Final Course

Study Material

(Modules 1 to 4)

Paper 5

Indirect Tax Laws

Part – I: Goods and Services Tax

Module – 1

(Relevant for May 2026, September 2026 and January 2027 examinations)

BOARD OF STUDIES

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Edition	:	September, 2025
Committee/Department	:	Board of Studies (Academic)
E-mail	:	bosnoida@icai.in
Website	:	www.icai.org
Price	:	₹ /- (For All Modules)
ISBN No.	:	978-93-48313-44-7
Published by	:	The Publication & CDS Directorate on behalf of The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi 110 002 (India)
Printed by	:	

BEFORE WE BEGIN ...

Indirect Tax Laws: Dynamic Subject Area

In the realm of chartered accountancy education, Indirect Tax Laws has emerged as one of the most dynamically evolving subjects. At the Final level, this subject is divided into two parts: Part I, which covers Goods and Services Tax (GST) for 80 marks, and Part II, which focuses on Customs & Foreign Trade Policy (FTP) for 20 marks. GST has brought a paradigm shift in the country's indirect tax landscape. It aims to create a unified market with consistent tax rates and procedures, breaking down economic barriers and promoting a more integrated national economy. By subsuming most of the erstwhile Central (excise duty, service tax, central sales tax) and State taxes (State-Level VAT) into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it mitigates the ill effects of cascading and improves competitiveness. It follows a multi-stage collection mechanism where tax is collected at every stage and the credit of tax paid at the previous stage is available as a set off at the next stage of transaction.

The nitty-gritties of this new tax law coupled with its inherent dynamism, makes the learning, understanding, application and analysis of the provisions of this law in problem solving both fascinating and challenging.

Know your Study Material

This Study Material is relevant for May 2026, September 2026 and January 2027 examinations. **The subject matter of Part I: Goods and Services Tax of this Study Material is based on the provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Act, 2017 as amended by the Finance Act, 2024 and Finance (No. 2) Act, 2024 including the significant notifications and circulars issued and other legislative amendments made, which have become effective upto 30.04.2025.** These amendments have been indicated in ***bold italics*** in this Study Material.

Further, the Finance Act, 2025 has come into force from 29.03.2025 after receiving the assent of the President of India. However, the amendments made in the

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CGST Act, 2017 and the IGST Act, 2017 vide the Finance Act, 2025 have not become effective till 30.04.2025. Therefore, the applicability or otherwise of the amendments made by the Finance Act, 2025 for May 2026, September 2026 and/or January 2027 examinations shall be announced by the ICAI only after the same becomes effective.

The content discussed in Part II: Customs & FTP is based on the Customs laws as amended by the Finance Act, 2025 including the significant notifications and circulars issued and other legislative amendments made, which have become effective upto 30.04.2025. The amendments are indicated in ***bold italics*** in the Study Material.

The significant notifications and circulars issued in Part I: Goods and Services Tax and Part II: Customs & FTP from 01.05.2025 to 31.10.2025 will be compiled and web-hosted on the BoS Knowledge Portal as Statutory Update for May 2026 examination. Similarly, significant notifications and circulars issued from 01.05.2025 to 28.02.2026 will be compiled and web-hosted as Statutory Update for September 2026 examination and significant notifications and circulars issued from 01.05.2025 to 30.06.2026 will be compiled and web-hosted as Statutory Update for January 2027 examination.

Framework of Chapters: Uniform Structure comprising of specific components

Efforts have been made to present the complex indirect tax laws in a lucid manner. Care has been taken to present the chapters in a logical sequence to facilitate easy understanding by the students. The Study Material has been divided into four modules for ease of handling by students. The first three modules are on GST and the fourth module is on Customs and FTP.

The various chapters of this subject have been structured uniformly and comprise of the following components:

	Components of each Chapter	About the component
1.	Learning Outcomes	Learning outcomes which you need to demonstrate after learning each topic have been detailed in the first page of each chapter/unit. Demonstration of these

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		learning outcomes will help you to achieve the desired level of technical competence
2.	**Content**	The concepts and provisions of indirect tax laws are explained in student-friendly manner with the aid of examples/ illustrations/ diagrams/ flow charts. Diagrams and flow charts would help you understand and retain the concept/ provision learnt in a better manner. Examples and illustrations would help you understand the application of concepts/provisions. These value additions would, thus, help you develop conceptual clarity and get a good grasp of the topic.
3.	**Test Your Knowledge**	This section comprises of variety of questions which will help you to analyse the provisions of indirect laws and apply the same in problem solving, thus, sharpening your application skills. In effect, it will test your ability to analyse and apply the concepts/provisions learnt in solving problems and addressing issues. Questions aim to test your analytical ability and interpretational skills.
4.	**Answers**	After you work out the problems/questions given under the section "Test Your Knowledge", you can verify your answers with the answers given under this section. This way you can self-assess your level of understanding of the provisions or concepts of a chapter.
5.	**Significant Select Cases**	The recent significant select Supreme Court and High Court rulings in customs law have been reported at the end of chapters of Part II Customs & FTP to help you appreciate the interpretation of the provisions of customs law by the Courts.

Students may make note of the following while reading the Study Material:

- For the sake of brevity, the "Goods and Services Tax", "Central Goods and Services Tax", "State Goods and Services Tax", "Union Territory Goods and

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Services Tax", "Integrated Goods and Services Tax", "Central Goods and Services Act, 2017", "Integrated Goods and Services Act, 2017", "Union Territory Goods and Services Act, 2017", "Central Goods and Services Tax Rules, 2017" and "Integrated Goods and Services Tax Rules, 2017" have been referred to as "GST", "CGST", "SGST", "UTGST", "IGST", "CGST Act", "IGST Act", "UTGST Act", "CGST Rules" and "IGST Rules" respectively in Part I: Goods and Services Tax of the Study Material.

- Unless otherwise specified, the section numbers and rules referred to in the chapters of Part I: Goods and Services Tax pertain to CGST Act and CGST Rules respectively (except Chapter 3: Place of Supply, where the section numbers and rule numbers pertain to IGST Act and IGST Rules).
- The illustrations, examples, questions and answers given under **'Test Your Knowledge'** in Part I: Goods and Services Tax and Part II: Customs & FTP are solved/answered on the basis of the **position of law, as existing on 30.04.2025**. The reference to years/months subsequent to such date in the examples, illustrations, questions and answers is only for the purpose of explaining the concepts and provisions as the position of law may change subsequently.
- Though all efforts have been taken in developing this Study Material, the possibilities of errors/omissions cannot be ruled out. You may bring such errors/omissions, if any, to our notice so that the necessary corrective action can be taken.

We hope that these student-friendly features in the Study Material improves your learning curve and sharpens your analytical and interpretational skills.

Happy Reading and Best Wishes!

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SYLLABUS

PAPER – 5 : Indirect Tax Laws

(One paper — Three hours – 100 Marks)

Part-I: Goods and Services Tax (80 Marks)

Objective:

To acquire the ability to analyse and interpret the provisions of the goods and services tax law and recommend solutions to case scenarios.

Contents:

1. Goods and Services Tax (GST) Law as contained in the Central Goods and Services Tax (CGST) Act, 2017 and Integrated Goods and Services Tax (IGST) Act, 2017 including

(i) Case studies based on following:

Levy and collection of CGST and IGST – Application of CGST/IGST law; Concept of supply, inter-State supply, intra-State supply, supplies in territorial waters; Charge of tax including reverse charge; Classification; Exemption from tax; Place of supply; Time of Supply; Value of supply; Input tax credit; Computation of GST liability

(ii) Procedures under GST including registration, tax invoice, credit and debit notes, electronic way-bill, accounts and records, returns, payment of tax

(iii) Refunds and case studies based on refund provisions

(iv) Job work

(v) Liability to pay in certain cases

(vi) Administration of GST; Assessment and Audit

(vii) Inspection, Search, Seizure and Arrest

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(viii) Demand and Recovery; Offences and Penalties

(ix) Appeals and Revision

(x) Advance Ruling

(xi) Ethics under GST

(xii) Other provisions[1]

Part-II: Customs & FTP (20 Marks)

Objective:

To develop an understanding of the customs laws and foreign trade policy and acquire the ability to analyse and interpret the provisions of such laws/concepts.

Contents:

1. Customs Law as contained in the Customs Act, 1962 and the Customs Tariff Act, 1975

(i) Introduction to customs law including Constitutional aspects

(ii) Levy of customs duties including application of customs law, taxable event, charge of customs duty, exceptions to levy of customs duty, exemption from custom duty

(iii) Types of customs duties

(iv) Classification and valuation of imported and export goods

(v) Import and Export Procedures including special procedures relating to baggage, goods imported or exported by post, stores

(vi) Warehousing

(vii) Refund

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[1] *The entire CGST and IGST laws are included in the syllabus at the Final level. Any residuary provision under the CGST Act, 2017 and IGST Act, 2017, not covered under any of the above specific provisions, would be covered under "Other provisions". Further, if any new Chapter is included in the CGST Act, 2017 and IGST Act, 2017, the syllabus will accordingly include the provisions relating thereto.*

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2. Foreign Trade Policy

(i) Introduction to FTP – legislation governing FTP, salient features of an FTP, administration of FTP, contents of FTP and other related provisions

(ii) Basic concepts relating to import and export

(iii) Basic concepts relating to export promotion schemes provided under FTP

Note – While covering the above laws, students should familiarise themselves with the ethical considerations and information technology aspects involved in the compliance of these laws.

If any new legislation(s) is enacted in place of an existing legislation(s), the syllabus will accordingly include the corresponding provisions of such new legislation(s) in place of the existing legislation(s) with effect from the date to be notified by the Institute. Similarly, if any existing legislation ceases to have effect, the syllabus will accordingly exclude such legislation with effect from the date to be notified by the Institute. Students shall not be examined with reference to any particular State GST Law.

Further, the specific inclusions/exclusions in any topic covered in the syllabus will be effected every year by way of Study Guidelines, if required.

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CHAPTER 1

SUPPLY UNDER GST

The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- comprehend the taxable event under GST
- analyse the taxable event – Supply – its meaning and scope.
- identify the transactions that will amount to supply even without any consideration.
- identify the transactions which will be neither the supply of goods nor the supply of services.
- classify the specified transactions either as supply of goods or as supply of services.
- explain the meaning of composite and mixed supplies and their taxability under GST.

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This chapter explains in detail the concept of taxable event under GST. However, it is advisable to first go through the basic concepts of GST as introduced in India. The same is given at the end of the chapter as **Annexure -1. The same is only for the understanding of the students and is not relevant from the examination point of view**.

1. TAXABLE EVENT UNDER GST - SUPPLY

A **taxable event** is any transaction or occurrence that results in a tax consequence. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system; it determines the point at which tax would be levied.

Under the earlier indirect tax regime, the framework of taxable event in various statutes was prone to catena of interpretations resulting in litigation since decades. The controversies largely related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc.

The GST laws resolve these issues by laying down one comprehensive taxable event i.e. **"Supply"** - Supply of goods or services or both. Various taxable events namely manufacture, sale, rendering of service, purchase, entry into a territory of State etc. that existed prior to introduction of GST have been done away with in favour of just one event i.e. **Supply**.

The GST Law, by levying tax on the 'supply' of goods and/or services, departs from the historically understood concepts of

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'taxable event' under the State VAT Laws, Excise Laws and Service Tax Law i.e. sale, manufacture and provision of services respectively.

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

2. RELEVANT DEFINITIONS

- **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)].

- **Services:** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

  Explanation: For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].

- **Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].

- **Competent authority:** means such authority as may be notified by the Government [Section 2(29].

- **Family:** means, —

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

  (ii) the parents, grand-parents, brothers and sisters of the person **if they are wholly or mainly dependent on the said person** [Section 2(49)].

- **Government:** means the Central Government [Section 2(53)].

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❖ **Local authority:** means —

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution.

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution.

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund.

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006.

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

(f) a Development Board constituted under article 371 and article 371J of the Constitution.

(g) a Regional Council constituted under article 371A of the Constitution [Section 2(69)].

❖ **Consideration:** in relation to the supply of goods or services or both includes:

- any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government,
- the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

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However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply [Section 2(31)].

❖ **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 (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets 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, as the case may be;

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

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club

(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

[Section 2(17)].

❖ **Actionable claim:** means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts

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recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882].

- **Manufacture:** means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly [Section 2(72)].

- **Money:** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].

- **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109)].
- **Non-taxable territory:** means the territory which is outside the taxable territory [Section 2(79)].
- **India:** means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters. [Section 2(56)].

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- **Supplier**: in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].

  However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims [Section 2(105)].

- **Recipient**: of supply of goods and/or services means-

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

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

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

  and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply

  and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

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❖ **Person:** includes [Section 2(84)]-

- An individual
- A HUF
- A company
- A firm
- Trust
- A Limited Liability Partnership
- A local authority
- An association of persons or a body of individuals, whether incorporated or not, in India or outside India
- Any corporation established by/under any Central, State or Provincial Act or Government company as defined in section 2(45) of Companies Act, 2013
- Any body corporate incorporated by or under the laws of a country outside India
- Central Government/State Government
- A co-operative society registered under any law relating to cooperative societies
- Society as defined under the Societies Registration Act, 1860
- Every artificial juridical person, not falling above

✪ ***Definitions in which the expression "means" has been used are exhaustive definitions. Consequently, the scope of these definitions cannot be expanded.***

✪ ***Definitions in which the expression "includes" has been used are inclusive and are not exhaustive definitions. Resultantly, the scope of these definitions is wide.***

Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws[1] are outside the scope of syllabus.

[1] *It may be noted that GST laws of all the States and Union Territories are largely based on the CGST Act, 2017.*

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3. CONCEPT OF SUPPLY [SECTION 7 OF THE CGST ACT]

The concept of **'supply'** is the key stone of the GST architecture. The provisions relating to the meaning and scope of supply are contained in Chapter III of the CGST Act read with various Schedules given under the said Act.

Following sections and schedules shall be discussed in this chapter to understand the concept of supply:

Section 7	Meaning and scope of supply
Section 8	Taxability of composite and mixed supplies
Schedule I	Activities to be treated as supply even if made without consideration
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services
Schedule III	Activities or transactions which shall be treated neither as supply of goods nor as supply of services.

Provisions of section 7 containing the meaning and scope of supply are as follows:

STATUTORY PROVISIONS		
Section 7	***Meaning and Scope of Supply***	
Sub-section	***Clause***	***Particulars***
(1)	***Supply includes -***	
	(a)	*all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental,*

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		lease or disposal made or agreed to be made for a ***consideration*** *by* ***a person*** *in the* ***course or furtherance of business***
	(aa)	*the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment/other valuable consideration.* *Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.*
	(b)	***importation of services,*** *for a consideration whether or not in the course or furtherance of business, and*
	(c)	*the* ***activities*** *specified in* ***Schedule I****, made or agreed to be made* ***without a consideration.***
(1A)	*where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in* ***Schedule II****.*	
(2)	*Notwithstanding anything contained in sub-section (1),*	
	(a)	*activities or transactions specified in* ***Schedule III****; or*
	(b)	*such activities or transactions undertaken by the Central Government, a State Government or any local*

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		authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council
	shall be treated neither as a supply of goods nor a supply of services.	
(3)	*Subject to the provisions of sub-sections (1), (1A) & (2), Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —*	
	(a)	*a supply of goods and not as a supply of services; or*
	(b)	*a supply of services and not as a supply of goods.*

ANALYSIS

The definition of 'supply' as contained in section 7 is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. Clause (a) of sub-section (1) illustrates the forms of supply, but the list is not exhaustive. This is further substantiated by the use of words ***'such as'*** in the definition.

Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

The meaning and scope of supply in terms of section 7 can be understood in terms of following **parameters**:

1. Supply should be of goods or services.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.

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Supply should be

Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2nd and 3rd parameters *[the requirement of supply being made for a consideration and in the course or furtherance of business]* in the GST law.

Few exceptions have been carved out where a transaction is deemed to be a supply even without consideration *[contained in Schedule I – discussed later in this Chapter]*.

Without Consideration

Schedule -I -Deemed Supply

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Import of Services for consideration

Supply even if not in the course or furtherance of business

Similarly, the condition of supply to be made in the course or furtherance of business has been relaxed in case of import of services *[Import of services for a consideration, whether or not in the course or furtherance of business, is treated as supply]*.

Further, there are also cases where a transaction is kept out of scope of supply despite the existence of the above parameters, i.e. there is a list of activities which are treated neither as a supply of goods nor as a supply of services *[contained in Schedule III – discussed later in this Chapter]*.

Neither Supply of goods nor Supply of services

Schedule - III

Classified either as Supply of goods or as Supply of services

Schedule - II

In other words, they are outside the scope of GST. Besides, GST law has classified certain activities/transactions either as supply of goods or as supply of services in Schedule II *[Discussed later in this Chapter]*.

Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods. In the subsequent paras, the above aspects of supply have been extensively discussed. The discussion has been broadly categorised into following:

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SUPPLY OF GOODS OR SERVICES FOR CONSIDERATION IN COURSE OR FURTHERANCE OF BUSINESS

SUPPLY SHOULD BE OF GOODS OR SERVICES OR BOTH

The definition of supply begins with the term **'Supply includes'**, thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'.

Supply **includes** all forms of supply of goods or services or both. Supply of **anything other than goods or services** like money, securities etc. does not attract GST.

The terms goods and services as defined under the CGST Act have been analysed by way of a diagram on next page.

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

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***Please refer the definitions of 'actionable claims' and 'money' as provided in heading 2. – Relevant Definitions.*

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SUPPLY INCLUDES SPECIFIED FORMS OF SUPPLY, SHOULD BE FOR CONSIDERATION AND SHOULD BE IN COURSE OR FURTHERANCE OF BUSINESS

The first part of section 7 [Clause (a) of sub-section (1)] includes **all forms of supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for consideration in the course or furtherance of business.**

It is important to note that supply includes ALL forms of supply within its purview, though **eight illustrative forms of supply** have been enlisted in the definition. Further, supply as contemplated in this first part has two pre-requisites:

- ✓ the supply should be for a consideration; and
- ✓ the supply should be in the course or furtherance of business.

We shall first discuss the various forms of supply as illustrated in section 7(1)(a) in detail:

A. FORMS OF SUPPLY

Various forms of supply contemplated in section 7(1)(a) are sale, transfer, barter, exchange, licence, rental, lease or disposal. These forms of supply are only illustrative and not exhaustive. However, none of these terms have been defined under the Act. In order to understand their meaning, we have taken recourse to their dictionary meaning or otherwise and have explained them as follows:

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I. Sale and Transfer: The dictionary meaning of term 'sale' is the act of selling; specifically: the transfer of ownership of and title to property from one person to another for a price[2]. As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

Further, the term 'transfer' has been defined in the Black's Law dictionary as to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of.

(1) A shopkeeper sells a pen for ₹ 100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of sale.

(2) A company transfers goods from its factory to the depot for sale purposes. This is 'transfer' of goods where the sale has not yet taken place.

II. Barter and Exchange: The dictionary meaning of term 'barter' is to exchange goods or services for other goods or services instead of using money[3]. Black's Law dictionary defines the term 'exchange' as an act of giving or taking one thing for another.

While barter deals with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are paid for partly in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.

(3) When a new car worth ₹ 5,00,000 is purchased in **exchange** of an old car alongwith the monetary consideration of ₹ 4,00,000 paid for the said purchase. – **Exchange transaction**

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[2] *www.merriam-webster.com*

[3] *www.macmillandictionary.com*

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(4) A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor. – **Barter transaction.**

III. Licence, lease, rental and disposal: The dictionary meaning of the term 'licence' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful[4].

The dictionary meaning of 'rental' is an arrangement to rent something, or the amount of money that you pay to rent something[5] and that of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time[6].

Black's law dictionary defines disposal as the sale, pledge, giving away, use, consumption or any other disposition of a thing.

Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule II of CGST Act *[Schedule-II has been discussed in detail in the subsequent paras]*.

As discussed earlier, one of the parameters to qualify as a supply of goods and/or services is that a supply is made for a consideration. This parameter has been explicated in the following paras:

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[4] *www.merriam-webster.com*
[5] *www.dictionary.cambridge.org*
[6] *www.dictionary.cambridge.org*

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B. CONSIDERATION

The dictionary meaning of word 'consideration' is payment. Consideration need not always be in the form of money. It can be in money or in kind. It covers anything which might be possibly done, given or made in exchange for something else. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person. However, any subsidy given by the Central Government or a State Government is not considered as consideration.

A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. The term consideration is defined under section 2(31) *[Refer heading 'Relevant Definitions']*.

The said definition has been depicted in the form of a diagram as follows:

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Let us examine the existence of consideration in the following three scenarios:

1.	Donations received by charitable institutions from individual donors, without quid pro quo (something for something)
2.	Art works sent by artists to galleries for exhibition
3.	'No Claim Bonus' offered by an insurance company to the insured

1. Donations received by charitable institutions from individual donors, without *quid pro quo*[7]

An important feature of consideration is *quid pro quo* [something for something]. Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Generally, institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. receive financial help or any other support in the form of donation or gift from the individual donors. In order to express the gratitude towards such help/support, the recipient institutions place a name plate or similar such acknowledgement in their premises.

When the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and **is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business**, then it can be said that there is **no supply** of service for the payment in the form of donation. In other words, there is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (i.e. supply a service). Therefore, there is no GST liability on such payment made.

Some examples of cases where there would be no taxable supply are as follows:-

[7] *any obligation to do anything in return of the donation*

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(5) Bhushan donated a blackboard to Yoganisht Sansthan - a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated - "Good wishes from Mr. Bhushan".

(6) Smt. Durga Devi donated some money to a temple in the memory of her late father. The Temple Trust constructed a room in the temple complex from such donation and wrote "Donated by Smt. Durga Devi in the memory of her father" on the door floor of the room.

In above examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised.

Thus, GST is not leviable where the following three cumulative conditions are satisfied namely:

[Circular No. 116/35/2019 GST dated 11.10.2019]

2. Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists

Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.

It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply *[Circular No. 22/22/2017 GST dated 21.12.2017]*.

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3. No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him

The issue which arose for consideration was whether the deduction on account of 'No Claim Bonus' (NCB) allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s).

As per practice prevailing in the insurance sector, the insurance companies deduct 'No Claim Bonus' from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.

[Circular No. 186/18/2022 GST dated 27.12.2022]

4. Salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle

In case of motor vehicle insurance provided by the insurance companies engaged in providing general insurance services, such companies insure the cost of repairs/damages of motor vehicles incurred by the policyholders.

In case a claim is made by an insurer for damage of the motor vehicle, while

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settling said insurance claim, where the general insurance companies, as per the pre-decided terms of the insurance contract:

(i) deduct the value of salvage/wreckage of the motor vehicle as deductibles from the claim amount paid to the insured, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same.

(ii) do not deduct the value of salvage/wreckage of the motor vehicle and pay the full amount of insurance claim, the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer[8].

***Provisions of Schedule I have been discussed in detail later in this chapter.*

Another parameter to qualify as supply of goods and/or services is that a supply is made in course or furtherance of business. This parameter has been explained in the following paras:

C. COURSE OR FURTHERANCE OF BUSINESS

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST.

[8] *Circular No. 215/9/2024 GST dated 26.06.2024*

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Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business'.

Meaning of supply made in the course or furtherance of business: Any activity undertaken in course/ for furtherance of business would constitute a supply. In order to understand the term 'in the course or furtherance of business', we need to first understand the term 'business'. Business as defined under section 2(17), *inter alia,* includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit.

The definition of business has been summarised in the diagram below:

Thus, business includes any activity/transaction which is incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager [bet] or any other similar activity. In addition, any activity undertaken by the Central Government or a State Government or any local authority in which they are engaged as public authority shall also be construed as business. For any trade,

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commerce, or any other similar activity to qualify as business, **frequency, volume, continuity or regularity of such transaction is not a pre-requisite**.

Some of the examples of supply made/not made 'in the course or furtherance of business' are as follows:

(7) Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because said supply is not made by Rishabh in the course or furtherance of business[9].

(8) Manikarnika sold her old gold bangles and earrings to 'Aabhushan Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual[10] [11].

Since 'business' includes vocation, therefore supply of goods or service **as a vocation** is also a supply under GST.

(9) Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply as it is made in course or furtherance of business.

Facilities provided by the club/association to its members for consideration are provided in course or furtherance of business.

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[9] *Clarified vide GST FAQs issued by CBIC*

[10] *Clarified by CBIC vide press release dated 13.07.2017 and GST Flyer - 'The meaning and scope of supply'*

[11] *The view taken in Examples 7 & 8 above is based on the view taken in the Departmental FAQs/ press release. There is another school of thought according to which since the definition of business includes trade, commerce, or any other similar activity,* **whether or not there is frequency, volume, continuity or regularity** *of such transaction, on literal interpretation, the transactions in the above examples can be considered to be made in the course or furtherance of business and thus, will constitute supply. The taxability of such transactions, however, will have to be examined under the provisions of section 9 [Discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material]. However, since this view may not always lead to logical conclusions, it is more prudent to take a purposive approach as followed in Departmental FAQs/press release given above.*

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(10) A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is included in the definition of 'business'.

Admission of persons to any premises for a consideration is also included in business.

(11) Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.

Business includes activities of a race club including by way of totalisator or a license to book maker[12] or activities of a licensed book maker in such club.

(12) Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator[13]. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.

From the above discussion, it can be inferred that if an activity or transaction satisfies all the above parameters, as discussed in points A, B and C above, said activity or transaction qualifies as 'Supply under GST'.

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[12] *Book maker is a person that accepts and pays off bets on sporting and other events at agreed-upon odds.*

[13] *Totalisator is a device showing the number and amount of bets staked on a race, to facilitate the division of the total among those backing the winner.*

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After understanding the basic concept of supply, let us now examine taxability of few transactions:

Taxability of Cost Petroleum

When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government, it enters into a **Production Sharing Contract (PSC)** with the Government. The relationship of the contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee. As per these PSCs, when a contractor discovers oil/gas, he is at first entitled to recover the contract cost *[expenses incurred in exploration, development, production and payment of royalty]* involved in the extraction of oil/gas from the total sale proceeds and thereafter, he is expected to share with the Government the profit from his venture [known as profit petroleum], as per the PSC.

The value of petroleum which the contractor is entitled to take in a year for recovery of the contract costs is called the **cost petroleum**. Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the **profit petroleum**. The **Government's share of profit petroleum** which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas **is exempt from GST**[14].

The **cost petroleum** is not a consideration received by the contractor for the services provided to Government and thus not taxable *per se*. The reason for the same is that the **contractors carry exploration and production of petroleum for themselves and not as a service to Government**. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum *[Circular No. 32/06/2018 GST dated 12.02.2018]*.

[14] *Refer Chapter 4 – Exemptions from GST in this Module of the Study Material for detailed discussion.*

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Financial Transactions

Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money and other related services. For such services, invariably a variety of instruments are used in the financial markets.

In the following paras, we have examined whether transactions in such instruments qualify as supply? As seen earlier, the **definitions of 'goods' and 'services' specifically exclude both money and securities**.

The definition of **'money'** includes instruments like cheques, drafts, pay orders, promissory notes, letters of credit, etc. Therefore, activities that are only transactions in such instruments would be outside the definition of service.

Commercial Paper

Certificate of Deposit

Money would also include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD')[15] (as they are in the nature of promissory notes), issuance of drafts or letters of credit, etc. While these transactions are outside the ambit of supply, the related activity for which a separate consideration is charged, is chargeable to GST if other elements of taxability are present.

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[15] *Commercial Paper ('CP') and Certificate of Deposit ('CD') are understood as unsecured money market instruments which may be issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All – India Financial Institutions (FIs) permitted by RBI.*

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The term **'securities'** shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA) [16] [Section 2(101)].

In this regard, there may arise a doubt as to whether a 'derivative' is included within the meaning of 'securities' above and whether derivatives are liable to GST? Before that, let us understand what a derivative means in simple terms. Derivatives are financial contracts/instruments that derive their value from something else, like an underlying asset. They are kind of bets or agreements based on the price/performance of the underlying asset, rather than owning that asset directly. 'Derivatives'[17] are included in the definition of 'securities' under SCRA. As **'derivatives' fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST**.

Two most common types of derivatives are futures contracts and forward contracts. In simple terms, forward and futures contracts are similar to making a promise to buy or sell something, like a commodity (e.g., oil, wheat), financial asset (e.g., stocks, bonds), or even a market index (e.g., S&P 500) at a specific price on a future date. It's an agreement/contract between two parties to buy or sell that something at a specific price on a specific date in the future. On the specified date in future, the

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[16] *In terms of section 2(h) of SCRA, "securities" includes—*
(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
(ia) derivative;
(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
(id) units or any other such instrument issued to the investors under any mutual fund scheme;
(ii) Government securities;
(iia) such other instruments as may be declared by the Central Government to be securities; and
(iii) rights or interest in securities.

[17] *In terms of section 2(ac) of SCRA, "derivative" includes— (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security; (B) a contract which derives its value from the prices, or index of prices, of underlying securities. The definition of 'derivatives' in SCRA is an inclusive definition.*

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contract needs to be settled. These contracts can either be settled by way of actual physical delivery of the underlying asset or by way of net settlement of differential rate with no actual delivery. The primary difference between the futures and forward contract is that futures contracts are standardised derivative contracts, traded on organised exchanges and marked-to-market daily whereas forward contracts are customisable, over-the-counter derivative contracts, not traded on organised exchanges but negotiated between two parties, without any daily mark-to-market requirements.

GST implications on futures contracts: Since futures contracts are in the nature of derivatives, these qualify as 'securities' and thus, are **not subject to GST**. However, where the futures contracts have a **delivery option** and the settlement of contract takes place by way of actual delivery of underlying commodity/currency, then such **futures contracts would be treated as normal supply of goods and liable to GST**.

Futures contracts

GST implications on forward contracts: Where the settlement takes place by way of **actual delivery of underlying commodity/currency**, then such forward contracts would be treated as **normal supply of goods and liable to GST**. Where the settlement takes place by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of 'securities' and thus, are not chargeable to GST.

Forward contracts

GST implications on secured debt: Sale, purchase, acquisition or assignment of a secured debt does not constitute a transaction in money; it is in the nature of a derivative and hence a security.

SECURED DEBT

GST implications on transactions in instruments: Transactions in instruments like interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference.

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GST implications on services by way of extending deposits, loans or advances: Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount is exempt from the levy of GST. *The same has been discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.*

It is important to note that GST would be levied on service charges normally charged for various transactions in money including charges for making drafts, issuance charges for letter of credit, etc or service charges or service fees or documentation fees or broking charges or such like fees or charges charged on the derivatives/futures contracts/forward contracts, since the same would be a consideration for provision of service.

Lending of securities - Securities Lending Scheme

Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 (hereafter referred to as SLS) for the purpose of facilitating lending and borrowing of securities. The security lending mechanism is depicted in the diagram below: -

In the above diagram:

(i) **Lender** is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.

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(ii) **Borrower** is a person who borrows the securities under the scheme through an approved intermediary.

(iii) **Approved intermediary** is a person duly registered by the SEBI under the SLS through whom the lender will deposit the securities for lending and the borrower will borrow the securities.

Under this scheme, **lender of securities** lends securities through an approved intermediary to a borrower, under an agreement, temporarily for a specified period. The lenders earn **lending fee** for lending their securities to the borrowers.

Securities are lent with a condition that the **borrower** will **return equivalent securities** of the same type or class at the end of the specified period along with the corporate benefits[18] accruing on the securities borrowed. The borrower of securities can **further sell or buy these securities**.

In order to lend securities under SLS, **lender enters into an agreement with the approved intermediary** and for the purpose of borrowing of securities, the **borrower enters into an agreement with the approved intermediary**. Thus, there is no direct agreement between the lender and borrower for the lending or borrowing of securities and there is anonymity between them.

The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India.

As seen earlier in this chapter, securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

The **SLS doesn't treat lending of securities as disposal of securities** and therefore is not excluded from the definition of services. The **lending fee** charged from the borrowers of securities **has the character of consideration and is taxable under GST.** Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for **commission or fee** are also **taxable separately** *[Circular No. 119/38/2019 GST dated 11.10.2019]*.

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[18] *Corporate benefits include dividends (gross), rights, bonus, redemption benefits, interest, or any other right or benefit accruing on the securities lent.*

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Securities of subsidiary company in holding company

Since securities (including shares)[19] are considered neither as goods nor as services [discussed in detail earlier], securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services.

Merely because there is an entry in the scheme of classification of services to that effect[20], **the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services** by a holding company to the said subsidiary company, unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7[21].

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[19] As per the definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956, securities include 'shares' as per definition of securities.

[20] There is a specific SAC (Service Accounting Code entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest".

[21] Circular No. 196/08/2023 GST dated 17.07.2023

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Cash Calls in Joint Venture (JV)

JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame. Whether a cash call is merely a transaction in money or in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Let us understand the taxability of cash calls with the help of following examples:

(13) There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.

In above case, cash calls will not be subject to GST since the operating member is not carrying out an activity for another for consideration. Here, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

(14) There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machinery and performs exploration and production activities on behalf of the JV.

In above case, the operating member uses its own machinery and is therefore providing 'service' within the scope of 'supply' because here operating member is recovering the cost appropriated towards machinery & services from other JV members in their participating interest ratio[22].

[22] *Circular No. 35/9/2018 GST dated 05.03.2018*

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In the subsequent paras, we have discussed the exceptions to the two parameters of supply, *namely*, (i) supply made for consideration, but not in course or furtherance of business and (ii) supply made without consideration.

IMPORTATION OF SERVICES FOR CONSIDERATION WHETHER OR NOT IN COURSE OR FURTHERANCE OF BUSINESS

The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration **whether or not in the course or furtherance of business**. This is the only exception to the condition of supply being made in course or furtherance of business.

(15) Ramaiyaa, a proprietor, has received the architect services for his personal residence from an architect located in New York at an agreed consideration of $ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.

ACTIVITIES WITHOUT CONSIDERATION - DEEMED SUPPLY

STATUTORY PROVISIONS

Schedule-I	***Activities to be treated as supply even if made without consideration***
Para No.	***Particulars***
(1)	*Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.*

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(2)	*Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.* *Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.*
(3)	*Supply of goods —* *(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or* *(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.*
(4)	*Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.*

ANALYSIS

As seen earlier, section 7(1)(c) provides that supply includes the activities specified in Schedule I, made or agreed to be made without a consideration. Thus, there are activities or transactions which are treated as supply, **even if they are made without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed in the subsequent paras:

As per Schedule I, in the following four cases, activities made without consideration will be treated as supply under section 7:

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I. Permanent Transfer/Disposal of Business Assets [Para 1 of Schedule I]: Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. However, this provision shall apply only if input tax credit has been availed on such assets.

Therefore, in order to qualify as supply under this para, following conditions need to be satisfied cumulatively:

- There must be a disposal or transfer of business assets**.
- Transfer/disposal must be permanent, and
- ITC must have been availed on such business assets.

In view of the last condition stipulated above, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:

(i) Business assets on which ITC is blocked/not available under GST[23].

(ii) Business assets though eligible for ITC, ITC has not been availed by the registered person.

It's important to note that under GST legislation, there is no specific definition for the term "business asset." Nevertheless, business assets are generally recognized as property or equipment acquired primarily for business purposes. These assets can be grouped into various categories, including current and non-current, short-term and long-term, operating and capitalized, as well as tangible and intangible assets.

(16) Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops.

[23] *List of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.*

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(17) A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

This para is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

II. Supply between related persons or distinct persons [Para 2 of Schedule I]: Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply even if made without consideration **provided the same is made in the course or furtherance of business.**

Let us understand the terms **'related persons'** and **'distinct persons'**.

(i) Related persons: A person who is under influence of another person is called a related person like members of the same family or subsidiaries of a group company etc. Under GST law various categories of related persons have been specified. The term 'related person' has been defined in explanation to section 15. The said definition has been depicted by way of a diagram as follows:

Persons including legal person are deemed as related persons if

- Such persons are officers/directors of one another's business
- Such persons are legally recognised partners
- Such persons are employer & employee
- A third person controls/ owns/ holds (directly/ indirectly) ≥ 25% voting stock/shares of both of them
- One of them controls (directly/indirectly) the other
- A third person controls (directly/indirectly) both of them
- Such persons together control (directly/indirectly) a third person
- Such persons are members of the same family*
- One of them is the sole agent/sole distributor/sole concessionaire of the other

*****See the definition of 'family' as provided in heading 2. – Relevant Definitions.*

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(18) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(19) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

(ii) **Distinct Persons specified under section 25:** Before we go through the statutory provisions of 'distinct persons', let us first have an **overview of the registration provisions** for better understanding of the concept of distinct persons. *Detailed and in-depth analysis of the registration provisions is contained in Chapter 8 – Registration in Module 2 of this Study Material.*

Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable/exempt supply.

Since registration under GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he can get a single registration for said State/UT. He may also get separate registration for any place(s) of business in such State/UT.

Now, let us understand the concept of distinct persons in simple terms:

The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as **distinct persons**. Where a person having one registered establishment in a State/UT has another establishment in a different State/UT [not necessarily registered], these establishments are considered as **establishments of distinct persons.**

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Statutory provisions relating to 'distinct persons' are contained in sub-sections (4) and (5) of section 25. They have been explained with examples as follows:

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

(20) Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Mohan's registrations under GST under same PAN in West Bengal and Delhi shall be treated as distinct persons.

Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons** [Section 25(5)]. Further, Explanation 1 to section 8 of the IGST Act stipulates that **establishments of same entity shall be considered as establishments of distinct persons** where a person has:

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment within that State or Union territory.

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(21) Rishabh Enterprises, a registered supplier, owns a restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand.

In this case, restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishments of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business even without consideration will qualify as supply.

(iii) **Stock transfers or branch transfers qualify as supply**: It is a common practice in business to transfer goods transferred amongst different units of same entity, for instance, distribution of samples manufactured in a factory to different branches or transfer of goods from factory to depot/showroom for sale therefrom, from one warehouse to another warehouse, from one branch to another branch where the demand of the goods is higher. Since the transfer is within the same business, the transferor unit would not charge any amount to the transferee unit. Similarly, it is also possible that one branch supplies services to another branch of the same entity without consideration. These transactions are termed as self-supplies. Under GST, these transactions though undertaken without consideration, will also qualify as supply, provided the transfer of goods or services is between:

(i) different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or

(ii) establishments of distinct persons.

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(22) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.

However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. This can be understood with the help of the following example:

(23) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there.

It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business.

Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.

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However, in the above example, if Raghubir Fabrics obtains separate registrations for Lucknow factory and Kanpur showroom, stock transfer between the Lucknow factory and Kanpur showroom will constitute supply. The concept arising from the above discussion is summarised in below diagram (assuming a case where there are two places of business in a State):

Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer, in course or furtherance of business, do not constitute supply since they are not related persons or distinct persons and there is no consideration involved *[Circular No. 47/21/2018 GST dated 08.06.2018]*.

(iv) Supply of goods or services or both between an employer and employee: In terms of the definition of related person given above, employer and employee are related persons.

However, services provided by an employee to the employer in the course of or in relation to his employment are outside the scope of GST (treated as neither supply of goods nor as supply of services) as per Schedule III of the CGST Act *(discussed subsequently in this chapter)*].

Gifts by employer to employee

Further, proviso to Para 2 of Schedule I provides that gifts upto ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated

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as supply of goods or services or both. However, gifts of value more than ₹ 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.

The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

Perquisites by employer to employee

Since services by an employee to the employer in the course of or in relation to his employment are outside the scope of GST, supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST.

Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.

It follows therefrom that **perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST[24].**

[24] *Circular No. 172/04/2022 GST dated 06.07.2022*

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Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre[25]. Consequently, if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST.

The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (C2C)[27]

III. Principal – Agent [Para 3 of Schedule I]: Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.

Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

Points which merit consideration, in this regard, are as follows:

- Only **supply of goods and not supply of services** is covered here.
- Supply of goods between principal and agent **without consideration** is also supply.

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[25] *Complete list of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.*

[26] *Circular No. 172/04/2022 GST dated 06.07.2022 read with Ministry of Finance's Press Release on 10.07.2017*

[27] *It is possible to take an alternative view in this regard. This scenario, i.e. the employer providing services (free of charge) to the employee in lieu of the services provided by the employee to the employer in the course of employment, is an exchange transaction. In an exchange transaction, both the parties independently assess their transaction status. Thus, while service provided by employee to the employer being covered under Schedule III is not a supply, service provided by employer to employee may constitute a supply in terms of section 7(1)(c) read with para 2 of Schedule I since employer and employee are related persons as per explanation to section 15. Provisions of section 15 have been discussed in detail in Chapter 6 – Value of Supply in this Module of the Study Material.*

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Thus, the **supply of services** between the principal and the agent and vice versa would require "consideration" to be present so as to be considered as supply and thus, making it liable to GST.

Let us first go through the **meaning of terms 'principal' and 'agent'**. Section 2(5) defines **agent** as 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.

As we can deduce from this definition of agent that (a) the term 'agent' is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship and (b) the supply/receipt of goods/services has to be undertaken by the agent on behalf of the principal.

Further, the term **principal** has been defined under section 2(88) as a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

In order to determine whether a particular principal-agent relationship falls within the ambit of the Para 3 of Schedule I as discussed above or not, the **DECIDING FACTOR** is **whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?** In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

- Where the **invoice for further supply is being issued by the agent in his name** then, any provision of goods from the principal to the agent would fall within the fold of Para 3 above.

Invoice for further supply to customer be issued in the agent's name.

- However, where the **invoice is issued by the agent to the customer in the name of the principal,** such agent shall not fall within the ambit of Para 3 above.

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- Similarly, where the goods being procured by the agent on behalf of the principal are **invoiced in the name of the agent** then further provision of the said goods by the agent to the principal would be covered by Para 3 above ***[Circular No. 57/31/2018 GST dated 04.09.2018]***.

Goods procured on behalf of principal are invoiced in the agent's name.

Where the invoice is issued by the agent to customer in the name of:	Whether he will be an agent in terms of Para 3 of Schedule I?
Principal	No
Agent	Yes

The above clarification can be understood with the help of following scenario-based examples:

(24) Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol and asks the supplier (Golu) to send the goods and issue the invoice directly to Anmol.

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

(25) Manimani Bank, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders.

The highest bid is accepted and the goods are sold to the highest bidder by Manimani Bank. The invoice for the supply of the goods is issued by Manimani Bank to the successful bidder.

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

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

The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder.

In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder, and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3 of Schedule I.

(27) A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3 of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

(28) Ravi sells agricultural produce by utilizing the services of Kavi who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Kavi identifies the buyers and sells the agricultural produce on behalf of Ravi for which he charges a commission from Ravi.

As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

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In cases where the invoice is issued by Kavi to the buyer, then he is an agent covered under Para 3 of Schedule I[28]. However, in cases where the invoice is issued directly by Ravi to the buyer, the commission agent (Kavi) doesn't fall under the category of agent covered under Para 3

Clarification of issues pertaining to Del-credere agent (DCA)

A question was posed by the industry - whether supply between a principal and a Del-credere agent would also get covered under Schedule I. The Government clarified the doubt of the industry by way of following clarification:

Before going through the clarification, let us first understand what is meant by a DCA? In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the **DCA guarantees the payment to the supplier**.

In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.

In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

Circular No. 73/47/2018 GST dated 05.11.2018 has clarified the following issues in this regard:

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[28] *It is important to note that services provided by the commission agent for sale or purchase of agricultural produce are exempt supply under GST. Said exemption has been discussed in detail in Chapter 4 Exemptions from GST in this Module of the Study Material.*

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Sl. No.	Issue	Clarification
1.	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I?	As already clarified vide *Circular No. 57/31/2018 GST* (discussed above), whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I depends on the following possible scenarios: ❑ In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent. ❑ In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.
2.	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I?	In such a scenario, following activities are taking place: 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I, the temporary short-term transaction based loan being

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		provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply[29]. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.
3.	Where DCA is an agent under Para 3 of Schedule I and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	In such a scenario following activities are taking place: 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be

[29] *Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt supply vide Entry 27 of Notification No. 12/2017 CT(R) dated 28.06.2017 [Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material].*

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		considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d)[30].

IV. Importation of services [Para 4 of Schedule I]: Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply".

(29) Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such consultancy services free of cost to its branch office.

Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.

(30) Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi.

Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.

However, if in the above case, Chakmak receives architect services without consideration from his son with respect to his office in Delhi, the same shall be treated as supply because the same have been received in the course of business.

[30] *Section 15 has been discussed in detail in Chapter 6 – Value of Supply in this Module of the Study Material.*

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In the preceding paras, we have discussed the provisions of Schedule-I which enumerates the cases where an activity is treated as supply even though it is undertaken free of cost. In this backdrop, let us now examine whether the items given free of cost in case of some of the sales promotion schemes qualify as supply or not.

Clarification on Sales promotion schemes

A number of sales promotion schemes are commonly employed by the businesses to increase sales volume or to encourage the use or trial of a product or service so that new customers get attracted towards their products. For instance, certain sections of trade and industry, such as, pharmaceutical companies often provide drug samples to their stockists, dealers, medical practitioners, etc., or sometimes, companies announce offers like 'Buy One, Get One free' - i.e. buy one soap and get one soap free or get one tooth brush free along with the purchase of tooth paste.

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As we have already seen that as per section 7(1)(a), the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" except in case of activities mentioned in Schedule I of the CGST Act. In view of the same, few sales promotion schemes have been examined as under:

Free samples and gifts: Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST[31], except where the activity falls within the ambit of Schedule I.

Buy one get one free offer: It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly – *Concept of composite and mixed supply has been discussed subsequently in this chapter*.

[Circular 92/11/2019 GST dated 07.03.2019]

There has always been an ambiguity as to whether activities/ transactions involving supply of goods/ services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. Clause (aa) to section 7(1) brings in the certainty that said activities/ transactions are covered within the scope of supply under GST and ensures the levy of GST on such activities/transactions. This has been discussed as under:

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[31] *ITC on inputs, input services and capital goods to the extent they are used in relation to the gifts/free samples shall be available to the supplier only where the activity of distribution of gifts/free samples falls within the scope of supply supply. The same has been discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.*

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ACTIVITIES/TRANSACTIONS BETWEEN A PERSON, OTHER THAN AN INDIVIDUAL, AND ITS MEMBERS/ CONSTITUENTS FOR CONSIDERATION

The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash, deferred payment or other valuable consideration are covered within the ambit of 'supply' as per section 7(1)(aa).

Further, explanation to clause (aa) to section 7(1) clarifies that for the purpose of this clause, such person (association, club, etc.) and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions between them shall be deemed to take place from one such person to another. The **explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect** over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority.

The aforesaid explanation prevents the application of doctrine of mutuality by such person(s)[32].

(31) Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.

(32) A Resident Welfare Association collects maintenance charges from its members for services provided.

Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.

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[32] *Section 7(1)(aa), in effect, overrules the judgment of the Hon'ble Supreme Court in State of West Bengal v. Calcutta Club Limited wherein it was held that the transactions between a Club and its members cannot be taxed owing to the doctrine of mutuality, i.e., a person cannot make a profit from himself.*

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ACTIVITIES/TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

Section 7(1A) classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II of the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.

This helps in mitigating the ambiguities which existed in earlier laws.

(33) Under earlier tax regime, the restaurants used to charge both service tax and VAT on the value of food served. This is so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.

Under GST, the supply by a restaurant is treated as composite supply *[concept of composite supply is discussed subsequently in this chapter]* since supply of food and service is naturally bundled in ordinary course of business. Further, para 6(b) of Schedule II *[refer table below]* specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.

The matters listed out in Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation. These are as follows:-

Para No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods. **(34)** Shivaji sells ready-made garments to its customers.	Supply of Goods

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		Any transfer of right in goods/ undivided share in goods without transfer of title thereof. **(35)** Genius Equipments Ltd. gives a machinery on rent to Suhaasi Manufacturers.	Supply of Services
		Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. **(36)** Dhruva Capitals supplied goods on hire purchase basis to customers. **(37)** Optima Manufacturers supplies toys to retailers on 'sale or return basis'.	Supply of Goods
2.	Land and Building	Any lease, tenancy, easement, licence to occupy land[33]. **(38)** Lease agreement for land.	Supply of Services
		Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.	Supply of Services

[33] *Also refer Circular No.44/18/2018 CGST dated 02.05.2018 discussed subsequently.*

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		(39) A shop let out in a busy market area.	
3.	Treatment or Process	Any treatment or process which is applied to another person's goods **(40)** Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.	Supply of Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business so as no longer to form part of those assets.	Supply of Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/ under directions of person carrying on the business. **(41)** A person manufacturing and selling wooden furniture takes one chair manufactured by him for use at his house.	Supply of Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, **in the course or furtherance of his business,** immediately	Supply of Goods

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		before he ceases to be a taxable person. **(42) Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.** **Exceptions:** ❑ Business is transferred as a going concern to another person[34]. ❑ Business is carried on by a personal representative who is deemed to be a taxable person.	
5.	**(a) Renting of immovable property** **(43)** Renting of a commercial complex. **(44)** Renting of precincts of a religious place. **(45)** Renting of property to an educational institution. **(46)** Permitting use of immoveable property for placing vending/dispensing machines. **(b) Construction of complex, building, civil structure, etc.** Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a		Supply of Services

[34] *Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt supply under GST [Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material].*

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	buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier[35]. **(47)** Rathi Builders has constructed individual residential units for agreed consideration of ₹ 1.2 crore per unit. ₹ 90 lakh per unit were received before issuance of completion certificate by the competent authority and its first occupation, and balance after completion. The term **construction** includes additions, alterations, replacements, or remodeling of any existing civil structure. The expression **competent authority** means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:— (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.	Supply of Services

[35] *Also refer Circular No. 234/28/2024 CGST dated 11.10.2024 discussed subsequently.*

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	(c) Temporary transfer or permitting use or enjoyment of any intellectual property right **(48)** Temporary transfer of patent.	Supply of Services
	(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software **(49) Suvidha Solutions develops an accounting software for a business firm.**	
	(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act. **(50)** Cable operator - Sakharam has entered into an agreement with Cable operator - Aatmaram that Sakharam will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non-compete agreements constitute supply of service. *Please refer the detailed discussion on this para of Schedule-II given at the end of the Table.*	
	(f) Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration. **(51)** Machinery given on hire.	

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6.	Following composite supplies :- ❑ Works contract ***Works contract:*** *means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of <u>any immovable property</u> wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119)].* ❑ Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.	Supply of Services

CBIC has clarified the taxability of tenancy rights, Joint Venture (JV) and Priority Sector Lending Certificates (PSLCs) as under:

1. Taxability of 'tenancy rights' under GST

CBIC has clarified the taxability of 'tenancy rights' under GST as under:

Pagadi system, i.e. transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceeds with owner of land, as

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laid down in their tenancy agreement. **Alternatively,** the landlord pays to tenant the prevailing tenancy premium to get the property vacated.

It has been clarified that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.

It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2 of Schedule II as discussed in table above i.e. any lease, tenancy, easement, licence to occupy land is a supply of services. Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in para 5 of Schedule III. Thus, it is not a negative list activity *[this concept is discussed under next heading]* and consequently, a consideration for the said activity shall attract levy of GST.

To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable *per-se*. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.

However, renting of residential dwelling for use as a residence to an unregistered person or to a registered sole proprietor taking the residential dwelling on rent on his own account in his personal capacity for use as his residence is exempt *[Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017 – Discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material]*. Hence, grant of tenancy rights in a residential dwelling for use as residential dwelling against tenancy premium or periodic rent or both (to above mentioned persons) is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST[36].

[36] *Circular No. 44/2018 CT dated 02.05.2018*

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2. Priority Sector Lending Certificates (PSLCs)[37]

PSLCs are in the nature of goods[38]. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which earlier attracted VAT.

In GST, there is no exemption available to trading in PSLCs. Thus, PSLCs are taxable as goods. GST payable on the certificates would be available as ITC to the bank buying the certificates *[Circular No. 34/08/2018 GST dated 01.03.2018]*.

Further, nature of supply of PSLC between banks is supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI *[Circular No. 93/12/2019 GST dated 08.03.2019]*.

3. Applicability of GST on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

CBIC has clarified issues with respect to GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.

Clarification: "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II if the same constitutes a "supply" within the meaning of the CGST Act.

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[37] *Lending by a commercial bank for specified sectors which have been identified as **"priority sector"** by RBI is called as Priority Sector Lending. Priority Sector Lending Certificates (PSLCs) are a mechanism to enable banks to achieve the priority sector lending target and sub-targets by purchase of these instruments in the event of shortfall. This also incentivizes surplus banks as it allows them to sell their excess achievement over targets thereby enhancing lending to the categories under priority sector. Under the PSLC mechanism, the seller sells fulfilment of priority sector obligation and the buyer buys the obligation with no transfer of risk or loan assets.*

[38] *RBI's FAQ on PSLCs*

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a. Agreeing to the obligation to REFRAIN from an act

(52) Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

(53) A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight.

(54) An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

b. Agreeing to the obligation to tolerate an act or a situation

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

c. Agreeing to the obligation to do an act

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Above three activities must comply with the following conditions:

(1) There must be an expressed or implied agreement or a contract must exist

Above three activities must be under an **"agreement" or a "contract"** (whether express or implied) to fall within the ambit of para 5(e) of Schedule II. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.

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Such contractual arrangement must be an **independent arrangement** in its own right. Such arrangement/agreement can take the form of an **independent stand- alone contract or may form part of another contract.**

Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another. There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.

(2) Consideration must flow in return to this contract/agreement

Some **"consideration"** must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.

Taxability of some of the transactions has been discussed in detail as under:

(A) Liquidated Damages

It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

<u>The taxability or otherwise of liquidated damages is clarified as under:</u>

It is argued that performance is the essence of a contract. **Liquidated damages** cannot be said to be a consideration received for tolerating the breach or non-performance of

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contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.

Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person.

A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

Examples of such cases are:

(54) Damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,

(55) Penalty stipulated in a contract for delayed construction of houses,

(56) Forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer.

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(57) Forfeiture of earnest money by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".

If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.

On the contrary, consider the following examples:

(58) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.

(59) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.

(60) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.

(61) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.

(62) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

In the above examples, amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment

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of loan and of making arrangements for the intended supply by the tour operator respectively.

Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

(B) Cheque dishonor fine/ penalty

The supplier wants payment to be received on time and does not want cheque to be dishonoured. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.

The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, **cheque dishonor fine or penalty is not a consideration for any service and not taxable.**

(C) Penalty imposed for violation of laws

Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also **not consideration for any supply received and are not taxable.**

Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority

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on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.

Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

In short, **fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.**

(D) Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.

The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.

Further, the employee does not get anything in return from the employer against payment of such amounts.

Therefore, such amounts recovered by the employer are **not taxable as consideration** for the service of agreeing to tolerate an act or a situation.

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(E) Late payment surcharge or fee

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc.

Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty.

Even if this service is described as a service of tolerating the act of late payment, it is an **ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.**

Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.

However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.

(F) Fixed charges for power

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.

The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for

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tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

(G) Cancellation charges

It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till the exit of the passenger from the destination terminal.

All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and

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waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business. Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.

(63) Cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money.

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Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable[39].

4. Clarifications regarding applicability of GST on penal charges being levied by the Regulated Entities (REs)

Regulated Entities (hereinafter referred as REs) such as banks and non-banking financial companies (NBFCs) have been instructed, vide RBI instructions dated 18.08.2023, to discontinue the use of penal interest for non-compliance with loan terms.

As per the instructions, instead of penal interest, REs are to levy penal charges for non-compliance with loan terms.

The intent of levying penal charges is essentially to inculcate a sense of credit discipline. These instructions are effective from 01.01.2024, and do not apply to credit cards, external commercial borrowings, trade credits and structured obligations which are covered under product specific directions.

Issue: ***The issue which arose for consideration was whether penal charges so levied are in the nature of payment/consideration for tolerating an act or situation.***

Clarification: ***As clarified vide Circular No. 178/10/2022 GST dated 03.08.2022 discussed above that certain payments such as liquidated damages for breach of contract are not a consideration for tolerating an act or situation. They are rather amounts recovered to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. The essence of a contract is its 'performance' and not its 'breach', meaning thereby that parties enter into a contract for execution and not for its breach.***

[39] *Circular No. 178/10/2022 GST dated 03.08.2022*

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Penal charges levied by REs, in compliance with RBI directions dated 18.08.2023, are essentially in the nature of charges for breach of terms of contract and hence, it has been clarified that no GST is payable on the penal charges levied by Regulated Entities, in compliance with RBI directions dated 18.08.2023, for non-compliance with material terms and conditions of loan contract by the borrower[40].

5. Applicability of GST in respect of warranty replacement of goods or its parts and/ repair services during warranty period

As a commercial practice, the original equipment manufacturers/ suppliers offer warranty for the goods / services supplied by them to the customers. During the warranty period, goods /services are replaced to the customers (either by manufacturer itself or by the distributor on behalf of the manufacturer) and generally, no separate consideration is charged and received at the time of replacement from the customer.

Following issues have been clarified in respect of warranty replacement of goods or its parts and/ repair services provided during the warranty period:

SCENARIO 1

ORIGINAL EQUIPMENT MANUFACTURER OFFERING REPLACEMENT OF GOODS OR ITS PARTS/ REPAIR SERVICES UNDER WARRANTY TO THE CUSTOMER

[40] *Circular No. 245/02/2025 GST dated 28.01.2025*

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Issue: Where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of goods or its parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, whether GST would be payable on such replacement of goods or its parts or supply of repair services, **without any consideration from the customer**, as part of warranty?

Clarification: The **value of original supply** of goods (provided along with warranty) by the manufacturer to the customer **includes the likely cost of replacement of goods or its parts and / or repair services to be incurred during the warranty period**, on which tax would have already been paid at the time of original supply of goods.

Value of original supply includes likely cost of replacement of goods/its parts/ repair services to be incurred during the warranty period.

As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, **no further GST is chargeable on such replacement of goods or its parts and/ or repair service** during warranty period.

No separate charges for such replacement/ repair services → **No further GST payable**

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However, **if any additional consideration is charged** by the manufacturer from the customer, either for replacement of goods or its parts or for any service, **then GST will be payable** on such supply with respect to such additional consideration.

SCENARIO 2

DISTRIBUTOR PROVIDES WARRANTY RELACEMENT AND/OR REPAIR SERVICES TO THE CUSTOMER ON BEHALF OF THE MANUFACTURER

Taxability of the transaction/activitiy undertaken between Distributor and Customer

Issue 1: Whether GST would be payable on replacement of goods or its parts and/ or repair services **provided by a distributor** without any consideration from the customer, as part of warranty on behalf of the manufacturer?

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Clarification: There may be instances where a distributor of a company provides replacement of goods or its parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.

In such cases, as **no consideration is being charged by the distributor from the customer, no GST would be payable** by the distributor on the said activity of providing replacement of goods or its parts and/ or repair services to the customer.

No separate charges for such replacement/ repair services → **No further GST payable**

However, **if any additional consideration is charged** by the distributor from the customer, either for replacement of goods or its parts or for any service, **then GST will be payable** on such supply with respect to such additional consideration. **Additional consideration charged for such replacement/ repair services.**

Taxability of the transaction/activitiy undertaken between Distributor and Manufacturer

Issue 2: Whether any supply is involved between the distributor and the manufacturer in case of replacement of GOODS OR ITS PARTS by distributor?

Clarification: There can be 4 instances as discussed at the next page.

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In case where	In such a case
Distributor replaces the goods or its part(s) to the customer under warranty either by using his stock or by purchasing from a third party and **charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice**, for the said supply made by him to the manufacturer.	**GST would be payable** by the distributor on the said supply by him to the manufacturer.
Distributor **raises a requisition to the manufacturer for the goods or its part(s)** to be replaced by him under warranty and the **manufacturer then provides the said goods or its part(s)** to the distributor for the purpose of such replacement to the customer as part of warranty **without separately charging any consideration** at the time of such replacement.	**No GST is payable** on such replacement of goods or its part(s) by the manufacturer.
Distributor replaces the goods or its part(s) to the customer under warranty **out of the supply already received by him from the manufacturer and the manufacturer issues a credit note** in respect of the goods or its part(s) so replaced subject to provisions of section 34(2)[41].	Accordingly, the **tax liability may be adjusted** by the manufacturer subject to the condition that such distributor has reversed the ITC availed[42] against such goods/parts.

[41] *Provisions of section 34(2) have been discussed in detail in Chapter 10: Tax invoice; Credit and Debit Notes in Module 2 of this Study Material.*

[42] *Provisions of ITC (Input Tax Credit) have been discussed in detail in Chapter 8: Input Tax Credit in Module 2 of this Study Material.*

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Distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or the parts. The manufacturer then provides the said goods or the parts to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment.	No GST is payable on such replenishment of goods or the parts.

Issue 3: Where the **distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration**, as part of warranty, on behalf of the manufacturer but **charges the manufacturer for such REPAIR SERVICES** either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?

Clarification: In such scenario, there is a **supply of service by the distributor** and the **manufacturer is the recipient** of such supply of repair services in accordance with the provisions of section 2(93)(a) of the CGST Act, 2017.

Distributor provides repair service, in addition to replacement of parts to customer without any consideration, as part of warranty and charges the manufacturer for such repair services.

Hence, **GST would be payable** on such provision of service by the distributor to the manufacturer.

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SCENARIO 3

EXTENDED WARRANTY

Sometimes companies provide offers of **Extended warranty** to the customers which can be availed (i) at the time of original supply or (ii) just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?

Clarification:

(a) **If a customer enters into an agreement of extended warranty with the supplier of the goods at the time of original supply**, then the consideration for such extended warranty becomes part of the value of the **composite supply**, the principal supply being the supply of goods, and GST would be payable accordingly.

However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services.

(b) **In case where a consumer enters into an agreement of extended warranty at any time after the original supply**, then the same shall be treated as a supply of **services distinct from the original supply** of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services[43] [44].

[43] *Circular No. 195/07/2023 GST dated 17.07.2023 read with Circular No. 216/10/2024 GST dated 26.06.2024*

[44] *The provisions pertaining to availability of input tax credit have been discussed in Chapter-8: Input Tax Credit of Module 2 of this Study Material.*

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5. Applicability of GST on Location Charges or Preferential Location Charges (PLC) collected along with consideration for sale/transfer of residential/commercial properties

Allowing choice of location of the apartment is integral part of supply of construction services. Therefore, PLC is part of consideration charged for supply of construction services before issuance of completion certificate.

Therefore, PLC paid along with the consideration for the construction services of residential/ commercial/ industrial complex forms part of composite supply where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the main supply of construction service[45].

[45] *Circular No. 234/28/2024 GST dated 11.10.2024*

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NON-SUPPLIES UNDER GST

I. Activities/transactions specified under Schedule III: Section 7(2)(a) provides activities or transactions specified in **Schedule III** shall be treated neither as a supply of goods nor a supply of services. Schedule III specifies transactions/ activities which shall be neither treated as supply of goods nor as supply of services. Thus, the activities/transactions specified under this schedule can be termed as Non-Supplies under the GST regime. In a way, it is a "Negative list" for the purposes of taxation in GST.

It is important to note that apart from the activities specified in Schedule III, some activities have been notified by the Government vide different notifications, which are also to be considered as non-supplies. Further, some circulars have been issued clarifying that certain transactions are to be considered as non-supplies.

Hence, our discussion under this heading will revolve around the following:

A. Non-supplies listed in Schedule III

B. Non-supplies notified vide notification

C. Non-supplies clarified by way of circular

A. NON-SUPPLIES LISTED IN SCHEDULE III

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment. example **(64)** Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment.

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(65) Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Similarly, casual workers employed by a security services agency for provision of security services to a client are also services in the course of employment.

Only services that are provided by the employee to the employer in the course of employment are outside the realm of supply. However, services provided outside the ambit of employment for a consideration would qualify as supply[46].

(66) Annapurna is a director in Nilgiri Ltd. receiving remuneration which is declared as salaries in the books of the company and subject to TDS under section 192 of the Income-tax Act, 1961. In this case, services provided by Annapurna to Nilgiri Ltd. are in course of her employment with the company.

(67) Services provided on contract basis by a person to another i.e. principal-to-principal basis are not services provided in the course of employment[47].

(68) Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.

(69) Annapurna, an independent director in Nilgiri Ltd., receives a sitting fee of ₹ 12,000. Since as per the Companies Act, 2013, independent director should not have been an employee of the company, services provided by Annapurna to Nilgiri Ltd. are not in course of employment.

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[46] *Also, refer Circular No. 213/07/2024 GST dated 26.06.2024 discussed at the end of the Table.*

[47] *Discussion based on Service Tax Education Guide issued under erstwhile under service tax law.*

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2.	Services by any court or Tribunal established under any law for the time being in force. Explanation – The term **"Court"** includes District Court, High Court and Supreme Court.

Leviability of GST on amounts/fees charged by Consumer Disputes Redressal Commission

In order to provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies are set up in each District and State and at the National level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively.

Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal[48].

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[48] *Consumer Disputes Redressal Commissions are clothed with the characteristics of a Tribunal on account of the following: -*

(1) Statement of objects and reasons as mentioned in the Consumer Protection Bill state that one of its objects is to provide speedy and simple redressal to consumer disputes, for which a quasi-judicial machinery is sought to be set up at District, State and Central levels.

(2) The President of the District/State/National Disputes Redressal Commissions is a person who has been or is qualified to be a District Judge, High Court Judge and Supreme Court Judge respectively.

(3) These Commissions have been vested with the powers of a civil court under CPC for issuing summons, enforcing attendance of defendants/witnesses, reception of evidence, discovery/production of documents, examination of witnesses, etc.

(4) Every proceeding in these Commissions is deemed to be judicial proceedings as per sections 193/228 of IPC. The Commissions have been deemed to be a Civil Court under CrPC.

(5) Appeals against District Commissions lie to State Commission while appeals against the State Commissions lie to the National Commission. Appeals against National Commission lie to the Supreme Court.

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	Consequently, fee paid by litigants while registering complaints to said Commissions are not leviable to GST. Any penalty in cash imposed by or amount paid to these Commissions will also not attract GST *[Circular No. 32/06/2018 GST dated 12.02.2018]*.
3.	(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities. (b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity. **(70)** Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, C & AG, Chairman of Union Public Service Commission, Attorney General of India, in that capacity. (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building, (i.e. in case, where entire consideration for sale of building received after issuance of

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	completion certificate or after its first occupation, whichever is earlier). Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered under this para and accordingly, does not attract GST. However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services[49].
6.	Actionable claims, other than ***specified actionable claims*****.** **'Actionable claims'** are specifically included in the definition of goods under section 2(52) *[Refer the definitions of 'actionable claims' and 'goods' given under heading 'Relevant Definitions]*. However, this para of Schedule III specifically excludes actionable claims, other than **specified actionable claims** from the ambit of definition of supply. Co-joint reading of said provisions implies that **only specified actionable claims are treated as supply. All other actionable claims are outside the ambit of definition of supply.** Now the question arises, what are the specified actionable claims? **Specified actionable claim** means the actionable claim involved in or by way of—

Specified actionable claims

[49] *Circular No. 177/09/2022 GST dated 03.08.2022*

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(i) betting;
(ii) casinos;
(iii) gambling;
(iv) horse racing;
(v) lottery; or
(vi) online money gaming [Section 2(102A)].

Online money gaming means **online gaming**** in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets[50], in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

Online money gaming

****Online gaming** means offering of a game on the internet or an electronic network and includes online money gaming [Section 2(80A)].

Online gaming

(71) Some of the other examples of actionable claims are: Right to recover insurance money, claim for

[50] *Virtual digital asset shall have the same meaning as assigned to it in section 2(47A) of the Income-tax Act, 1961 [Section 2(117A)].*

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arrears of rent, claims for future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, right to the benefit of a contract, etc. These are not considered as supply of goods or services.

7. **'Merchant trading':** Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

(72) Vivekanand purchased goods from USA and sold it to George in Canada without bringing the goods in India. This transaction is neither supply of goods nor supply of services.

8. **(a)** **'In-bond sales':** Supply of warehoused goods to any person before clearance for home consumption.

(73) Radheyshyam imported some goods in India but kept the goods in **custom bonded warehouse** without clearing it for home consumption. In the meantime, Radheyshyam sold these goods to Sitaram while they were in warehouse. This transaction between Radheyshyam and Sitaram is neither supply of goods nor supply of services.

(b) **High Sea Sales:** Supply of goods by the consignee to any other person, **by endorsement of documents of title to the goods**, after the goods have been

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	dispatched from the port of origin located outside India but before clearance for home consumption. **(74)** Prasoon of India imported some goods from Japan. While the goods were in high seas, Prasoon sold the goods to Jinesh in India by way of endorsement of documents of title of goods. This transaction between Prasoon and Jinesh is neither supply of goods nor supply of services.
9.	***Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.*** ***Co-insurance is a practice where multiple insurance companies jointly cover a single insurance policy. Instead of a single insurer bearing the entire risk, the risk is shared between two or more insurers (called co-insurers). In a co-insurance agreement, each insurer agrees to cover a specific percentage of the risk and in return receives a corresponding percentage of the total premium. One of the co-insurers is designated as lead insurer.*** ***The lead insurer is responsible for managing the policy, handling the administration such as claim processing and communicating with the insured. The lead insurer collects the total premium from the insured and then apportions the premium between the co-insurers (known as co-insurance premium) based on their respective shares of the risk, alongwith paying applicable taxes.***
10.	***Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the***

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

Reinsurance is a risk management practice where an insurance company (called the insurer) transfers part of its risk to another insurance company (called reinsurer) in exchange for a portion of the premium that insurer collects from its policyholders, called reinsurance premium. This allows the insurer to manage its risk and financial exposure. The reinsurer often pays ceding commission (also known as the reinsurance commission) to the insurer to compensate for administrative costs, underwriting, and acquisition expenses related to issuing and servicing the policies. By receiving this commission, the insurer is compensated for expenses and reduces its overall burden, making reinsurance financially viable. Generally, while paying the reinsurance premium, insurer deducts the ceding commission/ reinsurance commission payable by reinsurer.

ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company

Some of the Indian companies provide the option to their employees for allotment of securities/shares of their foreign holding company as part of the compensation package as per terms of contract of employment. In such cases, on exercising the option by the employees of Indian subsidiary company, the securities/shares of foreign holding company are allotted directly by the holding company to the concerned employees of Indian subsidiary company

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and the cost of such securities/shares is generally reimbursed by the subsidiary company to the holding company.

In case where securities/shares of the foreign holding company are transferred to the employees of domestic subsidiary company as Employee Stock Purchase Plan (ESPP) or Employee Stock Option Plan (ESOP) or Restricted Stock Unit (RSU)[51], **GST is not leviable on the compensation paid to the employee by the employer as per the terms of employment contract** since as seen earlier, the **purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services.** Moreover, the ESOP/ESPP/RSU is a **part of remuneration of the employee by the employer as per terms of employment** and is covered under Para 1 of Schedule III of the CGST Act.

When **reimbursement for transfer of securities/shares** (which is neither in the nature of goods nor services) is done by domestic subsidiary company to foreign holding company on cost-to-cost basis, the **same cannot be treated as import of services** by the domestic subsidiary company from the foreign holding company and hence, is not liable to GST.

If the **foreign holding company charges any additional fee**, markup, or commission from the domestic subsidiary company for issuing ESOP/ESPP/RSU to the employees of the domestic subsidiary company, then the same shall **be considered** to be in nature of **consideration** for the supply of **services of facilitating/arranging the transaction in securities/shares** by the foreign holding company to the domestic subsidiary company. The GST shall be payable by the domestic holding company on reverse charge basis on such import of services from the foreign holding company[52].

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[51] *ESPPs and ESOPs are typically presented as 'options' granted to employees, whereas RSUs take the form of awards or rewards contingent upon the employee meeting specific performance standards.*

[52] *Circular No. 213/07/2024 GST dated 26.06.2024*

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B. NON-SUPPLIES NOTIFIED VIDE NOTIFICATION

Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/transactions which shall be treated neither as supply of goods nor as supply of services. Till now, following two activities/transactions have been notified under said clause:

(i) Activity in relation to Panchayat/Municipality functions:

Services by way of any activity in relation to a function entrusted to a **Panchayat** under article 243G of the Constitution or to a **Municipality** under article 243W of the Constitution are treated neither as a supply of goods nor as a supply of service [53].

(ii) Grant of alcoholic liquor licence: Services by way of **grant of alcoholic liquor licence by the State Governments** are treated neither as a supply of goods nor as a supply of service [54].

Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called.

This special dispensation is applicable only to supply of service by way of grant of liquor licenses by the State Governments as an agreement

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[53] *notified vide Notification No. 14/2017 CT (R) dated 28.06.2017/ Notification No. 11/2017 IT (R) dated 28.06.2017, as amended*

[54] *notified vide Notification No. 25/2019 CT (R) dated 30.09.2019/ Notification No. 24/2019 IT (R) dated 30.09.2019*

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between the Centre and States. Hence, this is not applicable/has no precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge [55].

C. NON-SUPPLIES CLARIFIED BY WAY OF CIRCULAR

CBIC has clarified that following activities/transactions are non-supplies:

(i) Inter-State movement of various modes of conveyance

Inter-State movement of various modes of conveyance, between distinct persons including-

- Trains,
- Buses,
- Trucks,
- Tankers,
- Trailers,
- Vessels,
- Containers,
- Aircrafts,

(a) carrying goods or passengers or both; or

(b) for repairs and maintenance,

[except in cases where such movement is for further supply of the same conveyance] shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

[55] *Circular No. 121/40/2019 GST dated 11.10.2019*

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However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance *[Circular No. 1/1/2017 IGST dated 07.07.2017**]*.

(ii) Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]

Above circular shall *mutatis mutandis* apply to **inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes], [except in cases where movement of such goods is for further supply of the same goods], such **inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements**.

In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods *[Circular No. 21/21/2017-GST dated 22.11.2017]*.

In the preceding paras, we have discussed, how to determine whether a given activity or transaction constitutes a supply. Once an activity or transaction qualifies as supply, one needs to determine whether the same is leviable to GST or not.

Though the provisions relating to levy and collection of GST have been *discussed at length in Chapter 2 – Charge of GST in this Module of the Study Material*, a brief idea of the same is provided hereunder.

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(iii) Clarification regarding transactions in vouchers[56]

Voucher means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].

From this definition of voucher, it emerges that "voucher" may be in nature of payment instrument which creates an obligation on the supplier to accept it as a consideration or part consideration for the supply of goods and/or services.

Voucher is in the nature of payment instrument

The issuance of payment instruments, including pre-paid instruments, in India is regulated by Reserve Bank of India (RBI) in terms of the Payment and Settlement Act, 2007, RBI's Master Directions and the relevant Notifications/Circulars/ Communications issued by the RBI from time to time.

Pre-paid instruments (PPIs) as defined by RBI

- ***payment instruments that facilitate purchase of goods and/or services against the value stored on such instruments.***
- ***The value stored on such instruments represents the value paid for by the holder, by cash, by debit to a bank account, or by credit card.***

[56] *Circular No. 243/37/2024 GST dated 31.12.2024*

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- ***The pre-paid instruments can be issued as cards, wallets and in any such form/instrument which can be used to access the PPI and to use the amount therein.***

Further, as per section 2(75) of CGST Act, "money" includes an instrument recognized by the Reserve Bank of India which is used as a consideration to settle an obligation.

On combined reading of the definition of "voucher" as per section 2(118), along with definition of "money" as per section 2(75) and the description of "pre-paid instruments" given by RBI, the following is observed:-

Case A: Where the voucher is covered as a pre-paid instrument recognized by the RBI and is used as a consideration to settle an obligation

- ***In such cases, the voucher will fall under the definition of "money".***
- ***Thus, as "money" is excluded from the definition of goods and services, the transactions in voucher would be considered neither as a supply of goods nor as a supply of services.***

Case B: where voucher is not covered as a pre-paid instrument recognized by RBI

- ***In such cases, voucher cannot be treated as money.***
- ***The voucher will be in nature of an obligation on the supplier to receive it as consideration or part consideration and assure the beneficiary/voucher holder to claim certain goods and/or services as specified on the voucher or in the related documents.***

Voucher – Neither supply of goods nor supply of services

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- ***In such cases, the voucher can be considered as an "actionable claim".***
- ***As vouchers are not covered under definition of specified actionable claim, it appears that they are covered in entry 6 of Schedule III of CGST Act as actionable claims, other than specified actionable claims.***
- ***Therefore, it appears that even in such a case, transaction in vouchers would be treated neither as a "supply of goods" nor as a "supply of services".***

Issue - 1

Whether "transactions in vouchers" falls under the category of supply of goods and/or services?

Clarification

It has been clarified that irrespective of whether voucher is covered as a pre-paid instrument recognized by RBI or not, the voucher is just an instrument which creates an obligation on the supplier to accept it as consideration or part consideration and the transactions in voucher themselves cannot be considered either as a supply of goods or as a supply of services.

However, supply of underlying goods and/or services, for which vouchers are used as consideration or part consideration, may be taxable under GST.

Issue - 2

What would be the GST treatment of transactions in vouchers by distributors/ sub-distributors/ agents etc.?

Clarification

There are primarily two models for distribution of vouchers through distributors/ sub distributors/ agents, etc.

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(i) Where vouchers are distributed through the distributors/ sub-distributors/ dealers on Principal-to-Principal(P2P) basis:

In such cases, the distributor/ dealer purchases voucher from the voucher issuer typically at a discounted rate and subsequently sells the same to the sub-distributors, corporates or end customers and generate revenue through a trading margin, which is a difference between the acquisition cost and the selling price of the vouchers by the said distributor/ dealer.

In such cases, distributors/ dealers (including sub-distributors) own the vouchers and operate autonomously with full control over the process from purchase to the final sale of the vouchers to the end user.

Vouchers distribution on P2P basis - NO GST

As per section 9 (1) of CGST Act, GST is chargeable on the supply of goods and/or services. As the transaction in vouchers is neither supply of goods nor supply of services, therefore, pure trading of vouchers in this case would not constitute either supply of goods or supply of services.

Accordingly, such trading of vouchers would not be leviable to GST as per section 9(1).

(ii) Where vouchers are distributed using distributors/ sub-distributors/ agents on commission/ fee basis:

In such cases, the transactions between the voucher issuer and the distributors/ sub-distributors/ agents are on principal-agency basis.

These arrangements, as per contract/agreement between distributor/sub-distributor/agents and the

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voucher issuer may specify a set of obligations on such agents such as marketing & promotion and other related support activities for distribution of vouchers against a commission/fee or any other amount by whatever name called, for such purpose.

In such cases, distributors/sub-distributors/agents do not operate autonomously, do not own the vouchers and only act as agent of the voucher issuer.

In such cases, GST would be payable by such distributor/sub-distributor/agent, acting as an agent of the voucher issuer, on the commission/fee or any other amount by whatever name called, for such purpose, as a supply of services to the voucher issuer.

Vouchers distribution on commission/fee basis-GST is payable

Issue - 3

What would be GST treatment of additional services such as advertisement, cobranding, marketing & promotion, customization services, technology support services, customer support services etc.

Clarification

In such a case, the said service fee/ service charge/ affiliate charge or other amount for supply of such additional services to the voucher issuer as per the terms of contract/agreement, would be liable to GST at the applicable rate in the hands of the said service provider.

Additional services -GST payable at applicable rate

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Issue 4

What would be the GST treatment of unredeemed vouchers (breakage)?

Clarification

In case vouchers remain unused/ unredeemed at the end of their expiry period, the businesses generally make book adjustments and account the said amount on account of unredeemed vouchers in their statement of income. The value of such unredeemed vouchers accounted for in the statement of income is called breakage.

The issue which arose for consideration was whether the amount attributed to the unredeemed voucher(breakage) can be considered as "monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person".

As per section 9 (1) of the CGST Act, GST is leviable only on the supply of goods and/or services. In the case of breakage, there is no redemption of voucher and there is no supply of underlying goods and/or services. Therefore, there is no supply of goods and/or services on account of such unredeemed vouchers (breakage). As there is no underlying supply of goods and/or services in case of non-redemption of vouchers by the customer, the amount retained for unredeemed vouchers by the voucher issuer cannot be construed as consideration for any supply. Accordingly, such amount attributable to unredeemed vouchers (breakage) would not be taxable as per the provisions of section 9(1) of CGST Act.

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Circular No. 178/10/2022-GST dated 03.08.2022 clarifies that agreement to do or refrain from an act should not be presumed to exist, and that there must be an express or implied agreement, oral or written, to do or abstain from doing something against payment of consideration, for a taxable supply to exist.

Considering the principle laid out in the said circular, it emerges that where the voucher is issued for the purpose of redemption in respect of a supply of goods and/or services and there is no express or implied agreement, oral or written, between the issuer of voucher and redeemer for payment of any amount or charges by the redeemer to the voucher issuer in case of non-redemption of the voucher, it cannot be considered that non-redemption of voucher by the redeemer tantamounts to supply of services.

Therefore, it appears that the amount attributable to non-redemption of voucher (breakage) would not constitute as a "monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person". Therefore, no GST appears to be payable on such amount attributable to non-redemption of voucher (breakage).

[Circular No. 243/37/2024 GST dated 31.12.2024]

The diagrammatic representation of the above circular is on the next page.

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Thus, the transactions in voucher themselves cannot be considered either as a supply of goods or as a supply of services. However, supply of underlying goods and/or services, for which vouchers are used as consideration or part consideration, may be taxable under GST.

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Transactions in vouchers by distributors/ sub-distributors/dealers/agents etc.

Vouchers distributed on Principal-to-Principal (P2P) basis

[Distributors/sub-distributors/ dealers (DSDs) purchase vouchers at discounted rate and sold to sub-distributors, corporates or end customers. DSDs earn trading margin [Selling price - Acquisition cost]. Thus, DSDs own the vouchers, retaining full ownership and control of the vouchers throughout the process.]

*This amounts to **trading of vouchers.***

Not be leviable to GST as per section 9(1)

Vouchers distributed on Principal–Agent basis

[Voucher issuer and the Distributors/ Sub-distributors/ Agents (DSAs) operate on a principal–agency basis. DSAs do not own vouchers, but act as an agent of voucher issuer and operate under specified obligations set by him (e.g., marketing, promotion, other support services). DSAs earn commission/fees which are treated as a supply of services to the voucher issuer.]

***GST applicable on the commission/ fee or any other amount by whatever name called**, charged for such purpose as a supply of services to the voucher issuer.*

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Vouchers

Additional services

[Ex., advertisement, co-branding, customization services, technology support services, customer support services, etc.]

provided by either the distributor/sub-distributor/by another person to the voucher issuer

against a service fee/service charge/affiliate charge or any other amount, by whatever name called

Such service fee etc. ***would be liable to GST at the applicable rate*** *in the hands of the said service provider.*

Unredeemed vouchers (breakage)

[Vouchers unused/unredeemed at the end of the expiry period.]

No supply of underlying goods and/or services on account of such unredeemed vouchers (breakage)

Amount attributable to unredeemed vouchers (breakage) ***would not be leviable to GST*** *as per the provisions of section 9(1) of the CGST Act.*

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In the preceding paras, we have discussed, how to determine whether a given activity or transaction constitutes a supply. Once an activity or transaction qualifies as supply, one needs to determine whether the same is leviable to GST or not. Though the provisions relating to levy and collection of GST have been *discussed at length in Chapter 2 – Charge of GST in this Module of the Study Material*, a brief idea of the same is provided hereunder.

Supply Leviable to GST

For a supply to attract GST, primarily two additional conditions need to be satisfied. These are – (i) supply must be made by a taxable person and (ii) supply must be a taxable supply. These two additional conditions have been discussed hereunder:

(i) Supply by a taxable person

A supply to attract GST should be made by a taxable person.

The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable.

Meaning of taxable person: A "taxable person" is a person who is registered or liable to be registered under section 22 or section 24 *[The said sections and the concept of taxable person thereto have been discussed in detail in Chapter 8 – Registration in Module 2 of the Study Material]*.

Hence, a person who is liable to be registered but does not take a registration and remains an unregistered person shall be construed as a taxable person. Similarly, a person not liable to be registered, but has taken got himself registered by taking a voluntary registration and got himself registered is also a taxable person.

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(ii) Taxable supply

For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law [Section 2(108)] *[Refer Chapter-2: Charge of GST in this Module of the Study Material for detailed discussion on leviability of GST]*.

On the other hand, exempt supply means supply of any goods or services or both which attract **nil rate of tax** or which may be **wholly exempt from tax*** under section 11 of the CGST Act, or under section 6 of the IGST Act, and includes **non-taxable supply** [Section 2(47)]

**Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply [Refer Chapter-4: Exemptions from GST in this Module of the Study Material for detailed discussion].*

4. COMPOSITE AND MIXED SUPPLIES [SECTION 8]

STATUTORY PROVISIONS	
Section 8	***Tax liability on composite and mixed supplies***
Clauses	***Particulars***
	The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-
(a)	***a composite supply*** *comprising two or more supplies, one of which is a principal supply, shall be treated as a* ***supply of such principal supply****; and*
(b)	***a mixed supply*** *comprising of two or more supplies shall be treated as supply of that particular* ***supply that attracts highest rate of tax.***

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ANALYSIS

GST is payable on goods or services or both at the notified rates. Classification of any supply (whether as goods or services, the category of goods or services) is essential to determine the applicable rate of GST on the particular supply. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are not so simple and clearly identifiable. Sometimes supplies are a combination of goods or combination of services or combination of both goods and services and each individual component of such supplies may attract a different rate of tax.

In such cases, the rate of tax to be levied on such supplies may be a challenge. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

In order to determine whether the supplies are 'composite supply' or 'mixed supply', one needs to determine **whether the supplies are naturally bundled or not naturally bundled in ordinary course of business**. The concept of 'naturally bundled' supplies is emanating from the definition of 'composite supply'.

COMPOSITE SUPPLIES

Composite supply means a supply made by a taxable person to a recipient and:

- comprises two or more taxable supplies of goods or services or both, or any combination thereof.
- which are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply [Section 2(30)].

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.

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Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. [Section 2(90)]

Works contract and restaurant services are classic examples of composite supply, but the GST law identifies both as supply of services *[as you would have seen in the discussion on Schedule II of the CGST Act earlier in this Chapter]* and chargeable to specific rate of tax mentioned against each of such services (works contract or restaurant).

However, in respect of other composite supplies (i.e. other than the two categories mentioned above), the need to determine the supply as a composite one, will arise, so as to determine the appropriate classification of such supply as supply of goods or supply of services as also the appropriate rate of tax.

It will be necessary to determine as to whether a particular supply is naturally bundled in the ordinary course of business and what constitutes principal supply in such composite supplies.

How to determine whether the services are bundled in the ordinary course of business?

Whether the services are bundled in the ordinary course of business or not, would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

- **The perception of the consumer or the service recipient** - If large number of service recipient of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

  (75) Mobile phone is always sold with battery.

- **Majority of service providers in a particular area of business provide similar bundle of services**.

  (76) Bundle of services of catering on board and services of transport by air is a bundle offered by a majority of airlines.

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- The **nature of the various services in a bundle of services** will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service, then it would be treated as services bundled in the ordinary course of business.

(77) Service of stay in a hotel is often combined with provision of breakfast and dinner provided free of cost during the stay. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- **Other illustrative indicators**, not determinative but indicative of bundling of services in the ordinary course of business are:
  - ✓ There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
  - ✓ The elements are normally advertised as a package.
  - ✓ The different elements are not available separately.
  - ✓ The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes he principal supply so as to determine the right classification and rate of tax of such composite supply.

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Some of the examples of composite supplies have been given below:

(78) A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

– Accommodation for the delegates

– Breakfast for the delegates,

– Tea and coffee during conference

– Access to fitness room for the delegates

– Availability of conference room

– Business centre

As is evident a bouquet of services is being provided, many of them are chargeable to different effective rates of tax. If the principal service is described as convention service it is able to capture the entire essence of the package. Thus, the principal service may be judged as convention service and charged to tax accordingly.

However, it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

(79) Poshaak Manufacturers entered into a contract with Cheeku Ltd. for supply of readymade shirts packed in designer boxes at Cheeku Ltd.'s outlet. Further, Poshaak Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.

(80) When a consumer buys a television set and he also gets mandatory warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.

(81) A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transportation of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

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How to determine the tax liability on composite supply?: A **composite supply** comprising of two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply.** Accordingly, the entire value of composite supply [i.e. main supply + ancillary supply(ies)] shall be classified under the category of main supply and shall be taxed at the GST rate applicable to the main supply. This can be better understood with the help of following example:

(82) Rati Computers supplies laptop (worth ₹ 52,000) alongwith laptop bag (worth ₹ 3,000) to a customer for ₹ 55,000. Being naturally bundled**,** supply of laptop bag along with the laptop is composite supply which is treated as the supply of the principal supply [viz. laptop]. Assuming that the rate of tax applicable on laptop is 18% and on laptop bag is 28%, in the given case, rate of principal supply, i.e. laptop @ 18% will be charged on the entire value of ₹ 55,000.

CBIC, in the following cases, has clarified issues as to whether the given supplies are composite supply and if yes, what constitutes the principal supply in the given composite supply:

1. Printing industry issues

The printing industry in India in particular faced a dilemma in determining whether the nature of supply provided was that of goods or services. Another doubt was whether in case where certain contracts involved both supply of goods and services, whether the same would constitute a supply of goods or services or if it would be a composite supply and in case it is, then what would constitute the principal supply.

Thus, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only **content is supplied by the publisher** or the person who

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owns the usage rights to the intangible inputs while the **physical inputs including paper used for printing belong to the printer**, **supply of printing** [of the content supplied by the recipient of supply] is the **principal supply** and therefore such supplies would constitute **supply of service**.

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the **printer using its physical inputs** including paper to print the **design, logo etc. supplied by the recipient** of goods, predominant supply is **supply of goods** and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods[57].

2. Food supplied to the patients

Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of health care and not separately taxable. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable[58].

3. Activity of bus body building

In the case of bus body building, there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case[59].

4. Retreading of tyres

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

Supply of retreaded tyres[60], where the old tyres belong to the supplier of retreaded tyres, is a **supply of goods**[61].

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[57] *Circular No. 11/11/2017 GST dated 20.10.2017*
[58] *Circular No. 32/6/2018 GST dated 12.02.2018*
[59] *Circular No. 34/8/2018-GST dated 01.03.2018*
[60] *Retread tyres are revamped tyres on which the worn out tread (the part of the tire that makes contact with the surface of the road) is replaced using new tread.*
[61] *Circular No. 34/8/2018-GST dated 01.03.2018*

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5. Supply of food and beverages at cinema halls taxable as restaurant service

Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.

The cinema operator:

(i) may run these refreshment/eating stalls/ kiosks/ counters/ restaurant themselves

or

(ii) they may give it on contract to a third party.

The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.

It is hereby clarified that:

(i) supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

(a) the food or beverages are supplied by way of or as part of a service, and

(b) supplied independent of the cinema exhibition service.

(ii) where the **sale of cinema ticket and supply of food and beverages are clubbed** together, and **such bundled supply satisfies the test of composite supply**, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply[62].

[62] *Circular No. 201/13/2023 GST dated 01.08.2023*

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MIXED SUPPLIES

Mixed supply means:

- two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person
- for a single price where such supply does not constitute a composite supply [Section 2(74)].

The individual supplies are independent of each other and are not naturally bundled.

How to determine if a particular supply is a mixed supply?: In order to identify if the particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply. A supply can be a mixed supply only if it is not a composite supply. As a corollary, it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business, then the possibility of it being a mixed supply needs to be checked.

Once the amenability of the transaction as a composite supply is ruled out, and a single consideration is charged for the entire supply of different components, it would be treated as a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

example

(83) A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately or separate prices are charged.

example

(84) A shopkeeper selling storage water bottles along with refrigerator for a single price. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.

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(85) A house is given on rent through a single rent deed - one floor of which is to be used as residence and the other for housing a printing press, at a lump sum rent amount. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Said supplies are mixed supply.

How to determine the tax liability on mixed supply?: A **mixed supply** comprising of two or more supplies shall be treated as supply of that particular **supply that attracts highest rate of tax.**

(86) Sringaar Enterprises supplies 10,000 kits (at ₹ 50 each) amounting to ₹ 5,00,000 to Raghav General Store. Each kit consists of 1 face cream, 1 face tissue packet and 1 nail paint. It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate. Assuming that the rate of tax applicable on face cream is 18%, on face tissue packet is 28% and on nail paint is 12%, in the given case, highest tax rate [viz. face tissue packet] @ 28% will be charged on the entire value of ₹ 5,00,000.

More than one supply made together and taxed at the individual rates

There can also be a case where an activity/transaction involves more than one supply of goods or services or both, but neither they are composite supplies nor can be categorised as mixed supplies, that is, all supplies carry independent significance. In such a case, if separate consideration is indicated against each supply, each such supply shall be charged at the respective rate applicable to that particular supply.

(87) In case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately[63].

[63] *Circular No. 47/21/2018 GST dated 08.06.2018*

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LET US RECAPITULATE

- The taxable event under GST is supply. The scope of supply under GST can be understood in terms of following parameters:

  - Supply should be of goods or services
  - Supply should be made for a consideration
  - Supply should be made in the course or furtherance of business

- While these parameters describe the concept of supply, under certain circumstances, transactions have been deemed as supply even when the supply is made without consideration or not in the course or furtherance of business. Activities specified in Schedule I are deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.
- Besides, some specified transactions/ activities are neither treated as supply of goods nor a supply of services. Furthermore, certain activities have been categorised as supply of goods or as supply of services.
- The discussion with respect to supply is broadly categorised into following:

Supply
- **includes**
  - Supply with consideration in course/furtherance of business.
  - Supply between a person (other than individual), and its members or constituents for cash, deferred payment or other valuable consideration
  - Importation of services with consideration whether or not in course or furtherance of business.
  - Supply without consideration
  - Activities/transactions to be treated as supply of goods or supply of services
- **excludes**
  - Activities/transactions neither the supply of goods nor the supply of services

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Sub-sections of section 7 alongwith related Schedules have been summarised as follows:

1. Supply for consideration in course or furtherance of business [Section 7(1)(a)]

2. Activities/transactions between a person, other than an individual, and its members or constituents for valuable consideration [Section 7(1)(aa)]

3. Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]

Supply should be in course or furtherance of business. The exception to said rule is import of services is deemed as supply even if the same has been

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imported not in course/furtherance of business.

4. Supply without consideration – Deemed Supply [Section 7(1)(c) read with Schedule I]

This includes all supplies made to a taxable or non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act.

As per Schedule I, in the following four cases, **supplies made without consideration** will be treated as supply under section 7:

I. Permanent transfer/disposal of business assets

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II. Supply between related persons or distinct persons

III. Supply between principal and agent

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IV. Importation of services

The combined provisions of relating to import of services [as stipulated under under section 7(1)(b) and section 7(1)(c) read with Schedule I] have been depicted in the below mentioned diagram:

Import of services

4. Activities or transactions to be treated as supply of goods or supply of services [Section 7(1A) read with Schedule II]

Para No.	Activity/ Transaction	Type	Supply of goods/ services
1.	Transfer	(i) Title in goods	Goods

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		(ii) Title in goods under an agreement that property shall pass at a future date.	
		Right/undivided share in goods without transfer of title in them	Services
2.	Land and Building	Lease, tenancy, easement, licence to occupy land	Services
		Lease/letting out of building including a commercial/ industrial/ residential complex for business/ commerce, wholly/ partly.	Services
3.	Treatment or Process	Applied to another person's goods	Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred/disposed of by/under directions of person carrying on business so as no longer to form part of those assets	Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business	Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person. **Exceptions:**	Goods

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	❑ Business transferred as a going concern. ❑ Business carried on by a personal representative who is deemed to be a taxable person.	
5.	Renting of immovable property	Services
	Construction of complex, building, civil structure, etc. **Exception:** Entire consideration received after issuance of completion certificate or after its first occupation, whichever is earlier.	
	Temporary transfer or permitting use or enjoyment of any intellectual property right	
	Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software	Services
	Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.	
	Transfer of right to use any goods for any purpose	
6.	Following **composite supplies**:- ❑ Works contract ❑ Supply of goods, being food or any other article for human consumption or any drink.	Services

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5. Non-supplies under GST [Section 7(2)(a) read with Schedule III]

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.
2.	Services by any court or Tribunal established under any law for the time being in force.
3.	(a) Functions performed by Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities & Members of other local authorities; (b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	Actionable claims, other than **specified actionable claims**.

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7.	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8.	**(a)** Supply of warehoused goods to any person before clearance for home consumption. **(b)** Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.
9.	***Activity of apportionment of co-insurance premium by the lead insurer to co-insurers for jointly supplied insurance services, provided the lead insurer pays full GST on the total premium received from the insured.***
10.	***Services by insurer to reinsurer with ceding commission deducted from reinsurance premium are permitted, provided the reinsurer pays GST on the gross premium inclusive of such commission.***

The diagram on next page summarises the steps to determine whether an activity undertaken is supply or not.

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6. Composite and mixed supplies

Composite Supply

- Consist of two or more supplies
- Naturally bundled
- In conjunction with each other
- One of which is principal supply
- Tax liability shall be rate of principal supply
- **Example:** Charger supplied alongwith mobile phones.

Mixed Supply

- Consist of two or more supply
- Not naturally bundled
- Though can be supplied independently, still supplied together
- Tax liability shall be the rate applicable to the supply that attracts highest rate of tax
- **Example:** A gift pack comprising of choclates, candies, sweets and balloons.

TEST YOUR KNOWLEDGE

1. *Satyamev Printers is a printing house registered under GST. It receives an order for printing 5000 copies of a book on yoga and meditation authored by a well-known yoga guru. The content of the book is to be provided by the yoga guru to Satyamev Printers. It is agreed that Satyamev Printers will use its own paper to print the said books.*

   You are required to determine the rate of GST applicable on supply of printed books by Satyamev Printers assuming that rate of GST applicable on services is 18% whereas the rate of GST applicable on supply of goods is 12%.

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

   Examine whether the disposal of computers by Sudama Associates qualifies as deemed supply under Schedule I of the CGST Act, 2017.

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

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

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

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

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

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

   Assume the rates of GST to be as under:

   Hiring out of excavators – 12%

   Supply of manpower services and soil-testing and seismic evaluation services – 18%

4. *Mr. Kanjilal Adani is an oil exploration & production contractor and is registered under GST in the State of Gujarat. He entered into a Production Sharing Contract (PSC) with Government of Gujarat wherein he gets a license to explore, exploit and sell the petroleum crude and/or natural gas from the Government in Aliabet Oilfield in lieu of royalty and a share in profit petroleum.*

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In the month of June, Mr. Kanjilal Adani explored the petroleum reserves at Aliabet Oilfield. He got a portion of the petroleum silt (non-taxable under GST) worth ₹ 3,00,000 as part of compensation. This petroleum silt is part of cost petroleum as per the contract entered with the Government.

Examine the taxability of the petroleum silt received by Mr. Kanjilal Adani under the GST law.

5. *Angad Private Ltd. is engaged in the business of distribution of construction material. As an incentive, Angad Private Ltd. pays an amount of ₹ 75,000 to its employees upon achieving a specified sales target. The incentive is part of the salary of the employees and applicable tax is deducted at source as per relevant income tax provisions. Angad Private Ltd. is of the view that GST is not leviable on such incentive paid to the employees. Whether the view taken by Angad Private Ltd. is correct?*

6. *XYZ Consultancy, registered in Bangalore, supplies technical consultancy services to its clients. It has been providing technical services to BA Ltd., Mumbai since past 2 years. Consideration is settled by BA Ltd. assignment-wise. BA Ltd. paid ₹ 37 lakh to XYZ Consultancy on 10th January for XYZ Consultancy agreeing not to provide similar technical services to any other business entity in India or abroad for a period of next 8 years. XYZ Consultancy is of the view that ₹ 37 lakh is not chargeable to tax under GST law.*

   You are required to examine whether the view taken by XYZ Consultancy is valid in law. It may be noted that BA Ltd. is not ready to pay any further amount to XYZ Consultancy in addition to the amount already agreed.

7. *Mokshabhumi Industries has its manufacturing unit in the State of Maharashtra. It stores the finished goods manufactured by it at a depot located in the State of Gujarat. The depot is owned by Punyabhumi Ltd. – a related person of Mokshabhumi Industries. Punyabhumi Ltd. has not charged any consideration from Mokshabhumi Industries for usage of depot for storage purpose. Whether the storage of goods permitted by Punyabhumi Ltd. to Mokshabhumi Industries qualifies as supply under GST?*

8. *Rob Shareholding Ltd., an approved intermediary, has entered into a agreement wherein certain securities were to be lent to Dhandhan Bank, under Securities Lending Scheme, 1997. Dhandhan Bank shall pay specified lending fee against*

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such lending of securities to it. Explain the taxability of transactions involved in the Securities Lending Scheme, 1997.

9. *Krishnadev is a trader based in India. Ramakrishna, brother of Krishnadev, is located in China and is also engaged in business of trading of goods. Krishnadev places an order with Ramakrishna for procurement of certain goods from local market in China. Before the shipment of goods from China to India, Krishnadev sold such goods to Christiano, a trader located in Brazil. The goods were subsequently shipped from China to Brazil. Comment on the taxability of transaction between Krishnadev and Christiano under GST in India.*

10. *Mohandas International entered into a transaction for import of goods from a vendor located in Italy. Due to financial issues, Mohandas International was not in a situation to clear the goods upon payment of import duty. Mohandas International sold the goods to Radhakrishnan Export House by endorsement of title to the goods, while the goods were in high seas. The agreement further provided that Mohandas International shall purchase back the goods in future from Radhakrishnan Export House. Discuss the taxability of transaction(s) involved, under the GST law.*

11. *Mr. Happy, registered under GST, has a huge residential property located at a prime location in Mumbai, Maharashtra. He has let out the 1st and 2nd floor to Mr. Peace for residential purposes in April. Mr. Peace, registered under GST, surrenders his tenancy rights to Mr. Serene (unregistered under GST) for a tenancy premium of ₹ 10,00,000 on 1st June. Mr. Serene has also paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Mr. Serene has agreed to pay a monthly rent of ₹ 1,00,000 to Mr. Happy from June.*

    You are required to ascertain whether GST is payable on (i) tenancy premium paid by Mr. Serene to Mr. Peace and (ii) monthly rent paid by Mr. Serene to Mr. Happy, for the month of June.

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

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constructed. Examine whether the money donated by Rudraksh Kapoor is leviable to GST.

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

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

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

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

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

(iv) Event management services provided free of cost to her brother (wholly dependent on her) for his son's marriage function in Indore (Madhya Pradesh). Cost of providing said services is ₹ 80,000.

(v) 1,400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) for ₹ 3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers from Mrs. Kajal's godown at Jaipur to Function Garden, Ajmer. Since Mrs. Kajal is not a GTA, transportation services provided by her are exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017[64].

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[64] Notification No. 12/2017 CT(R) dated 28.06.2017 (containing the list of services exempt from GST) has been discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material.

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Assume rates of GST to be as under:-

S. No.	Particulars	Rate of GST
1.	Laptop	18%
2.	Laptop bag	28%
3.	Hair oil	18%
4.	Beauty soap	28%
5.	Hair comb	12%
6.	Event management service	5
7.	Service of renting of chairs and coolers	12%
8.	Transportation service	5%

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

14. *Chandragupta Maurya is an artist who makes contemporary paintings. He is registered in the State of Kolkata. Chandragupta Maurya appoints Dhruv Kumar to auction his painting in Maharashtra. Dhruv Kumar arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by Dhruv Kumar on the behalf of Chandragupta Maurya but in his own name and the painting is delivered to the successful bidder.*

    Examine whether Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I of the CGST Act, 2017.

ANSWERS

1. Section 2(30) provides that a composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally

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bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies.

Further, section 8(a) stipulates that a composite supply comprising two or more supplies, one of which is a principal supply, is treated as a supply of such principal supply. Hence, one needs to ascertain what constitutes the principal supply in this supply. As per section 2(90), principal supply is the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

The above circular further clarifies that in the composite supply of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.

Accordingly, in the given case, the supply of printed books by Satyamev Printers is a composite supply wherein the principal supply is supply of printing services. Thus, the rate of GST applicable thereon is the rate applicable on supply of printing services, i.e. 18%.

2. As per section 7(1)(c) read with Schedule I of the CGST Act, 2017, permanent transfer or disposal of business assets is treated as supply even though the same is made without consideration. However, this provision would apply only if input tax credit has been availed on such assets. Therefore, the disposal of computers by Sudama Associates is not a supply as the input tax credit has not been availed on the same.

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3. Computation of GST payable by Shivaji Pvt. Ltd.

Particulars	Value of supply (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400
Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
GST liability			**2,63,400**

Notes:

1. Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under section 2(30) wherein the principal supply is the hiring out of the excavator.

   As per section 8(a), the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

2. Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.

4. Compensation is received by Mr. Kanjilal Adani in the form of petroleum silt which, as per the contract with the Government of Gujarat, is part of cost petroleum.

As per *Circular No. 32/06/2018 GST dated 12.02.2018*, the **cost petroleum is not a consideration received** by the oil exploration & production contractors for the services provided to Government under a Production Sharing Contract (PSC) and thus not taxable *per se*. The reason for the same is that the

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contractors carry exploration and **production of petroleum for themselves and not as a service to Government**. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum.

Consequently, the cost petroleum received by Mr. Kanjilal Adani is not taxable under GST.

5. Yes, Angad Private Ltd.'s view is correct. In terms of section 7(2) read with Schedule III of the CGST Act, 2017, services by an employee to employer in the course of or in relation to his employment shall not be treated as supply under GST. Further, the amount paid as incentive by Angad Private Ltd. is not in the nature of gift, and thus, is not covered under Schedule I. Infact, in the given case, the incentive is part of the salary and is directly linked to the sales target. Therefore, the services provided in course or in relation to employment by the employees for which incentives are given to them shall not be treated as a "supply".

In the light of above discussion, GST is not leviable on the incentive paid by Angad Private Ltd. to its employees.

6. In the given case, XYZ Consultancy is providing the service of agreeing to the obligation to refrain from an act to BA Ltd. against a consideration of ₹ 37 lakh [Schedule II read with *Circular No. 178/10/2022 GST dated 03.08.2022]*. Therefore, the same is liable to tax under GST law. Thus, view taken by XYZ Consultancy is incorrect.

7. As per section 7(1)(c) read with Schedule I, supply of goods or services or both between related persons without consideration when made in the course or furtherance of business qualifies as supply. Thus, the storage services provided by Punyabhumi Ltd. to Mokshabhumi Industries in course or furtherance of business qualify as supply under GST even though no consideration has been charged for the same.

8. Securities Lending Scheme, 1997 (hereafter referred to as SLS) facilitates the lending and borrowing of securities. Securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

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However, SLS doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services. The lending fee charged from the borrowers of securities has the character of consideration and is taxable under GST. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately *[Circular No. 119/38/2019 GST dated 11.10.2019]*.

9. The transaction between Krishnadev and Christiano is in the nature of merchant trading. As per Schedule III, transactions involving sale of goods from a place in non-taxable territory to another place in non-taxable territory, without such goods entering into India, shall be treated neither as supply of goods nor as supply of services under GST. Therefore, the transaction between Krishnadev and Christiano shall not be treated as supply and is thus not leviable to GST.

10. As per Schedule III, high seas sale transactions i.e. supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be treated neither as supply of goods nor as supply of services under GST. Thus, the sale of goods by Mohandas International to Radhakrishnan Export House in high seas shall not be liable to GST.

Further, the import duty including IGST shall be payable by Radhakrishnan Export House at the time of clearance of goods at port of import. In case the goods are sold back by Radhakrishnan Export House to Mohandas International at a subsequent point of time, the same shall be treated as normal domestic sale transaction and GST shall be applicable on the same subject to other conditions prescribed under GST Law.

11. *Circular No. 44/2018 CT dated 02.05.2018* clarifies that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

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Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in Schedule III. Thus, it is not a non-supply under GST and consequently, a consideration for the said activity shall attract levy of GST. Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST. Hence, in the given case, the tenancy premium of ₹ 10,00,000 received by Mr. Peace for surrendering his tenancy rights to Mr. Serene is liable to GST.

The circular further clarifies that since renting of residential dwelling for use as a residence to an unregistered person is exempt *[Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017*[65]*]*, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both to an unregistered person is exempt. Consequently, monthly rent ₹ 1,00,000 received by Mr. Happy from Mr. Serene is exempt.

12. *Circular No. 116/35/2019 GST dated 11.10.2019* has clarified that in case of donations received by a charitable institution, when the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Thus, GST is not leviable where all the following three conditions are satisfied namely:

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[65] *Notification No. 12/2017 CT (R) dated 28.06.2017 (containing the list of services exempt from CGST) has been discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material.*

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- Gift or donation is made to a charitable organization
- Payment has the character of gift or donation
- Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.

(a) In the backdrop of the above discussion, in the given case, the way the name of Rudraksh Kapoor is displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it is only an expression of gratitude and public recognition of Rudraksh's act of philanthropy and is not aimed at advertising or promoting his business. There is no reference/mention of his publishing house which otherwise would have got advertised.

Thus, the money donated by Rudraksh Kapoor is not a leviable to GST.

(b) In the given case, since the name of Rudraksh Publishing House has been displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it might be aimed at advertising or promoting his business. There is a direct mention of his publishing house which is being advertised. In such a case, it is a supply of service by Divyaprakash Charitable Trust for a consideration received in the form of donation.

13.

S. No.	Particulars	Rate of GST
(i)	Supply of laptop bag along with laptop to Mumbai customer [Being naturally bundled, supply of laptop bag along with the laptop is a composite supply which is treated as the supply of the principal supply [viz. laptop] in terms of section 8(a). Accordingly, rate of principal supply, i.e. laptop will be charged.]	18%

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(ii)	Supply of kits to Ram Fancy Store [It is a mixed supply and is treated as supply of that particular supply which attracts highest tax rate [viz. beauty soap] in terms of section 8(b).]	28%
(iii)	Free gifts to customers [Cannot be considered as supply under section 7 read with Schedule I as the gifts are given to unrelated customers without consideration.]	Nil
(iv)	Event management services provided free of cost to her brother [who is a related person] for his son's marriage. Thus, said services shall fall within the purview of Schedule I and shall be treated as supply even if made without consideration. Since it is an individual supply, it will be taxed at the rate applicable on said service.	5%
(v)	Chairs and coolers hired out to Function Garden [Transportation services provided by Mrs. Kajal are exempt. However, since chairs and coolers are hired out along with their transportation, it is a case of composite supply wherein the principal supply is hiring out of chairs and coolers. Accordingly, transportation service will also be taxed at the rate applicable for renting of chairs and coolers*]	12%

**Note: As per section 2(30), composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies. Since in point (v), service of hiring out of chairs & coolers is taxable while transportation service is exempt, it is possible to take a view that this is not a case of composite supply.*

In that case, the two services will be treated as independent services and taxed accordingly.

14. An activity/transaction qualifies as supply under GST only if it is undertaken for a consideration and is in course/furtherance of business. However, supply

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of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal is considered as supply even if made without consideration provided the invoice for further supply is issued by the agent in his own name [Section 7(1)(c) read with Para 3 of Schedule I of the CGST Act, 2017].

Circular No. 57/31/2018 GST dated 04.09.2018 provides that where the invoice for further supply of goods is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of Para 3 of Schedule I

In the given case, Dhruv Kumar is not merely providing auctioneering services to Chandragupta Maurya, but is also supplying the painting on behalf of Chandragupta Maurya to the successful bidder and has the authority to transfer the title of the painting on behalf of Chandragupta Maurya. Dhruv Kumar issued the invoice in his own name for supply of the painting on the behalf of Chandragupta Maurya. Thus, Dhruv Kumar can be considered as an agent of Chandragupta Maurya under Para 3 of Schedule I.

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or, January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of section 2(69) are compared with the provisions as amended by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2025	Remarks
2(69)	**Local authority:** means — (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution. (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution. (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally	**Local authority:** means — (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution. (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution. (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or	Sub-clause (c) of clause (69) of section 2 is proposed to be amended to replace "municipal or local fund" with "municipal fund or local fund" and to insert an Explanation after the said sub-clause, to provide for definitions of the terms 'Local

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	entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund. (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006. (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution. (f) a Development Board constituted under article 371 and article 371J of the Constitution. (g) a Regional Council constituted under article 371A of the Constitution	entrusted by the Central Government or any State Government with the control or management of a municipal ***fund*** or local fund. **Explanation—*For the purposes of this sub-clause-*** ***(i) "local fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Panchayat area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called*** ***(ii) "municipal fund" means any fund under the control or management of an authority of a local self-government established for discharging civic***	Fund' and 'Municipal Fund' used in the definition of "local authority" under the said clause so as to clarify the scope of the said terms.

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		functions in relation to a Metropolitan area or Municipal area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called. (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006. (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution. (f) a Development Board constituted under article 371 and article 371J of the Constitution. (g) a Regional Council constituted under article 371A of the Constitution.	

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Annexure-1

Goods and Services Tax in India

Goods and Services Tax (GST) is a path breaking indirect tax reform which attempts to create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

VAT and GST are often used inter-changeably as the latter denotes comprehensiveness of VAT by coverage of goods and services. France was the first country to implement VAT/GST in 1954. Presently, more than 160 countries have implemented VAT/GST in some form or the other because this tax has the capacity to raise revenue in the most transparent and neutral manner. Most of the countries follow unified GST i.e., a single tax applicable throughout the country. However, in federal polities like Brazil and Canada, a dual GST system is prevalent. Under dual system, GST is levied by both the federal and the State Governments. India has adopted dual GST model because of its unique federal nature.

The idea of GST was mooted in the year 2000 when the then Prime Minister set up a committee to design a Goods and Services Tax (GST) model for the country. The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became the **Constitution (101st Amendment) Act, 2016,** which paved the way for introduction of GST in India.

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In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted.

The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. With effect from 1st July, 2017, the historic indirect tax reform - GST was introduced. GST law was extended to Jammu and Kashmir on 8th July, 2017.

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Before we proceed with the finer nuances of Indian GST, let us first understand the basic concept of GST.

- GST is a value added tax levied on supply i.e., manufacture or sale of goods and provision of services.
- GST offers comprehensive and continuous chain of tax credits from the producer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
- The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages.
- Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system.

Framework of GST as introduced in India

I. Concurrent Dual GST:

India has a unique federal structure. In view of the same, India has adopted a **Concurrent Dual GST Model**. Under Dual GST Model, the Centre and States simultaneously levy GST on complete supply chain, i.e. starting from production to distribution stage.

Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services.

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Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services. GST extends to whole of India including the Union Territory of Jammu and Kashmir.

II. CGST/SGST/UTGST/IGST

GST is a destination-based tax applicable on all transactions involving supply of goods or services or both for a consideration subject to exceptions thereof. GST in India comprises of Central Goods and Services Tax (CGST) - levied and collected by Central Government, State Goods and Services Tax (SGST) - levied and collected by State Governments/Union Territories with Legislatures and Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without Legislatures, on intra-State supplies of taxable goods and/or services. As a general rule, where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as intra-State supply of goods or services respectively.

Further, where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as inter-State supply of goods

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or services respectively. Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Services Tax (IGST). IGST is the sum total of CGST and SGST/UTGST and is levied by the Centre on all inter-State supplies.

III. Legislative Framework

There is single legislation – CGST Act, 2017 - for levying CGST. Similarly, Union Territories without Legislatures [i.e. Andaman and Nicobar Islands, Lakshadweep, Ladakh, Dadra and Nagar Haveli & Daman and Diu and Chandigarh] are governed by UTGST Act, 2017 for levying UTGST. States and Union territories with their own legislatures [i.e. Delhi, Jammu and Kashmir and Puducherry] have their own GST legislation for levying SGST.

In Ladakh, CGST and UTGST is levied on supply of goods or services or both. In Delhi, CGST and SGST is levied on supply of goods or services or both.

Though there are multiple SGST legislations, the basic features of law, such as chargeability, definition of taxable event and taxable person, classification and valuation of goods and services, procedure for collection and levy of tax

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and the like are uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.

IV. GST Common Portal

Before GST, since the Centre and State indirect tax administrations worked under different laws, regulations, procedures and formats, their IT infrastructure and systems were also independent of each other. Integrating them for GST implementation was complex since it required integrating the entire indirect tax ecosystem so as to bring all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and other external stakeholders.

Besides, GST being a **destination-based tax**, the inter-State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre. A Common Portal was needed which could act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This was possible only with the help of a strong IT infrastructure.

Resultantly, Common GST Electronic Portal – **www.gst.gov.in** – a website managed by Goods and Services Network (GSTN) [a wholly owned Government Company] is set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.

The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal is one single common portal for all GST related services.

A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities.

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The functions of the GSTN include facilitating registration; forwarding the returns to Central and State authorities; computation and settlement of IGST; matching of tax payment details with banking network; providing various MIS reports to the Central and the State Governments based on the taxpayer return information; providing analysis of taxpayers' profile.

However, it is important to note that the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons*. It is managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India.

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**All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 5 crore are required to issue e-invoices.*

V. GSPs/ASPs

GSTN has selected certain Information Technology, Information Technology enabled Services and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs have access to GST System and have the capability to develop applications to be used by taxpayers for interacting with the GSTN.

GSP develops applications having features like return filing, reconciliation of purchase register data with auto populated data for acceptance/rejection/modification, dashboards for taxpayers for quick monitoring of GST compliance activities. They may also provide role-based access to divide various GST related activities like uploading invoice, filing returns etc., among different set of users inside a company (medium or large companies will need it), applications for tax professional to manage their client's GST compliance activities, integration of existing accounting packages/ERP with GST System, etc.

GSP is an additional channel being made available for facilitating the taxpayers for performing some of the functions and use of their services is optional. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

VI. Compensation Cess

A GST Compensation Cess at specified rate is imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed

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on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. Initially, it was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection is extended till **31st March, 2026**.

Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force.

VII. GST – A tax on goods and services

GST is levied on all goods and services, except alcoholic liquor for human consumption and petroleum crude, diesel, petrol, ATF and natural gas.

- **Alcoholic liquor for human consumption:** is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to **State excise duty** and inter-State/intra-State sale of the same is subject to **CST/VAT** respectively.

- **Petroleum crude, diesel, petrol, ATF and natural gas:** As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.

  Till such date, **central excise duty** continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to **CST/ VAT** respectively.

- **Tobacco:** Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in

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India. Resultantly, **tobacco is subject to GST as well as central excise duty.**

- **Opium, Indian hemp and other narcotic drugs and narcotics:** Opium, Indian hemp and other narcotic drugs and narcotics are within the purview of GST, i.e. GST is leviable on them. However, State Governments have also retained the power to levy excise duties on such products manufactured in India. Resultantly, Opium, Indian hemp and other narcotic drugs and narcotics are **subject to GST as well as State excise duties.**
- Further, **real estate sector** has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property.

Taxes Subsumed in GST

The various central, State and local levies were examined to identify their possibility of being subsumed under GST. While identifying, the following principles were kept in mind:

(i) Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.

(ii) Taxes or levies to be subsumed should be part of the transaction chain which commences with import/ manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.

(iii) The subsuming of taxes should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that were not specifically related to supply of goods & services would not be subsumed under GST.

(iv) Revenue fairness for both the Union and the States individually would need to be attempted.

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Taking the above principles into account, following taxes were subsumed in the GST:

Central Taxes

- Central Excise Duty & Additional Excise Duties
- Service Tax
- Excise Duty under Medicinal & Toilet Preparation Act, 1955
- CVD & Special CVD
- Central Sales Tax
- Central surcharges & Cesses in so far as they relate to supply of goods & services

State Taxes

- State surcharges and cesses in so far as they relate to supply of goods & services
- Entertainment Tax (except those levied by local bodies)
- Tax on lottery, betting and gambling
- Entry Tax (All Forms) & Purchase Tax
- VAT/ Sales tax
- Luxury Tax
- Taxes on advertisements

GST

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Within GST or outside GST

Alcohol for human consumption.	Power to tax remains with the State.

Five petroleum products – crude oil, diesel, petrol, natural gas and ATF.	GST Council to decide the date from which GST will be applicable.

Entertainment tax levied by local bodies.	Power to tax remains with the local bodies.

Tobacco	Within the purview of GST. Power to levy excise duties, also retained.

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CHAPTER 2

CHARGE OF GST

The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- explain the extent and commencement of CGST Act, IGST Act, SGST Act & UTGST Act.
- describe the provisions pertaining to levy and collection of CGST & IGST.
- identify and analyse the services on which tax is payable under reverse charge mechanism.
- comprehend and analyse the composition levy- eligibility for the same and conditions to be fulfilled.

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1. INTRODUCTION

Power to levy tax is drawn from the Constitution of India. To pave way for the introduction of Goods and Services Tax ("**GST**"), 101st Constitutional Amendment Act, 2016 was passed. By virtue of this Act, enabling provision was made to levy GST on supply of goods or services or both in India. Central excise duty, State VAT and certain State specific taxes and service tax were subsumed into a comprehensive GST.

The very basis for the charge of tax in any taxing statute is the taxable event i.e the occurrence of the event which triggers levy of tax. As discussed earlier, the taxable event under GST is **SUPPLY** *[Discussed in detail in Chapter – 1: Supply under GST in this Module of the Study Material]*. **CGST and SGST/UTGST** are levied on all **intra-State supplies** of goods and/or services while **IGST** is levied on all **inter-State supplies** of goods and/ or services.

The provisions relating to levy and collection of CGST and IGST are contained in section 9 of the CGST Act, 2017 and section 5 of the IGST Act, 2017, respectively. Let us now have a fundamental idea of intra-State supply and inter-State supply.

As a general rule, where the **location of the supplier** and the **place of supply** of goods or services are **in the same State/Union territory**, it is treated as **intra-State supply** of goods or services respectively.

Similarly, where the **location of the supplier** and the **place of supply** of goods or services are in (**i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory**, it is treated as **inter-State supply** of goods or services respectively.

*The concepts of **'place of supply'** and meaning of the **'location of the supplier'** have been elaborated in the next chapter, Chapter 3 – Place of Supply, in this Module of the Study Material. Consequently, the meaning of terms 'inter-State supply' and 'intra-State supply' has been explained in detail in that chapter.*

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2. RELEVANT DEFINITIONS

- **Central tax:** means the central goods and services tax levied under section 9 of the CGST Act [Section 2(21)].
- **Integrated tax:** means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act [Section 2(58)].
- **State tax:** means the tax levied under any State Goods and Services Tax Act [Section 2(104)].
- **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].
- **Aggregate turnover:** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess [Section 2(6)].
- **Customs frontiers of India:** means the limits of a customs area [Section 2(4) of the IGST Act]. 'Customs Area' is the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11) of the Customs Act, 1962].
- **Non-taxable online recipient** means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

  Explanation—For the purposes of this clause, the expression **"unregistered person"** includes a person registered solely in terms of section 24(vi) of the CGST Act, 2017 [Section 2(16) of the IGST Act, 2017].

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- **Prescribed:** means prescribed by rules made under this Act on the recommendations of the council [Section 2(87)].
- **Registered Person:** means a person who is registered under section 25 but does not include a person having unique identity number [Section 2(94)].
- **Reverse charge:** means the liability to pay tax by the recipient of supply of goods or services **or** both instead of the supplier of such goods or services or both under section 9(3)/9(4), or under section 5(3)/5(4) of the IGST Act [Section 2(98)].
- **Services:** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged [Section 2(102)].

  Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.
- **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

  However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims. [Section 2(105)].

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- **Taxable supply:** means a supply of goods and/or services which is leviable to tax under CGST Act [Section 2(108)].
- **Non-taxable supply:** means a supply of goods or services or both which is not leviable to tax under CGST Act or under IGST Act [Section 2(78)].
- **Taxable person:** means a person who is registered or liable to be registered under section 22 or section 24 of the CGST Act [Section 2(107)].

  It is important to note that a person who is liable to be registered but does not take a registration and remains an unregistered person shall be construed as a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

  Section 22 enumerates the persons liable to be registered under CGST Act and section 24 lists the persons liable to be registered compulsorily under the GST law. The said sections and the concept of taxable person thereto has been discussed in detail in Chapter 8 – Registration in Module 2 of this Study Material.

- **Recipient**: of supply of goods and/or services means-

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

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

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

  and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

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3. EXTENT & COMMENCEMENT OF GST LAW

(i) **Central Goods and Services Tax Act, 2017** extends to the whole of India [Section 1 of the CGST Act].

India: "India" means [Section 2(56) of CGST Act]-

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

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(ii) **State GST law** of the respective State/Union Territory with Legislature [Delhi, Puducherry and Jammu & Kashmir]* extends to whole of that State/Union Territory.

(1) Maharashtra GST Act, 2017 extends to whole of the State of the Maharashtra.

***State:** includes a Union territory with Legislature [Section 2(103) of the CGST Act].

(iii) **Integrated Goods and Services Tax Act, 2017** extends to the whole of India [Section 1 of the IGST Act].

(iv) **Union Territory Goods and Services Tax Act, 2017** extends to the Union territories** of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Ladakh[1], Chandigarh and other territory, i.e. the Union Territories without Legislature [Section 1 of the UTGST Act].

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[1] *Students may note that the erstwhile State of Jammu and Kashmir is reorganised into the Union territory of Jammu and Kashmir (with Legislature) and Union territory of Ladakh vide the Jammu and Kashmir Reorganisation Act, 2019. Further, the erstwhile Union territories of Dadra and Nagar Haveli and Daman and Diu is merged into a new Union territory of Dadra and Nagar Haveli and Daman and Diu vide the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019.*

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****Union territory**: means the territory of—

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli and Daman and Diu;

(d) Ladakh

(e) Chandigarh; and

(f) other territory.

Explanation—–For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory [Section 2(114)].

Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws are outside the scope of syllabus.

4. LEVY & COLLECTION OF CGST & IGST [SECTION 9 OF THE CGST ACT & SECTION 5 OF THE IGST ACT]

STATUTORY PROVISIONS	
Section 9 of the CGST Act, 2017	*Levy and collection (CGST)*
Sub-section	*Particulars*
(1)	*Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State*

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	supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption ***and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption****, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
(2)	*The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*
(3)	*The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
(4)	*The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.*

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Section 5 of the IGST Act, 2017	Levy and collection of tax (IGST)
Sub-section	**Particulars**
(1)	*Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption,* ***and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption,*** *on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
	Provided that the integrated tax on goods ***other than the goods as may be notified by the Government on the recommendations of the Council*** *imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.*
(2)	*The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*
(3)	*The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

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

ANALYSIS

Central Goods and Services Tax **(CGST)** shall be **levied** on **all intra-State supplies** of goods or services or both[2].

The tax shall be **collected** in such manner as may be prescribed and shall be **paid by the taxable person**. However, intra-State supply of **alcoholic liquor for human consumption** is outside the purview of CGST.

Value for levy: Transaction value under section 15 of the CGST Act– *Discussed in detail in Chapter 6 – Value of supply in this Module of Study Material.*

Rates of CGST: Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council**.** ***[Discussed in detail subsequently in this Chapter].*** Maximum rate of CGST can be 20%.

In case of **inter-State supplies** of goods and/or services, Integrated Goods and Services Tax **(IGST)** is **levied** on the **transaction value** under section 15 of the CGST Act. Alcoholic liquor for human consumption ***and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption*** is outside the purview of GST law, IGST is also not leviable on the same. IGST is the sum total of CGST and SGST/UTGST. Maximum rate of IGST can be 40%.

[2] *IGST is leviable on import of goods and on import of services.*

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However, CGST/IGST on supply of the following items has not yet been levied. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:

- petroleum crude
- high speed diesel
- motor spirit (commonly known as petrol)
- natural gas and
- aviation turbine fuel

Goods imported into India: All imports are deemed as inter-State supplies and accordingly IGST shall be levied on imported goods in addition to the applicable custom duties.

The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

The integrated tax on goods **other than the goods as may be notified by the Government on the recommendations of the Council** imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under the Customs Act, 1962.

Since in case of intangible goods, it is not possible to levy and collect IGST on imports in the manner as provided in the proviso, as the goods may not be physically crossing customs frontiers. Thus, Government is enabled to notify certain goods for whom the proviso may not be applicable for levy and collection of IGST and in whose case, IGST shall be levied and collected in the manner specified in section 5(1) of the IGST Act, 2017 only.

Consequently, supply of online money gaming has been notified[3] for the said purpose. This implies that import of specified actionable claim of online money

[3] *Notification No. 03/2023 IT dated 29.09.2023*

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gaming will be taxed under IGST as import of goods without applicability of customs duty.

Reverse Charge Mechanism

CGST/IGST shall be **paid by the recipient** of goods or services or both, on reverse charge basis, in the following cases:

- ✓ Supply of such goods or services or both, as **notified by the Government** on the recommendations of the GST Council.
- ✓ Supply of specified categories of goods or services or both **by an unregistered supplier** to specified class of registered persons, as notified by the Government on recommendation of GST Council.

All the provisions of the CGST Act/IGST Act shall apply to the recipient in the aforesaid cases as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. **Let us first understand the concept of reverse charge mechanism:**

Generally, the supplier of goods or services is liable to pay GST. However, under the reverse charge mechanism, the liability to pay GST is cast on the recipient of the goods or services.

Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply [Section 2(98)].

It may be noted that the underlying principle of an indirect tax is that burden of tax has to be ultimately passed on to the recipient. GST being an indirect tax, this principle holds good for GST. Under normal circumstances, the statutory liability to deposit GST and undertake compliances *[i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.]* is on the supplier while he may recover the same from its recipient. However, under reverse charge mechanism, the statutory liability to deposit GST and undertaking compliance requirements, *[i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.]* shifts from supplier to recipient.

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There are **two types of reverse charge scenarios** provided in law.

(i) First scenario occurs in case of supply of specified categories of goods or services, covered by section 9(3) of the CGST/ SGST (UTGST) Act. ***Similar provisions are contained under section 5(3) of the IGST Act.***

(ii) Second scenario occurs in case of supply of specified categories of goods or services made by an unregistered supplier to specified class of registered recipients, covered by section 9(4) of the CGST Act. ***Similar provisions are contained under section 5(4) of the IGST Act.*** *Goods and services notified under this case have been discussed subsequently in this chapter.*

Goods and services notified under reverse charge mechanism under section 9(3) of the CGST Act/ section 5(3) of the IGST Act are as follows:

A. Supplies of goods taxable under reverse charge, i.e. supply of the goods where tax is payable by the recipient:

Notification No. 4/2017 IT (R) dated 28.06.2017 as amended has notified the following goods wherein whole of the tax shall be paid on reverse charge basis by the recipient of supply:

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person

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3A.	3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely:- (a) Of peppermint (Mentha piperita); (b) Of other mints: Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis	Any unregistered person	Any registered person
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons	Any registered person

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			for supply of silk yarn	
4A.	5201	Raw cotton	Agriculturist	Any registered person
5.	-	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent. Explanation. —For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (c) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of section 11(1) of the Lotteries (Regulation) Act, 1998.
6.	Any Chapter	Used vehicles, seized and confiscated goods, old and	Central Government excluding Ministry of Railways (Indian	Any registered person

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		used goods, waste and scrap	Railways), State Government, Union territory or a local authority	
7.	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person
8.	72, 73, 74, 75, 76, 77, 78, 79, 80, or 81	Metal scrap	Any unregistered person	Any registered person.

B. Supply of services taxable under reverse charge under section 9(3) of the CGST Act, i.e. the services where tax is payable by the recipient: *Notification No. 13/2017 CT (R) dated 28.06.2017* as amended has notified the following categories of supply of services wherein whole of the tax shall be paid on reverse charge basis by the recipient of services:

S. No.	Category of supply of services	Supplier of service	Recipient of Service
1	Supply of services by a **Goods Transport Agency (GTA)** in respect of transportation of goods by road **to**- (a) any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under	Goods Transport Agency (GTA) *[Please refer the analysis given subsequently.]*	(a) Any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India;

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	the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person.		or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person; located in the taxable territory. [Hereinafter referred as **Specified recipients**]

However, reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-

(a) a Department/ establishment of the Central Government/ State Government/ Union territory; or

(b) local authority; or

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(c) Governmental agencies, which has taken registration under the CGST Act only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services[4]. Further, nothing contained in this entry shall apply where, - i. the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and ii. the supplier has issued a tax invoice to the recipient charging CGST at the applicable rates and has made the prescribed declaration on such invoice issued by him.			
2	Services provided by an **individual advocate including a senior advocate or firm of advocates** by way of legal services, directly or indirectly. "**Legal service**" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory.
3	**Services supplied by an arbitral tribunal** to a business entity.	An arbitral tribunal.	Any business entity located in taxable territory.

[4] *These services have been simultaneously exempted from GST vide entry 21B of Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, there will be no tax liability in this case. [Refer Chapter 4: Exemptions from GST in this Module of the Study Material for discussion on this exemption].*

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4	Services provided by way of **sponsorship** to any body corporate or partnership firm.	Any person ***other than a body corporate.***	Any body corporate or partnership firm located in the taxable territory.
5	**Services supplied by the Central Government, State Government, Union territory or local authority to a business entity** excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts and the Ministry of Railways (Indian Railways); (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

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5A	Services supplied by Central Government, excluding the Ministry of Railways (Indian Railways), State Government, Union territory/ local authority by way of renting of immovable property to a person registered under CGST Act, 2017	Central Government, State Government, Union territory or local authority	Any person registered under the CGST Act, 2017 [read with section 20(v) of IGST Act, 2017].
5AA	Service by way of renting of residential dwelling to a registered person	Any person	Any registered person
5AB	Services by way of renting of any immovable property other than residential dwelling.	Any unregistered person	Any registered person ***other than a person who has opted to pay tax under composition levy.***
5B	Services supplied by any person by way of transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter
5C	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as	Any person	Promoter

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	premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter[5]		
6	**Services supplied by a director** of a company/ body corporate to the said company/ body corporate.	A director of a company or a body corporate *[Please refer the analysis given subsequently.]*	Company or a body corporate located in the taxable territory.
7	**Services supplied by an insurance agent** to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8	**Services supplied by a recovery agent** to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9	Supply of **services by a music composer, photographer, artist**	Music composer, photographer,	Music company, producer or the like, located in the taxable territory.

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

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	or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works **to a music company, producer** or the like.	artist, or the like	
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory.
	However, an author can choose to pay tax under forward charge if- (i) he has taken registration under the CGST Act and filed a declaration, in the prescribed form, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; (ii) he makes a declaration on the invoice issued by him in prescribed form to the publisher.		
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI)	Members of Overseeing Committee constituted by RBI	RBI

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11	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership (LLP) firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or LLP firm	A banking company or a NBFC, located in the taxable territory
12	Services provided by business facilitator to a banking company.	Business facilitator	A banking company, located in the taxable territory
13	Services provided by an agent of business correspondent to business correspondent.	An agent of business correspondent	A business correspondent, located in the taxable territory.
14	Security services (services provided by way of supply of security personnel) provided to a registered person. However, nothing contained in this entry shall apply to: (i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or	Any person other than a body corporate	A registered person, located in the taxable territory.

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	(c) Governmental agencies; which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under composition scheme.		
15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies service to a body corporate & doesn't issue an invoice charging CGST @6% to service recipient. *[Please refer the analysis*	Any body corporate located in the taxable territory.

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		given subsequently.]	
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India, as amended	Lender i.e., a person who deposits securities registered in his name/in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under Scheme of SEBI	Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

🔔 ***All the above services have also been notified for reverse charge under IGST Act vide Notification No. 10/2017 IT (R) dated 28.06.2017 as amended. In addition to them, following additional services are also notified by said notification for reverse charge under IGST purposes:***

S. No.	Category of supply of service	Supplier of service	Recipient of Service
1.	Any service **supplied by any person who is located in a non-taxable territory** to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient *[see definitions]*.

For purpose of this above services, following explanations shall apply-

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(a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

(b) **Body Corporate**: has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include—

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

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

(c) the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

(d) the words and expressions used and not defined in reverse charge notification but defined in the CGST Act, the IGST Act, and the UTGST Act shall have the same meanings as assigned to them in those Acts.

(e) Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.

(f) Insurance agent means an insurance agent licensed under section 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance [Section 2(10) of the Insurance Act, 1938].

(g) Renting of immovable property means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing,

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licensing or other similar arrangements in respect of immovable property.

(h) the provisions of reverse charge notification, in so far as they apply to the Central Government, State Government, shall also apply to the Parliament and State Legislature, Courts and Tribunals.

Person liable to pay GST on GTA Services

GTA services are taxable at the following two rates:

(i) **@ 5%** (2.5% CGST+2.5% SGST/UTGST or 5% IGST) where GTA has not taken the Input Tax Credit (ITC) on goods or services used in supplying GTA service (there can be either of the cases - where GTA exercises the option to itself pay GST at said rate or does not exercise the option to itself pay GST at said rate, on services supplied by it) or

(ii) **@ 12%** (6% CGST+6% SGST/UTGST or 12% IGST) where GTA exercises the option to itself pay GST at said rate on services supplied by it. In this case, there is no restriction on availing ITC on goods or services used in supplying GTA service by GTA.

In the following paras, we have explained as to who is the person liable to pay tax in case of each of the above two rates:

Note - Where recipient is other than the specified recipients (Unregistered individual end consumer or unregistered casual taxable person), GST will be exempt – *Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.*

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** **Recipient of GTA service** *is the person who pays/is liable to pay freight for transportation of goods by road in goods carriage, located in the taxable territory.*

Person liable to pay GST on renting of motor vehicles service

Service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient are taxable at the following two rates:

(i) **@ 5%** (2.5% CGST+2.5% SGST/UTGST or 5% IGST) provided supplier of services has taken only the limited ITC (of input services in the same line of business) or

(ii) **@ 12%** (6% CGST+6% SGST/UTGST or 12% IGST) where supplier of services opts to pay GST at said rate. In this case, there is no restriction on availing ITC on goods or services used in supplying renting of motor vehicles service by the supplier of service.

In the following paras, we have explained as to who is the person liable to pay tax in case of each of the above two rates[6]:

** *RCM is applicable here only when the supplier does not issue an invoice charging GST @12% (6% CGST+6% SGST/UTGST or 12% IGST) from the service recipient.*

[6] *Entry 15 of Notification No. 13/2017 CT (R) dated 28.06.2017 read with Circular No. 130/49/2019 GST dated 31.12.2019*

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Now there may arise a doubt as to whether RCM is applicable on:

(i) service of renting of motor vehicle designed to carry passengers

or

(ii) service of transportation of passengers.

It is clarified[7] that **there is a clear distinction between the two services** which is as under:

A. The two services fall under two different headings in the Tariff.

B. **(i)** **Services of renting of motor vehicles designed to carry passengers** covers:

- renting of motor vehicle
- for transport of passengers
- for a period of time
- where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

(ii) **'Passenger transport services'** covers passenger transport services over pre-determined routes on pre-determined schedules.

Accordingly, **where the body corporate hires the motor vehicle** (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the **service would fall under 'services of renting of motor vehicles designed to carry passengers', and the body corporate shall be liable to pay GST on the same under RCM.**

Thus, reverse charge would apply on act of renting of vehicles by body corporate subject to fulfilment of other conditions prescribed for this purpose and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing vehicle on rent.

However, **where the body corporate avails the passenger transport service** for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under 'passenger transport services' and **the body corporate shall not be liable to pay GST on the same under RCM.**

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[7] *vide Circular No. 177/09/2022 GST dated 03.08.2022*

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Taxability of remuneration paid to the Director

In order to determine the leviability of tax on the remuneration paid to the directors, we first need to ascertain whether the director is an employee of the company or not. Following two situations are possible:

(i) Services provided by the **independent directors**[8]/those directors (by whatever name called) who are **not employees of the said company** to such company, in lieu of remuneration as the consideration for the said services, are clearly **outside the scope of Schedule III** of the CGST Act[9] and are therefore taxable. As seen in the table given above illustrating the reverse charge services (Entry No. 6), such remuneration paid to the directors is taxable in hands of the company, on **reverse charge basis**.

(ii) In case where it is ascertained that a director, irrespective of name and designation, is an employee, next step would be to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service".

The part of **director's remuneration** which is **declared as Salaries** in the books of a company and subjected to TDS under section 192 of the Income-

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[8] *The definition of* "independent directors" *under section 149(6) of the Companies Act, 2013 read with rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that the* independent director should not have been an employee of the company.

[9] *As per Para 1 of Schedule III, services by an employee to the employer in the course of or in relation to his employment are non-supplies, i.e. they are neither supply of goods nor supply of services. The provisions of Schedule III have been discussed in detail in Chapter 1 – Supply under GST in this Module of the Study Material.*

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tax Act (IT Act), are **not taxable** being consideration for services by an employee to the employer in the course of or in relation to his employment **in terms of Para 1 of Schedule III.**

Further, the part of employee **director's remuneration which is declared separately other than salaries** in the company's accounts and subjected to TDS under section 194J of the IT Act as fees for professional or technical services are **treated as consideration** for providing services which are **outside the scope of Schedule III** and is therefore, taxable. Besides, as already discussed, the recipient of the said services i.e. the company, is liable to discharge the applicable GST on it on **reverse charge basis**[10].

Tax on services supplied by director of a company in his personal capacity such as renting of immovable property to the company/body corporate not payable under revere charge

Tax on services supplied by director of a company/body corporate to the said company or the body corporate is payable by the company/body corporate under reverse charge mechanism (RCM). It is hereby clarified[11] that services supplied by a director of a company/body corporate to the company/body corporate in his private/personal capacity such as services supplied by way of renting of immovable property are not taxable under RCM.

Only those services supplied by director of company/body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate.

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[10] *as clarified vide Circular No 140/10/2020 GST dated 10.06.2020*

[11] *Circular No. 201/13/2023 GST dated 01.08.2023*

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Delhi Development Authority (DDA) -NOT a local authority under GST law

As seen earlier, tax on services supplied by local authority to a business entity is payable under reverse charge. The issue which arose for consideration was whether DDA can be treated as local authority under GST law.

It has been clarified that since local authority means an authority which is similar to the elected self-governing body such as Municipal Committee and which is entrusted with the control and management of municipal or local fund can be termed as local authority, DDA cannot be treated as local authority under GST law as DDA does not meet the requirement of local authority as per section 2(69)[12].

Tax payable by the electronic commerce operator (ECO) on notified services: The Government may, on the recommendations of the GST Council, notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the ECO if such services are supplied through it. **ECO** is any person who owns/operates/manages an electronic platform for supply of goods/services/both. *The provisions relating to ECO will be discussed in detail in Chapter 12 – Electronic Commerce Transactions in Module 2 of this Study Material.*

Classification under GST

In order to determine the rate applicable on a particular supply of goods or services, one needs to first determine the classification of such goods or services. Classification of goods and services assumes significance since there are different rates prescribed for supply of different goods and services. Therefore, classification is crucial for determining the rate of tax applicable on a particular product or service.

[12] *Circular No. 245/02/2025 GST dated 28.01.2025*

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Classification of Goods

Classification of goods means identification of the chapter, heading, sub-heading and tariff item in which a particular product will be classified.

Chapter, heading, sub-heading and tariff item are referred in the Schedules of rate notification for goods under GST are the Chapter, heading, sub-heading and tariff item of the First Schedule to the Customs Tariff Act, 1975. Indian Customs Tariff is based on HSN. HSN stands for Harmonized System of Nomenclature.

It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO) for the purpose of classifying goods across the World in a systematic manner.

It comprises of about 5,000 commodity groups; each identified by a 6-digits code [code can be extended], arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. India has extended the HSN codes upto 8-digits.

Along the lines of HSN, the Indian Customs Tariff has a set of Rules of Interpretation of the First Schedule and General Explanatory notes. These rules and the general explanatory notes give clear direction as to how the nomenclature in the schedule is to be interpreted.

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These **Rules for Interpretation** including section and chapter notes and the General Explanatory Notes of the First Schedule[13] **apply to the interpretation of the rate notification for goods under GST also.**

Consequently, under GST, goods are classified on the basis of HSN in accordance with the **Rules for the Interpretation** of the Customs Tariff. *The same have been discussed in Chapter 3 – Classification of Imported and Export Goods in Module 4 of this Study Material.*

Once classification for a product has been determined on this basis, applicable rate has to be determined as per the rate prescribed in the rate notification issued under GST.

Classification of Services

A new **Scheme of Classification of Services** has been devised under GST. It is a modified version of the United Nations Central Product Classification.

Under this scheme, the services of various descriptions have been classified under various sections, headings and groups. Chapter 99 has been assigned for services. This chapter has following sections:

Section 5 Construction Services

Section 6 Distributive Trade Services; Accommodation, Food and Beverage Service; Transport Services; Gas and Electricity Distribution Services

Section 7 Financial and related services; real estate services; and rental and leasing services

Section 8 Business and Production Services

Section 9 Community, social and personal services and other miscellaneous services

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[13] ***Sections:*** *A group of Chapters representing a particular class of goods.*
Chapters: *Each section is divided into various chapters and sub-chapters. Each chapter contains goods of one class.*
Chapter notes: *They are mentioned at the beginning of each chapter. These notes are part of the statute and hence have the legal authority in determining the classification of goods.*
Heading: *Each chapter and sub-chapter is further divided into various headings.*
Sub-heading: *Each heading is further divided into various sub-headings.*

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Each section is divided into various headings which is further divided into Groups. Its further division is made in the form of 'Tariff item'/ Service Codes.

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Rate of tax is determined in accordance with the Service Code in which the service is classified.

GST Rates prescribed for various goods

Broadly, seven rates of **CGST** have been notified in seven Schedules of rate notification for goods, viz., 0.125%, 0.75%, 1.5%, 2.5%, 6%, 9% and 14%. SGST/ UTGST at the equivalent rate is also leviable.

With regard to **IGST**, broadly seven rates have been notified in seven Schedules of rate notification for goods, viz., 0.25%, 1.5%, 3%, 5%, 12%, 18% and 28%[14].

[14] *Students may refer the CBIC website for the complete Schedule of GST Rates for goods for knowledge purpose.*

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Certain specified goods have been exempted from tax.

GST Rates prescribed for various services

Broadly, six rates of **CGST** have been notified for services, viz., 0.75%, 2.5%, 3.75%, 6%, 9% and 14%[15]. Equivalent rate of SGST/ UTGST is also leviable.

For **IGST**, six rates have been notified for services, viz., 1.5%, 5%, 7.5%, 12%, 18% and 28%[16][17].

For certain specified services, nil rate of tax has been notified.

Services of gambling, services by way of admission to entertainment events/access to amusement facilities including (a) casinos, or race club, clubs or any place having casinos or race clubs or (b) sporting event such as IPL and the events like IPL, services provided by a race club by way of totalisator or a license to bookmaker in such club, gambling etc. attract the highest rate of 28% (CGST @ 14% and SGST @ 14% or IGST @ 28%).

A number of services are subject to a lower rate of 5% (CGST @ 2.5% and SGST @ 2.5% or IGST @ 5%). For instance, GTA service is taxed @ 5% subject to the condition that credit of input tax charged on goods/services used in supplying said service has not been taken. Similarly, tax rate for supply of restaurant service, other than at 'specified premises[18]', is 5% without any input tax credit.

Services not covered under any specific heading are taxed at the rate of 18% (CGST @ 9% and SGST @9% or IGST @ 18%).

In the following paras, applicability of GST in real estate sector has been briefly discussed:

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[15] notified vide Notification No. 11/2017 CT (R) dated 28.06.2017

[16] notified vide Notification No. 8/2017 IT (R) dated 28.06.2017.

[17] Students may refer the CBIC website for the complete Schedule of GST Rates for services for knowledge purposes.

[18] "Specified premises" means premises providing "hotel accommodation" services having declared tariff of any unit of accommodation above ₹7,500 per unit per day or equivalent.

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GST rates in real estate sector

The effective rate of GST on real estate sector for the new projects by promoters are as follows:

(i) 1% without ITC on construction of **affordable houses** (area 60 sqm in metros/ 90 sqm in non-metros and value upto ₹ 45 lakh).

(ii) 5% without ITC is applicable on construction of:

(a) all houses other than affordable houses, and

(b) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions:

Above tax rates shall be available subject to following conditions:

(a) ITC shall not be available.

(b) 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons[19].

However, if value of inputs and input services purchased from registered supplier is less than 80%, promoter has to pay GST on reverse charge basis, under section 9(4) [discussed earlier], at the rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

Supply of services notified under section 9(4)

[19] *Discussion in above paras highlighted in brown is solely for the purpose of knowledge of the students and is not meant for examination purposes.*

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Further, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on reverse charge basis, under section 9(4), at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.

Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) at the applicable rates *[Notification No. 07/2019 CT (R) dated 29.03.2019/ Notification No. 07/2019 IT (R) dated 29.03.2019].*

Levy of GST on Airport Dues

The authority managing the airport (airport operator[20]) charges the airport levies, namely, PSF[21] and UDF[22] from the embarking passengers at any airport.

In view of the definition of consideration under section 2(31), PSF and UDF charged by airport operators are consideration for providing services to passengers.

Thus, services provided by an airport operator to passengers against consideration in the form of UDF and PSF are liable to GST.

PSF and UDF are levied by the airport operators but are collected by the airlines. These charges are collected by the airline as an agent of passengers and is not a consideration for any service provided by the airlines.

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[20] *Generally, an airport licensee appoints an airport operator responsible for overseeing the airport's day-to-day operations and facility management. However, in smaller airports, the roles of airport licensee and airport operator may be fulfilled by the same entity.*

[21] *PSF is the Passenger Service Fee (PSF) which the airport licensee may collect from the embarking passengers at such rates as specified by the Central Government. The airport licensee shall utilize the said fee for infrastructure and facilitation of the passengers.*

[22] *UDF is the User Development Fee (UDF) which the airport licensee may levy and collect, at a major airport, at the prescribed rate.*

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Thus, the amount so recovered by airlines will be excluded from the value of supplies made by the airline to its passengers. In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under rule 33 of the CGST Rules[23]. It is the airport operator which is liable to pay GST on UDF and PSF.

The airline should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport operator, in the invoice issued by airlines to its passengers.

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

The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines (at the time of issue of air ticket and the same is remitted by airlines to airport operators).

Since, the airport operators are collecting PSF and UDF inclusive of GST, there is no question of their not paying GST collected by them to the Government *[Circular No. 115/34/2019 GST dated 11.10.2019]*.

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[23] *Rule 33 of the CGST Rules has been discussed in detail in Chapter 6 - Value of Supply in this Module of the Study Material.*

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5. COMPOSITION LEVY [SECTION 10 OF THE CGST ACT]

STATUTORY PROVISIONS

Section 10	Composition levy	
Sub-section	**Particulars**	
(1)	*Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,—*	
	(a)	*one percent.[24] of the turnover in State or turnover in Union territory in case of a manufacturer*
	(b)	*two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and*
	(c)	*half per cent. of the turnover in State or turnover in Union territory in case of other suppliers*
	subject to such conditions and restrictions as may be prescribed.	
	Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not	

[24] *Rate of tax prescribed in case of a manufacturer is half percent of the turnover in State/UT. The same has been discussed in detail in subsequent paras.*

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		exceeding one crore and fifty lakh rupees[25], as may be recommended by the Council.
		Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten percent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.
		Explanation - For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.
(2)		*The registered person shall be eligible to opt under sub-section (1), if—*
	(a)	*save as provided in sub-section (1), he is not engaged in the supply of services*
	(b)	*he is not engaged in making any supply of services which are not leviable to tax under this Act*
	(c)	*he is not engaged in making any inter-State outward supplies of goods or services*
	(d)	*he is not engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52; and*
	(e)	*he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council*
	(f)	*he is neither a casual taxable person nor a non-resident taxable person.*
		Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-

[25] *The turnover limit for composition levy has been increased from ₹ 50 lakh to ₹ 1.5 crore vide Notification No. 14/2019 CT dated 07.03.2019.*

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		tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.
(2A)		*Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—*
	(a)	*engaged in making any supply of goods or services which are not leviable to tax under this Act;*
	(b)	*engaged in making any inter-State outward supplies of services;*
	(c)	*engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52;*
	(d)	*a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and*
	(e)	*a casual taxable person or a non-resident taxable person.*
		Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.
(3)		*The option availed of by a registered person under sub-section (1) or sub-section (2A), as the case may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) or sub-section (2A), as the case may be.*

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(4)	*A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.*
(5)	*If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74* ***or section 74A*** *shall, mutatis mutandis, apply for determination of tax and penalty.*
	Explanation 1 — For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. *Explanation 2 — For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:—* *(i) supplies from the first day of April of a financial year upto the date when such person becomes liable for registration under this Act; and* *(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.*

ANALYSIS

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(1) Overview of the Scheme

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to a prescribed limit. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers.

Initially, the scheme was designed to benefit the small traders, manufacturers and restaurant service providers. So, the scheme was fundamentally for the suppliers of goods and only for restaurant service providers (not supplying alcoholic liquor for human consumption). However, subsequently, suppliers availing composition scheme were permitted to supply other services also, though only upto a small specified value. This scheme is contained in **sub-sections (1) and (2) of section 10 [hereinafter referred to as composition scheme under section 10(1)].**

Under this scheme, suppliers of goods have the option to pay tax at the concessional rate of 1% (CGST + SGST/UTGST) of the turnover and restaurant service providers (not supplying alcoholic liquor for human consumption) have the option to pay tax @ 5% (CGST + SGST/UTGST) of the turnover. Small taxpayers with an aggregate turnover in the preceding financial year up to ₹ 1.5 crore are eligible to pay tax at these rates in the current financial year upto an aggregate turnover of ₹ 1.5 crore. However, a person engaged exclusively in supply of services other than restaurant service is not eligible for this composition scheme stipulated under sub-sections (1) and (2).

In order to provide benefit of composition scheme to persons engaged in supply of services other than restaurant service whose aggregate turnover in the preceding financial year is up to ₹ 50 lakh, a scheme to pay tax @ 6% (CGST +

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SGST/UTGST) of the turnover was introduced subsequently. A mixed supplier who is primarily engaged in supplying services other than restaurant service along with marginal supply of goods could also avail the benefit of this scheme. The provisions of this scheme are contained in sub-section (2A) of section 10.

Essentially, the composition scheme under **sub-section (2A) of section 10 [hereinafter referred to as composition under 10(2A)]** is for small service providers like salon stylist, tailors, etc. This scheme provides an option to such suppliers to pay tax @ 6% of the turnover in the current financial year upto an aggregate turnover of ₹ 50 lakh.

Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on their goods and/ or services, etc. They are not required to raise any tax invoice, but simply need to issue a Bill of Supply[26] wherein no tax will be charged from the recipient.

Simple annual return Quarterly payment of tax

Easy compliance as no elaborate accounts and records to be maintained

An eligible person opting to pay tax under the composition scheme shall, instead of paying tax on every invoice at the specified rate, pay tax at the prescribed percentage of his turnover every quarter through prescribed form [Form GST CMP 08]. At the end of a quarter, he would pay the tax, without availing the benefit of input tax credit. Return is to be filed annually by a composition supplier.

The provisions relating to composition levy are contained in section 10 of CGST Act, 2017 and Chapter-II [Composition Levy] of Central Goods and Services Tax (CGST) Rules, 2017. The said rules have been incorporated in the discussion in the following paras at the relevant places.

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[26] *Discussed in detail in Chapter-9: Tax Invoice, Credit and Debit Notes in Module-2 of this Study Material.*

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As seen above, section 10 stipulates two types of composition schemes –

Provisions relating to these schemes have been discussed in detail in subsequent paras:

(2) Turnover limit for opting for composition levy [Section 10(1), 10(2A) & 10(3)]

Turnover limit in case of composition levy

Section 10(1) provides the turnover limit of ₹ 50 lakh in the preceding financial year for becoming eligible for composition levy under section 10(1). However, proviso to section 10(1) empowers the Government to increase the said limit of ₹ 50 lakh upto ₹ 1.5 crore, on the recommendation of the GST Council. In view of said power of the Government, the turnover limit for composition levy under section 10(1) has been increased from ₹ 50 lakh to ₹ 1.5 crore vide ***Notification No. 14/2019 CT dated 07.03.2019***.

However, the said notification further stipulates that the turnover limit for composition levy under section 10(1) shall be ₹ 75 lakh **in respect of 8 of the Special Category States** namely:

Special Category States	
Arunachal Pradesh	Mizoram

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Uttarakhand	Nagaland
Manipur	Sikkim
Meghalaya	Tripura

In case of Special Category States of **Assam, Himachal Pradesh** and **Jammu and Kashmir**, the turnover limit will be ₹ 1.5 crore only.

Thus, if the aggregate turnover of a supplier in a State/UT other than Special Category States (except Assam, Himachal Pradesh and Jammu and Kashmir) is upto ₹ 1.5 crore in the preceding financial year, said supplier is eligible for composition scheme under section 10(1). Further, it is important to note that the aggregate turnover is computed on all India basis for a person having same Permanent Account Number (PAN) – *Refer the definition of aggregate turnover discussed in subsequent paras.*

(3) A shoes' dealer 'Prithviraj' has offices in Maharashtra and Goa. He makes intra-State supply of goods from both these offices.

In order to determine whether 'Prithviraj' is eligible to avail benefit of the composition scheme under section 10(1), turnover of both the offices would be taken into account and if the same does not exceed ₹ 1.5 crore in the preceding financial year, 'Prithviraj' can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for goods for

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both the offices in the current financial year.

Further, the option of a registered person to avail composition scheme under section 10(1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the threshold limit of ₹ 1.5 crore [₹ 75 lakh in 8 specified special category States] [Section 10(3)].

Turnover limit in case of composition levy for services under section 10(2A)

Section 10(2A) provides the turnover limit of ₹ 50 lakh in the preceding financial year for becoming eligible for composition levy under section 10(2A).

(4) A hair stylist 'Billoo Barber' has his salon in Delhi and Haryana, making intra-State supplies.

In order to determine whether 'Billoo' is eligible to avail benefit of the composition scheme under section 10(2A), turnover of both the salons would be taken into account and if the same does not exceed ₹ 50 lakh in the preceding financial year, 'Billoo' can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for services for both the salons in the current financial year.

Further, the option of a registered person to avail composition scheme under section 10(2A) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the threshold limit of ₹ 50 lakh [Section 10(3)].

To summarise, a registered person opting for composition scheme under section 10(1) should have an aggregate turnover upto ₹ 1.5 crore [₹ 75 lakh in 8 specified Special Category States] in the preceding FY and he can avail the benefit of said scheme[27] for the current FY till the time his aggregate turnover in the current FY does not exceed ₹ 1.5 crore/₹ 75 lakh.

[27] *Intimation for opting to pay tax under composition scheme must be filed prior to the commencement of the FY for which said option is exercised [Rule 3].*

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Similarly, a registered person opting for composition scheme under section 10(2A) should have an aggregate turnover upto ₹ 50 lakh in the preceding FY and he can avail the benefit of said scheme for the current FY till the time his aggregate turnover in the current FY does not exceed ₹ 50 lakh.

From the above discussion, it is apparent that the term aggregate turnover is of utmost importance. So, let us understand this term in detail.

(3) Aggregate turnover under composition levy [Section 2(6) read with explanation 1 to section 10]

The definition of aggregate turnover as contained in section 2(6) is analysed as follows:

The aggregate turnover is the sum of value of all outward supplies falling in the following four categories:

- Taxable supplies
- Exempt supplies
- Exports of goods or services or both
- Inter-State supplies

It excludes:

- The value of inward supplies on which tax is payable by a person on reverse charge basis
- Taxes including cess paid under GST law.

It is computed on all India basis for a person having same Permanent Account Number (PAN).

Further, explanation 1 to section 10 clarifies that for the purposes of computing **aggregate turnover of a registered person for determining his eligibility to pay tax under this section**, aggregate turnover **includes** value of supplies from 1st April of a FY up to the date of his becoming liable for registration and **excludes** value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

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On combined reading of the aforesaid provisions, the method of computing the aggregate turnover for the purpose of determining the eligibility of a registered person for the composition scheme [for both goods and services] can be depicted in a diagram as follows:

**Note:* *The value of exports and inter-State supplies are relevant only while determining the aggregate turnover of the preceding FY. These values are not relevant for determining the aggregate turnover of the current FY in which the composition supplier has opted for composition levy as he is not permitted to make inter-State supplies and exports in the said FY*[28].

(4) Rates of tax under the composition levy scheme [Section 10(1) and section 10(2A) read with rule 7]

Rule 7 prescribes the rates at which tax is payable by a registered person opting for composition levy – composition levy under section 10(1) and composition levy under section(2A).

[28] *Section 10(2)(c)*

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Rates of tax in case of composition levy under section 10(1)

A registered person opting for composition levy under section 10(1) shall pay

While computing the threshold limit of ₹ 1.5 crore/ ₹ 75 lakh / ₹ 50 lakh, inclusions in and exclusions from 'aggregate turnover' are as follows:

tax calculated at the prescribed rates [mentioned in table below] during the current FY, in lieu of the tax payable by him under regular scheme:

S. No.	Category of registered persons	Rate of tax
1	Manufacturers, other than manufacturers of notified goods, i.e. ice cream, pan masala, tobacco, aerated waters, fly ash bricks; fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.	**½ %**[29] of the turnover in the State/Union territory
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II **[referred to as "Restaurant service" in discussion under this chapter]**	**2½ %**[30] of the turnover in the State/Union territory
3	Any other supplier eligible for composition levy under section 10 of CGST Act and Chapter-II [Composition Levy] of CGST Rules.	**½ %**[31] of turnover of taxable supplies of goods & services in the State/Union territory

Note *- Students may note that the 'aggregate turnover' of preceding FY is relevant for the purpose of determining eligibility to avail composition scheme, but the tax has to be paid in accordance with the applicable rates on the 'turnover' (or 'turnover of taxable supplies' in case of third category of registered persons above) in a State/UT.*

[29] *Effective rate 1% (CGST+ SGST/UTGST)*
[30] *Effective rate 5% (CGST+ SGST/UTGST)*
[31] *Effective rate 1% (CGST+ SGST/UTGST)*

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The concept of 'Turnover in the State/UT' under the composition levy has been explained subsequently in this chapter.

Rates of tax in case of composition levy for services under section 10(2A)

A registered person opting for composition levy under section 10(2A) shall pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)] of the turnover of supplies of goods and services in the State or Union territory.

As seen above, since the tax under composition scheme has to computed as a specified % of the turnover in State or turnover in Union territory, it is pertinent to understand what is turnover in State or turnover in Union territory.

(5) Turnover in State or turnover in Union territory under composition levy [Section 2(112) read with explanation 2 to section 10]

As per section 2(112), turnover in State/ turnover in Union territory means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Turnover in State/ Union Territory

Further, explanation 2 to section 10 clarifies that for the purposes of **determining the tax payable by a person under this section**, the expression turnover in State or turnover in Union territory **shall not include** the value of following supplies, namely:

(i) supplies from 1st April of a FY up to the date when such person becomes liable for registration under this Act; and

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(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

On combined reading of the aforesaid provisions, the method of computing the **turnover in a State/UT for paying tax under the composition scheme** can be depicted in a diagram as follows:

While computing the Turnover in a State/UT to pay tax under composition levy, inclusions and exclusions are as follows:

Includes	**Excludes**
--All taxable supplies and exempt supplies made within the State/UT *(While computing turnover in a State/UT of a supplier, other than manufacturer and restaurant service provider, eligible for composition levy for goods [eg- trader], the exempt supplies will not be taken into consideration)*	--CGST/ SGST/ UTGST/ IGST/ Cess --Value of inward supplies on which tax is payable under reverse charge. --Value of supplies from the first day of April of a FY up to the date when such person becomes liable for registration under this Act --Value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount

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(5) A photographer 'Champak' has commenced providing photography services in Delhi from April this year. His turnover for various quarters till December is as follows:

April-June	₹ 20 lakh
July-Sept	₹ 30 lakh
Oct-Dec	₹ 20 lakh

In the given case, since Champak has started the supply of services in the current financial year, his aggregate turnover in the preceding FY is Nil. Consequently, in the current FY, he is eligible for composition scheme under section 10(2A). He becomes eligible for the registration when his aggregate turnover exceeds ₹ 20 lakh.

While registering under GST, he opts for composition scheme under section 10(2A).

For determining his turnover of the State for payment of tax under composition scheme under section 10(2A), turnover of April-June quarter [₹ 20 lakh] shall be excluded as the value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act are to be excluded for this purpose.

On next ₹ 30 lakh [turnover of July-Sept quarter], he shall pay tax @ 6% [3% CGST and 3% SGST], i.e. CGST ₹ 90,000 and SGST ₹ 90,000.

By the end of July-Sept quarter, his aggregate turnover reaches ₹ 50 lakh*.

Consequently, his option to avail composition scheme under section 10(2A) shall lapse by the end of July-Sept quarter and thereafter, he is required to pay tax at the normal rate of 18%. Thus, the tax payable for Oct-Dec quarter is ₹ 20 lakh × 18%, i.e. ₹ 3,60,000.

**while computing aggregate turnover for determining Champak's eligibility to pay tax under composition scheme, value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act (i.e. turnover of April-June quarter), are included.*

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(6) Who are NOT eligible to opt for composition scheme? [Section 10(2) and (2A)]

Registered person who is not eligible for composition scheme under section 10(1)

- Supplier engaged in making any supply of goods or services which are not leviable to tax
- Supplier engaged in making any inter-State outward supplies of goods or services
- Person supplying any services through an electronic commerce operator who is required to collect tax at source under section 52
- Manufacturer of ice cream, panmasala, tobacco and aerated waters, fly ash bricks; fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.
- Supplier who is either a casual taxable person or a non-resident taxable person
- Supplier of services, save as provided in section 10(1) *[Refer discussion below diagram]*

Registered person who is not eligible for composition scheme under section 10(2A)

- Supplier engaged in making any supply of goods or services which are not leviable to tax
- Supplier engaged in making any inter-State outward supplies of goods or services
- Person supplying any services through an electronic commerce operator who is required to collect tax at source under section 52
- Manufacturer of notified goods or supplier of notified services
- Supplier who is either a casual taxable person or a non-resident taxable person.

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A person engaged in marginal supply of services other than restaurant service also eligible for composition scheme under 10(1) [Second proviso to section 10(1) read with section 10(2)(a)]

Fundamentally, the composition scheme under section 10(1) can primarily be availed in respect of goods and only one service namely, restaurant service. However, there are cases where a manufacturer/ trader is also engaged in supply of services other than restaurant service though the percentage of such supply of services is very small as compared to the supplies of goods. There may also be cases where a restaurant service provider is also engaged in supplying a small percentage of other services.

With a view to enable such taxpayers to avail of the benefit of composition scheme under section 10(1), second proviso to section 10(1) permits marginal supply of services [other than restaurant services – not supplying alcoholic liquor for human consumption] for a specified value along with the supply of goods and/or restaurant service, as the case may be. This specified value is value not exceeding:

(a) 10% of the turnover in a State/UT in the preceding financial year

or

(b) ₹ 5 lakh,

whichever is higher.

Thus, it can be inferred that where the turnover of a registered person opting for composition scheme under section 10(1) is upto ₹ 50 lakh in the preceding financial year, he can supply services [other than restaurant services] upto a maximum value of ₹ 5 lakh in the current financial year. Further, where the turnover of a registered person opting for composition

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scheme is more than ₹ 50 lakh and upto ₹ 1.5 crore in the preceding financial year, he can supply services [other than restaurant services] in the current financial year upto a maximum value of 10% of the turnover in a State/Union territory in the preceding financial year.

(6) Ramsewak is engaged in supply of goods. His turnover in preceding FY is ₹ 60 lakh. Since his aggregate turnover in the preceding FY does not exceed ₹ 1.5 crore, he is eligible for composition scheme section 10(1) in current FY. Further, in current FY, he can supply services [other than restaurant services] upto a value of not exceeding:

(a) 10% of ₹ 60 lakh, i.e. ₹ 6 lakh

or

(b) ₹ 5 lakh,

whichever is higher.

Thus, he can supply services upto a value of ₹ 6 lakh in current FY. If the value of services supplied exceeds ₹ 6 lakh, he becomes ineligible for the composition scheme under section 10(1) and has to opt out of the same.

Interest income to be excluded for determining the value of turnover in a State or Union territory under second proviso to section 10(1) [Explanation to second proviso to section 10(1)]

Generally, businesses tend to save and invest money in the form of deposits, loans or advances. However, this way they get engaged in supply of service by way of extending deposits, loans or advances[32] – a service other than restaurant service. And where the income from such services cause the value of services[33] supplied to exceed the value referred in second proviso to section 10(1)[34] [10% of the turnover in the preceding FY in a State/Union territory or ₹ 5 lakh, whichever is higher], said business would have become ineligible for the composition scheme under section 10(1) and one has to

[32] *It is, however, pertinent to note that services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount are exempt from GST – Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.*

[33] *other than restaurant services*

[34] *as discussed in preceding paras*

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opt out of the composition scheme. This can cause a lot of hardship to small businesses.

In view of the above, an explanation is inserted after second proviso to section 10(1) to clarify that for the purposes of second proviso to section 10(1), the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account for determining the value of turnover in a State or Union territory.

Under second proviso to section 10(1), a registered person opting for composition scheme may supply services [other than restaurant services] of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ₹ 5 lakh, whichever is higher. **Thus, while computing value of services [other than restaurant services] as referred in this proviso, interest on loans/deposit/advances will not be taken into account.**

The provisions relating to composition levy discussed hereafter are applicable to both composition levy under section 10(1) as well as composition levy under section 10(2A).

(7) Conditions and restrictions for composition levy [Rule 5]

Person opting for composition levy has to comply with the following conditions:

- he shall pay tax under section 9(3)/9(4)[35] (reverse charge) on inward supply of goods or services or both.
- he is neither a casual taxable person nor a non-resident taxable person
- he shall mention the words **"composition taxable person, not eligible to collect tax on supplies"** at the top of the bill of supply issued by him; and
- he shall mention the words **"composition taxable person"** on every notice or signboard displayed at a prominent

[35] *wherever applicable*

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place at his principal place of business and at every additional place or places of business.

Further, where the goods held in stock by him are liable to be taxed under reverse charge under section 9(4)[36], the tax thereon has been paid under reverse charge under section 9(4).

In addition to the above conditions, **a registered person opting for composition scheme under section 10(1) must not be engaged in the manufacture of goods as notified under section 10(2)(e)**, during the preceding FY. The following goods have been hereby notified vide ***Notification No. 14/2019 CT dated 07.03.2019*** as amended:

Tariff item, subheading, heading or Chapter*	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
24	All goods, i.e. Tobacco and manufactured tobacco substitutes
2202 1010	Aerated Waters

[36] *This condition applies in case where a builder/promoter opting for composition scheme has the stock of the goods on which he is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:*

(i) Builder/promoter must purchase at least 80% of inputs and input services used in supplying the service, from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

(ii) Where cement is received from an unregistered person, promoter/builder has to pay tax on supply of such cement under reverse charge and

(iii) GST on capital goods is payable by the promoter on reverse charge basis.

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6815	Fly ash bricks; fly ash aggregate; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

** as specified in the First Schedule to the Customs Tariff Act, 1975*

(8) Intimation of opting for composition levy [Rules 3 & 4]

(i) Intimation by person applying for registration: Any person who is not registered and applies for registration may be given an option to pay tax under composition levy **in Part B of the registration form, viz., Form GST REG-01.** The same shall be considered as an intimation to pay tax under composition levy. Such intimation shall be considered only after the grant of registration to the applicant. The **option to pay tax under composition levy shall be effective from the date from which registration is effective**.

(ii) Intimation by a registered person: A registered person who opts to pay tax under the composition levy scheme shall **electronically file an intimation** in prescribed form on the GST Common Portal [www.gst.gov.in]. The intimation shall be filed **prior to the commencement of the FY** for which said option is exercised.

He shall also furnish the **statement in prescribed form** in accordance with the provisions of rule 44(4) *[Discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material]* **within 60 days** from the commencement of the relevant FY.

Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

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The option to pay tax under composition levy shall be effective from the beginning of the FY[37].

A person applying for registration can opt for composition at the time of applying for registration [this time being any time of the financial year] and composition levy shall be effective from the date from which registration is effective.

A registered person can opt for composition scheme from the beginning of any FY and composition levy shall be effective from the beginning of said FY. Intimation for opting to pay tax under composition scheme must be filed prior to the commencement of the FY for which said option is exercised.

[37] *Registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of thirty days from such date. Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration. Discussed in detail in Chapter 8 – Registration in Module 2 of this Study Material.*

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(9) Validity of composition levy [Section 10(3) read with rule 6[38]]

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

- The option exercised by a registered person to pay amount under composition levy shall remain valid so long as he satisfies all the conditions mentioned in the relevant section and rules. For instance, the option to pay tax under composition scheme lapses from the day on which aggregate turnover of a registered person exceeds the specified limit (₹ 1.5 crore/ ₹ 75 lakh/ ₹ 50 lakh) during the FY.
- Such person is required to pay tax under regular scheme under section 9(1) from the day he ceases to satisfy any of the conditions prescribed for composition levy. He shall issue tax invoice for every taxable supply made thereafter. Further, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.
- The **effective date from which withdrawal from the composition scheme shall take effect** shall be the date indicated by him in his intimation, but such date may not be prior to the commencement of the financial year in which such intimation is being filed.

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[38] *read with Circular No. 77/51/2018 GST dated 31.12.2018*

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II. Withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme

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

III. Denial of option to pay tax under the composition scheme by tax authorities

- Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition scheme or has contravened the provisions of the CGST Act or provisions of this Chapter, he may issue a show cause notice (SCN) to such person. Upon receipt of reply to SCN, the proper officer shall pass an order either accepting the reply, or denying the option to pay tax under composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.
- **In case of denial of option to pay tax under composition levy by the tax authorities,** the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules[39].

In each of the above cases, such person may furnish a statement in prescribed form containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn/denied, within a period of 30 days from the date from which the option is withdrawn/ or from the date of the order denying composition scheme.

[39] *Circular No. 77/51/2018 GST dated 31.12.2018*

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Any intimation or application for withdrawal or denial of the option to pay tax under section 10 in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

(7) A person availing composition scheme during a financial year crosses the turnover of ₹ 1.5 crore on 9th of December. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds ₹ 1.5 crore, i.e. on 9th December, in this case.

(10) Composition scheme to be adopted uniformly by all the registered persons having the same PAN [Proviso to section 10(2) and proviso to section 10(2A)]

All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme.

(8) A dealer 'Kishorilal & Sons' has two offices in Delhi and is eligible for composition levy under section 10(1). If 'Kishorilal & Sons' opts for the composition scheme under section 10(1), both the offices would pay taxes under composition scheme and abide by all the conditions as may be prescribed for the said composition scheme.

(11) Composition scheme supplier cannot collect tax [Section 10(4)]

Taxable person opting for the composition scheme shall not collect tax from the recipient on supplies made by him. It implies that a composition scheme supplier cannot issue a tax invoice.

(12) Composition scheme supplier cannot enter credit chain [Section 10(4)]

Taxable person opting for the composition scheme shall not be entitled to any credit of input tax.

(13) Imposition of penalty in case of irregular availment of the composition scheme [Section 10(5)]

If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of section 73 or 74 ***or section 74A*** of the CGST Act shall be applicable for determination of tax and penalty.

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LET US RECAPITULATE

Extent & commencement of CGST Act/ SGST Act/ UTGST Act/ IGST

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
States of India	✔	✔		✔
Union Territories with Legislature	✔	✔		✔
Union Territories without Legislature	✔		✔	✔

Levy and collection of CGST/IGST

Particulars	CGST	IGST
Levied on	Intra-State supplies of goods/services/both	Inter-State supplies of goods/services/both
Collected and paid by	Taxable person	
Supply outside purview of GST	Alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption	
Value for levy	Transaction value under section 15 of the CGST Act	
Rates	Rates as notified by	IGST rate= CGST rate +

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	Government. Maximum rate of CGST can be 20%.	SGST/UTGST rate Maximum rate of IGST can be 40%.
Supplies on which tax would be levied w.e.f. a notified date	❑ **petroleum crude** ❑ **high speed diesel** ❑ **motor spirit (commonly known as petrol)** ❑ **natural gas and** ❑ **aviation turbine fuel**	
Tax payable under reverse charge	❑ Supply of goods or services or both, notified by the Government. ❑ Supply of specified categories of goods or services or both by an unregistered supplier to specified class of registered persons.	
Tax payable by the electronic commerce operator	The Government may notify specific categories of services the tax on supplies of which shall be paid by electronic commerce operator (ECO) as if such services are supplied through it.	

Services on which tax is payable under reverse charge

S. No.	Category of supply of Services	Supplier of Service	Recipient of Service
1.	Supply of services of transportation of goods by road by GTA except where GTA exercises the option to pay tax under forward charge	Goods Transport Agency (GTA)	Any of the following: • Factory • Society • Co-operative society

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			• Body corporate • Partnership firm • Casual taxable person • Registered Person (Referred as Specified recipient.}
	Exception: Services provided by a GTA to- (a) Department/ Establishment of CG/SG/UT; or (b) Local Authority (LA); or (c) Governmental agencies (GA), which has taken registration only for the purpose of deducting TDS.		
2.	Legal services	An individual advocate including a senior advocate/firm of advocates.	Business entity
3.	Services by an arbitral tribunal	Arbitral tribunal	Business entity
4.	Sponsorship services	Any person ***other than a body corporate***	Body corporate or partnership firm
5.	Services by CG/SG/UT/LA	CG/SG/UT/LA	Business entity

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	excluding, - (1) renting of immovable property service, and (2) (i) services by Department of Posts/ Ministry of Railways (ii) services in relation to aircraft/vessel; (iii) transport of goods/passengers.		
5A.	Renting of immovable property service	CG/SG/UT/LA excluding the Ministry of Railways	Registered person
5AA.	Renting of residential dwelling service	Any person	Registered person
5AB.	Renting of any immovable property other than residential dwelling	Any unregistered person	Any registered person ***other than a person who has opted to pay tax under composition levy.***
5B.	Services supplied by way of TDR or FSI (including additional FSI) for construction of a project	Any person	Promoter
5C.	Long term lease of land (30 years or more) against consideration in the form of	Any person	Promoter

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	upfront amount and/or periodic rent for construction of a project		
6.	Services by a director of a company/ body corporate	Director	Company/ body corporate
7.	Services supplied by an insurance agent	Insurance agent	Person carrying on insurance business
8.	Services supplied by a recovery agent	Recovery agent	Banking company/ financial institution/NBFC
9.	Services of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works	Music composer, photographer, artist, or the like	Music company, producer or the like
9A.	Services of copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary works except where the author exercises the option to pay tax under forward charge	Author	Publisher
10.	Supply of services by the members of Overseeing Committee	Members of Overseeing Committee constituted by the RBI	RBI
11.	Services supplied by individual Direct Selling	Individual DSAs other than a	Banking

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	Agents (DSAs)	body corporate, partnership or LLP firm	company/NBFC
12.	Services by business facilitator	Business facilitator	Banking company
13.	Services provided by an agent of business correspondent	An agent of business correspondent	Business correspondent
14.	Security services **Exceptions:** Security services provided to- (I) (a) Department/ establishment of CG/SG/UT; or (b) LA; or (c) GA, which has taken registration only for the purpose of deducting TDS. (II) Registered composition supplier	Any person other than a body corporate	Registered person
15.	• Renting of motor vehicle service • Vehicle designed to carry passengers	Non-body corporate who doesn't issue an invoice charging CGST @ 6% to service recipient.	Body corporate

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	• Cost of fuel is included in consideration charged from recipient		
16.	Services of lending of securities under Securities Lending Scheme, 1997	Lender	Borrower

All the above services have also been notified for reverse charge under IGST Act vide Notification No. 10/2017 IT (R) dated 28.06.2017 as amended. In addition to them, following additional services are also notified by said notification for reverse charge under IGST purposes:

S. No.	Category of supply of service	Supplier of service	Recipient of Service
1.	Any service	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.

Composition levy

Composition levy	Advantages
•An option for specified categories of small taxpayers to pay GST at a very low rate on the basis of turnover.	•Low rates of tax •Hassel free simple procedures for such taxpayers •Simple calculation of tax based on turnover •A very simple annual return

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Composition Levy

- Composition levy provided under section 10(1) and 10(2)
- Composition levy provided under section 10(2A)

Procedure for opting for the scheme

Category of persons	How to exercise option	Effective date of composition levy
New registration under GST	Intimation in the registration form	From the effective date of registration
Registered person opting for composition levy	Intimation in prescribed form	Beginning of the financial year

Turnover limit for composition levy

Turnover limit in preceding FY to opt for composition levy for goods

For Special Category States except Assam, Himachal Pradesh and J&K	• ₹ 75 lakh
For remaining States	• ₹ 1.5 crore

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Turnover limit in preceding FY to opt for composition levy for services

Turnover for composition levy for services

- ₹ 50 lakh in preceding financial year

Conditions and restrictions for composition levy

Person opting for composition:

- is neither a casual taxable person nor a non-resident taxable person
- shall pay tax under section 9(3)/9(4) on inward supply
- is not engaged in the manufacture of notified goods** [or notified services also in case of composition scheme under section 10(2A)]
- shall mention the words **"composition taxable person, not eligible to collect tax on supplies"** at the top of the bill of supply issued by him
- shall mention the words "composition taxable person" at a prominent place at his place of business

*** Goods notified for a registered person opting for composition scheme under section 10(1) are ice cream, pan masala, tobacco, aerated waters fly ash bricks, fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.*

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Rates of tax

Composition scheme	Category of registered persons	Rate
For goods	Manufacturer	1% (½% CGST + ½% SGST/UTGST) of turnover
	Restaurant service providers	5% (2½% CGST + 2½% SGST/UTGST) of turnover
	Others	1% (½% CGST + ½% SGST/UTGST) of turnover of taxable supplies
For services	All service providers except restaurant service providers	6% (3% CGST + 3% SGST/UTGST) of turnover

Who are NOT eligible to opt for composition scheme?

Registered person who is not eligible for composition scheme under section 10(1).	**Registered person who is not eligible for composition scheme under section 10(2A).**
Supplier engaged in making any supply of goods or services which are not leviable to tax i.e. non-taxable supplies	Supplier engaged in making any supply of goods or services which are not leviable to tax i.e. non-taxable supplies
Supplier engaged in making any inter-State outward supplies of goods or services	Supplier engaged in making any inter-State outward supplies of goods or services
Person supplying any services through an electronic commerce	Person supplying any services through an electronic commerce

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operator who is required to collect tax at source under section 52	operator who is required to collect tax at source under section 52
Manufacturer of ice cream, pan masala, tobacco, aerated waters fly ash bricks, fly ash aggregate, fly ash blocks, bricks of fossil meals or similar siliceous earths, building bricks, earthen or roofing tiles.	Manufacturer of notified goods or supplier of notified services
Supplier who is either a casual taxable person or a non-resident taxable person	Supplier who is either a casual taxable person or a non-resident taxable person.
Supplier of services, save as provided in section 10(1)**	

***A registered person opting for composition scheme under section 10 (1) is allowed to supply services [other than restaurant services] alongwith supply of goods or supply of restaurant services of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ₹ 5 lakh, whichever is higher. Here, while computing turnover in a State/UT, interest on loans/deposit/advances will not be taken into account.*

Other points

- Bill of supply shall be issued instead of tax invoice.
- Tax shall not be collected from recipient of supply
- Input tax credit shall not be availed
- Composition Scheme if availed shall include all registered persons having same PAN
- Penalty shall be imposed in case of irregular availment of the composition scheme

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TEST YOUR KNOWLEDGE

1. *Panini Private Limited, Jaipur, agrees to sponsor a sports event organized by Pink City Club, a non-body corporate, in Jaipur. Panini Private Limited has paid an amount of ₹ 5,00,000 for such sponsorship of the sports event. Consequently, said event was named after the brand name of Panini Private Limited. Examine who is the person liable to pay tax in the given case.*

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

3. *Mr. Rajbeer, a registered person at Delhi, is in the business of selling goods relating to interior decoration under the firm name M/s. Rajbeer & Sons. He has opted for composition scheme for the financial year 2023-24.*

   His turnover for current FY ₹ 80 lakh and is expected to achieve ₹ 130 lakh in financial year 2024-25. Discuss whether M/s Rajbeer & Sons can still enjoy the benefits of composition scheme in financial year 2024-25.

   His son Karan wants to start business of providing services relating to interior decoration, after completing post-graduation course in interior decoration under same firm name M/s Rajbeer & Sons with effect from 1st April of financial year 2024-25 and wants to enjoy the benefits of composition scheme under GST.

   Advise Mr. Rajbeer and his son Karan.

4. *Varun & Arun Associates started a partnership firm of architects in Bhopal (Madhya Pradesh) on 1st April of the current financial year. The firm provides architectural services in Madhya Pradesh only. It provided the following details of its turnover during the current financial year:*

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April - June	*₹ 20 lakh*
July - Sept	*₹ 30 lakh*
Oct - Dec	*₹ 20 lakh*

The firm has obtained the registration under section 22 with effect from 1st July and opts to pay tax under composition scheme. Determine the tax liability of Varun & Arun Associates for the quarters: April – June, Jul-Sept and Oct-Dec.

Note: The rates of tax on architectural services are CGST- 9% and SGST-9%.

5. *Examine whether the suppliers are eligible for composition levy under section 10 in the following independent cases in the beginning of financial year 2024-25:*

   (a) *Technology Enterprises, registered in Jalandhar, Punjab, is engaged in manufacturing and supplying computer systems. Its aggregate turnover in the financial year 2023-24 is ₹ 125 lakh. Technology Enterprises supplies the computer systems manufactured by it within the State of Punjab only. With a view to expand its business operations, it will also start providing the repairing services of computer systems in Punjab in the financial year 2024-25.*

   (b) *M/s. Siddharth & Sons, registered in Delhi, owns a restaurant 'Tasty Foods' with a turnover of ₹ 112 lakh in the financial year 2023-24. In view of the growing customer demand, it will also start intra-State trading of juices in Delhi from financial year 2024-25.*

   (c) *Sitaram Associates, registered in Sikkim, is engaged in running a restaurant chain 'Veg Kitchen' in the State. It has a turnover of ₹ 73 lakh in the financial year 2023-24. In the financial year 2024-25, it decides to shut down the food chain owing to huge losses being incurred in the said business. Instead, it will start providing intra-State architect services from financial year 2024-25.*

   (d) *Deepti Services Ltd., registered in Uttarakhand, is exclusively providing intra-State hair styling services. It has turnover of ₹ 34 lakh in the financial year 2023-24.*

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Will your answer be different, if Deepti Services Ltd. also start intra-State supply of beauty products alongwith providing hair styling services in the financial year 2024-25?

6. *B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and product 'Q' exempt by way of a notification. The firm supplies these products only in the eastern part of Maharashtra. All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.*

B & D Company has furnished the following details with respect to its turnover (exclusive of taxes):

Particulars	Turnover for the quarter ended 30th June (₹)	Turnover for the quarter ended 30th September (₹)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

The extract of the only bill book maintained by the firm showed the following details-

Bill No.	Date	Value of products (exclusive of taxes)		
		'P' (₹)	'Q' (₹)	Total (₹)
2306	1st October	2,00,000	3,000	2,03,000
2307	1st October	1,36,000	2,250	1,38,250
2308	2nd October	67000	39,250	1,06,250
2309	3rd October	58,750	33,750	92,500
2310	5th October	1,00,000	-	1,00,000
2311	6th October	94,000	6,000	1,00,000

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2312	6th October	-	17,000	17,000
2313	8th October	50,000	6,000	56,000
2314	9th October	60,000	9,000	69,000
2315	.....	.....	.....	.....
.....	.....	.....	.....	.....

Further, B & D Company paid freight of ₹ 1,40,000 to Goods Transport Agency during the period April to October. Assume equal amount of freight is paid each month on the 10th day of each month. Also, assume that the goods for which the freight is paid on 10th day of the month are transported between 11th to 20th day of the month.

All the above amounts are exclusive of taxes, wherever applicable.

Compute the GST liability (ignoring ITC provisions) of B & D Company for the period April to October under composition scheme under sub-sections (1) and (2) of section 10 showing calculations for each quarter separately.

Note: Make suitable assumptions wherever required. Rate of CGST and SGST on service of transportation of goods by GTA is 2.5% each wherein GTA has not opted to pay tax itself. Stock is valued at cost price.

7. *Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the financial year 2023-24, it had a turnover of ₹ 140 lakh from the restaurant service. Further, it had earned the bank interest of ₹ 20 lakh from the fixed deposits in said financial year. You are required to advise Shubhlaxmi Foods whether it is eligible for the composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2024-25.*

   Further, assuming that in the financial year 2024-25, its turnover is ₹ 130 lakh from the supply of restaurant services and ₹ 10 lakh from the supply of farm labour in Maharashtra. It has also earned the bank interest of ₹ 30 lakh from the fixed deposits. Compute the tax payable by Shubhlaxmi Foods in the financial year 2024-25.

8. *Bansal and Chandiok started a partnership firm of Chartered Accountants in Jaipur (Rajasthan) on 1st April in the current financial year. The firm specializes*

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in providing audit services to banks in Rajasthan. It provided the following details of its turnover:

Quarter	***Amount (in ₹)***
Apr-Jun	*10 lakh*
Jul-Sep	*20 lakh*

It crossed the threshold limit of ₹ 20 lakh on 1st August. Bansal and Chandiok wishes to opt to pay tax at concessional rate under section 10(2A). Examine whether the firm is eligible for this scheme in the current financial year? If yes, then determine the tax payable by it in quarters (i) Apr-Jun & (ii) Jul-Sep?

9. *Mr. Prem is running a restaurant in New Delhi. In the financial year 2023-24, it has an aggregate turnover of ₹ 120 lakh from the restaurant services. In the financial year 2024-25, apart from restaurant service, he also wants to provide food delivery services to other small restaurants. He estimated the turnover of such services is upto ₹ 5 lakh.*

   Mr. Prem wishes to opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2024-25. You are required to advise him for same.

10. *M/s Heeralal and Sons, registered in Karnataka, has opted to avail the benefit of composition scheme under sub-sections (1) and (2) of section 10 from 1st April, 2025. It has furnished the following details for the quarter ended on 30th June, 2025.*

S. No.	***Items***	***₹***
(i)	*Taxable turnover of goods within the State*	*15,00,000*
(ii)	*Exempted turnover of goods (exempted by way of notification) within the State*	*17,00,000*
	Total Turnover	*32,00,000*

Using the above information, calculate tax to be paid by the firm for quarter ended on 30th June, 2025 in following independent situations:

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(i) M/s Heeralal and Sons is a manufacturer

(ii) M/s Heeralal and Sons is a trader

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

	Particulars	₹
(i)	*Provided Direct Selling Agent service to Y Bank Ltd.*	*4,00,000*
(ii)	*Provided security services (by way of supply of security personnel) to ABC P. Ltd., a registered person under GST*	*60,000*
(iii)	*Provided security services (by way of supply of security personnel) to PSR Trust, an unregistered person under GST*	*1,00,000*
(iv)	*Provided renting of motor vehicle for transportation of passengers to Amaze Tours Ltd. and value of supply included cost of fuel*	*75,000*
(v)	*Provided renting of motor vehicle for transportation of passengers to Priti & Co., CA firm and value of supply included cost of fuel*	*40,000*
(vi)	*Availed representational service from PB and Co., a law firm towards a Consumer Court case*	*70,000*

Determine the GST liability of M/s All-in-One for the month of March by giving necessary explanations for treatment of various items. Rates of GST for both inward and outward supply is CGST/SGST@ 9% each except renting a vehicle, for which CGST/SGST @ 2.5% each is applicable. M/s All-in-One commenced its business from February. All the supplies are intra-State only. Ignore the provisions relating to input tax credit.

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12. *MN Ltd. has two registered places of business in the State of Haryana. Its aggregate turnover during the financial year 2023-24 was ₹ 62 lakh. It wishes to opt for composition levy under sub-sections (1) and (2) of section 10 for one of the place of business in the financial year 2024-25 and wants to continue with registration under regular scheme and pay taxes at the normal rate for the other place of business. Both the places of business are having the same Permanent Account Number issued under the Income-tax Act, 1961. Can MN Ltd. do so? Explain with reason.*

13. *Ranveer Industries, registered in Himachal Pradesh, is engaged in making inter-State supplies of readymade garments. The aggregate turnover of Ranveer Industries in the financial year 2023-24 is ₹ 70 lakh. It has opted for composition levy under sub-sections (1) and (2) of section 10 in the financial year 2024-25 and paid tax for the April – June quarter of financial year 2024-25 under composition levy.*

    The proper officer has levied penalty for wrongly availing the scheme on Ranveer Industries in addition to the tax payable by it.

    Examine the validity of the action taken by proper officer.

14. *Mr. Yash, doing business in the State of Kerala, commenced his business in the month of April and provides the following further information.*

    (i) His intra-State turnover for the first two quarters was as follows:

    April - June - ₹ 20 lakh

    July - September - ₹ 100 lakh

    (ii) In each of the quarters, exempt supply made by him was 25% of the total turnover for the said quarter.

    (iii) Since the product supplied by him was eligible for composition scheme, he opted for registration under composition scheme with effect from 1st July.

    You are required to compute the tax payable by Mr. Yash under GST law from the above information:

    (i) If he is a manufacturer

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(ii) If he is a trader.

ANSWERS

1. *Notification no 13/2017 CT (R) dated 28.06.2017 as amended* (hereinafter referred to as reverse charge notification), provides that sponsorship services provided by any person other than body corporate to a body corporate or partnership firm located in the taxable territory, shall be liable to GST under reverse charge in the hands of recipient.

In the present case, Pink City Club is the supplier of sponsorship services which is receiving the consideration in the form of sponsorship fee of ₹ 5,00,000 from Panini Private Limited, against the provision of sponsorship service. Since the recipient of sponsorship services- Panini Private Limited is a body corporate, GST on said services is payable by the recipient - Panini Private Limited, under reverse charge.

2. **Sitting fee paid to director** – As per reverse charge notification, tax on services supplied by a director of a company/ body corporate to the said company/ body corporate, located in the taxable territory, is payable under reverse charge. Hence, in the present case, the sitting fee amounting to ₹ 25,000, payable to Arpan Singhania by Narayan Limited, is liable to GST under reverse charge and thus, recipient of service - Narayan Limited – is liable to pay GST on the same.

Salary paid to director - As per *Circular No.140/10/2020 GST dated 10.06.2020*, the part of director's remuneration which is declared as salary in the books of a company and subjected to TDS under section 192 of the Income-tax Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III. Therefore, in the given case, the salary received by Arpan Singhania of ₹ 1.5 lakh is not liable to GST.

Services provided by Tapasya & Associates – Tapasya & Associates have rendered certain professional services to Narayan Limited. The fact that Arpan Singhania is a partner in Tapasya & Associates and a director in Narayan Limited does not have any impact on the taxability of the professional services

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supplied by Tapasya & Associates to Narayan Limited. The professional services provided by Tapasya & Associates to Narayan Limited are liable to GST under forward charge and thus, supplier - Tapasya & Associates – is liable to pay GST on the same.

3. As per section 10, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT may opt for composition scheme, provided he is, inter alia, engaged in supply of goods and/or restaurant service. However, a person who opts for composition scheme is permitted to supply services other than restaurant service of value not exceeding 10% of turnover in a State/UT in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the given case, M/s. Rajbeer & Sons, engaged in business of selling goods relating to interior decoration, is eligible for composition scheme in the financial year 2024-25 since its aggregate turnover in financial year 2023-24 (viz. ₹ 80 lakh) does not exceed ₹ 1.5 crore.

If Karan wishes to start the business of providing services relating to interior decoration under the same firm name M/s Rajbeer & Sons, the sole proprietorship needs to be first converted into a partnership firm. Further, new GST registration under the new PAN is required to be obtained.

In such a case, the firm can provide services relating to interior decoration up to a value of ₹ 5 lakh (10% of zero turnover of last year or ₹ 5 lakh, whichever is higher) to continue enjoying the benefit of composition scheme in financial year 2024-25.

4. The composition scheme under sub-sections (1) and (2) of section 10 is available in case of goods and restaurant service. Further, marginal services upto specified limit can be provided along with the supply of goods or restaurant service, as the case may be. Since, in the given case, Varun & Arun Associates is exclusively supplying services other than restaurant services, it is not eligible to pay tax under sub-sections (1) and (2) of section 10. However, section 10(2A) provides an option to a registered person, who is not eligible to pay tax under sub-sections (1) and (2) of section 10, of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ₹ 50 lakh. Said person can pay tax

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@ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ₹ 50 lakh, subject to specified conditions.

In the given case, Varun & Arun Associates has started the supply of services in the financial year 2022-23. Therefore, its aggregate turnover in the financial year 2022-23 is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the financial year 2023-24. It becomes eligible for the registration when its aggregate turnover exceeds ₹ 20 lakh. While registering under GST, it has to opt for composition scheme under section 10(2A).

For determining its turnover of the State for payment of tax under composition scheme under section 10(2A), turnover of April-June quarter [₹ 20 lakh] shall be excluded as the value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act are to be excluded for this purpose.

On next ₹ 30 lakh [turnover of July-Sept quarter], it shall pay tax @ 6% [3% CGST and 3% SGST], i.e. CGST ₹ 90,000 and SGST ₹ 90,000.

By the end of July-Sept quarter, its aggregate turnover reaches ₹ 50 lakh*.

Consequently, its option to avail composition scheme under section 10(2A) shall lapse by the end of July-Sept quarter and thereafter, it is required to pay tax at the normal rate. Thus, the tax payable for Oct-Dec quarter is ₹ 20 lakh × 9%, i.e. CGST - ₹ 1,80,000 and SGST - ₹ 1,80,000.

**Note - While computing aggregate turnover for determining Varun & Arun Associates' eligibility to pay tax under composition scheme, value of supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act (i.e. turnover of April-June quarter), are also included.*

5. As per section 10(1), the following registered persons, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay tax under composition levy:

(i) Manufacturers,

(ii) Persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II (restaurant services), and

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(iii) Any other suppliers eligible for composition levy.

The composition scheme under sub-sections (1) and (2) of section 10 can essentially be availed in respect of goods and only one service namely, restaurant service. However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher. Further, the registered person should not be engaged in making any inter-State outward supplies of goods or services.

Furthermore, newly inserted section 10(2A) provides an option to a registered person, who is not eligible to pay tax under section 10(1) and 10(2), of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ₹ 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ₹ 50 lakh, subject to specified conditions. One of such conditions is that the registered person should not be engaged in making any inter-State outward supplies of goods or services.

In view of the above-mentioned provisions, the answer to the given independent cases is as under:-

(a) The turnover limit for being eligible for composition scheme under under sub-sections (1) and (2) of section 10 for Jalandhar (Punjab) is ₹ 1.5 crore in the preceding financial year. Thus, Technology Enterprises can opt for said composition scheme in financial year 2024-25 as its aggregate turnover is less than ₹ 1.5 crore in the financial year 2023-24 and it is making intra-State supplies. Further, since the registered person opting for composition scheme can also supply services (other than restaurant services) for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher. Thus, Technology Enterprises can supply repair services up to a value of ₹ 12.5 lakh [10% of ₹125 lakh] in the financial year 2024-25.

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(b) In the given case:-

(i) the turnover in the preceding year is less than the eligible turnover limit under composition scheme under sub-sections (1) and (2) of section 10 for Delhi, i.e. ₹ 1.5 crore.

(ii) the supplier is engaged in providing restaurant service which is an eligible supply under said composition scheme.

(iii) the supplier wants to engage in trading of goods which is also an eligible supply under said composition scheme.

Thus, M/s. Siddharth & Sons is eligible for composition scheme under sub-sections (1) and (2) of section 10 from the financial year 2024-25.

(c) The turnover limit for being eligible for composition scheme under sub-sections (1) and (2) of section 10 for Sikkim is ₹ 75 lakh in the preceding financial year. However, a registered person who is exclusively engaged in supplying services other than restaurant services are not eligible for said composition scheme. Thus, Sitaram Associates cannot opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2024-25.

The benefit of composition scheme under section 10(2A) is available in case of a registered person who is not eligible to pay tax under sub-sections (1) and (2) of section 10 provided its aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh.

Thus, in view of the above-mentioned provisions, Sitaram Associates cannot avail the benefit of composition scheme under section 10(2A) also as its aggregate turnover in the preceding financial year is more than ₹ 50 lakh.

(d) A service provider can opt for the composition scheme under sub-sections (1) and (2) of section 10 only if he is engaged in supply of restaurant services. Said scheme permits supply of marginal services for a specified value, but only when the same are supplied along with goods and/ or restaurant service.

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Since Deepti Services Ltd. is exclusively engaged in supply of services other than restaurant services, it is not eligible for composition scheme sub-sections (1) and (2) of section 10 even though its turnover in the financial year 2023-24 is less than ₹ 75 lakh, the eligible turnover limit for Uttarakhand.

However, since Deepti Services Ltd. is not eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 and its aggregate turnover in the financial year 2023-24 does not exceed ₹ 50 lakh, Deepti Services Ltd. is entitled to avail benefit of composition scheme under section 10(2A) in the financial year 2024-25.

Further, the answer will remain the same even if Deepti Services Ltd. also start supplying beauty products alongwith providing hair styling services in the financial year 2024-25 since it fulfils the conditions laid down for availing the benefit of composition scheme under section 10(2A). It can avail the benefit of composition scheme under section 10(2A) till the time its aggregate turnover in the financial year 2024-25 doesn't exceed ₹ 50 lakh.

6. As per section 10(3) read with *Notification No.14/2019 CT dated 07.03.2019* as amended, the option availed by a registered person to pay tax under composition scheme under sub-sections (1) and (2) of section 10 shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds ₹ 1.5 crore [₹ 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir].

As per section 2(6), aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same PAN, to be computed on all India basis but excludes CGST, SGST/UTGST, IGST and GST Compensation Cess.

In the given case, the firm is registered under the composition scheme in the State of Maharashtra. The aggregate turnover of the firm exceeds ₹ 1.5 crore on 3rd October [aggregate of both taxable and exempt turnover from 1st April

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to 3rd October, i.e. ₹ 1,50,05,000 (₹ 1,44,65,000 + ₹ 2,03,000 + ₹ 1,38,250 + ₹ 1,06,250 + ₹ 92,500)]

The inward supplies of goods transportation services in respect of which the firm has to pay tax under reverse charge have not been included in the aggregate turnover in terms of section 2(6). The tax is payable under reverse charge on such services as the applicable rate of tax on such services is given as 5% and not 12%, in which case the GTA would have been liable to pay tax under forward charge *[Notification No. 13/2017 CT (R) dated 28.06.2017 as amended]*.

Thus, the firm will have to pay tax under regular scheme (Section 9) from 3rd October.

Output tax liability of B & D Company under composition scheme

During the period when the firm pays tax under composition scheme, i.e. from 1st April to 2nd October, tax will be payable on quarterly basis and no ITC will be available [Section 10(4) read with sub-sections (2) and (7) of section 39].

Further, since the firm is trading in goods, tax will be payable @ ½% [Effective rate - 1% (½% CGST + ½% SGST)] of the turnover of taxable supplies of goods and services (i.e. 'P') in the State [Section 10(1) read with rule 7].

The tax liability for the quarters ended June, September and December under composition scheme will be computed as under-

Particulars	**Quarter ended 30th June (₹)**	**Quarter ended 30th September (₹)**	**Quarter ended 31st December (₹)**
Turnover of 'P' (Taxable supplies)	60,00,000	50,00,000	4,03,000 [2,00,000 + 1,36,000 + 67,000]
CGST @ 0.5% [A1]	30,000	25,000	2,015
SGST @ 0.5% [B1]	30,000	25,000	2,015

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Inward supply on which tax is payable under reverse charge [Service of goods transportation availed from a GTA @ 5%]	60,000 [(1,40,000/7) x 3]	60,000 [(1,40,000/7) x 3]	Nil [Paid on 10th day for goods transported between 11th to 20th day of the month, so the same will be assessed under regular scheme]
CGST @ 2.5% [A2]	1,500	1,500	-
SGST @ 2.5% [B2]	1,500	1,500	-
Total CGST [A1 + A2]	31,500	26,500	2,015
Total SGST [B1 + B2]	31,500	26,500	2,015
Total CGST liability for the period from 1st April to 2nd October		**60,015 [31,500 + 26,500 + 2015]**	
Total SGST liability for the period from 1st April to 2nd October		**60,015 [31,500 + 26,500 + 2015]**	

7. As per section 10(1) read with *Notification No. 14/2019 CT dated 7.03.2019*, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates if, *inter alia*, he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in a State/Union Territory in the preceding year or ₹ 5 lakh, whichever is higher [Second proviso to section 10(1)].

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Although exempt services are included in determining the value of turnover in a State or Union territory, explanation to section 10(1) clarifies that for the purposes of second proviso to section 10(1), the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

Further, the exempt services are also included in the aggregate turnover [Section 2(6)]. However, explanation 1 to section 10 excludes value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount from aggregate turnover.

In this backdrop, in the given case, the aggregate turnover of Shubhlaxmi Foods in the financial year 2023-24 is ₹ 140 lakh (since bank interest of ₹ 20 lakh from the fixed deposits will not be taken into account for computing aggregate turnover). Resultantly, it is eligible to opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2024-25.

Further, apart from restaurant services, it can provide services upto ₹ 14 lakh [i.e. 10% of ₹ 140 lakh or ₹ 5 lakh, whichever is higher], in the financial year 2024-25. As already seen, bank interest of ₹ 20 lakh from fixed deposits will not be considered while determining this limit.

Further, tax payable @ 5% (2½% CGST+ 2½% SGST) of the turnover in the State by Shubhlaxmi Foods in the financial year 2024-25 is as follows:

=5% of ₹ 1,40,00,000 [₹ 1,30,00,000 + ₹ 10,00,000]

[(Bank interest of ₹ 30 lakh from the fixed deposits is not considered while computing turnover in the State for determining the tax payable under composition scheme (In terms of explanation 2 to section 10)]

= ₹ 7,00,000 [CGST = ₹ 3,50,000 and SGST = ₹ 3,50,000]

8. The composition scheme under sub-sections (1) and (2) of section 10 is available in case of goods and restaurant service. Further, marginal services upto specified limit can be provided along with the supply of goods or restaurant service, as the case may be. Since, in the given case, Bansal and Chandiok is supplying services other than restaurant services, it is not eligible

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to pay tax under sub-sections (1) and (2) of section 10. However, section 10(2A) provides an option to a registered person, who is not eligible to pay tax under sub-sections (1) and (2) of section 10, of paying tax @ 6% (CGST-3% and SGST/UTGST-3%) provided his aggregate turnover in the preceding financial year is upto ₹ 50 lakh. Said person can pay tax @ 6% of the turnover in State or turnover in Union territory up to an aggregate turnover of ₹ 50 lakh, subject to specified conditions.

In the given case, Bansal and Chandiok has started the supply of services in the financial year 2023-24. Therefore, its aggregate turnover in the financial year 2022-23 is Nil. Consequently, it is eligible to avail the benefit of composition scheme under section 10(2A) of the CGST Act in the financial year 2023-24. It becomes liable to the registration when its aggregate turnover exceeds ₹ 20 lakh. While registering under GST, it has to opt for composition scheme under section 10(2A).

Tax payable by the firm is as follows:

(i) Apr-Jun quarter: Tax payable by the firm in first quarter is nil since the firm's turnover [₹ 10 lakh] has not yet exceeded the threshold limit of ₹ 20 lakh (viz. the threshold limit applicable for registration in the State of Rajasthan).

(ii) July-Sep quarter: While computing the tax payable by the firm in second quarter, the turnover from 1st April to the date from which he becomes liable for registration under the Act is to be excluded. Tax payable will be computed as under-

Total Turnover	₹ 30,00,000/-
Less: Threshold limit for registration	₹ 20,00,000/-
Taxable Turnover	₹ 10,00,000/-
Tax @ 6%	₹ 60,000/-*

*CGST = ₹ 30,000 and SGST = ₹ 30,000

9. As per section 10(1) read with *Notification No.14/2019 CT dated 07.03.2019*, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay, in lieu of the tax payable by him,

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an amount calculated at the specified rates if, *inter alia*, he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in a State/Union Territory in the preceding year or ₹ 5 lakh, whichever is higher.

In the present case, since the aggregate turnover of Mr. Prem was ₹ 120 lakh in financial year 2023-24 (i.e. it did not exceed ₹ 1.5 crore), he is eligible for composition scheme in the financial year 2024-25. Further, in the financial year 2024-25, he can also supply services other than restaurant services for a value upto ₹ 12 lakh (10% of ₹ 120 lakh) or ₹ 5 lakh, whichever is higher. Thus, till the time his turnover from food delivery services does not exceed ₹ 12 lakh, he is eligible for the scheme.

10. Computation of amount payable under composition scheme

(i) If M/s Heeralal and Sons is a manufacturer:

Tax is to be paid @ 1% (½% CGST+ ½% SGST) of the turnover in the State as under:

1% of ₹ 32,00,000 [₹ 15,00,000 + 17,00,000]

= ₹ 32,000 [CGST

= ₹ 16,000 and SGST

= ₹ 16,000]

(ii) If M/s Heeralal and Sons is a trader:

Tax is to be paid @ 1% (½% CGST + ½%SGST) of the turnover of **taxable supplies** of goods and services in the State as under:

= 1% of ₹ 15,00,000

= ₹ 15,000 [CGST

= ₹ 7,500 and SGST

= ₹ 7,500]

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11. GST liability of M/s All-in-One

	Particulars	Value [₹]	CGST payable [₹]	SGST payable [₹]
A.	**GST liability on outward supply**			
(i)	Direct selling agent service to Y Bank Ltd. [Tax is payable under forward charge since the supplier of such service is a partnership firm and not an individual.]	4,00,000	36,000 [4,00,000 x 9%]	36,000 [4,00,000 x 9%]
(ii)	Security services to ABC P. Ltd., a registered person [Tax is payable under reverse charge by the recipient since security services are provided by a non-body corporate to a registered person.]	-		
(iii)	Security services to PSR Trust, an unregistered person [Tax is payable under forward charge since security services are provided by a non-body corporate to an unregistered person.]	1,00,000	9,000 [1,00,000 x 9%]	9,000 [1,00,000 x 9%]
(iv)	Renting of motor vehicle to Amaze Tours Ltd. where value included cost of fuel	-		

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	[Tax is payable under reverse charge by recipient since such services are provided by a non-body corporate to a body corporate and GST is payable @ 5%.]			
(v)	Renting of motor vehicle to Priti & Co., CA firm, where supply value included cost of fuel [Tax is payable under forward charge since such services are provided by a non-body corporate to a non-body corporate.]	40,000	1,000 [40,000 x 2.5%]	1,000 [40,000 x 2.5%]
Total GST liability on outward supplies			**46,000**	**46,000**
B.	**GST liability on inward supplies under reverse charge**			
(vi)	Availed representational service from PB and Co, a law firm [Legal services provided by a partnership firm of advocates/individual advocate other than a senior advocate to a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration, are exempt from GST. Since M/s All-in-One started its business in February, its turnover in the preceding financial year is	70,000	-	-

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	zero making it eligible for exemption from registration in the preceding financial year and hence, the legal services provided to it are exempt from GST.]			
	GST liability on inward supplies under reverse charge		-	-

12. As per proviso to section 10(2), where more than one registered persons are having the same PAN issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the composition scheme under section 10(1) unless all such registered persons opt to pay tax under said composition scheme.

In the given case, since MN Ltd. has two places of business (they are not separate entities under the Income-tax Act, 1961), they would be registered under the same PAN. Therefore, MN Ltd. cannot opt for composition levy for only one of the places of business and pay tax under regular scheme for other place of business.

13. As per section 10(1), a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore in a State/UT [₹ 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir], may opt for composition scheme.

However, he shall not be eligible to opt for composition scheme if, *inter alia*, he is engaged in making any inter-State outward supplies of goods or services.

In the given case, since Ranveer Industries is engaged in making inter-State supplies of readymade garments, it is not eligible to opt for composition scheme in current year irrespective of its turnover not exceeding the threshold limit of ₹ 75 lakh in the preceding FY.

Further, if the proper officer has reasons to believe that a taxable person has paid tax under composition scheme despite not being eligible, such person shall, in addition to any tax payable, be liable to a penalty and the provisions

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of section 73 or section 74 or 74A shall, *mutatis mutandis,* apply for determination of tax and penalty.

Thus, the action taken by the proper officer of levying the penalty for wrongly availing the composition scheme is valid in law.

14. As per section 10 read with rule 7, a registered person opting for composition levy for goods pays tax at the rates mentioned below during the current FY, in lieu of the tax payable by him under regular scheme:

Manufacturers, other than manufacturers of notified goods	1% (½% CGST+ ½% SGST/UTGST) of the turnover in the State/ Union territory
Trader	1% (½% CGST+ ½% SGST/UTGST) of turnover of taxable supplies of goods & services in the State/ Union territory

Turnover prior to getting registered will not be considered for determining the turnover in a State/Union Territory.

(i) If Mr. Yash is a manufacturer

CGST = ₹ 100 lakh x 0.5% = ₹ 50,000

SGST = ₹ 100 lakh x 0.5% = ₹ 50,000

(ii) If Mr. Yash is a trader

CGST = ₹ 75 lakh (as 25% of turnover is exempt) x 0.5% = ₹ 37,500

SGST = ₹ 75 lakh (as 25% of turnover is exempt) x 0.5% = ₹ 37,500

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CHAPTER 3

PLACE OF SUPPLY

The section numbers referred to in the Chapter pertain to the IGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- explain the provisions relating to determination of place of supply of goods, both in case of domestic as well as cross-border transactions and analyse the same to determine the place of supply in a given situation
- explain the provisions relating to determination of place of supply of services, both in case of domestic as well as cross-border transactions and analyse the same to determine the place of supply in a given situation

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1. INTRODUCTION

GST is a destination-based consumption tax, i.e. the tax is levied on the consumption of supply at the destination thereof or at the point of consumption of such supply. The 'place of supply' denotes the place where the supply is consumed. Thus, place of supply determines the jurisdiction where the tax revenue should reach.

Goods, usually being tangible do not pose any significant problems for determination of their place of consumption. Services, usually being intangible pose problems w.r.t determination of place of supply mainly due to following factors:

- The manner of delivery of a service could be altered easily.

  For example, telecom service could change from post-paid to pre-paid or billing address of the customer could be changed, repair or maintenance of software could be changed from onsite to online; banking services earlier required customer to go to the bank, now the customer can avail service from anywhere.

- Service provider, service receiver and the service provided may not be ascertainable or may easily be suppressed as nothing tangible moves and there would hardly be any trail.

- For supplying a service, a fixed location of service provider is not mandatory and even the service recipient may receive service while on the move. The location of billing could be changed overnight.

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- Sometime the same element may flow to more than one location, for example, construction or other services in respect of a railway line, a national highway or a bridge on a river which originate in one State and end in the other State.

Similarly, a copyright for distribution and exhibition of film could be assigned for many States in a single transaction or an advertisement or a programme is broadcasted across the country at the same time.

An airline may issue seasonal tickets, containing say 10 vouchers which could be used for travel between any two locations in the country.

The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

- Services are continuously evolving and thus, continue to pose newer challenges. For example, 15-20 years back no one could have thought of DTH, online information, online banking, online booking of tickets, internet, mobile telecommunication etc.

Considering the difficulties in determining the actual place of consumption of services, the various elements involved in a service transaction are used as proxies for determining the place of consumption or place of supply of such services. A proxy which gives more appropriate result than others for determining the place of supply, could be used for determining the place of supply. The various elements used for determining the place of supply of a service are:

(a) location of service provider

(b) location of service receiver

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(c) place where the activity takes place/ place of performance

(d) place where the service is consumed

(e) place/person to which/whom actual benefit flows

Separate rules for determining place of supply in respect of B2B and B2C transactions

In respect of B2B (business to business) transactions, the supply is made by one registered person to another registered person and the taxes paid are taken as credit by the recipient. Therefore, such transactions are just pass through. GST collected on B2B supplies effectively create a liability for the Government and an asset for the recipient of such supplies in as much as the recipient is entitled to use the input tax credit (ITC) for payment of future taxes. For B2B transactions, the location of recipient takes care in almost all situations as further credit is to be taken by recipient. The recipient usually further supplies to another customer.

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The supply is consumed only when a B2B transaction is further converted into B2C (business to consumer) transaction. In respect of B2C transactions, the supply is made to an unregistered person who consumes the same and the taxes paid actually reach the Government.

B2B means business to business transaction. In such type of transactions, the recipient is also a registered supplier and hence, takes ITC.

B2C means business to consumer transaction. In such type of transactions, the recipient is consumer or unregistered and hence, will not take or cannot take ITC.

Provisions for determination of place of supply in GST law

Basis the above guiding principles, **Chapter V of the IGST Act [Sections 10 to 13]** prescribes the provisions relating to place of supply of goods and services in domestic as well as cross-border transactions. The provisions prescribe both general and specific rules to determine place of supply of goods and services in various circumstances.

The determination of 'place of supply' and the 'location of the supplier' is essential to ascertain the nature of supply, i.e. whether a supply is intra-State or inter- State. In other words, these two factors are required to determine whether a supply is subject to SGST/UTGST plus CGST in a given State/ Union territory or else would attract IGST if it is an inter-State supply.

If an inter-State transaction is wrongly treated as intra-State or *vice-versa* and tax paid accordingly, the correct tax will need to be paid and refund claimed for tax wrongly paid. Though no interest is levied in such a case, procedural requirements increase and working capital gets blocked where the amount involved is huge. Hence, determining correct place of supply is of paramount importance

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2. RELEVANT DEFINITIONS

- **Continuous journey** means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

  Explanation.—For the purposes of this clause, the term "stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time [Section 2(3)].

  The term conveyance has been defined in section 2(34) of the CGST Act to include a vessel, an aircraft and a vehicle.

- **Export of goods** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India [Section 2(5)].

  This definition is similar to the definition of 'export' given under Customs Act, 1962.

- **Export of services** means the supply of any service when

  (a) the supplier of service is located in India,

  (b) the recipient of service is located outside India,

  (c) the place of supply of service is outside India,

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

  (e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 [Section 2(6)].

  As per Explanation 1 to Section 8, the following are treated as establishments of distinct persons:

  - an establishment in India and any other establishment outside India;

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- an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- an establishment in a State or Union territory and any other establishment registered within that State or Union territory

❑ **Fixed establishment** means a place other than the place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(7)].

❑ **Import of goods** with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India [Section 2(10)].

This definition is again similar to the definition of 'import' under the Customs Act, 1962.

In *Kiran Spinning Mills v. CC 1999 (113) ELT 753 (SC 3 member bench)*, it has been held that import is completed only when goods cross the customs barrier.

In *Garden Silk Mills Ltd. UOI 1999 AIR SCW 4150 (SC 3 member bench)*, it has been held that import of goods in India commences when they enter into territorial waters but continues and is completed when the goods become part of the mass of goods within the country.

❑ **Import of services** means the supply of any service, where

(a) the supplier of service is located outside India,

(b) the recipient of service is located in India, and

(c) the place of supply of service is in India [Section 2(11)].

❑ **Intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13)].

❑ **Location of the recipient of services** means:

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

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

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

(d) in absence of such places, the location of the usual place of residence of the recipient [Section 2(14)].

The definition of 'fixed establishment' for this purpose has been discussed above. The definition of 'place of business' is discussed later.

The above definition relates only to services. The term 'location of recipient of goods' has not been defined in the Act.

- **Location of the supplier of services** means:

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

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

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

(d) in absence of such places, the location of the usual place of residence of the supplier [Section 2(15)].

The above definition relates only to services. The term 'location of supplier of goods' has not been defined in the Act.

- **Online information and database access or retrieval services** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,––

(i) advertising on the internet;

(ii) providing cloud services;

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(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

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

(vi) digital data storage; and

(vii) online gaming [Section 2(17)].

- **Place of business** includes

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

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

  (c) a place where a taxable person is engaged in business through an agent, by whatever name called [Section 2(85)].

This is an inclusive definition and is applicable for both goods and services.

- **Supply** shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act [Section 2(21)].

- **Recipient** of supply of goods or services or both, means—

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

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- where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- where no consideration is payable for the supply of a service, the person to whom the service is rendered,
- and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of the CGST Act].

❑ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims [Section 2(105) of the CGST Act].

❑ **Words and expressions** used and not defined in the IGST Act but defined in the after supplies Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts [Section 2(24)].

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3. PLACE OF SUPPLY OF GOODS OTHER THAN SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA [SECTION 10]

STATUTORY PROVISIONS

Section 10	Place of supply of goods other than supply of goods imported into, or exported from India	
Sub-section	**Clause**	**Particulars**
(1)	The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—	
	(a)	where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;
	(b)	where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;
	(c)	where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;
	(ca)	Where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the

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		said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice. *Explanation-For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person*
	(d)	*where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;*
	(e)	*where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.*
(2)	*Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.*	

ANALYSIS

Section 10 prescribes the provisions for determining the place of supply of goods in domestic transactions, i.e. within India. Sub-section (1) of section 10 sets out five rules to provide the place of supply of goods in the following specific situations:

- Supply involving movement of goods
- Goods delivered on 'bill to ship to' model
- Supply not involving movement of goods
- Goods assembled/installed at site
- Goods supplied on board a conveyance

Each of the above situation is discussed below. For residual cases, sub-section (2) of section 10 provides that where the place of supply of goods cannot be determined, the Government may prescribe the manner to ascertain the same.

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It must be kept in mind that the provisions of section 10 discussed hereunder are all in relation to domestic supply of goods.

(i) Supply involving movement of goods [Section 10(1)(a)]

In case of supply involving movement of goods, the place of supply is the location of the goods at the time when the movement of goods terminates (ends) for delivery to the recipient.

The 'location of the goods' is a question of fact to be ascertained by observing the journey that the goods so supplied make from their origin (from supplier) to termination (with the recipient). This movement, however, can be undertaken by the supplier or recipient or even any other person (like transporter) after having disclosed the destination of the movement of goods.

It is important to understand that this provision does not apply in cases where there is no movement of goods. Also, the provision does not link itself to transfer of property in goods but to the movement of the goods.

(1) MA Pvt. Ltd. of Nasik, Maharashtra sells 10 refrigerators to MB Pvt. Ltd. of Pune, Maharashtra for delivery at place of business of MB Pvt. Ltd. in Pune. The place of supply is Pune in Maharashtra.

(2) MA Pvt. Ltd. of Nasik, Maharashtra sells 20 refrigerators to MC Pvt. Ltd. of Ahmedabad, Gujarat for delivery at place of business of MC Pvt. Ltd. in Ahmedabad. The place of supply is Ahmedabad.

(ii) Supply involving movement of goods where goods are delivered to recipient on the instruction of third person – 'Bill to Ship to' Supply [Section 10(1)(b)]

Clause (b) of section 10(1) lays down the provisions to determine the place of supply in cases where there is a tripartite arrangement of supply, commonly known as 'bill to ship to' transactions or where there is a sale of goods in transit by the original buyer/ agents.

As per section 10(1)(b),

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If the goods are delivered to a recipient or any other person by the supplier

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on the instructions of a third person (original buyer), who may be acting as an agent or on his own account

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before or during movement of goods (but not after the movement terminates)

↓

whether or not there is a transfer of documents of title to the goods

↓

it is deemed that the third person has received the goods and the **place of supply is the principal place of business of such third person**

In simple words, **where goods are delivered by the supplier to the recipient at the instruction of a third person, the place of supply is the principal place of business of such third person and not of the actual recipient.**

It is important to identify the two supplies involved in this transaction– one supply is by supplier to third person and second supply is by third person to recipient. This provision deals only with the first limb of supply, i.e. supply by supplier to third person.

Second limb of supply, i.e. supply by third person to recipient will be governed by the provisions of section 10(1)(a), i.e. the place of supply will be the location of the goods at the time when the movement of goods terminates (ends) for delivery to the recipient.

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Supply by supplier to third person

Even though section 2(93) of CGST Act defines recipient, *inter alia,* as the 'payer of the consideration'; in this provision, recipient' is the one who actually collects the goods and the third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods and also usually makes payment to the supplier.

Supply by third person to recipient

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(3) X & Co. (a supplier registered in Uttar Pradesh having principal place of business at Noida) asks Y & Co. of Ahmedabad, Gujarat to deliver 50 washing machines to its buyer Z & Co. at Jaipur, Rajasthan. In this case, two supplies are involved, one between X & Co. and Z & Co. and other between Y & Co. and X & Co.

While the former supply is covered under clause (a) of section 10(1), the latter one, i.e. between Y & Co. and X & Co. is covered under clause (b) of section 10(1). Accordingly, in this case, the place of supply of goods is not the location of delivery of such goods (Jaipur) but the principal place of business of third person, i.e. principal place of business of X & Co. located at Noida.

(iii) Supply not involving movement of goods [Section 10(1)(c)]

If the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient.

(4) MA Pvt. Ltd. (New Delhi) has leased its machine (cost ₹ 8,00,000) to MB Pvt. Ltd. (Noida, Uttar Pradesh) for production of goods on a monthly rent of ₹ 40,000. After 14 months MB Pvt. Ltd. requested MA Pvt. Ltd. to sell the machine to it for ₹ 4,00,000, which is agreed to by MA Pvt. Ltd. In this case, there will be no movement of goods and the same will be sold on as is where is basis. Thus, the location of the machine at the time of such sale will be the place of supply, i.e. Noida.

(5) XZ Ltd. (Mumbai, Maharashtra) opens a new branch office at Gurugram, Haryana. It purchases a building for office from KTS Builders (Gurugram). It also enters into a separate contract with KTS Builders for purchase of pre-installed office furniture and fixtures in the building.

Though there will be no GST liability on purchase of building (as sale of building is covered under Schedule III to CGST Act), office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient (XZ Ltd.), i.e. Gurugram.

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(iv) Supply of goods to an unregistered person [Section 10(1)(ca)]

Where the supply of goods is made to a person other than a registered person, the place of supply shall be:

(i) the location as per the address of the said person recorded in the invoice issued in respect of the said supply and

(ii) the location of the supplier where the address of the said person is not recorded in the invoice.

For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person.

Place of supply in case of sales to unregistered persons is as follows:

**Simply mentioning the State of unregistered person instead of complete address would be sufficient.

There are cases where an unregistered person purchases goods over the counter (OTC) in one State and thereafter, transports the goods to another State (generally, the State where he resides).

For instance, migrant workers, tourists, etc. who come to a State for work, tourism, etc. and purchase goods in that State to take it to their respective State. Similarly, in automobile sector, the residents of a State may travel to another State to purchase vehicle from that State to take advantage of lower registration charges and road tax, which vary from State to State and thereafter, take the vehicle to their State.

In such cases, the place of supply will be determined as per above mentioned provision.

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(v) Supply involving installation or assembly of goods [Section 10(1)(d)]

If the supply involves goods which are to be installed or assembled at site, the place of supply is the place of such installation or assembly. This is a case of composite supply of goods wherein two supplies are involved, supply of goods and ancillary supply of installation/assembling service. The principal supply is supply of goods which are being installed.

(6) MA Pvt. Ltd. (New Delhi) purchases a machine from MB Pvt. Ltd. (New Delhi) for being installed in its factory at Noida, Uttar Pradesh. The place of supply is the site at which the machine is installed, i.e. Noida.

(7) Pure Refineries (Mumbai, Maharashtra) gives a contract to PQ Ltd. (Ranchi, Jharkhand) to supply a machine which is required to be assembled in a power plant in its refinery located in Kutch, Gujarat. The place of supply is the site of assembly of machine, i.e. Kutch even though Pure refineries is located in Maharashtra.

(vi) Goods supplied on board a conveyance [Section 10(1)(e)]

When goods are sold supplied during a journey on board a conveyance, it becomes difficult to determine the place of supply of goods – whether it is the location from where the journey originates or whether it is the destination or whether it is any of the locations covered by the conveyance during the journey. Therefore, section 10(1(e) specifically provides for determination of place of supply of goods supplied on board a conveyance.

Examples of goods supplied on board a conveyance can be books and miscellaneous items supplied by the hawkers in train, supply of packaged food items on payment basis in aeroplanes, etc.

Section 10(1)(e) lays down that **place of supply of goods supplied on a board a conveyance like aircraft, train, vessel, motor vehicle is the location where such goods have been taken on board.**

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Place of supply of goods supplied on board a conveyance is determined under this provision even if the supply has been made by any of the passenger on board the conveyance and not by the carrier of the conveyance.

(8) Mr. X (New Delhi) boards the New Delhi-Kota train at New Delhi. He sells the goods taken on board by him (at New Delhi), in the train, at Jaipur during the journey. The place of supply of goods is the location at which the goods are taken on board, i.e. New Delhi and not Jaipur where they have been sold.

4. PLACE OF SUPPLY OF GOODS IMPORTED INTO, OR EXPORTED FROM INDIA [SECTION 11]

STATUTORY PROVISIONS

Section 11	***Place of supply of goods imported into, or exported from India***	
	Clause	***Particulars***
	The place of supply of goods,—	
	(a)	*imported into India shall be the location of the importer;*
	(b)	*exported from India shall be the location outside India.*

ANALYSIS

Section 11 deals with the determination of place of supply in cases involving import and export of goods[1].

[1] *The terms import and export of goods have been explained in detail in Chapter-14 : Import and Export under GST in Module-3 of this Study Material. The definitions of terms "import of goods" and "export of goods" have been given in this Chapter under the heading "Relevant Definitions" for reference.*

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It must be kept in mind that the provisions of section 11 discussed hereunder are all in relation to cross border supply of goods.

(i) Import of goods [Section 11(a)]

The import of goods has been defined in section 2(10) of the IGST Act as bringing goods into India from a place outside India. All imports are deemed as inter-State supplies and accordingly IGST is levied in addition to the applicable custom duties.

If the goods have been imported in India, the place of supply of goods is the place where the importer is located.

(9) MC Pvt. Ltd. imports electric kettles from China for its Kitchen Store in Noida, Uttar Pradesh. MC Pvt. Ltd. is registered in Uttar Pradesh. The place of supply is Noida.

(ii) Export of goods [Section 11(b)]

Section 2(5) defines export of goods to mean taking goods out of India to a place outside India.

Under the GST Law, export of goods has been treated as:

- inter-State supply
- zero rated supply (i.e. the goods exported are relieved of GST levied upon them either at the input stage or at the final product stage.)

The place of supply in case of export of goods is the place where they have been exported, i.e. the destination outside India.

(10) MR Pvt. Ltd. (New Delhi) exports spices from New Delhi to London, UK. The place of supply is London.

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5. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OF SERVICE AND THE LOCATION OF THE RECIPIENT OF SERVICE IS IN INDIA [SECTION 12]

STATUTORY PROVISIONS

Section 12	***Place of supply of services where location of supplier of service and the location of the recipient of service is in India***		
Sub-section	***Clause***		***Particulars***
(1)	*The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.*		
(2)	*The place of supply of services, except the services specified in sub-sections (3) to (14),—*		
	(a)		*made to a registered person shall be the location of such person;*
	(b)		*made to any person other than a registered person shall be,—*
		(i)	*the location of the recipient where the address on record exists; and*
		(ii)	*the location of the supplier of services in other cases.*
(3)	*The place of supply of services,—*		
	(a)		*directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way*

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		of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
	(b)	*by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or*
	(c)	*by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or*
	(d)	*any services ancillary to the services referred to in clauses (a), (b) and (c),*
	shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:	
	Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.	
	Explanation.—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.	
(4)	*The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.*	
(5)	*The place of supply of services in relation to training and performance appraisal to*	

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	(a)		*a registered person, shall be the location of such person;*
	(b)		*a person other than a registered person, shall be the location where the services are actually performed.*
(6)	*The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.*		
(7)	*The place of supply of services provided by way of ,—*		
	(a)		*organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or*
	(b)		*services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,–*
		(i)	*to a registered person, shall be the location of such person;*
		(ii)	*to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.*
	Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.		

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(8)	*The place of supply of services by way of transportation of goods, including by mail or courier to,—*	
	(a)	*a registered person, shall be the location of such person;*
	(b)	*a person other than a registered person, shall be the location at which such goods are handed over for their transportation.*
(9)	*The place of supply of passenger transportation service to,—*	
	(a)	*a registered person, shall be the location of such person;*
	(b)	*a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:*
	Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).	
	Explanation.—For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.	
(10)	*The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.*	
(11)	*The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,—*	
	(a)	*in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable*

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			connection or dish antenna is installed for receipt of services;
	(b)		*in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;*
	(c)		*in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—*
		(i)	*through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or*
		(ii)	*by any person to the final subscriber, be the location where such pre- payment is received or such vouchers are sold;*
	(d)		*in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:*
	Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:		
	Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.		
	Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place		

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	of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.	
(12)	*The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:*	
	Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.	
(13)	*The place of supply of insurance services shall,—*	
	(a)	*to a registered person, be the location of such person;*
	(b)	*to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.*
(14)	*The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*	

ANALYSIS

Section 12 contains the provisions for determining the place of supply of services where both the 'location of supplier of services' and the 'location of recipient of

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services' are in India. If either of the two persons (supplier or recipient) is outside India, the place of supply is determined by section 13.

Section 12 lays down a default provision to determine the place of supply of services as well as few other provisions to determine place of supply of certain specific services. Thus, place of supply is determined as per default provision in respect of services other than the ones covered by the specific provisions. It is also important to note that in many cases, the section provides different places of supply for a service supplied to registered and unregistered persons.

It must be kept in mind that the provisions of section 12 discussed hereunder are all in relation to domestic supply of services.

(i) Default provision [Section 12(2)]

The default provision is applicable only if the supply of service does not fall in any of the specific cases provided under section 12. It provides that the **place of supply of services made to a registered person is the location of the person receiving the services.** Since the supplier has the GSTIN of the person receiving the service, the location of such GSTIN is the place of supply.

However, if the services is supplied to an unregistered person, the place of supply is:

a) the location of such unregistered person, if the address of the unregistered person is available in the records of the supplier

b) the location of the supplier of services in other cases

The provision can be summarized as under:

Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered
Supply of services other than the ones specified in sub-sections (3) to (14) of section 12	Location of recipient	a) If the address of the unregistered person is available in the records of the supplier, the location of such unregistered person. b) In other cases, the location of the supplier of services

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Clarification regarding place of supply of online services supplied by the suppliers of services to unregistered recipients

It has been clarified that a conjoint reading of section 12(2)(b) of the IGST Act, 2017, section 31(2) of the CGST Act[2] and proviso to rule 46(f) of CGST Rules[3] leads to a conclusion that in respect of supply of services made to unregistered persons, irrespective of the value of the said supply, the supplier is required to mandatorily record the name of the State of the unregistered recipient on the tax invoice, in cases involving supply of online money gaming or supply of taxable services by or through an electronic commerce operator or supply of online information and database access or retrieval (OIDAR) services.

Recording of the name of State of the unregistered recipient on the tax invoice in respect of such supply of services shall be deemed as the address on record of the recipient for the purpose of determination of place of supply of the said services under section 12(2)(b) of the IGST Act, 2017.

Accordingly, in such cases, the place of supply of such services shall be considered as the location of the recipient of the services as per provisions of clause (i) of section 12(2)(b) of the IGST Act, 2017.

Combined reading of the definitions of 'electronic commerce' and 'electronic commerce operator' as per section 2(44) and section 2(45) of the CGST Act, along with rule 46(f) of CGST Rules, provides an understanding that all services supplied to unregistered recipients over digital or electronic network, either by the supplier using his own digital or electronic facility / platform or through any other electronic or digital platform owned and

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[2] *Section 31(2) of the CGST Act, 2017 has been discussed in detail in Chapter-9 of Module-2 of the Study material. It provides that a registered person must issue a tax invoice for taxable services within a prescribed time, showing all required details. The Government may notify specific service categories where any other document can serve as a tax invoice or where issuing a tax invoice is not required.*

[3] *Rule 46(f) of the CGST Rules, 2017 has been discussed in detail in Chapter-9 of Module-2 of the Study material. It provides that recipient details may be mentioned on invoices if requested by recipient for supplies below ₹ 50,000. However, it mandates mentioning the recipient's State in cases of online gaming or certain e-commerce and digital services to unregistered recipients, regardless of value.*

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operated by an independent electronic commerce operator, will be covered under proviso to rule 46(f) of CGST Rules, 2017.

It is, accordingly, clarified that provisions of proviso to rule 46(f) of CGST Rules, 2017 shall be applicable in respect of all the online supplies of services supplied to an unregistered recipient, in addition to the supply of online money gaming and OIDAR services.

- ***Supplier of online services to record name of State of unregistered recipient irrespective of value of supply***
- ***Name of State shall be deemed as address on record***
- ***Place of Supply-Location of Recipient***

Some of the examples of such services are subscription of e-newspapers and e-magazines, online subscription of entertainment services (e.g. OTT platforms), online telecom services, digital services through mobile applications etc.

Therefore, in respect of following cases of supplies to unregistered recipients, the suppliers are mandatorily required to record the name of the State of the recipient on the tax invoice, irrespective of the value of supply of such services, and to declare place of supply of the said services as the location of the recipient (based on the name of state of the recipient) in their details of outward supplies in form GSTR-1/1A.:-

(i) Supply of any such online/ digital services,

(ii) OIDAR services and

(iii) Online money gaming

[Circular no. 242/36/2024 GST dated 31.12.2024]

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✪ ***The default presumption for place of supply in respect of registered recipients (B2B supply of services) is the location of such person. Since the recipient is registered, address of recipient is always there and the same can be taken as proxy for place of supply.***

✪ ***The default presumption for place of supply in respect of unregistered recipients (B2C supply of services) is also the location of recipient. However, in many cases, the address of recipient is not available; in such cases, location of the supplier of services is taken as proxy for place of supply. . For instance, there are various B2C services where the address of the recipient is not recorded by the supplier of services. For instance, a person may visit a bank branch where he is not a regular customer and may get a demand draft against cash or request for conversion of foreign currency into local currency. The bank branch charges commission towards its consideration for the services supplied by it. The place of supply in such cases would be determined based on the location of the branch of the bank as the bank branch doesn't have the address of the said service recipient as a normal business practice.***

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(11) Mr. A (a Chartered Accountant registered in New Delhi) makes a supply of service to his client MB Pvt. Ltd. of Noida, Uttar Pradesh (registered in Uttar Pradesh). In this case, since the supply is made to a registered person, the place of supply is the location of the registered recipient, i.e. Noida.

(12) Mr. A, a Chartered Accountant in Gurugram, Haryana, (registered in Haryana) provides consultancy services to his client Mr. C who is a resident of New Delhi but is not registered under GST.

If the address of Mr. C is available in the records of Mr. A, location of Mr. C, i.e. New Delhi will be the place of supply, else the location of Mr. A, which is Gurugram, will be the place of supply.

(ii) Services in relation to an immovable property or lodging accommodation in a hotel/boat/vessel etc. [Section 12(3)]

Section 12(3) covers supplies of services which are (i) **directly** in relation to an immovable property, or (ii) by way of lodging accommodation in a hotel, etc. or a house-boat or vessel, or accommodation in any immovable property for organizing social, business functions etc. Such services are classified in the following major categories:

(a) Services provided **directly** in relation to an immovable property including those by

- architects,
- interior decorators,
- surveyors,
- engineers and other related experts,
- estate agents

(b) Service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work

(c) Services provided by way of lodging accommodation by a

- hotel

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- inn
- guest house
- homestay
- club
- campsite
- house boat
- vessel

(d) Services provided by way of accommodation in an immovable property for organizing

- any marriage/reception or matters related thereto,
- official, social, cultural, religious or business functions
- including services provided in relation to such function at such property

(e) Services ancillary to the above-mentioned services

If the immovable property/boat/vessel is located outside India, the location of recipient of the services is the place of supply.

In all above cases, **location of the immovable property or the boat or the vessel or where such immovable property or the boat or the vessel is intended to be located, is the place of supply.**

This provision is applicable on property already constructed/ developed as well as on the property yet to be constructed/ developed.

For example, if the services have been supplied for an immovable property which is yet to be constructed/developed (e.g. architect's services for drawing the plan of a building), the place where such immovable property is intended to be located is the place of supply.

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(13) KTS Builders (Mumbai) is constructing a factory building for PLM Pvt. Ltd. (Kolkata), in New Delhi. The place of supply is the location of the immovable property, i.e. New Delhi.

(14) Shah and Shah, an architectural firm at Kolkata, has been hired by MKF Builders of Mumbai to draw up a plan for a high rise building to be constructed by them in Ahmedabad, Gujarat. The place of supply is the place where the immovable property is intended to be located, i.e. Ahmedabad.

(15) Mr. Ramesh, a Chartered Accountant, (New Delhi) travels to Mumbai for business and stays in a hotel there. The place of supply of accommodation service is the place where the hotel is located, i.e. Mumbai.

(16) Mr. X, a consulting engineer based in Mumbai, Maharashtra renders professional services in respect of an immovable property of Mr. Y (Bangalore) located in Australia. Since the immovable property is located outside India, the place of supply of service is the location of recipient, i.e. Bangalore and not the place where the immovable property is located (Australia) [4].

The provision can be summarized as under:

Nature of Supply	Location of immovable property/ boat/ vessel	Place of Supply
Supply of services relating to immovable property or lodging accommodation in a hotel/ boat/ vessel or accommodation in an immovable property for social/ business/ religious/ cultural functions	**In India**	Location/intended location of such immovable property/ boat/ vessel
	Outside India	Location of the recipient

[4] *It is important to note that this case should not be confused with the case where either the supplier or recipient is located outside India. Here, the property is located outside India and both supplier and recipients are located in India.*

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Immovable property/Boat/Vessel located in more than one State/Union territory

Sometimes immovable property may extend to more than one location, for example, a railway line, a national highway or a bridge on a river may originate in one State and end in the other State or a house boat stay may traverse more than one State.

In such cases, i.e. where the immovable property or boat or vessel is located in more than one State/Union territory, the service is deemed to have been supplied in each of the respective States/Union territories, in proportion to the value for the services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the immovable property or boat or vessel is located) is computed in accordance with rule 4 of IGST Rules as under:

S. No.	Type of service in relation to immovable property	Factor which determines the proportionate value of service supplied in different States/Union territories
(a)	Service provided by way of lodging accommodation by hotel, inn, guest house etc. and its ancillary services (other than the cases where such property is a	Number of nights stayed in such property *Refer Example 17*

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	single property located in 2 or more contiguous States/ Union territories or both)	
(b)	• All other services provided in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc. and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in 2 or more contiguous States or/and Union territories • Services ancillary to services mentioned above	Area of the immovable property lying in each State/ Union territories *Refer Example 18*
(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ Union territories, to be determined on the basis of declaration made by the service provider *Refer Example 19*

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Example 17 - Lodging accommodation by hotel/inn/guest house etc. and ancillary services excluding the property located in 2 or more contiguous States/ Union territories or both

A hotel chain X charges a consolidated sum of ₹ 30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night.

The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively.

The value of services provided will thus be apportioned as ₹ 20,000/- in the Union territory of Delhi and ₹ 10,000/- in the State of Uttar Pradesh.

Example 18 - Other services provided in relation to immovable property

There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified).

The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively.

The value of the service shall be accordingly apportioned between the States.

Example 19 - Lodging accommodation by a house boat or vessel and its ancillary services

A company C provides the service of 24 hours accommodation in a houseboat, which will transit both in Kerala and Karnataka in as much as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider).

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The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively.

The value of the service shall be accordingly apportioned between the States.

(iii) Restaurant and catering service, personal grooming, fitness, beauty and health services [Section 12(4)]

The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery is the location where such services are **actually performed.**

(20) Mr. A, a businessman from Pune dines in a restaurant at Mumbai while on a business trip. The place of supply of restaurant service is the location where such service is performed, i.e. Mumbai.

(21) Mr. Timmy Ferreira, a makeup artist at Kolkata, goes to Jaipur, Rajasthan for doing the makeup of Ms. Simran Kapoor, a Bollywood actress based in Mumbai. The place of supply is the location where such service is performed, i.e. Jaipur.

(iv) Training and performance appraisal services [Section 12(5)]

The place of supply of services in relation to training and performance appraisal depends upon whether the supply is B2B or B2C.

In B2B supply, i.e. **where the recipient of service is a registered person, the place of supply is the location of such person.**

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However, in case of B2C supply, i.e. **where the recipient of service is unregistered, the place of supply is the place where the service is actually performed.**

(22) DEO Consultants (Kolkata) impart GST training to accounts and finance personnel of Sun Cements Ltd., Guwahati, Assam (registered office) at the company's Kolkata office which is also registered under GST. Since the contract is entered with Guwahati office, and it being a registered recipient, the place of supply is the location of the registered person, i.e. Guwahati.

(23) Mr. Suresh (unregistered person based in Noida) signs up with Excellent Linguistics (New Delhi) for training on English speaking at their New Delhi Centre. Since the recipient is unregistered, the place of supply is the location where services are provided, i.e. New Delhi.

(v) Services by way of ADMISSION to events/amusement park/other places [Section 12(6)]

The place of supply of following services-

(i) services provided by way of ADMISSION to following types of events:

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(ii) services provided by way of admission to amusement park or any other place

(iii) services ancillary to the above-mentioned services

is the **place where the event is actually held or where the park or such other place is located.**

(24) Mr. A, a resident of Ghaziabad, Uttar Pradesh, buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi. The place of supply is the location where the circus is held, i.e. Gurugram.

(25) Mr. B of New Delhi buys a ticket for an amusement park located in Noida, Uttar Pradesh. The place of the supply is the location where the park is located, i.e. Noida.

(vi) ORGANISATION of events [Section 12(7)]

For supplies related to ORGANIZATION of events or assigning sponsorship to such events, the place of supply depends on whether the supply is made to a registered person or an unregistered person.

When such service is provided to a registered person, the place of supply is location of recipient.

When it is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

The event can be a cultural, artistic, sporting, scientific, educational or entertainment event. It can also be a conference, fair, exhibition, celebration or other similar event.

Place of supply of services ancillary to organisation of such type of events or assigning of sponsorship to such events is also determined under sub-section (7) of section 12, i.e. in the manner described above. The provision can be summarized as under:

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Nature of Supply	Place of Supply	
	Recipient is registered	Recipient is unregistered
Organisation of events or services ancillary to the same or assigning of sponsorship to such events	Location of recipient	Location where the event is held
Organisation of events outside India		Location of recipient

(26) Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mumbai. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.

(27) Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), in Mauritius. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e. Ahmedabad.

(28) Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding at New Delhi. The recipient being an unregistered person, the place of supply is the location where the event is held, i.e. New Delhi.

(29) Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding in Seychelles. The recipient being an unregistered person and the event held outside India, the place of supply is the location of the recipient, i.e. Hyderabad and not the location where the event is held, i.e. Seychelles.

Event held in more than one State/Union territory

If the event is held in more than one State/Union territory and a consolidated amount is charged for services relating to such event, the place of supply of such services is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

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The above provision is applicable only when the recipient is unregistered, as for a registered recipient, the place of supply is the location of such recipient.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in different States/Union territories (where the event is held) is computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.

(30) An event management company E has to organize some promotional events in States S1 and S2 for a recipient R (unregistered). 3 events are to be organized in S1 and 2 in S2. They charge a consolidated amount of ₹ 10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as ₹ 6,00,000/- in S1 and ₹ 4,00,000/- in S2.

(vii) Transportation of goods including mail or courier [Section 12(8)]

The place of supply of services by way of transportation of goods, including by mail or courier, etc. provided to a registered person, is the location of such person.

However, where such services are provided to an unregistered person, the place of supply is the location at which such goods are handed over for their transportation.

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Where the goods are being transported outside India, i.e. where the destination of goods transported is outside India, and the supplier of services by way of transportation of goods and its recipient are located in India, place of supply will be determined as per above provisions only.

(31) M/s XYZ Pvt. Ltd. is a registered company in New Delhi. It sends its courier to Pune through M/s Brue Air Courier Service. The recipient being registered person, the place of supply is the location of recipient, i.e. New Delhi.

(32) Mr. Y, an unregistered person, of New Delhi sends a courier to his brother in Amritsar, Punjab. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. New Delhi.

(33) PR Pvt. Ltd., a Goods Transportation Agency based in Kanpur, Uttar Pradesh, is hired by Hajela Enterprises (registered in Kanpur) to transport its consignment of goods to a buyer in New Delhi. The recipient being registered, the place of supply is the location of recipient, i.e. Kanpur.

(34) ST Pvt. Ltd., a Goods Transportation Agency based in Noida, Uttar Pradesh, is hired by Chhaya Trade Links (registered in New Delhi) to transport its consignment of goods to a buyer in Kanpur, Uttar Pradesh. The recipient being registered, the place of supply is the location of recipient, i.e. New Delhi.

(35) Mr. Srikant, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Srikant's family is stationed in Kanpur, Uttar Pradeh. He hires Goel Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation, i.e. Kanpur.

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(36) M/s JKL Pvt. Ltd. is a registered company in Chennai. It ships goods to its customer in London, United Kingdom through M/s Strong Logistics, a shipping company. The place of supply of services of transportation of goods provided by M/s Strong Logistics to M/s JKL Pvt. Ltd. is the location of the recipient, i.e. Chennai.

(viii) Passenger transportation service [Section 12(9)]

Nature of Supply	Place of Supply	
	Recipient is registered	**Recipient is unregistered**
Passenger transportation	Location of the recipient	Location where the passenger embarks on the conveyance for a continuous journey *[See definition under the heading "Relevant Definitions]*
Issue of right to passage for future use and the point of boarding not known at the time of issue of right to passage		a) If the **address of the unregistered person** is available in the records of the supplier, the **location of such unregistered person.** b) In other cases, the **location of the supplier** of services

The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time.

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(37) Mr. Amar (registered person in New Delhi) travels from Mumbai to Bangalore in Airjet flight. Mr. Amar has bought the tickets for the journey from Airjet's office registered in New Delhi. The place of supply is the location of recipient, i.e. New Delhi.

(38) Mr. Shyam, an unregistered person, based in Gurugram, Haryana books a two-way air journey ticket from New Delhi to Mumbai on 5th December. He leaves New Delhi on 10th December in a late-night flight and lands in Mumbai the next day. He leaves Mumbai on 14th December in a morning flight and lands in New Delhi the same day.

The return journey is treated as a separate journey, even if the tickets for onward and return journey are issued at the same time. Thus, being an unregistered person, the place of supply for the outward and return journeys are the locations where the unregistered person embarks on the conveyance for the continuous journey, i.e. New Delhi and Mumbai respectively.

Examples of issue of right to passage for future use-point of boarding not known at the time of issue of right

(39) An airline may issue seasonal tickets, containing say 10 voucher which could be used for travel between any two locations in the country.

(40) The card issued by New Delhi metro could be used by a person located in Noida, or New Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

(ix) Service supplied on board a conveyance [Section 12(10)]

Nature of Supply	Place of Supply
Service supplied on board a conveyance*	Location of the first scheduled point of departure of that conveyance for the journey

** Note - Conveyance includes a vessel, an aircraft, a train or a motor vehicle.*

You may recollect that the proxy for place of supply of goods on board a conveyance is the location at which the goods are taken on board. Services being intangible, the same proxy cannot be used for determining the place of supply for services supplied on board a conveyance. Therefore, for

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services, the proxy is the location of the first scheduled point of departure of that conveyance for the journey

However, for determining the place of supply of both goods and services supplied on board a conveyance, no distinction is made between registered and unregistered recipients.

(41) Mr. X is travelling from Delhi to Mumbai in an Airjet flight. He desires to watch an English movie during the journey by making the necessary payment. The place of supply of such service of showing 'movie on demand' is the first scheduled point of departure of the conveyance for the journey, i.e. Delhi.

(x) Telecommunication service [Section 12(11)]

Telecommunication services include the services of telephone, data transfer (internet), broadcasting, cable, DTH (Direct to home) services, etc. Section 12(11) classifies the telecommunication services into 3 categories for the purpose of determining the place of supply as under:

- Services provided using a fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna
- Post-paid mobile connection and post-paid internet services
- Pre-paid mobile connection and pre-paid internet and DTH services

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The place of supply of the various types of telecommunication services is tabulated as under:

Nature of Supply	Place of Supply	Recipient
❑ Fixed telecommunication line ❑ Leased circuits ❑ Internet leased circuit ❑ Cable or dish antenna	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services	ANY PERSON
Post-paid mobile connection and internet services	• Location of billing address of the recipient of services in the records of the supplier of services • Location of the supplier of services, if the address is not available	
Pre-paid mobile connection, internet services and DTH services (recharge coupon, vouchers, net pack etc.)	Address of the selling agent/ re-seller/ distributor at the time of supply	

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Services provided through a ❑ selling agent ❑ re-seller ❑ distributor of subscriber identity module card or recharge voucher		
Services provided by any person to final subscriber	Location where such pre-payment is received or such vouchers are sold	
Pre-paid services, the payment for which is made through internet banking/ other electronic mode of payment	Location of the recipient of services in the records of the supplier of services	
Other cases	• The address of the recipient as per the records of the supplier of services • Location of the supplier of services, if the address is not available	

(42) Mr. X (Kolkata) gets a landline phone installed at his home from Skybel Ltd. The place of supply is the location where the telecommunication line is installed, i.e. Kolkata.

(43) Mr. Y (Mumbai) gets a DTH installed at his home from RT Ltd. The place of supply is the location where the DTH is installed, i.e. Mumbai.

(44) Mr. D (Mumbai) takes a post-paid mobile connection in Mumbai from Skybel Ltd and gives his residence address at Mumbai as the address for billing with supplier. The place of supply is the location of billing address of the recipient, i.e. Mumbai.

(45) Mr. E (New Delhi) gets his post-paid mobile bill (billing address New Delhi) paid online from Goa. The place of supply is the location of the billing address of the recipient, i.e. New Delhi.

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(46) Mr. C (Pune) purchases a pre-paid card from a selling agent in Mumbai. The place of supply is the address of the selling agent or re-seller, i.e. Mumbai.

(47) Mr. F (Puducherry) gets a pre-paid mobile recharged from a grocery shop in Chennai. The place of supply is the location where such pre-payment is received, i.e. Chennai.

Leased circuit is installed in more than one State/Union territory

If the leased circuit is installed in more than one State/Union territory and a consolidated amount is charged for supply of services, the place of supply is deemed to be in each of the respective States/Union territories in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the value of services supplied in different States/Union territories (where the leased circuit is installed) is determined in accordance with rule 6 of the IGST Rules in proportion to the number of points lying in each such State/ Union territory.

The number of points in a circuit is determined in the following manner-

(i) In the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points – Refer Example 48

(ii) Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point – Refer Example 49 & 50

Example 48 – Circuit between two points or places

A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory

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of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

Example 49 – Intermediate point or place in the circuit

A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

Example 50 – Intermediate point or place in the circuit

A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

(xi) Financial and stock broking services [Section 12(12)]

The place of supply of banking and other financial services, including stock broking services to any person is the **location of the recipient of services in the records of the supplier of services.** However, if the location of recipient of services is not available in the records of the supplier, the place of supply is the **location of the supplier of services.**

(51) Mr. A (Chennai) buys shares from a broker in BSE (Mumbai). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Chennai.

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(52) Mr. B (New Delhi) withdraws money from Best Bank's ATM in Amritsar. Mr. B has crossed his limit of free ATM withdrawals. The place of supply is the location of the recipient of services in the records of the supplier, i.e. New Delhi.

(53) Mr. C from Varanasi, Uttar Pradesh, visits a bank registered in New Delhi for getting a demand draft made. Mr. C does not have any account with the said bank. Therefore, since the location of recipient is not available in the records of the supplier, the place of supply is the location of the supplier of services, i.e. New Delhi.

(xii) Insurance services [Section 12(13)]

The place of supply of insurance services is the **location of recipient when provided to a registered recipient.**

If such services are provided to a person other than a registered person, the place of supply is the **location of the recipient of services in the records of the supplier of services.**

(54) Mr. A, CEO of XY Ltd., Mumbai (a company registered in Maharashtra) buys insurance cover for the inventory stored in company's factory located at Mumbai, from Excellent Insurers, Chennai (registered in Tamil Nadu). The place of supply is the location of the registered recipient, i.e. Mumbai.

(55) Ms. B (unregistered resident of Kolkata) goes to her native place Patna, Bihar and buys a medical insurance policy for her parents there from Safe Insurers, Patna (registered in Bihar). The place of supply is the location of the recipient of services in the records of the supplier, i.e. Patna.

(xiii) Advertisement service to the Government [Section 12(14)]

Nature of Supply	Place of Supply
Advertisement service to the Central Government/ State Government/ Statutory body/ Local authority meant for the State/Union territory identified in contract or agreement	Each of such States/ Union territories where the advertisement is broadcasted/ run / played/ disseminated.

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The value of such supplies specific to each State/Union territory is in proportion to the amount attributable to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of advertisement services attributable to different States/Union territories (where the advertisement is broadcasted/ run /played/disseminated) is computed in accordance with rule 3 of IGST Rules as under:

Sl. No.	Type of advertisement	Value of service attributable to dissemination in different States/Union territories where the advertisement is broadcasted/ run /played/disseminated
1.	Advertisements in newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/Union territory *Refer Example 56*
2.	Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.	Amount payable for the distribution of a specific number of such material in each State/Union territory *Refer Example 57*
3.	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory *Refer Example 58*
4.	Advertisements on trains	Amount attributable to each State/Union territory calculated in the ratio of length of the railway track in each of such State/Union territory, for that train *Refer Example 60*

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5.	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State/Union territory
6.	Advertisements on railway tickets	Amount attributable to each State/Union territory calculated in the ratio of number of Railway Stations in each of such State/Union territory *Refer Example 60*
7.	Advertisements on radio stations	Amount payable to such radio station, which by virtue of its name is part of each State/Union territory *Refer Example 61*
8.	Advertisement on television channels	Amount attributable to each State/Union territory calculated basis the viewership of such channel in each of such State/ Union territory which shall be derived as under: (a) Viewership can be ascertained from the channel viewership figures published by the Broadcast Audience Research Council. (b) Figures for the last week of a given quarter is used for calculating viewership for the succeeding quarter. (c) Where the channel viewership figures relate to a region comprising of more than one State/Union territory, the viewership figures for a State/ Union territory of that region, is calculated in ratio of the populations of that State/Union territory, as determined in the latest Census. (d) The ratio of the viewership figures for each State or Union territory so

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		calculated, when applied to the amount payable for the service, shall represent the portion of the value attributable to the dissemination in that State or Union territory *Refer Example 62*
9.	Advertisements in cinema halls	Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory. *Refer Example 63*
10.	Advertisements on internet It is deemed that such service is provided all over India.	Amount attributable to each State/Union territory calculated basis the internet subscribers in each of such State/ Union territory which shall be derived in the following manner: (a) Internet subscribers can be ascertained from the internet subscriber figures published by the (b) Telecom Regulatory Authority of India (TRAI). (c) Figures for the last quarter of a given financial year will be used for calculating the number of internet subscribers for the succeeding financial year. (d) Where the internet subscriber figures relate to a region comprising of more than one State/Union territory, the subscriber figures for a State/Union territory of that region shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census. (e) The ratio of the subscriber figures for each State or Union territory so calculated, when applied to the amount payable for the service, shall

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		represent the portion of the value attributable to the dissemination in that State or Union territory *Refer Example 64*
11.	Advertisements through SMS	Amount attributable to each State/Union territory calculated on the basis of the telecom subscribers in each of such State/ Union territory. (a) Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. (b) Figures for a given quarter will be used for calculating the subscribers for the succeeding quarter. (c) Where such figures relate to a telecom circle comprising of more than one State/Union territory, the subscriber figures for that State/Union territory shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census. *Refer Examples 65-68*

Example 56 - Advertisements in newspapers and publications

ABC is a government agency which deals with the all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities.

These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them.

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ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper.

The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the State of Maharashtra which is attributable to the dissemination in Maharashtra.

Likewise, the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State-wise and Union territory-wise invoices based on the editions.

Example 57 - Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.

As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of 1,00,000 pamphlets (at a total cost of ₹ 1,00,000) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States, i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order.

Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order.

The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup, i.e. 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State-wise by GH to ABC indicating the value pertaining to that State, i.e. ₹ 20,000 - Haryana, ₹ 50,000 - Uttar Pradesh and ₹ 30,000 - Rajasthan.

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Example 58 - Advertisements in hoardings (other than those on trains

ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the 4 metros, i.e. Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city-wise, location-wise breakup of the amount payable for such hoardings.

The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the 4 metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State-wise and Union territory-wise by IJ to ABC indicating the value pertaining to that State or Union territory.

Example 59 - Advertisements on trains

ABC places an order on KL for advertisements to be placed on a train with regard to the 'Janani Suraksha Yojana'. The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website *www.indianrail.gov.in.*

The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra Karnataka and Goa.

The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the

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length of the track in each of these States and Union territory. If this ratio works out to say 0.5:0.5:2:2:3:3:1, and the amount to be paid to KL is ₹ 1,20,000, then KL will have to calculate the State-wise and Union territory-wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory.

In the given example, the State-wise and Union territory-wise breakup works out to Delhi (₹ 5,000), Haryana (₹ 5,000), Uttar Pradesh (₹ 20,000), Madhya Pradesh (₹ 20,000), Maharashtra (₹ 30,000), Karnataka (₹ 30,000) and Goa (₹ 10,000). Separate invoices will have to be issued State-wise and Union territory-wise by KL to ABC indicating the value pertaining to that State or Union territory.

Example 60 - Advertisements on railway tickets

ABC has issued a release order to MN for display of advertisements relating to the 'Ujjwala' scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh.

The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website *www.indianrail.gov.in*.

Let us assume that this ratio is 713:251 and the total bill is ₹ 9,640. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to ₹ 7,130 and ₹ 2,510 respectively. Separate invoices will have to be issued State-wise by MN to ABC indicating the value pertaining to that State.

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Example 61 - Advertisements on radio stations

For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations. The plac e of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued State-wise and Union territory-wise by MN to ABC based on the value pertaining to each State or Union territory.

Example 62 - Advertisement on television channels

ABC issues a release order with QR channel for telecasting an advertisement relating to the 'Pradhan Mantri Kaushal Vikas Yojana' in the month of November, 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand.

The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under — I. QR will ascertain the viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council. Let us assume it is 1,00,000 for Delhi and 2,00,000 for the region comprising of Uttar Pradesh and Uttarakhand and 1,00,000 for the region comprising of Bihar and Jharkhand.

II. Since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into

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another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census.

III. By applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand can be calculated.

Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9:1. When this ratio is applied to the viewership figures of 2,00,000 for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 1,80,000 and 20,000 respectively.

IV. In a similar manner, the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of 1,00,000 for this region, the viewership figure for Bihar and Jharkhand works out to 80,000 and 20,000 respectively.

V. The viewership figure for each State works out to Delhi (1,00,000), Uttar Pradesh (1,80,000), Uttarakhand (20,000), Bihar (80,000) and Jharkhand (20,000). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).

VI. This ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is ₹ 20,00,000, the State-wise breakup is ₹ 5,00,000 (Delhi), ₹ 9,00,000 (Uttar Pradesh) ₹ 1,00,000 (Uttarakhand), ₹ 4,00,000 (Bihar) and ₹ 1,00,000 (Jharkhand). Separate invoices will have to be issued State-wise and Union territory-wise by QR to ABC indicating the value pertaining to that State or Union territory.

Example 63 - Advertisements in cinema halls

ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the States of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of

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advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State-wise and Union territory-wise by ST to ABC indicating the value pertaining to that State.

Example 64 - Advertisements on internet

ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the State-wise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in.

These figures show the service area wise internet subscribers. There are 22 service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas.

In order to calculate the State-wise breakup, first the State-wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.).

Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State-wise ratio of internet subscribers. Let us assume that this works out to 8:1:2..... and so on for Andhra Pradesh, Arunachal Pradesh, Assam... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State-wise and Union territory-wise by WX to ABC indicating the value pertaining to that State or Union territory.

Advertisements through SMS

(65) In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.

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(66) The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of subscribers for this telecom circle so as to arrive at the State-wise figures of telecom subscribers. Separate invoices will have to be issued State-wise by the service provider to ABC indicating the value pertaining to that State.

(67) ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to -

I. obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;

II. obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;

III. this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;

IV. the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State-wise by UV to ABC indicating the value pertaining to that State.

(68) The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.

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6. PLACE OF SUPPLY OF SERVICES WHERE LOCATION OF SUPPLIER OR LOCATION OF RECIPIENT IS OUTSIDE INDIA [SECTION 13]

STATUTORY PROVISIONS

Section 13	*Place of supply of services where location of supplier or location of recipient is outside India*	
Sub-section	***Clause***	***Particulars***
(1)	*The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.*	
(2)	*The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:*	
	Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.	
(3)	*The place of supply of the following services shall be the location where the services are actually performed, namely:—*	
	(a)	*Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:*
		Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:
		Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for

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		repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.
	(b)	*services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.*
(4)	*The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.*	
(5)	*The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.*	
(6)	*Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.*	
(7)	*Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in*	

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	this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.		
(8)	*The place of supply of the following services shall be the location of the supplier of services, namely:—*		
	(a)	*services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;*	
	(b)	*intermediary services;*	
	(c)	*services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.*	
	Explanation.—For the purposes of this sub-section, the expression,–		
	(a)	*"account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;*	
	(b)	*"banking company" shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;*	
	(c)	*"financial institution" shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;*	
	(d)	*"non-banking financial company" means,—*	
		(i)	*a financial institution which is a company;*
		(ii)	*a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or*
		(iii)	*such other non-banking institution or class of such institutions, as the Reserve Bank of India*

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			may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.
(10)	*The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.*		
(11)	*The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.*		
(12)	*The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.*		
	Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non- contradictory conditions are satisfied, namely:—		
	(a)	*the location of address presented by the recipient of services through internet is in the taxable territory;*	
	(b)	*the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;*	
	(c)	*the billing address of the recipient of services is in the taxable territory;*	
	(d)	*the internet protocol address of the device used by the recipient of services is in the taxable territory;*	
	(e)	*the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;*	
	(f)	*the country code of the subscriber identity module card used by the recipient of services is of taxable territory;*	

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	(g)	*the location of the fixed land line through which the service is received by the recipient is in the taxable territory.*
(13)	*In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.*	

ANALYSIS

Section 13 provides for determination of place of supply of services in cases where either the location of the supplier of services or the recipient of services is outside India. Thus, this section provides the place of supply in relation to international or cross-border supply of services. Place of supply of a service is one of the factors which determines as to whether a service can be termed as import or export of service.

Similar to section 12, section 13 also lays down a default provision to determine the place of supply of services as well as few other provisions to determine place of supply of certain specific services. Thus, place of supply is determined as per

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default provision in respect of services other than the ones covered by the specific provisions.

Further, sub-section (13) of section 13 empowers the Central Government to notify services or circumstances for which the place of supply will be the place of effective use and enjoyment of service so as to prevent double taxation/non-taxation of the supply of a service.

It must be kept in mind that the provisions of section 13 discussed hereunder are all in relation to cross border supply of services.

(i) Default provision [Section 13(2)]

The default provision is applicable only if the supply of service does not fall in any of the specific cases provided in section 13.

This provision provides that the place of supply of services is **the location of the recipient of services.**

However, **if the location of the recipient of services is not available** in the ordinary course of business, the place of supply is **the location of the supplier of services.**

The provision can be summarized as under:

Nature of Supply	Place of Supply	
	Location of recipient is available	**Location of recipient is not available**
Supply of services other than the ones specified in sub-sections (3) to (13) of section 13	Location of the recipient of services	Location of the supplier of services

The principal exceptions to the above default provision relating to place of supply of cross border services are:

- Performance-based services
- Services directly in relation to immovable property
- Admission to and/or organization of events, celebrations etc.

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- Services supplied by a banking company, financial institution, non-banking financial company (NBFS) to account holders
- Intermediary services
- Hiring of means of transport other than aircrafts and vessels except yachts, up to a period of one month
- Passenger transportation services
- Services on board a conveyance during the course of a passenger transport operation
- Online information and database access or retrieval services

The place of supply of each of the above exceptions is discussed below.

(ii) Performance based services [Section 13(3)]

	Nature of Supply	Place of Supply
(i)	Services requiring physical presence of goods on which the services are to be performed	Location where the service is actually performed
	Exceptions: Services supplied in respect of goods, that are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs/treatment/process, without being put to any other use in India	❑ Location of the recipient ❑ Location of the supplier if location of recipient is not available

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	Services supplied in respect of goods, that are provided from a remote location by electronic means	Location where goods are situated at the time of supply of services
(ii)	Services supplied to an individual, which require the physical presence of the recipient	Location where the service is actually performed
(iii)	Services at (i) and (ii) above supplied at more than one location including a location in the taxable territory	Location in the taxable territory
(iv)	Services at (i) and (ii) supplied in more than one State/Union territory	Each of State /Union territory

In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India and are not put to any use in India, the place of supply would be determined as per the provisions contained in section 13(2) - *Circular No. 103/22/2019 GST dated 28.06.2019*.

(69) MX Pvt. Ltd. (New Delhi) imports a machine from Germany for being installed in its factory at New Delhi. To install such machine, MX Pvt. Ltd. takes the service of an engineer who comes to India from Germany for this specific installation. The place of supply of installation service, which requires the physical presence of machinery, is the location where the service is actually performed, i.e. New Delhi.

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(70) A mobile company located in United States of America (USA) takes services of a software company located in Bangalore for installation of a software in its mobiles in USA. The Indian software company provides its services through electronic means from its office in India. The place of supply is the location where goods (mobile phones) are situated at the time of supply of service, i.e. USA.

(71) ABC Ltd., Hyderabad has exported a machine to a company in Indonesia. The machine stops functioning and is thus, imported by ABC Ltd. for free repairs in terms of the sale contract. The machine is exported after repairs without being put to any use in India. The place of supply of repair service is the location of the recipient, i.e. Indonesia.

(72) QR Pvt. Ltd. imports raw diamonds from a diamond merchant in Belgium for the purpose of cutting, polishing and finishing the same. After the work is completed, the finished diamonds are exported to the diamond merchant in Belgium. The place of supply of the services undertaken by QR Pvt. Ltd. is the location of the recipient, i.e. Belgium.

(73) Mr. X, a hair stylist registered in New Delhi, travels to Singapore to provide his services to Ms. Y, a resident of Singapore. The place of supply is the location where the services are actually performed, i.e. Singapore.

(74) PQR Consultants, New Delhi, bags a contract for doing market research for a vehicle manufacturing company based in South Korea, in respect of its upcoming model of a car. The research is to be carried out in five countries including New Delhi in India. Since the services are supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. New Delhi.

Value of supply of service supplied in more than one State/Union territory

The value of services supplied

(i) in respect of goods requiring physical presence of such goods; and

(ii) to an individual requiring his physical presence

in each State or Union territory - where the service is performed - (when such services are supplied in more than one State/union territory) is in

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proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the service is performed) is computed in accordance with rule 7 of IGST Rules in the following manner:

S. No.	Cases	Manner of computing the proportionate value of service
(i)	Services supplied on the same goods	Equally dividing the value of service in each of the States/ Union territory where the service is performed *Refer Example 75*
(ii)	Services supplied on different goods	Considering the ratio of the invoice value of goods in each States/ Union territory, on which service is performed, as the ratio of the value of the service performed in each State/Union territory *Refer Example 76*
(iii)	Services supplied to individuals	Applying generally accepted accounting principles. *Refer Example 77*

Example 75 - Services supplied on the same goods

A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

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Example 76 – Services supplied on different goods

A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Example 77 – Services supplied to individuals

A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

(iii) Services in relation to immovable property [Section 13(4)]

Nature of Supply	Place of Supply
Services supplied **directly** in relation to an immovable property like ❑ Services of experts and estate agents ❑ Accommodation by a hotel, inn, guest house, club or campsite ❑ Grant of rights to use immovable property ❑ Construction and related services ❑ Services of architects or interior decorators	Location of immovable property located or intended to be located

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Above services supplied at more than one location, including a location in the taxable territory	Location in the taxable territory
Above services supplied in more than one State/Union territory	Each of State/Union territory

(78) Mr. C, an architect (New Delhi), provides professional services to Mr. Z of New York in relation to his immovable property located in Pune. The place of supply is the location of immovable property, i.e. Pune.

(79) Mr. C, an architect (New Delhi), enters into a contract with Mr. Z of New York to provide professional services in respect of immovable properties of Mr. Z located in Pune and New York. Since the immovable properties are located in more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. Pune.

Manner of determining value of supply of service supplied in more than one State/Union territory

The value of services supplied directly in relation to an immovable property in each State or Union territory – where the service is supplied - (when such services are supplied in more than one State/union territory) is in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the service is supplied) is computed in accordance with rule 8 of IGST Rules. Rule 8 lays down that in the absence of any such contract or agreement, the value is determined by applying the provisions of rule 4 of the said rules, *mutatis mutandis*.

Thus, the provisions for determining the proportionate value of services provided directly in relation to an immovable property under section 12(3)

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[both the supplier and the recipient are located in India] are applicable for determining the proportionate value of services directly provided in relation to an immovable property under section 13(4) [either the supplier or the recipient is located outside India] as well. *[Rule 4 prescribing the provisions for determining the proportionate value of services provided directly in relation to an immovable property under section 12(3) is discussed earlier in this chapter.]*

(iv) Services by way of admission to and/or organization of events or celebrations etc. [Section 13(5)]

Nature of Supply	Place of Supply
Services supplied by way of admission to or organisation of following: ❑ Cultural, artistic, sporting, scientific, educational, entertainment events ❑ Celebration, conference, fair, exhibition ❑ Similar events	Place where the event is actually held
Services ancillary to such admission or organization of event	
Above services supplied at more than one location, including a location in the taxable territory	Location in the taxable territory
Above services supplied in more than one State/Union territory	Each of State/Union territory

(80) A circus team from Russia organizes a circus in New Delhi. The place of supply is the location where the event is actually held, i.e. New Delhi.

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(81) An event management company registered in New Delhi organises an art exhibition displaying works of an international painter based in Dubai. The exhibition is organised in 3 countries including New Delhi in India. Since the service is supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory, i.e. New Delhi.

Manner of determining value of supply of service supplied in more than one State/Union territory

The value of services supplied by way of admission to or organisation of an event in each State or Union territory – where the service is supplied - (when such services are supplied in more than one State/union territory) is in proportion to the value for services determined in terms of the contract or agreement entered into in this regard.

Manner of determining proportionate value of service in the absence of a contract or agreement

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services supplied in different States/Union territories (where the service is supplied) is computed in accordance with rule 9 of IGST Rules.

Rule 9 lays down that in the absence of any such contract or agreement, the value is determined by applying the provisions of rule 5 of the said rules, *mutatis mutandis*.

Thus, the provisions for determining the proportionate value of services supplied by way of organization of an event under section 12(7) [both the supplier and the recipient are located in India] are applicable for determining the proportionate value of services supplied by way of admission to or organization of an event under section 13(5) [either the supplier or the recipient is located outside India] as well. *[Rule 5 prescribing the provisions for determining the proportionate value of services supplied by way of organization of an event under section 12(7) discussed earlier in this chapter.]*

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(v) Banking and financial services, intermediary services and hiring of means of transport [Section 13(8)]

Nature of Supply	Place of Supply
Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders *[See definition of these terms in Explanation to sub-section (8) of section 13]*	Location of the supplier of services
Intermediary *[See definition]* services	
Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of 1 month	

Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory is exempt from GST vide Notification No. 9/2017 IT(R) dated 28.06.2017[3].

(82) Mr. C, a non-resident, has an NRE account with Varanasi Bank (registered in Uttar Pradesh) in India. The place of supply of banking services provided by the Varanasi Bank to Mr. C, a non-resident customer, is the location of the supplier of service, i.e. Varanasi.

[3] *This exemption is subject to conditions specified in Notification No. 9/2017 IT(R) dated 28.06.2017 which has been discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.*

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(83) XYZ & Sons, Kolkata, is an agent who facilitates supply of goods between foreign customers and Indian sellers. The place of supply of intermediary services is the location of the supplier of services, i.e. Kolkata.

(84) Mr. D, an unregistered person based in New Delhi hires a yacht from a company based in London, UK for 20 days. The place of supply is the location of the supplier of services, i.e. London.

(vi) Transportation services [Sub-sections (10) and (11) of section 13]

Nature of Supply	Place of Supply
Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey *[See definition]*
Services provided on board a conveyance during passenger transportation including services intended to be wholly or substantially consumed while on board	First scheduled point of departure of that conveyance for the journey

The place of supply of supply of services of transportation of goods, where location of supplier or location of recipient is outside India will be governed by the default provision section 13(2) *[discussed earlier]*.

(85) Mr. A, a foreign tourist, has booked a ticket for New Delhi-Sri Lanka flight from an airlines registered in New Delhi for a continuous journey without any stopover. The place of supply of services by airlines is the place where the passenger embarks on the conveyance for a continuous journey, i.e. New Delhi.

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(vii) Online information and database access or retrieval services (OIDAR) [Section 13(12)]

The place of supply of OIDAR *[See definition]* is the location of the recipient of services.

It is difficult to determine the location of the recipient in case of OIDAR as such recipients normally access the services online and are not required to disclose their location.

The explanation to sub-section (12) lays down 7 conditions. On satisfying any 2 non-contradictory conditions out of such seven conditions, the service recipient is deemed to be located in the taxable territory, i.e. India.

The **seven conditions** are:

(a) the recipient gives an Indian address through internet;

(b) the payment is settled by an Indian credit card/debit card/other card;

(c) the recipient has an Indian billing address;

(d) the computer/other device used by the recipient has an Indian IP address;

(e) the recipient uses an Indian bank account for payment;

(f) the country code of the subscriber identity module card used by the recipient of services is of India;

(g) the recipient receives the service through an Indian fixed land line.

(viii) Notified services [Section 13(13)]

In order to prevent double taxation or non-taxation of supply of any service, section 13(13) empowers the Government to notify any service for which the place of supply shall be the place of effective use and enjoyment of service.

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The following services have been notified[4] in this regard:

(1) Research and development services related to pharmaceutical sector

The following research and development services related to pharmaceutical sector [as specified in columns (2) and (3) from Sl. No. 1 to 10 of the table given below] when supplied by a person located in taxable territory to a person located in the non-taxable territory, have been notified as the services for which the place of supply shall be the place of effective use and enjoyment of a service as specified in the corresponding entry in column (4) of the table given below:

Sl. No.	Nature of supply	General description of supply	Place of supply
(1)	(2)	(3)	(4)
1.	Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.	When research and development services related to pharmaceutical sector as specified in columns (2) and (3) from Sl. No. 1 to 10 of this table are supplied by a person located in taxable territory to a person located in the non-taxable territory, the
2.	Integrated development		
3.	Evaluation of the efficacy of new chemical/ biological	This is in vivo research (i.e. within the animal) and involves development of	

[4] *vide Notification No. 04/2019 IT dated 30.09.2019*

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	entities in animal models of disease	customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.	place of supply shall be the location of the recipient of services subject to fulfillment of the following conditions:- (i) Supply of services from the taxable territory is provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory. (ii) Such supply of services fulfills all other conditions in the
4.	Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions.	
5.	Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new	

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		drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.	definition of export of services, except the condition that place of supply is outside India.
6.	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.	
7.	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.	

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8.	Bio-equivalence and Bioavailability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.	
9.	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of	

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		information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage	
10.	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.	

(2) B2B MRO services of aircrafts or aircraft engines/ components/ parts

Description of services or circumstances	Place of supply
Supply of maintenance, repair or overhaul service (hereinafter referred as MRO service) in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business	Location of the recipient of service

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(3) B2B MRO services of ships and other vessels, their engines and other components

Description of services or circumstances	Place of supply
Supply of MRO service in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service

7. CLARIFICATIONS ON PLACE OF SUPPLY

(1) Place of supply of the goods (particularly being supplied through e-commerce platform) to unregistered persons where billing address is different from the address of delivery of goods

Issue: Mr. A (unregistered person) located in X State places an order on an e-commerce platform for supply of a mobile phone, which is to be delivered at an address located in Y State. Mr. A, while placing the order on the e-commerce platform, provides the billing address located in X State. In such a scenario, what would be the place of supply of the said supply of mobile phone, whether the State pertaining to the billing address i.e. State X or the State pertaining to the delivery address i.e. State Y?

Clarification: As per the provisions of section 10(1)(ca) [discussed earlier in this chapter], the **place of supply of goods shall be the address of delivery of goods recorded on the invoice** i.e. State Y in the present case where the delivery address is located.

Also, in such cases involving supply of goods to an unregistered person, where the billing address and delivery address are different, the supplier may record the delivery address as the address of the recipient on the invoice for the purpose of determination of place of supply of the said supply of goods[5].

[5] *Circular No. 209/3/2024 GST dated 26.06.2024*

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(2) Place of supply in respect of various cargo handling services provided by ports to clients

The port authorities provide various services to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.

It is clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in section 12(2) or section 13(2), as the case may be, depending upon the terms of the contract between the supplier and recipient of such services[6].

(3) Place of supply in case of software/ design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry

A number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.

[6] *Circular No. 103/22/2019 GST dated 28.06.2019*

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In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.

The question arose whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of "goods required to be made physically available by the recipient to the provider".

It is observed that in contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.

Therefore, *Circular No. 118/37/2019 GST dated 11.10.2019* clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per section 13(2). Provisions of section 13(3)(a) do not apply separately for determining the place of supply for ancillary supply in such cases.

(4) Clarification on doubts related to scope of "Intermediary"

Circular No. 159/15/2021 GST dated 21.09.2021 has clarified the doubts related to the intermediary [See definition] services. The circular clarifies that the concept of intermediary services requires following basic prerequisites:

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(i) **Minimum of three parties:** By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons.

It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service.

An intermediary essentially "arranges or facilitates" another supply (the "main supply") between two or more other persons and, does not himself provide the main supply.

(ii) **Two distinct supplies:** As discussed above, there are two distinct supplies in case of provision of intermediary services:

(1) **Main supply**, between the two principals, which can be a supply of goods or services or securities;

(2) **Ancillary supply**, which is the service of facilitating or arranging the main supply between the two principals.

This ancillary supply is the supply of intermediary service and is clearly identifiable and distinguished from the main supply.

A person involved in supply of main supply on principal-to-principal basis to another person cannot be considered as supplier of intermediary service.

(iii) **Intermediary service provider to have the character of an agent, broker/any other similar person:** The definition of "intermediary" itself provides that "intermediary service provider means a broker, an agent or any other person, by whatever name called....".

This part of the definition is not inclusive but uses the expression "means" and does not expand the definition by any known expression of expansion such as "and includes".

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The use of the expression **"arranges or facilitates"** suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the **role of intermediary is only supportive**.

(iv) Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary "does not include a person who supplies such goods or services or both or securities on his own account".

Use of word **"such"** in the definition with reference to supply of goods or services **refers to the main supply** of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary.

It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of "intermediary".

(v) Sub-contracting for a service is not an intermediary service: The supplier of main service may outsource the supply of the main service, either fully or partly, to one or more sub-contractors.

Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly **is not an intermediary**.

example

(86) 'A' and 'B' have entered into a contract as per which 'A' needs to provide a service of, say, annual maintenance of tools and machinery to 'B'. 'A' subcontracts a part or whole of it to 'C'. Accordingly, 'C' provides the service of annual maintenance to 'A' as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of 'A', i.e. to 'B' on behalf of 'A'.

Though 'C' is dealing with the customer of 'A', but 'C' is providing the main supply of annual maintenance service to 'A' on his own account, i.e. on principal to principal basis.

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In this case, 'A' is providing supply of annual maintenance service to 'B', whereas 'C' is supplying the same service to 'A'. Thus, **supply of service by 'C' will not be considered as an intermediary.**

(vi) The specific provision of place of supply of 'intermediary services' under section 13 shall be invoked only when either the location of supplier of intermediary services or location of the recipient of intermediary services is outside India.

Applying the abovementioned guiding principles, the issue of intermediary services is clarified through the following examples:

(87) 'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

(88) 'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

(89) An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service,

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and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of section 2(13).

(90) 'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

The examples given above are only indicative and not exhaustive. **Whether or not a specific service would fall under intermediary services within the meaning of section 2(13), would depend upon the facts of the specific case. While examining the facts of the case and the terms of contract, the basic characteristics of intermediary services, as discussed in preceding paras, should be kept in consideration.**

(5) Place of supply in case of supply of service of transportation of goods, including through mail and courier where either supplier/recipient is outside India

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As seen earlier in this chapter, there is no specific provision for determining the place of supply of service of transportation of goods, including through mail and courier in cases where location of supplier of services or location of recipient of services is outside India. Thus, the place of supply of said services will be determined by the default rule under section 13(2). Accordingly, in cases where the location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services[7].

(6) Place of supply in case of supply of services in respect of advertising sector

Advertising companies are often involved in procuring space on hoardings/ bill-boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:

(i) **Issue:** There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?

Clarification: The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a).

[7] *Circular No. 203/15/2023 GST dated 27.10.2023*

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As per section 12(3)(a) discussed earlier in this chapter, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or coordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.

(ii) **Issue:** There may be another case where the advertising company wants to display its advertisement on hoardings/ billboards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ billboards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location.

During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?

Clarification: In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property.

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Accordingly, the place of supply of the same shall not be covered under section 12(3)(a). Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location.

Therefore, such services provided by the vendor to advertising company are purely in the nature of advertisement services in respect of which place of supply shall be determined in terms of section 12(2) [discussed earlier in this chapter][8].

(7) Clarification on place of supply of custodial services[9] provided by banks to Foreign Portfolio Investors (FPIs)

Banks enter into custodial agreements with the FPIs for the provision of the custodial services. The main activity carried out by banks as a custodian is maintaining the account of the securities held by the FPIs. Custodial services to FPIs involve keeping their investments safe and handling transactions, like buying and selling stocks. This makes it easier for FPIs to invest in another country without worrying about the regulatory requirements.

It is important to note that section 13(8)(a) covers a situation where services are supplied by banking company or a financial institution or a non-banking company to account holders. However, custodial services are not considered to be covered under the services provided by bank to account holders, but have been considered to be covered under the services which are not provided to account holder.

Thus, the custodial services provided by banks or financial institutions to FPIs are not to be treated as services provided to 'account holder'. Therefore, the said services are not covered under section 13(8)(a) and

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[8] *Circular No. 203/15/2023 GST dated 27.10.2023*

[9] *According to the SEBI (Custodian of Securities) Regulations 1996:*

'Custodial Services' *in relation to securities means safekeeping of securities of a client and providing services incidental thereto, and includes-*

- *maintaining accounts of securities of a client;*
- *collecting the benefits or rights accruing to the client in respect of securities;*
- *keeping the client informed of the actions taken or to be taken by the issuer of securities, having a bearing on the benefits or rights accruing to the client; and*
- *maintaining and reconciling records of the services referred above.*

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the place of supply of custodial services will not be determined under section 13(8)(a). Therefore, the place of supply of such services is to be determined under the default provision i.e., section 13(2)[10].

(8) Place of supply of advertising services provided to foreign clients

A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In short, the advertising agency provides a one-stop solution to the client who outsources the entire activity to the agency.

In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client.

In this regard, following has been clarified:

Issue 1 -Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as per section 2(13)?

[10] *Circular No. 220/14/2024 GST dated 26.06.2024*

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Clarification: The advertising agency, in this case, enters into two agreements:

I. With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in the media as agreed to with the client. The advertising company raises invoice to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.

II. With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by the media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company.

Thus, the agreement, in the instant case, is in the nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the media company and the foreign client. Thus, the advertising company is not acting as an agent but is providing the services to the client on its own account. In view of above, it is clarified that in the present scenario, the advertising company does not fulfil the criteria of "intermediary" under section 2(13).

Issue-2 Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "recipient" of the services being supplied by the advertising company under section 2(93) of the CGST Act, 2017?

Clarification: As per section 2(93)(a) of the CGST Act, the "recipient" of the services means the person who is liable to pay consideration where a consideration is payable for the supply of goods or services or both.

In the instant scenario, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India.

Further, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India can also not be considered

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as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client.

Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements, as per section 2(93) of the CGST Act, 2017.

Issue-3 Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)?

Clarification: In the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with the supplier of advertising services. Therefore, the provisions of section 13(3)(a) [discussed earlier] cannot be made applicable for determination of place of supply of advertising services. Further, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services. Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) [discussed earlier].

In view of the above discussion, the place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e. section 13(2), i.e. the location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e. outside India as per section 13(2), and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6)[11].

[11] *Circular No. 230/24/2024 GST dated 10.09.2024*

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(9) Place of supply in cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client

In cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client, the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client.

The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

Consequently, in such cases, the advertising company is an "intermediary" in accordance with section 2(13) of the CGST Act, 2017, [as elucidated in Circular No. 159/15/2021GST discussed above in respect of the said services of facilitating the foreign client] and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b), i.e. the location of the supplier, i.e. the location of the advertising company[12].

(10) Place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India

Data Hosting Service Providers (DHSPs) in India offer storage space and technical infrastructure to hold data for foreign Cloud Computing Service Providers (CCSPs). These CCSPs rely on Indian data centers to securely store and manage large amounts of information. This allows

[12] *Circular No. 230/24/2024 GST dated 10.09.2024*

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them to serve their clients without having their own physical storage in India. Under this business model,

1. A contract is entered into between CCSPs and DHSPs wherein CCSPs will use the data centres of DHSPs for hosting cloud computing services.

DATA HOSTING SERVICES

2. DHSP either:
   - owns premises for data centre or
   - operates data centre on leased premises.
3. It independently:
   - procures infrastructure and human resource, and
   - handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. (even in case where some hardware is provided by CCSPs),
   - handles operations like infrastructure monitoring, IT management and equipment maintenance, etc.

   to provide the said supply of data hosting services to CCSPs.
4. There is no contact between DHSP and the end users/consumers/subscribers of the foreign CCSP.
5. DHSP provides data hosting services to the CCSPs:
   - on a web platform through computing and networking equipment
   - for the purpose of:
     - ❑ collecting,
     - ❑ storing,
     - ❑ processing,
     - ❑ distributing or
     - ❑ allowing access to

     large amounts of data.

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6. Data hosting services are:

- not passive supply of a service directly in respect of immovable property,
- comprehensive services related to data hosting which involves the supply of various services by DHSP like :
  - ❑ operating data center,
  - ❑ ensuring uninterrupted power supplies,
  - ❑ backup generators, network connectivity, backup facility,
  - ❑ firewall services
  - ❑ monitoring and surveillance service

  for ensuring continuous operations of the servers and related hardware, etc.

  which are essential for CCSP to provide cloud computing services to end users/ customer/ subscribers.

CLOUD COMPUTING SERVICES

7. CCSP provides cloud-based applications and software services to various end users/ customers/ subscribers for data storage, analytics, artificial intelligence, machine learning, processing, database analysis and deployment services, etc.

8. The end users/ customers/ subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers.

CLARIFICATION

With regard to data hosting services, it is observed that:

(a) DHSP provides data hosting services to the CCSP on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between CCSPs and their end users/consumers.

(b) Data hosting services provided by DHSP to the said CCSPs cannot be considered in relation to the goods "made available" by the said CCSPs to the DHSP in India.

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(c) Data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises.

In terms of the above discussion, it is inferred and clarified that the place of supply in such cases needs to be determined according to the default provision under section 13(2), i.e. the location of the recipient of the services.

Thus, where the CCSP receiving the data hosting services are located outside India, the place of supply will be considered to be outside India. Accordingly, supply of data hosting services being provided by a DHSP located in India to an overseas CCSP can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6)[13].

The above discussion has been depicted by way of a diagram below:

[13] *Circular No. 232/26/2024 GST dated 10.09.2024*

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After understanding the concept of **'place of supply'** and meaning of the **'location of the supplier'**, you will now be in a position to better appreciate the meaning of the terms - **inter-State supply, intra-State supply and supply in course of territorial waters**. Therefore, these terms have been discussed in detail hereunder:

8. INTER-STATE SUPPLY [SECTION 7 OF THE IGST ACT]

STATUTORY PROVISIONS

Section 7	*Inter-State Supply*
Sub-section	*Particulars*
(1)	*Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—* *(a) two different States;* *(b) two different Union territories; or* *(c) a State and a Union territory,* *shall be treated as a supply of goods in the course of inter-State trade or commerce.*
(2)	*Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.*
(3)	*Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—* *(a) two different States;* *(b) two different Union territories; or* *(c) a State and a Union territory,* *shall be treated as a supply of services in the course of inter-State trade or commerce.*

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(4)	*Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*
(5)	*Supply of goods or services or both,—* *(a) when the supplier is located in India and the place of supply is outside India;* *(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or* *(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,* *shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.*

ANALYSIS

This section provides as to when the supplies of goods and/or services shall be treated as **Supply in the course of inter-State trade/commerce**.

A. SUPPLY OF GOODS' in the course of inter-State trade/commerce [Section 7(1) and (2)]

It primarily covers two kinds of supplies – Supply of goods within India and supply of goods imported into India. The two categories of supplies are discussed hereunder:

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(i) Supplies within India

Supply of goods shall be considered as supply of goods in course of inter-State trade or commerce in the following cases:

The above concept can be easily understood with the help of following examples. In each of the following cases, supplies of goods shall be treated as supply of goods in course of inter-State trade/commerce.

(ii) Supplies from outside India

Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be considered as supply of goods in the course of inter-State trade or commerce. Import of goods, means bringing goods into India from a place outside India. Thus, all imports shall be deemed as inter-State supplies and accordingly IGST shall be levied on the imported goods in addition to the applicable custom duties.

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B. 'SUPPLY OF SERVICES' in the course of inter-State trade/commerce [Section 7(3) and 7(4)]

It primarily covers two kinds of supplies – supply of services within India and import of services into India. The two categories of supplies are discussed hereunder:

(i) Supplies within India

Supply of services shall be considered as supply of services in course of inter-State trade or commerce in the following cases:

(ii) Import of services into India

Supply of services which are imported into territory of India, shall be treated as supply of services in the course of inter-State trade or commerce. The term 'import of services' has been defined under section 2(11) of the IGST Act as supply of any service where the supplier is located outside India, the recipient is located in India, and the place of supply of service is in India.

From the aforesaid discussion, it can be inferred that import of goods or services[14] shall be treated as inter-State supplies and would be subject to IGST.

[14] *Provisions relating to import of goods/services have been discussed in detail in Chapter 14 – Import and Export under GST in Module 3 of this Study Material.*

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C. SUPPLY OF GOODS OR SERVICES OR BOTH in the course of inter-State trade or commerce [Section 7(5)]

Certain supplies are treated as supplies in the course of inter-State trade or commerce, and shall equally apply to supply of goods and to supply of services. These have been discussed hereunder:

I. Supply of goods or services or both when the supplier is located in India and the place of supply is outside India

It is important to note here that in this case, location of recipient is not material to qualify as supply in the course of inter-State trade or commerce. However, such supplies of goods and/or services need to satisfy some more conditions to qualify as export of goods and/or services[15].

II. Supply of goods or services or both to or by a Special Economic Zone developer/ Special Economic Zone unit

SEZ is a geographically bound zone within India where the economic laws relating to export and import are more liberal as compared to other parts of the country. For all tax purposes, SEZ is considered to be a place outside India. Any supplies made to SEZ unit/developer or vice versa are inter-State supplies. It is noteworthy that place of supply is not relevant in case of supplies to/from an SEZ unit or developer.

Further, supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit are zero-rated supplies [Section 16 of the IGST Act] – *Discussed in detail in Chapter 14 – Import and Export under GST*.

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[15] *Provisions relating to export of goods/services have been discussed in detail in Chapter 14 – Import and Export under GST in Module 3 of this Study Material.*

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The same can be understood with the help of the following example:

III. Supply of goods and/or services in the taxable territory, not being an intra-State supply & not covered elsewhere in this section

This is a residuary clause and shall cover all supplies in taxable territory which are neither covered under any provisions [enumerated above] determining inter-State supplies nor are intra-State supplies.

9. INTRA-STATE SUPPLY [SECTION 8 OF THE IGST ACT]

STATUTORY PROVISIONS	
Section 8	***Intra-State Supply***
Sub-section	***Particulars***
(1)	*Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:*

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	Provided that the following supply of goods shall not be treated as intra-State supply, namely:- *(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;* *(ii) goods imported into the territory of India till they cross the customs frontiers of India; or* *(iii) supplies made to a tourist referred to in section 15.*
(2)	*Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply.* *Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.*
	Explanation 1. - For the purposes of this Act, where a person has, - *(i) an establishment in India and any other establishment outside India;* *(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or* *(iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory,* *then such establishments shall be treated as establishments of distinct persons.*
	Explanation 2. - A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

ANALYSIS

This section provides as to when the supplies of goods and/or services shall be treated as **intra-State supply**.

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A. Which supplies of goods/services shall be treated as intra-State supplies? [Section 8(1) and 8(2) of the IGST Act]

Supply of goods/services where the location of the supplier and the place of supply of goods/services are in the same State or same Union territory shall be treated as intra-State supply. Such supplies are exigible to CGST and SGST.

The concept discussed above has been explained by way of following examples:

(91)

Location of Supplier	Place of Supply	Whether qualifies as intra-State supply?
Punjab	Punjab	Yes
London	Delhi	No
Delhi	Gujarat	No
Puducherry	Puducherry	Yes

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B. Exclusions [Proviso to section 8(1) and proviso to section 8(2) of the IGST Act]

Certain supplies of goods/services shall not be treated as intra-State supplies even when the location of supplier and place of supply fall within the same State/ Union Territory. These supplies are as under:

- **Supply of goods/services to or by SEZ Unit or SEZ Developer:** Supply of goods/services to/by a SEZ developer/unit or supply to a SEZ developer/unit shall not be treated as intra-State supply. As already discussed in this chapter, such supplies shall be treated as supply in course of inter-State trade or commerce.

- **Supply of goods made to a tourist [referred to in section 15 of the IGST Act]:** shall not be considered as intra-State supply. Explanation to section 15 defines tourist as a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

  (95) George, a tourist from USA, visits India and purchases a shawl in Delhi. In this case, even though the place of supply and location of supplier are in the same State, it will be treated as inter-State transaction and will be exigible to IGST.

- **Goods imported in India:** Goods imported into the territory of India till they cross the customs frontiers of India are supplies in course of inter-State trade/commerce and thus, are excluded from the definition of intra-State supplies.

C. Establishments of distinct persons

Establishments of same entity shall be considered as establishments of distinct persons where a person has:

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory.

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Thus, any supply between any of the above establishments shall be treated as supply between establishments of distinct persons. Further, a person carrying on a **business through a branch or an agency or a representational office** in any territory shall be treated as having an **establishment in that territory**.

10. SUPPLIES IN TERRITORIAL WATERS [SECTION 9 OF THE IGST ACT]

STATUTORY PROVISIONS

Section 9	*Supplies in territorial waters*
	Notwithstanding anything contained in this Act - *(a) where the location of the supplier is in the territorial waters, the location of such supplier; or* *(b) where the place of supply is in the territorial waters, the place of supply,* *shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.*

ANALYSIS

This section determines the location of supplier and/or the place of supply when such location of supplier and/or the place of supply is in territorial waters. Before that, let us understand the term "territorial waters".

The term '**Territorial waters**' has not been defined in the GST law. However, as per United Nations Convention on the Law of the Sea, the term **'territorial sea'** is a belt of coastal waters extending atmost 12 nautical miles from the baseline of a coastal state.

Section 3(2) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 stipulates that the limit of territorial waters is

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the line every point of which is at a distance of 12 nautical miles from the nearest point of the appropriate base line. *Refer the pictorial diagram showing 'territorial waters' given on page 3.6 earlier in this chapter.*

Section 9 of the IGST Act provides that where the location of the supplier is in the territorial waters, it shall be deemed that location of such supplier is in the coastal State or Union Territory where the nearest point of the appropriate baseline is located. Similarly, in case where the place of supply is in territorial waters, the place of supply shall be deemed to be in the coastal State or Union Territory where the nearest point of the appropriate baseline is located.

LET US RECAPITULATE

A. Place of supply of goods other than import and export [Section 10]

S. No.	Nature of Supply	Place of Supply
1.	Where the supply involves the movement of goods, whether by the supplier or the recipient or by any other person	Location of the goods at the time at which, the movement of goods terminates for delivery to the recipient
2.	Where the goods are delivered to the recipient or any person on the direction of the third person by way of transfer of title or otherwise	Principal place of business of such third person
3.	Where there is no movement of goods either by supplier or recipient	Location of such goods at the time of delivery to the recipient
4.	Where supply is made to unregistered persons and the address of such person is recorded in the invoice.	Location as per address of unregistered person recorded in the invoice

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		(Simply mentioning the State of such person instead of complete address would be sufficient.)
5.	Where supply is made to unregistered persons and the address of such person is not recorded in the invoice	Location of the supplier
6.	Where goods are assembled or installed at site	Place where the goods are assembled or installed
7.	Where the goods are supplied on-board a conveyance like a vessel, aircraft, train or motor vehicle	Place where such goods are taken on-board the conveyance
8.	Where the place of supply of goods cannot be determined in terms of the above provisions	To be determined in the prescribed manner

B. Place of supply of goods imported into, or exported from India [Section 11]

S. No.	Nature of Supply of Goods	Place of Supply
1.	Import	Location of importer
2.	Export	Location outside India

C. Place of supply of services where location of supplier AND recipient is in India [Section 12]

(i) In respect of the following 12 categories of services, the place of supply is determined with reference to a proxy; rest of the services are governed by the default provision.

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S. No.	Nature of Service	Place of Supply
1.	Immovable property related-services including accommodation in hotel/boat/vessel	❑ Location at which the immovable property or boat or vessel is located or intended to be located ❑ If located outside India: Location of the recipient
	If the immovable property or boat or vessel is located in more than one State	Each such State in proportion to the value of services provided in each State – *Refer point (ii) below*
2.	Restaurant and catering services, personal grooming, fitness, beauty treatment and health service	Location where the services are actually performed
3.	Training and performance appraisal	❑ B2B: Location of such registered person ❑ B2C: Location where the services are actually performed
4.	Admission to an event or amusement park	Place where the event is actually held or where the park or the other place is located
5.	Organisation of an event including ancillary services and assigning of sponsorship to such events	❑ B2B: Location of such registered person ❑ B2C: Location where the event is actually held If the event is held outside India: Location of the recipient
	If the event is held in more than one State (in	Each such State in proportion to the value of services provided in

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	cases of unregistered recipient)	each State – *Refer point (iii) below*
6.	Transportation of goods, including mails or courier	❑ B2B: Location of such registered person ❑ B2C: Location at which such goods are handed over for their transportation
7.	Passenger transportation	❑ B2B: Location of such registered person ❑ B2C: Place where the passenger embarks on the conveyance for a continuous journey
8.	Services on board a conveyance	Location of the first scheduled point of departure of that conveyance for the journey
9.	Banking and other financial services including stock broking	❑ Location of the recipient of services in the records of supplier ❑ Location of the supplier of services if location of recipient of services is not available
10.	Insurance services	❑ B2B: Location of such registered person ❑ B2C: Location of the recipient of services in the records of the supplier
11.	Advertisement services to the Government	❑ Each of States/Union territory where the advertisement is broadcasted/ displayed/ run/ disseminated ❑ Proportionate value in case of multiple States – *Refer point (iv) below*

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12.	Telecommunication services	❑ Services involving fixed line, leased and internet leased circuits, dish antenna etc: Location of such fixed equipment ❑ Post-paid mobile/ internet services: Location of billing address of the recipient and if the same is not available, location of supplier ❑ Pre-paid mobile/ internet/DTH services provided: • Through selling agent/ re-seller/ distributor: Address of such selling agent/ re-seller/ distributor in the records of supplier at the time of supply • By any person to final subscriber: Location where pre-payment is received or place of sale of vouchers • When payment made through electronic mode - Location of recipient in records of supplier ❑ Other cases: Address of the recipient in the records of the supplier and if the same is not available, location of supplier
	If the leased circuit is installed in more than one State	Each such State in proportion to the value of services provided in each State – *Refer point (v) below*

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(ii) Manner of determining proportionate value of immovable property related service attributable to different States/ Union territories – where the immovable property/ boat/ vessel is located - in the absence of a contract or agreement in this regard.

S. No.	Type of service in relation to immovable property	Factor determining the proportionate value of service
(a)	Service provided by way of lodging accommodation by hotel/ inn/guest house etc. and its ancillary services (other than the cases where such property is a single property located in 2 or more contiguous States/ Union territories or both)	Number of nights stayed in such property
(b)	All other services provided in relation to immovable property including organising any marriage or reception etc., accommodation in a single property located in 2 or more contiguous States or/and Union territories, services ancillary to such services	Area of the immovable property lying in each State/ Union territories
(c)	Services by way of lodging accommodation by a house boat or vessel and its ancillary services	Time spent by the boat or vessel in each such State/ Union territories, to be determined on the basis of declaration made by the service provider

(iii) Manner of determining proportionate value of service relating to organization of event, attributable to different States/Union territories – where the event is held - in the absence of a contract or agreement in this regard

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(iv) Manner of determining proportionate value of advertisement service attributable to different States/Union territories – where the advertisement is broadcasted/ run /played/disseminated - in the absence of a contract or agreement in this regard

Sl. No.	Type of advertisement	Proportionate value of service
1.	Advertisements in newspapers and publications	Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/Union territory
2.	Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.	Amount payable for the distribution of a specific number of such material in each State/Union territory
3.	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory
4.	Advertisements on trains	Amount attributable to each State/Union territory calculated in the ratio of length of the railway track in each of such State/Union territory, for that train

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5.	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/Union territory for the advertisements on bills pertaining to consumers having billing addresses in each of such State/Union territory
6.	Advertisements on railway tickets	Amount attributable to each State/Union territory calculated in the ratio of number of Railway Stations in each of such State/Union territory
7.	Advertisements on radio stations	Amount payable to such radio station, which by virtue of its name is part of each State/Union territory
8.	Advertisement on television channels	Amount attributable to each State/Union territory calculated on the basis of the viewership of such channel in each of such State/ Union territory. Viewership figures for the last week of a given quarter as published by BARC can be used for calculating viewership for the succeeding quarter. Figures pertaining to more than one State/Union territory are apportioned in ratio of the populations of those States/Union territories, as per the latest Census.
9.	Advertisements in cinema halls	Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory.
10.	Advertisements on internet It is deemed that such service is	Amount attributable to each State/Union territory calculated on the basis of the internet subscribers in each of such State/ Union territory.

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	provided all over India.	Internet subscriber figures for the last quarter of a given financial year as published by TRAI can be used for calculating the subscribers for the succeeding financial year. Figures pertaining to more than one State/Union territory are apportioned in the ratio of the populations of those States/Union territories, as per the latest census.
11.	Advertisements through SMS	Amount attributable to each State/Union territory calculated on the basis of the telecom subscribers in each of such State/ Union territory. Telecom subscribers figures in a telecom circle for a given quarter as published by TRAI can be used for calculating the subscribers for the succeeding quarter. Figures pertaining to a telecom circle comprising of more than one State/Union territory are apportioned in the ratio of the populations of those States/Union territories, as per the latest census.

(v) Manner of determining proportionate value of service relating to installation of a leased circuit, attributable to different States/Union territories – where the circuit is installed - in the absence of a contract or agreement in this regard

Installation of leased circuit → Proportionate value of such service computed on the basis of → **Number of points lying in the State/ Union territory**

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(vi) For the rest of the services other than those specified above, the default provision has been prescribed as under:

Default provision for the services other than the 12 specified services		
S. No.	**Description of Supply**	**Place of Supply**
1.	B2B	Location of such registered person
2.	B2C	❑ Where the address on record exists: Location of the recipient ❑ Other cases: Location of the supplier of services

D. Place of supply of services where location of supplier OR location of recipient is outside India [Section 13]

(i) In respect of the following categories of services, the place of supply is determined with reference to a proxy; rest of the services are governed by the default provision.

S. No.	Nature of Service	Place of Supply
1.	Services supplied in respect of goods which are required to be made physically available	Location where the services are actually performed

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	Services supplied in respect of goods but from a remote location by way of electronic means	Location where the goods are situated at the time of supply of services
	Above provisions are not applicable in case of goods that are temporarily imported into India for repairs/treatment/any process and exported after such repairs/treatment/any process without being put to any other use in India	
2.	Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services	Location where the services are actually performed
3.	Service supplied directly in relation to an immovable property including accommodation in hotel, boat, vessel	Place where the immovable property is located or intended to be located
4.	Admission to or organisation of an event	Place where the event is actually held
If the above services are supplied at more than one location, i.e. (i) Goods & individual related (ii) Immovable property-related (iii) Event related		
At more than one location, including a location in the taxable territory		Location in the taxable territory
In more than one State		Each such State in proportion to the value of services provided in each State – *Refer point (ii) below*
5.	Services supplied by a banking company, or a	Location of the supplier

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	financial institution, or a NBFC to account holders	of services
	Intermediary services	
	Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	
6.	Passenger transportation	Place where the passenger embarks on the conveyance for a continuous journey
7.	Services provided on-board a conveyance	First scheduled point of departure of that conveyance for the journey
8.	Online information and database access or retrieval services	Location of recipient of service

(ii) Manner of determining proportionate value of service relating to (1) goods & individual (2) immovable property (3) admission to/organization of event attributable to different State/Union territories– where such services are supplied - in the absence of a contract or agreement in this regard

S. No.	Cases	Manner of computing the proportionate value of service
1.	Services relating to goods & individual	
	(a) Services supplied on the same goods	Equally dividing the value of service in each of the States/ Union territory where the service is performed

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	(b) Services supplied on different goods	Considering the ratio of the invoice value of goods in each States/ Union territory, on which service is performed, as the ratio of the value of the service performed in each State/Union territory
	(c) Services supplied to individuals	Applying generally accepted accounting principles.
2.	Services directly relating to immovable property	In the same manner as is applicable for determining the proportionate value of services provided in relation to an immovable property under section 12(3)
3.	Services relating to admission to/organization of event	In the same manner as is applicable for determining the proportionate value of services provided in relation to organization of an event under section 12(7)

(iii) For the rest of the services other than those specified above, a default provision has been prescribed as under:

Default provision for the cross-border supply of services other than nine specified services		
S. No.	**Description of supply**	**Place of Supply**
1.	Any	❑ Location of the recipient of service ❑ Location of the supplier of service, if location of recipient is not available in the ordinary course of business

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(iv) Place of supply of services notified under section 13(13)

S. No.	Services notified	Place of supply
1.	Specified research and development services related to pharmaceutical sector supplied by a person located in taxable territory to a person located in the non-taxable territory	Location of recipient of services subject to fulfillment of specified conditions
2.	B2B maintenance, repair or overhaul services of aircrafts, aircraft engines/components/parts	Location of recipient of service
3.	B2B MRO services of ships and other vessels, their engines and other components/ parts	Location of recipient of service

TEST YOUR KNOWLEDGE

1. *XY Ltd. (registered in Rajasthan) received legal services from an attorney in UK (unrelated person) in relation to registration of a trademark in UK. A consideration of £ 8,000 was paid by the company to the attorney in UK.*

   Determine the place of supply for the service and suggest if XY Ltd. is required to pay tax under reverse charge on this transaction.

2. *Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organising the grand party for the launch of its new product at Bangalore. Damani Industries is registered in Mumbai. Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.*

   Will your answer be different if the product launch party is organised at Dubai?

3. *Priyank Sales of Pune, Maharashtra enters into an agreement to sell goods to Bisht Enterprises of Bareilly, Uttar Pradesh. While the goods were being packed in Pune godown of Priyank Sales, Bisht got an order from Sahil Pvt. Ltd. of*

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Shimoga, Karnataka for the said goods. Bisht Enterprises agreed to supply the said goods to Sahil Pvt. Ltd. and asked Priyank Sales to deliver the goods to Sahil Pvt. Ltd. at Shimoga.

You are required to determine the place of supply(ies) in the above situation.

4. *Musicera Pvt. Ltd. owned by Nitish Daani - a famous classical singer - wishes to organise a 'Nitish Daani Music Concert' in Gurugram (Haryana). Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising the said music concert at an agreed consideration of ₹ 10,00,000. Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of ₹ 4,00,000. Musicera Pvt. Ltd. fixes the entry fee to the music concert at ₹ 5,000. 400 tickets for 'Nitish Daani Music Concert' are sold.*

   You are required to determine the gross GST liability in respect of the supply(ies) involved in the given scenario.

   Will your answer be different if the price per ticket is fixed at ₹ 450?

   Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable.

5. *RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.*

   The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

   With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

6. *ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective*

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vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.

The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

The company has charged US $ 1,00,000 (exclusive of GST) to its foreign customer for the services provided by it. With reference to the provisions of GST law, examine whether the said supply will amount to export of service?

7. *Mr. Murthy, an unregistered person and a resident of Pune, Maharashtra hires the services of Sun Ltd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru, Karnataka.*

   (i) Determine the place of supply of services provided by Sun Ltd.

   (ii) What would be your answer if the product launch takes place in Bangkok?

   (iii) What would be your answer if Mr. Murthy is a registered person and product launch takes place in-

   (a) Bengaluru

   (b) Bangkok?

8. *Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties.*

   Determine the place of supply in the transactions below as per provisions of GST law in the following independent situations:

Case	***Location of Mr. Mahendra Goyal***	***Location of Mr. Harish Jain***	***Property situated at***
I	*Delhi*	*Maharashtra*	*New York (USA)*
II	*Delhi*	*New York*	*Paris (France)*

   Explain the relevant provisions of law to support your conclusions.

9. *Asha Enterprises, supplier of sewing machines, is located in Kota (Rajasthan) and registered for purpose of GST in the said State. It receives an order from*

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Deep Traders, located in Jalandhar (Punjab) and registered for the purpose of GST in the said State. The order is for the supply of 100 sewing machines with an instruction to ship the sewing machines to Jyoti Sons, located in Patiala (Punjab) and registered in the said State for purpose of GST. Jyoti Sons is a customer of Deep Traders. Sewing machines are being shipped in a lorry by Asha Enterprises.

Briefly explain the following:

(a) the place of supply;

(b) the nature of supply:- whether inter-State or intra-State and

(c) whether CGST/SGST or IGST would be applicable in this case.

10. Determine the place of supply for the following independent cases:

(i) Grand Gala Events, an event management company at Kolkata, organises two award functions for Narayan Jewellers of Chennai (Registered in Chennai, Tamil Nadu) at New Delhi and at Singapore.

(ii) Perfect Planners (Bengaluru, Karnataka) is hired by Dr. Kelvin (unregistered person based in Kochi, Kerala) to plan and organise his son's wedding at Mumbai, Maharashtra.

Will your answer be different if the wedding is to take place in Malaysia?

ANSWERS

1. In the given case, the service provider is outside India, and the service recipient is in India. Thus, the place of supply will be determined on the basis of the provisions of section 13. Since the given service does not get covered under any of the specific provisions of section 13, the place of supply thereof will be governed by the default provision, i.e. place of supply of services will be the location of the recipient of service, which in this case is Rajasthan (India).

Further, the given case is import of service in terms of section 2(11) as 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. Since the services are imported for a consideration from an unrelated person, the same

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tantamounts to supply in terms of section 7(1)(b) of CGST Act and are liable to GST.

As per reverse charge *Notification No. 10/2017 IT(R) dated 28.06.2017*, if a service is supplied by a person located in a non-taxable territory to a person located in the taxable territory, other than non-taxable online recipient, the tax is payable by the recipient of service under reverse charge.

Therefore, XY Ltd. will pay GST under reverse charge on £ 8000 paid by it to the attorney in UK.

2. Section 12(7)(a)(i) stipulates that when service by way of organization of an event is provided to a registered person, place of supply is the location of such person.

Since, in the given case, the product launch party at Bangalore is organized for Damani Industries (registered in Mumbai), place of supply is the location of Damani Industries, i.e. Mumbai, Maharashtra.

In case the product launch party is organised at Dubai, the answer will remain the same, i.e. the place of supply is the location of recipient (Damani Industries)– Mumbai, Maharashtra.

3. The supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) is a bill to ship to supply where the goods are delivered by the supplier [Priyank Sales] to a recipient [Sahil Pvt. Ltd. (Shimoga)] or any other person on the direction of a third person [Bisht Enterprises]. The place of supply in case of domestic bill to ship to supply of goods is determined in terms of section 10(1)(b).

As per section 10(1)(b), where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Thus, in the given case, it is deemed that the Bisht Enterprises has received the goods and the place of supply of such goods is the principal place of business of Bisht Enterprises. Accordingly, the place of supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) will be Bareilly, Uttar Pradesh.

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This situation involves another supply between Bisht Enterprises (Bareilly) and Sahil Pvt. Ltd. (Shimoga). The place of supply in this case will be determined in terms of section 10(1)(a).

Section 10(1)(a) stipulates that where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Thus, the place of supply in second case is the location of the goods at the time when the movement of goods terminates for delivery to the recipient (Sahil Pvt. Ltd.), i.e. Shimoga, Karnataka.

4. In the given situation, three supplies are involved:

(i) Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert.

(ii) Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by way of organising the music concert.

(iii) Services provided by Hotel Dumdum to Supriya (P) Ltd. by way of accommodation in the Hotel lawns for organising the music concert.

The CGST and SGST or IGST liability in respect of each of the above supplies is determined as under:

(i) As per the provisions of section 12(6), the place of supply of services provided by way of admission to, *inter alia,* a cultural event shall be the place where the event is actually held.

Therefore, the place of supply of services supplied by Musicera Pvt. Ltd. (Ludhiana, Punjab) to audiences by way of admission to the music concert is the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Ludhiana, Punjab) and the place of supply (Gurugram, Haryana) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply (400 tickets @ ₹ 5,000 per ticket) = ₹ 20,00,000

IGST @ 18% on value of supply = ₹ 20,00,000 x 18% = ₹ 3,60,000.

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(ii) Section 12(7)(a)(i) stipulates that the place of supply of services provided by way of organization of, *inter alia,* a cultural event to a registered person is the location of such person.

Therefore, the place of supply of services supplied by Supriya (P) Ltd. (Delhi) to Musicera Pvt. Ltd. (Ludhiana, Punjab) by way of organising the music concert is the location of the registered person, i.e. Ludhiana (Punjab).

Since the location of the supplier (Delhi) and the place of supply (Ludhiana, Punjab) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply = ₹ 10,00,000

IGST @ 18% on value of supply = ₹ 10,00,000 x 18% = ₹ 1,80,000

(iii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, *inter alia,* any cultural function shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Hotel Dumdum (Gurugram, Haryana) to Supriya (P) Ltd. (Delhi) by way of accommodation in Hotel lawns for organising the music concert shall be the location of the Hotel Dumdum, i.e. Gurugram, Haryana.

Since the location of the supplier (Gurugram, Haryana) and the place of supply (Gurugram, Haryana) are in the same State, CGST and SGST will be leviable. Therefore, CGST and SGST leviable will be computed as follows:

Consideration for supply = ₹ 4,00,000

CGST @ 9% on value of supply = ₹ 4,00,000 x 9% = ₹ 36,000

SGST @ 9% on value of supply = ₹ 4,00,000 x 9% = ₹ 36,000

If the price for the entry ticket is fixed at ₹ 450, answer will change in respect of supply of service provided by way of admission to music concert, as mentioned in point (i) above. There will be no IGST liability if the consideration for the ticket is ₹ 450 as the inter-State services by way of right to admission to, *inter alia,* musical performance are exempt from IGST

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vide *Notification No. 9/2017 IT (R) dated 28.06.2017*, if the consideration for right to admission to the event is not more than ₹ 500 per person. However, there will be no change in the answer in respect of supplies mentioned in point (ii) and (iii) above.

5. As per section 13(2), in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services, i.e. USA.

As per section 2(6), export of services means the supply of any service when,–

(a) the supplier of service is located in India;

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

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

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

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

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

6. Section 2(13) defines "intermediary" to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

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In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services.

If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of section 13. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of section 13.

As per section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier, i.e. the location of ABC Pvt. Ltd. which is New Delhi.

As per section 2(6) of the IGST Act, 2017, export of services means the supply of any service when,–

(a) the supplier of service is located in India;

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

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

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

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

Since, in the given case, place of supply is in India, this transaction does not tantamount to export of service.

7. (i) As per section 12(7)(a)(ii), when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Mr. Murthy] is unregistered and event is held in India, place of supply is the location

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where the event is actually held, i.e. Bengaluru, Karnataka. The location of the supplier and the location of the recipient is irrelevant in this case.

(ii) However, if product launch takes place outside India [Bangkok], the place of supply will be the location of recipient, i.e. Pune, Maharashtra.

(iii) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person in terms of section 12(7)(a)(i).

Therefore, if Mr. Murthy is a registered person, then in both the cases, i.e. either when product launch takes place in Bengaluru or Bangkok, the place of supply will be the location of recipient, i.e. Pune, Maharashtra.

8. Case I

As per section 12(3), where both the service provider and the service recipient are located in India, the place of supply of services directly in relation to an immovable property, including services provided by interior decorators is the location of the immovable property. However, if the immovable property is located outside India, the place of supply is the location of the recipient.

Since in the given case, both the service provider (Mr. Mahendra Goyal) and the service recipient (Mr. Harish Jain) are located in India and the immovable property is located outside India (New York), the place of supply will be the location of recipient, i.e. Maharashtra.

Case II

As per section 13(4), where either the service provider or the service recipient is located outside India, the place of supply of services directly in relation to an immovable property including services of interior decorators is the location of the immovable property.

Since in the given case, service provider (Mr. Mahendra Goyal) is located in India and service recipient (Mr. Harish Jain) is located outside India (New York), the place of supply will be the location of immovable property, i.e. Paris (France).

9. The supply between Asha Enterprises (Kota, Rajasthan) and Deep Traders (Jalandhar, Punjab) is a bill to ship to supply where the goods are delivered

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by the supplier [Asha Enterprises] to a recipient [Jyoti Sons (Patiala, Punjab)] on the direction of a third person [Deep Traders].

In case of such supply, it is deemed that the said third person has received the goods and the place of supply of such goods is the principal place of business of such person [Section 10(1)(b)]. Thus, the place of supply between Asha Enterprises (Rajasthan) and Deep Traders (Punjab) will be Jalandhar, Punjab.

Since the location of supplier and the place of supply are in two different States, the supply is an inter-State supply in terms of section 7, liable to IGST.

This situation involves another supply between Deep Traders (Jalandhar, Punjab) and Jyoti Sons (Patiala, Punjab). In this case, since the supply involves movement of goods, place of supply will be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, i.e. Patiala, Punjab [Section 10(1)(a)].

Since the location of supplier and the place of supply are in the same State, the supply is an intra-State supply in terms of section 8, liable to CGST and SGST.

10. (i) When service by way of organization of an event is provided to a registered person, place of supply is the location of such person in terms of section 12(7)(a)(i).

Since, in the given case, the award functions at New Delhi and Singapore are organized for Narayan Jewellers (registered in Chennai), place of supply in both the cases is the location of Narayan Jewellers, i.e. Chennai, Tamil Nadu.

(ii) As per section 12(7)(a)(ii), when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Dr. Kelvin] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e. Mumbai, Maharashtra.

However, if the wedding is to take place outside India [Malaysia], the place of supply is the location of recipient, i.e. Kochi, Kerala.

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CHAPTER 4

EXEMPTIONS FROM GST

The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- describe the power of the Government to grant exemption from CGST/IGST.
- provide an overview of the goods exempt from GST.
- identify and analyse various services exempt from GST.

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1. INTRODUCTION

When a supply of goods and/or services falls within the purview of charging section, such supply is chargeable to GST. However, for determining the liability to pay the tax, one needs to further check whether such supply of goods and/or services are exempt from tax.

Exempt supply has been defined as 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** [Section 2(47)]. **Non-taxable supply** means a supply of goods or services or both which is **not leviable to tax** under CGST Act or under the IGST Act [Section 2(78)]. Thus, under GST, a supply not leviable to tax is also included within the purview of 'exempt supply'.

Supplies not leviable to tax are alcoholic liquor for human consumption, specified petroleum products namely Petroleum Crude, High Speed Diesel, Motor spirit (commonly known Petrol), Natural Gas and Aviation Turbine Fuel.

Power to grant exemption from GST has been granted vide section 11 of the CGST Act and vide section 6 of the IGST Act. State GST laws also contain identical provisions granting power to exempt SGST. Under GST, **essential goods/services, i.e. public consumption products/services, have been exempted.** Items such as unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST. Further, essential services like health care services, education services, etc. have also been exempted.

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It is important to note that exemption under GST may be provided in any of the following manner:

(a)	**Exemption to specified activities or transactions** Sometimes, exemption is provided in respect of specified activities or transactions. Consequently, the status of the supplier or recipient of the activities/transactions becomes immaterial. **(1)** Services **by way of** transfer of a going concern, as a whole or an independent part thereof. **(2)** Services **by way of** loading, unloading, packing, storage or warehousing of rice.
(b)	**Exemption to specified suppliers** At times, exemption is given to specified suppliers only. Here, the status of recipient of the activities or transactions becomes immaterial. **(3)** Services provided **by** the Central Government, State Government, Union territory or local authority where the consideration for such services does not exceed ₹ 5,000. **(4)** Services **by** an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 by way of charitable activities.
(c)	**Exemption to specified recipients** In some cases, exemption is given to specified recipient only. Here, the status of supplier of the activities or transactions becomes immaterial. **(5)** Services provided **to** the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory. **(6)** Services provided **to** the Central Government, State Government, Union territory administration under any training programme, for which 75% or more of the total expenditure is borne by the Central Government, State Government, Union territory administration.
(d)	**Exemption to specified suppliers and specified recipients** Sometimes, exemption is given only when activities or transactions are carried out by specified suppliers for specified recipients only.

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	(7) Services **by** the Employees' State Insurance Corporation **to** persons governed under the Employees' State Insurance Act, 1948. **(8)** Services **by** National Pension System (NPS) Trust **to** its members against consideration in the form of administrative fee.

In this chapter, we shall discuss the power to grant exemption from tax under CGST Act/IGST Act, list of services exempt from GST in detail and an overview of the goods exempt from tax.

2. POWER TO GRANT EXEMPTION FROM TAX [SECTION 11 OF THE CGST ACT/SECTION 6 OF THE IGST ACT]

STATUTORY PROVISIONS

Section 11	***Power to grant exemption from tax***
Sub-section	***Particulars***
(1)	*Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council,* ***by notification****, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification*
(2)	*Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council,* ***by special order*** *in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.*

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(3)	*The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.*

Explanation––*For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.*

ANALYSIS

(i) **Exemption from payment of tax:** GST law empowers the Central Government or State Government as the case may be to grant exemption from tax. The exemption is granted on recommendation of the GST Council.

Exemption can be from whole of tax or part of tax

Exemption can be **from whole** of the tax **or part of the tax**. It should be granted in public interest.

Exemption can be granted by a notification or by a special order

Exemption can be granted to goods or services or both of any specified description, **by way of issuance of notification** either, **absolutely** [i.e. unconditional exemption; exemption is not subject to any condition(s)] or **conditionally** [i.e. exemption is subject to specified condition(s)]. Exemption may be granted **by a special order** in case of the circumstances of an **exceptional nature**.

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Unconditional exemption is mandatory

Conditional exemption is optional

The **absolute/ unconditional exemption is mandatory** in nature. Where the supply of the goods or services or both are **unconditionally exempted from *whole of the tax***, the registered person doesn't have option to collect and pay tax on such supply of goods or services or both. Where the supply of the goods or services or both are **unconditionally exempted from *part of the tax***, the registered person doesn't have option to collect and pay the tax, in excess of the effective rate, on such supply of goods or services or both.

However, where the **exemption is conditional**, it is **at the option** of the registered person whether to avail the same or not.

The above provisions have been explained by way of a diagram as follows:

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(ii) Explanation inserted within 1 year, for the purpose of clarifying the scope or applicability of any notification/order, to have retrospective effect: Wherever the Government feels that there is a need to clarify the scope or applicability of any notification/order issued under this section, it can issue an explanation within 1 year of issue of said notification/ order. Such explanation shall have effect as if it was there when first such notification/ order was issued, i.e. explanation so inserted would be effective retrospectively.

It is hereby clarified that the explanation so inserted for a particular entry in the notification, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.

(9) Principal *Notification No. 11/2017 CT (R) dated 28.06.2017*[1] came into force with effect from 01.07.2017. Thereafter, a new entry - Entry no. 3(vi) was inserted w.e.f. 21.09.2017. Subsequently, an explanation was also inserted with respect to entry no. 3(vi) by issue of a notification on 26.07.2018 [i.e. within 1 year of the insertion of entry 3(vi)].

Although the effective date mentioned in the notification which inserted said explanation was 27.07.2018, said explanation will be effective from the inception of entry 3(vi) in notification i.e. 21.09.2017 and not 27.07.2018.

[Circular No. 120/39/2019 GST dated 11.10.2019]

Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.

[1] *This notification notifies the rate of tax on services.*

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3. GOODS EXEMPT FROM TAX

A list of items has been notified under section 11(1) of the CGST Act, 2017/ section 6(1) of the IGST Act, 2017. These items have been exempted from whole of the tax.

Under GST, everyday items used by the common man have been included in the list of exempted items.

Items such as unbranded atta/maida/besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST.

Some of the examples of the goods exempted from tax have been provided herein[2]:

Live fish (0301)	**Fresh Milk (0401)**	**Potatoes (0701)**
Grapes (0806)	**Indian National Flag (63)**	**Plastic Bangles (3926)**

[2] *Students may go through the complete list of goods exempt from GST on CBIC website – www.cbic.gov.in, for knowledge purposes.*

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4. LIST OF SERVICES EXEMPT FROM TAX

I. SPECIFIC SERVICES EXEMPT FROM CGST AND IGST

Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017[3] **(hereafter referred to as "the Notification") unless otherwise specified,** has exempted the various services wholly from CGST. Each of the entries of the exemption notification have been discussed below:

1. Services related to charitable and religious activities

Entry No.[4]	Description of services
1	Services by an entity registered under section 12AA/12AB of the Income-tax Act, 1961 by way of **charitable activities**.
13	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA/12AB of the Income-tax Act, 1961 or a trust or an institution registered under section 10(23C)(v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act. However, nothing contained in entry (b) of this exemption shall apply to- (i) **renting of rooms** where charges are **₹ 1,000 or more** per day; (ii) **renting of premises**, community halls, kalyanmandapam or open area, and the like where charges are **₹ 10,000 or more** per day;

[3] *Exemption from IGST has been granted to various services vide Notification No. 9/2017 IT (R) dated 28.06.2017. All the services exempted from CGST & SGST/UTGST have also been exempted from IGST.*
Apart from these, there are few additional services which have been exempted only under IGST law. Such services have been discussed subsequently in this chapter.

[4] *Entry Nos. mentioned herein correspond to entries in Notification No. 12/2017 CT (R) dated 28.06.2017. However, these entry numbers have been given only for reference purposes and are not relevant for examination purpose.*

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	(iii) **renting of shops** or other spaces for business or commerce where charges are **₹ 10,000 or more** per month.
60	Services by a specified organisation in respect of a **religious pilgrimage** facilitated by the Government of India, under bilateral arrangement.
80	Services by way of training or coaching in- (a) recreational activities relating to arts or culture, by an individual, or (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.

ANALYSIS

A. SERVICES PROVIDED BY CHARITABLE/RELIGIOUS TRUST

Entry 1 of the Notification exempts services supplied by an entity registered under section 12AA/12AB of the Income-tax Act, 1961 by way of charitable activities. Thus, in order to claim exemption under Entry 1 of the Notification, following two conditions must be satisfied:-

(i) The entity should be **registered under section 12AA/12AB of the Income tax Act,** 1961, and

(ii) The entity must carry out one or more of the specified charitable activities.

Before proceeding further, let us first understand the meaning of term '**charitable activities'.** The term 'charitable activities' mean **activities relating** to-

(i) **PUBLIC HEALTH** by way of-

(A) care or counseling of

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

(II) persons afflicted with HIV or AIDS;

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

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

(ii) **ADVANCEMENT OF RELIGION, SPIRITUALITY OR YOGA**;

(iii) **ADVANCEMENT OF EDUCATIONAL PROGRAMMES / SKILL DEVELOPMENT** relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

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

(iv) **PRESERVATION OF ENVIRONMENT** including watershed, forests & wildlife.

Thus, only those services provided by a charitable and religious trusts [registered under section 12AA/12AB of the Income-tax Act] which fall within the above definition of charitable activities, are eligible for exemption from GST. There could be many other services provided by such charitable and religious trusts which are not covered by the definition of charitable activities and hence, such services would attract GST.

For instance, grant of advertising rights to a person for publicity, on the premises of the charitable/religious trust or on publications of the trust, or granting admission to events, functions, celebrations, shows against admission tickets or fee etc. would attract GST.

In the following paras, we have examined some of the services supplied by the entities registered under section 12AA/12AB of the Income-tax Act:

Management of educational institutions by charitable trusts

- Activities of schools, colleges or any other educational institutions run by charitable trusts by way of education or skill development of abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years or above residing in a **rural area**, will be considered as charitable activities and income from such supplies will be wholly exempt from GST.
- The term **rural area** means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified

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area committee; or any area that may be notified as an urban area by the Central Government or a State Government.

(10) Shiksha Academy, an educational institute run by Sarvsewa Trust, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a Skill Development Programme for the old age people over the age of 65 years residing in Bangalore city (an urban area).

Services provided by Shiksha Academy do not fall within the purview of 'charitable activities'. The activities relating to advancement of skill development relating to persons over the age of 65 years, are covered under the definition of 'charitable activities' only when such persons are residing in rural area.

- Activities of a school, college or an institution run by a trust which do not come within the ambit of charitable activities will not be exempt under Entry 1. However, such activities may be exempt under Entry 66 *[discussed later in this chapter]* provided the school, college or institution qualifies as an 'educational institution'.

Hostel accommodation provided by trusts

- Hostel accommodation services provided by trusts to students do not fall within the ambit of charitable activities as defined above.

Religious yatras or pilgrimage

- Religious yatras/pilgrimage organised by any charitable or religious trust are not exempt.
- Only such services of religious pilgrimage as are provided by **specified organization** in respect of a religious pilgrimage facilitated by the Government of India (GoI), under bilateral arrangement, are exempt from GST. *[See **Entry 60** in above table]*. The term **specified organization** as referred herein means-
  - Kumaon Mandal Vikas Nigam Limited (KMVN), a Government of Uttarakhand Undertaking; or
  - 'Haj Committee of India' or 'State Haj Committee including Joint State Committee'.

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- In short, as per **Entry 60**, the services provided by the Haj Committee and KMVN in relation to pilgrimage to Mecca and Kailash- Mansarovar respectively are not liable to GST.

(11) KMVN supplies numerous services, namely, medical facilities, catering services, security, accommodation services, etc. to the pilgrims undertaking Kailash-Mansarovar pilgrimage. Such services provided by KMVN in respect of the religious pilgrimage to Kailash-Mansarovar are covered under entry 60 and thus, are exempt.

Arranging yoga and meditation camp by charitable trusts

- As discussed above, services provided by entity registered under section 12AA/12AB of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt as such activities are covered in definition of charitable activities.
- Fee or consideration charged in any other form from the participants for participating in a religious, yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt.

- Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.
- However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable[5].

(12) Bhavyajyoti Foundation, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a 'Meditation Camp' for the old age people. GST would be exempt on the same as services provided by entity registered under section 12AB of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt.

[5] *Circular No. 66/40/2018 GST dated 26.09.2018*

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Hospitals managed by charitable trusts

Exemption available to health care services under Entry 74 *[discussed later in this chapter]* is also applicable to the health care services provided by a **clinical establishment, an authorised medical practitioner or paramedics of a religious or charitable trust** also.

Training or coaching in arts, culture or sports

As per Entry 80, services by way of training or coaching in-

(a) recreational activities relating to arts or culture, by an individual, or

(b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act

are exempt from GST.

It is important to note that the exemption with regard to services provided by way of training or coaching in **recreational activities relating to arts or culture** is available when the same is provided by an individual. Similarly, services of training or coaching in **sports** are exempt only when such services are provided by a charitable entity registered under section 12AA or 12AB of Income-tax Act.

Let us now analyse the term **'recreational activities'.** The term recreational activities is very wide. However, under this entry, the scope of training or coaching in recreational activities is restricted to the area of arts and culture. Hence, the training or coaching in **recreational activities relating to the areas other than arts or culture** is outside the purview of this entry.

Further, training or coaching in **all forms of arts, culture or sports** is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre, etc. of any school, tradition or language or any of the sports.

example

(13) Manavtaa Sansthaan, a charitable trust registered under section 12AB of the Income-tax Act, 1961, has organized a 'Basketball Training Camp' for teenagers. GST would be exempt on the same as services provided by entity registered under section 12AB of the Income-tax Act, 1961 by way of training or coaching in sports are exempt.

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GST on services provided TO charitable trusts

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

B. CONDUCT OF ANY RELIGIOUS CEREMONY

Going through Entry 13(a), it can be inferred that the amount charged, by whatever name called, for the conduct of any religious ceremony is exempt from GST. Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.

(14) Raamanand Joshi, a priest, charges ₹ 12,000 for conducting a religious ceremony on the birthday of Ghanshyam's son. The amount charged for the conduct of any religious ceremony is exempt from GST.

C. RENTING OF PRECINCTS OF RELIGIOUS PLACE MEANT FOR GENERAL PUBLIC

- **Entry 13(b)** exempts renting of precincts of a religious place meant for general public owned by an entity registered under any of the specified sections of the Income Tax Act provided the consideration charged for such renting does not exceed the prescribed ceiling limits as given in said entry. Thus, this exemption is determined on the basis of amount of consideration charged for such renting. Let us understand the meaning of the terms 'religious place', 'general public' and 'precincts' referred herein.
- **Religious place** means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality.
- **General public** means the body of people at large sufficiently defined by some common quality of public or impersonal nature.
- The word **'precincts'** is not to be interpreted in a restricted manner and **all immovable property of the religious place located within the outer boundary walls** of the complex (of buildings and facilities) in which the religious place is located, is to be considered as being located in the precincts

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

- Activities other than conduct of religious ceremony and renting of precincts of religious place will be taxable irrespective of the manner or the name in which the consideration is received.

- **For example**, if donation is received with specific instructions/ mutual understanding between the donor and the receiver that religious place will host an advertisement promoting business of the donor, such donation will be subject to GST. However, where the donation is received without such instructions or when the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). In other words, there is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration[6].

(15) Durgadevi Trust, a religious trust registered under section 12AB of the Income-tax Act, owns and manages a temple in their locality. It rents the commercial shops located in the precincts of the temple for a rent of ₹ 10,000 per month per shop. The consideration so received is liable to GST as such services are exempt only when the consideration is less than ₹ 10,000 per month.

(16) Sarvodaya Trust, a religious trust, registered under section 10(23BBA) of the Income-tax Act, owns and manages a gurudwara. It rents the community hall located in the precincts of the gurudwara for a rent of ₹ 9,000 per day for a marriage function. The consideration so received is exempt from GST as the consideration is less than ₹ 10,000 per day.

[6] *Discussion under this heading is primarily based on CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts and other clarifications issued by CBIC.*

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2. Agriculture related services

Entry No.	Description of services
24	Services by way of loading, unloading, packing, storage or warehousing of rice.
24A	Services by way of warehousing of minor forest produce.
24B	Services by way of storage/ warehousing of cereals, pulses, fruits and vegetables.
54	Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of— (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of **farm labour**; (c) **processes carried out at an agricultural farm** including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) **renting or leasing of agro machinery or vacant land** with or without a structure incidental to its use; (e) **loading, unloading, packing, storage or warehousing** of agricultural produce; (f) **agricultural extension services**; (g) services by any **Agricultural Produce Marketing Committee** or Board or services provided by a commission agent for sale or purchase of agricultural produce.

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55	Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
55A	Services by way of artificial insemination of livestock (other than horses).

ANALYSIS

ENTRY 54

The words **'Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products'** used in **Entry 54** include activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.

Further, the term **'agricultural produce'** means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, **on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics, but makes it marketable for primary market**. It is important to note that agricultural produce is either subject to no further processing at all or if any processing is undertaken on the agricultural produce it should not alter its essential characteristics but may make it marketable for primary market. Few instances of such processes are the processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, etc.

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Let us examine what is exempt under Entry 54.

Entry 54 exempts the agricultural operations directly related to production of any agricultural produce such as cultivation, harvesting, threshing, plant protection or testing. Further, processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like **operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market** are also exempt. In view of the same, following processes are outside the purview of this entry and thus, are liable to GST:-

(a) **Process which alters the essential characteristics of the agricultural produce:** For instance, potato chips or tomato ketchup, etc. are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).

(b) **Process which makes agricultural produce marketable in the retail market:** The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in this entry. Only such processes are covered in this entry which makes agricultural produce marketable in the primary market and not retail market.

Apart from this, supply of farm labour is also exempt from GST.

Renting or leasing of agro machinery or vacant land

Item (d) of the entry exempts **renting or leasing of agro machinery or vacant land** with or without a structure incidental to its use.

(17) Moolchand has leased out to a farmer – Tulsidas - a vacant land for agriculture. The land has a greenhouse and a storage shed which are incidental to its use for agriculture. Such service of leasing of vacant land with a greenhouse and a storage shed which is incidental to its use for agriculture is exempt from GST.

Agricultural extension services

Item (f) of the entry exempts **Agricultural Extension Services (AES)**. Said services have been defined under the notification to mean the application of scientific research and knowledge to agricultural practices through farmer education or training.

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The main objective of AES is to transmit latest technical know-how to farmers. It also focuses on enhancing farmers' knowledge about crop techniques and help them to increase productivity. This is done through training courses, kisan call centres, farm visits, on farm trials, kisan melas, kisan clubs, advisory bulletins and the like.

Agricultural Produce Marketing Committee services

Services by any **Agricultural Produce Marketing Committee** or Board or services provided by a commission agent for sale or purchase of agricultural produce are not liable to GST. Agricultural Produce Marketing Committee or Board means any committee or board set up under a State Law for the time being in force for purpose of regulating the marketing of agricultural produce.

Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc.

Services provided by such Agricultural Produce Marketing Committee or Board are covered in item (g) of entry 54. However, any service provided by such bodies which is not directly related to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce, will be liable to tax e.g. renting of shops or other property for commercial purposes.

Warehousing of agriculture produce

Item (e) of Entry 54 exempts loading, unloading, packing, storage or warehousing of agricultural produce. In this regard, following may be noted:

- **Processed Tea and coffee**

Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed

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output of the same. Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption under entry 54 where such exemption is available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans.

- **Jaggery**

Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce.

- **Pulses**

Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of dehusking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However, whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.

In view of the above, it is inferred that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce and therefore do not fall within item (e) of entry 54[7].

ENTRY 55

Custom milling of paddy into rice

Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt under GST.

[7] *Circular No. 16/16/2017 GST dated 15.11.2017*

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Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested.

Further, processing of paddy into rice is not usually carried out by cultivators, but by rice millers. Milling of paddy into rice also changes its essential characteristics.

Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.

In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under Entry 55[8].

3. Educational services

Entry No.	Description of services
66	Services provided - (a) by an educational institution to its students, faculty and staff; (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee; (b) to an educational institution, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution;

[8] *Circular No. 19/19/2017 GST dated 20.11.2017*

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	(v) supply of online educational journals or periodicals. However, nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent. Further, nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course.
66A	Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity.

ANALYSIS

Education is fundamental to the nation building process. The term "Education" is not defined in the CGST Act, 2017, but as per Apex Court decision in *"Loka Shikshana Trust v. CIT"*, education is process of training and developing knowledge, skill and character of students by normal schooling.

Taxing the Education Sector has always been a sensitive issue, as education is seen more as a social activity than a business one. The Government has a constitutional obligation to provide free and compulsory elementary education to every child. Thus, to promote education, it would be beneficial if educational services are exempted from tax.

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However, commercialization of education is also a reality. The distinction between core and ancillary education is blurring and education is now an organised industry with huge revenues. The GST law tries to maintain a fine balance whereby core educational services provided and specified services received by educational institutions are exempt and other services are sought to be taxed.

Exemption from GST granted vide Entry 66 stated above can be discussed under two broad categories –output services and input services of an educational institution. The discussion in succeeding paras fundamentally revolves around these two areas:

OUTPUT SERVICES

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

- Since exemption with respect to said services is available only when these services are provided BY 'educational institution', it is important to analyse the term **EDUCATIONAL INSTITUTION** first:

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

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

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

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

- It is to be noted that only those institutions, whose operations conform to the specifics given in the definition of the term "educational institution", would be treated as one entitled to avail exemptions provided by the law.

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- **Sub-clause (ii):** The term **'education as a part of curriculum for obtaining a qualification recognised by any law for the time being in force'** means the education delivered as **'a part'** of the curriculum that has been prescribed for obtaining a qualification prescribed by law. Thus, in order to be covered under Entry 66, the education service should be delivered as part of curriculum. In view of same, it can be inferred that:

Education services provided	Covered in sub-clause (ii)	Reasons
Conduct of **degree courses by colleges, universities or institutions**	✓	These courses lead to grant of qualifications recognized by law
Training given by private coaching institutes	✗	Such training does not lead to grant of a recognized qualification.
Education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country	✗	Only a course recognized by an Indian law is covered herein.

(18) 'Dharam Institute of Technology' (DIT), a private engineering college in M.P., offers post graduate engineering programmes. All the engineering courses including the distance learning post graduate engineering programme offered by DIT are recognised by the law [The All India Council for Technical Education (AICTE)]. Since DIT imparts education as a part of a curriculum for obtaining a qualification recognised by the Indian law, the same is an educational institution.

- **Sub-clause (i):** An institution providing pre-school education and education up to higher secondary school or equivalent qualify as an educational institution.

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(19) 'Littleways Public School' is a school loacted in Tamil Nadu. The school has two branches – one is a pre-school and another is a higher secondary school affiliated to CBSE. A pre-school and a higher secondary school are educational institutions. Thus, Littleways Public School qualifies as an educational institution.

- **Sub-clause (iii):** covers institutions providing services by way of education as a part of approved vocational education course.

An **approved vocational education course** means, -

- ✓ a **course run by an ITI/ ITC**[9] affiliated to the National Council for Vocational Education and Training (NCVET) or State Council for Vocational Training (SCVT)**offering courses in designated trades** notified under the Apprentices Act, 1961** or

- ✓ a **Modular Employable Skill Course**, approved by the NCVET, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. The Modular Employable Skills is the minimum skill set which is sufficient for gainful employment or self-employment in the world of work. It provides employable skills to early school drop-outs, existing workers seeking skill upgradation, workers seeking certification of their skills acquired informally, etc. to improve their employability and provides certification after completion of the course.

****Designated trade** means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of Apprentices Act, 1961[10].

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[9] *Industrial Training Institute/ Industrial Training Centre*

[10] *Some of the designated trades notified under the Apprentices Act, 1961 are electrician, wireman, carpenter, plumber, mason, mechanic, tool and die maker, baker and confectioner, weaver, tailor, footwear maker, photographer, beautician, painter, desk top publishing operator, gardener, cable television operator, library assistant, etc.*

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(20) 'Kaladrishti ITI, Gorakhpur is engaged in providing skill development courses in other than designated trades notified under the Apprentices Act, 1961. Since courses offered by Kaladrishti ITI are not in designated trades notified under the Apprentices Act, 1961, education provided by it is not approved as vocational educational course as defined above. Resultantly, it doesn't qualify as an educational institution.

In view of the above definition, some of the institutions providing education services have been examined as under:

Private ITIs

- **Private ITIs** qualify as an educational institution if the education provided by these ITIs is approved as vocational educational course as defined above.

Accordingly, services provided by a private ITI **only in respect of designated trades notified under Apprentices Act, 1961 are exempt** from GST under this entry. Services in respect of other than designated trades are liable to GST.

Further, in case of designated trades, **services provided by private ITI** by way of **conduct of entrance examination** against consideration in the form of entrance fee will also be exempt.

Moreover, in respect of such designated trades, **services provided TO private ITIs** relating to admission to or **conduct of examination** by a private ITI will also be exempt.

In case of **other than designated trades** in private ITIs, **GST is payable** on the aforesaid services provided by/to the private ITIs[11].

[11] *Circular No. 55/29/2018 GST dated 09.08.2018*

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Government ITIs

As far as **Government ITIs** are concerned, services provided by a Government ITI to individual trainees/students, are exempt under Entry 6 as these are in the nature of services provided by the Central or State Government to individuals *[Entry 6 is discussed in detail subsequently]*. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs[12].

Unrecognized educational institutions

- Private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

(21) 'Super Minds', a coaching institute in Raipur, provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam. Super Minds, being a coaching centre which trains candidates to secure a banking job, is not an educational institution in terms of the exemption notification.

Educational institutions up to Higher Secondary schools

- By virtue of Entry 66, educational institutions up to Higher Secondary School level do not suffer GST on output services and also on specified input services *[discussed in subsequent paras]*. However, some of the input services like repairs and maintenance etc. provided by private players to educational institutions are subject to GST.
- Output services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall therefore, not attract GST.

[12] *Circular No. 55/29/2018 GST dated 09.08.2018*

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- **Boarding schools** provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of composite supply if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8[13].

  Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle.

  In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

Educational institutions providing qualification recognized by law

- We have already seen that the institutions providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force qualify as educational institutions. However, the question arises that in case where **a course in a college leads to dual qualification only one of which is recognized by law**, would service provided by the college by way of such education be covered by the exemption notification?

- Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

  If an artificial bundle of service is created by clubbing two courses together, when only single fee is charged for both, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a supply which is not bundled in the ordinary

[13] *Section 2(30) provides the definition of composite supply and section 8 contains the provisions relating to tax liability on composite and mixed supplies. The concept of composite and mixed supply has been discussed in detail in Chapter 1 – Supply under GST in this Module of the Study Material.*

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course of business, it shall be treated as a mixed supply as per provisions contained in section 2(74)[14] read with section 8.

The taxability will be determined by the supply which attracts highest rate of GST.

- However, **incidental auxiliary courses provided by way of hobby classes or extra-curricular activities in furtherance of overall well-being** will be an example of naturally bundled course, and therefore treated as composite supply. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. If extra billing is being done, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course of business, and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration[15].

- Indian Institutes of Management Act, 2017 (IIM Act, 2017) empowers IIMs to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes.

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

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[14] *Section 2(74) provides the definition of mixed supply.*

[15] *The view taken in the preceding paras, that education coupled with other incidental services is a composite supply and is exempt since the principal supply [education service] is exempt, is based on the CBIC Flyer - Chapter 40 – 'GST on Education Services'. However, it is also possible to take a different view since as per the definition of composite supply under section 2(30), composite supply consists of two or more* ***taxable supplies****.*

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Long duration programs of IIMs - Exempt

- IIMs provide various long duration programs (1 year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Services provided by IIMs to their students- in all such long duration programs (one year or more) are exempt from levy of GST.

Short duration programs of IIMs – Not exempt

- IIMs also provide various short duration/ short term programs (less than 1 year) for which they award participation certificate to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law.
- Such participants are also not considered as students of IIM. Services provided by IIMs as an educational institution to such participants is not exempt from GST and GST is payable on the same [16].

Conduct of entrance examination by authority/board/body set up by CG/SG

Any authority, board or body set up by the Central Government or State Government (including National Testing Agency) for conduct of entrance examination for admission to educational institutions shall be treated as educational institution for the limited purpose of providing services by way of conduct of entrance examination for admission to educational institutions.

Central and State Education Boards

It is important to note that the Central and State Educational Boards shall be treated as 'Educational Institution' for the limited purpose of providing services by way of conduct of examination to the students. In this regard, following is clarified:

[16] *Circular No. 82/01/2019 GST dated 01.01.2019*

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- Various services are supplied by Centre and State Boards such as National Board of Examination (NBE). These services include entrance examination (on charging a fee) for admission to educational institution, input services for conducting such entrance examination for students, accreditation of educational institutions or professional so as to authorise them to provide their respective services.

- For example, NBE provides services of conducting entrance examinations for admission to courses including Diplomat National Board (DNB) and Fellow of National Board (FNB), prescribes courses and curricula for PG medical studies, holds examinations and grant degrees, diplomas and other academic distinctions. It carries out all functions as are normally carried out by central or state educational boards and is thus a central educational board. "Central and State Educational Boards" are treated as educational institutions for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an 'educational institution' in so far as it provides services by way of conduct of examination, including any entrance examination, to the students.

- It is clarified that:

  (i) GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution under Entry 66(aa). Therefore, GST shall not apply to any fee or any amount charged by such Boards for conduct of such examinations including entrance examinations.

  (ii) GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc, when provided to such Boards under Entry 66(b)(iv).

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(iii) GST is applicable to other services provided by such Boards, namely of providing accreditation to an institution or to a professional [accreditation fee or registration fee such as fee for FMGE (Foreign Medical Graduate Examination) screening test] so as to authorise them to provide their respective services[17].

Supply of food in a mess or canteen

- Educational institutions generally have mess facility for providing food to their students and staff.

  Such facility is

  (i) either run by the institution/ students themselves or

  (ii) is outsourced to a third person.

- **If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition of 'educational institution' as given above**, then the same is exempt. [covered under item (a) of entry 66].

- **If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution**, i.e. the institution outsources the catering activity to an outside contractor, then it is a supply of service to the concerned educational institution by such outside caterer and attracts GST.

  However, said services when provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt from tax [covered under item (b)(ii) of Entry 66].

Supply of food in anganwadis and schools

- An anganwadi, inter alia, provides pre-school non-formal education. Hence, anganwadi is covered by the definition of educational institution (as pre-school).

[17] *Circular No. 151/07/2021 GST dated 17.06.2021*

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- As seen above that as per entry 66(b)(ii), any catering service provided to an educational institution (pre-school and schools) is exempt from GST and it includes mid- day meal service also. The **scope of this entry is thus wide enough to cover any serving of any food to a school** (including pre-school).
- It is further clarified that services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations.
- Hence, **serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates**[18].

Entrance fee for conduct of entrance examination/fee for admission/issuance of migration certificate

- As discussed earlier, Entry 66 exempts, inter alia, services provided –

  (a) by an educational institution to its students, faculty and staff;

  (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee.
- Therefore, it can be seen that all services supplied by an 'educational institution' to its students are exempt from GST. Consideration charged by the educational institutes by way of entrance fee for conduct of entrance examination is also exempt.
- The exemption is wide enough to cover the amount or fee charged for admission or entrance, or amount charged for application fee for entrance, or the fee charged from prospective students for issuance of eligibility certificate to them in the process of their entrance/admission to the educational institution.
- Services supplied by an educational institution by way of issuance of migration certificate to the leaving or ex-students are also covered by the exemption. Accordingly, such activities of educational institutions are also exempt[19].

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[18] *Circular No. 149/05/2021 GST dated 17.06.2021*

[19] *Circular No. 177/09/2022 GST dated 03.08.2022*

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Fees charged from prospective employers

Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to tax.

Maritime courses approved by DG Shipping

Maritime Training Institutes and their training courses are approved by the Director General of Shipping which are duly recognised under the provisions of the Merchant Shipping Act, 1958 read with the Merchant Shipping (Standards of training, certification and watch-keeping for Seafarers) Rules, 2014.

Therefore, Maritime Training Institutes are educational institutions and the courses conducted by them are exempt subject to fulfilment of other conditions specified herein[20].

Approved flying training courses conducted by FTO approved by the DGCA

Directorate General of Civil Aviation (DGCA) approves Flying Training Organizations (FTOs) as well as also approves flying training courses and mandates the requirement of course completion certificates to be issued to successful candidates in terms of the Aircraft Act, 1934 and the rules prescribed thereunder.

Therefore, the approved flying training courses conducted by FTOs approved by DGCA, wherein the DGCA mandates the requirement of a completion certificate are exempt as services provided by educational institutions (an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force) to its students, faculty and staff are exempt from levy of GST. *[Circular No. 234/28/2024 GST dated 11.10.2024]*

[20] *Circular No. 117/36/2019 GST dated 11.10.2019*

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INPUT SERVICES

- Regarding, input services, it may be noted that where output services are exempted, the educational institutions may not be able to avail credit of tax paid on the input side. The auxiliary education services *[services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person]* specified in item (b) of entry 66 only have been exempted [Sub-items (i) to (v) of item (b) of Entry 66].

- However, the said exemption comes with a rider. Auxiliary services of (i) transportation of students, faculty, and staff, (ii) catering including any mid-day meals scheme sponsored by Government and (iii) security or cleaning or housekeeping services are exempt only if such auxiliary education services are provided to educational institutions providing services by way of education up to higher secondary or equivalent, (from pre-school to HSC).

- Thus, if such auxiliary education services are provided to educational institutions providing degree or higher education or institutions providing approved vocational education course, the same would not be exempt.

- Similarly, services of supply of online educational journals/periodicals are exempt only if they are provided to an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force[21].

(22) Little Millennium – a pre school in outskirts of Mumbai – has subscribed the online journals on child development and experiential learning. Services of supply of online educational journals or periodicals provided, *inter alia,* to an institution providing services by way of pre-school education are not exempt.

[21] *The discussion in the foregoing paras is primarily based on CBIC Flyer - Chapter 40 – 'GST on Education Services' unless otherwise specified.*

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(23) SM Transporters has provided services of transportation of students and faculty from their residence to school and back, to Pathwheels School - a higher secondary school. Services of transportation of students, faculty and staff provided, *inter alia,* to an institution providing services by way of education up to higher secondary school or equivalent are exempt.

(24) Shiksha College, offering degree courses (recognised by law), has to conduct its half yearly examination in November. For this purpose, it has paid the honorarium to paper setters and examiners (not on the rolls of Shiksha College) for their services. Further, it availed the printing services for printing the question papers (paper and content are provided by Shiksha College) for conducting examination. Services provided to an educational institution relating to admission to, or conduct of examination by, such institution are exempt. Therefore, services of paper setters and examiners and printing services availed by Shiksha College are exempt.

(25) Gyaani Public School – a higher secondary school – has hired Suvidha Services Ltd. for security and housekeeping services in the school. Security and housekeeping services provided within the premises of, *inter alia,* a higher secondary school are exempt. Therefore, said services provided by Suvidha Services Ltd. are exempt. The school susbequently hired Suvidha Services Ltd. for providing the security and housekeeping services at School's Annual Day function organised in an auditorium outside the school campus. Security and housekeeping services provided to Gyaani Public School for School's Annual Day function organised outside the school campus will be taxable as only the security and housekeeping services performed **within the premises** of the higher secondary school are exempt.

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The exemptions available in respect of input and output services of an educational institution have been tabulated as follows:

	Type of educational institution		
	Educational institution providing pre-school education and education up to higher secondary school or equivalent	**Educational institution providing education as a part of a curriculum for obtaining a recognised qualification**	**Educational institution providing education as a part of approved vocational education course**
Exempt input services	(i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution	(i) services relating to admission to, or conduct of examination by, such institution (ii) supply of online educational journals or periodicals	Services relating to admission to, or conduct of examination by, such institution.
Exempt output services	Services provided by an educational institution - (a) to its students, faculty and staff; (aa) by way of conduct of entrance examination against consideration in the form of entrance fee.		

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Affiliation provided by universities to colleges

- The activity of affiliation is to monitor and ensure whether the institution possesses the required infrastructure in terms of space, technical prowess, financial liquidity, faculty strength, etc. and is thereby eligible for the privileges to conduct the course/program of study for the degree/title extended by the University to the students enrolled in such institutions.
- The affiliation services provided by the universities are not related to the admission of students to such colleges or the conduct of examinations by such colleges.
- It has been clarified by CBIC that the affiliation services provided by universities to their constituent colleges are not covered within the ambit of exemptions provided to educational institutions. *[Circular No. 234/28/2024 GST dated 11.10.2024]*

Affiliation provided by Central and State educational boards or Councils, or other similar bodies, to schools

- The activity of affiliation carried out by educational boards or councils, or other similar bodies, is to monitor and ensure whether the schools possess the required infrastructure, finances, faculty strength etc. and are thereby eligible for the privileges to operate under the aegis of said boards or councils.
- The affiliation services are not related to the admission of students to such schools or the conduct of examinations by such schools.
- It has been clarified by CBIC that such services of affiliation, provided to schools by Central or State educational boards or councils, or other similar bodies, by whatever name called, are taxable *[Circular No. 234/28/2024 GST dated 11.10.2024]*.

However, it may be noted that the affiliation services provided by Central and State educational boards or Councils, or other similar bodies to GOVERNMENT SCHOOLS i.e. schools established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity are exempt vide Entry 66A of Exemption Notification.

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4. Health care services

Entry No.	Description of services
46	Services by a veterinary clinic in relation to health care of animals or birds.
74	Services by way of- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics; However, nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services. (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

ANALYSIS

Entry 74 - Health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST [Entry 74(a)].

However, services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services will not be exempt.

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The term 'health care services' is defined as follows:

Health care services

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

(26) Healthy Nursing Home specializes in undertaking plastic surgeries. One such surgery is conducted to repair cleft lip of a newborn baby. In view of above definition, plastic surgeries are not included in health care services. However, plastic surgery conducted to repair a cleft lip will be included in health care services as it reconstructs anatomy or functions of body affected due to congenital defects (i.e. cleft lip).

(27) Aarogya Multispecialty Hospital provides palliative care to patients facing serious and life-threatening illness. Palliative care is given to improve the quality of life of patients who have a serious or life-threatening disease, but the goal of such care is not to cure the disease.

On request, such care is also provided to patients at their homes. Health care service means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India. It is immaterial whether such service is provided at the clinical establishment or at the home of the patient or at any other place.

Thus, palliative care for terminally ill patients provided at their homes is included in health care services.

As it is apparent from the definition of health care services, only services in **recognized systems of medicines in India** are exempt under this entry. Following

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systems of medicines are the recognized systems of medicines in India[22]:-

Recognized systems of medicines

- Allopathy
- Yoga
- Naturopathy
- Ayurveda
- Homeopathy
- Siddha
- Unani
- Any other system of medicine that may be recognized by Central Government.

(28) Reiki healing treatment is not a recognized system of medicinces. Therefore, it is not included in health care services.

Let us now understand the meaning of terms - 'clinical establishment', 'authorised medical practitioner' and 'paramedics'.

- **Clinical establishment:** means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. Thus, diagnostic or investigative services of diseases provided by pathological labs are not liable to GST.
- **Authorised medical practitioner:** means a medical practitioner registered with any of the councils of recognised system of medicines established/recognised by law in India & includes a medical professional having requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.

[22] *Section 2(h) of the Clinical Establishments (Registration and Regulation) Act, 2010*

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Further, **Paramedics** are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.

Rent of rooms provided to in-patients

Rent of the rooms having room charges upto ₹ 5,000 per day to a person receiving health care services in hospitals is exempt[23].

Services provided by senior doctors/ consultants/ technicians

- Hospitals hire senior doctors/ consultants/ technicians independently. Such persons do not have any contract with the patient. Hospitals pay them consultancy charges and there is no employer-employee relationship between them.
- It is clarified by CBIC that services provided by such senior doctors/ consultants/ technicians, whether employees or not, are healthcare services which are exempt from GST *[Circular No. 32/06/2018 GST dated 12.02.2018]*.

Amount charged by hospitals from the patients

- In above cases, suppose hospitals charge the patients, say, ₹ 10,000/- and pay to the consultants/technicians only ₹ 7,500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Going through the definition of health care services [given above], it can be inferred that hospitals also provide healthcare services.
- The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt *[Circular No. 32/06/2018 GST dated 12.02.2018]*.

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[23] *Circular No. 27/01/2018 GST dated 04.01.2018 read with proviso to Entry 74(a)*

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Food supplied to the patients

- Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the hospitals from outdoor caterers.
- When outsourced, there is no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC.
- Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable.
- Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable *[Circular No. 32/06/2018 GST dated 12.02.2018]*[24].

Ambulance services provided National Health Mission (NHM)

- National Health Mission (NHM) is a flagship programme of the Government of India wherein the Central Government provides technical and financial support to States to strengthen healthcare systems including for free ambulance services (Dial 102/108 services).

[24] *The view taken in the preceding paras, that health care services coupled with other incidental services is a composite supply and is exempt since the principal supply [health care service] is exempt, is based on Circular No. 32/06/2018 GST dated 12.02.2018. However, it is also possible to take a different view since as per the definition of composite supply under section 2(30) of the CGST Act, composite supply consists of two or more* ***taxable supplies****.*

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- Dial 108 is the emergency response system primarily designed to attend to patients of critical care, trauma and accident victims etc. while Dial 102 services essentially are for basic patient transport aimed to cater the needs of pregnant women and children, though other categories are also taking benefit and are not excluded.

- Some State Governments themselves provide the free ambulance services to the patients while many States are operating the ambulance service on an outsourced model, i.e., services are provided by a private service provider (PSP) on behalf of State Government and it charges a fee from the State Governments for said ambulance services. However, in both the cases, ambulance services are provided free of cost to the patients.

- Services provided by State Governments and Private Service Providers (PSPs) by way of transportation of patients in ambulance are exempt under Entry 74 above.

- As regards ambulance services provided by PSPs [under NHM] on behalf of State Governments against consideration in the form of fee or otherwise charged from State Government, since ambulance services are an activity in relation to 'health and sanitation' and 'public health' functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the Constitution of India[25], same would be exempt as under:

  a. Entry 3 if it is a pure service and not a composite supply involving supply of any goods, and

  b. Entry 3A if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply *[Circular No. 51/25/2018 GST dated 31.07.2018]. [Refer Entry 3 and 3A discussed in detail subsequently under heading 'Services provided to Government'].*

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[25] *An illustrative list of functions entrusted to Panchayat and Municipality under Article 243G and 243W respectively of the Constitution of India has been provided subsequently in this chapter under heading 'Services provided by Government'.*

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Services other than health care services in clinical establishment's premises

- Supply of services other than healthcare services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. will be subject to GST[26].

Services by way of Assisted Reproductive Technology (ART) procedures such as In vitro fertilization (IVF)

- As per the definition of health care services given earlier, it means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.
- **Since, the abnormality/disease/ailment of infertility is treated using ART procedure such as IVF, it is clarified that services by way of IVF are also covered under the definition of health care services[27].**

5. Services provided by Government

Entry No.	Description of services
4	Services by governmental authority by way of **any activity in relation to any function entrusted to a municipality** under article 243W of the Constitution are exempt.
5	Services by a governmental authority by way of any activity in relation to **any function entrusted to a Panchayat** under article 243G of the Constitution.
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the **Department of Posts and the Ministry of Railways (Indian Railways);**

[26] *As clarified by the CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts*
[27] *Circular No. 177/09/2022 GST dated 03.08.2022*

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	(b) services in relation to **an aircraft or a vessel,** inside or outside the precincts of a port or an airport; (c) **transport of goods or passengers**; or (d) any service, other than services covered under entries (a) to (c) above, **provided to business entities**.
7	Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the Central Goods and Services Tax Act, 2017 Explanation - For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to following services:- (i) item (a), (b) and (c) of Entry 6 above. (ii) services by way of **renting of immovable property**.
8	Services provided by the Central Government, State Government, Union territory or local authority **to another Central Government, State Government, Union territory or local authority**. *However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above.*
9	Services provided by Central Government, State Government, Union territory or a local authority **where the consideration for such services does not exceed ₹ 5,000**. ***However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above*** Further, in case where **continuous supply of service*** is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed **₹ 5,000 in a FY.** **as defined in section 2(33)*
9C	Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.

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9D	Services by: an old age home run by: ✓ Central Government, State Government or ✓ an entity registered under section 12AA/12AB of Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.
9E	Services provided by Ministry of Railways (Indian Railways) to individuals by way of – (a) sale of platform tickets (b) facility of retiring rooms/waiting rooms; (c) cloak room services; (d) battery operated car services
9F	Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways).
9G	Services provided by Special Purpose Vehicles (SPVs) to Ministry of Railways (Indian Railways) by way of allowing Ministry of Railways (Indian Railways) to use the infrastructure built and owned by them during the concession period against consideration and services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration.
24C	Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams).
34A	Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions[28].

[28] *Circular No.154/10/2021 GST dated 17.06.2021 reiterates that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under Entry 34A.*

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47	Services provided by the Central Government, State Government, Union territory or local authority by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.
61	Services provided by the Central Government, State Government, Union territory or local authority **by way of issuance of passport, visa, driving license, birth certificate or death certificate**.
62	Services provided by the Central Government, State Government, Union territory or local authority **by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable** to the Central Government, State Government, Union territory or local authority under such contract.
63	Services provided by the Central Government, State Government, Union territory or local authority by way of **assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals**, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
65	Services provided by the Central Government, State Government, Union territory by way of **deputing officers after office hours or on holidays for inspection or container stuffing** or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
65B	Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders. However, at the end of the contract period, ERCC shall submit an account to the State Government and certify that amount of GST deposited by mining lease holders on royalty is more than GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and the ERCC shall pay

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	the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty. Explanation- **Mining lease holder** means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957, the rules made thereunder or the rules made by a State Government under section 15(1) of the said Act.
74A	Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA or 12AB of the Income-tax Act, 1961.

ANALYSIS

Relevant definitions are as under:

- **Business entity:** means any person carrying out business.
- **Governmental authority:** means an authority or a board or any other body,
  - (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by any Government,

  with 90%, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

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- **Government Entity**: means an authority or a board or any other body including a society, trust, corporation,

  (i) set up by an Act of Parliament or State Legislature; or

  (ii) established by any Government,

  with 90%, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

- **Aircraft:** means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines [Section 2(1) of the Aircraft Act, 1934].

- **Airport:** means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in section 2(2) of the Aircraft Act, 1934 [Section 2(b) of the Airports Authority of India Act, 1994].

Exemption to services provided by Government

- **Not all services provided by the Government or a local authority are exempt from tax**. As for instance, following services are not exempt:

  (a) services by the Department of Posts and the Ministry of Railways (Indian Railways);

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

  (c) transport of goods or passengers; or

  (d) any service, other than services covered under (a) to (c) above, provided to business entities [with aggregate turnover exceeding such amount in the preceding financial year as makes it eligible for exemption from registration under CGST Act].

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Services mentioned in clause (a) to (c) above have been referred to as **"specified services"** in discussion hereunder.

Accommodation services supplied by Air Force Mess and other similar messes to its personnel

Accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Entry 6 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority[29].

Let us first understand what does 'Government' and 'local authority' mean?

Meaning of Government

- As per section 2(53), 'Government' means the Central Government.
- Various State/ Union Territories (with Legislatures) GST Acts define 'Government' as Government of respective State Government/ Union Territory. For Union Territories (without State Legislatures), 'Government' means the Administrator or any Authority or officer authorized to act as Administrator by the Central Government.
- Regulatory bodies/agencies, for instance, Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India, do not fall under the definition of Government.

Meaning of local authority

- Local authority is defined in section 2(69) and means the following:
  - ✓ a **"Panchayat"** as defined in clause (d) of article 243 of the Constitution;

[29] *Circular No. 190/02/2023 GST dated 13.01.2023*

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- ✓ a **"Municipality"** as defined in clause (e) of article 243P of the Constitution;
- ✓ a **Municipal Committee, a Zilla Parishad, a District Board,** and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- ✓ a **Cantonment Board** as defined in section 3 of the Cantonments Act, 2006;
- ✓ a **Regional Council or a District Council** constituted under the Sixth Schedule to the Constitution;
- ✓ a **Development Board** constituted under article 371 and article 371J of the Constitution; or
- ✓ a **Regional Council** constituted under article 371A of the Constitution.

Thus, 'local authority' includes only those bodies which are listed in the above definition. It would not include other body which is merely described as a 'local body' by virtue of a local law. For example, local developmental authorities - setup by State Governments to undertake developmental works - like Delhi Development Authority, Ahmedabad Development Authority, Bangalore Development Authority, etc. are not qualified as local authorities.

In the subsequent paras, we have examined some of the Government services:

Statutory collections made by the Real Estate Regulatory Authority (RERA)

RERA is constituted under the Real Estate (Regulation and Development) Act, 2016. RERA performs function of regulating the real estate development and construction of the building entrusted to them which fall under Entry No.1 and 2 of the 12th Schedule of the Indian Constitution.

RERA is a 'governmental authority' and is covered under the scope of entry no. 4. It is hereby clarified[30] that statutory collections made by RERA are covered under the entry no. 4 and thus, exempt from GST.

[30] *Circular No. 228/22/2024 GST dated 15.07.2024*

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Services provided to a business entity

- **Entry 7** provides that services provided to a business entity are exempt if its aggregate turnover is upto such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act.
- However, this exemption is not applicable to **specified services** and renting of immovable property services. **Renting in relation to immovable property** means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- GST on services, other than **specified services,** supplied by the Central Government, State Government, Union territory or local authority to a business entity [whose turnover exceeds such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act] is payable under reverse charge by such business entity.

  However, reverse charge provisions are not applicable to renting of immovable property services provided to unregistered persons and where **'specified services'** are being provided to such business entity *[See the reverse charge provisions as discussed in Chapter – 2: Charge of GST in this Module of the Study Material]*.

Services provided by the Department of Posts

- Department of Posts provide basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations. It also provides services of transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

- Moreover, it provides services like distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills **on commission basis**. These services are in the nature of intermediary and are generally called **agency services**.

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- Entry 6 stipulates that the services provided by the Central Government, State Government, Union territory or local authority are exempt excluding the services by the Department of Posts and the Ministry of Railways (Indian Railways). Further, entry 24C exempts the services provided by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams). Thus, on remaining services provided by the **Department of Posts, it is liable to pay tax** without the application of reverse charge.

Services provided by one Department of the Government to another Department of the Government

- Services (except specified services) provided by one Department of the Central Government/ State Government to another Department of the Central Government/ State Government are exempt under **Entry 8**.

Services by governmental authority by way of any activity in relation to any function entrusted to Panchayat/ Municipality

Services provided by governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution[31] and services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution[32] are exempt vide **Entry 4** and **Entry 5** respectively.

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[31] The functions entrusted to municipality under the 12th Schedule to Article 243W of the Constitution include urban planning including town planning, roads and bridges, public health, sanitation conservancy and solid waste management, fire services, slum improvement and upgradation, promotion of cultural, educational and aesthetic aspects, provision of urban amenities and facilities such as parks, gardens, playgrounds, public amenities including street lighting, parking lots, bus stops and public conveniences, etc.

[32] The functions entrusted to Panchayat under the 11th Schedule to Article 243G of the Constitution include Agriculture, including agricultural extension, Animal husbandry,

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Services provided by police/security agencies of Government to PSUs/corporate entities/sports events held by private entities

- Services provided by Police/security agencies of Government to PSU/private business entities are not exempt from GST.
- Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services *[See the reverse charge provisions as discussed in Chapter – 2: Charge of GST in this Module of the Study Material]*.

(29) The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for an agreed consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the consideration paid, albeit under reverse charge mechanism.

Services provided by way of tolerating non-performance of a contract

- **In case of supplies made to Government, services [provided by Government] by way of tolerating the non-performance of contract by the supplier of service is covered under the exemption under Entry 62**. Thus, any consideration received by the Government from any person or supplier for non-performance of contract is exempted from tax.

(30) Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company, for construction of its office complex for an agreed consideration. In the agreement dated 10th July, it was agreed by both the parties that M/s.

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dairying and poultry, Fisheries, Small scale industries, including food processing industries, Drinking water, Fuel and fodder, Rural electrification, including distribution of electricity, Health and sanitation, including hospitals, primary health centres and dispensaries, Women and child development, Public distribution system, etc.

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ABC shall complete the construction work and handover the project on or before 31st December.

It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty. M/s. ABC did not complete the construction and did not handover the project by the specified date i.e., on or before 31st December. As per the contract, the Department asked for damages/penalty from M/s. ABC and threatened to go to the court if not paid. Resultantly, M/s. ABC paid an amount of ₹ 10,00,000/- to the Department for non-performance of contract. Amount paid by M/s. ABC to Department is exempt from payment of tax[33].

General Insurance policies provided by a State Government

- Services provided by State Government by way of general insurance (managed by government) to employees of the State government/Police personnel, employees of Electricity Department or students of colleges/private schools etc. **wherein the total premium for insurance policy is paid by employees, students etc.** are exempt vide entry 6 of the Notification which exempts services by Central Government, State Government, Union territory or local authority to individuals.
- General Insurance policies provided to employees of the State Government/ Police personnel, employees of Electricity Department or students of colleges/private schools etc. **wherein the total premium for insurance policy is paid by the Central Government, State Government, Union territory** are exempt from GST under Entry 40[34] which exempts services provided to the Central Government, State Government, Union territory under any insurance scheme are exempt from GST *[Circular No. 16/16/2017 GST dated 15.11.2017]*.

[33] *As per Circular No. 178/10/2022 GST dated 03.08.2022, liquidated damages do not constitute consideration for a supply and are not taxable.*

[34] *Entry 40 has been discussed subsequently in this chapter under heading 'Services provided to the Government'.*

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6. Construction services

Entry No.	Description of services
10	Services provided by way of **pure labour contracts** of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the **Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana**.
10A	Services supplied by **Electricity Distribution Utilities** by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.
11	Services by way of **pure labour contracts** of construction, erection, commissioning, or installation of original works pertaining to a **single residential unit otherwise than as a part of a residential complex**.
41A and 41B	Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses[35].

[35] *These entries have been stated here in simplified form.*

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Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana (hereinafter referred to as PMAY) is a programme launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) which envisions provision of Housing for All by 2022 when the nation completes 75 years of its independence.

The mission seeks to address the housing requirement of urban poor including slum dwellers through following, *inter alia*, programme verticals:

- Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource.
- Promotion of Affordable Housing for weaker section through credit linked subsidy.
- Affordable Housing in Partnership with Public & Private sectors.
- Subsidy for beneficiary-led individual house construction/enhancement.

Last component of the mission is assistance to individual eligible families belonging to Economically Weaker Section (EWS) categories to either construct new houses or enhance existing houses on their own to cover the beneficiaries who are not able to take advantage of other components of the mission. Such families may avail specified amount of central assistance for construction of new houses or for enhancement of existing users under the mission.

Entry 10 exempts the services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the PMAY from GST.

The term **'original works'** means- all new constructions;

- all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

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- erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

Entry 11 exempts the services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex from GST.

The term **'residential complex'** means any complex comprising of a building or buildings, having more than one single residential unit. Further, '**single residential unit'** means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

7. Passenger transportation services

Entry No.	Description of services
15	Transport of passengers, with/ without accompanied belongings, by – (a) air, in economy class, embarking from or terminating in an airport located in the State of **Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;** (b) **non-air conditioned contract carriage** other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) **stage carriage other than air- conditioned stage carriage.** However, nothing contained in items (b) and (c) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the CGST, 2017**.**
16	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a **RCS (Regional Connectivity Scheme) airport**, against consideration in the form of viability gap funding.

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	However, nothing contained in this entry shall apply on or after the expiry of a period of **3 years** from the date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.
17	Service of transportation of passengers, with or without accompanied belongings, by— (a) railways in a class other than— (i) first class; or (ii) an air-conditioned coach; (b) metro, monorail or tramway; (c) inland waterways; (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (e) metered cabs or auto rickshaws (including e-rickshaws). However, nothing contained in item (e) above shall apply to services supplied through an electronic commerce operator, and notified under sub-section (5) of Section 9 of the CGST, 2017.

ANALYSIS

Services of transportation of passengers are usually chargeable to GST. Entry 6 *[Services provided by Government - discussed earlier]* specifically excludes the transport of passengers' services provided by the Government or local authority from its purview, which implies that transport of passengers' services provided by the Government or local authority services provided by the Government are also liable to GST.

However, services of transportation of passengers specified in Entries 15, 16 and 17 mentioned above are exempt from GST (whether provided by Government or otherwise) with or without accompanied belongings.

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Services provided by way of transportation of passengers have been analysed as follows:

ENTRY 15

Clause (a)

- Transport of passengers by air, embarking from or terminating in an airport located in the States of North-East India or at Bagdogra located in West Bengal is exempt from GST provided said transportation is in economy class.

  (31) Rituraj has booked air tickets in economy class of a flight from Delhi to Guwahati, Assam. Transport of passengers by air terminating in an airport located in Assam is exempt from GST.

Clause (b)

- Passenger transportation service provided by a non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire are exempt from GST. Conducted tour is a short visit to a place in which someone shows you around and tells you information about it[36].

  The term **contract carriage** means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

  (a) on a time basis, whether or not with reference to any route or distance; or

  (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes--

  (i) a maxicab; and

  (ii) a motor cab notwithstanding that separate fares are charged for its passengers [Section 2(7) of Motor Vehicles Act, 1988].

[36] *www.macmillandictionary.com*

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Further, **radio taxi** means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service.

(32) Subroto has hired a non-air conditioned bus from Mohit Travels for organising a recreation tour from Delhi to Jaipur. Transport of passengers by a non-air-conditioned contract carriage are exempt from GST. However, said transportation of passengers for tourism purposes is excluded therefrom. Therefore, in the given case, passenger transportation services are taxable.

Hiring of non-air conditioned contract carriages by firms for transportation of their employees to and from work

Exemption under this clause would apply to passenger transportation services by **non-air conditioned contract carriages where transportation takes place over pre-determined route on a pre-determined schedule.** The **exemption shall not be applicable** where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider[37].

Clause (c)

- Passenger transportation services provided by a stage carriage other than air-conditioned stage carriage are also exempt.

The term **stage carriage** means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey [Section 2(40) of the Motor Vehicles Act, 1988].

(33) The non-air conditioned buses are being operated by a State Transport Corporation for carrying passengers within the State. The passengers are being picked and dropped from and to various points by

[37] *Circular No. 177/09/2022 GST dated 03.08.2022*

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issuing individual tickets to the passengers. Such services provided by said State Transport Corporation are exempt from GST.

Proviso

It is important to note that in case where services of transport of passengers, by non-air conditioned contract carriage other than radio taxi excluding tourism, conducted tour, charter or hire or by non-air conditioned stage carriage, are supplied through Electronic Commerce Operator (ECO)[38], such services are not exempt from GST. Further, tax on such services shall be paid by ECO.

ENTRY 16

- Services provided to the Central Government, by way of transport of passengers by air, embarking from or terminating at a RCS airport, against consideration in the form of viability gap funding are exempt.

A **Regional Connectivity Scheme** is introduced to facilitate / stimulate regional air connectivity by making it affordable by supporting airline operators through (1) concessions by Central Government/State Governments and airport operators to reduce the cost of airline operations on regional routes/other support measures and (2) financial (viability gap funding or VGF) support to meet the gap, if any, between the cost of airline operations and expected revenues on such routes.

Under RCS, the underserved airports of India are aimed to be connected to key airports through cheap air flights that will cost ₹ 2,500 for per hour flight.

ENTRY 17

- Transportation of passengers by following specified modes of transport is exempt:

(a) railways in a class other than—

(i) first class; or

(ii) an air-conditioned coach;

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[38] *Provisions relating to ECOs have been discussed in detail in Chapter 12 –Electronic Commerce Transactions in Module 2 of this Study Material.*

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(b) metro, monorail or tramway;

(c) inland waterways;

(d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(e) metered cabs or auto rickshaws (including e-rickshaws).

The term **metered cab** means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder (but does not include radio taxi).

The term **E-rickshaw** means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.

It is important to note that in case where service of transport of passengers by metered cabs or auto rickshaws (including e-rickshaws) are supplied through ECO, such services are not exempt from GST. Further, tax on such services shall be paid by ECO.

Clause (d) of Entry 17

As regards transportation of passengers by vessels in clause (d) of Entry 17 *[See the table given above]*, the words **'other than predominantly for tourism purpose'** qualify the preceding words **"public transport"**.

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

Normal public ships or other vessels that sail between places located in India would be covered in this entry even if some of the passengers on board are

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using the service for tourism because predominantly, such service is not for tourism purpose.

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

(34) Services by way of transportation of passengers [not predominantly for tourism purpose] on a vessel, from Kolkata to Port Blair (mainland to island) or Port Blair to Neil Island (inter island) is covered in clause (d) of Entry 17 since such transportation is between two places located in India.

Where such public transport is owned by private operators, for instance, private ferries used as means of transport from one island to another in Andaman and Nicobar Islands, exemption under Entry 17(d) would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/government.

The **expression 'public transport' used in this Entry only means that the transport should be open to public.** It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc[39].

8. Goods transportation services

Entry No.	Description of services
18	Services by way of transportation of goods- (a) by road except the services of— (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.

[39] *Circular No. 177/09/2022 GST dated 03.08.2022*

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20	Services by way of **transportation by rail or a vessel** from one place in India to another of the following goods – (a) **relief materials** meant for victims of natural or man-made disasters, calamities, accidents or mishap; (b) **defence or military equipments**; (c) **newspaper or magazines** registered with the Registrar of Newspapers; (e) **agricultural produce**; (f) milk, salt and food grain including flours, pulses and rice; and (g) organic manure.
Goods Transport Agency (GTA) Service	
21	Services provided by a goods transport agency, by way of transport in a goods carriage of – (a) agricultural produce; (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments.
21A	Services provided **by a GTA to an unregistered person**, including an unregistered casual taxable person, other than the following recipients, namely: - (a) any factory registered under/governed by the Factories Act, 1948; or (b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any Co-operative Society established by or under any law for the time being in force; or (d) any body corporate established, by or under any law for the time being in force; or

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	(e) any partnership firm whether registered or not under any law including association of persons; (f) any **casual taxable person registered** under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.
21B	Services provided **by a GTA**, by way of transport of goods in a goods carriage, to, - (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

ANALYSIS

Transportation of goods by rail/vessel/GTA in goods carriage

Exemptions granted to transport of specified goods through rail or a vessel or a by GTA in goods carriage** are presented in the following table:

Transportation of the following goods by rail / vessel / GTA in goods carriage is exempt
(a) agricultural produce (b) milk, salt and food grain including flours, pulses and rice (c) organic manure (d) newspaper or magazines registered with the Registrar of Newspapers

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(e) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap

(f) defence or military equipments

****Goods carriage** means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

Transportation of goods by road

- The services of transportation of goods by road are exempt from GST under **Entry 18**. **Services of GTA and courier services are an exception to this exemption.** However, GTA services provided to an unregistered person [including unregistered casual taxable person[40]] are exempt from GST by virtue of **Entry 21A**.
- Further, GTA services provided to registered casual taxable person and following persons, whether being a casual taxable person or not, even if unregistered under GST law, are liable to tax:

  (i) a factory registered under Factories Act,

  (ii) society registered under Societies Act,

  (iii) Co-operative society,

  (iv) body corporate and

  (v) partnership firm including AOP.

- In other words, the GTA services provided to only an unregistered individual end consumer and unregistered casual taxable persons are exempt from GST.
- Thus, GTA services provided to:
  - ✓ person registered under GST law & registered casual taxable person, and

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[40] *The concept of 'casual taxable person' has been discussed in detail in Chapter 8 – Registration in Module 2 of this Study Material.*

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- ✓ a factory registered under Factories Act, society registered under Societies Act, Co-operative society, body corporate and partnership firm including AOP – whether or not registered under GST law,

are liable to tax.

- Transportation of goods service provided by GTA in a goods carriage, to a Central/State Government (Union Territory) Department or Establishment or local authority or Governmental agencies which has taken registration under GST law only for the purpose of deducting TDS under section 51 and not for making a taxable supply of goods or services are exempt under **Entry 21B**.

Before proceeding further, we shall now understand the meaning of GTA:

Who is a GTA – Goods Transport Agency?

Let us understand the meaning of Goods Transport agency (GTA). Goods transport agency has been defined in the Notification to mean any person who:

- ❖ provides service **in relation to transport of goods by road** and
- ❖ issues **consignment note**, by whatever name called.

- Thus, it can be seen that **issuance of a consignment note is the *sine-qua-non* for a supplier of service to be considered as a GTA**. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of GTA.

- **If a consignment note is issued, it indicates that the lien on the goods has been transferred** (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee. It is only the services of such GTA, which assumes agency functions, that has been brought into the GST net.

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- **Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA.** As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at Entry 18, which are exempt from GST.

(35) Hari Prasad owns a single truck and operates it himself. He carries the goods booked for his truck without issuance of consignment note. Services provided by Hari Prasad by way of transportation of goods by road are exempt under Entry 18.

- **Consignment note** means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains:

  - ✓ the name of the consignor and consignee,
  - ✓ registration number of the goods carriage in which the goods are transported,
  - ✓ details of the goods transported,
  - ✓ details of the place of origin and destination,
  - ✓ gross weight of the consignment;
  - ✓ GSTIN of the person liable for paying tax whether consignor, consignee or GTA
  - ✓ other particulars as prescribed for a tax invoice[41].

Significance of the term 'in relation to' in the definition of GTA

The use of the phrase **'in relation to'** has extended the scope of the definition of GTA. It includes not only the actual transportation of goods, but also various intermediary and ancillary services, such as, loading/ unloading, packing/ unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road.

[41] *Meaning of GTA and consignment note elaborated in foregoing paras is primarily based on CBIC GST flyer - Chapter 38 – Goods Transport Agency in GST.*

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These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

It is clarified by CBIC that ancillary or incidental services provided by GTA in the course of transportation of goods by road, such as loading/unloading, packing/unpacking, transshipment, temporary warehousing etc. will be treated as composite supply of transport of goods.

The method of invoicing used by GTAs will not generally alter the nature of the composite supply of service.

However, if such services are not provided in the course of transportation of goods and are invoiced separately, then these services will not be treated as composite supply of transport of goods[42].

What is courier agency?

Courier agency has been defined in the Notification to mean any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.

Express cargo service: Some transporters undertake door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles.

Such services are known as 'Express Cargo Service' with assurance of timely delivery. The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Hence, the said service relating to transportation of goods by road is not exempt.

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[42] *As clarified in answer to question no. 6 of CBIC FAQs on Transport & Logistics read with Circular No. 234/28/2024 GST dated 11.10.2024.*

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Transport of minerals within a mining area by vehicles deployed with driver for a specific duration of time

The issue which arose for consideration was whether transport of minerals within a mining area, say from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time would be covered under Entry 18 which exempts transport of goods by road except by a GTA.

Usually in such cases the vehicles such as tippers, dumpers, loader, trucks etc., are given on hire to the mining lease operator. Expenses for fuel are generally borne by the recipient of service. The vehicles with driver are at the disposal of the mining lease operator for transport of minerals within the mine area (mining pit to railway siding, beneficiation plant etc.) as per his requirement during the period of contract.

Such services are nothing but "rental services of transport vehicles with operator". The person who takes the vehicle on rent defines how and when the vehicles will be operated, determines schedules, routes and other operational considerations.

The person who gives the vehicles on rent with operator cannot be said to be supplying the service by way of transport of goods.

Accordingly, it is clarified that such **renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator and not service of transportation of goods by road.** Consequently, it is not eligible for exemption under Entry 18[42].

[42] *Circular No. 177/09/2022 GST dated 03.08.2022*

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9. Banking and financial services

Entry No.	Description of services
27	Services by way of— (a) **extending deposits, loans or advances** in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se **sale or purchase of foreign currency** amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
27A	Services provided by a banking company to Basic Saving Bank Deposit account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
34	Services by an acquiring bank, to any person in relation to settlement of an **amount upto ₹ 2,000** in a single transaction transacted through credit card, debit card, charge card or other payment card service. Explanation.— For the purposes of this entry, **"acquiring bank"** means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.
39A	Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR). Explanation.- For the purposes of this entry, the intermediary of financial services in IFSC is a person,- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.

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ANALYSIS

Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money.

Specified banking services exempt from GST vide Entry 27 have been discussed below:

(A) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount: This entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are 'deposits, loans or advances' and have to be taken in the generic sense.

They would cover any facility by which an amount of **money is lent or allowed to be used or retained on payment of** what is commonly called **the time value of money which could be in the form of an interest or a discount.** This entry would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Interest: means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

- **Illustrations of services exempt under Entry 27** are -
  - ✓ Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.

  - ✓ Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.

  - ✓ Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans/advances are represented by way of interest.

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- ✓ Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.

- **Invoice discounting/cheque discounting or any other similar form of discounting** is covered only to the extent consideration is represented by way of discount as such discounting is a manner of extending a credit facility or a loan.

- **Service charges/ fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest** on loan, advance or a deposit are not exempt and liable to GST.

  Similarly, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged on a derivative/ future contract/ forward contract/ invoice or cheque discounting, the same would be a consideration for supply of service and liable to GST.

  (36) Subhashini Bank has collected processing fees from its customers on sanction of loan to them. Interest does not include processing fee on sanction of the loan. Hence, the processing fee is not covered in Entry 27 and is thus, taxable.

  Similarly, minimum balance charges collected by the bank from current account and saving account holders are considered as charges collected over and above interest on loan. Hence, the same are not covered in Entry 27 and is thus, taxable.

- **Any interest/ delayed payment charges charged to clients for delay in payment of brokerage amount/ settlement obligations/ margin trading facility:** is exempt from GST since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances and are covered by Entry 27[43].

Charges for delayed payment of brokerage/ settlement obligations/ margin trading facility

Exempt

[43] *As clarified vide FAQs on Banking, Insurance and Stock Brokers Sector issued by CBIC.*

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- **Charges for late payment of outstanding dues on credit card:** Interest charged on outstanding credit card balances has been specifically excluded from Entry 27. Hence, the same is liable to GST.

Interest charged on o/s credit card balance

Liable to GST

(37) Tanatan Bank collects interest on credit card issued to its customers by it. Interest involved in credit card services is specifically excluded from Entry 27 & is thus, taxable.

- **Collateralized Borrowing and Lending Obligations (CBLO) transactions:** In CBLO transaction, the borrowing bank pays an amount as consideration to the lending bank for funds provided by it for a short term. Such amount would qualify as 'consideration represented by way of interest or discount' and hence, would exempt from GST under Entry 27.

Collateralized Borrowing and Lending Obligations (CBLO)

Exempt

However, if any charges or fees are levied for such transactions, the same would be a consideration and would be liable to GST.

- **Instruments like repos and reverse repos:** Repos and reverse repos[44] are financial instruments of short-term call money market that are normally used by banks to borrow from or lend money to RBI. The margins, called the repo rate or reverse repo rate, in such transactions are nothing but interest charged for lending or borrowing of money. Thus, they have the characteristics of loans and deposits for interest and are accordingly exempt from GST under Entry 27.

Repos
Reverse repos

Exempt

[44] *Section 45U(c) of the RBI Act, 1934 defines 'repos' as an instrument for borrowing funds by selling securities with an agreement to repurchase the securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed. Section 45U (d) of the RBI Act, 1934 defines 'reverse repos' as an instrument for lending funds by buying securities with an agreement to re-sell the securities on a mutually agreed future date at an agreed price which includes interest for the funds lent.*

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- **Income from Commercial Paper (CP) or Certificates of Deposit (CD):** As already seen in *Chapter 1 – Supply under GST in this Module of the Study Material*, the transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD') are in the nature of promissory notes. Consequently, they are included in the term 'money' and hence, are not chargeable to GST.

Income from Commercial Paper (CP) or Certificates of Deposit (CD)
Exempt

With regard to income from CPs or CDs, since these are the instruments for lending or borrowing money wherein consideration is represented by way of a discount or subscription to CPs or CDs, the same would be covered by entry 27 and is not liable to GST.

However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for supply of services and liable to GST.

Service charges
Liable to GST

- **Assignment or sale of secured or unsecured debts:** As seen in *Chapter 1 – Supply under GST in this Module of the Study Material*, only actionable claims in respect of lottery, betting and gambling would be taxable under GST. Where sale, transfer or assignment of debts falls within the purview of actionable claims, the same **would not be subject to GST**.

Further, any charges collected in the course of transfer or assignment of a debt would be chargeable to GST, being in the nature of consideration for supply of services.

- **Interest on debt instruments:** As debt instruments such as debentures, bonds etc. are in the nature of loans, interest thereon will be **exempt from GST**.

- **Interest on a finance lease transaction:** A finance lease is a method of borrowing against the asset. The interest represents the time value of the money expended by the bank in financing the asset.

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However, in a financial lease the ownership of the asset is with the bank. In essence, it is a 'purchase the asset and lend it further' transaction for bank.

Therefore, neither the services are purely in the nature of extending loans nor the consideration for a financial lease is purely in the nature of interest. Thus, interest on finance lease transactions **will be taxable** under GST.

- **Transactions where loan of one bank is taken over by another bank:** GST will be payable on any transaction processing fees levied for such takeover of loans, but not on the interest component (as interest is exempted).

- **Interchange fees on card settlement fees paid/ shared by banks:** Fees charged for card settlement is a consideration which is part of a separate transaction between the banks which are parties to this transaction and shall be **liable to GST**.

- **Securitization transactions undertaken by banks:** Securitized assets are in the nature of securities and hence are not subject to GST.

  However, if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of services related to securitization and would be liable to GST.

  Securitization transactions undertaken by banks

  Exempt

- **Additional/ penal interest on the overdue loan:** In cases where the Equated Monthly Instalment (EMI)[45] is not paid at the scheduled time, there is a levy of additional/ penal interest on account of delay in payment of EMI.

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[45] *An Equated Monthly Instalments (EMI) is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest.*

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There may arise a doubt as to whether this additional / penal interest on the overdue loan is exempt under Entry 27 or such penal interest is to be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under para 5(e) of Schedule II of the CGST Act, 2017 i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"].

There are two transaction options involving EMI that are prevalent in the trade. These two options, alongwith the GST applicability on them, have been explained with the help of illustrations as under -

(38) X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. However, X gives Y an option to pay in installments, ₹ 11,000 every month before 10th day of the following month, over next four months (₹ 11,000 × 4 = ₹ 44,000). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ₹ 500/- per month for the delay.

In some instances, X is charging Y ₹ 40,000 for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to ₹ 500 per month for each delay in payment.

In this case, the amount of penal interest is to be included in the value of supply[46]. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

(39) X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/ penal interest @ 1.25% per month for any delay in payment.

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[46] *Here, the amount of penal interest is to be included in the value of supply in terms of the provisions of section 15(2)(d). Section 15(2)(d) provides that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. The provisions of section 15 have been discussed in detail in Chapter 6: Value of Supply in this Module of the Study Material.*

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Here, the additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry. However, any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt.

Moreover, the value of supply of mobile by X to Y would be ₹ 40,000 for the purpose of levy of GST.

Since this levy of additional/ penal interest satisfies the definition of "interest" as contained in Entry 27 above, the same cannot be treated as consideration for liquidated damages. Consequently, transaction of levy of additional/ penal interest does not fall within the ambit of Schedule II i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act"[47] *[Circular No. 102/21/2019-GST dated 28.06.2019]*.

Granting of loan by a person to a related person or by an overseas affiliate to its Indian entity, where the consideration being paid is only by way of interest or discount[48]

In case where loan is granted by a person to a related person or by an overseas affiliate to its Indian entity, it may not require to follow credit assessment processes as are followed by an independent lender; i.e., there may not be the activity of 'processing' the loan, and no consideration in the nature of processing fee/administrative charges/loan granting charges etc. is involved in granting such a loan.

Therefore, services of processing the loans by banks/independent lenders vis-à-vis the loans provided by a related party cannot be placed on equal footing. Accordingly, in the cases, where no consideration is charged by the person from the related person, or by an overseas affiliate from its Indian party, for extending loan/credit, other than by way of interest/discount, it cannot be deemed to be a "Supply of

[47] *Schedule II of the CGST Act, 2017 has been discussed in detail in Chapter 1 – Supply under GST in this Module of the Study Material.*

[48] *Circular No. 218/12/2024 GST dated 26.06.2024*

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service" between the said related persons in the form of processing/facilitating/administering the loan in terms of section 7(1)(c) read with paras 2 and 4 of Schedule I of the CGST Act, 2017[49].

(B) Services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange: The term **'authorised dealer of foreign exchange'** means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) of FEMA, 1999 to deal in foreign exchange or foreign securities [Section 2(c) of the Foreign Exchange Management Act, 1999].

It is important to note that such services provided to general public will not be covered in this entry as this entry only covers sale or purchase of foreign exchange:-

(i) amongst banks or

(ii) amongst authorized dealers of foreign exchange or

(iii) amongst banks and such dealers.

Services provided by commercial banks to RBI would be taxable as these are not covered by any of the exemptions/exclusions under the GST law

Clarification in respect of exemption to payment aggregators in relation to settlement of an amount, up to ₹ 2,000 in a single transaction, transacted through credit card, debit card, charge card or other payment card services

Issue

Whether exemption under Entry 34 of exemption notification is available to payment aggregators in relation to settlement of an amount, up to ₹2,000 in a single transaction, transacted through credit card, debit card, charge card or other payment card services?

Clarification

Payment Aggregators (PAs) are entities that facilitate ecommerce sites and merchants to accept various payment instruments from their

[49] *Section 7 of the CGST Act, 2017 and Schedule I has already been discussed in Chapter-2 "Supply under GST" in this Module of the Study material.*

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customers without the need for the e-commerce sites and merchants to create a separate payment integration system of their own. In the process, PAs receive payments from customers, pool and transfer them on to the merchants within a specified time period.

Entry 34 provides exemption to services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Here, "Acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

PAs receive payments from customers in an escrow account and are obligated to do the final settlement with the merchant within time periods specified by RBI[50]. Therefore, the RBI regulated PAs, involved in the settlement process of making payments to the merchant, are covered by the second part of the definition of acquiring bank, i.e. "any other person, who makes the payment to any person who accepts such card".

Payment Gateways (PGs) are defined as entities that provide technology infrastructure to route and facilitate processing of an online payment transaction without any involvement in handling of funds.

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[50] ***Clause 8 of the RBI's Guidelines on Regulation of Payment Aggregators and Payment Gateways, dated 17-3-2020, pertaining to 'Settlement and Escrow Account Management'***

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Since they handle settlements, RBI regulates PAs.

PAs fall under the acquiring bank category. "Any person who makes the payment to the person who accepts such card".

Customer

Customer makes a payment using a card or UPI

Payment Aggregator

Merchant

Within RBI-specified timelines, the PA settles the payment to the merchant

Escrow Account

The PA receives the payment into an escrow account

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It has been clarified that PAs fall within the definition of 'acquiring bank' given in the Explanation to the said exemption entry as they make the payment to the merchants who accept credit cards, debit cards, charge cards or other payment card services. Consequently, exemption under Entry 34 is available to RBI regulated Payment Aggregators (PAs) in relation to settlement of an amount, up to ₹ 2,000 in a single transaction, transacted through credit card, debit card, charge card or other payment card services.

Exemption available to RBI regulated Payment Aggregators.

It is also clarified that this exemption is limited to payment settlement function only, which involves handling of money, and does not cover Payment Gateway (PG) services.

10. Life insurance business services

Entry No.	Description of services
28	Services of life insurance business provided by way of annuity under the **National Pension System** regulated by the Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013.
29	Services of life insurance business provided or agreed to be provided by the **Army, Naval and Air Force Group Insurance Funds** to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
29A	Services of life insurance provided or agreed to be provided by the **Naval Group Insurance Fund** to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.
29B	Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.

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36	Services of life insurance business provided under following schemes- (a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product** as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of **₹ 2,00,000**; (d) Varishtha Pension Bima Yojana; (e) Pradhan Mantri Jeevan Jyoti Bima Yojana; (f) Pradhan Mantri Jan Dhan Yojana; (g) Pradhan Mantri Vaya Vandan Yojana. ****Life micro-insurance product** means any term insurance contract with/without return of premium, any endowment insurance contract or health insurance contract, with/without an accident benefit rider, either on individual/group basis, as per terms stated in Schedule-II appended to the regulations [Regulation 2(e) of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005].

11. Services provided by specified bodies

Entry No.	Description of services
30	Services by the **Employees' State Insurance Corporation** to persons governed under the Employees' State Insurance Act, 1948.
31	Services provided by the **Employees Provident Fund Organisation** to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952.
31A	Services by **Coal Mines Provident Fund Organisation** to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.
31B	Services by **National Pension System (NPS) Trust** to its members against consideration in the form of administrative fee.

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12. General insurance business services

Entry No.	Description of services
35	Services of **general insurance business** provided under following schemes – (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna[51]; (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) Pradhan Mantri Fasal Bima Yojana (PMFBY); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha Bima Yojna; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. (r) Bangla Shasya Bima

[51] *earlier known as Integrated Rural Development Programme*

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36A	Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36 or 40[52]. "Retrocession" means a re-insurance transaction whereby a part of assumed reinsured risk is further ceded to another Indian Insurer or a CBR (Cross Border Re-insurer). It has been clarified[53] that the term "reinsurance" includes "retrocession" services.
36B	***Services of insurance provided by the Motor Vehicle Accident Fund, constituted under section 164B of the Motor Vehicles Act, 1988, against contributions made by insurers out of the premiums collected for third party insurance of motor vehicles.***

13. Pension schemes

Entry No.	Description of services
37	Services by way of collection of contribution under the **Atal Pension Yojana**.
38	Services by way of collection of contribution under any pension scheme of the State Governments.

14. Business facilitator/correspondent

Entry 39: Services by the following persons in respective capacities –

(a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;

(b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or

(c) business facilitator or a business correspondent to an insurance company in a rural area.

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[52] *Entry 40 is discussed subsequently under heading 15. 'Services provided to Government'.*

[53] ***Circular No. 228/22/2024 GST dated 15.07.2024***

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ANALYSIS

It is still a big challenge for India to make the financial services accessible in rural areas. In many rural areas, either there are no banks or number of banks is insufficient. In order to counter this problem and ensure greater financial inclusion, the Reserve Bank of India (RBI) introduced the Business Correspondents and Business Facilitator Model through guidelines in 2006 allowing banks to employ two categories of intermediaries – known as Business facilitators (BFs) and Business correspondents (BCs).

BCs / BFs help villagers to open bank accounts and provide other banking services to them. They act as an intermediary between the bank and its customers. Banks, in turn, pay commission/ fee to the BCs/BFs.

According to the RBI guidelines, while the BCs are permitted to carry out transactions on behalf of the bank as agents, the BFs can refer clients, pursue the clients' proposal and facilitate the bank to carry out its transactions, but cannot transact on behalf of the bank[54].

Similarly, insurance companies engage the BCs/BFs to provide the insurance services in remote areas.

Entry 39 exempts the services provided by BF/BC to a banking company with respect to accounts in its rural area branch and services provided by any person as an intermediary to a BF/BC with respect to said services are exempt from GST. Further, the services provided by BF/BC to an insurance company in a rural area are also exempt.

It is important to note that for the purpose of availing exemption from GST under this Entry, services provided by a BF/BC to a banking company in their respective individual capacities should be with respect to accounts in a branch located in the **rural area** of the banking company.

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[54] *BFs provide a wide range of services including identification of borrowers and fitment of activities, collection and preliminary processing of loan applications, processing and submission of applications to banks, follow-up for recovery, etc. BCs, in addition to these activities, also undertake disbursal of small value credit, recovery of principal / collection of interest, collection of small value deposits, sale of micro insurance/ mutual fund products/ pension products/ other third-party products, receipt and delivery of small value remittances/ other payment instruments, etc.*

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Wherever the services provided by BF/BC to banking company and services provided by intermediary of BF/BC to BF/BC do not fall within the scope of this entry, GST is payable on such services.

However, the banking company is the person liable to pay GST under reverse charge in respect of commission/fees charged for the taxable services provided by BF to a banking company. Similarly, GST on taxable services provided by an agent of BC to BC is payable under reverse charge by the BC[55].

Further, as seen above, as per RBI's guidelines, banks may pay reasonable commission/fee to the BC. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner.

The arrangements of banks with the BCs specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF/BC.

Hence, banking company is the service provider to the ultimate customer in the BF model/BC model. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF/BC[56]..

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[55] *Provisions relating to reverse charge mechanism have been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.*

[56] *Circular No. 86/05/2019 GST dated 01.01.2018*

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Some relevant definitions under this entry are as follows:

- **Insurance company:** means a company carrying on life insurance business or general insurance business.
- ***Insurer :*** ***"Insurer" has the same meaning as assigned to it in sub-section (9) of section 2 of the Insurance Act, 1938.***

  As per Section 2(9) of the Insurance Act, 1938, "Insurer" means—

  (a) an Indian Insurance Company, or

  (b) a statutory body established by an Act of Parliament to carry on insurance business, or

  (c) an insurance co-operative society, or

  (d) a foreign company engaged in re-insurance business through a branch established in India. Explanation — For the purposes of this sub-clause, the expression "foreign company" shall mean a company or body established or incorporated under a law of any country outside India and includes Lloyd's established under the Lloyd's Act, 1871 (United Kingdom) or any of its Members
- **Intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13) of the IGST Act, 2017].
- **Rural area:** means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government.
- Exemption Notification defines BF/BC as an intermediary appointed under the BF model or BC model by a banking company or an insurance company under the guidelines issued by the RBI.

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15. Services provided to Government

Entry No.	Description of services
3	**Pure services provided TO Government:** ❑ Pure services (excluding works contract service or other composite supplies involving supply of any goods) ❑ provided to the Central Government, State Government or Union territory or local authority ❑ by way of any activity: ✓ in relation to any function entrusted to a Panchayat under article 243G of the Constitution or ✓ in relation to any function entrusted to a Municipality under article 243W of the Constitution.
3A	**Composite supply of goods and services TO Government:** ❑ Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply ❑ provided to the Central Government, State Government or Union territory or local authority ❑ by way of any activity: ✓ in relation to any function entrusted to a Panchayat under article 243G of the Constitution or ✓ in relation to any function entrusted to a Municipality under article 243W of the Constitution.
3B	Services provided to a Governmental Authority by way of — (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.

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11A	Service provided **by Fair Price Shops** to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.
40	Services provided to the Central Government, State Government, Union territory **under any insurance scheme** for which total premium is paid by the Central Government, State Government, Union territory.
72	Services provided to the Central Government, State Government, Union territory administration **under any training programme** for which ***75% or more of the*** total expenditure is borne by the Central Government, State Government, Union territory administration. It is clarified[57] that free coaching services provided by coaching institutions and NGOs under the central scheme of "Scholarships for students with Disabilities" where 75% or more of the expenditure[58] is borne by the Government to coaching institutions by way of grant in aid is covered under this entry and hence is exempt from GST.

ANALYSIS

Broadly speaking, **Entry 3** exempts the supply of 'pure services' and Entry 3A exempts 'composite supply goods and services', made to Government. Let us first understand what **'supply of pure services'** and **'composite supply of goods and services'** mean under these entries.

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[57] *vide Circular No. 164/20/2021 GST dated 06.10.2021*

[58] *This circular was issued prior to amendment in Entry 72 when the exemption was available only when **total expenditure** under the training programme was borne by the Central Government, State Government, Union territory administration.*
*However, as seen earlier in this chapter, Entry 72 has subsequently been amended and now exemption is available even when **75% or more of the total expenditure** under the training programme is borne by the Central Government, State Government, Union territory administration.*
Hence, the words "total expenditure" have been substituted with "75% or more of the total expenditure" in the above discussion pertaining to circular.

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Supply of **'pure services'** means supply of services without involving any supply of goods. **'Composite supply of goods and services'** means supply of both goods and services. **Entry 3A** exempts composite supply goods and services to Government provided the value of supply of goods constitutes not more than 25% of value of such composite supply.

Let us understand the concept of supply of 'pure services' and 'composite supply of goods and services' to Government by following examples:

(40) Supply of manpower for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as **supply of pure services**.

(41) A local authority awards the work of maintenance of street-lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods, i.e. **composite supply of goods and services**[59].

Moreover, such services (whether pure or composite) must be provided to the Central Government, State Government or Union territory or local authority **by way of any activity** in relation to any function entrusted to a:

(i) Panchayat under article 243G of the Constitution (listed in **11th Schedule** to the Constitution) or

(ii) Municipality under article 243W of the Constitution (listed in **12th Schedule** to the Constitution).

In view of the same, it is clarified that if pure services & composite supplies procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule above, in the manner as a local authority does for the general public, the same are not eligible for exemption under Entries 3 and 3A[60].

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[59] *As clarified vide question 25 of CBIC FAQs on Government Services*
[60] *Circular No. 177/09/2022 GST dated 03.08.2022*

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Clarification in respect of applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters.

Issue

MCD is receiving the services such as housekeeping, civil maintenance, furniture maintenance and horticulture, from facility management agency, for the upkeep of their office. The issue which arose for consideration was whether such services received by them are exempt from GST in terms of Sr. No.3A of the exemption Notification.

Clarification

The services of facility management such as housekeeping, civil maintenance, furniture maintenance and horticulture agency for the upkeep of office of MCD are not supplied in relation to performing any functions entrusted to a Municipality under Article 243W of the Constitution of India. Such services are not covered under the scope of entry at Sr. No. 3A.

Thus, it has been clarified that GST is applicable on the services provided by facility management agency to MCD, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of entry at Sr. No. 3A.

[Circular No. 245/02/2025-GST dated 28.01.2025]

Milling of wheat into flour/paddy into rice for distribution by State Governments under PDS exempt from GST

Public Distribution specifically figures at entry 28 of the 11th Schedule. Thus, composite supply of service by way of milling of wheat and fortification thereof by miller, or of paddy into rice, by any person to a State Government for distribution of such wheat flour under Public Distribution System (PDS) is eligible for exemption under Entry 3A provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc) does not exceed 25% of the value of composite supply. It is a matter of fact as to whether the value of goods in such composite supply is up to 25% and requires ascertainment on case-to-case basis[61].

[61] *Circular No. 153/09/2021GST dated 17.06.2021*

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Supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of total value of supply) made to CPWD are exempt from GST

Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD. Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Articles 243G and 243W read with Sr. No. 29 of 11th Schedule and Sr. No. 8 of 12th Schedule of the constitution.

Sr. Nos. 3 and 3A of exemption notification exempt pure services and composite supply of goods and services in which value of goods does not constitute more than 25%, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. Nos. 3 and 3A of exemption notification[62].

District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and eligible for the same exemptions from GST as available to any other Governmental Authority

DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc.

These activities are similar to activities that are enlisted in 11th Schedule and 12th Schedule of the Constitution. The ultimate users of the various schemes under DMF

[62] ***Circular No. 206/18/2023 GST dated 31.10.2023***

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are individuals, families, women and children, farmers/producer groups, SHGs of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.

Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority[63].

16. Leasing services

Entry No.	Description of services
41	Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of 30 years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having ***20%*** or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area. **Upfront amount paid in instalments** Aforesaid exemption is admissible irrespective of whether such upfront amount is payable/paid in one/more instalments, provided the amount is determined upfront[64]. **Location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease** As seen above, **upfront amount** is exempt from GST. Allowing choice of location of plot is integral part of supply of long-term lease of plot and therefore, location charge is nothing, but part of consideration charged for long term lease of plot. Being charged upfront along with the upfront amount for the lease, the same is exempt.

[63] **As clarified vide *Circular No. 206/18/2023 GST dated 31.10.2023***

[64] *As clarified vide Circular No. 101/20/2019- GST, dated 30.04.2019*

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	Accordingly, it is clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Entry 41[65]. Explanation - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 20% or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory. **Conditions:** 1. The leased plots shall be used for the purpose for which they are allotted, that is, for industrial or financial activity in an industrial or financial business area. 2. State Government concerned shall monitor and enforce the above condition as per the order issued by the State Government in this regard. 3. In case of any violation or subsequent change of land use, due to any reason whatsoever, the original lessor, original lessee as well as any subsequent lessee/ buyer/ owner shall be jointly and severally liable to pay such amount of central tax, as would have been payable on the upfront amount charged for the long term lease of the plots but for the exemption contained herein, along with the applicable interest and penalty. 4. The lease agreement entered into by the original lessor with the original lessee or subsequent lessee, or sub- lessee, as well as any subsequent lease/ sale agreements, for lease or sale of such plots to subsequent lessees or buyers or owners shall incorporate in the terms and conditions, the fact that the central tax was exempted on the long term lease of the plots by the original lessor to the original lessee subject to above condition and that the parties to the said agreements undertake to comply with the same.

[65] *As clarified vide Circular No. 177/09/2022 GST dated 03.08.2022*

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17. Legal services

Entry 45: Services provided by-

(a) an arbitral tribunal to –

(i) any person other than a business entity; or

(ii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;

(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-

(i) an advocate or partnership firm of advocates providing legal services;

(ii) any person other than a business entity; or

(iii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;

(iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

(c) a senior advocate by way of legal services to-

(i) any person other than a business entity; or

(ii) a business entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017;

(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.

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ANALYSIS

Relevant definitions are as under:

- **Legal service:** means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- **Advocate:** means an advocate entered in any roll under the provisions of the Advocates Act, 1961 [Section 2(1)(a) of the Advocates Act, 1961].
- **Arbitral tribunal:** means a sole arbitrator or a panel of arbitrators [Section 2(d) of the Arbitration and Conciliation Act, 1996].

- **Senior advocate:** An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction.

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

Under Entry 45, following services are exempt from GST

Legal services provided by

--Arbitral tribunal

--Partnership firm of advocates or an individual as an advocate other than a senior advocate by way of legal services

--Senior advocate by way of legal services

provided to

--any person other than BE

--Business Entity with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under GST.

--CG/SG/UT/LA/GA/GE

Legal services provided by a partnership firm of advocates/ individual as an advocate other than a senior advocate to another advocate/ partnership firm of advocates providing legal services.

Thus, legal services provided to a business entity with an aggregate turnover

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exceeding such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017 are liable to GST. Further, tax is payable by the business entity on such services under reverse charge.

(42) Pyarelal & Co. has obtained registration under GST in the preceding financial year as its aggregate turnover exceeded the threshold exemption limit. In the current FY, it sought legal consultancy services for its business from Nyay Advocates – a partnership firm of advocates.

The legal services so received by Pyarelal & Co. are not exempt because its aggregate turnover exceeds the threshold exemption limit of registration in the preceding financial year. Further, the tax on the said legal services is payable by Pyarelal & Co. under reverse charge.

18. Sponsorship of sports events

Entry 53: Services by way of sponsorship of sporting events organised -

(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;

(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;

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

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

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

(43) Central Civil Services Cultural and Sports Board organised a cricket tournament for promotion of sports and cultural activities amongst the Central Government Employees. Reliable Industries sponsored said cricket tournament. In the given case, services by way of sponsorship of sporting events organized by the Central Civil Services Cultural and Sports Board are exempt from GST.

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19. Skill Development services

Entry No.	Description of services
69	Any services provided by – (a) the National Skill Development Corporation set up by the Government of India; (b) the National Council for Vocational Education and Training; (c) an Awarding Body recognized by the National Council for Vocational Education and Training; (d) an Assessment Agency recognized by the National Council for Vocational Education and Training; (e) a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training, ***(f) a training partner approved by the National Skill Development Corporation,*** in relation to- (i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package.
70	Services of **assessing bodies empanelled centrally** by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.

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71	Services provided by training providers (Project implementation agencies) under **Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY)** implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational ***Education and*** training courses certified by the National Council for Vocational Training.

20. Performance by an artist

Entry 78: Services by an artist by way of a performance in folk or classical art forms of-

(a) music, or

(b) dance, or

(c) theatre,

if the consideration charged for such performance is not more than **₹ 1,50,000** are exempt from GST.

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are exempt if consideration does not exceed ₹ 1,50,000. However, if consideration from such activities exceeds ₹ 1,50,000, entire consideration is subject to GST.

Further, all other activities by an artist in **other art forms** e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly activities of artists in **still art forms** e.g. painting, sculpture making etc. are **taxable.**

However, the exemption shall not apply to service provided by such artist as a brand ambassador.

'Brand ambassador' means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

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21. Right to admission to various events

Entry No.	Description of services
79	Services by way of admission to a **museum, national park, wildlife sanctuary, tiger reserve or zoo****. ****Zoo** means an establishment, whether stationary or mobile, where captive animals are kept for exhibition to the public and includes a circus and rescue centres but does not include an establishment of a licensed dealer in captive animals [Section 2(39) of the Wild Life (Protection) Act, 1972].
79A	Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958 or any of the State Acts, for the time being in force.
81	Services by way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event ⏲; (c) recognised sporting event; (d) planetarium, where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹ 500 per person. ⏲ **Recognised sporting event** means any sporting event,- (i) organised by a **recognised sports body**●● where the participating team or individual represent any district, state, zone or country; (ii) organized

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	(A) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State or zone; (B) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat; (C) by Central Civil Services Cultural and Sports Board; (D) as part of national games, by Indian Olympic Association; or (E) under Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme. ●● **Recognised sports body** means – (i) the Indian Olympic Association; (ii) Sports Authority of India; (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations; (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government; (v) the International Olympic Association or a federation recognised by the International Olympic Association; or (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

22. Services by an unincorporated body or a non- profit entity

Entry No.	Description of services
77	Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union

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	(b) for the provision of carrying out any activity which is exempt from the levy of GST; or (c) up to an amount of ₹ 7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.
77A	Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,- (i) activities relating to the welfare of industrial or agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of ₹ 1000/- per member per year.

ANALYSIS

Co-operative Housing Society

Co-operative Housing Societies are entities registered under the co-operative laws of the respective States. A Co-operative Housing Society is a collective body of persons, who stay in a residential society and as a collective body, they supply certain services to its members, like collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.

A Co-operative Housing Society is akin to a club, which is composed of its members. Service provided by a Housing Society [Resident Welfare Association (RWA)] to its members is treated as service provided by one person to another. The activities of the housing society/RWA would attract the levy of GST and the housing society would be required to register if its aggregate turnover exceeds the threshold limit and comply with the GST Law, unless specifically exempted.

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GST exemption on services provided by a Co-operative Housing Society

If the aggregate turnover of housing society/ RWA providing services to its members is above the applicable threshold limit for registration[66], it needs to take registration under GST in terms of section 22 *[Refer Chapter-8: Registration in Module 2 of this Study Material for detailed discussion on registration]*. However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members. If the services provided by it are exempt under an exemption notification, then it is not required to charge GST on the said services, even if it is registered under GST.

For instance, in view of entry 77(c) above, supply of service by a RWA (unincorporated body or a non- profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7500 per month per member for providing services and goods for the common use of its members in a housing society/a residential complex are exempt from GST.

So, there can be case where a society is registered under GST, but the monthly contribution received from all the members is less than ₹ 7,500/- per member (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members). In such a case, no GST is to be charged by the housing society on the monthly bill raised by the society.

(44) RWA of Chulbul Housing Society, registered under GST, collected the maintenance charges of ₹ 6,000 per month per member. In this case, no GST is to be charged by the RWA.

However, in above case, if the monthly contribution exceeds ₹ 7,500/- per member, entire contribution is taxable.

(45) If, in above example, other things remaining the same, the RWA of Chulbul Housing Society collected the maintenance charges of ₹ 9,000 per month per member, GST @18% shall be payable on the entire amount of ₹ 9,000 and not on [₹ 9,000 - ₹ 7,500] = ₹ 1,500.

There can also be a case where the aggregate turnover of the society/RWA is less than the applicable threshold limit for registration and the monthly contribution of all the individual members towards maintenance is less than ₹ 7,500/- (such services being exempt). Further, the society is providing no other taxable service to its

[66] *Threshold limit is ₹ 10 lakh for specified Special Category States, namely, Manipur, Mizoram, Nagaland and Tripura and ₹ 20 lakh for all other States.*

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members or outsiders. In this case, the society (essentially exclusively providing wholly exempt services) need not take registration under GST.

(46) The turnover of RWA of Bulbul Housing Society located in New Delhi in a financial year is ₹ 15 lakh. It has collected the maintenance charges of ₹ 6,000 per month per member. RWA is not providing any other taxable service to its members. In this case, RWA is not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ₹ 20 lakh.

However, an RWA is not required to obtain registration even though the amount of maintenance charges exceeds ₹ 7500 per month per member but the aggregate turnover of the RWA in a financial year does not exceed the threshold limit for registration.

(47) In the above example, other things remaining the same, if the maintenance charges collected by the RWA are ₹ 8,000 per month per member, RWA is still not required to take registration under GST since its aggregate turnover is less than the applicable threshold limit of ₹ 20 lakh.

The above discussion has been summarized as under:

** ₹ 10 lakh in case of Special Category States of Manipur, Mizoram, Nagaland and Tripura*

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Thus, RWA shall be required to pay GST on monthly subscription/ contribution charged from its members, only if such subscription is more than ₹ 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also more than ₹ 20 lakh.

In other words,

Annual turnover of RWA	Monthly maintenance charge	Whether exempt?
More than ₹ 20 lakh*	More than ₹ 7500/-	No
	₹ 7500/- or less	Yes
₹ 20 lakh or less	More than ₹ 7500/-	Yes
	₹ 7500/- or less	Yes

** ₹ 10 lakh in case of Special Category States of Manipur, Mizoram, Nagaland and Tripura*

There may also be cases where a person owns 2 or more flats in the housing society/residential complex. The question arises whether the ceiling of ₹ 7500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person.

As per general business sense, a person who owns 2 or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. Consequently, the ceiling of ₹ 7500/- per month per member shall be applied separately for each residential apartment owned by him.

(48) Gareeb Chand owns two residential apartments in a residential complex and pays ₹ 15,000/- per month as maintenance charges towards maintenance of these two apartments to the RWA (₹ 7,500/- per month in respect of each residential apartment). In this case, the exemption from GST shall be available with respect to maintenance charges paid for each apartment.

It is important to note that RWA is entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes,

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other sanitary/hardware fillings etc.) and input services such as repair and maintenance services, used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹ 7,500 per month per member. *[Refer Chapter-7: Input Tax Credit in Module 2 of this Study Material for detailed discussion on ITC provisions]*

(49) RWA of Tintin Housing Society, registered under GST, has collected the maintenance charges of ₹ 9,000 per month per member from 1,000 members of the society in the month of May. For paying the GST of ₹ 16,20,000 [payable @ 18% on the amount of ₹ 90,00,000], RWA can utilise the ITC of GST of ₹ 1,00,000 paid by it on purchase of swings for garden, ITC of ₹ 20,000 on electric cables and ITC of ₹ 15,000 on plumbing services, which were made/availed during the month of May.

✪ Statutory dues such as property tax, electricity charges etc. forming part of the monthly maintenance bill raised by the society on its members would be excluded while computing the aforesaid monthly limit of ₹ 7,500.

Taxability of various charges collected by societies

A society may collect the following charges from the members on quarterly basis as follows:

1. Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM)
2. Water Tax-Municipal Corporation of Greater Mumbai (MCGM)
3. Non-Agricultural Tax-Maharashtra State Government
4. Electricity charges
5. Sinking Fund-mandatory under the Bye-laws of the Co-operative Societies
6. Repairs & maintenance fund
7. Car parking Charges
8. Non-Occupancy Charges
9. Simple interest for late payment.

CBIC has clarified the taxability of above charges as follows:

1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted

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from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable.

2. Similarly, GST is not leviable on Non-Agricultural Tax, Electricity Charges etc., which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST.

3. Sinking fund, repairs & maintenance fund, car parking charges, Non-occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members[67].

23. Other exempt services

Entry No.	Description of services
2	Services by way of **transfer of a going concern**, as a whole or an independent part thereof. **Transfer of a going concern** means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Transfer of business for a lump sum consideration commonly referred to as slump sale is covered under this entry. Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted. **(50)** Royal Hotel Group is in the business of running a chain of restaurants. It intends to sell its business as a going concern. It would not be required to pay GST on such sale of its business.

[67] *Discussion under this entry in forgoing paras is primarily based on Circular No. 109/28/2019 GST dated 22.07.2019, CBIC GST Flyer 'GST on Co-Operative Housing Societies' and CBIC FAQs on levy of GST on Supply of Services to Co-operative Society.*

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9B	Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries). In this regard, it is clarified that this entry covers services associated with transit cargo both **to and from** Nepal and Bhutan. The movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption[68].
12	Services by way of **renting of residential dwelling** for use as residence except where the residential dwelling is rented to a registered person. Explanation — For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, – (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and (ii) such renting is on his own account and not that of the proprietorship concern. Explanation 2.- Nothing contained in this entry shall apply to- (a) accommodation services for students in student residences; (b) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like. Thus, renting of residential dwelling either by a registered person or an unregistered person for use as residence to UNREGISTERED PERSON is exempt from GST. Renting of residential dwelling for use as residence to a registered person (other than proprietor covered in explanation above) as well as renting of residential dwelling for commercial use to registered or unregistered person is liable to GST. Further, tax on renting of residential dwelling to a registered person is payable by the registered person under reverse charge[69] whether such

[68] *Circular No. 177/09/2022 GST dated 03.08.2022*

[69] *Provisions relating to reverse charge mechanism are contained in Notification No. 13/2017 CT (R) dated 28.06.2017 which has been discussed in detail in Chapter 2 – Charge of GST in this Module of Study Material.*

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	residential dwelling is being used for commercial purposes or residential purposes.
12A	Supply of accommodation services having value of supply less than or equal to twenty thousand rupees per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days.
19	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
19C	Satellite launch services.
22	Services by way of giving on hire – (a) to a State Transport Undertaking (STU), a motor vehicle meant to carry more than 12 passengers**; or **State Transport Undertaking:** means any undertaking providing road transport service, where such undertaking is carried on by- i. the Central Government or a State Government; ii. any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950. iii. any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments. Explanation-For the purposes of this clause, road transport service means a service of motor vehicles carrying passengers or goods or both by road for hire or reward [Section 2(42) of the Motor Vehicles Act, 1988]. Generally, such STUs/ Corporations are established with a view to providing public transport facility to the commuters. If transport undertakings hire the buses on lease basis from private persons on payment of consideration, the services by way of supply of motor vehicles to such STU are exempt from payment of tax. However, supplies of motor vehicles to Government Departments other than the STUs are taxable[70].

[70] *As clarified vide question 26 of CBIC FAQs on Government Services*

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(aa) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers;

EOV means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one/more electrical batteries fitted to such road vehicle.

The expression **"giving on hire"** in this entry includes renting of vehicles.

Accordingly, where the said vehicles are rented or given on hire to STUs or Local Authorities, said services are eligible for above exemption irrespective of whether such vehicles are run on routes, timings as decided by the STUs or Local Authorities and under effective control of STUs or Local Authorities which determines the rules of operation or plying of vehicles[71].

(b) to a goods transport agency, a means of transportation of goods.

(51) Nishant owns a truck which he has rented to Sindhu and Bansal Transport Agency - a GTA. Services by way of giving on hire a means of transportation of goods [truck in the given case] to a GTA [Sindhu and Bansal Transport Agency], are exempt from tax.

However, if Nishant had rented a vehicle designed to carry passengers to such GTA, said activity is not exempt under this entry.

(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

23 Service by way of access to a road or a bridge on payment of **toll charges.**

With regard to said entry, following issues have been clarified:

(i) Ministry of Road Transport and Highways (MORTH) permitted the overloaded vehicles to ply on the national highways after payment of

[71] *Circular No. 164/20/2021 GST dated 06.10.2021*

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	higher toll charges. It has been clarified[72] that overloading charges at toll plazas would get the same treatment as given to toll charges. (ii) MORTH[73] has directed to collect additional amount from the users of the road to the extent of two times of the fees applicable to that category of vehicle which is not having a valid functional Fastag. Essentially, the additional amount collected from the users of the road not having a functional Fastag, is in the nature of toll charges and should be treated as additional toll charges. Therefore, it is clarified[74] that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.
25	Transmission/distribution of electricity by an electricity transmission/ distribution utility. However, in this regard CBIC has clarified that the other services provided by DISCOMS (distribution companies) to consumer against charges are liable to GST such as,- i. Application fee for releasing connection of electricity; ii. Rental Charges against metering equipment; iii. Testing fee for meters/transformers, capacitors etc.; iv. Labour charges from customers for shifting of meters or shifting of service lines; v. charges for duplicate bill[75].
25A	Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission or distribution of electricity provided by electricity transmission or distribution utilities to their consumers.

[72] *vide Circular No. 164/20/2021 GST dated 06.10.2021*
[73] *vide circular dated 16.02.2021*
[74] *vide Circular No. 177/09/2022 GST dated 03.08.2022*
[75] *Circular No. 34/8/2018 GST dated 01.03.2018*

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44	Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year subject to the following conditions, namely:- (a) the total turnover had not exceeded ₹ 50 lakh during the preceding financial year; and (b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee. **Incubatee:** means an entrepreneur located within the premises of a Technology Business Incubator (TBI)/ Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India (NSTEDB) and who has entered into an agreement with the TBI/STEP to enable himself to develop and produce hi-tech and innovative products.
44A	Research and development services against consideration received in the form of grants supplied by – (a) a Government Entity; or (b) a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961. The condition to be fulfilled in this case is that the research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 is so notified at the time of supply of the research and development service.
48	Taxable services, provided or to be provided, by a TBI/STEP recognised by NSTEDB or bio- incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India (BIRAC).
49	Services by way of **collecting or providing news** by an independent journalist, Press Trust of India or United News of India.
50	Services of **public libraries** by way of lending of books, publications or any other knowledge-enhancing content or material.
52	Services by an organiser to any person in respect of a **business exhibition** held outside India.

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52A	Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India. However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less. Further, in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day. Explanation. - **"Foreign 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. example (52) A tour operator provides a tour operator service to a foreign tourist as follows: - (a) 3 days in India, 2 days in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/- Exemption: ₹ 40,000/- (=₹1,00,000/- x 2/5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 40,000/-(i.e., Taxable value: ₹ 60,000/-); (b) 2 days in India, 3 nights in Nepal; Consideration charged for the entire tour: ₹ 1,00, 000/- Exemption: ₹ 60,000 (=₹ 1,00,000/- x 3/5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 50,000/-(i.e., Taxable value: ₹ 50,000/-); (c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: ₹ 1,00,000/- Exemption: ₹ 54,545 (=₹ 1,00,000/- x 3/5.5) or, ₹ 50,000/- (= 50% of ₹ 1,00,000/-) whichever is less, i.e., ₹ 50,000/-(i.e., Taxable value: ₹ 50,000/-).
57	Services by way of **pre-conditioning, pre- cooling, ripening, waxing, retail packing, labelling** of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

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58	Services provided by the **National Centre for Cold Chain Development** under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of **cold chain knowledge dissemination**.
59	Services by a **foreign diplomatic mission** located in India.
61A	Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States.
65A	Services by way of **providing information under the RTI Act** (Right to Information Act, 2005).
68	Services provided to a recognised sports body by- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body; (b) another recognised sports body. However, services by individuals such as selectors, commentators, curators, technical experts are taxable. The service of a player to a franchisee which is not a recognized sports body is also taxable. *The term **'recognised sports body'** has been defined earlier in this chapter.*
76	Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

Note: For the purpose of this exemption notification, a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.

GST on payment of honorarium to the Guest Anchors

Circular No. 177/09/2022 GST dated 03.08.2022 clarifies the applicability of GST on honorarium paid to Guest Anchors. Sansad TV and other TV channels invite guest anchors to participate in their shows and pay remuneration to them in the form of honorarium.

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It is clarified that supply of all goods & services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. **Services provided by the guest anchors in lieu of honorarium attract GST liability.**

However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakh (₹ 10 lakh in case of specified Special Category States) shall not be liable to take registration and pay GST.

Above services have been exempted from both CGST/SGST/UTGST and IGST[76]. Apart from these services, list of services exempt from IGST by *Notification No. 9/2017 IT (R) dated 28.06.2017 as amended* also include following services:

S.No.	Description of services
1	Services received from a provider of service located in a non- taxable territory by – (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA/12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or (ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course;

[76] *by virtue of Notification No. 12/2017 CT (R) dated 28.06.2017 as amended (for CGST) and Notification No. 9/2017 IT (R) dated 28.06.2017 as amended (for IGST)*

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	(c) a person located in a non-taxable territory. However, the exemption shall not apply to online information and database access or retrieval services received by persons specified in entry (a) or entry (b).
2	Import of services by an establishment of a foreign company in India, which is an airline company, from a related person or from any of its other establishments outside India, when made without consideration. Explanation: Foreign company shall have the same meaning as assigned to it in sub-section (42) of section 2 of Companies Act, 2013. **Conditions to be fulfilled:** (i) GST at applicable rates is paid by the establishment of the foreign airline company in India on transport of goods and passengers as may be applicable. (ii) Ministry of Civil Aviation certifies that the establishment of the foreign company in India is that of an airline company which has been designated by the foreign government under the applicable bilateral air services agreement with India. (iii) Ministry of Civil Aviation certifies that on a reciprocal basis, designated Indian airlines are not subject to levy of similar taxes by whatever name called for the same services appearing under the entry, by the Government of the country designating the foreign airline company.
3	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
4	**Services supplied by an establishment of a person in India to any establishment of that person outside India**, which are treated as establishments of distinct persons [in accordance with Explanation 1 in section 8 of the IGST Act] provided the place of supply of the service is outside India [in accordance with section 13 of IGST Act].

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5	**Import of services by United Nations or a specified international organisation for official use** of the United Nations or the specified international organisation. 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.
6	**Import of services by Foreign diplomatic mission or consular post in India**, or diplomatic agents or career consular officers posted therein shall be exempt from IGST, subject to the conditions, - (i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from integrated tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity; (ii) that the services imported are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said diplomatic agent or career consular officer or members of his or her family. (iii) that in case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India, decides to withdraw the same subsequently, it shall communicate the withdrawal of such certificate to the foreign diplomatic mission or consular post; (iv) that the exemption from the whole of the integrated tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available from the date of withdrawal of such certificate.

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7	Services **provided by an intermediary** when location of both supplier and recipient of goods is outside the taxable territory. **Conditions to be fulfilled:** Following documents shall be maintained for a minimum duration of 5 years: (1) Copy of Bill of Lading (2) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods (3) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in non-taxable territory (4) Copy of certificate of origin issued by service recipient located in non-taxable territory (5) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory.

OTHER EXEMPTIONS

S.No.	Description of services
1	**Intra-State supplies received by a TDS deductor from any unregistered supplier exempt from CGST** Intra-State supplies of goods or services or both received by a deductor under section 51, from any unregistered supplier, is exempt from the whole of the central tax leviable thereon under section 9(4),

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	subject to the condition that the deductor is not liable to be registered otherwise than under section 24(vi) ***[Notification No. 9/2017 CT (R) dated 28.06.2017].***
2	**Services imported by unit/developer in SEZ exempt from IGST** All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 ***[Notification No. 18/2017 IT (R) dated 05.07.2017].***
3	**Central Government's share of profit petroleum exempted from CGST** Intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, has been exempted from so much of CGST as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf. ***[Notification No. 5/2018 CT (R) dated 25.01.2018]*** Parallel exemption from IGST has been extended to inter-State supply of such services vide ***Notification No. 5/2018 IT (R) dated 25.01.2018.***
4	**IGST exempted to the extent it is paid on the consideration attributable to royalty and license fee included in transaction value under rule 10(1)(c) of Customs Valuation (Determination of value of imported Goods) Rules, 2007** IGST leviable on import of services in relation to temporary transfer or permitting the use or enjoyment of any intellectual property right has been exempted to the extent of the aggregate of the duties of customs leviable under section 3(7) of the Customs Tariff Act, 1975, on the consideration declared under section 14(1) of the Customs Act,

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	1962 towards royalties and license fees included in the transaction value as specified under rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on which the appropriate duties of customs have been paid ***[Notification No. 6/2018 IT (R) dated 25.01.2018].***

5. POWER NOT TO RECOVER GOODS AND SERVICES TAX NOT LEVIED OR SHORT-LEVIED AS A RESULT OF GENERAL PRACTICE.

STATUTORY PROVISIONS

Section 11A	***Power not to recover Goods and Services Tax not levied or short-levied as a result of general practice.***		
	Particulars		
	Notwithstanding anything contained in this Act, if the Government is satisfied that-		
	(a)	***a practice was, or is, generally prevalent regarding levy of central tax (including non-levy thereof) on any supply of goods or services or both; and***	
	(b)	***such supplies were, or are, liable to,-***	
		(i)	***central tax, in cases where according to the said practice, central tax was not, or is not being, levied, or***
		(ii)	***a higher amount of central tax than what was, or is being, levied, in accordance with the said practice,***
	the Government may, on the recommendation of the Council, by notification in the Official Gazette, direct that the whole of the central tax payable on such supplies, or, as the case may be, the central tax in excess of that payable on such supplies, but for the said practice, shall not be required to be paid in respect of the supplies on which the central tax was not, or is not being levied, or was, or is being, short-levied, in accordance with the said practice.		

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ANALYSIS

Regularization of non-levy/short levy of GST on account of generally followed practice

The Government is empowered to issue a retrospective exemption from GST under specific circumstances. If the Government is satisfied that there was, or is, a generally followed practice where GST was not levied or levied at a lower rate on certain goods or services—despite such supplies being actually liable to GST or a higher rate of GST—then, on the recommendation of the GST Council, the Government may issue a notification in the Official Gazette.

This notification can state that the GST which was not paid or short-paid due to the prevalent practice shall not be required to be paid.

This provision aims to provide relief to taxpayers who have followed industry practice in good faith, based on commonly accepted practices, even if those practices were not legally accurate.

Similar provisions granting power to exempt IGST have been provided under section 6A of the IGST Act.

Students may note that some of the entries granting exemption from GST are similar to the negative list entry/entry granting exemption under the erstwhile service tax law. Therefore, clarification pertaining to said negative list entry/exemption provided in the 'Service Tax Education Guide' – an educational aid released for facilitating the stakeholders to obtain preliminary understanding of the provisions, wherever it seems relevant under the GST law, have been incorporated at relevant places.

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LET US RECAPITULATE

1. **Power to exempt from tax [Section 11 of the CGST Act/ section 6 of IGST Act]**

2. ***Power not to recover GST not levied or short-levied as a result of general practice. [Section 11A of the CGST Act/ Section 6A of IGST Act]***

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3. List of services exempt from GST

	Exempt Services
Services related to charitable and religious activities	**Charitable activities** BY an **entity registered under section 12AA/12AB** of Income-tax Act.
	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned/managed by institutions/entities/trusts, registered under section 12AA/12AB/10(23C)(v) of the Income tax Act or body/authority covered under section 10(23BBA) of the said Act, except where- (i) charges for **renting of rooms ≥ ₹ 1,000** per day; (ii) charges for **renting of premises**, community halls, kalyanmandapam, open area, etc. are **≥ ₹ 10,000** per day; (iii) charges for **renting of shops/**spaces for business/commerce are **≥ ₹ 10,000** per month.
	Services by a specified organisation [KMVN/Haj Committee] **in respect of a religious pilgrimage** [Haj and Kailash Mansarovar Yatra].
	Training/coaching in (a) recreational activities relating to arts/culture, **by an individual** or (b) sports by **charitable entities** registered under section 12AA or 12AB of the Income-tax Act.
Agriculture related services	Loading, unloading, packing, storage or warehousing of rice.
	Warehousing of minor forest produce.
	Services by way of storage/ warehousing of cereals, pulses,

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	fruits & vegetables.
	Artificial insemination of livestock (other than horses).
	Carrying out an **intermediate production process as job work** in relation to cultivation of plants & rearing of animals [except horses], for food, fibre, fuel, raw material or other similar products or agricultural produce.
	Services relating to cultivation of plants & rearing of animals [except horses], for food, fibre, fuel, raw material or other similar products or agricultural produce by way of – (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of **farm labour**; (c) **processes carried out at an agricultural farm** including tending, pruning, etc. and such like operations **which do not alter the essential characteristics of agricultural produce** but make it only marketable for the primary market; (d) **renting or leasing of agro machinery or vacant land** with/without a structure incidental to its use; (e) **loading, unloading, packing, storage or warehousing** of agricultural produce; (f) **agricultural extension services**; (g) services by any **Agricultural Produce Marketing Committee** or Board or services provided by a commission agent for sale/purchase of agricultural produce.
Education services	Services provided BY an educational institution (EI): • to its students, faculty and staff; • by way of conduct of entrance examination against consideration in form of entrance fee

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	Services provided TO an EI, by way of,- (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government (CG), State Government (SG) or Union Territory (UT); (iii) security/cleaning/housekeeping services performed in such EI;	These exemptions are only applicable to an institution providing services by way of pre-school education & education up to higher secondary school or equivalent.
	(iv) services relating to admission to, or conduct of examination by, such EI;	
	(v) supply of online educational journals or periodicals. This exemption is **only applicable to an institution** providing services by way of education as part of a curriculum for obtaining qualification recognised by any law for time being in force.	
	Services of affiliation provided by a Central or State Educational Board or Council or any other similar body, by whatever name called, to a school established, owned or controlled by the Central Government, State Government, Union Territory, local authority, Governmental authority or Government entity.	
Health care services	• **Health care services** BY a clinical establishment/ authorized medical practitioner/ para-medics However, nothing in this entry shall apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services.	

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	• **Transportation of a patient in an ambulance** BY any person other than specified above.
	Service BY a veterinary clinic in relation to **Health care of animals/birds**
Services provided by Government	Services by Governmental Authority (GA) by way of **any activity in relation to any function entrusted to a Municipality /Panchayat** under article **243W/ 243G** of Constitution
	Services by the CG/SG/UT/Local Authority (LA) excluding following services— (a) services by **Department of Posts** and the Ministry of Railways (Indian Railways); (b) services in relation to an **aircraft/a vessel,** inside/outside precincts of a port/airport; (c) **transport of goods/passengers**; or (d) any service, other than 'specified services' above, **provided to business entities**. **(a) to (c) hereinafter referred as ' specified services'**
	Services by the Department of Posts by way of post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams).
	Services provided by CG/SG/UT/LA to a business entity (BE) with an aggregate turnover of up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017. This exemption is not applicable to **specified services** and **renting of immovable property service.**
	Services provided by CG/SG/UT/LA **to another** CG/SG/UT/LA. This exemption is not applicable to **specified services.**
	Services provided by CG/SG/UT/LA **where consideration for such services does not exceed ₹ 5,000**. This exemption is not applicable to **specified services****.

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	In case of **continuous supply of service*, the exemption shall apply only where the consideration charged for such service does not exceed **₹ 5,000 in a FY.**
	Supply of service by a Government Entity (GE) to CG/SG/UT/LA/any person specified by CG/SG/UT/LA against consideration received from CG/SG/UT/LA, in the form of grants.
	Services by an old age home run by CG/SG/an entity registered under section 12AA/12AB of Income-tax Act to its residents (aged ≥60 years) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.
	Services provided by Ministry of Railways (Indian Railways) to individuals by way of – (a) sale of platform tickets (b) facility of retiring rooms/waiting rooms; (c) cloak room services; (d) battery operated car services
	Services provided by one zone/division under Ministry of Railways (Indian Railways) to another zone(s)/division(s) under Ministry of Railways (Indian Railways).
	Services provided by SPVs to Ministry of Railways (Indian Railways) by way of allowing it to use the infrastructure built and owned by them during the concession period against consideration and services of maintenance supplied by Ministry of Railways (Indian Railways) to SPVs in relation to the said infrastructure built and owned by the SPVs during the concession period against consideration.
	Services supplied by CG/SG/UT to their undertakings or PSUs by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.

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	Services provided by CG/SG/UT/LA by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.
	Services provided by CG/SG/UT/LA **by way of issuance of passport, visa, driving license, birth certificate or death certificate**.
	Services provided by CG/SG/UT/LA **by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable** to CG/SG/UT/LA under such contract.
	Services provided by CG/SG/UT/LA by way of **assignment of right to use natural resources to an individual farmer for cultivation of plants & rearing of all life forms of animals** [except horses], for food, fibre, fuel, raw material or other similar products.
	Services provided by CG/SG/UT by way of **deputing officers after office hours or on holidays for inspection or container stuffing** or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
	Services supplied by a SG to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of SG on the mineral dispatched by the mining lease holders subject to specified conditions.
	Services provided by rehabilitation professionals recognised under the RCI Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by CG/SG/UT/an entity registered under section 12AA/12AB of the Income-tax Act, 1961.

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Construction services	**Pure labour contracts** of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the **Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana**.
	Services supplied by **Electricity Distribution Utilities** by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer/agriculturalist for agricultural use.
	Pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a **single residential unit otherwise than as a part of a residential complex**.
	Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.
Services of transport of passengers (with/ without accompanied belongings)	Such services provided by – (a) **air in economy class, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;** (b) **non-air conditioned contract carriage** other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or

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	(c) **stage carriage other than air- conditioned stage carriage.** However, nothing contained in items (b) and (c) above shall apply to services supplied through an ECO, and notified under section 9(5) of the CGST Act.
	Such services provided to CG by air, embarking from or terminating at a Regional Connectivity Scheme **(RCS) airport**, against consideration in the form of viability gap funding. This exemption shall apply only till expiry of a period of **3 years** from date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.
	Such services provided by— (a) railways in a class other than first class/an air-conditioned coach; (b) metro, monorail or tramway; (c) inland waterways; (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (e) metered cabs or auto rickshaws (including e-rickshaws). However, nothing contained in item (e) above shall apply to services supplied through an ECO, and notified under section 9(5) of the CGST Act.
Goods transportation services	Services by way of transportation of goods- (a) by road except the services of— (i) a goods transportation agency (GTA); (ii) a courier agency; (b) by inland waterways.

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	Exempt transportation of goods by **rail/ vessel/ by GTA in a goods carriage** • Agricultural produce • milk, salt and food grain including flours, pulses and rice • organic manure • newspaper or magazines registered with the Registrar of Newspapers • Defence/ military equipments • relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap
	Services provided **by a GTA to an unregistered person**, including an unregistered casual taxable person, except following recipients, namely: - (a) a factory registered under Factories Act, (b) society registered under Societies Act, (c) Co-operative society, (d) body corporate and (e) partnership firm including AOP; (f) registered casual taxable person.
	Services provided **by a GTA**, by way of transport of goods in a goods carriage, to, - (a) a Department or Establishment of the CG/SG/UT; or (b) local authority; or (c) Governmental agencies, which has taken registration only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.

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Banking and financial	Services by way of— (a) **extending deposits, loans or advances** in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se **sale or purchase of foreign currency** amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
	Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
	Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.
	Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees.
Services of Life insurance business	Such services by way of annuity under the **National Pension System** by Pension Fund Regulatory and Development Authority of India (PFRDAI) under PFRDA Act, 2013.
	Such services by the **Army, Naval and Air Force Group Insurance Funds** to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of CG.
	Services of life insurance provided/agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force.

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	Such services by the **Naval Group Insurance Fund** to the personnel of Coast Guard under the Group Insurance Schemes of CG.
	Such services under following schemes- (A) (a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product** as approved by the Insurance Regulatory and Development Authority (IRDA), having maximum amount of cover of **₹ 2,00,000**; (d) Varishtha Pension BimaYojana; (e) Pradhan Mantri Jeevan Jyoti BimaYojana; (f) Pradhan Mantri Jan DhanYogana; (g) Pradhan Mantri Vaya Vandan Yojana.
General insurance business	Such services under following schemes – (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna[77]; (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (B) (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy;

[77] *earlier known as Integrated Rural Development Programme*

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	(j) Pradhan Mantri Fasal Bima Yojana (PMFBY); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme; (n) Rashtriya Swasthya Bima Yojana; (o) Coconut Palm Insurance Scheme; (p) Pradhan Mantri Suraksha BimaYojna; (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. (r) Bangla Shasya Bima.
	Services provided to CG/SG/UT **under any insurance scheme** for which total premium is paid by CG/SG/UT. (C)
	Services by way of reinsurance of the insurance schemes specified in (A) or (B) or (C) above.
	Services of insurance provided by the Motor Vehicle Accident Fund against contributions made by insurers out of the premiums collected for third party insurance of motor vehicles.
Services provided by specified bodies	Services by the **Employees' State Insurance (ESI) Corporation** to persons governed under the ESI Act, 1948.
	Services provided by the **EPFO** to the persons governed under the Employees Provident Funds (EPF) & Miscellaneous Provisions Act, 1952.
	Services by **CMPFO** to persons governed by Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.

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	Services by **NPS Trust** to its members against consideration in the form of administrative fee.
Pension schemes	Services by way of collection of contribution under: • Atal Pension Yojana • any pension scheme of SG
Business facilitator/correspondent	Services by the following persons in respective capacities – (a) business facilitator/business correspondent to a Banking Co. with respect to accounts in its rural area branch; (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or (c) business facilitator/business correspondent to an insurance company in rural area.
Services provided to Government	Following services provided to the CG/SG/UT/LA/GA/GE by way of any activity in relation to any function entrusted to a Panchayat/Municipality under articles 243G/243W of the Constitution: • Pure services • Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply.
	Services provided to a Governmental Authority by way of— (a) water supply; (b) public health; (c) sanitation conservancy; (d) solid waste management; and (e) slum improvement and upgradation.
	Service provided **by Fair Price Shops** to CG/SG/UT by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against commission/margin.

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	Services provided to CG/SG/UT **under any insurance scheme** for which total premium is paid by CG/SG/UT.	
	Services provided to CG/SG/UT administration **under any training programme** for which 75% or more of the total expenditure is borne by CG/SG/UT administration.	
Leasing services	Upfront amount payable in respect of service by way of granting of long term lease of 30 years, or more of industrial plots/plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having ***20%*** or more ownership of CGS/SG/UT to the industrial units/developers in any industrial/financial business area subject to specified conditions.	
Legal services	**Service provided by**	**To**
	• Arbitral tribunal	any person other than BE
	• Partnership firm of advocates or an individual as an advocate other than a senior advocate by way of legal services	BE with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act
	• Senior advocate by way of legal services	CG/SG/UT/LA/GA/GE
	Legal services provided by a partnership firm of advocates/ individual as an advocate other than a senior advocate to another advocate/ partnership firm of advocates providing legal services	
Sponsorship of sports events	Sponsorship of sporting events organised - (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;	

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	(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat; (c) by the Central Civil Services Cultural and Sports Board; (d) as part of national games, by the Indian Olympic Association; or (e) under the Panchayat Yuva Kreeda Aur Khel Abhiyaan Scheme.
Skill Development services	Any services provided by – (a) the National Skill Development Corporation (NSDC) set up by the GoI; (b) the National Council for Vocational Education and Training (NCVET); (c) an Awarding Body recognized by the NCVET; (d) an Assessment Agency recognized by the NCVET; (e) a Training Body accredited with an Awarding Body that is recognized by NCVET, ***(f) a training partner approved by NSDC,*** in relation to- (i) the National Skill Development Programme or any other scheme implemented by the NSDC; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any National Skill Qualification Framework aligned qualification or skill in respect of which NCVET has approved a qualification package
	Services of **assessing bodies empanelled centrally** by DGT, Ministry of Skill Development and Entrepreneurship by way of assessments under the SDI Scheme.
	Services provided by training providers (Project implementation agencies) under **DDUGKY** implemented by

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	Ministry of Rural Development, GoI by way of offering skill or vocational training courses certified by the National Council for Vocational Education and Training (NCVET).
Performance by an artist	Services by an artist by way of a performance in folk or classical art forms of music/ dance/ theatre, if the consideration charged for such performance is not more than **₹ 1,50,000.** This exemption shall not apply to service provided by such artists as a brand ambassador.
Right to admission to various events	Services by way of admission to: (i) museum, national park, wildlife sanctuary, tiger reserve or zoo (ii) protected monument declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958/any of the State Acts, for the time being in force. (iii) following events/places where the consideration for right to admission is not more than ₹ 500 per person: (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event; (d) planetarium.
Services by an unincorporated body or a non- profit entity registered under any law for the time being in force	Services by **unincorporated body/ non- profit entity to its own members** as reimbursement/share of contribution: (i) As a **trade union** (ii) for providing **exempt activity** (iii) **up to an amount of ₹ 7,500 per month per member for sourcing of goods/services** from a third person for the common use of its members in a housing society/residential complex

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	Services provided by such entity/body engaged in- (i) activities relating to the welfare of industrial/agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against membership fee upto **₹ 1000/- per member per year**.
Other exempt services	**Transfer of a going concern**, as a whole or an independent part thereof.
	Services associated with transit cargo to Nepal and Bhutan (landlocked countries).
	Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person. Explanation 1 — For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, – (i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and (ii) such renting is on his own account and not that of the proprietorship concern. Explanation 2.- Nothing contained in this entry shall apply to- (a) accommodation services for students in student residences; (b) accommodation services provided by Hostels, Camps, Paying Guest accommodations and the like.
	Supply of accommodation services having value of supply less than or equal to ₹ 20,000 per person per month provided that

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	the accommodation service is supplied for a minimum continuous period of 90 days.
	Satellite launch services
	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
	Services by way of giving on hire – (a) to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers; (aa) to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers; or (b) to a GTA, a means of transportation of goods. (c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.
	Service by way of access to a road or a bridge on payment of toll charges.
	Transmission/distribution of electricity by an electricity transmission/ distribution utility.
	Supply of services by way of providing metering equipment on rent, testing for meters/transformers/capacitors etc., releasing electricity connection, shifting of meters/service lines, issuing duplicate bills etc., which are incidental or ancillary to the supply of transmission ***or*** distribution of electricity provided by electricity transmission ***or*** distribution utilities to their consumers.
	Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a FY provided:- (a) total turnover had not exceeded ₹ 50 lakh during the preceding FY; and

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	(b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubate.
	Research and development services against consideration received in the form of grants supplied by – (a) a Government Entity; or (b) a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961. The condition to be fulfilled in this case is that the research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 is so notified at the time of supply of the research and development service.
	Taxable services, provided or to be provided, by a Technology Business Incubator/ Science and Technology Entrepreneurship Par (TBI/STEP) recognised by NSTEDB or bio- incubators recognised by BIRAC.
	Services by way of **collecting or providing news** by an independent journalist, PTI or United News of India.
	Services of **public libraries** by way of lending of books, publications or any other knowledge-enhancing content or material.
	Services by an organiser to any person in respect of a **business exhibition** held outside India.
	Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India. However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed

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	outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less. Further, in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.
	Services by way of **pre-conditioning, pre- cooling, ripening, waxing, retail packing, labelling** of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
	Services provided by the **National Centre for Cold Chain Development** under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of **cold chain knowledge dissemination**.
	Services by a **foreign diplomatic mission** located in India.
	Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States.
	Services by way of **providing information under the RTI Act.**
	Services provided to a recognised sports body (RSB) by- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a RSB; (b) another RSB.
	Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
Above services have been exempted from both CGST and IGST. Apart from these services, list of services exempt from IGST also include following services:	

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	Services received from a provider of service located in a non-taxable territory by – (a) CG/SG/UT/LA/GA/ an individual **in relation to any purpose other than commerce, industry or any other business or profession**; (b) an entity registered under section 12AA/12AB of the Income-tax Act, 1961 for the purposes of providing charitable activities; or (ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of- (i) pre-school education and education up to higher secondary school or equivalent; or (ii) education as a part of an approved vocational education course; (c) a person located in a non-taxable territory. However, the exemption shall not apply to OIDAR services received by persons specified in entry (a) or entry (b).
	Import of services by an establishment of a foreign company in India, which is an airline company, from a related person or from any of its other establishments outside India, when made without consideration subject to specified conditions.
	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
	Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons provided the place of supply of the service is outside India.
	Import of services by UN or a specified international organisation for official use of UN or the specified international organisation.

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	Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein subject to specified conditions.
	Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory subject to specified conditions.

TEST YOUR KNOWLEDGE

1. *Examine whether the following independent intra-State services are exempt from GST:*

   (a) *Legal services provided by BMC & Partners, Delhi, a partnership firm of advocates, to Vastukaar Enterprises, Delhi, providing architect services (with preceding financial year's aggregate turnover as ₹21 lakh).*

   (b) *Minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders.*

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

   However, the money actually charged by Shiva Medical Centre from the in-patients is higher than the consultancy charges paid to the hired doctors and consultants. The difference amount retained by the hospital, i.e. retention money, includes charges for providing ancillary services like nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc.

   The Department took a stand that senior doctors and consultants are providing services to Shiva Medical Centre and not to the patients. Hence, their services

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are not the health care services and must be subject to GST. Further, GST is applicable on the retention money kept by Shiva Medical Centre.

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

3. *Vedanta Hospital, Gurgaon has its own restaurant in the basement of hospital premises - Annapurna Bhawan - which supplies food to its in-patients (patients admitted in the hospital) as per the advice of the doctor/nutritionist. Annapurna Bhawan also supplies food to other patients (who are not admitted) or their attendants or visitors. The food is prepared by the employees of the hospital and nothing is outsourced to any third-party vendors. Vedanta Hospital is of the view that all services provided by a clinical establishment are exempt from GST and thus, it is not liable to pay any tax. You are required to test the correctness of the view taken by Vedanta Hospital.*

4. *Indian Institutes of Management (IIM), Indore organizes a placement drive for the students studying in the campus. Many multinational companies register for the placement program and pay the registration fee of ₹ 1,00,000. IIM, Indore is of the view that such consideration received from multinational companies for participating in the placement program is exempt from GST. Explain whether the view taken by IIM, Indore is correct.*

5. *India Corporations Ltd., a Public Sector Undertaking (PSU), has taken loan from a banking company - Wellness Bank Ltd. The loan was guaranteed by the Central Government. India Corporations Ltd. defaulted in the repayment of such loan. Examine whether the services of guaranteeing of loan by the Central Government, in the given case, is liable to GST.*

6. *British High Commission, chief diplomatic mission of the United Kingdom, is located in India and is providing advisory services to the students willing to travel to UK for further studies. The mission has organized a seminar for such students and a registration fee of ₹ 5,000 per student has been charged from the students for the same. You are required to determine whether the advisory services provided by British High Commission are liable to GST.*

7. *Explain in brief whether the below mentioned independent cases of supply of services provided are exempt or taxable under GST law, providing very brief reasoning:*

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(i) Himalayan Wanderers Campsite, a registered entity under GST, has fixed up various tents in Shimla, for lodging purposes being offered to tourists and trekkers. The details of tents rented by Himalayan Wanderers Campsite on 8th December is as under:

No. of tents rented	***Amount of rent charged per tent per day***	***Nature of occupancy***
10	*₹ 600*	*Single*
15	*₹ 1000*	*Double*

(ii) Fables Infotech LLP, a limited liability partnership firm having registered place of business in Hyderabad under GST, entered into a contract with Neeta Services for providing air-conditioned mini vans for 1 year for transportation of its female employees working in night shifts to be picked up from designated spots every day at 9.00 p.m. except weekends and dropped to the office. The same female employees were again picked up from office at 6.30 a.m. every morning except weekends and dropped back at the same spots from where they were picked up.

(iii) HumTum Services Limited, registered under GST, provided catering services to Baljatan Anganwadi, an educational institute providing pre-school education amounting to ₹ 2,50,000 in the month of February.

(iv) 50 women from different cities pursuing diploma in management courses, participated in the 'Leadership Program' designed especially for women for a duration of 9 months by IIM, Bangalore (a certificate as to their participation was awarded to each one of them after the completion of the programme).

(v) Mr. Ashok rented his residential flat to his friend Dr. Kishore, who is not registered under GST for use as his medical clinic at a monthly rent of ₹ 15000.

8. Determine whether GST is payable in respect of each of the following independent services provided by the registered persons:

(1) Fees of ₹ 10,000 charged from office staff for in-house personality development course conducted by Mungerilal College providing education as part of a curriculum for obtaining a qualification recognised by Indian law.

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(2) *Bus fees of ₹ 2,500 per month collected from students by Rosemary College providing education as part of a curriculum for obtaining a qualification recognised by Indian law.*

(3) *Housekeeping service provided by M/s. Clean Well to Himavarsha Montessori school, a play school, for cleaning its playground and classrooms for ₹ 25,000 per month.*

(4) *Info link supplied 'Tracing Alphabets', an online educational journal, to students of UKG class of Sydney Montessori School for ₹ 2,000.*

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

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

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

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

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

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

He received the services from an unregistered goods transport agency for his business activities and paid freight of ₹ 45,000.

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

You are required to calculate gross GST liability (ignoring ITC provisions) of Mr. Nagarjun for the month of September assuming that the rate of GST, wherever applicable, is 18% except the GTA services where the applicable rate of GST is 5%. Working notes should form part of your answer.

11. *Vividh Pvt. Ltd. is a supplier of goods and services at Bangalore, registered in the State of Karnataka, having turnover of ₹ 200 lakh in the last financial year. It has furnished the following information for the month of June.*

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Particulars	*Amount (₹) excluding GST*
Services provided by way of a labour contract for repairing a single residential unit otherwise than as a part of residential complex	*13,00,000*
Fee received from students of a competitive exam training academy run by Vividh Pvt. Ltd.	*5,40,000*
4 buses each with a seating capacity of 72 passengers given on hire to State Transport Undertaking	*6,00,000*
Rent paid to Local Municipal Corporation for premises taken on rent for competitive exam training academy	*2,50,000*
Goods transport services received from a registered GTA which has opted to pay tax itself @ 12%	*1,80,000*

Compute gross GST liability including tax payable under reverse charge (ignoring ITC provisions) of Vividh Pvt. Ltd. for the month of June assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18% unless otherwise mentioned.

12. *"Chanakya Academy" is registered under GST in the State of Uttar Pradesh. The Academy runs the following educational institutions:*

    (i) 'Keshav Institute of Technology' (KIT), a private engineering college in Ghaziabad. KIT also runs distance learning post graduate engineering programmes. Exams for such programmes are conducted in select cities at centres appointed by the KIT. All the engineering courses including the distance learning post graduate engineering programme run by KIT are recognised by the law [The All India Council for Technical Education (AICTE)].

    (ii) 'Little Millennium', a pre-school in Lucknow.

    (iii) 'Bright Minds', a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.

    (iv) 'Spring Model' a higher secondary school affiliated to CBSE Board.

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The Academy provides the following details relating to the expenses incurred by the various institutions run by it during the period April to September:

S. No.	Particulars	KIT	Little Millennium	Bright Minds	Spring Model
		(₹)	(₹)	(₹)	(₹)
(i)	Printing services for printing the question papers (paper and content are provided by the Institutions)	2,50,000		1,50,000	2,00,000
(ii)	Paper procured for printing the question papers	4,30,000		2,58,000	3,44,000
(iii)	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			
(iv)	Rent for exam centers taken on rent like schools etc., for conducting examination	8,00,000		1,00,000	
(v)	Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	4,00,000	80,000	2,20,000	2,40,000

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(vi)	*Hire charges for buses used to transport students and faculty from their residence to the institutions and back*	*4,80,000*	*5,50,000*	*1,30,000*	*7,50,000*
(vii)	*Catering services for running a canteen in the campus for students* *(Catering services for KIT include a sum of ₹ 60,000 for catering at a student event organised in a banquet hall outside the campus)*	*3,20,000*	*2,60,000*	*1,80,000*	*5,00,000*
(viii)	*Security and housekeeping services for the institution(s)* *(Security and housekeeping services for Spring Model include a sum of ₹ 80,000 payable for security and housekeeping at the student event organised in a banquet hall outside the campus)*	*6,00,000*	*4,00,000*	*3,75,000*	*4,65,000*

With the help of the above details, determine the amount of GST payable, if any, (ignoring ITC provisions) on goods and services received during April to September by the various educational institutions run by the 'Chanakya

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Academy'; all the amounts given above are exclusive of taxes, wherever applicable.

Note: Rate of GST on goods is 12%, catering service is 5% and on other services is 18%.

13. *M/s A2Z, a proprietary firm registered under GST, is engaged in providing various services under one roof. The firm provides the following information pertaining to supplies made/input services availed by it during the month of March:*

S. No.	Particulars	Amount (₹)
1.	Amount collected for loading, unloading, packing and warehousing of potato chips	15,000
2.	Fees paid for yoga camp conducted by a charitable trust registered under section 12AB of the Income-tax Act, 1961 for employees of the firm	20,000
3.	Interest received on fixed deposits with APNA Bank by the firm	30,000
4.	Professional services provided to foreign diplomatic mission located in India	50,000
5.	Recovery agent services provided to ABC Finance Ltd. - an NBFC located in Delhi	1,00,000
6.	Security services (by way of supply of security personnel) provided to XYZ Ltd. - a registered person under GST	80,000
7.	Receipts from running an educational institution (a Senior Secondary School) for services provided to its students (including receipts for providing residential dwelling service of ₹ 18,20,000 by the institution to the students)	35,00,000
8.	Supply value including cost of fuel for provision of renting of motor vehicle for transportation of passengers' service to NPS Ltd.	88,000

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Determine the GST liability (inclusive of liability for the supplies received also) of M/s A2Z for the month of March with necessary explanation for treatment of each item. Rate of tax for both inward and outward supply is CGST and SGST @ 9% each except for the service of renting a vehicle for transportation of passengers for which CGST and SGST @ 2.5% each is applicable. All the supplies are intra-State only. All amounts given hereunder are exclusive of GST.

14. *A2X Services Limited, registered under GST, is engaged in providing various services to various educational institutions. The company provides the following information in respect of services provided during the month of April:*

S. No.	Description of services provided
(i)	Transportation of students & staff of 'Shiksha University', a Deemed University
(ii)	Catering services provided to 'Rank CBSE School'
(iii)	Security personnel services provided to 'Win CBSE School', for its annual sports day held at SAI Sports Complex owned by Government of India
(iv)	Supply of online periodical science journal to 'Merit CBSE School' for its higher secondary students
(v)	Services, in relation to placement of students, to 'SKILL', a Government recognized vocational training college

Comment on the taxability or otherwise of the above transactions under GST law. State the correct legal provisions for the same.

ANSWERS

1. **(a)** Services provided by a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to a business entity with an aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from

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registration under the CGST Act, 2017, are exempt from GST vide *Notification No. 12/2017 CT (R) dated 28.06.2017* (hereinafter referred to as exemption notification).

Since in the given case, services are being provided by the partnership firm of advocates - BMC & Partners to a business entity - Vastukaar Enterprises whose aggregate turnover in the preceding FY exceeded ₹ 20 lakh i.e. the threshold limit for registration applicable to a service provider in Delhi, said services are not exempt from GST.

(b) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt from GST vide exemption notification.

However, service charges/ fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest on loan, advance or a deposit are not exempt and are liable to GST.

In view of the above, minimum balance charges collected by Dhanvarsha Bank from current account and saving account holders are not exempt and are liable to GST.

2. No, the stand taken by the Department is not correct.

Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide exemption notification.

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

Circular No. 32/06/2018 GST dated 12.02.2018 has clarified that the entire amount charged by the hospitals from the patients including the retention

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money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt from GST. In view of the same, GST is not applicable on the retention money kept by Shiva Medical Centre.

The circular also clarifies that services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are also healthcare services exempt from GST. Hence, services provided by the senior doctors and consultants hired by Shiva Medical Centre, being healthcare services, are also exempt from GST.

3. Services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide exemption notification. *Circular No. 32/06/2018 GST dated 12.02.2018* has clarified that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services and is not separately taxable. Thus, it is exempt from GST. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

In view of the same, GST is not applicable on the food supplied by Annapurna Bhawan to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

4. Indian Institutes of Management Act, 2017 (IIM Act, 2017) empowers IIMs to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Resultantly, all the IIMs fall under purview of "educational institutions" as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force.

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Further, the services provided by an educational institution to its students[78], faculty and staff are exempt from GST vide exemption notification.

However, in the given case, services have been provided by the educational institution (viz. IIM, Indore), to the multinational companies. Therefore, the same is not exempt from GST.

5. Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions are exempt from GST vide exemption notification.

In the present case, Central Government has guaranteed the loan taken by India Corporations Ltd. [a PSU], from Wellness Bank Ltd., [a banking company]. Consequently, services provided by the Central Government, in the form of guarantee of loan, are exempt from tax.

6. Services by a foreign diplomatic mission located in India are exempt from GST vide exemption notification. Hence, in the given case, advisory services by British High Commission located in Delhi to the students are exempt from GST.

7. **(i)** **Taxable:** Since there is no specific exemption with respect to services provided by a campsite for lodging purposes, services provided by Himalayan Wanderers Campsite are liable to GST.

(ii) **Taxable:** Service of transport of passengers provided by Neeta Services are liable to GST since such services are being provided in a contract carriage which is air-conditioned.

(iii) **Exempt:** Since catering services provided to an educational institution providing pre-school education are exempt from GST, HumTum Services Limited is not liable to pay GST.

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[78] *As per Circular No. 82/01/2019 GST dated 01.01.2019, services provided by IIMs to their students who are enrolled for long duration programs (1 year or more) for which they are awarded diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017, under such long duration programs are exempt from GST.*

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(iv) **Taxable:** Since short duration programs provided by IIMs are not any qualification recognized by law, GST is payable in the given case.

(v) **Taxable:** Since residential dwelling is rented for use other than residence, GST is payable on the same.

8. **(1)** Services provided by an educational institution to its students, faculty and staff are exempt from GST vide exemption notification. Educational Institution has been defined to mean, *inter alia*, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Since Mungerilal College provides education as part of a curriculum for obtaining a qualification recognised by Indian law, the services provided by it to its staff by way of conducting personality development course would be exempt from GST, it being an educational institution.

(2) Since Rosemary College provides education as a part of a curriculum for obtaining a qualification recognised by Indian law, the transport services provided by Rosemary College to its students are exempt from GST.

(3) Services provided to an educational institution, by way of, *inter alia*, house-keeping services performed are exempt from GST vide exemption notification provided such services are performed in such educational institution. However, such exemption is available only when the said services are provided to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

In view of the above discussion, house-keeping services provided to Himavarsha Montessori Play School are exempt from GST since housekeeping services have been performed in such play school itself.

(4) Services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST vide exemption notification. However, such exemption is not available to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Therefore, supply of online journal to students of UKG class of Sydney Montessori School is not exempt from GST.

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9. Renting of precincts of a religious place meant for general public, owned/managed by, *inter alia*, an entity registered as a charitable trust under section 12AA/12AB of the Income-tax Act are exempt from GST vide exemption notification. However, said exemption is not available if:

(i) charges for rented rooms are ₹ 1,000 per day or more;

(ii) charges for rented community halls, Kalyan mandapam, open area are ₹ 10,000 per day or more;

(iii) charges for rented shops are ₹ 10,000 per month or more.

Further, services by way of renting of residential dwelling for use as residence to an unregistered person are also exempt vide exemption notification.

Computation of GST liability of Sarva Sugam Charitable Trust for August

Particulars	Value (₹)	GST @ 18% (₹)
Renting of residential dwelling for use as residence to an unregistered person [Exempt vide exemption notification]	18,00,000	Nil
Renting of rooms for devotees [Exempt since charges per day are below ₹1,000]	6,00,000	Nil
Renting of Kalyanamandapam [Taxable since charges per day exceed ₹10,000]	12,00,000	2,16,000
Renting of community halls and open spaces [Exempt since charges per day are below ₹ 10,000]	10,75,000	Nil
Renting of shops for business [Exempt since charges per month are below ₹10,000]	4,75,000	Nil
Renting of shops for business [Taxable since charges per month exceed ₹ 10,000]	7,50,000	1,35,000
Total		**3,51,000**

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10. Computation of gross GST liability of Mr. Nagarjun

Particulars	Value (₹)	IGST (₹)
Supplies on which Mr. Nagarjun is liable to pay GST under forward charge		
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000	9,000
Commission received as an insurance agent from insurance company [Note 2]	Nil	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 3]	15,000	2,700
Services provided to foreign diplomatic mission located in India [Note 4]	28,000	5,040
Funeral services [Note 5]	Nil	Nil
Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge		
Services received from GTA [Note 6]	45,000	2,250
IGST payable (Since all the transactions are inter-State transactions, IGST is payable on the same.)		**18,990**

Notes:

(1) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide exemption notification. Thus, service provided as selector of team is liable to GST.

(2) Commission for providing insurance agent's services is liable to GST. However, the tax payable thereon is to be paid by the recipient of

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service i.e., insurance company, under reverse charge in terms of *Notification No. 13/2017 CT (R) dated 28.06.2017*[79]. Thus, Mr. Nagarjun will not be liable to pay GST on such commission.

(3) Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST vide exemption notification. Thus, such services provided in respect of urban area branch will be taxable.

(4) While services provided by a foreign diplomatic mission located in India are exempt from GST vide exemption notification, services provided to such mission are taxable.

(5) Funeral services being covered in Schedule III of CGST Act are not a supply and thus, are outside the ambit of GST.

(6) GST on services provided by a GTA to, *inter alia*, a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of *Notification No. 13/2017 CT (R) dated 28.06.2017* except where GTA is registered and has exercised the option to itself pay tax on said services[80]. Since in the given case, GTA is unregistered, it could not have exercised the option to pay tax and thus, GST is payable @ 5% under reverse charge mechanism by the recipient – Mr. Nagarjun.

11. Computation of gross GST liability of Vividh Pvt. Ltd.

Particulars	Value of supply (₹)	GST @ 18% (₹)
Services provided by way of labour contracts for repairing a single residential unit otherwise than as a part of residential complex [Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a	13,00,000	2,34,000

[79] *Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.*

[80] *Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.*

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single residential unit otherwise than as a part of a residential complex are exempt vide exemption notification. Labour contracts for repairing, are thus, taxable.]		
Fee received from students of competitive exam training academy [Fee received from students of competitive exam training academy is taxable as it is not an educational institution since competitive exam training does not lead to grant of a recognized qualification.]	5,40,000	97,200
Buses each with seating capacity of 72 passengers given on hire to State Transport Undertaking [Services by way of giving on hire to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers, are exempt from GST vide exemption notification.]	6,00,000	Nil
Services on which tax is payable under reverse charge:		
Rent paid to Local Municipal Corporation [GST is payable under reverse charge in case of renting of immovable property services supplied by a local authority to a registered person.]	2,50,000	45,000
GTA services availed [Since GTA has opted to pay tax @ 12%, tax is payable under forward charge by GTA only and not by Vividh Pvt. Ltd.]	1,80,000	Nil
Gross GST payable		**3,76,200**

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12. Exemption notification exempts select services provided to an educational institution. Here, the **"educational institution"** means an institution providing services by way of-

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

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

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

The select services which are exempt when provided to an educational institution are-

(i) transportation of students, faculty and staff;

(ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;

(iii) security or cleaning or house-keeping services performed in such educational institution;

(iv) services relating to admission to, or conduct of examination by, such institution;

(v) supply of online educational journals or periodicals.

However, the services mentioned in points (i), (ii) and (iii) are exempt only when the same are provided to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Also, the supply of online educational journals or periodicals is not exempt from GST when provided to-

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

(ii) education as a part of an approved vocational education course.

Further, services by way of giving on hire motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by

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way of pre-school education and education upto higher secondary school or equivalent is exempt[81].

In the given case, all the engineering courses including the distance learning post graduate engineering programme run by KIT are recognised by the law [The All India Council for Technical Education (AICTE)]. Therefore, since KIT imparts education as a part of a curriculum for obtaining a qualification recognised by the Indian law, the same is an educational institution in terms of the exemption notification.

Similarly, Little Millennium and Spring Model, being a pre-school and a higher secondary school respectively are also educational institutions in terms of the exemption notification.

However, Bright Minds, being a coaching centre, training candidates to secure a banking job, is not an educational institution in terms of the exemption notification. Hence, none of the select services (mentioned above) will be exempt when provided to Bright Minds.

In the light of the foregoing provisions, the amount of GST payable on goods and services received by these educational institutions during April to September is computed as under:

Particulars	KIT	Little Millennium	Bright Minds	Spring Model
	(₹)	(₹)	(₹)	(₹)
Printing services for printing the question papers (paper and content are provided by the Institutions)	Exempt [Services provided to educational institution in relation to conduct of examination]		27,000 [1,50,000 x 18%]	Exempt
Paper procured for printing the question papers	51,600 [4,30,000 x 12%]		30,960 [2,58,000 x 12%]	41,280 [3,44,000 x 12%]

[81] *as per Entry 22 of Notification No. 12/2017 CT (R)*

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[Supply of select services to educational institutions is exempt and not supply of goods to such educational institutions]				
Honorarium to paper setters and examiners (not on the rolls of the educational institution)	Exempt [Services provided to educational institution in relation to conduct of examination]			
Rent for exam centres taken on rent like schools etc., for conducting examination	Exempt [Services provided to educational institution in relation to conduct of examination]		18,000 [1,00,000 x 18%]	
Subscription for online educational journals [Little Millennium has taken the subscription for online periodicals on child development and experiential learning]	Exempt	14,400 [80,000 x 18%]	39,600 [2,20,000 x 18%]	43,200 [2,40,000 x 18%]

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Hire charges for buses used to transport students and faculty from their residence to the institutions and back	86,400 [4,80,000 x 18%]	Exempt	23,400 [1,30,000 x 18%]	Exempt
Catering services for running a canteen in the campus for students [Catering service provided to pre-school and the higher secondary school is exempt irrespective of whether the same is provided within or outside the premises of the pre-school and the higher secondary school]	16,000 [3,20,000 x 5%]	Exempt	9,000 [1,80,000 x 5%]	Exempt
Security and housekeeping services for the institution(s) [Security and housekeeping service provided to pre-school and the higher secondary school for the student event organised in a banquet hall will be	1,08,000 [6,00,000 x 18%]	Exempt	67,500 [3,75,000 x 18%]	14,400 [80,000 x 18%]

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taxable as only the security and housekeeping service provided within the premises of the pre-school and the higher secondary school are exempt.]				
Total GST payable on goods and services received	2,62,000	14,400	2,15,460	98,880

13. Computation of GST liability of M/s A2Z for the month of March:

S. No.	Particulars	CGST (₹)	SGST (₹)
1.	Loading, unloading, packing and warehousing of potato chips [Loading, unloading, packing and warehousing of agricultural produce is exempt. However, potato chips is not an agricultural produce.]	1,350 [15,000 × 9%]	1,350 [15,000 × 9%]
2.	Fees paid for yoga camp [Services provided by a charitable trust registered under section 12AB of the Income-tax Act by way of advancement of yoga are exempt.]	--	--
3.	Interest received on fixed deposits [Services of extending fixed deposits in so far as the consideration is represented by way of interest are exempt.]	--	--
4.	Professional services provided to foreign diplomatic mission located in India [Not specifically exempt.]	4,500 [50,000 × 9%]	4,500 [50,000 × 9%]

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5.	Recovery agent services provided to ABC Finance Ltd., an NBFC [Since such services are being provided to an NBFC, tax on the same is payable by recipient - ABC Finance Ltd. - under reverse charge (RCM).[82]]	--	--
6.	Security services provided to XYZ Ltd., a registered person [Since such services are being provided by a non-body corporate to a registered person, tax on the same is payable by recipient - XYZ Ltd. - under reverse charge (RCM) [83].]	--	--
7.	Receipts from running an educational institution (including receipts for residential dwelling service) [Services provided by an educational institution and services by way of renting of residential dwelling for use as residence are exempt.]	--	--
8.	Renting of motor vehicle service [Since services of renting of motor vehicle including cost of fuel with tax payable @ 2.5% CGST/SGST is being provided by a non-body corporate to a body corporate, tax on the same is payable by recipient – NPS Ltd. – under RCM[84].]	--	--
	Total GST liability	**5,850**	**5,850**

[82] *Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST.*

[83] *Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.*

[84] *Provisions relating to reverse charge mechanism have already been discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material.*

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14.

S. No.	Particulars	Taxability
(i)	Transportation of students and staff of deemed university [Taxable since transportation services provided to an educational institution are exempt only if such institution provides pre-school education or education up to higher secondary school or equivalent.]	Taxable
(ii)	Catering services provided to "Rank CBSE School" [Catering services provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt.]	Exempt
(iii)	Security services to "Win CBSE School" for its annual sports day held at SAI Sports complex [Security services provided to an educational institution providing pre-school education or education up to higher secondary school are exempt provided such services are performed in the premises of such institution. However, in this case, security services are being provided outside the school campus, and hence the same are taxable.]	Taxable
(iv)	Supply of online periodical science journal to school for its higher secondary students [Taxable since educational institutions providing service by way of pre-school education and education upto higher secondary school or equivalent are not eligible for exemption in respect of supply of online educational journals.]	Taxable
(v)	Services in relation to placement of students, to Government recognized vocational training college [Taxable since only services related to admission and conducting exams are exempt for vocational educational institutions.]	Taxable

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or, January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of section 2(69) of the CGST Act, 2017 is compared with the provisions as amended by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2025	Remarks
2 (69)	**Local authority:** means - (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution. (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution.	**Local authority:** means — (a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution. (b) a "Municipality" as defined in clause (e) of article 243P of the Constitution. (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State	The sub-clause (c) of clause (69) of section 2 is being proposed to be amended so as to substitute the term "municipal or local fund" with the terms "municipal fund or local fund" and to

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	(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund. (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006. (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution. (f) a Development	Government with the control or management of a municipal ***fund*** or local fund. **Explanation.—*For the purposes of this sub-clause-*** ***(i) "local fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Panchayat area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called*** ***(ii) "municipal fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Metropolitan area or Municipal area and vested by law with the powers to levy, collect and appropriate any tax,***	insert an Explanation after the said sub-clause, to provide the definitions of the terms "local fund" and "municipal fund" used in the definition of "local authority" under the said clause so as to clarify the scope of the said terms.

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	Board constituted under article 371 and article 371J of the Constitution. (g) a Regional Council constituted under article 371A of the Constitution	***duty, toll, cess or fee, by whatever name called.*** (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006. (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution. (f) a Development Board constituted under article 371 and article 371J of the Constitution. (g) a Regional Council constituted under article 371A of the Constitution	

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CHAPTER 5

TIME OF SUPPLY

The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After reading this Chapter, you will be able to

- identify the point in time when the liability to pay GST arises -
  - on supply of goods or services where GST is payable under forward charge
  - on supply of goods or services where GST is payable under reverse charge
  - on supply of vouchers exchangeable for goods and services
  - on supply of goods and services in residual cases
  - in case of enhancement of value of supply on account of interest, late fee/penalty paid for delay in payment of consideration
- pinpoint the applicable rate of GST in case there is a change in rate of GST in respect of supply of goods or services
- apply the concepts relating to time of supply of goods and/or services in problem solving

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1. INTRODUCTION

GST is payable on supply of goods or services. A supply consists of elements that can be separated in time, like purchase order / agreement, despatch (of goods), delivery (of goods) or provision or performance of service, entry in the records, payment, and entry of the payment in the records or deposit in the bank.

So, the question that arises is - at what point of time in the aforesaid transaction, the GST becomes payable? Does it become payable when an agreement to supply goods or services is made, or when the goods are shipped or the services are provided, or when the invoice is issued or when payment is made? What if the goods are shipped over a period of time? What if the service is provided over a period of time?

Point in time when the liability to pay tax arises

Provisions relating to **'time of supply'** provide answers to all such and other questions that arise with respect to the time when the liability to pay CGST and SGST/UTGST (intra-State supply) or IGST (inter-State supply) arises. In other words, time of supply indicates the point in time when the liability to pay tax arises. It is important to note here that though the liability to pay tax arises at the time of supply, the same can be paid to the Government by the due dates prescribed with reference to the said 'time of supply'. For instance, if time of supply of a given supply is 25th May, the tax leviable thereon would be payable latest by 20th June, which is the due date prescribed in the CGST Act for suppliers filing GST return on monthly basis.[1]

The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13 respectively. Section 14 provides for the method

[1]*Provisions relating to due date for payment of tax have been discussed in Chapter 11: Payment of Tax in Module 2 of this Study Material.*

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of determining the time of supply in case there is a change in the rate of tax on supply of goods or services. Sections 12 and 13 employ provisions of section 31 relating to issue of tax invoice as a reference point. Therefore, it will be useful to read this Chapter in conjunction with the provisions relating to tax invoice discussed in detail in *Chapter 9: Tax Invoice, Credit and Debit Notes in Module 2 of this Study Material.*

Events like issuing of invoices, receipt of payment, provision of service, receipt of services as recorded in books of account need to be analysed to determine the time of supply when the tax on supply is payable under forward charge. When the tax on supply is payable under reverse charge, events like date of receipt of goods or services, date of making payment, date of issue of invoice etc. need to be analysed to determine the time of supply. The provisions relating to time of supply essentially fix the tax collection event to the earliest possible time.

In the subsequent pages of this Chapter, sections 12, 13 and 14 are extracted, followed by their analysis, to understand how to determine the time of supply of goods and services respectively. When studying the statutory provisions, the definitions (extracted first) must also be referred to simultaneously, so as to understand the precise meaning of the terms used.

Provisions of time of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. RELEVANT DEFINITIONS

- **Associated enterprises** shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961 [Section 2(12)].

  Broadly, an associated enterprise in relation to another enterprise, means an enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise. *[The detailed definition of associated enterprise may be referred to from Chapter 24: Transfer Pricing and other provisions to check avoidance of tax in the Study Material of Paper 4: Direct Tax Laws and International Taxation.]*

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- **Document** includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)].
- **Invoice** or **tax invoice** means the tax invoice referred to in section 31 [Section 2(66)].
- **Goods** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].

- **Services** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

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Explanation—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].

- **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].
- **Reverse charge** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub- section (4) of section 5 of the Integrated Goods and Services Tax Act [Section 2(98)].
- **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

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However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims. [Section 2(105)].

❖ **Recipient** of supply of goods or services or both, means—

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

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

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

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

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Recipient

❖ **Voucher** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].

3. TIME OF SUPPLY OF GOODS [SECTION 12]

STATUTORY PROVISIONS

Section 12	*Time of supply of goods*	
Sub-section	*Clause*	*Particulars*
(1)	*The liability to pay tax on goods shall arise at the time of supply as determined in terms of the provisions of this section.*	
(2)	*The time of supply of goods shall be the earlier of the following dates, namely:-*	

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	(a)	*the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or*
	(b)	*the date on which the supplier receives the payment with respect to the supply[2]:*
	Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.	
	Explanation 1. For the purposes of clauses (a) and (b), the "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.	
	Explanation 2. For the purpose of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.	
(3)	*In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:*	
	(a)	*the date of the receipt of the goods, or*
	(b)	*the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier, or*
	(c)	*the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:*

[2] *Practically, in case of goods, the date of receipt of payment by the supplier is no longer a criterion for determination of time of supply for payment of tax. Refer the 'Analysis' of section 12 given in the ensuing pages for detailed discussion in this regard.*

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	Provided that where it is not possible to determine the time of supply under clause (a), (b), or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.	
(4)	*In case of supply of vouchers by a supplier, the time of supply shall be –*	
	(a)	*the date of issue of voucher, if the supply is identifiable at that point; or*
	(b)	*the date of redemption of voucher, in all other cases*[3].
(5)	*Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—*	
	(a)	*in a case where a periodical return has to be filed, be the date on which such return is to be filed; or*
	(b)	*in any other case, be the date on which the tax is paid.*
(6)	*The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.*	
Section 31 (Relevant Extract)	***Tax invoice (to the extent relevant to the time of supply of goods)***	
(1)	*A registered person supplying taxable goods shall, before or at the time of,—*	
	(a)	*removal of goods for supply to the recipient, where the supply involves movement of goods; or*
	(b)	*delivery of goods or making available thereof to the recipient, in any other case,*

[3] *It may be noted that the Finance Act, 2025 has omitted the provisions relating to time of supply of vouchers. Provisions of the Finance Act, 2025 have not become effective as on the date of printing of this Study Material. Once the said amendment comes into effect, students will no longer be required to study the provisions relating to the time of supply of vouchers.*

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	issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:
	Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.
(4)	*In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.*
(7)	*Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.*

Section 12 must be read with section 31, which prescribes in detail the date on which tax invoice for a supply of goods must be issued in various situations.

ANALYSIS

Section 12 provides for the determination of time of supply in the following situations:

- Supply of goods under forward charge;
- Supply of goods under reverse charge;
- Supply of vouchers that can be used to pay for goods;
- Residual cases
- Addition to value of supply of goods by way of interest or late fee or penalty for delayed payment.

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We consider below how the time of supply is determined in each of these situations.

(i) Time of supply of goods under forward charge [Section 12(2) read with section 31]

As per section 12(2), the time of supply of goods that are taxable under forward charge, is the earlier of the following two dates:

- Date of issue of invoice by the supplier or the last date on which the invoice ought to have been issued in terms of section 31, to the extent the invoice covers the supply of goods; or
- Date of receipt of payment by the supplier, to the extent the payment covers the supply of goods.

No tax payable at the time of receipt of advance for supply of goods – Special procedure for payment of tax in case of supply of goods

In exercise of the powers conferred by section 148[4], the Central Government, on the recommendation of the GST Council, has issued *Notification No. 66/2017 CT dated 15.11.2017* to specify that a registered person (excluding composition supplier and registered persons making supply of specified actionable claims) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31, including in the situations attracting the provisions of section 14.

In simple words, all taxpayers under forward charge (except composition suppliers and registered persons making supply of specified actionable claims) are not required to pay GST at the time of receipt of advance in relation to supply of goods. The entire GST shall become payable only when the invoice for the supply of such goods is issued or ought to have been issued. **Thus, time of supply of goods for the purpose of payment of tax**

[4] *Section 148 provides that the Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons. The same is discussed in Chapter 24 - on Miscellaneous Provisions of Module 3 of this Study Material.*

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is the date of issue of invoice or the last date when the invoice ought to have been issued under section 31.

The relief of not paying GST on receipt of advance is available only in case of supply of goods and not for supply of services.

Meaning of "Date of receipt of payment"

"Date of receipt of payment" in the above situation refers to the date on which the payment is recorded in the books of account of the entity (supplier of goods) that receives the payment, or the date on which the payment is credited to the entity's bank account, whichever is earlier.

Significance of "to the extent the invoice or payment covers the supply of goods"

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

However, it may be noted that in case of goods (except for composition supplier and registered persons making supply of specified actionable claims), tax is payable only on the basis of issuance of invoice/last date for the purpose of issuance of invoice even if any advance or part payment has been received before the issuance of invoice/last date for the purpose of issuance of invoice.

(1) A Ltd. enters into an agreement with B Ltd. to supply 100 kg of raw material. However, A Ltd. supplies only 80 kg of raw material and issues the invoice for the same.

Here, the supply would be deemed to have been made in respect of 80 kg of raw material, i.e. to the extent covered by the invoice. Therefore, the provisions relating to time of supply will only be applicable to supply of 80 kg of raw material and not for entire 100 kg of raw material.

The provisions relating to time of supply of goods as contained in section 12 in case of forward charge read with *Notification No. 66/2017 CT dated 15.11.2017*, have been depicted by way of a diagram given at a subsequent page.

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Time limit for issuance of invoice for supply of goods under section 31

Section 12(2) refers to the last date on which a supplier is required to issue the invoice under section 31. Following are the relevant provisions of section 31 in this regard:

- As per section 31(1), the invoice needs to be issued either **before** or **at the time** of removal of goods (where supply involves movement of goods) or delivery of goods/ making goods available to recipient (in any other case).
- In case of continuous supply of goods, the invoice should be issued **before** or **at the time** of issuance of periodical statement/receipt of periodical payment [Section 31(4)].

  Continuous supply of goods is a supply of goods provided or agreed to be provided continuously or on recurring basis, under a contract, and for which the supplier issues an invoices to the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify [Section 2(32)].

  The said term has been discussed in Chapter 9: Tax Invoice; Credit and Debit Notes in Module 2 of this Study Material.
- In case of goods sent or taken on approval for sale or return, invoice should be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier [Section 31(7)].

example

(2) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on the same day. Payment for the goods is received on 20th June.

Time of supply of goods for the purpose of payment of tax is 10th June being the date of issue of invoice in terms of section 31.

(3) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on 10th June. Payment for the goods is received on 5th June.

Time of supply of goods for the purpose of payment of tax is 10th June being the date of issue of invoice in terms of section 31.

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TIME OF SUPPLY OF GOODS UNDER FORWARD CHARGE AS PER SECTION 12

Date of issue of invoice / Last date of issue of invoice under section 31

Date on which the payment is recorded in the books of account of the supplier *[presently irrelevant for the purpose of payment of tax]*

Date on which the payment is credited to the supplier's bank account *[presently irrelevant for the purpose of payment of tax]*

Whichever is earlier

SPECIAL PROCEDURE[5] FOR PAYMENT OF TAX IN CASE OF GOODS

GST to be paid at the time of supply → **As specified in section 12(2)(a)**

Date of issue of invoice / Last date of issue of invoice under section 31

Effectively, in case of goods, no GST is payable at the time of receipt of advance for supply of goods.

[5] *under section148 of the CGST Act*

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(4) B Ltd. sells goods to C Ltd. on 10th June. The invoice for the same is issued on 12th June. Payment for the goods is received on 20th June. Time of supply of goods for the purpose of payment of tax is 10th June being the last date on which invoice ought to have been issued in terms of section 31.

(5) B Ltd. enters into a contract with C Ltd. for supply of goods over a period of one year starting from the month of January. As per the contract, C Ltd. makes payment on 10th day of each month. B Ltd. issues the invoice on the same day. Time of supply of the goods for the purpose of payment of tax will be 10th day of each month.

(6) B Ltd. sends goods to C Ltd. for sale on approval basis on 10th January. C Ltd. approves the goods on 15th August. B Ltd. should issue the invoice on 10th July as the supply gets fructified after six months from the date of removal. Time of supply of the goods for the purpose of payment of tax is 10th July being the last date on which invoice ought to have been issued in terms of section 31.

Excess payment upto ₹ 1000: Option of taking invoice date as time of supply

In terms of the proviso to sub-section (2) of section 12, for a payment of up to ₹ 1,000 received in excess of the value of the goods invoiced, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of goods for such excess value. Since GST on supply of goods is payable only on the basis of issuance of invoice[6], this provision is practically irrelevant for supply of goods.

If neither the date of invoice nor the date of payment is available, the time of supply is determined in terms of the residual provisions under sub-section (5) of section 12 [discussed under point (iv)].

[6] as per *Notification No. 66/2017 CT dated 15.11.2017*

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(ii) Time of supply of goods under reverse charge [Section 12(3)]

The time of supply of goods on which GST is payable on reverse charge basis under sub-sections (3) and (4) of section 9 of CGST Act is determined in terms of section 12(3)(a), (b) and (c), as follows:

The time of supply for such goods will be the earliest of the following dates:

- Date on which the goods are received, or
- Date on which payment is recorded in the books of account of the recipient, or the date on which the same is debited in his bank account, whichever is earlier, or
- Date immediately following 30 days from the date of issue of invoice (or document by some other name in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of goods in the books of account of the recipient of supply.

The provisions relating to time of supply of goods in case of reverse charge are depicted by way of a diagram given at a subsequent page.

The relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment).

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(7) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 12th June.

C Ltd. records the payment in the books of account on 30th June and the same is debited from the bank account of C Ltd. on 2nd July.

Time of supply of the goods is 12th June being the earliest of the **three** stipulated dates namely:

- date of receipt of goods,
- date of payment and
- date immediately following 30 days of issuance of invoice.

(8) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 6th July.

C Ltd. records the payment in the books of account on 21st July and the same is debited from the bank account of C Ltd. on 31st July.

Time of supply of the goods is 5th July being the earliest of the three stipulated dates namely, date of receipt of goods, date of payment and date immediately following 30 days of issuance of invoice.

(9) B Ltd. sells goods to C Ltd. on 4th June. The goods are taxable under reverse charge. Invoice for the same is issued on 4th June. C Ltd. receives the goods on 27th June.

C Ltd. records the payment in the books of account on 10th June and the same is debited from the bank account of C Ltd. on 2nd July.

Time of supply of the goods is 10th June being the earliest of the three stipulated dates namely, date of receipt of goods, date of payment and date immediately following 30 days of issuance of invoice.

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TIME OF SUPPLY OF GOODS UNDER REVERSE CHARGE

Date on which goods are received

Date on which the payment is recorded in the books of account of the recipient of goods

Date on which the payment is debited in the bank account of the recipient of goods

31st day from the issue of invoice by the supplier

Whichever is earlier

If it is not possible to determine the time of supply through above parameters,
THEN
TIME OF SUPPLY WILL BE

Date on which goods are recorded in the books of account of the recipient of supply

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(iii) Time of supply of vouchers exchangeable for goods[7] [Section 12(4)]

As commonly understood, vouchers are instruments that can be exchanged as payment for goods or services of the designated value. As per the definition, vouchers are instruments, that certain persons (potential suppliers) are obliged to accept as consideration, part or full, against supply of goods and/or services. The instrument or its related documentation sets out the terms and conditions of use, the goods and/or services covered, and the identity of the potential suppliers of such goods and/or services.

As per section 12(4), the time of supply of vouchers exchangeable for goods is-

- Date of issue of the voucher, if the supply that it covers is identifiable at that point, or
- Date of redemption of the voucher in other cases.

The provisions relating to time of supply of vouchers exchangeable for goods are depicted by way of diagram given below.

TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS

[7] *It may be noted that the Finance Act, 2025 has omitted the provisions relating to time of supply of vouchers. Provisions of the Finance Act, 2025 have not become effective as on the date of printing of this Study Material. Once the said amendment comes into effect, students will no longer be required to study the provisions relating to the time of supply of vouchers.*

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(10) A Ltd. sells food coupons to B Ltd. The company gives these coupons to its employees as part of the agreed perquisites. The coupons can be redeemed for purchase of any item of food /provisions in the outlets that are part of the program.

As the supply against which the coupon will be redeemed is not known on the date of the sale of the coupon, the time of supply of the coupon will be the date on which the employee redeems it against food / provision items of his choice.

(11) With each purchase of a large pizza during the Christmas week from Perfect Pizza, one can buy a voucher for ₹ 20 which will be redeemable till 5th Jan for a small pizza. As the supply against which the voucher will be redeemed is known on the date of issue of the vouchers, the time of supply is the date of issue of the voucher.

(iv) Time of supply of goods in residual cases [Section 12(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 12, in the following manner:

- Due date for filing of the periodical return, or
- In any other case, date on which GST is paid.

TIME OF SUPPLY OF GOODS IN RESIDUAL CASES

Where a periodical return is to be filed

TIME OF SUPPLY IS THE DATE ON WHICH RETURN IS REQUIRED TO BE FILED

OTHER CASES

TIME OF SUPPLY IS THE DATE ON WHICH GST IS PAID

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(v) Time of supply in case of enhancement in value on account of interest/late fee etc. for delayed payment of consideration [Section 12(6)]

INTEREST OR LATE FEE FOR DELAYED PAYMENT OF CONSIDERATION

Commercially, most of the contracts of supplies stipulate payment of interest/late fee/penalty etc. in case of payment of consideration beyond the agreed time period. Such interest/late fee/penalty etc. is includible in value of taxable supply *[This concept has been discussed in detail in Chapter 6 - Value of Supply in this Module of the Study Material]*. So, the point to consider here is that when the liability to pay GST would arise in such cases of addition in value.

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

example

(12) A Ltd. sold goods to B Ltd. on 6th June with a condition that interest @ 2% per month will be charged if B Ltd. failed to make payment within 15 days of the delivery of the goods. Goods were delivered as also the invoice was issued on 6th June. B Ltd. paid the consideration for the goods on 6th July along with applicable interest.

Time of supply for the goods sold is the date of issue of invoice, i.e. 6th June and the time of supply for addition in value by way of interest is the date when such addition in value is received by A Ltd., i.e. 6th July.

The provisions relating to time of supply of goods as contained in section 12 are summarised in the diagram given on next page.

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Time of supply of goods under forward charge

- Date of issue/ due date of issue of tax invoice under section 31
- Date of recording the payment in the books of accounts of the supplier
- Date on which payment is credited in the bank account of the supplier

whichever is earlier

No GST at the time of receipt of advance for supply of goods: GST to be paid on date of issue/due date of issue of tax invoice under section 31

Time of supply of goods under reverse charge

- Date of receipt of goods
- Date of recording the payment in the books of accounts of the recipient of goods
- Date on which payment is debited from the bank account of the recipient of goods
- 31st day from the date of supplier's invoice

whichever is earlier

If the above events are UNASCERTAINABLE

Time of supply = Date of entry of good in books of account of recipient of goods

Time of supply of vouchers exchangeable for goods

- Date of issue of voucher, if the supply is identifiable at that point
- Date of redemption of voucher in other cases

Residual cases (If all the above do not work for a situation) → Time of supply → Where a periodical return is to be filed, due date of such return OR In any other case, the date on which tax is paid

Addition in value by way of interest, late fee/penalty for delayed payment of consideration for goods → Time of supply → Date on which the supplier receives such addition in value

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4. TIME OF SUPPLY OF SERVICES [SECTION 13]

STATUTORY PROVISIONS

Section 13	*Time of supply of services*	
Sub-section	*Clause*	*Particulars*
(1)	*The liability to pay tax on services shall arise at the time of supply, as determined in terms of the provisions of this section.*	
(2)	*The time of supply of services shall be the earliest of the following dates, namely:-*	
	(a)	*the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*
	(b)	*the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or*
	(c)	*the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:*
	Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.	
	Explanation - For the purposes of clauses (a) and (b) -	
	(i)	*the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.*

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	(ii)	*"the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*
(3)	*In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely-*	
	(a)	*the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or*
	(b)	*the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:*
	(c)	***the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient.***
	Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:	
	Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.	
(4)	*In case of supply of vouchers by a supplier, the time of supply shall be-*	
	(a)	*the date of issue of voucher, if the supply is identifiable at that point; or*
	(b)	*the date of redemption of voucher, in all other cases*[8]*;*

[8] *It may be noted that the Finance Act, 2025 has omitted the provisions relating to time of supply of vouchers. Provisions of the Finance Act, 2025 have not become effective as on the date of*

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(5)	*Where it is not possible to determine the time of supply of services under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall*		
	(a)	*in a case where a periodical return has to be filed, be the date on which such return is to be filed; or*	
	(b)	*in any other case, be the date on which the tax is paid.*	
(6)	*The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.*		
Section 31	***Tax invoice (to the extent relevant to time of supply of services)***		
(2)	*A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:*		
	Provided that the Government may, on the recommendations of the Council, by notification,—		
	(a)	*specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;*	
	(b)	*subject to the condition mentioned therein, specify the categories of services in respect of which—*	
		(i)	*any other document issued in relation to the supply shall be deemed to be a tax invoice; or*
		(ii)	*tax invoice may not be issued.*

printing of this Study Material. Once the said amendment comes into effect, students will no longer be required to study the provisions relating to the time of supply of vouchers.

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(3)	***(f)***	***a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall within the period as may be prescribed issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both***
(5)	*Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,––*	
	(a)	*where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;*
	(b)	*where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;*
	(c)	*where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.*
(6)	*In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.*	
Chapter VI: Tax Invoice, Credit and Debit Notes of CGST Rules		
Rule 47	**Time limit for issuing tax invoice**	
	The invoice referred to in rule 46, in case of taxable supply of services, shall be issued within a period of thirty days from the date of supply of service:	
	Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of supply of service:	

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	Provided further that an insurer or a banking company or a financial institution, including a non- banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.
Rule 47A	***Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, he shall issue the said invoice within a period of thirty days from the date of receipt of the said supply of goods or services, or both, as the case may be.***

ANALYSIS

Section 13 must be read with section 31 and rule 47 and 47A of CGST Rules, which prescribe in detail the date on which tax invoice for a supply of service must be issued in various situations.

Section 13 provides for the determination of the time of supply in the following situations:

- Supply of service taxable under forward charge,
- Supply of service taxable under reverse charge,
- Supply of vouchers that can be used to pay for services,
- Residual cases,
- Addition to value of supply of services by way of interest or late fee or penalty for delayed payment.

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Below we shall consider these in detail.

(i) Time of supply of services under forward charge [Section 13(2) read with section 31 and rule 47 of CGST Rules]

For supply of service on which the supplier is liable to pay tax, the time of supply will be the earlier of the dates arrived at by methods (A) and (B), as follows:

(A) Date of issue of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;

(B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31,

If the above two methods [(A) and (B)] are not applicable, the time of supply will be the date on which the recipient of service shows receipt of the service in his books of account.

Meaning of "date of receipt of payment"

"Date of receipt of payment" in the above situation refers to the date on which the payment is recorded in the books of account of the supplier that receives the payment, or the date on which the payment is credited to the supplier's bank account, whichever is earlier.

Significance of "to the extent the payment covers the services"

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

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The provisions relating to time of supply of services in case of forward charge can be depicted by way of a diagram given hereunder.

TIME OF SUPPLY OF SERVICES UNDER FORWARD CHARGE

If time of supply cannot be determined by both the above methods, then

Date of receipt of services in the books of account of the recipient

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Time limit for issuance of invoice for supply of services under section 31

The criteria to determine the time of supply of services depend upon whether the invoice is issued within the time prescribed under section 31.

Following are the relevant provisions in this regard:

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

- In case of insurance companies/ banking companies/ financial institutions including NBFCs/ telecom companies/ notified supplier of services making taxable supplies between distinct persons as specified in section 25[9], invoice may be issued before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made [Second proviso to rule 47].

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

  (i) on/ before the due date of payment - where the due date of payment is ascertainable from the contract or

  (ii) before/ at the time when the supplier of service receives the payment - where the due date of payment is not known

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

  Continuous supply of services are provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period

[9] *Concept of distinct persons has been discussed in Chapter 1: Supply under GST in this Module of the Study Material.*

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exceeding 3 months with periodic payment obligations and includes supply of such services as the Government may notify [Section 2(33)]. *The said term has been discussed in Chapter 9: Tax Invoice; Credit and Debit Notes in Module 2 of this Study Material.*

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

Cessation of supply of services

Clarification on time of supply in respect of supply of services of construction of road and maintenance thereof of National Highway Projects of National Highways Authority of India (NHAI) in Hybrid Annuity Mode (HAM) model[10]

Issue: Under the Hybrid Annuity Mode (HAM) model of National Highways Authority of India (NHAI), the concessionaire has to construct the new road and provide Operation & Maintenance of the same which is generally over a period of 15-17 years and the payment of the same is spread over the years. What is the time of supply for the purpose of payment of tax on the said service under the HAM model?

Clarification: Under the Hybrid Annuity Model (HAM) of concession agreements, the highway development projects are under Design, Build, Operate and Transfer model (DBOT), wherein the concessionaire is required to undertake new construction of Highway, as well as the Operation and Maintenance (O&M) of Highways. The payment terms for the construction portion as well as the O&M portion of the contract are provided in the agreement between National Highways Authority of India (NHAI) and the concessionaire.

A HAM contract is a single contract for construction as well as operation and maintenance of the highway. The payment terms are so staggered that the concessionaire is held accountable for the repair and maintenance of the highway as well.

Single contract

[10] *Circular No. 221/15/2024 GST dated 26.06.2024*

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The contract needs to be looked at holistically based on the services to be performed by the concessionaire and cannot be artificially split into two separate contracts for construction and operation and maintenance, based on the payment terms. The concessionaire is bound contractually to complete not only the construction of the highway but also to operate and maintain the same.

In HAM contract, the payment is made spread over the contract period in installments and payment for each installment is to be made after specified periods, or on completion of an event, as specified in the contract. **The same appears to be covered under the 'Continuous supply of services' as defined under section 2(33).**

Accordingly, as per section 13(2) read with section 31(5), time of supply of services under HAM contract, including construction and O&M portion if the invoice is issued on or before the specified date or the date of completion of the event specified in the contract, as applicable, would be **EARLIER** of the following dates:-

Invoice is issued on or before the specified date

(a) date of issuance of such invoice, or

(b) date of receipt of payment

However, in cases, where the invoice is not issued on or before the specified date or the date of completion of the event specified in the contract, as per section 13(2)(b), time of supply should be **EARLIER** of the following dates:-

Invoice is NOT issued on or before the specified date

(a) date of provision of the service (i.e., the due date of payment as per the contract), or

(b) date of receipt of payment.

In case of continuous supply of services, the date of provision of service may be deemed as the due date of payment as per the contract, as the invoice is required to be issued on or before the due date of payment as per the provisions of Section 31(5) of CGST Act.

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It is also clarified that as the installments/annuity payable by NHAI to the concessionaire also includes some interest component, the amount of such interest shall also be includible in the taxable value for the purpose of payment of tax on the said annuity/installment in view of the provisions of section 15(2)(d) of the CGST Act, 2017[11].

(13) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 15th June. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June.

Date of receipt of payment is 20th June being the earlier of two stipulated dates namely, date on which the payment is recorded in the books of account of the supplier and date on which the payment is credited to the supplier's bank account.

Since the invoice is issued within 30 days from the date of supply of service, time of supply of services is 15th June being the earlier of the two stipulated dates namely, date of issuance of invoice and date of receipt of payment.

(14) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 7th July. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June.

Date of receipt of payment is 20th June being the earlier of two stipulated dates namely, date on which the payment is recorded in the books of account of the supplier and date on which the payment is credited to the supplier's bank account.

Since the invoice is issued within 30 days from the date of supply of service, time of supply of services is 20th June being the earlier of the two stipulated dates namely, date of issuance of invoice and date of receipt of payment.

[11] *Section 15 shall be discussed in detail in Chapter-6: Value of supply of this Study material.*

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(15) A Ltd. provides services to B Ltd. on 10th June. A Ltd. issues the invoice for the services on 15th July. Payment is received in the bank account of A Ltd. on 20th June and is recorded in the books of account of A Ltd. on 30th June.

Here, invoice is not issued within 30 days of provision of service. Therefore, time of supply of services is 10th June being the earlier of the two stipulated dates namely, date of provision of service and date of receipt of payment.

Excess payment upto ₹ 1000: Option of taking invoice date as time of supply

In terms of the proviso to sub-section (2) of section 13, for a payment of up to ₹ 1,000 received in excess of the invoice value, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of services in relation to this excess value. In other words, if advance upto ₹ 1,000 is received with respect to any services, GST is not payable at that stage; GST will be payable when invoice is raised. This provision facilitates the supplier to defer payment of tax on small amounts typically received by him in excess of the invoice amount.

This provision has been made as in case of monthly/periodical bills like telephone bills or electricity bills, customers often pay slightly higher amounts than bill amounts. It would have been very cumbersome to pay GST on such petty advances and adjust them later, as legally, 'receipt voucher' is required to be issued under GST when advance against services is received.

(16) A telephone company receives ₹ 5000 against an invoice of ₹ 4800. The excess amount of ₹ 200 can be adjusted against the next invoice.

The company has the option to take the date of the next invoice as the time of supply of service in relation to the amount of ₹ 200 received in excess against the earlier invoice.

(ii) Time of supply of services taxable under reverse charge [Section 13(3)]

The time of supply of service on which GST is payable on reverse charge basis (except on services received from associated enterprises located outside

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India) under sub-sections (3) and (4) of section 9 is determined in terms of section 13(3)(a) and (b) ***and (c)*** as follows:

The time of supply for such service will be the earlier of the following:

- Date of payment, or
- Date immediately following 60 days from the date of issue of invoice (or any other document in lieu of invoice) by the supplier, ***in cases where invoice is required to be issued by the supplier***
- ***Date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient.***

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.

Meaning of "Date of payment"

"Date of payment" in the above situation refers to the date on which the payment is recorded in the books of account of the recipient of service, or the date on which the payment is debited from the recipient's bank account, whichever is earlier.

Time limit for issuance of invoice by recipient for supply of services in case of reverse charge mechanism [Section 31(3)(f) read with rule 47A]

Where an invoice referred to in rule 46 is required to be issued under section 31(3)(f) by a registered person, who is liable to pay tax under section 9(3)/(4), he shall issue the said invoice within a period of 30 days from the date of receipt of the said supply of goods and/or services, as the case may be.

Thus, invoice is to be issued within a period of 30 days from the date of receipt of the said supply of goods and/or services, as the case may be.

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Clarification on time of supply of services of spectrum usage and other similar services under GST[12]

Under the spectrum[13] allocation model followed by Department of Telecommunications (DoT), bidder (the telecom operator) bids for securing the right to use spectrum offered by the Government. Here, service provider is the Government of India (through DoT) and service recipient is the bidder/telecom operator. The GST is to be discharged on the supply of spectrum allocation services by the recipient of services (the telecom operator) on reverse charge basis[14].

In case where full upfront payment is made by the telecom operator, GST would be payable when the payment of the said upfront amount is made or is due, whichever is earlier.

In case where deferred payment is made by the telecom operator in specified installments, same shall be considered as 'continuous supply of services' as defined under section 2(33), since the supply of services (spectrum usage) is agreed to be provided by the supplier (DoT) to the recipient (telecom operator) continuously for a period which is exceeding three months with periodic payment obligations.

Further, in the given case, since the date of payment to be made by the telecom operator to DoT is clearly ascertainable from the relevant documents, invoice shall be issued in accordance with the provisions of section 31(5)(a). As per this section, in cases of continuous supply of services, where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before such due date of payment. Accordingly, tax invoice will be required to be issued in respect of the said supply of services, on or before such due date of payment as per the option exercised by the telecom operator. Thus, in this case, GST would be payable as and when the payments are due or made, whichever is earlier.

It is also clarified that the similar treatment regarding the time of supply, may apply in other cases also where any natural resources are being allocated by the Government to the successful bidder/ purchaser for right to use the said natural resource over a period of time, constituting continuous supply of services, with the

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[12] *Circular No. 222/16/2024 GST dated 26.06.2024*

[13] *Spectrum services refer to services that use radio waves, or "spectrum," to send data wirelessly. This includes services like mobile phone networks, Wi-Fi, TV broadcasts, and radio.*

[14] *Vide entry 5 of Notification No. 13/2017 CT(R) dated 28.06.2017*

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option of payments for the said services either through an upfront payment or in deferred periodic installments over the period of time.

Import of services between associated enterprises

In the case of service received from an associated enterprise[15] located outside India, the time of supply will be the date of payment for the service, or the date of entry of the service in the books of account of the recipient, whichever is earlier. The provisions relating to time of supply of services in case of reverse charge can be depicted by way of a diagram given on next page.

(17) A Ltd. provides services to B Ltd. on 10th June. The services are taxable under reverse charge. A Ltd. issues the invoice for the services on 15th June. Payment is debited from the bank account of B Ltd. on 20th June and is recorded in the books of account of B Ltd. on 30th June.

Time of supply of services is 20th June being the earliest of the three stipulated dates namely, date on which payment is recorded in the books of account of recipient of services, date on which payment is debited from the bank account of the recipient of services and date immediately following 60 days since issue of invoice.

(18) A Ltd. provides services to B Ltd. on 10th June. The services are taxable under reverse charge. A Ltd. issues the invoice for the services on 15th June. Payment is debited from the bank account of B Ltd. on 20th September and is recorded in the books of account of B Ltd. on 15th September.

Time of supply of services is 15th August being the earliest of the three stipulated dates namely, date on which payment is recorded in the books of account of recipient of services, date on which payment is debited from the bank account of the recipient of services and date immediately following 60 days since issue of invoice.

(19) A Inc., a foreign company, and B Ltd., an Indian company, are associated enterprises. A Inc. provides technical services to B Ltd. Vide an email dated June 4th, A Inc. informs B Ltd. the cost of technical services provided to it. B Ltd. transfers the payment to A Inc. on 12th August.

Time of supply of services is 12th August being the date of payment as there is no prior entry of the amount in the books of account of B Ltd.

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[15] *Associated enterprises shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961. Broadly, an associated enterprise in relation to another enterprise, means an enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.*

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TIME OF SUPPLY OF SERVICES UNDER REVERSE CHARGE

Date on which the payment is recorded in the books of account of the recipient.

Date on which the payment is debited from the bank account of the recipient of services

61st day from issue of invoice by the supplier, *in cases where invoice is required to be issued by the supplier*

Date of issue of invoice by the recipient, in cases where invoice is required to be issued by the recipient i.e. within 30 days of receipt of services.

Whichever is earlier

If it is not possible to determine the time of supply through above parameters, THEN TIME OF SUPPLY WILL BE

Date of entry of service in the books of account of the recipient of supply

TIME OF SUPPLY IN CASE OF IMPORT OF SERVICES FROM ASSOCIATED ENTERPRISES

Supply of services from AE located outside India

Date of payment for the service

Date of entry of service in books of account of recipient

Whichever is earlier

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(iii) Time of supply of vouchers exchangeable for services[16] [Section 13(4)]

The term voucher has already been explained under the Heading "Time of Supply of Goods". The time of supply of vouchers that are exchangeable for services is stipulated as:-

- the date of issue of the voucher - if the supply is identifiable at that point,

or

- the date of redemption of the voucher - in other cases.

(20) A Ltd., a company providing hospitality services, enters into agreement with B Ltd. by which B Ltd. markets A Ltd.'s hotel rooms and sells coupons / vouchers redeemable for a discount against stay in the hotel.

As the supply against which the voucher will be redeemed is identifiable, the time of supply of the voucher will be its date of issue.

(iv) Time of supply of services in residual cases [Section 13(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 13, in the following manner:

- Date on which periodical return for the period is required to be filed, or
- In any other case, date on which GST is paid.

(v) Time of supply in case of enhancement of value on account of interest/late fee etc. for delayed payment of consideration [Section 13(6)]

The provisions for time of supply in case of addition in value by way of interest, late fee/penalty for delayed payment of consideration are the same for goods and services.

Section 13(6) prescribes that time of supply in case of addition in value by way of interest/ late fee/penalty for delayed payment of consideration for a service is the date on which the supplier receives such addition in value.

The provisions relating to time of supply of services as contained in section 13 are summarised in the diagram given on next page.

[16] *It may be noted that the Finance Act, 2025 has omitted the provisions relating to time of supply of vouchers. Provisions of the Finance Act, 2025 have not become effective as on the date of printing of this Study Material. Once the said amendment comes into effect, students will no longer be required to study the provisions relating to the time of supply of vouchers.*

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Where a periodical return is to be filed, due date of such return
OR
In any other case, the date on which the tax is paid

Addition in value by way of interest, late fee/penalty for delayed payment of consideration for services → **Time of supply** → **Date on which the supplier receives such addition in value**

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5. CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICES [SECTION 14]

STATUTORY PROVISIONS

Section 14	*Change in rate of tax in respect of supply of goods or services*	
Clause	*Particulars*	
Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:––		
(a)	*in case the goods or services or both have been supplied before the change in rate of tax,––*	
	(i)	*where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or*
	(ii)	*where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or*
	(iii)	*where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;*
(b)	*in case the goods or services or both have been supplied after the change in rate of tax,––*	
	(i)	*where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or*

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	(ii)	*where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or*
	(iii)	*where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:*

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation — For the purposes of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

ANALYSIS

When there is a change in effective rate of tax, we have to identify -

- ***the date of change in rate of tax,***
- ***the date of supply of goods or services,***
- ***the date of issue of invoice, and***
- ***the date of receipt of payment***

The time of supply is determined according to a combination of these dates.

When the rate of tax is changed before, and a transaction of supply of goods or services gets completed in all its documentary and financial aspects, the law makes specific provisions for ascertaining the time of supply of the goods or service for the purpose of payment of tax.

The three markers for identifying time of supply are actual supply, invoice and payment. These can occur in differing sequences. Their occurrence before and after the change of effective rate of tax determines the time of supply of the service.

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Of the three markers (supply, invoice, payment), -

- if issue of invoice and receipt of payment are both before the change in rate, the time of supply is the date of the earlier of these two events;
- if supply and issue of invoice are before the change in rate, the date of issue of invoice is the time of supply;
- if supply and receipt of payment are before the change in rate, the date of receipt of payment is the time of supply.
- If supply and receipt of payment are after the change in rate, the date of receipt of payment is the time of supply;
- If issue of invoice and receipt of payment are after the change in rate, the date of the earlier of these two events is the time of supply;
- If supply and issue of invoice are after the change in rate, the date of issue of invoice is the time of supply.

It can be seen from a study of these provisions, that the timing of two out of the three markers (supply, invoice, payment) determines the time of supply. If any two of them occur before the change in rate of tax, the time of supply will fall in the period prior to change in rate of tax i.e., old rate will be applicable. However, if any two of them occur after the change in rate of tax, the time of supply will fall in the period after the change in rate of tax i.e., new rate will be applicable.

Further, it may be noted that for supply of goods by a registered person (excluding composition supplier and registered persons making supply of specified actionable claims), GST is to be paid on the outward supply of goods on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 - *Notification No. 66/2017 CT dated 15.11.2017 (Refer point (i) of Analysis under Heading 3: Time of Supply of Goods [Section 12]).*

Meaning of "Date of receipt of payment"

Here, "date of receipt of payment" refers to the date on which the payment is entered in the books of accounts of the supplier, or the date on which the payment is credited in his bank account, whichever is earlier.

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(21) Mr. A, an interior decorator, designs and renovates the office of XYZ in June. The invoice is to be raised after approval of the work. In the meantime, the rate of tax is changed on 5th July. Invoice is raised and payment made later in July. Here, the time of supply is after the change in rate of tax, though the service was completed prior to the change.

(22) A Ltd. makes custom-made precision tools for which it takes full advance with the purchase order. One such order is received on 13th April and full amount is paid with the order. The tools are manufactured and delivered on 22nd May. Invoice is also issued on the same day. In the meanwhile, rate of tax was increased on the tools of this description from 20th May onwards. Here, increased rate of tax will be applicable as goods are supplied and invoice issued after 20th May.

Date of crediting of payment in bank account to be the "date of receipt of payment" if such crediting takes place after 4 working days of change in rate of tax

Where the payment is credited in the bank account after 4 working days from the date of change in the rate of tax, the date of receipt of payment will be the date of credit in the bank account. In other words, in such a case, the date of recording the payment in the books of account will not be considered as the date of receipt of payment even though if the same precedes the date of crediting of payment in the bank account.

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(23) Rate of tax is changed on 10th July. Receipt of payment is recorded in the books of account of the supplier on 8th July. The payment is credited in the supplier's bank account on 15th July. The Bank was open all days between 10th and 15th July. Here, the date of receipt of payment is 15th July.

LET US RECAPITULATE

The provisions relating to time of supply of goods and services can be better understood if the same are studied simultaneously appreciating the similarities and differences between the two. Therefore, such provisions have been summarised by way of a comparison table to help students remember and retain the provisions in a better and effective manner:

TIME OF SUPPLY WHERE TAX IS PAYABLE UNDER FORWARD CHARGE

Time of supply of goods [Section 12(2)]	Time of supply of services [Section 13(2)]
Earliest of the following: → Date of **issue of invoice** by the supplier or the **last date on which he is required under section 31, to issue the invoice** under	(a) **Invoice issued within the time period prescribed under section 31** **Earliest of the following:**

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section 31(1) with respect to the supply

→ Date on which the supplier **receives the payment** (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) with respect to the supply – *presently irrelevant for purpose of payment of tax*

No GST at the time of receipt of advance for supply of goods: In case of supply of goods by a registered person under forward charge (excluding composition supplier and registered persons making supply of specified actionable claims), GST is to be paid on the outward supply of goods on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 [*Notification No. 66/2017 CT dated 15.11.2017*].

→ Date of issue of invoice by the supplier

→ Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier)

(b) Invoice not issued within the time period prescribed under section 31

Earliest of the following:

→ Date of provision of service

→ Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier)

(c) When the above events are unascertainable

→ Date on which the recipient shows the receipt of services in his books of account

TIME LIMIT FOR RAISING INVOICES

Supply of goods [Section 31(1)]	Supply of services [Section 31(2)]
Before or at the time of,- **(a) removal of goods** for supply to the recipient, where the supply involves movement of goods, or **(b) delivery of goods or making available thereof to the recipient**, in any other case	**Before or after the provision of service** but within 30 days [45 days in case of insurance companies/banking and financial institutions including NBFCs] from the date of supply of services

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TIME OF SUPPLY WHERE TAX IS PAYABLE UNDER REVERSE CHARGE

Time of supply of goods [Section 12(3)]	Time of supply of services [Section 13(3)]
Earliest of the following: → Date of **receipt of goods**, or → Date of **payment** as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or → **31st day from the date of issue of invoice by the supplier**	**Earliest of the following:** → Date of **payment** as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or → **61st day from the date of issue of invoice by the supplier, *in cases where invoice is required to be issued by the supplier*** → ***Date of issue of invoice by the recipient, in cases where invoice is required to be issued by the recipient. [Invoice is to be issued within 30 days from the date of receipt of services.]***
Where the above events are not ascertainable, the time of supply shall be the date of entry in the books of account of the recipient of supply	
	Import of service from associated enterprise Date of entry in the books of account of the recipient or the date of payment, whichever is earlier

TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS AND SERVICES

Supply of vouchers exchangeable for goods and services [Sections 12(4) and 13(4)]
(a) Supply of goods or services is identifiable at the time of issue of voucher → Date of issue of the voucher **(b)** Other cases → Date of redemption of the voucher

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TIME OF SUPPLY OF GOODS AND SERVICES IN RESIDUAL CASES

Supply of goods and services in residual cases [Sections 12(5) and 13(5)] i.e where it is not possible to determine the time of supply under the other provisions

(a) Where a periodical return is required to be filed

→ Due date of filing such return

(b) Other cases

→ Date of payment of tax

TIME OF SUPPLY FOR ADDITION IN VALUE BY WAY OF INTEREST/ LATE FEE/PENALTY FOR DELAYED PAYMENT OF CONSIDERATION

Addition in value by way of interest, late fee/penalty for delayed payment of consideration

Time of Supply →Date on which the supplier receives such addition in value

The provisions relating to time of supply of goods falling in the residual category are same as that of the time of supply of services falling in the residual category. Also, the provisions relating to time of supply for addition in value by way of interest, late fee/penalty for delayed payment of consideration are same for goods and services.

Furthermore, concepts like option of taking invoice date as time of supply in case of receipt of excess payment upto ₹ 1000, meaning of "Date of receipt of payment", significance of words "to the extent the invoice or payment covers the supply" are also same for goods and services.

Students may make a note of the above points as it will help them in understanding and remembering the provisions in a better manner.

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CHANGE IN RATE OF TAX

In case of change in rate of tax, determination of rate of tax depends upon three events namely,-

- Date of supply of goods or services,
- Date of invoice; and
- Date of receipt of payment

If any two of the above events occur before the change of rate, the time of supply is before the change of rate. If any two of them occur after the change of rate, the time of supply is after the change of rate and the new rate becomes applicable to the supply. However, in case of supply of goods by a registered person (excluding composition supplier and registered persons making supply of specified actionable claims), GST is to be paid on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 [*Notification No. 66/2017 CT dated 15.11.2017*].

Using this principle, time of supply of services, in case of change in rate of tax, can be determined as under:

Supply	Issue of invoice	Receipt of payment	Time of supply
BEFORE	**BEFORE**	**AFTER**	Date of issue of invoice
BEFORE	**AFTER**	**BEFORE**	Date of receipt of payment
BEFORE	**AFTER**	**AFTER**	Date of issue of invoice or date of receipt of payment, whichever is earlier
AFTER	**AFTER**	**BEFORE**	Date of issue of invoice
AFTER	**BEFORE**	**AFTER**	Date of receipt of payment
AFTER	**BEFORE**	**BEFORE**	Date of issue of invoice or date of receipt of payment, whichever is earlier

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The provisions relating to time of supply of vouchers that are exchangeable for goods are same as that of the vouchers that are exchangeable for services. Similarly, the provisions relating to time of supply of goods falling in the residual category are same as that of the time of supply of services falling in the residual category. Also, the provisions relating to time of supply for addition in value by way of interest, late fee/penalty for delayed payment of consideration are same for goods and services.

Furthermore, concepts like meaning of "Date of receipt of payment", significance of words "to the extent the invoice or payment covers the supply" are also same for goods and services.

Students may make a note of the above points as it will help them in understanding and remembering the provisions in a better manner.

TEST YOUR KNOWLEDGE

1. *Kanchenjunga Pvt. Ltd. supplies taxable goods to Sutlej Pvt. Ltd. for ₹ 2,50,000 on 23rd June and issues the invoice on 25th June. Payment for the goods is made by Sutlej Pvt. Ltd. on 15th July.*

   Determine the time of supply of goods for the purpose of payment of tax.

2. *I buy a set of modular furniture from a retail store. Invoice is issued to me and I make the payment. The furniture is to be delivered to me later in the week when a technician is available to assemble and install it. The next day the rate of tax applicable to modular furniture is revised upward, and the store sends me a supplementary invoice with the delivery note accompanying the furniture to collect the differential amount of tax.*

   Is this correct on store's part? Explain.

3. *An online portal, Best Info, raises invoice for database access on 21st February on Roy & Bansal Ltd. The payment is made by Roy & Bansal Ltd. by a demand draft sent on 25th February, which is received and entered in the*

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accounts of Best Info on 28th February. Best Info encashes the demand draft and thereafter, gives access to the database to Roy & Bansal Ltd from 3rd March. In the meanwhile, the rate of tax is changed from 1st March.

Determine the time of supply of the service of database access by Best Info.

4. *Trust Industries Ltd. has entered into a contract with VST Ltd. to supply gas by a pipeline to VST Ltd. for a period of one year. As per the terms of the contract-*

   (i) VST Ltd. shall make monthly payments [Payment for a month shall be made by 7th day of the next month]

   (ii) Every quarter, Trust Industries Ltd. shall issue a statement of account showing the quantity and value of goods dispatched, payments received and payment due.

   (iii) The differential amount, if any, as mentioned in the statement of account shall be paid by VST Ltd.

   The details of the various events are:

August 5, September 5, October 6	*Payments of ₹ 2 lakh made in each month for the quarter July-September*
October 3	*Statement of accounts for the quarter July – September issued by the supplier showing amount of ₹ 2,56,000 as unpaid*
October 17	*Balance payment of ₹ 56,000 received by supplier for the quarter July – September*

   Determine the time of supply of goods for the purpose of payment of tax.

5. *Renudhoot Ltd. enters into a contract with XYZ Ltd. on 2nd July 2023 for a period of 2 years for construction of a new building - to be used for commercial purposes - for a total consideration of ₹ 150 lakh. As per the terms of contract, Renduhoot Ltd. is required to make payment at different stages of completion of the building namely, 50%, 75% and 100%.*

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Determine the time of supply using relevant details given as under:

Stage	***Date of various stages***	***Date of issuance of invoice***	***Date of payment***	***Amount paid (₹)***
Initial booking	*02.07.2023*	*02.07.2023*	*02.07.2023*	*15 lakh*
50% completion of building	*15.03.2024*	*22.03.2024*	*29.03.2024*	*60 lakh*
75% completion of building	*20.06.2024*	*24.07.2024*	*23.07.2024*	*35 lakh*
100% completion of building	*30.09.2024*	*30.09.2024*	*20.09.2024*	*40 lakh*

6. *Mint Industries Ltd., a registered supplier, imports business support services from Green Inc. of USA on 13th August. The self-invoice is raised for the transaction by Mint Industries Ltd. on 28th August. Mint Industries Ltd. makes the payment against the said invoice as follows:*

Case I	*22nd September*
Case II	*27th August*

Determine time of supply in each of the aforesaid cases.

7. *Kothari Ltd., Mumbai, holds 51% of shares of Wilson Inc., a USA based company. Wilson Inc. provides business auxiliary services to Kothari Ltd. From the following details, determine the time of supply of service provided by Wilson Inc:*

Agreed consideration	*US $1,00,000*
Date on which services are provided by Wilson Inc.	*16th June*
Date on which invoice is issued by Wilson Inc.	*19th August*
Date of debit in the books of account of Kothari Ltd.	*30th September*
Date on which payment is made by Kothari Ltd.	*23rd December*

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8. *Basis the following information, determine the time of supply:*

S. No.	Event	Date
(1)	Commencement of provision of service	05th June
(2)	Completion of service	10th October
(3)	Invoice issued	20th October
(4)	Payment received by cheque and entered in the books	15th October
(5)	Amount credited in Bank account	18th October
(6)	Rate changed from 12% to 18%	16th October

Note: Assume that all the days covered in the above case are working days.

9. *KLM Ltd., a publishing and printing house registered in Maharashtra, is engaged in supply of books, letter cards, envelopes, guides and reference materials. The following information is provided by the company:*

Event	Printing of books	Printing of envelopes
Date of entering into printing contract	16th March	20th March
Date of receipt of advance	20th March	25th March
Date of completion of printing	10th April	5th April
Date of issue of invoice	15th May	10th April
Date of removal of books and letter heads to buyer	13th May	7th April
Date of receipt of balance payment	31st May	30th April

In respect of printing of books, content was supplied by the author. For printing of envelopes, the design and logo were supplied by the buyer.

Determine the time of suppl(ies) for the purpose of payment of tax.

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10. *Andes Pvt. Ltd., a registered supplier, manufactures product 'A' and 'B'. While 'A' is taxable under forward charge, 'B' is taxable under reverse charge. The following details are provided in relation to two individual supplies of products 'A' and 'B' made by the company:*

S. No.	Date	Event
(i)	10th February	Payment of ₹ 1,00,000 made by buyer for supply of 'A' to be delivered in the month of March
(ii)	13th February	Receipt of ₹ 1,00,000 [as mentioned in point (i) above]
(iii)	17th February	Payment of ₹ 2,00,000 made by buyer for supply of 'B' to be delivered in the month of March
(iv)	20th February	Receipt of ₹ 2,00,000 [as mentioned in point (iii) above]
(v)	5th March	Product 'A' manufactured and removed
(vi)	6th March	Receipt of product 'A' [as mentioned in point (v) above] by the buyer
(vii)	10th March	Product 'B' manufactured and removed
(viii)	23rd March	Receipt of product 'B' [as mentioned in point (vii) above] by the buyer
(ix)	4th March	Invoice for ₹ 2,00,000 issued for supply of 'A'
(x)	11th March	Invoice for ₹ 4,00,000 issued for supply of 'B'
(xi)	25th March	Payment made by the buyer of 'A'
(xii)	31st March	Payment [as mentioned in point (xi) above] received
(xiii)	1st April	Payment made by the buyer of 'B'
(xiv)	4th April	Payment [as mentioned in point (xiii) above] received

Determine the time of suppl(ies) of goods for the purpose of payment of tax.

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ANSWERS

1. In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier and registered persons making supply of specified actionable claims) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(1), invoice for supply of goods should be issued before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Therefore, time of supply of goods is 23rd June being the last date on which invoice ought to have been issued and not 25th June when the invoice is actually issued.

2. No, the store is not correct in issuing supplementary invoice with revised rate of tax. The revised rate of tax is not applicable to the transaction, as the issuance of invoice as well as receipt of payment occurred before the supply. Therefore, in terms of section 14(b)(ii), the time of supply is earlier of the two events namely, issuance of invoice or receipt of payment, both of which are before the change in rate of tax, and thus, the old rate of tax remains applicable.

3. As issuance of invoice and receipt of payment (entry of the payment in Best Info's accounts) occurred before the change in rate of tax, the time of supply of service by the online portal is earlier of the date of issuance of invoice (21st February) or date of receipt of payment (28th February) i.e., 21st February. This would be so even though the service commences after the change in rate of tax [Section 14(b)(ii)].

4. As per *Notification No. 66/2017 CT dated 15.11.2017*, a registered person (excluding composition supplier and registered persons making supply of specified actionable claims) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms

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of section 31. As per section 31(4), in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice is issued before or at the time of each such statement is issued or, as the case may be, each such payment is received.

Therefore, invoices should be issued for ₹ 2 lakh each on or before August 5, and September 5, when monthly payments of ₹ 2 lakh are received. Further, invoice should also be issued for differential payment of ₹ 2,56,000 on or before October 3, when statement of account is issued

Thus, assuming that the invoice is issued on August 5, September 5 and October 3, the time of supply for the purpose of payment of tax will be August 5 and September 5 respectively for goods valued at ₹ 2 lakh each and October 3 for the goods valued at ₹ 2,56,000.

5. As per section 13, the time of supply of services is the earlier of the dates arrived at by methods (A) and (B), as follows:

(A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;

(B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31

Since in the present case, the construction services are provided under a contract for a period exceeding three months with periodic payment obligations, such services would fall within the ambit of term "continuous supply of services" as defined under section 2(33).

As per section 31(5), in case of continuous supply of services, the invoice should be issued either (i) on/ before the due date of payment or (ii) before/ at the time when the supplier of service receives the payment, if the due date of payment is not known (iii) on/ before the date of completion of the milestone event when the payment is linked to completion of an event [Section 31(5)].

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Accordingly, the time of supply with respect to each of the stages of completion is as follows:

Stages of completion	Time of supply
Initial booking	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice or date of receipt of payment is the time of supply. However, date of issuance of invoice (02.07.2023) and date of receipt of payment (02.07.2023) are the same. Therefore, time of supply is 02.07.2023.
50%	Since invoice has not been issued on or before the date of 50% completion, earlier of date of provision of service (15.03.2024) or date of receipt of payment (29.03.2024), i.e. 15.03.2024 is the time of supply.
75%	Since invoice has not been issued on or before the date of 75% completion, earlier of date of provision of service (20.06.2024) or date of receipt of payment (23.07.2024), i.e. 20.06.2024 is the time of supply.
100%	Since invoice is issued within the prescribed time limit, earlier of the date of issue of invoice (30.09.2024) or date of receipt of payment (20.09.2024), i.e. 20.09.2024 is the time of supply.

6. In case of services supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient, tax is payable under reverse charge by the person located in the taxable territory *[Notification No. 10/2017 IT (R) dated 28.06.2017]*. Hence, in the given case, since the business support services are provided by Green Inc (located in non-taxable territory) to Mint Ltd. (person other than non-taxable online recipient and located in taxable territory), tax is payable under reverse charge by Mint Ltd. Further, since Green Inc. is not registered in India, invoice has been issued by recipient, i.e. Mint Industries Ltd.

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The time of supply of services taxable under reverse charge is the earlier of the following:

- Date of payment, or
- Date of issue of invoice by the recipient, since invoice is issued by the recipient.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.

In view of the aforesaid provisions, the time of supply in each of the given cases will be as under:

CASE	Time of supply
CASE I	The time of supply is earlier of the date of payment, i.e. 22nd September or date of issue of invoice, i.e. 28th August, i.e. 28th August.
CASE II	The time of supply is earlier of the date of payment, i.e. 27th August or date of issue of invoice, i.e. 28th August, i.e. 27th August.

7. Since Kothari Ltd. holds 51% shares of Wilson Inc., Kothari Ltd. and Wilson Inc. are 'associated enterprises' as per section 92A of the Income-tax Act, 1961. As per second proviso to section 13(3), in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply is the earlier of the following two dates:

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Date of entry in the books of account of the recipient of supply [which is Kothari Ltd. in the present case]	30th September
OR	OR
Date of payment [by Kothari Ltd. in the present case]	23rd December

Thus, time of supply is 30th September.

8. The explanation to section 14 lays down that the date of receipt of payment is the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier. However, the date of receipt of payment is the date of credit in the bank account if such credit in the bank account is after 4 working days from the date of change in the rate of tax.

In the given case, the payment has been credited in the bank account within 4 working days from the date of change in the rate of tax. Therefore, the date of receipt of payment is 15th October being the date of entry in the books of account of the supplier which is earlier than the date of credit of the payment in the bank account (18th October).

As per section 14(a)(iii), in case of change in rate of tax, if the service is supplied before the change in rate of tax and the invoice is issued after the change in rate of tax but the payment is received before such change in rate of tax, the time of supply is the date of receipt of payment.

Therefore, applying the provisions of section 14(a)(iii) to the given case, the time of supply is 15th October.

9. As per *Circular No. 11/11/2017 GST dated 20.10.2017,* in case of printing of books where only content is supplied by the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore, such supplies would constitute **supply of service.**

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

Accordingly, the time of supply of books and envelopes will be governed by sections 12 and 13 respectively.

In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier and registered persons making supply of specified actionable claims) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(1), invoice for supply of goods should be issued before or at the time of removal of goods for supply to the recipient, where supply involves movement of goods. Therefore, in the given case, the last date by which invoice ought to have been issued is 7th April. Thus, the time of supply of envelopes for the purpose of payment of tax is 7th April.

As per section 13, the time of supply of services is the earlier of the dates arrived at by methods (A) and (B), as follows:

(A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;

(B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31.

Since in the given case, invoice for the services is not issued within 30 days, the time of supply for the advance received is the date of receipt of payment, i.e. 20th March being earlier than the date of provision of service. However,

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the time of supply for the balance payment is the date of provision of service, i.e. 10th April being earlier than the date of receipt of balance payment.

10. In terms of section 12(2), the time of supply of goods is the earlier of, the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, *Notification No. 66/2017 CT dated 15.11.2017* specifies that a registered person (excluding composition supplier and registered persons making supply of specified actionable claims) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Also, it is important to note that the relief of not paying GST at the time of receipt of advance is available only in case of supply of goods, the tax on which is payable under forward charge. In case of reverse charge, GST is payable at the time of payment, if payment is recorded/made before receipt of goods (advance payment) [Section 12(3)].

Therefore, time of supply of product 'A', which is taxable under forward charge, is 4th March being the date of issue of invoice. However, time of supply of product 'B', which is taxable under reverse charge, is 17th February to the extent of ₹ 2,00,000 paid as advance being the earliest of the three stipulated dates namely, date of receipt of goods (23rd March), date of payment (17th February) and date immediately following 30 days of issuance of invoice (11th April). For balance ₹ 2,00,000, the time of supply of product 'B' is 23rd March being the earliest of the three stipulated dates namely, date of receipt of goods (23rd March), date of payment (1st April) and date immediately following 30 days of issuance of invoice (11th April).

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CHAPTER 6

VALUE OF SUPPLY

The section numbers referred to in the Chapter pertain to the CGST Act, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.4.2025

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- comprehend and analyse as to what constitutes the value of a taxable supply of goods / services when the supply is made to an unrelated person and price is the sole consideration for the supply
- identify the various inclusions in/exclusions from the value of supply
- comprehend and analyse the various rules providing the mechanism to value a supply in situations where transaction value cannot be adopted and in respect of certain special supplies
- compute the value of a taxable supply in different scenarios

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1. INTRODUCTION

Every fiscal statue makes provision for the determination of value as tax which is normally payable on *ad-valorem* basis. In GST also, tax is payable on *ad-valorem* basis i.e., percentage of value of the supply of goods or services.

Thus, it becomes important to know how to arrive at the value on which tax is to be paid. Provisions relating to 'value of supply' set out the mechanism to compute such value basis which CGST and SGST/UTGST (intra-State supply) and IGST (inter-State supply) should be paid.

Section 15 of the CGST Act supplemented with the rules under Chapter IV: Determination of Value of Supply of the CGST Rules, 2017 prescribes the provisions for determining the value of supply of goods and services made in different circumstances and to different persons.

Section 15 of the CGST Act provides common provisions for determining the value of supply of goods and services. Sub-section (1) of section 15 provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration for the supply.

In most of the cases of regular normal trade, the invoice value (i.e. transaction value) is the taxable value, which is specified under section 15(1). However, when value cannot be determined under section 15(1); and for certain specific transactions, the value is determined using Chapter IV: Determination of Value of Supply of CGST Rules.

Provisions of value of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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2. RELEVANT DEFINITIONS

❖ **Agent** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

❖ **Consideration** in relation to the supply of goods or services or both includes –

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply [Section 2(31)].

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- **Family** means,—

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

  (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person [Section 2(49)].

- **Goods** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].

- **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 [Section 2(73)].

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❖ **Person** includes-

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

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

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

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

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

(j) a local authority;

(k) Central Government or a State Government;

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

(m) trust; and

(n) every artificial juridical person, not falling within any of the above [Section 2(84)].

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❖ **Money** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].

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- **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].
- **Principal** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].
- **Recipient** of supply of goods or services or both, means—

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

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

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

  and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].
- **Services** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

  Explanation - For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].
- **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

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However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims [Section 2(105)].

- **Voucher** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].

3. VALUE OF SUPPLY [SECTION 15]

STATUTORY PROVISIONS		
Section 15	***Value of taxable supply***	
Sub-section	***Clause***	***Particulars***
(1)	*The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the*	

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	recipient of the supply are not related and the price is the sole consideration for the supply.	
(2)	*The value of supply shall include-*	
	(a)	*any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
	(b)	*any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
	(c)	*incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*
	(d)	*interest or late fee or penalty for delayed payment of any consideration for any supply; and*
	(e)	*subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*
	Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.	
(3)	*The value of the supply shall not include any discount which is given*	

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	(a)		*before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*
	(b)		*after the supply has been effected, if—*
		(i)	*such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*
		(ii)	*input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*
(4)	*Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.*		
(5)	*Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.*		
Explanation—For the purposes of this Act,—			
(a)	*persons shall be deemed to be "related persons" if—*		
	(i)		*such persons are officers or directors of one another's businesses;*
	(ii)		*such persons are legally recognised partners in business;*
	(iii)		*such persons are employer and employee;*

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	(iv)	*any person directly or indirectly owns, controls or holds twenty-five percent or more of the outstanding voting stock or shares of both of them;*
	(v)	*one of them directly or indirectly controls the other;*
	(vi)	*both of them are directly or indirectly controlled by a third person;*
	(vii)	*together they directly or indirectly control a third person; or*
	(viii)	*they are members of the same family;*
(b)	*the term "person" also includes legal persons;*	
(c)	*persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related*	

ANALYSIS

The CGST law has different provisions for determining the value of a supply of goods / services in the following situations:

A. Supplies made solely for a price in money (monetary consideration), to unrelated persons - Valuation governed by sub-section (1) of section 15;

B. Supplies made solely for non-monetary consideration, or for part monetary consideration and part non-monetary consideration, or involving additional consideration, or to related persons – Valuation governed by sub-section (4) of section 15 read with relevant rules

C. Supplies of specified categories of goods or services – Valuation governed by sub-section (5) of section 15 read with relevant rules

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A. Supplies to unrelated persons where price is the sole consideration

(i) Transaction value [Section 15(1)]

When a transaction of supply of goods / services is made

- between two persons (see definition of "person") who are not related to each other (see definition of "related person" in 'Explanation' to section 15), and
- price is the sole consideration (see definition of consideration) for the supply,

the value of the supply is the **"transaction value"**.

The definition of 'related person' under the explanation to section 15 covers various situations of control, including sole agent, sole distributor and sole concessionaire. The concept of related person has been presented by way of a diagram in ensuing pages.

Therefore, if the supply is between persons who are related in terms of the explanation to section 15, the value of the supply would not be the transaction value but would be determined through the valuation rules provided in the CGST Rules. Only when the supply is between unrelated persons and price is the sole consideration, the value thereof would be the transaction value in terms of section 15(1).

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Related Persons [Explanation to section 15]

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(1) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(2) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

(3) Alpha Ltd. controls the composition of Board of directors of Beta Ltd. and Gama Ltd. It is said to control both Beta Ltd. and Gama Ltd. Beta Ltd. and Gama Ltd. are related persons.

(4) Brita Ltd. and Grita Ltd. together control Margarita Ltd. Brita Ltd. and Grita Ltd. are related persons.

Under section 15(1), the transaction value which is applicable between unrelated persons where price is the sole consideration for the supply is -

the price actually paid or payable for the said supply of goods or services or both.

This is the price for the specific supply that is being valued. It includes the amount already paid at the time the supply is being valued for tax, as well as the amount payable and not yet paid at that time. The word 'payable' refers to price that is agreed to be paid for the goods / services.

(5) Wholesale price for 1 MT of cement sold by X Ltd. in the ordinary course of business: ₹ 7,000.

Price of 1 MT of cement sold by X Ltd. to an unrelated customer Y : ₹ 6,700.

Value of supply made by X Ltd. to Y is ₹ 6,700 which is the price actually paid or payable and not the wholesale price.

The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 of the CGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include refundable deposit, discount allowed subject to certain conditions.

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(ii) Inclusions in value [Section 15(2)]

The value of supply includes certain elements which are enumerated and discussed below.

- Taxes, duties, cesses, fees and charges other than CGST, SGST, UTGST, GST Compensation Cess, if charged separately
- Payments to third parties → Any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not already included in the price.
- Incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply
- Any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of goods /supply of services
- Interest or late fee or penalty for delayed payment of consideration
- Subsidies, directly linked to the price, other than subsidies given by the Central Government or State Governments

The above elements are discussed below.

Taxes other than GST & GST Compensation Cess [Section 15(2)(a)]

Any taxes, duties, cesses, fees and charges levied under any law for the time being in force except the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier, are includible in the value of supply. In case of inter-State supply liable to IGST, the value of supply will include taxes other than IGST and the GST Compensation Cess in terms of third proviso to section 20 of IGST Act. In effect, all the taxes, duties etc. which are not subsumed in GST form part of the taxable value for the purpose of levying GST.

For instance, if a supplier of goods pays municipal tax in relation to the goods being supplied and charges the same separately, such tax will form part of the value of supply.

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TCS under Income-Tax Act, 1961 not includible in the taxable value for the purpose of GST

For the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax. In other words, TCS under Income-Tax Act, 1961 (though other than GST) is not includible in the taxable value for the purpose of GST as it is only a modality for collection of tax[1].

Payments made to third parties by the recipient on behalf of the supplier in relation to the supply [Section 15(2)(b)]

A supplier may need to incur various expenses in order to make a particular supply of goods / services. In the normal course, he would pay these amounts and they would form part of the price that he charges from the customer (recipient of supply). However, even if the customer makes direct payment of some of such liabilities (of the supplier) to the third parties, and the supplier does not include this amount in his bill, it would still form part of the value of the supply.

A point to note here is that amount paid by the recipient to third parties will be added to the value under this clause only when the supplier is under contractual liability to make payment to such third parties and the said payment is in relation to such supply.

(6) Grand Biz contracts with ABC Co. to conduct a dealers' meet. In furtherance of this, Grand Biz contracts with vendors to deliver goods / services, like water, soft drinks, audio system, projector, catering, flowers etc. at the venue on the stipulated dates at the stipulated prices. Grand Biz is liable to make these payments as contracted.

The soft drinks supplier wants payment upon delivery; ABC Co. agrees to pay

[1] *Circular No. 76/50/2018 GST dated 31.12.2018 (amended vide corrigendum dated 7.03.2019)*

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the bill raised by the soft drinks vendor on Grand Biz on receiving the crates of soft drinks. This amount is not billed by Grand Biz to ABC Co. However, it would be added to the value of supply provided by Grand Biz to ABC Co. for payment of GST.

Valuation of supply made by a component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him

While calculating the value of the supply made by the component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him, the value of such moulds and dies shall not be added to the value of supply made by him because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b).

However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components[2] [3].

This clarification affirms the view that if an element or a constituent of a supply, which the supplier is responsible to incur/provide for the same, is actually paid for or made by the recipient, the value of such element or constituent of the supply is to be added to the value of the supply being charged by the supplier. If, however, the supplier is not responsible to incur/provide for such element or constituent and the recipient provides for the same, the respective value is not to be added to the value of supply.

[2] *Circular No. 47/21/2018 GST dated 08.06.2018*

[3] *Aspects relating to reversal of input tax credit on moulds and dies supplied free of cost, which have been clarified in this Circular, have been included in Chapter 7: Input Tax Credit in Module 2 of this Study Material.*

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Incidental expenses [Section 15(2)(c)]

Incidental expenses, such as, commission and packing charged by the supplier or anything else done by the supplier in relation to the supply at the time of or before delivery of goods or supply of services must be added to value.

(7) Commission: This may be paid to an agent and recovered from the buyer of the goods/services; this is part of the value of the supply.

(8) Packing, if charged by the supplier to the recipient, is similarly part of the value of the supply.

(9) Inspection or certification charges is another element that will be added to the value, if incurred before/at the time of supply and billed to the recipient of supply.

(10) Installation and testing charges at the recipient's site will also be added, being an amount charged for something done by the supplier in respect of the supply at the time of making the supply.

(11) Weighment charges, loading charges, designing charges etc. incurred before/at the time of supply will be added to the value, if billed to the recipient of supply.

Outward freight, transit insurance

Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport and insurance the contract of supply becomes a composite supply; the principal supply being the supply of goods. Therefore, outward freight and transit insurance become part of the value of

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the composite supply and GST is payable thereon at the same rate as applicable for the relevant goods. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight and insurance, the same will not be included in the value of supply of goods.

Interest, late fee or penalty for delayed payment [Section 15(2)(d)]

The value for a supply will include not only the base price but also the charges for delay in payment.

(12) A supply priced at ₹ 2,000 is made, with a credit period of 1 month for payment. Thereafter interest @ 12% is chargeable. The payment is received after the lapse of two months from the date of supply. The amount of interest @ 12% p.a. (i.e. 1% per month) on ₹ 2,000 for one month after the free credit period of one month, is ₹ 20. Such interest will be added to the value and thus, the value of supply will work out to be ₹ 2,020, assuming the interest to be exclusive of GST.

Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier. Further, since such charges are an addition in the value of supply, same rate of tax as applicable on the main supply of goods / service are applicable on such charges as well.

Subsidies linked with price [Section 15(2)(e)]

Subsidy is a sum of money given to keep the price of a service or commodity low. The subsidy is added to the value of supply of the supplier who receives the subsidy. It must be noted that only subsidies directly linked to the price of goods/services are added to the value. Blanket subsidy/ donation received are not includible in the value. Note that if the subsidy is given by the State or Central Government, it is not to be added to the value of supply.

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(13) The selling price of a notebook is ₹ 50. For notebooks sold to students in Government schools, a company uses its receives price linked subsidy of ₹ 30 per notebook from an NGO, so that the students pay only ₹ 20 per notebook. The value of the notebook will be ₹ 50, as this is a non-government subsidy. If the same subsidy is given/granted by the Central Government or State Government, the value of the notebook would be ₹ 20.

(iii) Exclusion of discounts from value [Section 15(3)]

Discounts are a common phenomenon for businesses. Numerous kinds of discounts are given by the suppliers to their customers namely, trade discounts, cash discounts, quantity/volume/performance discounts etc. Such discounts are reduced from the sale price of the supply. Since, the value of a taxable supply is the transaction value, GST is leviable on the value after deducting the discounts.

However, not all discounts offered by the supplier to their customers are allowed as a deduction from the value. Only such discounts which satisfy the conditions prescribed in section 15(3), are allowed as deduction from the value. The essence of the conditions prescribed in section 15(3) is that the price as established at the time of supply should form the basis of value. The discounts which do not fulfill the conditions specified in section 15(3) are not deductible from the value, i.e. GST in such a case is levied on the gross value of the supply without considering the discount.

Discounts that are allowed as deduction from the value are as follows:

(a) **Discounts given before or at the time of supply and shown in the tax invoice** – Example for such discount can be discounts that are offered for making the payment at the time of supply itself. Such discounts are thus, recoded in the invoice and thus, GST is charged on the gross value less discount duly recorded in the invoice.

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(b) Post supply discounts- It is not always commercially feasible to determine all discounts before or at the time of supply or record them in the invoice. For instance, cash discount given for making the payment within a stipulated time. Even though the discount is established before/at the time of supply, the supplier cannot record such discount in the invoice as he does not know if the buyer will make the payment within the stipulated time. Likewise, in case of quantity/volume/ performance discount also, the supplier is not aware before/ at the time of supply as to whether the buyer would purchase the requisite quantity within the stipulated time. Therefore, in this case also, the discount cannot be recorded in the invoice. In such cases, initially the GST is paid on the gross value indicated in the invoice without considering the discount. The supplier, however, passes the discount to the buyers subsequently by issuing credit notes.

Post supply discounts, i.e. the discounts that are given after supply is made are allowed as a deduction from the value of supply if the following two conditions are satisfied:

- Discount is in terms of an agreement that existed at the time of supply and can be worked out invoice-wise; and

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- Proportionate input tax credit is reversed by the recipient - The buyer would have availed input tax credit of GST payable on the gross value specified in the invoice. Thus, when a credit note[4] is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount[5].

If any of the above conditions are not satisfied, the GST liability of supplier cannot be reduced. The supplier, however, can issue a commercial credit note[6] for the value of discount. In such a scenario, the buyer will not be required to reverse any input tax credit.

The provisions relating to allowability of discount as a deduction from the value have been depicted by way of a diagram given in the next page.

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[4] Credit notes governed under GST law are issued under section 34. Provisions of section 34 are discussed in Chapter 9: Tax Invoice; Credit & Debit Notes in Module 2 of this Study Material.

[5] Presently, in cases where the amount of tax (CGST+SGST+IGST and including compensation cess, if any) involved in the discount given by the supplier to the recipient through tax credit notes in a Financial Year does not exceed ₹ 5,00,000, supplier needs to procure an undertaking/certificate from the said recipient that the said ITC attributable to such discount has been reversed by him (recipient). If said amount exceeds ₹5,00,000, the supplier needs to procure a certificate from the recipient, issued by the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that the recipient has made the required proportionate reversal of ITC at his end in respect of such credit note issued by the supplier. This requirement to procure certificate/undertaking is temporary till the time a functionality/facility is introduced on the common portal to enable the supplier or the tax officer to verify the compliance of the condition of proportionate reversal of ITC by the recipient, under section 15(3)(b). It may be noted that this facility of invoice management system has been developed by the GSTN from October, 2024 . However, this facility is optional and not made mandatory.

[6] A commercial credit note is not governed under GST law and is issued only for the value of discount/reduction in value of the supply, without any GST.

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Allowability of certain specific types of discounts offered by the suppliers as clarified vide Circular No. 92/11/2019 GST dated 07.03.2019

(i) **Staggered discounts ('Buy more, Save more' offers):** In case of staggered discounts, rate of discount increases with increase in purchase volume. For example – One may get 10 % discount for purchases above ₹ 5,000/-, 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-. Such discounts are shown on the invoice itself.

Such discounts are excluded to determine the value of supply.

(ii) **Periodic / year ending discounts/volume discounts:** These discounts are offered by the suppliers to their stockists, etc. For example- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15,000 pieces in a year. Such

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discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

Such discounts are excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3) including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

(iii) Secondary discounts: These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10,000 packets of biscuits to M/s B at ₹ 10/- per packet. Afterwards, M/s A re-values it at ₹ 9/- per packet. Subsequently, M/s A issues credit note to M/s B for ₹ 1/- per packet.

Such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied.

It may be noted that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in section 15(3)(b) are not satisfied. Such credit notes do not include GST, and do not have any impact on value of supply for the purposes of GST.

Examples of discount deductible from value of supply

(14) Royal Biscuit Co. gives a discount of 30% on the list price to its distributors. Thus, for a carton of Spice biscuit, in the tax invoice the list price is mentioned as ₹ 200, on which a discount of 30% is given to arrive at the final price of ₹ 140. The value is ₹ 140, as the discount is allowed at the time of supply and shown in the invoice.

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Post supply discounts

(15) The agreement of Raju Electrical Appliances with its dealers is that purchase of rice cookers over 1,000 pieces in the Diwali month shall entitle them to discount of 5% per cooker. Therefore, the quantum of discount can be determined only at the end of Diwali month. However, since the agreement relating to discount was in existence at the time of supply, and the discount can be worked out for each invoice, such post supply discount will be allowed as a deduction from the value of supply of rice cookers.

Raju Electrical Appliances can issue credit note for discount of 5% of the value of goods along with GST and claim adjustment of excess tax paid. The dealer must reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax.

(16) Pink and Blue Pvt. Ltd. (PBPL) sold goods to Orange Pvt. Ltd. (OPL) on 15th January at ₹ 50,000 (exclusive of taxes and discounts) and charged ₹ 9,000 as IGST @ 18%. The terms of supply stipulated that discount @ 2% will be given to OPL if it makes the payment within one month of the supply. OPL avails the input tax credit of ₹ 9,000 in the month of January and makes the payment for the goods on 10th February. PBPL issues credit note for ₹ 1180 [₹ 1,000 for value of discount and ₹ 180 for proportionate IGST leviable thereon] to OPL on 11th February. After receiving credit note, OPL reverses the input tax credit of ₹ 180 attributable to the discount given by the PBPL. PBPL can reduce its GST liability of the month of February by ₹ 180. OPL would have paid ₹ 57,820 (₹ 50,000 + ₹ 9,000 - ₹ 1,000 - ₹ 180) to PBPL on 10th February.

Examples of discount not deductible from value of supply

(17) In the above example, if the terms of supply did not provide for discount @ 2% for payment within one month but PBPL offers such discount to OPL at the time of payment after negotiation, the discount will not be allowed as a deduction from the value. PBPL will issue a commercial credit note for only the value of discount, i.e. for ₹ 1,000. OPL will not reverse any input tax credit and PBPL will also not be able to reduce its GST liability for the month of February. In this case, OPL would pay ₹ 58,000 (₹ 50,000 + ₹ 9,000 - ₹ 1,000) to PBPL on 10th February.

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(18) A company announces turnover discounts after reviewing dealer performance during the year. The discounts are based on performance slabs and are given as cash-back. As these discounts were not known at the time of supply of the goods, they will not be deducted from value of those goods. Hence, the company will not be able to adjust excess tax paid from its tax liability.

No Claim Bonus permissible as deduction under section 15(3)(a) for the purpose of calculation of value of supply of the insurance services provided by insurance company to insured

The issue which arose for clarification was whether 'No Claim Bonus' (NCB) provided by the insurance company to the insured can be considered as an admissible discount for the purpose of determination of value of supply of insurance service provided by the insurance company to the insured.

The insurance companies make the disclosure of the fact of availability of discount in form of NCB, subject to certain conditions, to the insured in the insurance policy document itself and also provide the details of the NCB in the invoices also. The pre-disclosure of NCB amount in the policy documents and specific mention of the discount in form of NCB in the invoice is in consonance with the conditions laid down for deduction of discount from the value of supply under section 15(3)(a).

Since as per section 15(3)(a), value of supply shall not include any discount which is given before or at the time of supply if such discount has been duly recorded in the invoice issued in respect of such supply, it is, therefore, clarified that NCB is a permissible deduction under said section for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured.

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Accordingly, where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice[7].

ILLUSTRATION 1

BW Ltd. manufactures tobacco products. It has provided the following particulars relating to goods sold by it to CF Ltd.

Particulars	₹
Price of the goods (exclusive of all taxes/duties and discounts)	*60,000*
Excise duty	*6,000*
Packing charges	*2,000*
Freight (arranged by BW Ltd.)	*1600*
Total amount billed to CF Ltd. before any discount	*69,600*
Discount @ 2% of the price of goods recorded in the invoice	

The final amount charged from CF Ltd. is ₹ 69,600 less discount @ 2%.

Determine the value of taxable supply made by BW Ltd.

ANSWER

Computation of value of taxable supply

Particulars	₹
Price of the goods (exclusive of taxes and discounts)	60,000
Add: Excise duty [Note 1]	6,000
Packing charges [Note 2]	2,000
Freight [Note 3]	1,600
Less: Discount @ 2% on ₹ 60,000 [Note 4]	(1,200)
Value of taxable supply	**68,400**

[7] *Circular No. 186/18/2022 GST dated 27.12.2022*

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Notes:

(1) As per section 15(2)(a), any taxes, duties, cesses, fees and charges other than CGST, SGST, UTGST, IGST and GST Compensation Cess, if charged separately by the supplier should be included in the value of supply. Thus, excise duty charged separately has been added in the value.

(2) As per section 15(2)(c), incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply should be included in the value. Thus, packing charges have been added in the value.

(3) Since transport is arranged by the supplier, the contract of supply becomes a composite supply; the principal supply being the supply of goods. Therefore, freight becomes part of the value of the composite supply.

(4) As per section 15(3)(a), the value of the supply does not include any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply. Therefore, since in this case, discount is known at the time of supply and recorded in the supply, it is deductible from the value.

ILLUSTRATION 2

SA Ltd. is a manufacturer of biscuits. The price of a 200 gm pack of biscuit sold by SA Ltd. is ₹ 30. It has received price linked subsidy of ₹ 5 per pack of biscuit sold from NM Ltd. as part of NM Ltd.'s CSR activity. SA Ltd. supplied 1000 packs of biscuits @ ₹ 25 per pack to one of its wholesalers namely, MA Pvt. Ltd. during a tax period. Loading charges of ₹ 1200 have also been charged separately from MA Pvt. Ltd. MA Pvt Ltd. delayed the payment of consideration and thus, paid ₹ 5,000 as interest (no separate amount of GST is paid on the interest by MA Ltd.) in the next tax period. Assume the rate of GST to be 18%.

Determine the value of taxable supply made by SA Ltd.

ANSWER

Computation of value of taxable supply

Particulars	₹
Price of 1,000 packs of biscuits @ ₹ 25	25,000

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Add: Subsidy received from NM Ltd. @ ₹ 5 for 1000 packs of biscuits [Note 1]	5,000
Loading charges [Note 2]	1,200
Interest for delay in payment of consideration [Note 3] (rounded off)	4,237
Value of taxable supply	**35,437**

Notes:

(1) As per section 15(2)(e), subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments should be included in the value.

(2) As per section 15(2)(c), incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services should be included in the value.

(3) As per section 15(2)(e), interest or late fee or penalty for delayed payment of any consideration for any supply should be included in the value. However, as per section 12(6), the time of supply to the extent it relates to an addition in the value of supply by way of interest is the date when such interest is received. In the given case, since GST has not been paid separately on the interest, the same is inclusive of GST. Thus, the value has been computed by making back calculations $\left[\frac{\text{Interest}}{100+\text{tax rate}}\times 100\right]$. The time of supply in relation to the addition in value by way of such interest will fall in the next tax period on the date when the same is received.

B. Supplies where value cannot be determined u/s 15(1) [Sub-section (4) of section 15]

Section 15(4) lays down that where sub-section (1) is not applicable, i.e. if the transaction is with a related party, and/or price is not the sole consideration

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for the supply of goods / services, then the value will be determined in the manner as prescribed (see the definition of 'prescribed'), which means as stipulated in the rules for valuation, i.e. Chapter IV: Determination of Value of Supply of CGST Rules. Rules 27 to 31 of the CGST Rules provide the mechanism to determine value in all such scenarios. These rules are discussed under Heading 4 in the ensuing pages of this Chapter.

C. Supplies of specified categories of goods or services [Sub-section (5) of section 15]

Section 15(5) lays down that in respect of certain notified supplies also, the value will be determined in the manner as stipulated in the rules for valuation. Thus, the methodology of transaction value will not apply for such notified categories of transactions; instead the rules will prescribe a different method of determining value for these notified transactions. At present, the rules have prescribed a different valuation method for

(i) the service of purchase or sale of foreign currency including money changing,

(ii) the service of booking air tickets by an air travel agent,

(iii) life insurance service

(iv) buying and selling of second hand goods,

(v) vouchers, token, coupons or stamps (other than postage stamps) redeemable against goods or services;

(vi) services provided without consideration between distinct persons under GST law that are different units of the same legal entity.

(vii) supply in case of lottery, betting, gambling and horse racing

(viii) supply of online money gaming,

(ix) supply of online gaming other than online money gaming and

(x) supply of actionable claims in casinos

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The scheme of valuation as provided under section 15 is depicted by way of a diagram given below:

4. RULES FOR VALUATION OF SUPPLY OF GOODS AND/OR SERVICES

CHAPTER IV: DETERMINATION OF VALUE OF SUPPLY OF CGST RULES		
Rule 27	*Value of supply of goods or services where the consideration is not wholly in money.-*	
Sub-rule	*Clause*	*Particulars*
	Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-	

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	(a)	*be the open market value of such supply;*
	(b)	*if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;*
	(c)	*if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;*
	(d)	*if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.*
	Illustration: *(1) Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.* *(2) Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty four thousand rupees.*	
Rule 28	***Value of supply of goods or services or both between distinct or related persons, other than through an agent.-***	
Sub-rule	***Clause***	***Particulars***
(1)	*The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-*	

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	(a)	*be the open market value of such supply;*
	(b)	*if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
	(c)	*if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*
	Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:	
	Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.	
(2)	*Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person located in India, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be one per cent of the amount of such guarantee offered per annum, or the actual consideration, whichever is higher:* *Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.*	
Rule 29	***Value of supply of goods made or received through an agent.-***	
	The value of supply of goods between the principal and his agent shall-	
	(a)	*be the open market value of the goods being supplied, or at the option of the supplier, be 90 percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.*

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		Illustration: A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 percent of five thousand rupees i.e., four thousand five hundred rupees per quintal.
	(b)	*where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.*
Rule 30	***Value of supply of goods or services or both based on cost.-***	
	Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.	
Rule 31	***Residual method for determination of value of supply of goods or services or both.-***	
	Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:	
	Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.	
Rule 31A	***Value of supply in case of lottery, betting, gambling and horse racing***	
(1)	*Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.*	

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(2)	*The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.*
	Explanation: - For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.
(3)	*The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.*
Rule 31B	***Value of supply in case of online gaming including online money gaming***
	Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player: *Provided that any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any shall not be deductible from the value of supply of online money gaming.*
Rule 31C	***Value of supply of actionable claims in case of casino***
	Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for - *(i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or* *(ii) participating in any including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required:* *Provided that any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be,*

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	or otherwise, shall not be deductible from the value of the supply of actionable claims in casino. *Explanation.—For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.*	
Rule 32	***Determination of value in respect of certain supplies.-***	
Sub-rule	***Clause***	***Particulars***
(1)	*Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.*	
(2)	*The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-*	
	(a)	*for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:*
		Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one percent of the gross amount of Indian Rupees provided or received by the person changing the money:
		Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one percent of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.
		Provided also that a person supplying the services may exercise the option to ascertain the value in terms of

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			clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.
	(b)		*at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be-*
		(i)	*one percent of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;*
		(ii)	*one thousand rupees and half of a percent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and*
		(iii)	*five thousand and five hundred rupees and one tenth of a percent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.*
(3)	*The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five percent of the basic fare in the case of domestic bookings, and at the rate of ten percent of the basic fare in the case of international bookings of passage for travel by air.*		
	Explanation.- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.		
(4)	*The value of supply of services in relation to life insurance business shall be,-*		
	(a)		*the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;*

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	(b)	*in case of single premium annuity policies other than (a), ten percent of single premium charged from the policy holder; or*
	(c)	*in all other cases, twenty five percent of the premium charged from the policy holder in the first year and twelve and a half percent of the premium charged from the policy holder in subsequent years:*
	Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.	
(5)	*Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:*	
	Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.	
(6)	*The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.*	
(7)	*The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.*	

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Rule 33	***Value of supply of services in case of pure agent.***	
	Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-	
	(i)	*the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
	(ii)	*the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
	(iii)	*the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*
	Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-	
	(a)	*enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
	(b)	*neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
	(c)	*does not use for his own interest such goods or services so procured; and*
	(d)	*receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*
	Illustration.- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The	

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	fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.
Rule 34	***Rate of exchange of currency, other than Indian rupees, for determination of value.-***
Sub-rule	***Particulars***
(1)	*The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.*
(2)	*The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.*
Rule 35	***Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax.-***
	Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-
	Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %)
Explanation.- For the purposes of the provisions of this Chapter, the expressions-	
(a)	*"open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;*

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

ANALYSIS

When a supply cannot be valued in terms of section 15(1) as also in case of certain specified supplies, valuation rules need to be resorted to. Rules 27-35 of Chapter IV of CGST Rules provide the different methods of valuation in such scenarios.

Rules 27 to 35 may be categorized as under for the purpose of discussion:

Rules 27 to 29 supplemented by rules 30 and 31	Valuation of supplies involving non-monetary consideration or related parties
Rules 31A, *31B, 31C* and 32	Valuation of specified supplies
Rule 33	Valuation of supply made as pure agent of the recipient
Rules 34 and 35	Other rules relevant for valuation

Rule 27 - Value of supply of goods or services where the consideration is not wholly in money

If the consideration for a supply of goods and /or services is wholly or partly in non-monetary terms, the supply is valued in accordance with provisions of rule 27.

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Examples of supplies valued as per rule 27

- **Barter transaction**
- **Exchange transaction**
- **Permanent transfer or disposal of business assets where input tax credit has been availed on such assets**

The methods provided in rule 27 are to be used in order of sequence, i.e. the one coming later in the sequence is applicable only if the previous method(s) are not applicable.

Rule 27 lays down the following methods to value a supply when the consideration thereof is not solely in terms of money:

(a) The open market value of such supply;

(b) If open market value of the supply is not known, the consideration in money plus the money equivalent of the non-money consideration, if such amount is known at the time of supply;

(c) If the value cannot be determined under the previous two clauses, the value of supply of goods and/or services of like kind and quality;

(d) Finally, if the value is not ascertainable by using the above methods, the consideration in money plus the money equivalent of the non-money consideration, as worked out based on cost of the supply plus **10%** mark-up [Rule 30-Cost based valuation] or by other reasonable means [Rule 31-Best Judgement method] in that sequence.

First, rule 30 is to be applied, if that is not feasible, rule 31 is to be applied. However, in case of supply of services, the supplier has an option to skip rule 30 and directly apply rule 31. *[Rule 30 regarding cost-based valuation and rule 31 regarding reasonable means are discussed in subsequent pages of this Chapter].*

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To understand the method of valuation provided in the above rule, the concepts of 'Open Market Value' and 'Supply of like kind and quality' need to be understood first.

What is open market value?

Open market value means

- ✓ full value of money <u>excluding taxes under GST law</u>,
- ✓ payable by a person to obtain such supply
- ✓ <u>at the time when supply being valued is made</u>,
- ✓ provided such supply is between unrelated persons and
- ✓ price is the sole consideration for such supply.

What is supply of like kind and quality?

Supply of like kind quality means

- ✓ any other supply made under similar circumstances,
- ✓ which is same or closely or substantially resembles
- ✓ in respect of characteristics, quality, quantity, functionality, reputation
- ✓ to the supply being valued.

(19) X Pvt. Ltd. offers a new mobile phone worth ₹ 20,000/- to Y in exchange of old mobile phone and cash payment of ₹ 16,000. Exchange value of old phone lowers the price of a new phone. The known market value of the new phone (without exchange of old phone), i.e. the open market value is ₹ 20,000, which is the taxable value in this case.

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(20) Laptop is manufactured and supplied for ₹ 40,000. Further, a printer valued ₹ 4,000 is also received in the barter. Market value of the laptop is not known. Its taxable value will be ₹ 44,000.

Rule 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent

A person who is under influence of another person is called a related person like members of the same family (*See definition of family)* or subsidiaries of a group company etc. Under GST law various categories of related persons have been specified and as relation may influence the price between two related persons therefore, special valuation rule has been framed to arrive at the taxable value of transactions between related persons.

Rule 28 deals with transactions between related persons *[See definition of related person in Explanation to section 15]* and between 'distinct persons' as specified under section 25, which means different registrations/establishments of the same entity (with same PAN) *[Refer Chapter 8: Registration in Module 2 of this Study Material for a detailed discussion on the concept of 'distinct persons']*. **This rule, however, does not provide the value of the supply made through an agent.**

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It may be recollected that a supply between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business is treated as supply even if made without consideration in terms of paragraph 2 of Schedule I of CGST Act. **Thus, rule 28 provides the value of such kind of supplies when the same are made for a consideration as well as when the same are made without consideration.**

The concept of related person has been explained by way of diagram given in the preceding pages.

Example of related person

(21) Mr. A and Mr. B are legally recognised partners in the partnership firm A&B Co. Mr. A & Mr. B are related persons. Thus, a transaction of supply between Mr. A & Mr. B in the course or furtherance of business is treated as supply even if made without consideration.

✪ ***A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act [Section 25(4)].***

✪ ***Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act. [Section 25(5)].***

Examples of supplies valued as per rule 28

- **Intra-State stock transfer of goods between different registrations of an entity under same PAN**
- **Inter-State stock transfer of goods between different registrations of an entity under same PAN**
- **Import of services by a company from a holding/ subsidiary company in course or furtherance of buisness**

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The methods of valuation of transactions between related persons and between distinct persons, **in the sequence in which they are to be applied, are as follows:**

(a) the open market value of such supply;

(b) if open market value is not available, the value of supply of goods or services of like kind and quality;

(c) if value cannot be determined under the above methods, it must be worked out based on the cost of the supply plus **10%** mark-up *[Rule 30 regarding cost-based valuation has been discussed in subsequent pages of this Chapter)* or by other reasonable means, in that sequence *[Rule 31 regarding reasonable means has been discussed in subsequent pages of this Chapter].*

If the recipient is eligible for full ITC, the invoice value is accepted as open market value (taxable value).

If the goods are intended to be supplied AS SUCH by the recipient
Value = 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer
However, it is not mandatory for the supplier to adopt this method of valuation. He can opt to value his goods in accordance with the valuation methods prescribed in clause (a), (b) or (c) above.

It is important to note that as per valuation rule 32(7), the value of taxable services provided by notified class of service providers, without any consideration, between distinct persons is NIL, if ITC is available.

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Rule 32 has been discussed in detail in subsequent pages of this Chapter. The valuation mechanism prescribed in rule 28 read with rule 32(7) has been explained by way of a flow diagram in the ensuing pages.

Value declared is accepted when recipient is eligible for full input tax credit

As mentioned in sticky note on previous page, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services. This provision is applicable only in following cases:

(a) distinct person as specified in section 25(4) and 25(5) of CGST Act i.e. where same person with single PAN has taken separate registration in different States or even in the same State

(b) related person.

The rationale behind this simplified valuation is that since the recipient can take entire input tax credit, there cannot be any intention to evade tax. It enables 'ease of doing business' as it simplifies the valuation in case of transactions between related persons and reduces disputes and litigation.

(22) ABC Pvt. Ltd., a registered supplier, is a manufacturer of taxable goods. The company's factory is located in Noida, Uttar Pradesh and depot in Gurugram, Haryana. Gurugram depot is eligible for full ITC. Noida factory agrees to supply goods worth ₹ 1,00,000 to a customer of Gurugram depot (on its behalf). Noida factory ships the goods directly to the customer in Gurugram and bills the Gurugram depot. Noida factory has the option of billing to Gurugram depot at ₹ 90,000 (90% of ₹ 1,00,000). It can also bill the Gurugram depot on actual cost as Gurugram depot is eligible for full ITC.

In the same scenario, if goods are replaced by services, the option of valuing the services @ 90% of value charged by the recipient to unrelated customer will not be available. However, since recipient is eligible for full ITC, the value of supply of service declared in the invoice shall be taken as open market value (taxable value).

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Cross Charge Mechanism under GST

Under sections 25(4) and 25(5), different GST registrations of the same legal entity in different/same States or Union Territories are considered as distinct persons. Further, supply of goods or services between these distinct persons—even without consideration—is treated as a taxable supply under section 7(1)(c) read with Schedule I. *This has already been discussed in Chapter 1- Supply under GST of this Module of the Study Material.*

This framework gives rise to the **cross-charge mechanism**, which applies when one unit (generally the Head Office) provides internal services or goods—such as HR, IT, admin, legal or accounting support—to another unit (such as a branch) of the same legal entity registered in another State.

Key points:

- Cross charge involves issuing a GST tax invoice from the supplying unit (e.g., HO) to the receiving unit (e.g., branch).
- GST is levied on the value of such internal supply, and the recipient unit can claim input tax credit (ITC).
- It is applicable to both goods and services supplied inter-unit.
- No additional registration is needed beyond the standard GST registrations.

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Valuation of internally generated services - where HO is providing certain services to the BOs or where the foreign affiliate is providing certain services to the related domestic entity[8]

Issue	Clarification
WHERE FULL ITC IS AVAILABLE In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for which full ITC is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs under section 31 for such internally generated services, and/ or whether the cost of all components including	The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 above read with section 15(4). As seen above, as per rule 28(a), the value of supply between distinct persons shall be the open market value (OMV) of such supply and where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the OMV of the goods or services [Second proviso to rule 28]. Accordingly, in respect of supply of services by HO to BOs, in cases where full ITC is available to a BO, the value declared on the invoice by HO to the said BO in respect of said supply shall be deemed to be the OMV of such services, irrespective of the fact whether cost of any particular **INVOICE ISSUED** **Value declared in invoice= OMV = Value of supply**

[8] *Circular No. 199/11/2023 GST dated 17.07.2023 read with Circular No. 210/4/2024 GST dated 26.06.2024*

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salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full ITC is available to the concerned BOs?	component of such services, like employee cost etc., has been included or not in the value of the services in the invoice. Further, in such cases where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as Nil by HO to BO, and may be deemed as OMV in terms of second proviso to rule 28. **INVOICE NOT ISSUED** **Value of supply = OMV= Nil**
WHERE FULL ITC IS NOT AVAILABLE In respect of internally generated services provided by the HO to BOs, in cases where full ITC is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of	In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.

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the said supply of services provided by HO to BOs?	
In case of import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism. In such cases, the registered person in India is required to issue self-invoice under section 31(3)(f) and pay tax on reverse charge basis. Accordingly, in cases where the foreign affiliate is providing certain services to the related domestic entity and <u>where full ITC is available to the said related domestic entity</u>, how will the value of said services be determined?	In such cases, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1). **<u>INVOICE ISSUED</u>** **Value declared in invoice= OMV = Value of supply** Further, in cases where full ITC is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1). **<u>INVOICE NOT ISSUED</u>** **Value of supply = OMV= Nil**

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Value of supply of service of providing corporate guarantees to banks/financial institution by a supplier to a related person located in India

If a supplier gives a corporate guarantee on behalf of a related party located in India for securing of credit facilities from a bank/financial institution by such related party, the value of service will be determined as follows:

1% of the amount of guarantee offered per annum

Actual consideration

whichever is higher

Exception

Where the recipient is eligible for full ITC:

Value declared in the invoice shall be deemed to be the Value of said supply of services.

Loan only partly availed or not availed at all

In cases where the loan is only partly availed or not availed at all by the recipient, value of supply of corporate guarantee will be calculated based on the amount guaranteed and not based on the amount of loan actually disbursed to the recipient.

Further, the recipient would be eligible to avail full ITC irrespective of when the loan is actually disbursed to him and irrespective of the amount of loan actually disbursed.

Takeover of existing loans

In case of service of corporate guarantee, service provider is corporate entity providing said guarantee and recipient is related entity for whom guarantee is provided.

Thus, in the case of takeover of existing loans by another banking company/ financial institution, there is **merely an assignment of an already issued corporate guarantee.**

Said activity of taking over of the loan does not fall under the service of providing corporate guarantee to any banking company/financial institution by a supplier to a recipient. Thus, GST will not be payable again unless there is issuance of fresh corporate guarantee/there is renewal of existing corporate guarantee.

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Intra-group corporate guarantee

(i) Where **domestic corporate** issue intra-group guarantees, GST is to be paid under **forward charge mechanism**, and invoice is to be issued by the supplier of the service of providing corporate guarantee to the related recipient under section 31.

(ii) Where corporate guarantee is provided by the **foreign/ overseas entity** for a related entity located in India, GST would be payable under **reverse charge mechanism**, by the recipient of service, i.e., the related entity located in India.

Export of service

Above provisions will not apply in cases of export of the services of providing corporate guarantee between related persons, i.e where the **recipient** of service between related persons is **located outside India**.

Corporate Guarantee for multiple years or for less than 1 year

Value of supply of said **service provided for a particular number of years** shall be 1% of amount of such guarantee offered multiplied by the number of years for which the said guarantee is offered or the actual consideration, whichever is higher. GST is payable at the time of issuance of such guarantee.

Where the **corporate guarantee is provided for a period less than a year**, say 6 months (half a year), then in those cases as well, the valuation may be done on proportionate basis for the said period, i.e., in this case, value of the said supply of services may be taken as half of 1% of the amount of such guarantee offered (6/12 × 1%), or the actual consideration, whichever is higher.

Corporate guarantee by multiple related entities

In cases where corporate guarantee is being provided by multiple related entities / co-guarantor, we first need to determine which of the two values is higher – sum of actual consideration paid to co-guarantors or 1% of total guaranteed amount.

If total actual consideration is higher, value of supply will be sum of the actual consideration paid/ payable to co-guarantors. If 1% of total guaranteed amount is higher, GST shall be payable by each co-guarantor proportionately on 1% of the amount guaranteed by them.

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(23) If there are two co-guarantors, A and B, who jointly provide a corporate guarantee to a banking/ financial institution on behalf a related recipient C for ₹ 1 crore, then A and B shall each pay GST on 0.5% of the amount guaranteed.

However, if in the above case of A and B providing corporate guarantee jointly to a banking/ financial institution on behalf of a related recipient C for ₹ 1 crore, A provides guarantee for 60% of the guarantee amount and B provides guarantee for the remaining 40% of the guaranteed amount, then GST shall be payable by A and B proportionately i.e., 0.6% and 0.4% of the amount guaranteed. This is to say that A shall pay GST on 1% of the amount guaranteed by A, i.e., 1% on ₹. 60 lakh and B shall pay GST on 1% of the amount guaranteed by B, i.e., 1% on ₹ 40 lakh.

(24) If a corporate guarantee is issued for a period of say 5 years, then the value of such guarantee is to be calculated at 1% per year of the amount of such guarantee offered, or the actual consideration, whichever is higher, i.e., the value of such corporate guarantee provided would be 5% of the amount guaranteed or the actual consideration, whichever is higher. Therefore, GST would be payable on such amount at the time of issuance of such corporate guarantee, i.e., 5% of the amount guaranteed or the actual consideration, whichever is higher.

However, if a corporate guarantee is issued, say for a period of 1 year and is renewed 5 times, for a period of 1 year each, then tax would be payable on 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher, on the issue of such corporate guarantee in the first year as well as on every renewal in subsequent years.

Valuation of corporate guarantee provided by a related person without consideration

Where the corporate guarantee is provided to the bank/financial institutions by:

(i) a company for providing credit facilities to the other company, where both the companies are related,

(ii) a holding company, for securing credit facilities for its subsidiary company [related in terms of explanation to section 15],

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the activity is to be treated as a supply of service between related parties even when made without any consideration [in terms of section 7(1)(c) read with para 2 of Schedule I]. In such cases, the taxable value will be determined as per rule 28(2)[9].

Valuation of personal bank guarantee by Directors to bank for the company

Let us first analyse whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service.

Since Director and company are related persons [in terms of Explanation (a) to section 15], the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration [in terms of section 7(1)(c) read with para 2 of Schedule I[10]]. As seen above, value will be open market value (OMV) of such supply.

However, as per the mandate provided by the RBI Guidelines in this regard, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal

Consequently, there is no question of such supply/ transaction having any OMV.

Accordingly, it is clarified that OMV of the said transaction/ supply may be treated as zero and therefore, no tax is payable on such supply of service by the director to the company. However, in exceptional cases, where remuneration is payable to the director[11], the taxable value of such supply of service shall be the remuneration/ consideration provided to such guarantor by the company, directly or indirectly.

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[9] Circular No. 204/16/2023 GST dated 27.10.2023

[10] Provisions of section 7(1)(c) and Schedule I have been discussed in detail in Chapter 1 – Supply under GST in this Module of the Study Material.

[11] Instances where consideration is payable to the director may include cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, are paid remuneration/ consideration in any manner, directly or indirectly.

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Rule 29 – Value of supply of goods or received through an agent

Supply of goods between principal and agent[12] *[Refer definitions of principal and agent under Heading 2: Relevant Definitions]* is valued by the following methods, **applied in sequence:**

This rule is applicable only for valuation of supply of goods between principal and agent.

(a) Open market value of goods being supplied

OR

90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer

[Supplier has the option to choose either of the two methods]

(25) ABC Ltd. supplies goods to its agent and the agent is supplying goods of like kind and quality in subsequent supplies at a price of ₹ 1,000 per unit on the day of the supply.

ABC Ltd. also supplies goods to an unrelated customer at the price of ₹ 950 per unit on the day of the supply. The value of the supply made by ABC Ltd. to agent shall be ₹ 950 per unit or where it exercises the option, the value shall be 90% of ₹ 1,000 i.e., ₹ 900 per unit.

(b) In case value cannot be determined under (a) then following values have to be considered sequentially to determine the taxable value:

i. Value of supply based on cost i.e. cost of supply plus 10% mark-up

ii. Value of supply determined by using reasonable means consistent with principles & general provisions of GST law (Best Judgement Method)

It may be noted that only the supply of goods between principal and agent is valued vide this rule. Therefore, supply of services like commission-based services

[12] *The relationship between principal agent has been discussed in detail in Chapter 1: Supply under GST in this Module of this Study Material.*

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provided by a commission agent for procuring orders, undertaking market research etc. are not valued as per rule 29.

Examples of supplies valued as per rule 29

- **Supply of goods by a principal to his agent when the agent supplies the goods on behalf of the principal**
- **Supply of goods by an agent to his principal when the agent receives the goods on behalf of the principal**

Rule 30 – Value of supply of goods or services or both based on cost

If the value of a supply of goods and/or services cannot be worked out by the foregoing methods, its value will be 110% of the cost of production/ manufacture/acquisition of such goods or cost of provision of such services.

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Rule 31 – Residual method for determination of value of supply of goods or services or both [Best Judgement Method]

The supplier of goods needs to sequentially follow rules 27 to 30 before valuing goods as per this residual rule 31. Service providers, however, have the option of valuing services as per rule 30 or rule 31 after sequentially following rules 27 to 29.

The residual method consists of determination of value by using reasonable means consistent with the principles and general provisions of section 15 and these Rules.

(26) A cosmetics company buys its products from a subcontractor, who supplies "testers" of each product, to be placed in retail outlets, free of charge. These are of different size from the product that is sold.

The company and the sub-contractor are related persons. The sub-contractor does not have details of cost of acquisition of such testers.

As none of the methods in rules 27 to 30 will work for valuing these testers, the value will have to be determined by using reasonable means consistent with the principles and general provisions of section 15 and the Rules.

A possible method may be *pro rata* reduction of the price based on difference in size from the product that is sold.

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Rule 31A – Value of supply in case of lottery, betting, gambling and horse racing

A new rule 31A has been inserted in CGST Rules to provide for valuation of supply of lottery and actionable claim in the form of chance to win in betting, gambling or horse racing in a race club. The rule provides that valuation of such supplies will be governed by the specific provisions set out in the said rule and not by any other valuation rule.

Supply	Value
Supply of lottery by the Organising State Organising State means the State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State	**Higher of the two amounts to be deemed as the value** 100/128 of the face value of ticket OR 100/128 of the price as notified in the Official Gazette by the organising State
Supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club	100% of the face value of the bet or the amount paid into the totalisator*

* *Totalisator is a computerised device that pools the wagers/bets (after deduction of charges and statutory taxes) of various persons placing the bet and also divides the total wager amount to be distributed to the winning persons.*

(27) The Government of a State runs a lottery where face value of a lottery ticket is ₹ 250 and the price notified by the State Government in the Official Gazette is ₹ 240. Here, the value of lottery is ₹ 195.313, i.e. higher of ₹ 195.313 (250 x 100/128). or ₹ 187.50 (240 x 100/128).

(28) The Government of a State runs a lottery where face value of a lottery ticket is ₹ 250 and the price notified by the State Government in the Official Gazette is ₹ 260. Here, the value of lottery is ₹ 203.13, i.e. higher of ₹ 195.313 (250 x 100/128) or ₹ 203.13 (260 x 100/128).

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Rule 31B – Value of supply of online gaming including online money gaming

Online money gaming means **online gaming**** in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets[13], in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

Online money gaming

****Online gaming** means offering of a game on the internet or an electronic network and includes online money gaming [Section 2(80A)].

Online gaming

[13] *Virtual digital asset shall have the same meaning as assigned to it in section 2(47A) of the Income-tax Act, 1961 [Section 2(117A)].*

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For online gaming including supply of actionable claims involved in online money gaming, the "value of supply" is the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player.

No Deductions for Refunds: If the gaming platform returns any money to the player for any reasons whatsoever (for example, if the player didn't use it in a game or for any other reason), that refunded amount does not reduce the total value computed above.

In short, any money or money's worth paid by a player to the platform counts towards the value, even if part of it is later refunded.

The provisions of this rule override the provisions of the Chapter IV: Determination of Value of Supply of the CGST Rules, 2017.

Rule 31C – Value of supply of actionable claims in casino

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When someone plays at a casino, value of supply shall be:

- Total amount paid or payable by or on behalf of the player for buying tokens, chips, coins, or tickets used for use in casino, no matter what they are called.
- Total amount paid or payable by or on behalf of the player for participating in an event, including game , scheme, competition or any other activity or process in the casino, where tokens, chips, coins or tickets aren't needed for that event.

No Deductions for Refunds: If the casino gives any money back to the player (for example, if the player returns unused tokens, coins, tickets or chips), this refund does not reduce the total value. The full amount the player paid originally is still considered for determining the value.

In short, the money a player spends at the casino, whether on tokens, chips, or events, counts as the "value" for the casino, and refunds won't reduce this amount.

The provisions of this rule override the provisions of the Chapter IV: Determination of Value of Supply of the CGST Rules, 2017.

For the purpose of rule 31B and rule 31C above, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

This implies that when a player wins money or credits from a game or activity (like a casino game or an online money game) and chooses to use those winnings to play more games instead of withdrawing them, such amount is not counted as new money deposited by the player and is thus, not included in the value. So, if a player keeps reusing their winnings within the platform, those reused winnings won't add to the total amount counted as "deposited" or "paid" by the player.

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Rule 32 – Determination of value in respect of certain supplies

✪ ***Rule 32 provides the valuation methods for five specific supplies.***

✪ ***Rule 32 overrides other rules of valuation. Thus, the supplies prescribed in this rule need not be valued by sequentially following rules 27 to 31.***

✪ ***The valuation methods prescribed under rule 32 are optional; the supplier can use them if he so desires. He can also opt to value his supplies in accordance with other valuation rules.***

The special provisions related to determination of value of such specific supplies are discussed below:

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(i) Special provision relating to determination of value of service of purchase or sale of foreign currency including money changing [Sub-rule (2)]

The value of service in relation to purchase or sale of foreign currency, including money changing, is determined by either of the two methods:

Method-1

Case 1: Transaction where one of the currencies exchanged is Indian Rupees

The value of supply is difference between buying rate or selling rate of currency and RBI reference rate for that currency at the time of exchange multiplied by total units of foreign currency.

However, if RBI reference rate for a currency is not available then value of supply is **1%** of the gross amount of Indian Rupees provided/ received by the person changing the money.

(29) On 10th May, Mr. Doshi converted USD $ 100 into ₹ 7,400 @ ₹ 74 per USD through Eastern Money Changers. RBI reference rate on 10th May for US $ is ₹ 75 per US $. The value of supply in this case is (₹ 75 – ₹ 74)* $ 100 = ₹ 100 and GST will be levied on this amount.

If the RBI reference rate is not available, then 1% of ₹ 7,400 i.e., ₹ 74 will be the value of supply of service.

Case 2: Transaction where neither of the currencies exchanged is Indian Rupees

The value of supply is 1% of the lesser of the two amounts the person changing the money would have received by converting (at RBI reference rate) any of the two currencies in Indian Rupees.

(30) US $ 9,000 are converted into UK £ 4,500. RBI reference rate at that time for US $ is ₹ 74 per US dollar and for UK £ is ₹ 98 per UK Pound. In this case, neither of the currencies exchanged is Indian Rupee.

Hence, in the given case, value of taxable service would be 1% of the lower of the following:-

(a) US dollar converted into Indian rupees = $ 9,000 × ₹ 74 = ₹ 4,41,000

(b) UK pound converted into Indian rupees = £ 4,500 × ₹ 98 = ₹ 6,66,000

Value of supply of service = 1% of ₹ 4,41,000 = ₹ 4,410

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Method-2

The person supplying the service may also exercise the following option (based on slab rates) to ascertain the value of service, however, once opted he cannot withdraw it during the remaining part of the financial year:

S. No.	Currency exchanged	Value of supply
1.	Upto ₹ 1,00,000	**1%** of the gross amount of currency exchanged OR **₹ 250,** whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	**₹ 1,000 + 0.50%** of the (gross amount of currency exchanged - ₹ 1,00,000)
3.	Exceeding ₹ 10,00,000	**₹ 5,500 + 0.1%** of the (gross amount of currency exchanged - ₹ 10,00,000) OR **₹ 60,000,** whichever is lower

ILLUSTRATION 3

X Pvt. Ltd., a money changer, has exchanged US $ 10,000 to Indian rupees @ ` 74 per US $. X Pvt. Ltd. wants to value the supply in accordance with rule 32(2)(b) of CGST Rules.

Determine the value of supply made by X Pvt. Ltd.

ANSWER

As per rule 32(2)(b) of CGST Rules, the value in relation to the supply of foreign currency, including money changing, is deemed to be-

(i) 1% of the gross amount of currency exchanged for an amount up to ₹ 1,00,000, subject to a minimum amount of ₹ 250;

(ii) ₹ 1,000 and 0.5% of the gross amount of currency exchanged for an amount exceeding ₹ 1,00,000 and up to ₹ 10,00,000.

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Therefore, the value of supply, made by X Pvt. Ltd., under rule 32(2)(b) of CGST Rules is computed as under:

Particulars	₹	₹
Value of currency exchanged in Indian rupees [₹ 74 x US $ 10,000]	7,40,000	
Upto ₹ 1,00,000		1,000
For ₹ 6,40,000 [0.50% x ₹ 6,40,000]		3,200
Value of supply		**4,200**

(ii) Special provision relating to determination of value of service of booking of tickets for air travel by an air travel agent [Sub-rule (3)]

Value of service of booking of tickets for air travel by an air travel agent is 5% of basic fare in case of domestic travel and 10% of basic fare in case of international travel.

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ILLUSTRATION 4

UB & Sons is an air travel agent. Compute the value of supply of service made by the firm during a month with the help of following particulars furnished by it:

Particulars	*Basic fare (₹)*	*Other charges and fee (₹)*	*Taxes (₹)*	*Total value of tickets (₹)*
Domestic Bookings	*1,00,900*	*9,510*	*4,990*	*1,15,400*
International Bookings	*3,16,880*	*20,930*	*15,670*	*3,53,480*

ANSWER

Computation of value of supply of services made by UB & Sons in a month

Particulars	₹	₹
Basic fare in case of domestic bookings	1,00,900	
Value of supply @ 5% **[A]** Refer Note below		5,045
Basic fare in case of international bookings	3,16,880	
Value of supply @ 10% **[B]** Refer Note below		31,688
Value of supply [A] + [B] (rounded off)		**36,733**

Note:

As per rule 32(3) of CGST Rules, the value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent is 5% of the basic fare in the case of domestic bookings, and 10% of the basic fare in the case of international bookings.

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(iii) Special provision relating to determination of value of service in relation to life insurance business [Sub-rule (4)]

Value of life insurance service varies with nature of insurance policy. The details are as follows:

Policy with dual benefits of risk coverage and investment	**•Taxable value = Gross premium charged less amount allocated for investments/savings if such allocation is intimated to the policy holder at the time of collection of premium**
Single premium annuity policy	**•Taxable value = 10% of the single premium charged from the policy holder where allocation for investments/savings is not intimated to the policy holder**
Other cases	**•Taxable value = 25% of premium charged from the policy holder in the 1st year and 12.5% of premium charged for subsequent years**
Policy with ONLY risk cover	**•Taxable value = Entire premium charged from the policy holder**

ILLUSTRATION 5

Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakh from policy holders with respect to life insurance policies in the FY 2023-24; out of which ₹ 100 lakh have been allocated for investment on behalf of the policy holders.

Compute the value of supply of life insurance services provided by ALICL:

(i) if the amount allocated for investment has been intimated by ALICL to policy holders at the time of supply of service.

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(ii) if the amount allocated for investment has not been intimated by ALICL to policy holders at the time of providing of service.

(iii) if the gross premium charged by ALICL from policy holders is only towards risk cover.

Note: ALICL has started its operations in the FY 2023-24. Thus, the entire gross premium of ₹ 180 lakh is the premium for the first year of all the policies. ALICL has not issued any single premium annuity policy.

ANSWER

As per rule 32(4), of the CGST Rules, value of supply of services in relation to life insurance services is

(a) the gross premium reduced by the amount allocated for investment on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;

(b) in all other cases, 25% of the premium in the 1st year and 12.5% of the premium in subsequent years

However, where the entire premium paid by the policy holder is only towards risk cover, such gross premium is the value of supply of life insurance services.

In the light of the aforesaid provisions, value of supply of life insurance services provided by ALICL in financial year 2023-24 will be computed as follows:

(i) Amount allocated for investment intimated to policy holder at the time of supply of service

Value of service = ₹ (180-100) lakh = ₹ 80,00,000

(ii) Amount allocated for investment not intimated to policyholders at the time of supply of service

Value of service = 25% of ₹ 180 lakh = ₹ 45,00,000

(iii) Gross premium received is only towards risk cover

Value of service = ₹ 180 lakh

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(iv) Special provision relating to determination of value of second hand goods by a dealer of second hand goods – Margin Scheme [Sub-rule (5)]

Normally GST is charged on the transaction value of the goods. However, in respect of second hand goods, a person dealing in such goods may be allowed to pay tax on the margin, i.e. the difference between the value at which the goods are supplied and the price at which the goods are purchased, if ITC is not availed. If there is no margin, no GST is charged for such supply.

The purpose of the margin scheme is to avoid double taxation as the goods, having once borne the incidence of tax, re-enter the supply chain.

The taxable value of supply of second hand goods, i.e. used goods as such or after such minor processing which does not change the nature of goods is the difference between the purchase price and the selling price, provided no ITC has been availed on purchase of such goods. However, if the selling price is less than purchase price, that negative value is ignored.

VALUE OF SECOND HAND GOODS

When ITC is not availed [Margin Scheme]	When ITC is availed
• Value = Selling price - Purchase price • Selling price < Purchase price ⇒ Ignore negative value • CGST on second hand goods received from unregistered supplier exempt	• Normal valuation as per other applicable provisions

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(31) A company X Ltd., which deals in buying and selling of second hand cars, purchases a second hand Maruti Alto Car of March, 2015 make (Original price ₹ 5 lakh) for ₹ 3 lakh from an unregistered person. It incurs ₹ 30,000 on minor furbishing and sells the car for ₹ 3,50,000. The company does not avail any ITC. The value for GST purpose shall be ₹ 50,000, i.e. the difference between the selling and the purchase price of the company.

✪ ***Persons who purchase second hand goods after payment of tax to supplier of such goods, are governed by this valuation rule only when they do not avail ITC on such input supply. If ITC is availed, then such supply is governed by normal GST valuation provisions.***

✪ ***Margin scheme is available only for supply of used goods by a person dealing in buying and selling of second-hand goods.***

Old and used motor vehicles[14]:

Different rates of taxes have been prescribed for old and used vehicles depending upon the size and engine capacity of such motor vehicles and value of supply in such case, when ITC is not availed, is value that represent margin of the supplier, on supply of such goods determined as follows

(i) In case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act,1961on the said goods,

- Value = Consideration received - Depreciated value on the date of supply,
- Consideration < Depreciated value ⇒ Ignore negative value

[14] *vide Notification No. 8/2018 CT(R) dated 25.01.2018*

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(ii) In any other case

- Value= Selling price - Purchase price
- Selling price < Purchase price ⇒ Ignore negative value

When ITC is availed

Normal valuation as per other applicable provisions

Purchase value of supply of goods repossessed from a defaulting borrower

Many a times goods taken on loan are repossessed by the lender in the event of default in payment of the loan. The purchase value of such repossessed asset is-

If the defaulting borrower is un-registered	If the defaulting borrower is registered
Purchase value = Purchase price in the hands of such borrower reduced by 5% for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession	**The repossessing lender agency will discharge GST at the supply value without any reduction from actual/notional purchase value**

(v) Special provisions relating to determination of value of redeemable vouchers/stamps/coupons/tokens [Sub-rule (6)]

The value of a token, voucher or coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods and/or services is equal to the money value of the goods and/or services redeemable against such token, voucher, coupon or stamp.

example **(32)** If ₹ 1,500 worth of meal coupons are supplied by the taxable person, the value of supply of such coupons under GST law will also be ₹ 1,500.

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(vi) Special provisions relating to determination of value of services provided by notified service providers between distinct persons [Sub-rule (7)]

Value of taxable services provided by notified class of service providers, without consideration, between distinct persons [as referred to in Para 2 of Schedule 1 of CGST Act], **is deemed to be NIL if ITC is available.**

No such services have been notified so far.

Rule 33 – Value of supply of services in case of pure agent

Supply as a pure agent is an independent concept relevant for valuation. It may happen sometimes that a supplier making a supply also incurs some expense for the recipient which is not a part of the supply made by him. If such expense is incurred by the supplier as a pure agent of the recipient, it is not includible in the value of supply; if not incurred as pure agent, the same is includible in the value of supply.

Broadly speaking, a pure agent is one who while making a supply to the recipient, also receives and incurs expenditure on some other supply on behalf of the recipient and claims reimbursement (as actual, without adding it to the value of his own supply) for such supplies from the recipient of the main supply.

While the relationship between them (provider of service and recipient of service) in respect of the main service is on a principal to principal basis, the relationship between them in respect of other ancillary services is on pure agent basis.

The concept of **'pure agent'** is identical to concept of **'Reimbursement of expenses incurred by supplier on behalf of customer'**. Since GST is on 'supply of goods or services', transactions which are not part of 'supply' will not form part of value of goods or services supplied.

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However, if such expenses are part of supply of goods or services, these cannot get covered under concept of 'pure agent' or 'reimbursement of expenses incurred by supplier on behalf of buyer'.

(33) A is an importer and B is a custom broker. A approaches B for customs clearance work in respect of an import consignment. The clearance of import consignment and delivery of the consignment to A would also require taking service of a transporter. So A, also authorises B, to incur expenditure on his behalf for procuring the services of a transporter and agrees to reimburse B for the transportation cost at actuals. Here, B is providing customs brokers service to A, which would be on a principal-to-principal basis.

The ancillary service of transportation, is procured by B on behalf of A as a pure agent and expenses incurred by B on transportation should not form part of value of customs broker service provided by B to A. This, in sum and substance is the relevance of the pure agent concept in GST.

The important thing to note is that a pure agent does not use the goods or services so procured for his own interest and this fact has to be determined from the terms of the contract.

In the illustration of importer and customs broker given above, assuming that the contract was for clearance of goods and delivery to the importer at the price agreed upon in the contract, the customs broker would be using the transport service for his own interest (as the agreement requires him to deliver the goods at the importers place) and thus, would not be considered as a pure agent for the services of transport procured.

Another important fact is that the person who provides any service as a pure agent receives only the actual amount for the services provided. Coming back to our example of importer and customs broker, the agreement provides reimbursement of transport services utilised at actuals.

In this case, let's say the value of transport service was ₹10,000/-.If the customs broker charges any amount more than ₹10,000/-, then he will not be considered as a pure agent for the services of transport and the value of transport service will be included in the value of his customs broker service.

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Relevance of pure agent under GST: Expenditure/costs incurred as pure agent excluded from value of supply

Subject to fulfilment of certain conditions, the **expenditure and costs incurred by the supplier as a pure agent of the recipient of supply of service, has to be excluded from the value of supply.**

The preceding paras explained who is considered as a pure agent. The valuation rules provide that expenditure incurred as pure agent, are excluded from the value of supply, and thus, also from aggregate turnover.

However, such exclusion of expenditure incurred as pure agent is possible *only and only if all the conditions required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier in each case.*

Expenditure or costs incurred by the supplier of services ('S') as pure agent of the recipient of services ('R') is excluded from the value of supply, if all the following conditions (in addition to the conditions required to be satisfied to be considered as a pure agent) are satisfied:

- The payment arises out of a contract between 'R' and a third party, and 'S' acts as pure agent of 'R' when he makes the payment;
- 'R' authorizes 'S' to make payment on his behalf;
- 'S' shows the payment separately in the invoice issued by him to 'R';
- The supplies procured by 'S' from the third party as pure agent of 'R' are in addition to the supplies that he provides on his own account.

'Pure agent' here means a person 'S' who -

- ➔ enters into contractual agreement with 'R' to act as his pure agent to incur expenditure/costs in the course of supply of goods and /or services;
- ➔ does not hold or intends to hold any title to the goods and / or services so procured or supplied as pure agent of 'R';

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- does not use for his own interest such goods or services so procured; and
- receives only the actual amount incurred to procure such goods or services (apart from the amount for the services provided on his own account)

The supplier needs to fulfil **ALL** the above conditions in order to qualify as a pure agent. In case the conditions are not satisfied, such expenditure incurred is included in the value of supply under GST.

The following illustration will make the concept clearer:

(34) Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B.

- Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies.
- The fees charged by the Registrar of the Companies for registration and approval of the name are compulsorily levied on B.
- A is merely acting as a pure agent in the payment of those fees.
- Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Some examples of expenditure/costs incurred as pure agent are:

(35) Port fees, port charges, custom duty, dock dues, transport charges etc. paid by customs broker on behalf of the owner of goods.

(36) Expenses incurred by C&F agent and reimbursed by principal such as freight, godown charges.

(37) Suppose a customs broker issues an invoice for reimbursement of a few expenses and for consideration towards agency service rendered to an importer. the amounts charged by the customs broker are as below:

S.No.	Component charged in invoice	Amount
1	Agency income	₹ 10,000/-

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2	Traveling expenses; Hotel expenses	₹ 15,000/-
3	Customs duty	₹ 55,000/-
4	Docks dues	₹ 5000/

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

(38) If supply contract is ex-factory, but the supplier pays freight to transporter for convenience and then recovers the same, it will not form part of 'value'.

(39) Advocate paying Court fees on behalf of client.

The pure agent concept is very important for businesses as it has direct implications on the value of taxable supply. It has direct bearing on the amount of GST charged on a particular supply. It also has bearing on the aggregate turnover of the supplier and therefore, on calculating the threshold limit for registration.

Whenever the supplier intends to act as a pure agent, care should be taken to ensure that the conditions specified for such pure agents and other conditions given in the valuation rules are also met so that only the real value of the service provided is subjected to GST.

Taxability of airport levies collected by airlines as pure agent - *Circular No. 115/34/2019 GST dated 11.10.2019*

Services provided by an airport operator to passengers against consideration in the form of user development fee (UDF) and passenger development fee (PSF) are liable to GST[15]. PSF and UDF are collected by the airlines as an agent and is not a consideration for any service provided by the airlines.

[15] *The chargeability of USF and PSF has been explained in detail by Circular No. 115/34/2019 GST dated 11.10.2019. The same has been discussed in Chapter 2: Charge of GST of this Module of the Study Material.*

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Thus, airlines is not responsible for payment of GST on UDF or PSF provided the airline satisfies the conditions prescribed for a pure agent under rule 33. It is the licensee, that is the airport operator which is liable to pay GST on UDF and PSF.

The airlines acting as pure agent of the passenger should separately indicate actual amount of PSF and UDF and GST payable on such PSF and UDF by the airport licensee, in the invoice issued by airlines to its passengers.

The airline shall not take ITC of GST payable or paid on PSF and UDF. The airline would only recover the actual PSF and UDF and GST payable on such PSF and UDF by the airline operator. The amount so recovered will be excluded from the value of supplies made by the airline to its passengers.

In other words, the airline shall not be liable to pay GST on the PSF and UDF (for airport services provided by airport licensee), provided the airline satisfies the conditions prescribed for a pure agent under rule 33.

The registered passengers, who are the ultimate recipient of the airport services, may take ITC of GST paid on PSF and UDF on the basis of pure agent's invoice issued by the airline to them.

The collection charges paid by airport operator to airlines are a consideration for the services provided by the airlines to the airport operator (AAI, DAIL, MAIL etc) and airlines shall be liable to pay GST on the same under forward charge. ITC of the same will be available with the airport operator.

Applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants - Circular No. 206/18/2023 GST dated 31.10.2023

It is clarified that whenever electricity is being supplied as bundled with renting of immovable property and/or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise, as the case may be, and the supply of electricity is an ancillary supply as the case

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may be. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise, as the case may be, would be applicable.

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

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Rule 34 – Rate of exchange of currency, other than Indian rupees, for determination of value

Goods: The relevant rate of exchange for determining the value of taxable goods is the rate notified by CBIC under section 14 of the Customs Act, 1962, prevalent on the date of time of supply of said goods.

Services: The relevant rate of exchange for determining the value of taxable service is the rate determined as per GAAP, prevalent on the date of time of supply of said service.

Rule 35 – Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

Where the value of supply is inclusive of GST, the tax amount is determined in the following manner:

Tax amount = (Value inclusive of taxes x GST rate in %) [IGST or CGST, SGST/UTGST] / (100 + sum of GST rates in %)

(40) If the value inclusive of tax is ₹ 100/- and applicable GST rate is 18% [IGST or CGST, SGST/UTGST] then,

Tax amount = (100x18)/(100+18)= 1800/118=₹ 15.25

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LET US RECAPITULATE

Inclusions in value u/s 15(2)

- ⇒ Taxes other than GST
- ⇒ Third party payments made by recipient in relation to supply, which supplier was liable to pay and were not included in the price
- ⇒ Incidental expenses including anything done by the supplier in respect of the supply till delivery of goods/supply of services, if charged to recipient
- ⇒ Subsidies directly linked to price of supply other than the ones given by Central/State Governments
- ⇒ Interest/late fee/penalty for delay in payment of consideration

Exclusions from value u/s 15(2)

- ⇒ Discounts given before or at the time of supply and recorded in the invoice
- ⇒ Post supply discount/incentive, if known in advance & linked with invoices and proportionate input tax credit reversed by the recipient

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VALUATION RULES

RULE 27: Consideration not wholly in money

Value shall be either of the following in the given order:

- open market value
- total of consideration in money + amount equal to the consideration not in money
- value of supplies of like kind and quality
- consideration in money + money value of non-monetary consideration computed as per rule 30 or 31 in that order.

RULE 28: Supply between distinct/ related persons, other than agent

Value shall be either of the following in the given order:

- open market value
- value of supplies of like kind and quality
- value as per rule 30 or 31 in that order.

♦ Option to supplier to value goods sold as such by recipient⇒Value= 90% of price charged by recipient to its unrelated customer

♦ Recipient eligible for ITC ⇒ invoice value = open market value (taxable value)

RULE 29: Supply made/received through an agent

Value shall be either of the following in the given order:

- open market value or 90% of price charged by recipient to his unrelated customer for supplies of like kind and quality;
- value as per rule 30 or 31 in that order.

RULE 30: Value based on cost

Value shall be 110% of cost of production/ acquisition/ provision of goods or services

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RULE 31: Residual method (Best Judgement Method)

Value shall be determined using reasonable means consistent with the principles and general provisions of section 15 & valuation rules. For services, rule 31 can be adopted before rule 30.

RULE 31A: Value of supply of lottery, chance to win in betting/ gambling/ horse racing in race club

Lottery organised by State Government - 100/128 of the face value of ticket OR 100/128 of the price as notified in the Official Gazette by the organising State, whichever is higher

Actionable claim in form of chance to win in betting, gambling or horse racing in a race club - 100% of the face value of the bet or the amount paid into the totalisator

Organising State - State Government which conducts the lottery either within the State or outside the State

RULE 31B: Value of supply in case of online gaming including online money gaming

= Total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player.

Any amount returned/refunded to player including player not using the amount paid/deposited with supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

RULE 31C: Value of supply of actionable claims in case of casino

= Total amount paid or payable by or on behalf of the player for:

(i) purchase of tokens, chips, etc., for use in casino; or

(ii) participating in any event, including game, scheme, etc., in the casino, in cases where the token, chips, etc., are not required.

Any amount returned/refunded by the casino to the player on return of token, coins, chips, or tickets, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

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RULE 32: Value in respect of certain specific supplies

⇒ **Purchase/sale of foreign currency:**

1st method:

Value = [Buying/Selling rate - RBI reference rate at that time] x total units of currency. If no RBI reference rate, value = 1% of INR received/provided. If the currencies exchanged are not in INR, value = lesser of the 2 amounts that would have been received by converting any of currencies into INR at RBI reference rate

OR 2nd method

Currency	Value
Upto ₹ 1,00,000	1% or ₹ 250 whichever is higher
From ₹1,00,001 to ₹ 10,00,000	₹ 1,000 + 0.5%
From ₹ 10,00,001	₹ 5,500 + 0.1% subject to maximum of ₹ 60,000

⇒ **Booking of tickets by air travel agent:** Value = 5% of basic fare for domestic bookings and 10% of the basic fare for international bookings.

⇒ **Life insurance business:** If amount allocated for investment is intimated - Value = Gross premium less amount allocated for investment;
Single premium annuity policies where amount allocated for investment is not intimated - Value = 10% of single premium;
Other cases – Value = 25% of premium in 1st year and 12.5% of premium in subsequent years;
Policy only towards risk cover – Value = Entire premium

⇒ **Buying & selling of second hand goods:** Value = Selling price – Buying price (ignore if value is negative); Purchase value of goods repossessed from unregistered borrower = Purchase price- 5% per quarter or part thereof from date of purchase till the date of disposal by the person making repossession

⇒ **Coupon/voucher:** Value = money value of supplies redeemable against such voucher/ coupon

⇒ **Notified services between distinct persons without consideration:** Value = Nil, if ITC is available

RULE 33: Supply as a pure agent

Costs incurred by the supplier as a pure agent of recipient shall be excluded from value

RULE 34: Rate of exchange for determination of value

Goods = Rate notified by CBIC under Customs Act on the date of time of supply of such goods;
Services = Rate as per GAAP on the date of time of supply of such services

Rule 35: Value inclusive of taxes

Where value of supply is inclusive of CGST, SGST/UTGST or IGST, the tax amount is calculated by making back calculations.

Tax amount = (Value inclusive of GST x GST rate in % of IGST or CGST, SGST/UTGST)/100 + sum of applicable GST rates in %)

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TEST YOUR KNOWLEDGE

1. *Income tax collected at source should be included in value of the supply in terms of section 15(2)(a). Examine the correctness of the statement.*

2. *How should the supply made by a component manufacturer be valued, when he uses moulds and dies owned by the original equipment manufacturer sent free of cost to him? Explain.*

3. *Examine whether the following discounts ought to be excluded to determine the value of supply:*

   (i) Company offering 20% discount for single purchase above ₹ 10,000

   (ii) Company offering additional discount of 1% on purchase of 10,000 pieces in a year

   (iii) After selling a product, the company re-valued the product at a lower value and issued credit note to the buyer for the differential amount.

4. *Rajesh & Co., a partnership firm, provides financial and management consultancy to a group of companies for an annual retainership fee of ₹ 15 lakh. Further, the firm is provided with a car (along with a driver) for its exclusive use throughout the year. The fuel cost is also borne by the Group. Rajesh & Co. pays GST on the amount of ₹ 15 lakh.*

   Is the value for the service provided by Rajesh & Co. correct under GST law? If not, please elaborate.

5. *The supplies of commodity 'y' to the market are channelled through a State Marketing Corporation which conducts an auction each day to arrive at the price. Gupta and Co. supplies commodity 'y' through the State Marketing Corporation.*

   How will the supply of 'y' made by Gupta and Co. to State Marketing Corporation be valued for paying tax?

6. *Easy Coupons Ltd. sells coupons that are redeemable against specified luxury food products at retail outlets. Each coupon is sold for value of ₹ 900 but is redeemable for supplies worth ₹ 1000.*

   What is the value of supply of such coupon under GST law?

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7. *A pharmaceutical company supplies a drug intermediate to its own unit in another State for conversion into formulations. The drug intermediate is exclusive to this company, and there is no market sale in India of this drug intermediate. Goods of like kind and quality are also not available. After conversion, the finished product is sold from the said unit itself by the company.*

   How will the value of the supply of this drug intermediate be determined under GST law?

8. *Dushyant rents out a commercial building owned by him to Bharat for the month of December, for which he charges a rent of ₹ 19,50,000. Dushyant pays the maintenance charges of ₹ 1,00,000 (for the December month) as charged by the local society. These charges have been reimbursed to him by Bharat. Also, Dushyant has paid municipal tax of ₹ 2,85,000 which he has not charged from Bharat.*

   You are required to determine the value of supply and the GST liability of Dushyant for the month of December assuming CGST and SGST rates to be 9% each.

   Note: All the amounts given above are exclusive of GST.

9. *Vayu Ltd. provides you the following particulars relating to goods supplied by it to Agni Ltd.:*

Particulars	***Amount (₹)***
List price of the goods (exclusive of taxes/duties and discounts)	*76,000*
Special packing at the request of customer to be charged to the customer	*5,000*
Duty levied by local authority on the sale of such goods	*4,000*
CGST and SGST charged separately in invoice	*14,400*
Price linked subsidy received from an NGO in relation to the goods sold (The price of ₹ 76,000 given above is after considering the subsidy)	*5,000*

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Vayu Ltd. offers 3% discount on the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supplies made by Vayu Ltd.

10. *Binaca Electronics Ltd. (hereinafter referred to as BEL) is engaged in manufacturing televisions. It is registered in the State of Haryana. It has appointed distributors across the country who sell the televisions manufactured by it.*

The maximum retail price (MRP) printed on the package of a television is ₹ 12,000. The applicable rate of GST on televisions is 18%. BEL dispatches the stock of televisions to its distributors ordered by them on a quarterly basis.

In order to promote its sales, the Sales Head of BEL has formulated a sales promotion scheme on 1st April. Under this scheme, BEL offers a discount of 10% (per television) on televisions supplied to the distributors if the distributors sell 500 televisions in a quarter.

The discount is offered on the price at which the televisions are sold to the distributors (excluding all charges and taxes).

It appoints Shah Electronics (an unrelated party as per GST Law) as its distributor in Haryana on 1st April and dispatches 750 televisions on 8th April as stock for the quarter April-June.

BEL has sold the televisions to distributor - Shah Electronics at ₹ 8,400 per television (exclusive of applicable taxes). Shah Electronics has requested BEL for a special packing of the televisions delivered to it for which BEL has charged ₹ 1,200 per television.

Shah Electronics places a purchase order of 1,000 televisions with BEL for the quarter July-September. The distributor reports sales of 700 televisions for the quarter April-June and 850 televisions for the quarter July-September.

The discount policy offered by BEL as explained above is also available to Shah Electronics as per the distributorship agreement.

While Shah Electronics reverses the input tax credit availed for the quarter July-September, it has failed to reverse the input tax credit availed for the quarter April-June.

Examine the scenario with reference to section 15 and compute the taxable value of televisions supplied by BEL to Shah Electronics during the quarters

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April-June and July-September assuming the rate of tax applicable on the televisions as 18%.

11. *Prada Forex Private Limited, registered in Delhi, is a money changer. It has undertaken the following purchase and sale of foreign currency:*

    (i) *1,000 US $ are purchased from Nandi Enterprises at the rate of ₹ 74 per US $. RBI reference rate for US $ on that day is ₹ 74.60.*

    (ii) *2,000 US $ are sold to Menavati at the rate of ₹ 74.50 per US$. RBI reference rate for US $ for that day is not available.*

    Determine the value of supply in each of the above cases in terms of rule 32(2)(a) and rule 32(2)(b).

12. *Rolly Polly Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of footwear. It imports a footwear making machine from USA. Rolly Polly Manufacturers Ltd. enters into a contract with Rudra Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), to meet all the legal formalities in getting the said machine cleared from the customs station.*

    Apart from this, Rolly Polly Manufacturers Ltd. authorises Rudra Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd. which shall be reimbursed by Rolly Polly Manufacturers Ltd. to Rudra Logistics on the actual basis in addition to agency charges.

    Rudra Logistics provided following details in the invoice issued by it to Rolly Manufacturers Ltd.:

S. No.	**Particulars**	**Amount (₹)**
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	50,000
(iii)	Charges for transportation of machine from Kandla port, Gujarat to its Rudra Logistics' godown in Ahmedabad, Gujarat	25,000

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(iv)	*Charges for transportation of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra*	*28,000*
(v)	*Prepared and submitted Bill of Entry and paid customs duty*	*5,00,000*
(vi)	*Dock dues paid*	*50,000*
(vii)	*Port charges paid*	*50,000*
(viii)	*Hotel expenses*	*45,000*
(ix)	*Travelling expenses*	*50,000*
(x)	*Telephone expenses*	*2,000*

Compute the value of supply made by Rudra Logistics with the help of given information.

Would your answer be different if Rudra Logistics has charged ₹ 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd.?

13. *Rustagi & Co. manufactures customized products at its unit situated and registered in Madhya Pradesh. Cost of production of 1,000 products for Rustagi & Co. is ₹ 20,00,000.*

These products require further processing before sale, and for this purpose products are transferred from its Madhya Pradesh unit to its another unit situated and registered in Himachal Pradesh. The value declared on the invoice for such transfer is the cost of production of such products.

The Himachal Pradesh unit, apart from processing its own products, engages in processing of similar products of other persons who supply the products of the same kind and quality. Thereafter, the Himachal Pradesh unit sells these processed products to wholesalers. There are no other factories in the

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neighbouring area which are engaged in the same business as that of Himachal Pradesh unit.

1,000 units of the products of same kind and quality are supplied to Himachal Pradesh unit, at the time when goods are sent by Madhya Pradesh unit, by another manufacturer located in Himachal Pradesh.

The ex-factory price of such goods is ₹ 19,00,000. The Himachal Pradesh unit of Rustagi & Co. is eligible for full ITC.

Determine the value of 1000 products supplied by Rustagi & Co. to its Himachal Pradesh unit.

14. *Dev Enterprises is the supplier of water coolers. Dev Enterprises supplied water coolers to an unrelated party, Vimal Traders for consideration of ₹ 2,95,000 (inclusive of GST @ 18%). Vimal Traders also gave some materials to Dev Enterprises [valuing ₹ 10,000 (exclusive of GST)] as an additional consideration for such supply.*

    At the same time, Dev Enterprises has supplied the same goods to another unrelated person at price of ₹ 2,97,360 (inclusive of GST@18%).

    You are required to:

    (1) Determine the value of goods supplied by Dev Enterprises to Vimal Traders.

    (2) What would your answer be if price of ₹ 2,97,360 is not available at the time of supply of goods to Vimal Traders? Explain briefly.

15. *Chirayu Life Insurance Company Limited (CLICL) has collected premium from policy subscribers. It does not intimate the amount allocated for investment to subscribers of the policy at the time of supply of insurance services. The company has provided the following details in relation to its receipts:*

Sl. No.	Particulars	Amount
1.	Premium for only risk cover	25,00,000
2.	Premium from new policy subscribers	40,00,000
3.	Renewal premium	80,00,000
4.	Single premium on annuity policy	1,00,00,000

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All amounts are exclusive of tax. You are required to compute the value of supply by CLICL in terms of rule 32(4).

16. *Aviant Ltd., registered in Noida (Uttar Pradesh), is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:*

– *The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is ₹ 42,00,000.*

  However, the actual price at which the machinery is supplied to an individual customer varies within a range of ± 10% depending upon the terms of contract of supply with the particular customer.

– *Apart from the price of the machinery, Aviant Ltd. charges from the customer the following incidental expenses:*

  - *associated handling and loading charges of ₹ 10,000*
  - *installation and commissioning charges of ₹ 1,00,000*

– *The machinery can be dismantled and erected at another site, if required. The above charges are compulsorily levied in case of each supply of machinery.*

– *Transportation of machinery to the customer's premises is arranged by Aviant Ltd. through a third-party service provider [Goods Transport Agency (GTA)].*

  The customer enters into a separate service contract with the GTA and pays the freight directly to it.

– *A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises.*

  In the event of failure to make the payment within the stipulated time, the company-

  - *recovers the discount given at the time of receiving payment from the customer (no separate amount of GST is recovered); and*
  - *charges simple interest @ 1% per month or part of the month (no*

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separate amount of GST is recovered) on the total amount due from the customer (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.

– *For every machinery supplied, Aviant Ltd. receives a price linked subsidy of ₹2,00,000 from its holding company Diligent Ltd.*

Aviant Ltd. has supplied a machinery to an unrelated party, Daffodil Pvt. Ltd. on 29th August at a price of ₹40,00,000 (excluding all taxes). Invoice was issued on 29th August by Aviant Ltd.

The corporate office of Daffodil Ltd., which is at New Delhi, has entered into contract with Aviant Ltd. for supply of machinery. However, the machinery has been installed at Daffodil Pvt. Ltd's registered manufacturing unit located in Gurugram (Haryana). Daffodil Pvt. Ltd. has paid the freight directly to the GTA.

Discount @ 2% on the price of machinery excluding taxes was given to Daffodil Pvt. Ltd. as it agreed to make the payment within 15 days. However, Daffodil Pvt. Ltd. paid the consideration on 30th September.

Assume the rates of taxes to be as under:

Bottle cap making machine		
CGST – 6%	*SGST – 6%*	*IGST – 12%*
Service of transportation of goods		
CGST – 2.5%	*SGST – 2.5%*	*IGST – 5%*
Other services involved in the above supply		
CGST – 9%	*SGST – 9%*	*IGST – 18%*

Calculate the GST liability [CGST, SGST or IGST, as the case may be] with respect to the supply of machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed.

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ANSWERS

1. The statement is not correct. CBIC vide *Circular No. 76/50/2018 GST dated 31.12.2018* (amended vide corrigendum dated 7.03.2019) has clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax.

2. *Circular No. 47/21/2018 GST dated 08.06.2018* has clarified that while calculating the value of the supply made by the component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost (FOC) to him, the value of such moulds and dies shall not be added to the value of supply made by him because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b).

However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components.

3. (i) The given case is a case of staggered discounts where rate of discount increases with increase in purchase volume. Such discounts are shown on the invoice itself. Therefore, the same are excluded to determine the value of supply.

(ii) The given case is a case of volume discount which are offered by the suppliers to their stockists, etc. Such discounts are established in terms of an agreement entered into at or before the time of supply which can be specifically linked to the relevant invoices though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. Such type of volume discounts are excluded/deducted to determine the value of supply provided they satisfy the parameters laid down in section 15(3)

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including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

(iii) This is a case of secondary discounts. These are the discounts which are not known at the time of supply or are offered after the supply is already over as per the agreement made at or before the time of supply.Therefore, such discounts shall not be excluded while determining the value of supply.

4. Rajesh & Co. gets a car along with driver (including the fuel) for the whole year, which is an additional non-monetary consideration for its services. The equivalent monetary value of such additional consideration must be added to the retainership fee (₹ 15 lakh) in order to arrive at the value of the taxable service provided by Rajesh & Co, as per rule 27 relating to valuation.

5. The State Marketing Corporation is an 'agent' in the meaning of the expression as defined in section 2(5), which includes an auctioneer. Therefore, the value of supply of 'y' will be determined in terms of rule 29 relating to valuation.

There is no open market for the first supply of commodity 'y', as it is compulsorily supplied to the State Marketing Corporation. However, Gupta & Co. has the option of valuing the supply of 'y' at 90% of price of goods of like kind and quality sold by the State Marketing Corporation to its unrelated customers.

If the value cannot be determined by this method, it needs to be determined on the basis of the cost plus 10% mark up as per rule 30 or on the basis of Best Judgement Method as per rule 31, in that order.

6. In terms of rule 32(6) relating to valuation, the value of a coupon is equal to the money value of the goods redeemable against it. Therefore, though the coupon is sold for ₹ 900, its value is ₹ 1000.

7. Since the supply is made to a distinct person, the same will be valued in accordance with rule 28 relating to valuation.

There is no open market value of the drug intermediate as also there are no like goods. Therefore, value of supply of such drug intermediate will be determined in terms of clause (c) of rule 28 i.e., by using rule 30. Thus, the

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value of supply of such drug intermediate will be 110% of its cost of production or manufacture.

However, if the recipient unit is eligible for full ITC, the value declared in the invoice by the supplier will be deemed to be the open market value of the drug intermediate and thus, the invoice value will be the value of taxable supply.

8. Computation of the value of supply and the GST liability of Dushyant for the month of December

Particulars	**Amount (₹)**
Rent of the commercial buiding	19,50,000
Maintenance charges paid to the local society, reimbursed by Bharat [Note 1]	1,00,000
Municipal tax paid by Dushyant [Note 2]	Nil
Value of supply	**20,50,000**
CGST @ 9%	**1,84,500**
SGST @ 9%	**1,84,500**

Notes:

(1) Since such charges are reimbursed by the tenant (Bharat), such charges ultimately form part of the rent paid by Bharat to Dushyant and thus, form part of the value as per section 15(2)(c).

(2) Since municipal tax is paid by the supplier (Dushyant) and not charged to the recipient, the same is not includible in the value.

9. Computation of value of taxable supplies by Vayu Ltd.

Particulars	**₹**
List price of the goods	76,000
Add: Special packing [Note 1]	5,000

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Duty levied by local authority on sale of goods [Note 2]	4,000
CGST and SGST charged [Note 2]	-
Subsidy received from an NGO [Note 3]	5,000
Less: Discount offered = 3% of List price = ₹ 76,000 × 3% [Note-4]	(2,280)
Value of taxable supplies	**87,720**

Notes:

1. Being incidental expenses charged by the supplier to the recipient of supply, packing charges are includible in the value as per section 15(2)(c).

2. Taxes, duties, etc. levied under any law for the time being in force other than CGST, SGST/UTGST, IGST are includible in the value as per section 15(2)(a).

3. Subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15(2)(e).

4. Since discount is known at the time of supply, it is deductible from the value in terms of section 15(3)(a).

10. Section 15(3)(a) allows discounts to be deducted from the value of taxable supply if the same is given before or at the time of the supply and if such discount has been duly recorded in the invoice issued in respect of such supply. In other words, pre-supply discounts recorded in invoices are allowed as deduction.

Further, post supply discounts are also allowed as deduction from the value of supply under section 15(3)(b) if-

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

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In the given case, Shah Electronics is entitled for 10% discount on televisions supplied by BEL for the quarters April-June as well as July-September as it has sold more than 500 televisions in each of these quarters. However, since the sales targets are achieved after the entire stock for the respective quarters of April-June and July-September has been dispatched, the discounts on the televisions supplied to Shah Electronics for the quarters of April-June and July-September is a post-supply discount.

Such post-supply discount will be allowed as a deduction from the value of supply since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices (invoices pertaining to televisions supplied to Shah Electronics for the quarters of April-June and July-September) provided Shah Electronics reverses the input tax credit attributable to the discount on the basis of document issued by BEL.

The value of supply for the quarters of April-June and July-September will thus, be computed as under:

Computation of value of supply for the quarter - April-June

Particulars	**Amount (₹)**
Price at which the televisions are supplied to Shah Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	Nil
Value of taxable supply of one unit of television	**9,600**
Value of taxable supply of televisions for the quarter April-June [₹ 9,600 x 750]	**72,00,000**

Notes:

(1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) presuming that the supplier and the recipient of supply are not related and price

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is the sole consideration for the supply as the supplier and recipient are not related parties.

(2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c).

(3) Since Shah Electronics has not reversed the input tax credit attributable to such discount on the basis of document issued by BEL, the conditions specified in section 15(3)(b) have not been fulfilled. Thus, the post-supply discount will not be allowed as deduction from the value of supply.

Computation of value of supply for quarter - July-September

Particulars	**Amount (₹)**
Price at which the televisions are supplied to Shah Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	(840)
Value of taxable supply of one unit of television	**8,760**
Value of taxable supply of televisions for the quarter July-September [₹ 8,760 x 1,000]	**87,60,000**

Notes:

(1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.

(2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c).

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(3) Since all the conditions specified in section 15(3)(b) have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply. The input tax credit to be reversed will work out to be ₹1,51,200 [1,000 x (8,400 x 10%) x 18%].

11. Rule 32(2) prescribes the provisions for determining the value of supply of services in relation to the purchase or sale of foreign currency, including money changing.

Determination of value under rule 32(2)(a)

(i) Value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Thus, value of supply is:

= (RBI reference for US $ - Buying rate of US $) × Total number of units of US $ bought

= (74.6 – 74) × 1,000

= ₹ 600/-

(ii) When the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. Thus, value of supply is:

= 1% of the gross amount of Indian Rupees received

= 1% of (74.50 × 2,000) = ₹ 1,490/-

Determination of value under rule 32(2)(b)

Rule 32(2)(b) provides that value in relation to the supply of foreign currency, including money changing shall be deemed to be –

S. No.	Currency exchanged	Value of supply
1.	Upto₹ 1,00,000	**1%** of the gross amount of currency exchanged **OR**

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		₹ 250 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto₹ 10,00,000	**₹ 1,000 + 0.50%** of the (gross amount of currency exchanged - 1,00,000)
3.	Exceeding ₹ 10,00,000	**₹ 5,500 + 0.1%** of the (gross amount of currency exchanged - 10,00,000) **OR** **₹ 60,000** whichever is lower

Thus, the value of supply in the given cases would be computed as under:

(i) Gross amount of currency exchanged = ₹ 74 × 1,000 = ₹ 74,000.

Since the gross amount of currency exchanged is less than ₹ 1,00,000, value of supply is 1% of the gross amount of currency exchanged i.e. 1% of ₹ 74,000 or ₹ 250, whichever is higher, i.e. = ₹ 740/-

(ii) Gross amount of currency exchanged = ₹ 74.50 × 2,000 = ₹ 1,49,000.

Since the gross amount of currency exchanged exceeds ₹ 1,00,000 but is less than ₹ 10,00,000, value of supply is ₹ 1,000 + 0.50% of (₹ 1,49,000 - ₹ 1,00,000), i.e. = ₹ 1,245/-

12. As per explanation to rule 33, a **"pure agent"** means a person who-

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The supplier needs to fulfil **all** the above conditions in order to qualify as a pure agent.

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In the given case, Rudra Logistics has entered into a contractual agreement with recipient of supply, Rolly Polly Manufacturers Ltd., to incur, on behalf of such recipient, the **expenses mentioned in S. No. (ii) to (vii)** incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient. Further, Rudra Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Rudra Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Rudra Logistics qualifies as a pure agent.

Further, rule 33 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

(I) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;

(II) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and

(III) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Rudra Logistics as a pure agent of Rolly Polly Manufacturers Ltd. shall be excluded from the value of supply.

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Accordingly, value of supply made by Rudra Logistics is as follows:

Particulars	Amount (₹)
Agency charges	5,00,000
Add: Unloading of machine at Kandla port, Gujarat	Nil
Charges for transport of machine from Kandla port, Gujarat to its godown in Ahmedabad, Gujarat	Nil
Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	Nil
Customs duty	Nil
Dock charges	Nil
Port charges	Nil
Hotel expenses	45,000
Travelling expenses	50,000
Telephone expenses	2,000
Value of supply	**5,97,000**

Yes, the answer would be different. If lump sum amount of ₹ 13,00,000 is paid then the value of supply shall be ₹ 13,00,000 and tax shall be charged on value of supply since individual cost are not given.

13. As per section 25(4), a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act. Therefore, units of Rustagi & Co. in Madhya Pradesh and Himachal Pradesh are distinct persons under GST.

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As per rule 28, the value of the supply of goods between distinct persons, other than where the supply is made through an agent, shall –

(a) be the open market value of such supply;

(b) if open market value is not available, be the value of supply of goods of like kind and quality;

(c) if value cannot be determined under the above methods, be cost of the supply plus 10% mark-up or be determined by other reasonable means, in that sequence.

Rule 28 also provides that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

Further, rule 28 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice by the supplier shall be deemed to be the open market value of the goods or services.

In the given case, the option of valuing the goods @ 90% of the price charged by the recipient to his unrelated customer is not available as the goods are not further supplied 'as such' but only after processing at Himachal Pradesh unit. However, since the Himachal Pradesh unit is eligible for full ITC, the value declared by the Madhya Pradesh unit in the invoice for transfer of such products, i.e. ₹ 20,00,000 shall be deemed to be the open market value of the products.

Thus, the value of 1000 products supplied by Rustagi & Co. to its Himachal Pradesh unit in terms of rule 28 is the open market value of such products which is ₹ 20,00,000.

14. **(1)** In the given case, price is not the sole consideration for the supply. Apart from monetary consideration, the buyer has given some material to the supplier as consideration for such supply. Hence, the value of the supply cannot be determined on the basis of the transaction value in terms of section 15(1).

Here, the value will be determined with the help of rule 27 which specifies that where the consideration for a supply is not wholly in money, the value will be the open market value.

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Open market value of a supply means the full value in money, excluding the applicable GST, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

Therefore, in the given case, the open market value of the goods supplied is ₹ 2,52,000 (₹ 2,97,360 x 100/118) and is therefore, the value of such goods.

(2) Rule 27 further provides that if open market value of the supply is not known, the value of the supply will be the consideration in money plus the money equivalent to the non-monetary consideration, if such amount is known at the time of supply.

Therefore, the value in the given case will be (₹ 2,95,000 x 100/118) + ₹ 10,000, which is ₹ 2,60,000.

15. As per rule 32(4), the value of supply of services in relation to life insurance business, when the amount allocated for investment/ savings on behalf of the policy holder is not intimated to the policy holder at the time of supply of service, is-

(i) in case of single premium annuity policies,10% of single premium charged from the policy holder;

(ii) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;

(iii) in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by CLICL will be computed as under:

Computation of value of supply for CLICL

Particulars	Amount (₹)
Premium for only risk cover	25,00,000
Premium from new policy subscribers 25% of ₹ 40,00,000	10,00,000

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Renewal premium 12.5% of ₹ 80,00,000	10,00,000
Single premium on annuity policy10% of ₹ 1,00,00,000	10,00,000
Total value of supply	**55,00,000**

16. Computation of GST liability of Aviant Ltd.

Particulars	**(₹)**
Price of machine [Note 1]	40,00,000
Add: Handling and loading charges [Note 2]	10,000
Installation and commissioning charges [Note 3]	1,00,000
Transportation cost [Note 4]	Nil
Price linked subsidy from Diligent Ltd. [Note 5]	2,00,000
Total price of the machine	43,10,000
Less: 2% cash discount on price of machinery = ₹ 40,00,000 × 2% [Note 6]	(80,000)
Taxable value of supply	42,30,000
Tax liability for the month of August [Note 10]	
IGST @ 12% [Note 7 and Note 8] – **[A]**	5,07,600
Tax liability for the month of September [Note 10]	
Interest collected @ 2% on ₹ 41,10,000 [Note 9]	82,200
Add: Cash discount recovered [Note 9]	80,000
Value of interest and cash discount inclusive of tax	1,62,200
IGST = (₹1,62,200/112) x 12 - **[B]**	17,379
Total IGST payable on the machinery [A] + [B]	**5,24,979**

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Notes:

(1) As per section 15(1), the value of a supply is the transaction value i.e., the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) All incidental expenses charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c).

(3) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c).

(4) Transportation cost has not been included in the value of supply of the machinery as it is a separate service contract between the customer and the third-party service provider. The customer pays the freight directly to the service provider.

The supplier (Aviant Ltd), in this case, merely arranges for the transport and does not provide the transport service on its own account. Therefore, there will be no impact from valuation point of view on transport expenses incurred for supply of machinery as the supplier is not the party to such supply of services.

(5) Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply in terms of section 15(2)(e).

(6) Cash discount was deducted by Aviant Ltd. upfront at the time of supply on 1st August, and hence, the same is excluded from the value of supply as it did not form part of the transaction value.

(7) In the given case-

- the location of the supplier is in Noida (UP); and
- the place of supply of machinery is the place of installation of the machinery i.e., Gurugram (Haryana) in terms of section 10(1)(d) of the IGST Act, 2017.

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Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

(8) The given supply is a composite supply involving supply of goods (machinery) **and** services (handling and loading and installation and commissioning) where the principal supply is the supply of goods.

As per section 8(a), a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (machinery) has been considered.

(9) Interest for the delayed payment (which excludes subsidy related amount of Rs 2,00,000 as the same was not recoverable from the recipient) of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d). Further, cash discount recovered will also be includible in the value of supply as now the transaction value i.e., the price actually paid for the machinery is devoid of any discount.

The cash discount recovered and interest respectively are inclusive of tax. Thus, tax payable thereon has to be computed by making back calculations in terms of rule 35.

(10) Invoice for the supply has been issued on 29th August. Thus, the time of supply of goods is 29th August in terms of section 12(1)(a).

As per section 12(6), the time of supply in case of addition in value by way of interest, late fee, penalty etc. for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of supply of interest received and cash discount recovered on account of delayed payment of consideration is 30th September, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.

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Final Course

Study Material

(Modules 1 to 4)

Paper 5

Indirect Tax Laws

Part – I: Goods and Services Tax

Module – 2

(Relevant for May 2026, September 2026 and January 2027 examinations)

BOARD OF STUDIES

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Basic draft of this publication was prepared by CA. (Dr.) Rashmi Goel.

Edition	:	September, 2025
Committee/Department	:	Board of Studies (Academic)
E-mail	:	bosnoida@icai.in
Website	:	www.icai.org
Price	:	₹ /- (For All Modules)
ISBN No.	:	978-93-48313-44-7
Published by	:	The Publication & CDS Directorate on behalf of The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi 110 002 (India)
Printed by	:	

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CHAPTER 7

INPUT TAX CREDIT

The section numbers referred to in the Chapter pertain to CGST Act and rule numbers referred to in the Chapter pertain to CGST Rules, unless otherwise specified. For the sake of brevity, input tax credit has been referred to as ITC in this Chapter. Examples/Illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- describe what are inputs, input services, capital goods and other relevant terms in relation to ITC
- explain the various conditions, timelines and restrictions for taking ITC on goods and services in general and in special circumstances
- identify the items on which ITC is available as also the blocked items on which ITC is not available
- explain the concept relating to availing of proportionate ITC when common inputs or input service or capital goods are used or intended to be used for exempted and taxable supplies or business and non-business activities
- comprehend the concept of an input service distributor and the manner of distribution of credit by him
- describe the manner of recovery of credit distributed in excess
- comprehend, analyse and apply all the above provisions as also the provisions relating to utilization of ITC in problem solving
- compute the GST liability of a registered person.

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1. INTRODUCTION

In earlier indirect tax regime, the credit mechanism for indirect taxes levied by the Union Government, (central excise duty and service tax) was governed by the CENVAT Credit Rules, 2004; and the credit mechanism for State-level VAT on sale of goods was governed by the States under their respective VAT laws. The VAT legislations allowed ITC of VAT on inputs and capital goods in transactions within the State, but not on inputs and capital goods coming in the State from outside the State, on which central sales tax was paid. CENVAT Credit Rules, 2004 allowed availing and utilizing credit of duty/tax paid on both goods (capital goods and inputs) and services by the manufacturers and the service providers across the country.

The credit across goods and services was integrated vide the CENVAT Credit Rules, 2004 in the year 2004 to mitigate the cascading effects of central levies namely, central excise duty and service tax. However, the credit chain remained fragmented on account of State-Level VAT as the credit of central taxes could not be set off against a State levy and *vice versa*. The chain further got distorted as ITC was not available on inter-State purchases. This resulted in cascading of taxes leading to increase in costs of goods and services.

The GST regime promises seamless credit on goods and services across the entire supply chain with some exceptions like supplies charged to tax under composition scheme, blocked credits and supply of exempted goods and/or services. ITC is considered to be the lifeline of the GST regime. In fact, it is the provisions of ITC which essentially make GST - a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

Chapter V of the CGST Act [Sections 16 to 21] & Chapter V: Input Tax Credit of the CGST Rules [Rules 36-45] prescribes the provisions relating to ITC.

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Further, section 41 contains provisions for availment of ITC, sections 49(5), 49A, 49B and rule 88A together prescribe the sequence of utilisation of ITC and rules 86A and 86B stipulate the conditions of use of amount available in electronic credit ledger and restrictions on use of amount available in electronic credit ledger. State GST laws also prescribe identical provisions in relation to ITC. First the statutory provisions of these sections together with the relevant rules have been extracted followed by their analysis[1].

Provisions of ITC under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Scheme of ITC - At a Glance

Given below are the salient features of the scheme of ITC. The scheme has been discussed in detail in the ensuing pages of this Chapter.

- The scheme is designed to avoid cascading effect of taxes and make GST a destination-based tax.
- Broadly, ITC is available on all inputs, input services and capital goods used for purposes of business by a taxable person. The exception is 'blocked credit', where ITC is not available even when these goods or services are used for the purposes of business.
- ITC is used for payment of tax on taxable output supply to avoid cascading effect of taxes.
- GST law does not require 'one to one' co-relation between inputs/input services and final products/services. Any eligible ITC can be used for payment of tax on any taxable output supply.
- IGST is another core aspect of GST. It is a transitory tax to enable transfer of ITC when goods or services move from one State to another. This is a unique feature of Indian GST.

[1] *The provisions of section 19 relating to taking ITC on inputs and capital goods sent for job work have been discussed in Chapter 16: Job Work in Module 3 of this Study Material.*

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- Since ITC can be availed & utilized for payment of tax on taxable output supply, as a natural corollary, ITC cannot be availed in respect of exempt output supply on which tax is not payable.
- The exception to the above principle is 'zero rated supply', i.e. exports or supplies to a special economic zone (SEZ) developer/unit for authorised operations, where ITC is available even if no tax is payable on output supply as zero-rated supplies are not exempt supplies. Such ITC can be utilized either for making supplies by paying tax or refund of the unutilized ITC can be obtained. This simple mechanism is used to make exports and supplies to SEZ completely tax free.
- If a taxable person is making both taxable and exempt supply, he is entitled to avail full credit of ITC in respect of inputs, input services and capital goods exclusively used for taxable supply and no credit at all can be availed for inputs, input services and capital goods exclusively used for exempt supply.
- If common inputs, input services and capital goods are used for taxable as well as exempt supply, only proportionate ITC attributable to the taxable supply is available. The common ITC is apportioned in the ratio of value of taxable supply and exempt supply. Elaborate provisions have been made in the GST law to prescribe the manner of calculation of proportionate ITC.
- ITC can be availed on inputs and capital goods sent for job work; ITC is available even if the inputs and capital goods are sent directly to the job worker without being first brought to the place of business of the supplier.[2]
- Input services received at head office or branch offices are ultimately indirectly used for supplies made from manufacturing or trading or business premises. ITC of such input services can be availed through mechanism of 'input service distributor'.

Before proceeding to understand the statutory provisions relating to ITC, let us first go through few relevant definitions.

[2] *The provisions relating to taking ITC on inputs and capital goods sent for job work have been discussed in Chapter 16: Job Work in Module 3 of this Study Material.*

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2. RELEVANT DEFINITIONS

- **Agent** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

- **Business** includes

  (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

  (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

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

  (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

  (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

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

  (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

  (h) activities of a race club including by way of totalisator or a licence to book maker or activities of a licenced 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 [Section 2(17)].

- **Capital goods** means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business [Section 2(19)].

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- **Conveyance** includes a vessel, an aircraft and a vehicle [Section 2(34)].
- **Exempt supply** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and includes non-taxable supply [Section 2(47)].
- **Input** means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business [Section 2(59)].
- **Input service** means any service used or intended to be used by a supplier in the course or furtherance of business [Section 2(60)].
- **Input service distributor** means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office [Section 2(61)].
- **Input tax** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

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

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

  (c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the IGST Act;

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

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

  but does not include the tax paid under the composition levy [Section 2(62)].

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- **Input tax credit** means the credit of input tax [Section 2(63)].
- **Invoice or tax invoice** means the tax invoice referred to in section 31 [Section 2(66)].
- **Inward supply** in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration [Section 2(67)].
- **Motor vehicle** shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 [Section 2(76)].

  Motor vehicle or vehicle under the Motor Vehicles Act, 1988 means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 cubic centimetres. [Section 2(28) of Motor Vehicles Act, 1988].
- **Non-resident taxable person** means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India [Section 2(77)].
- **Output tax** in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis [Section 2(82)].
- **Outward supply** in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business [Section 2(83)].
- **Place of business** includes—

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

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- a place where a taxable person maintains his books of account; or
- a place where a taxable person is engaged in business through an agent, by whatever name called [Section 2(85)].

❖ **Quarter** shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year [Section 2(92)].

❖ **Recipient** of supply of goods or services or both, means—

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

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

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

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].`

❖ **Registered person** means a person who is registered under section 25 of CGST Act but does not include a person having a Unique Identity Number [Section 2(94)]

❖ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied:

Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or

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money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims [Section 2(105)].

- **Taxable person** means a person who is registered or liable to be registered under section 22 or section 24 [Section 2(107)].
- **Taxable supply** means a supply of goods or services or both which is leviable to tax under CGST Act [Section 2(108)].
- **Turnover in State or turnover in Union territory** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess [Section 2(112)].
- **Works contract** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119)].
- **Zero-rated supply** means any of the following supplies of goods or services or both, namely:––

  (a) export of goods or services or both; or

  (b) supply of goods or services or both for authorised operations to a Special Economic Zone (SEZ) developer or a Special Economic Zone unit [Section 16(1) of the IGST Act].

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3. ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT [SECTION 16]

	STATUTORY PROVISIONS	
Section 16	***Eligibility and conditions for taking input tax credit***	
Sub-section	***Clause***	***Particulars***
(1)	*Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*	
(2)	*Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,–*	
	(a)	*he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
	(aa)	*the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;*
	(b)	*he has received the goods or services or both.*
		Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services–

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		(i)	*where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*
		(ii)	*where the services are provided by the supplier to any person on the direction of and on account of such registered person.*
	(ba)	*the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;*	
	(c)	*subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and*	
	(d)	*he has furnished the return under section 39:*	
	Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:		
	Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under section 50, in such manner as may be prescribed:		
	Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.		

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(3)	*Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.*	
(4)	*A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.*	
(6)	*Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,–*	
	(i)	*filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or*
	(ii)	*for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration,*
	whichever is later.	
Section 41	***Availment of input tax credit***	
(1)	*Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.*	

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(2)	*The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed.* *Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.*

Chapter V: Input Tax Credit of the CGST Rules		
Rule 36	***Documentary requirements and conditions for claiming input tax credit***	
Sub-rule	***Clause***	***Particulars***
(1)	*The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:-*	
	(a)	*an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;*
	(b)	*an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;*
	(c)	*a debit note issued by a supplier in accordance with the provisions of section 34;*
	(d)	*a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;*
	(e)	*an input service distributor invoice or input service distributor credit note or any document issued by an input service distributor in accordance with the provisions of sub-rule (1) of rule 54.*

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(2)		*Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document.*
		Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.
(3)		*No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts under section 74*[3].
(4)		*No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-*
	(a)	*the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1, as amended in FORM GSTR-1A if any, or using the invoice furnishing facility; and*
	(b)	*the details of <u>input tax credit in respect of</u> such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.*
Rule 37		***Reversal of input tax credit in the case of non-payment of consideration***
Sub-rule		***Particulars***
(1)		*A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to*

[3] *Section 74 contains the provisions for 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, pertaining to the period upto financial year 2023-24.*

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	the supplier thereof, the amount towards the value of such supply whether wholly or partly, along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay or reverse an amount equal to the input tax credit availed in respect of such supply, proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice.
	Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.
	Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.
(2)	*Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).*
(4)	*The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.*
Rule 37A	***Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof***
	Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1, as amended in FORM GSTR-1A if any, or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has

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	not been furnished by such supplier till the 30th day of September, following the end of the financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of the financial year.
	Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said registered person along with interest thereon under section 50.
	Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

ANALYSIS

(i) Eligibility for taking ITC [Section 16(1)]

(a) Registration under GST

Every registered person shall be entitled to ITC of GST charged on inward supply *[See definition of inward supply]* of goods and / or services. This is subject to the provisions relating to use of ITC under section 49 and the conditions and restrictions in the rules. *[Section 49 prescribes provisions relating to payment of tax, interest, penalty & other amounts. The same has been discussed in detail in Chapter 11: Payment of Tax in this Module of the Study Material. Relevant portion is discussed in this Chapter subsequently.]*

(b) Goods/services to be used for business purposes

ITC of GST will be available on goods and/or services which are used or intended to be used in the course or furtherance of the business *[See definition of business]*. The scope of the definition of 'business' is very

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wide. It is also an inclusive definition. The relation of inputs and input services with business can be direct or indirect.

The "intention to use" the goods and/or services in the course or furtherance of business would also suffice for availing ITC on such goods and/or services. However, if finally, the input goods or services are not utilised for intended purpose, ITC is disallowed, as provided in section 17(5) of CGST Act. *[Section 17(5) specifies the inputs or input services in respect of which ITC is not allowed. Provisions of section 17(5) are discussed in the ensuing pages of this Chapter.]*

Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit. ITC will be credited to electronic credit ledger. *[Provisions relating to electronic credit ledger have been discussed in detail in Chapter 11: Payment of Tax in this Module of the Study Material.]*

Moulds and dies provided by the original equipment manufacturer (OEM) to component manufacturer on FOC basis – when not considered as being in the course or furtherance of business?

Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on free on cost (FOC) basis does not constitute a supply as there is no consideration involved. Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of ITC availed on such moulds and dies by the OEM.

However, where the contract between OEM and component manufacturer is for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance

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of the former's business *[Circular No. 47/21/2018 GST dated 08.06.2018[4]]*.

(ii) Conditions for taking ITC [Section 16(2)]

This sub-section starts with a non-obstante clause and hence all the conditions specified therein must be fulfilled irrespective of fulfillment of any other conditions given under any other sub-section of section 16 for the purpose of taking of input tax credit. The registered person will be entitled to ITC on an inward supply only if **ALL** the following **six** conditions are fulfilled:

(a) Possession of tax paying document [Section 16(2)(a) read with rule 36]

ITC can be availed on the basis of any of the following documents:

(i) Invoice or revised invoice[5] issued by the supplier of goods and/or services

(ii) Invoice issued by the recipient receiving goods and/or services from unregistered supplier in case of reverse charge, subject to payment of tax

(iii) Debit note issued by the supplier

(iv) Bill of entry or similar document prescribed under the Customs Act[6]

(v) Document issued by input service distributor

The documents on the basis of which ITC is being taken should contain at least the following details:

- Amount of tax charged
- Description of goods or services

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[4] Circular No. 47/21/2018 GST dated 08.06.2018 also clarifies aspects relating to valuation of moulds and dies provided by the OEM to component manufacturer on FOC basis. The same are covered in Chapter 6: Value of Supply in Module 1 of this Study Material.

[5] Provisions relating to invoice/revised invoice have been discussed in detailed in Chapter 9: Tax Invoice: Credit and Debit Notes in this Module of the Study Material.

[6] Provisions relating to the Customs Act, 1962 have been discussed in Module 4 of this Study Material.

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- Total value of supply of goods and/or services
- GSTIN of the supplier and recipient
- Place of supply in case of inter-State supply

(b) Details of invoices/debit notes uploaded by the supplier in his GSTR-1 or using IFF and details communicated in Form GSTR-2B [Section 16(2)(aa) read with rule 36(4)]

ITC in respect of any supply of goods or services or both can be taken by a registered person only if **the details of the invoice/debit note in respect of said supply have been furnished by the supplier in the statement of outward supplies (Form GSTR-1, as amended in FORM GSTR-1A if any, or using IFF) and such details have been communicated to the recipient of such invoice/debit note** in Form GSTR-2B.

GSTR-1 is a monthly/quarterly statement containing details of outward supplies made by a registered supplier. In case where GSTR-1 is furnished quarterly under QRMP (Quarterly Return Monthly Payment) scheme, supplier can furnish such details for 1st two months of the quarter using invoice furnishing facility (IFF). This facility is provided to the taxpayer, to pass on the credit to their recipients.

Such details of outward supplies furnished by the supplier are communicated and made available electronically (auto populated) to the respective recipient(s) in GSTR- 2B. GSTR-2B is an auto-generated ITC statement for every registered person based on details furnished in GSTR-1/using IFF by the supplier[7].

[7] *The provisions relating to QRMP, filing of GSTR-1/IFF and GSTR-2B have been discussed in detail in Chapter 13: Returns in this Module of the Study Material.*

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GSTR-1A is a form wherein a registered person at his own option, amend or furnish additional details of outward supplies of goods and/or services after furnishing the details of outward supplies of goods and/or service in FORM GSTR-1 for a tax period but before filing of return in FORM GSTR-3B for the said tax period.

Thus, in respect of invoices/debit notes the details of which are not furnished by the suppliers in their GSTR-1s, as amended in Form GSTR-1A if any, or using IFF (and thus they are not visible in GSTR-2B of the recipient), ITC cannot be availed by such recipient.

ITC on such invoices/debit notes, not reflected in GSTR-2B of the current month, may be claimed by the taxpayer in any of the succeeding months when the details of said invoices/debit notes are furnished by the suppliers.

The above concept has been illustrated as follows:

ITC on invoices/debit notes which have been furnished by the suppliers in their GSTR-1s/using IFF and reflected in GSTR-2B of recipient	→	FULL ITC can be claimed on such invoices/debit notes, if all other conditions of availing ITC are fulfilled
ITC on invoice/debit note which have not been furnished by suppliers in their GSTR-1s/using IFF and thus, not reflected in GSTR-2B of recipient.	→	NO ITC can be claimed in respect of such invoices/debit notes.

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✪ ***Invoices on which ITC is not available under any of the provisions e.g., under section 17(5), are not to be considered for claiming ITC even though furnished by the suppliers.***

✪ ***On the other hand, full ITC can be availed in respect of IGST paid on imports, documents issued under reverse charge, credit received from ISD etc., which are outside the ambit of section 37(1).***

(1) Atlas Pvt. Ltd. is a manufacturer of taxable goods. It has received 50 invoices for inputs and input services from various suppliers during the month of September. Invoices involve ITC of ₹ 5 lakh. Suppliers have furnished in their GSTR-1s 40 invoices involving ITC of ₹ 3 lakh as on the due date of furnishing of GSTR-1s (which are not amended in GSTR-1A) and are reflected in GSTR-2B of Atlas Pvt. Ltd. ITC that can be claimed by Atlas Pvt. Ltd. in its GSTR-3B for the month of September is ₹ 3 lakh.

(c) Receipt of the goods and / or services [Section 16(2)(b)]

The registered person taking the ITC must have received the goods and / or services.

"Bill to Ship to" Model: Under this model, the goods are delivered to a third party - 'C' on the direction of the customer (registered person) – 'B' who purchases the goods from the vendor (supplier) – 'A'. In other words, 'A' bills to 'B' but ships the goods to 'C' on direction of 'B'. In effect, two supplies take place in this scenario viz., from 'A' to 'B' and from 'B' to 'C'. Thus, under this model, the customer (registered person) who receives such goods does not actually receive the said goods.

For such cases, by virtue of explanation to section 16(2)(b), it is deemed that the registered person (customer) has received the goods. In other words, goods delivered to another person on the direction of the registered person by way of transfer of documents of title or otherwise, either before or during the movement, are deemed to have been received by such registered person. So, ITC will be available to the

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registered person, on whose order the goods are delivered to a third person.

Similarly, services may also be provided to a third party by the service provider (supplier) on the direction of the service recipient (registered person). In this case also, though the service recipient (registered person) does not receive the service, by virtue of explanation to section 16(2)(b) it is deemed that the registered person (service recipient) has received the service. In other words, service provided to any person on the direction of and on account of the registered person, is deemed to have been received by such registered person. So, ITC will be available to the registered person, on whose direction the services are provided to a third person.

(2) A is a trader who places an order on B for a consignment of soda ash. A receives a buying order from C for the same quantity of soda ash. A instructs B to deliver the goods directly to C, and in turn A raises an invoice on C. Though the goods are not physically received at the premises of A, section 16(2)(b) allows ITC of such goods to A.

(3) The registered head office (New Delhi) of ABC Pvt. Ltd. enters into a contract with DEF Pvt. Ltd. of New Delhi for repair and maintenance of computers systems installed at its registered branch office in Bengaluru, Karnataka. DEF Pvt. Ltd. issues an invoice on ABC Pvt. Ltd., New Delhi for the services provided by it.

Though the actual services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office.

Clarification on availability of ITC in respect of goods delivered under ex-works contract

In automobile sector, the contract between the automobile dealers and the Original Equipment Manufacturers (OEMs) is generally an Ex-Works (EXW) contract, and as per the terms of the contract, the property in goods (i.e. vehicles) passes to the dealer at the factory gate of the OEM, when the goods are handed over to the transporter

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at the instance of the dealer, and the delivery on the part of the OEM is complete at his factory gate.

The transport may be arranged by the OEM on behalf of the dealer and where insurance is arranged, it may also be done on behalf of the dealer. Any claim in case of loss has to be lodged by the dealer.

The issue which arose for consideration was whether ITC can be availed by the dealer only after the vehicles are physically received by automobile dealers at his business premises or ITC can be availed on the date the vehicles are billed to him and handed over to the transporter by the OEM at his factory gate.

It has been clarified that in such a scenario, the property in the said goods can be considered to have been passed on to the dealer by the OEM upon handing over of the said goods to the transporter at his factory gate, meaning thereby that the goods can be considered to have been delivered to the registered person (the dealer), through the transporter, by the supplier (the OEM) at his factory gate and the supply of the said goods can be considered to have fructified at the factory gate of the OEM, even though the goods may be physically received by the registered person (the dealer) after the transit period.

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Accordingly, it is clarified that as per Explanation to section 16(2)(b), the registered person (the dealer) can be considered to have "received" the said goods at the time of such handing over of the goods by the supplier to the transporter, at his factory gate, for their onward transmission to the said registered person (the dealer).

The same principle is applicable in respect of supply of other goods also where the contract between the supplier and recipient is an EXW (Ex Works) contract, and as per terms of the contract, the goods are to be delivered by the supplier to the recipient, or to any other person (including a transporter) on behalf of the recipient, at his (supplier's) place of business and the property in the goods stands transferred to the recipient at the time of such handing over.

In such cases, the said goods can be construed to have been "received" by the said recipient at the time of handing over the said goods to the recipient or to the transporter, as the case may be, as per provisions of section 16(2)(b).

It is also mentioned that as per provisions of section 16(1) (discussed earlier), a registered person is entitled to ITC only in respect of supply of goods and/or services, which is used or intended to be used in the course or furtherance of business.

Thus, if the goods are found to have been diverted for non-business purposes at any stage, either before physically receiving the said goods at his business premises or subsequently, the registered person shall not be entitled to ITC on such goods in terms of section 16(1).

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Further, if at any time after "receiving" the goods, such goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples, the registered person would not be entitled to the ITC in respect of such goods as per provisions of section 17(5)(h) [Section 17(5) contains the provisions relating to Blocked credit and will be discussed subsequently in this chapter]*[8]*.

(d) Details of ITC in respect of the said supply communicated to the registered person under section 38 not restricted [Section 16(2)(ba)]

Section 38 stipulates that the details of outward supplies furnished by the registered suppliers in GSTR-1 (as amended in Form GSTR-1A if any)/using IFF and an auto-generated statement - GSTR-2B - containing the details of ITC is made available to the recipients of such supplies every month.

GSTR-2B contains the details of inward supplies (i) on which ITC is available to the recipient as well as (ii) on which ITC cannot be availed, whether wholly or partly, by the recipient. Accordingly, ITC will not be available in respect of inward supplies details of which have been furnished by a registered supplier:

- who is a new registrant. (Specified period from taking registration will be prescribed for this purpose.)
- who has defaulted in payment of tax for a prescribed period.
- whose output tax payable as per GSTR-1/IFF exceeds the output tax paid in GSTR-3B for a particular tax period by prescribed limit (Rule 88C).
- who has availed ITC of an amount that exceeds the credit that can be availed by him as per GSTR-2B during prescribed period and by prescribed limit.
- who has defaulted in discharging his tax liability in accordance with the provisions of section 49(12) read with rule 86B, i.e. who

[8] *Circular No. 241/35/2024 GST dated 31.12.2024*

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has discharged more tax liability from electronic credit ledger than prescribed under rule 86B[9].

- other specified classes of persons.

(e) Tax leviable on supply actually paid to Government [Section 16(2)(c)]

The supplier should have actually paid the tax charged on the goods and/or services, for which ITC is being taken, either in cash or by utilizing ITC, subject to the provisions of section 41.

Availment of self-assessed ITC [Section 41]

A registered person can avail the credit of eligible ITC as self-assessed in his return. Such amount shall be credited to his electronic credit ledger.

Reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof [Section 41 read with rule 37A]

(I) Reversal of ITC: If the tax payable corresponding to such ITC availed is not paid by the supplier to the Government, ITC so availed shall be reversed by the said person along with applicable interest.

A registered person (recipient) can avail ITC in GSTR-3B for a tax period in respect of such invoice/debit note, the details of which have been furnished by its supplier in the statement of outward supplies (in GSTR-1, as amended in Form GSTR-1A if any/using IFF).

However, if supplier does not furnish return in Form GSTR-3B for the tax period corresponding to the said statement of outward supplies till 30th September following the end of FY in which the ITC in respect of such invoice/ debit note has been availed; the said amount of ITC shall be reversed by the said recipient, while

[9] *Rule 86B provides that the registered person shall not utilise the amount available in electronic credit ledger to discharge his liability towards output tax in excess of 99% of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds ₹ 50 lakh subject to specified exceptions. It has been discussed subsequently in this chapter.*

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furnishing a return in GSTR-3B on or before 30th November following the end of such FY during which such ITC has been availed.

However, where the said amount of ITC is not so reversed by recipient, such amount shall be payable by the said person along with interest thereon under section 50.

(II) Re-availment of reversed ITC: Where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him.

Thus, where the said supplier subsequently furnishes the return in GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in GSTR-3B for a tax period thereafter.

(4) Jhamku, a registered supplier, supplies goods to Chamku valuing ₹ 10,000 on which he charged CGST and SGST of ₹ 900 each in the invoice raised in March, 2025. Jhamku uploaded the details of the said invoice in his GSTR-1 for the said month filed before the due date based on which Chamku availed the said ITC of ₹ 900 each towards CGST and SGST while filing his GSTR-3B for March, 2025 as the said ITC was also reflected in his GSTR-2B. However, Jhamku failed to furnish the corresponding GSTR-3B (for the month of March, 2025) upto 30th September, 2025.

Accordingly, while filing GSTR-3B for the month of October, 2025 on 20th November, 2025, Chamku reversed an amount of ITC earlier availed by him. Subsequently, suppose if Jhamku files GSTR-3B on 20th December, 2025 and pays the said amount of ₹ 900 each towards CGST and SGST alongwith interest, Jhamku can now re-avail the said input tax credit of ₹ 900 towards CGST and SGST which he has reversed earlier.

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(f) Filing of return [Section 16(2)(d)]

The registered person taking the ITC must have filed his return in GSTR-3B under section 39. Thus, a taxpayer should file GSTR-3B to avail ITC on eligible inward supplies.

(iii) Goods received in lots: ITC available only on receipt of last lot [First proviso to section 16(2)]

In case the goods covered under an invoice are not received in a single consignment but are received in lots / instalments, ITC can be taken only upon receipt of the last lot / instalment.

(5) XYZ enters into a contract with ABC for supply of 10 MT of a chemical for ₹ 1,18,000 (inclusive of GST of ₹ 18,000) in the month of August. The chemical is to be delivered in lots over a period of three months. ABC raises the invoice for the entire amount in August and XYZ also makes the payment in the same month but the supply is completed in November.

Though XYZ paid the full tax as early as August, it can take the ITC of the same only on receipt of the last lot of the chemical in the month of November.

(iv) Payment for the invoice to be made within 180 days [Second proviso to section 16(2) read with rule 37]

The registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice [Second proviso to section 16(2)].

However, where a registered person, who has availed of ITC on any inward supply fails to pay to the supplier thereof, the amount towards the value of such supply, whether wholly or partly, along with the tax payable thereon, within 180 days from the date of issue of invoice by supplier, **shall pay or reverse an amount equal to the ITC availed in respect of such supply, proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in Form GSTR-3B for the tax period** immediately following the period of 180 days from the date of the issue of the invoice.

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Exceptions

This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

(a) Supplies on which tax is payable under reverse charge

(b) Deemed supplies without consideration – Schedule I

(c) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply as per section 15(2)(b).

Under situations given in points (b) & (c), the value of supply is deemed to have been paid.

(6) Due to a quality dispute, PZP Ltd withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by PZP on the invoice needs to be paid / reversed along with interest in GSTR-3B furnished for the relevant month after completion of 180 days. Only after the vendor rectified the machine and PZP released the payment, could PZP take the credit again.

(v) If depreciation claimed on tax component, ITC not allowed [Section 16(3)]

If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed. Thus, in respect of the tax paid on such items, dual benefit cannot be claimed under Income-tax Act, 1961 and GST law simultaneously. In other words, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST law.

(7) A registered supplier purchases machinery for business purpose. The value of the machinery is ₹ 10 lakh and GST paid thereon is ₹ 1.80 lakh. ITC of ₹ 1.80 lakh cannot be availed by the supplier if he has claimed depreciation on such amount under income-tax law.

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(vi) Time limit for availing ITC: 30th November of succeeding financial year or date of filing of relevant annual return, whichever is earlier [Section 16(4)]

ITC on invoices pertaining to a financial year or debit notes issued in a financial year can be availed any time till **30th November** of the succeeding **financial year** or the date of filing of the relevant annual return, whichever is earlier.

Here, in case of debit notes, the date of issuance of debit note and not the date of underlying invoice is relevant to determine the relevant financial year[10].

Clarification on time limit under section 16(4)in respect of RCM supplies received from unregistered persons[11]

It is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) **the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f)**, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122[12].

(8) A debit note dated 07.07.2024 is issued in respect of the original invoice dated 16.03.2024. As the invoice pertains to F.Y. 2023- 24, the relevant financial year for availment of ITC in respect of the said invoice in terms of section 16(4) shall be FY 2023-24. However, as the debit note

[10] *Circular No. 160/16/2021 GST dated 20.09.2021*
[11] *Circular No. 211/5/2024 GST dated 26.06.2024*
[12] *Section 122 has been discussed in detail in Chapter-21 of Module-3 of the Study material.*

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has been issued in FY 2024-25, the relevant financial year for availment of ITC in respect of the said debit note shall be FY 2024-25 in terms of section 16(4).

(9) Hercules Machinery delivered a machine to XYZ, a monthly return filer under GST, in the month of January under Invoice no. 49 dated 28th January 2025 for ₹ 4,15,000 plus GST and undertook trial runs and calibration of the machine as per the requirements of XYZ. The amount chargeable for the post-delivery activities was covered in a debit note raised in the month of April 2025 for ₹ 50,000 plus GST. XYZ did not file its annual return for FY 2024-25 till the end of November, 2025.

The time-limit to avail ITC in respect of tax paid on supply for Invoice No. 49 would be 30th November, 2025.

Since the debit note is received in the next financial year, the time limit for taking ITC available on ₹ 50,000 is 30th November 2026, [earlier of the date of filing the annual return for the preceding financial year or 30th of November of the succeeding year.

Exception

The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

(vii) Time limit for taking ITC in case of revoked registration cancellation [Section 16(6)]

In case where registration of a taxpayer is cancelled and subsequently, it is revoked, return for the period from date of cancellation/ effective date of cancellation till the date of revocation of cancellation cannot be filed on the portal by the taxpayers till their cancellation of registration is revoked. In such cases, where the recipient has not claimed the ITC in respect of any invoice/debit note pertaining to that financial year and in the meantime, time-limit stipulated in section 16(4) lapses, he would not be able to claim ITC on the said invoice/debit note.

Consequently, relaxation has been given and the time limit to avail ITC under section 16(4) in respect of any invoice/debit note, is extended till the date of filing return in cases where the returns for the period from date of cancellation of registration/effective date of cancellation of registration till

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the date of revocation of cancellation of registration are filed within 30 days of revocation of cancellation of registration, subject to the condition that the time limit to avail ITC in respect of the said invoice or the debit note under section 16(4) had not already expired on the date of cancellation of registration.

(viii) Restriction of ITC in proportion of (i) taxable supplies (ii) business purposes [Sub-sections (1) and (2) of section 17]

ITC is restricted in proportion of the use of the goods and/or services (i) in the taxable and / or zero-rated supplies (ii) for business purposes. This is elaborated in heading (4) below.

(ix) ITC not allowed on certain supplies [Section 17(5)]

ITC has been blocked for specified goods and services. This is elaborated in heading (4) below.

4. APPORTIONMENT OF CREDIT & BLOCKED CREDITS [SECTION 17]

	STATUTORY PROVISIONS	
Section 17	***Apportionment of credit and blocked credits***	
Sub-section	***Clause***	***Particulars***
(1)	*Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*	
(2)	*Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the*	

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	input tax as is attributable to the said taxable supplies including zero-rated supplies.
(3)	*The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*
	Explanation — For the purposes of this sub-section, the expression ''value of exempt supply'' shall not include the value of activities or transactions specified in Schedule III, except: *(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and* *(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.*
(4)	*A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:*
	Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:
	Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.
(5)	*Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—*

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	(a)	*motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—*		
		(A)	*further supply of such motor vehicles; or*	
		(B)	*transportation of passengers; or*	
		(C)	*imparting training on driving such motor vehicles;*	
	(aa)	*vessels and aircraft except when they are used—*		
		(i)	*for making the following taxable supplies, namely:—*	
			(A)	*further supply of such vessels or aircraft; or*
			(B)	*transportation of passengers; or*
			(C)	*imparting training on navigating such vessels; or*
			(D)	*imparting training on flying such aircraft;*
		(ii)	*for transportation of goods;*	
	(ab)	*the following supply of goods or services or both:—*		
		services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):		
		Provided that the input tax credit in respect of such services shall be available—		
		(i)	*where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;*	

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		(ii)	*where received by a taxable person engaged—*	
			(I)	*in the manufacture of such motor vehicles, vessels or aircraft; or*
			(II)	*in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;*
	(b)	*the following supply of goods or services or both—*		
		(i)	*food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:*	
			Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;	
		(ii)	*membership of a club, health and fitness centre; and*	
		(iii)	*travel benefits extended to employees on vacation such as leave or home travel concession:*	
			Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide	

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		the same to its employees under any law for the time being in force[13].
	(c)	*works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*
	(d)	*goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business*
		Explanation.––For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property
	(e)	*goods or services or both on which tax has been paid under section 10;*
	(f)	*goods or services or both received by a non-resident taxable person except on goods imported by him;*
	(fa)	*goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;*
	(g)	*goods or services or both used for personal consumption;*
	(h)	*goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and*

[13] *Circular No. 172/04/2022 GST dated 06.07.2022 clarifies that this proviso is applicable to the whole of section 17(5)(b).*

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	(i)	*any tax paid in accordance with the provisions of section 74,* ***in respect of any period up to Financial Year 2023-24.***
(6)	*The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.*	
	Explanation.— For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—	
	(i)	*land, building or any other civil structures;*
	(ii)	*telecommunication towers; and*
	(iii)	*pipelines laid outside the factory premises.*
Chapter V: Input Tax Credit of the CGST Rules		
Rule 38	***Claim of credit by a banking company or a financial institution***	
	A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely,-	
	(a)	*the said company or institution shall not avail the credit of,-*
		(i) *the tax paid on inputs and input services that are used for non-business purposes; and*

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		(ii)	*the credit attributable to the supplies specified in sub-section (5) of section 17;*
	(b)		*the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);*
	(c)		*fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and the balance amount of input tax credit shall be reversed in Form GSTR-3B;*
Rule 42	***Manner of determination of input tax credit in respect of inputs or input services and reversal thereof***		
Sub-rule	***Clause***	***Particulars***	
(1)	*The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-*		
	(a)		*the total input tax involved on inputs and input services in a tax period, be denoted as 'T';*
	(b)		*the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T_1';*
	(c)		*the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T_2';*

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	(d)	*the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T_3';*
	(e)	*the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C_1' and calculated as-* $$C_1 = T - (T_1+T_2+T_3);$$
	(f)	*the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T_4';*
	(g)	*'T_1', 'T_2', 'T_3' and 'T_4' shall be determined and declared by the registered person at summary level in* ***FORM GSTR-3B;***
	(h)	*input tax credit left after attribution of input tax credit under clause (f) shall be called common credit, be denoted as 'C_2' and calculated as-* $$C_2 = C_1 - T_4;$$
	(i)	*the amount of input tax credit attributable towards exempt supplies, be denoted as 'D_1' and calculated as-* $$D_1 = (E \div F) \times C_2$$ *where,* *'E' is the aggregate value of exempt supplies during the tax period, and* *'F' is the total turnover in the State of the registered person during the tax period:*
		Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are

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		available, previous to the month during which the said value of 'E/F' is to be calculated;
		Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;
	(j)	*the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D_2', and shall be equal to five per cent. of C_2; and*
	(k)	*the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C_3', where,-* $$C_3 = C_2 - (D_1+D_2);$$
	(l)	*the amount 'C_3', 'D_1' and 'D_2' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in* ***FORM GSTR-3B*** *or through* ***FORM GST DRC-03;***
	(m)	*the amount equal to aggregate of 'D_1' and 'D_2' shall be reversed by the registered person in* ***FORM GSTR-3B*** *or through* ***FORM GST DRC-03****:*
	Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T_1' and 'T_2' respectively, and the remaining	

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	amount of credit on such inputs or input services shall be included in 'T_4'.	
(2)	*The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and,-*	
	(a)	*where the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2', such excess shall be reversed by the registered person in* ***FORM GSTR-3B*** *or through* ***FORM GST DRC-03*** *in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or*
	(b)	*where the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.*
Rule 43	***Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases***	
Sub-rule	***Clause***	***Particulars***
(1)	*Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used*	

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	for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-	
	(a)	*the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in* ***FORM GSTR-3B*** *and shall not be credited to his electronic credit ledger;*
	(b)	*the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in* ***FORM GSTR-3B*** *and shall be credited to the electronic credit ledger;*
	(c)	*the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:*
		Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'T_{ie}', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed;

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		Provided further that the amount 'T_{ie}' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.
	(d)	*the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'T_c', shall be the common credit in respect of such capital goods:*
		Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'T_c';
	(e)	*the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as:-* $T_m = T_c \div 60$
		Explanation.- For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.
	(f)	*the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods.*
	(g)	*the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as:*

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		$T_e = (E \div F) \times T_r$[14] *where,* *'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period:*
		Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;
		Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;
	(h)	*the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.*
	(i)	*The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax and declared in* ***FORM GSTR-3B.***
Explanation (1):-For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:-		

[14] *Clause (f) of the rule which contained the provisions for computation of 'T_r' has been omitted vide Notification No. 16/2020 CT dated 23.03.2020. This has rendered the formula given in clause (g) otiose as the term 'T_r' is now nowhere defined in the amended rule.*

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(b)	*the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and*	
(d)	*the value of supply of Duty Credit Scrips specified in Notification No. 35/2017CT (R) dated 13.10.2017*	
Explanation 3:- For the purpose of rule 42 and this rule, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.		
Explanation.- For the purposes of this Chapter,-		
(1)	*the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;*	
(2)	*for determining the value of an exempt supply as referred to in sub-section (3) of section 17-*	
	(a)	*the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and*
	(b)	*the value of security shall be taken as one per cent. of the sale value of such security.*

ANALYSIS

Section 17 requires apportionment and concomitant restriction of ITC in two situations as also blocking of ITC on specified inward supplies.

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A. Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of the CGST Rules]

The fundamental principle of credit scheme under value added tax is that tax paid on inputs, input services and capital goods can be availed as credit only when the output is taxable. Thus, when tax is not payable on output, credit cannot be availed.

Accordingly, ITC under GST can be availed and utilised for payment of tax on output supply. Consequently, ITC cannot be availed when tax is not payable on output supply, i.e. on exempt supply. The only exception to the above principle is 'zero rated supply, where ITC is available even if no tax is payable on output supply as zero rated supply is not an exempted supply.

If a taxable person is making both taxable and exempt supply, he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for taxable supply and no credit at all for inputs, input services and capital goods exclusively used for exempt supply.

If common inputs, input services and capital goods are used for taxable as well as exempt supply, only proportionate ITC attributable to the taxable supply is available. The common ITC is apportioned in the ratio of value of taxable supply and exempt supply.

Also, in case goods and/or services are used by the taxable person partly for the business purposes and partly for non-business purposes, he is entitled to full credit of ITC in respect of inputs, input services and capital goods exclusively used for business purposes and no credit at all can be availed for goods and/or services exclusively used for non-business purposes.

If common inputs, input services and capital goods are used partly for business and partly for non-business purposes, only proportionate ITC attributable to the business purpose is available.

Elaborate provisions have been made in sub-sections (1) and (2) of section 17 and rules 42 and 43 for calculation of such proportionate ITC. Such provisions are discussed in detail in the ensuing pages.

The situations requiring apportionment are as follows:

(a) when the goods and / or services are used by the registered person partly for the purpose of business *[See the definition of business]* and partly for other purposes [Section 17(1)]; and

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(b) when the goods and / or services are used by the registered person partly for making taxable supplies including zero-rated supplies and partly for making exempt supplies *[See the definition of exempt supplies]* [Section 17(2)].

In both the above situations, full ITC on inward supplies cannot be taken; only proportionate ITC is allowed in such scenarios. Where goods and/or services are used partly for non-business purposes and partly for business purposes, ITC attributable only to business purposes can be taken by the registered person. Similarly, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies, ITC attributable to taxable supplies and zero rated supplies can be taken by the registered person.

Section 16(2) of the IGST Act specifies that ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply. Zero-rated supply is an expression that covers two kinds of supplies: (i) exports, and (ii) supplies for authorised operations to a SEZ unit or SEZ developer. Therefore, ITC is available on goods and / or services used for supplies made in the course of export or to an SEZ unit or SEZ developer for authorised operations.

(10) A registered person is in the business of manufacturing shoes. He gave 50 pairs of shoes to his friends free of cost. ITC on inputs and input services attributable to such 50 pair of shoes being used for non-business purposes will not be available.

(11) A registered person manufactures a product 'X' chargeable to 18% GST, a product 'Y' chargeable to NIL rate of tax and a product 'Z' which is exported without payment of tax under bond. All the three products are manufactured from common inputs and input services. ITC on inputs and input services attributable to product 'Y' being an exempt supply, will not be available.

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Clarification on availability of ITC in respect of warranty replacement of goods or its parts and/ repair services during warranty period[15]

As a commercial practice, the original equipment manufacturers/ suppliers offer warranty for the goods / services supplied by them to the customers. During the warranty period, goods /services are replaced to the customers (either by manufacturer itself or by the distributor on behalf of the manufacturer) and generally, no separate consideration is charged and received at the time of replacement from the customer.

Following issues have been clarified in respect of warranty replacement of goods or its parts and/ repair services provided during the warranty period:

SCENARIO 1

ORIGINAL EQUIPMENT MANUFACTURER OFFERING REPLACEMENT OF GOODS OR ITS PARTS/ REPAIR SERVICES UNDER WARRANTY TO THE CUSTOMER

Issue: Where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides rep lacement of goods or its parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, whether in such cases, the **manufacturer is required to reverse ITC**

[15] *Circular No. 195/07/2023 GST dated 17.07.2023 read with Circular No. 216/10/2024 GST dated 26.06.2024*

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in respect of such replacement of goods or its parts, as the case may be or supply of repair services as part of warranty, in respect of which **no additional consideration is charged from the customer?**

Clarification: The **value of original supply** of goods (provided along with warranty) by the manufacturer to the customer **includes the likely cost of replacement of goods or its parts and / or repair services to be incurred during the warranty period.**

- **No separate charges for replacement/ repair services-NOT AN EXEMPT SUPPLY**
- **Thus, NO REVERSAL**

Therefore, **these supplies cannot be considered as exempt supply** and accordingly, the manufacturer, who provides replacement of goods or its parts, as the case may be and/ or repair services to the customer during the warranty period, is **not required to reverse the ITC in respect of the said replacement of goods or its parts,** as the case may be or on the repair services provided.

SCENARIO 2

DISTRIBUTOR PROVIDES WARRANTY REPLACEMENT AND/OR REPAIR SERVICES TO THE CUSTOMER ON BEHALF OF THE MANUFACTURER

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ITC admissibility in case of the transaction/activitiy undertaken between Distributor and Manufacturer

Issue 1: Where the distributor provides replacement of GOODS OR ITS PARTS to the customer as part of warranty on behalf of the manufacturer, whether distributor is required to reverse the ITC in case of such replacement?

Clarification: There can be 4 instances as discussed below:-

In case where	In such a case
Distributor replaces the goods or its part(s) to the customer under warranty either by using his stock or by purchasing from a third party and **charges the consideration for the goods or its part(s) so replaced from the manufacturer, by issuance of a tax invoice,** for the said supply made by him to the manufacturer.	**GST would be payable** by the distributor on the said supply by him to the manufacturer and the **manufacturer would be entitled to avail the ITC of the same**, subject to other conditions of the CGST Act, 2017. In such case, **no reversal of ITC by the distributor is required** in respect of the same.
Distributor **raises a requisition to the manufacturer for the goods or its part(s)** to be replaced by him under warranty and the **manufacturer then provides the said goods or its part(s)** to the distributor for the purpose of such replacement to the customer as part of warranty **without separately charging any consideration** at the time of such replacement.	**No GST is payable** on such replacement of goods or its part(s) by the manufacturer. Further, **no reversal of ITC** is required to be made by the manufacturer in respect of the goods or its parts so replaced by the distributor under warranty.

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Distributor replaces the goods or its part(s) to the customer under warranty **out of the supply already received by him from the manufacturer and the manufacturer issues a credit note** in respect of the goods or its part(s) so replaced subject to provisions of section 34(2)[16].	Accordingly, **the tax liability may be adjusted** by the manufacturer subject to the condition that such distributor has reversed the ITC availed against such goods/parts.
Distributor replaces the goods or its parts to the customer under warranty by **using his stock** and then raises a requisition to the manufacturer for the goods or the parts. The manufacturer then provides the said goods or the parts to the distributor through a delivery challan, **without separately charging any consideration at the time of such replenishment.**	No GST is payable on such replenishment of goods or the parts. Further, **no reversal of ITC** is required to be made by the manufacturer in respect of the goods or its parts so replenished to the distributor.

Issue 2: Where the **distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration**, as part of warranty, on behalf of the manufacturer but **charges the manufacturer for such REPAIR SERVICES** either by way of issue of tax invoice or a debit note, whether ITC is available on such activity by the distributor?

[16] *Provisions of section 34(2) have been discussed in detail in Chapter 10: Tax invoice; Credit and Debit Notes in Module 2 of this Study Material.*

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Clarification: In such scenario, there is a **supply of service by the distributor** and the **manufacturer is the recipient** of such supply of repair services in accordance with the provisions of section 2(93)(a) of the CGST Act, 2017.

Distributor provides repair service, in addition to replacement of parts to customer without any consideration, as part of warranty and charges the manufacturer for such repair services.

Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the **manufacturer would be entitled to avail the ITC of the same**, subject to other conditions of the CGST Act, 2017.

(i) Methodology of apportionment of credit on inputs and input services and reversal thereof [Rule 42]

In many situations, the amount of input tax involved in exempt /non-business use is not easily discernible, as common goods and/or services are used for (i) making taxable supplies including zero rated supplies and exempt supplies and (ii) business and non-business purposes.

Rule 42 of the CGST Rules provides the methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit as follows:

Step 1 – Compute common credit

Total input tax involved on inputs & input services in a tax period	**T**
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	**(T_1)**
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	**(T_2)**

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Less: Input tax on inputs & input services which are ineligible for credit *[blocked credits- See discussion under point (B)]*	**(T_3)**
ITC credited to Electronic Credit Ledger	**C1**
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	**(T4)**
Common ITC available for apportionment	**C2**

- ✓ T1, T2, T3 and T4 will be determined and declared by the registered person at the summary level in GSTR-3B.
- ✓ Where ITC on inputs and input services used partly for non-business purposes and exempt supplies can be segregated at invoice level, the same will be added to T_1 and T_2 respectively and the balance credit will be added in T_4.
- ✓ The portion identified as pertaining to taxable supplies in C_2 will be allowed as ITC.

Example on how to arrive at the amount of common credit C_2

Making an assumption that Hawai slippers are exempted, take a case of Eezee Footwear, manufacturer of two varieties of Hawai slippers and five varieties of other sandals and shoes. Dyes are used in the manufacture of all footwears. However, bright pink is used only for one of the Hawai varieties, and black is used only for the sandals and shoes. Blue and yellow are used for all the varieties. Brown is used for non-business purposes.

In inward supplies during the month -

Input tax on brown dye: ₹ 10,000 (This is T_1)

Input tax on bright pink dye: ₹ 90,000. (This is T_2)

Input tax on black dye: ₹ 40,000. (This is T_4)

Input tax on blue dye: ₹ 1,00,000

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Input tax on yellow dye: ₹ 15,000

Total input tax: ₹ 2,55,000 (This is T)

Total input tax reduced by (T_1 + T_2 + T_4, i.e., by ₹ 1,40,000) is ₹ 1,15,000.

Amount of common credit (C_2) is ₹ 1,15,000. This has to be apportioned as given below in Step 2.

Step 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit

✓ Apportion C_2 into credit attributable to exempt supplies **D_1** as under:

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

Where

E = Aggregate value of exempt supplies during the tax period

F = Total turnover in the State during the tax period

Notes:

(i) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.

(ii) Here, exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier and supply of warehoused goods before clearance for home consumption. Thus, ITC attributable to such supplies will need to be reversed.*

**The value of supply of warehoused goods before clearance for home consumption shall include the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.*

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(iii) Here, exempt supplies exclude-

(b) supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.

(d) value of supply of Duty Credit Scrips specified in Notification No. 35/2017CT (R) dated 13.10.2017

Thus, ITC attributable to such supplies need not be reversed.

(iv) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, central sales tax and VAT.

(v) The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Presently, (i) central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas (ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and (iii) VAT/CST is leviable on intra-State/inter-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor. Petroleum crude, diesel, petrol, ATF, natural gas are presently not taxable under GST and alcoholic liquor is outside the ambit of GST. Thus, supply of both these products (petrol/petroleum products and alcoholic liquor) being non-taxable under GST, will be exempt supplies u/s 2(47) and taxes/duties (as mentioned above) leviable thereon will be excluded from the value thereof for the purpose of apportionment of credit.

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Example on how to apportion common credit into credit attributable to exempt supplies

Ezee Footwear, which manufactures two varieties of exempt Hawai slippers and five varieties of taxable sandals and shoes, has the following turnover in October and has ₹ 1,15,000 common credit that has to be apportioned:

Turnover of Hawai 1 plus Hawai 2: ₹ 3 crores (This is 'E')

Turnover of all varieties of taxable shoes and sandals: ₹ 2 crore

Total turnover of all footwear during the month: ₹ 5 crores (This is 'F')

No inputs/input services are used for non-business purposes.

(3,00,00,000 /5,00,00,000) x 1,15,000= ₹ 69,000 is the input tax that pertains to exempt supply (D_1).

✓ Compute credit attributable to non-business purposes D_2 as under

$$D_2 = 5\% \text{ of } C_2 \text{ (common credit)}$$

Step 3 – Compute eligible credits

Compute C_3 attributable to business purposes and taxable supplies including zero rated supplies as under:

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

Step 4 – Restrict ineligible credits

Reverse $D_1 + D_2$.

- Compute C_3 separately for ITC of CGST, SGST/ UTGST and IGST.
- Compute $\sum (D_1 + D_2)$ for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following financial year.

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- If $\sum (D_1 + D_2)$ > the amount already reversed every month, the differential amount has to be reversed in any month till September in the following financial year and interest rate @ 18% should be paid on such differential amount from 1st April of succeeding year till the date of payment.
- If the amount reversed every month > $\sum (D_1 + D_2)$, the additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year.

(ii) Methodology of apportionment of credit of capital goods and reversal thereof [Rule 43]

Rule 43 provides the methodology for apportionment of ITC on capital goods and reversal of ineligible credit as follows:

Step 1 - Determine common credit 'T_c' on capital goods as under:

(i) Identify input tax on capital goods used/ intended to be used exclusively for non-business purposes or making exempt supplies. Such amount will not be credited to electronic credit ledger [ECrL].

(ii) Identify input tax on capital goods used/ intended to be used exclusively for making taxable supplies including zero rated supplies and declare the same in GSTR-3B. Such amount will be credited to ECrL.

(iii) Identify input tax on capital goods not covered under (i) and (ii) above [i.e. the capital goods which are used/intended to be used commonly for making taxable and/or zero rated supplies as well as exempt supplies and/or non-business purposes] and denote the same as 'A'. Such amount (as reflected on the invoice) will be credited to ECrL. The useful life of such capital goods will be taken as 5 years from the date of invoice.

(iv) **Change from exclusive use for non-business purpose/exempt supplies to common use:** Where capital goods which were initially covered under (i) above get subsequently covered under

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(iii), credit input tax in respect of the same, denoted as 'A', in the ECrL.

Simultaneously, compute the ineligible credit attributable to the period during which such capital goods were used for non-business purpose/making exempt supplies @ 5% per quarter or part thereof and denote the same as 'T_{ie}'. Add such 'T_{ie}' to the output tax liability of the tax period in which credit on such capital goods is claimed.

(v) Add together the amounts of 'A' credited to ECrL in respect of common capital goods whose useful life remains during the tax period to arrive at common credit 'T_c'.

(vi) **Change from exclusive use for taxable including zero rated supplies to common use:** Where capital goods which were initially covered under (ii) above get subsequently covered under (iii), add input tax claimed in respect of the same to aggregate value of 'T_c'.

Step 2 - Determine common credit during the useful life of capital goods for a tax period as under and denote the same as 'T_m':

$$T_m = T_c \div 60$$

Step 3 - Apportion common credit attributable to exempt supplies as under:

$$T_e = (E \div F) \times T_r$$

Where

E = Aggregate value of exempt supplies made during the tax period

F = Total turnover in the State during the tax period

Notes:

(i) T_m is to be computed during the useful life of capital goods which is five years from the date of invoice.

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(ii) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.

(iii) Here, exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier and supply of warehoused goods before clearance for home consumption. Thus, ITC attributable to such supplies will need to be reversed.*

**The value of supply of warehoused goods before clearance for home consumption shall include the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.*

(iv) Here, exempt supplies exclude-

(b) supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.

(d) value of supply of Duty Credit Scrips specified in Notification No. 35/2017CT (R) dated 13.10.2017

Thus, ITC attributable to such supplies need not be reversed.

(v) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, central sales tax and 17VAT.

(vi) Amount of T_{ie} and T_e are to be computed separately for CGST, SGST/UTGST and IGST and declared in GSTR 3B.

(vii) The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

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Step 4: Restrict ineligible credit

Add T_e to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods concerned.

Clarification on the requirement of reversal of ITC in respect of the portion of the premium for life insurance policies which is not included in taxable value[17]

'Life insurance business' as per section 2(11) of the Insurance Act, 1938, includes policies or instruments that combine investment and insurance components. This covers unit-linked insurance policies and similar products, where both investment and life insurance risk coverage are provided by the insurer.

Further, exempt supply means nil-rated supplies, wholly exempt supplies under section 11, or under section 6 of the IGST Act, & includes non-taxable supplies. Further, non-taxable supply means a supply not leviable to tax under CGST Act/IGST Act.

The premium portion not includible in taxable value under Rule 32(4) is neither nil-rated nor wholly exempt from tax and also not a non-taxable supply; hence, same cannot be considered as pertaining to an exempt supply.

ITC reversal is required only for supplies used:-

(i) partly for business and partly for other purpose [Section 17(1)] or

(ii) partly for taxable supplies including zero rated supplies and partly for exempt supplies. [Section 17(2)]

It is clarified that the amount of the premium for taxable life insurance policies, not included in the taxable value under rule 32(4), cannot be considered as pertaining to non-taxable/exempt supply & therefore, no reversal of ITC is required as per provisions of Rule 42/43, read with section 17(1) & 17(2), in respect of the said amount.

Amount of life insurance premium not included in taxable value under rule 32(4)

No reversal of ITC required

[17] *Circular No.-214/8/2024-GST dated 26.06.2024*

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(iii) Optional method for banks etc. [Section 17(4) read with rule 38]

- As an alternative to the above method, a banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and the balance amount of input tax credit shall be reversed in Form GSTR-3B.
- Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned u/s section 17(5) [blocked credits] cannot be availed.
- The restriction of availing 50% ITC shall not apply to the tax paid on supplies procured from another registration within the same entity, i.e. 100% credit of such tax can be availed.
- The option once exercised cannot be changed during the remaining part of the financial year.

Interest is the main income of banks and NBFCs and the same is exempt from GST. Thus, if rule 42 and 43 are applied strictly, significant portion of ITC of banks and NBFCs will have to be reversed/added to output tax liability. Therefore, banks and NBFCs have been given the said option of availing 50% of eligible ITC to possibly encourage them as they are required to finance priority sectors, MSME, agriculture etc.

B. Blocked credits [Section 17(5)]

ITC of tax paid on almost every inputs, input services or capital goods used for supply of taxable goods and/or services is allowed under GST except a small list of items provided u/s 17(5). Thus, ITC on such items is not allowed even though the same may qualify as inputs, input services or capital goods and are used in the course or furtherance of business.

The blocked list of credit covers mainly items of personal consumption, inputs and input services use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes, etc.

The various goods and/or services on which credit is blocked are discussed hereunder:

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(i) Motor vehicles and other conveyances and related services (insurance, servicing and repair and maintenance)

Motor vehicles and conveyances have been defined in the CGST Act *[See definition under the heading Relevant Definitions]*. Motor vehicles exclude –

- vehicle running upon fixed rails
- special purpose vehicles for being used in a factory or any enclosed premises
- vehicle with less than 4 wheels fitted with engine capacity of upto 25cc – (Thus, railways, two/three wheelers with engine capacity of upto 25cc, bicycle etc. do not fall in the definition of motor vehicle.)

Broadly, ITC is blocked on motor vehicles, vessels and aircrafts used for passenger transportation with certain exceptions. Further, ITC is also blocked on certain services relating to motor vehicles, vessels and aircrafts namely, general insurance, servicing and repair and maintenance. The basic principle here is that the motor vehicles, aircrafts and vessels on which ITC is blocked, the ITC on services of insurance, servicing and repair and maintenance pertaining to such motor vehicles, vessels and aircrafts is also blocked.

The blocked credits relating to motor vehicles, vessels, aircrafts and related services are discussed hereunder:

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(i)	Motor vehicles for transportation of persons with seating capacity	Ineligible motor vehicles when used for any of the following eligible purposes -	❑ ITC on ineligible motor vehicles used for any purpose other

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	≤ 13 persons (including the driver) – Referred to as ineligible motor vehicle in this table	• making further taxable supply of such motor vehicles (e.g traders of motor vehicles); ***[Refer discussion on availability of ITC on demo vehicles given below this table.]*** • making taxable supply of transportation of passengers (e.g travel operator offering transportation services); • Making taxable supply of imparting training on driving such motor vehicles (e.g motor driving schools).	than the eligible purposes is not allowed. ❑ ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed. • ITC on motor vehicles other than ineligible motor vehicles (e.g. motor vehicle used for transportation of goods, dumpers, tippers etc.) used for any purpose is allowed.
(ii)	Vessels and aircrafts	Vessels and aircraft when used for any of the following eligible purposes- • making further taxable supply of such vessels or aircraft;	ITC on vessels and aircrafts used for any purpose other than the eligible purposes is not allowed.

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		• making taxable supply of transportation of passengers; • making taxable supply of imparting training on navigating such vessels; • making taxable supply of imparting training on flying such aircrafts; • transportation of goods.	
(iii)	General insurance, servicing, repair and maintenance relating to: • Ineligible motor vehicles • Vessels • Aircraft	• Such services relating to ineligible motor vehicles, vessels or aircraft when used for eligible purposes • Such services when received by- o Manufacturer of ineligible motor vehicles, vessels or aircraft; or o Supplier of general insurance services in respect of ineligible motor vehicles, vessels	• ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is not allowed. • ITC is allowed on services of general insurance, servicing, repair and maintenance relating to

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		or aircraft insured by him	motor vehicles, vessels or aircraft, ITC on which is allowed.
(iv)	Leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is not allowed	• Such services when used for making an outward taxable supply of the same category of services or as an element of a taxable composite or mixed supply • Such services when provided by an employer to its employees under a statutory obligation	• ITC on leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is allowed, is also allowed**. • ITC on such services is allowed in the case of sub-contracting, i.e. when such services are used by the taxpayer who is in the same line of business.

*****The term "leasing" referred in above table refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items.***

Accordingly, availment of ITC is not barred in case of leasing, other than leasing of motor vehicles, vessels and aircrafts[18].

[18] *Circular No. 172/04/2022 GST dated 06.07.2022*

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Clarification on ITC availability in respect of demo vehicles which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause(a) of section 17(5)[19]

The usage of the words "such motor vehicles" instead of "said motor vehicle", in sub-clause (A) of section 17(5)(a) implies that the intention of the lawmakers was not only to exclude from the blockage of ITC the motor vehicle which is itself further supplied, but also to exclude from the blockage of ITC the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles.

ITC availment on demo vehicles – Not BLOCKED

As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'.

Accordingly, ITC in respect of demo vehicles is not blocked under clause (a) of section 17(5) as it is excluded from such blockage in terms of sub-clause (A) of the said clause.

Following issues have also been clarified in respect of ITC availment on demo vehicles:-

Issue	Clarification
Where demo vehicles* are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, say for transportation	In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, ITC in respect of such motor vehicles would not be excluded from blockage in terms

[19] *Circular No. 231/25/2024 GST dated 10.09.2024*

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of its staff employees/ management etc.	of sub-clause (A) of section 17(5)(a).
Where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles. In such cases, the sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer. For providing facility of vehicle test drive to the potential customers of the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer. The dealer may sell the said demo vehicle to a customer after a specified time or kilometres as per agreement with the vehicle manufacturer on payment of applicable GST.	In such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles. Accordingly, in such cases, ITC in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of section 17(5)(a) and therefore, ITC on the same would not be available to the said dealer.

*Demo vehicles are motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver).

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(12) ITC on cars purchased by a manufacturing company for official use of its employees is blocked.

(13) ITC on cars purchased by a car dealer for sale to customers is allowed.

(14) ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed.

(15) ITC on cars purchased by a car driving school for imparting training on driving is allowed.

(16) ITC on buses (seating capacity for 24 persons) purchased by a company for transportation of its employees from their residence to office and back, is allowed.

(17) ITC on trucks purchased by a company for transportation of its finished goods is allowed.

(18) ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.

(19) ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed.

(20) ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.

(21) A business jet purchased for the official travel of the company's directors is blocked.

(22) ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.

(23) ITC on general insurance services taken on cars manufactured by a car manufacturing company is allowed.

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(ii) Food & beverages, outdoor catering, health services and other services

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(i)	• Food and beverages • Outdoor catering • Beauty treatment • Health services • Cosmetic and plastic surgery • Life insurance and health insurance	• Such goods and/or services when used by a registered person for making an outward taxable supply of the same category of goods and/or services or as an element of a taxable composite or mixed supply • Such goods and/or services when provided by an employer to its employees under a statutory obligation	• ITC on such goods and/or services is allowed in the case of sub-contracting, i.e. when such goods and/or services are used by the taxpayer who is in the same line of business, e.g. outdoor catering service availed by another outdoor caterer. • When such goods and/or services are provided by the employer to its employees without any statutory

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			obligation, ITC thereon is blocked.
(ii)	Membership of a club, health and fitness centre	Such services when provided by an employer to its employees under a statutory obligation	When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.
(iii)	Travel benefits extended to employees on vacation such as leave or home travel concession	Such services when provided by an employer to its employees under a statutory obligation	When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.

(24) A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked.

(25) AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co. from CD & Sons, is allowed.

(26) ITC on outdoor catering services availed by a garment exporter for a marketing event organised for its prospective customers, is blocked.

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(27) Outdoor catering service is availed by a company to run a free canteen in its factory for its employees. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.

(28) The Managing Director of a company has taken membership of a club, the fees for which is paid by the company. ITC on such service is blocked.

(29) A company avails services of a travel agency for organizing a free vacation for its top performing employees. ITC on such services is blocked.

(iii) Works contract services for construction of immovable property [Clause (c) of section 17(5)]

One major input service, ITC on which is blocked is input service relating to construction activity like construction of office building, factory building etc. (except in case of persons like builders, developers and contractors who are undertaking construction for others). However, ITC is available for routine construction related services like repairs, maintenance, renovation etc. of office and factory building. Thus, broadly, ITC of construction services is not available when the expenses are capitalised in the books of account. Here, it needs to be noted that capitalisation of an expense does not depend on whether the taxpayer intends to avail ITC, but on the basis of Accounting Standards and GAAP.

Works contract has been defined in the CGST Act *[See definition under the heading Relevant Definitions]*. Essentially works contract is a composite supply involving both goods and services. Under the erstwhile laws, definition of works contract included work in relation to both movable and immovable properties. However, under GST law, the ambit of works contract has been **confined only to immovable property**.

Meaning of immovable property

Immovable property has not been defined under the GST law. Therefore, we will have to look for the definition of immovable property in other laws. Section 3(26) of the General Clauses Act, 1897, defines the term immovable property to include land, benefits to arise out of land, and

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things attached to the earth, or permanently fastened to anything attached to the earth.

The term "attached to the earth" is defined in section 3 of the Transfer of Property Act, 1882 to mean:

(a) rooted in the earth, as in the case of trees and shrubs; [However, the term "immovable property" under the Transfer of Property Act does not cover standing timber, growing crops or grass.]

(b) embedded in the earth, as in the case of walls or buildings.

(c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

Under GST law, a composite supply of works contract is treated as supply of services in terms of para 6(a) of Schedule II to the CGST Act.

ITC on works contract services for construction of an immovable property is blocked **EXCEPT WHEN**

- It is an input service for further supply of works contract service (sub-contracting);

  [ITC on works contract services can be availed only by that taxpayer who is in the same line of business, i.e. only a works contractor can avail ITC on works contract services received by him.]

- Immovable property is plant and machinery

  [Plant and machinery affixed permanently to the earth constitutes an immovable property. However, ITC on works contract services used for construction of such plant and machinery is allowed as an exception.]

Meaning of construction

"Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Thus, if re-construction, renovation, additions or alterations or repairs are not capitalized, it would not tantamount to construction under GST law. Consequently, ITC on works contract services availed for such

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construction (which is not capitalized) whether for any immovable property or for any plant and machinery, would be allowed to all the recipients irrespective of their line of business.

Meaning of plant and machinery

"Plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural supports that are used for making outward supply of goods and/or services **and includes such foundation or structural support**

but excludes

land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Thus, ITC on works contract services availed for construction of eligible plant and machinery is allowed to the recipient irrespective of the line of business of such recipient and irrespective of whether expense is capitalized or not by the recipient.

For instance, ITC on works contract services for construction of machinery fixed to earth by a foundation, would be allowed. However, ITC on works contract services for construction of telecommunication tower(s), would be blocked.

ITC on works contract services for construction of immovable property is available only in the following three situations:

(i) When the works contract service is availed by a works contractor for being used in providing the works contract service.

(ii) For construction of eligible plant and machinery. In this case, ITC is allowed to all recipients irrespective of their line of business and whether expense capitalized or not.

(iii) When the value of works contract service is not capitalized. In this case, ITC is allowed to all recipients irrespective of their line of business.

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(30) ITC on works contracts services availed by a software company for construction of its office, is blocked.

(31) CD & Co., a works contractor of Noida, has been awarded a contract for construction of a commercial complex in Lucknow. The firm avails services of EF & Co., a local works contractor of Lucknow, for the construction of complex. ITC on such works contract services availed by CD & Co., is allowed.

(32) ITC on works contract services availed by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.

(33) ITC on works contract services availed by a manufacturing company for construction of pipelines to be laid outside its factory, is blocked.

(34) A consulting firm has availed services of a works contractor for repair of its office building. The company has booked such expenditure in its profit and loss account. ITC on such services is allowed.

(35) A telecommunication company has availed services of a works contractor for repair of its office building. The company has capitalized such expenditure. ITC on such services is blocked.

(iv) Self-construction of immovable property [Clause (d) of section 17(5)]

So now we know that ITC on works contract services availed by a taxpayer, other than a works contractor, for construction of immovable property (other than **plant and machinery**) is not available. But what happens if a taxpayer procures goods and services and constructs an immovable property, for being used in the course or furtherance of business, without availing services of a works contractor? Will ITC be allowed in such a case?

The answer is No. ITC is not allowed on goods and/or services received by a taxable person for construction of an immovable property (other than **plant or machinery**) **on his own account** even though such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an

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immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the immovable property being constructed is used in the course or furtherance of his business.

The discussion on terms, 'construction' for works contract services [Elaborated in point (iii) above] applies to construction on own account also.

ITC on goods and/or services used in construction of immovable property is available only in the following three situations:

(i) For construction of eligible plant or machinery

(ii) When the value of goods and/or services is not capitalized

(iii) When the construction is not on own account

(36) A company buys cement, tiles etc. and avails the services of an architect for construction of its office building. ITC on such goods and services is blocked.

(37) MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients. ITC on such goods and services is allowed to MN & Co.

(38) A company buys cement, tiles etc. and avails the services of an architect for renovation of its office building. The company has booked such expenditure in its profit and loss account. ITC on such goods and services is allowed.

Note: It is important to note here that the term used in clause (c) above is **"plant AND machinery"** whereas the term used in clause (d) above is **"plant OR machinery"**. The expression **"plant AND machinery"** used in clause (c) has been defined in explanation to section 17 while expression **"plant OR machinery"** used in clause (d) has not been defined under the CGST Act.

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This distinction was addressed in Supreme Court in the case of *Chief Commissioner of CGST v. Safari Retreats Pvt. Limited (2024) 23 Centax 62 (SC)* [20]. Further, in this case, the constitutional validity of clauses (c) and (d) of section 17(5) and section 16(4) was also challenged.

The Apex Court observed that the explanation to section 17 which defines "plant and machinery" seeks to define said expression used in Chapter V and Chapter VI. In Chapter VI, the expression "plant and machinery" appears at several places, but the expression "plant or machinery" is found only in section 17(5)(d). This implies that legislature did not intend to give the expression "plant or machinery" the same meaning as "plant and machinery" and thus, has made this distinction consciously. **Therefore, the Court held that the expression "plant and machinery" and "plant or machinery" cannot be given the same meaning.**

Consequently, in case of clause (c), if the construction is of "plant and machinery" as defined, the benefit of ITC will accrue. Similarly, under clause (d), if the construction is of a "plant or machinery", ITC will be available.

Further, while trying to analyse the meaning of the expression "plant or machinery", the Court observed that the expression "plant or machinery" has a different connotation. It can be either a plant or machinery. Section 17(5)(d) deals with the construction of an immovable property. The very fact that the expression "immovable property other than "plant or machinery" is used shows that there could be a plant that is an immovable property. As the word 'plant' has not been defined under the CGST Act or the rules framed thereunder, its ordinary meaning in commercial terms will have to be attached to it.

Thus, the Supreme Court held that the question as to **whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression "plant or machinery" is a factual question which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business.** If the construction of a building was essential for

[20] *The judgment of the Supreme Court in the case of Chief Commissioner of CGST v. Safari Retreats Pvt. Limited (2024) 23 Centax 62 (SC) is effectively overridden by the proposed amendment to section 17(5)(d) by the Finance Act, 2025. The same has not yet become effective.*

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carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant. Then, it is taken out of the exception carved out by clause (d) of section 17(5) to sub-section (1) of section 16.

Further, the **Court upheld the constitutional validity of clauses (c) and (d) of section 17(5) and section 16(4).**

Clarification on availability of ITC on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5)[21]

Issue: Whether ITC on the ducts and manholes used in network of optical fiber cables (OFCs) for providing telecommunication services is barred in terms of clauses (c) and (d) of section 17(5) read with Explanation to section 17?

Clarification: Ducts and manholes are basic components for the optical fiber cable (OFC) network used in providing telecommunication services. The OFC network is generally laid with the use of PVC ducts/sheaths in which OFCs are housed and service/connectivity manholes, which serve as nodes of the network, and are necessary for not only laying of optical fiber cable but also their upkeep and maintenance.

In view of the Explanation in section 17, it appears that ducts and manholes are covered under the definition of "plant and machinery" as they are used as part of the OFC network for making outward supply of transmission of telecommunication signals from one point to another.

Ducts & manhole used in network of OFCs —

- ***Covered under the definition of "plant and machinery"***
- ***ITC not restricted***

Moreover, ducts and manholes used in network of optical fiber cables (OFCs) have not been specifically excluded from the definition of "plant and machinery" in the explanation to section as they are neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.

[21] *Circular No. 219/13/2024 GST dated 26.06.2024*

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Accordingly, it is clarified that availment of input tax credit is not restricted in respect of such ducts and manhole used in network of optical fiber cables (OFCs) under clause (c)/(d) of section 17(5).

(v) Inward supplies charged to tax under composition levy [Clause (e) of section 17(5)]

A supplier registered under composition scheme cannot collect tax from its customers. Thus, such supplier issues bill of supply and not a tax invoice. A composition supplier pays a lumpsum tax at a specified rate on its quarterly turnover.

Tax paid on goods and/or services under composition scheme is not available as ITC for the recipient.

Since a composition supplier cannot collect any tax on its supplies, from the recipient of its supplies, it is obvious that no ITC can be availed in respect of such supplies by the recipients. Nevertheless, section 17(5)(e) specifically blocks the ITC on inward supplies received by a taxable person from a composition supplier.

(vi) Inward supplies received by a non-resident taxable person [Clause (f) of section 17(5)]

Non-resident taxable person has been defined in the CGST Act *[See the definition under the heading Relevant Definitions]*. Essentially, a non-resident taxable person has no fixed place of business in India but he sporadically supplies goods or services in India.

Tax paid on goods and/or services received by such non-resident taxable person, is not available as ITC. However, tax paid by him on **imported goods** is allowed as ITC.

Whereas ITC on goods imported by a non-resident taxable person is allowed, ITC on services imported by him is blocked.

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(vii) Inward supplies used/intended to be used for purpose of CSR [Clause (fa) of section 17(5)]

ITC shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility (CSR) referred to in section 135 of the Companies Act, 2013.

CSR is a strategy undertaken by companies to not just grow profits, but to take an active and positive social role in the world around them. Corporate social responsibility programs aim to give structure to a company's efforts to give back to the community, participate in philanthropic causes, and provide positive social value. Businesses increasingly turn to CSR to make a difference and build a positive brand around their company.

(39) ABC Manufacturing Pvt. Ltd. purchased and distributed 1,000 educational kits (including school bags, notebooks, and stationery) to a government school in a rural area as part of its CSR obligations under the Companies Act, 2013. It purchased school bags, notebooks, and stationery from XYZ Stationery Suppliers (registered under GST) by making total payment of ₹ 5,50,000(inclusive of GST amounting to ₹ 50,000). Since the ITC on goods/services used for fulfilling CSR obligations is blocked. Hence, ₹ 50,000 GST paid on the educational kits cannot be claimed as ITC by ABC Manufacturing Pvt. Ltd.

(viii) Inward supplies used for personal consumption [Clause (g) of section 17(5)]

One of the foremost conditions laid down in section 16 for availing ITC on goods and/or services is that such goods and/or services should be used in the course or furtherance of business. Further, where goods and/or services are used partly for the purpose of any business and

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partly for other purposes, section 17(1) restricts the credit to so much of the ITC as is attributable to business purposes.

Furthermore, section 17(5)(g) also specifically blocks the ITC on goods and/or service used for personal consumption.

The term 'personal consumption' has not been defined in the GST law. Thus, it may be understood in the general sense which would mean non-business use.

(40) Mr. X owns a retail showroom of tyres and tyre tubes. He takes 4 tyres from the showroom for his personal car. Being used for personal consumption, ITC on such 4 tyres is blocked.

(ix) Free samples, gifts, goods lost/stolen etc. [Clause (h) of section 17(5)]

ITC in respect of goods that are disposed of by way of gift or free samples is not available. Also, ITC is blocked on lost goods, stolen goods, destroyed goods and goods that are written off. This is because principally, ITC is available only for payment of tax on output supply. If no tax is payable on output supply, ITC on inputs/input services/capital goods relating to such output supply is not eligible. Hence, ITC on gifts and free samples is blocked as no tax is payable on its outward supply. In case of lost/destroyed/stolen written off goods also, ITC is not available as these goods cannot be said to have been used for making a taxable supply.

Meaning of 'gift'

The term gift has not been defined in the GST law. Therefore, we will have to look for the definition of gift in other laws. Section 122 of the Transfer of Property Act, 1882, defines gift as transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right.

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Meaning of 'sample'

Sample is also not defined in the GST law. The dictionary meaning of sample is "a small part or quantity intended to show what the whole is like". In commercial parlance, samples are given to prospective customers to enable them to test the quality of the item before making a decision to buy the same.

ITC is blocked in respect of the goods mentioned above.

ITC in the hands of the supplier in respect of sales promotional schemes

Circular No. 92/11/2019 GST dated 07.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of various sales promotional schemes as under *[Taxability of such schemes has been discussed at relevant places in Chapter 1: Supply Under GST and Chapter 6: Value of Supply in Module 1 of the Study Material.]*

A. Samples and free gifts

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

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ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail the ITC.

B. Buy one get one free offer

This is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including 'Buy more, save more' offers

Discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in 15(3), including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

However, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

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D. Secondary discounts

These are the discounts which are not known at the time of supply or are offered after the supply is already over. Such discounts shall not be excluded while determining the value of supply. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

ITC reversal when return of time expired medicines/drugs are treated as fresh supply

The common trade practice in the pharmaceutical sector is that the drugs or medicines (hereinafter referred to as "goods") are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. Such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as **time expired goods** and are returned back to the manufacturer, on account of expiry, through the supply chain.

Circular No. 72/46/2018 GST dated 26.10.2018 has clarified that the retailer/ wholesaler can return the time expired goods, **either by treating the same as fresh supply or by issuing credit notes**[22].

Return of time-expired goods by treating the same as fresh supply

In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it is as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply subject to the fulfillment of the conditions specified in section 16.

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[22] *The procedure for return of time expired drugs or medicines by issuing credit note is covered in Chapter 9: Tax Invoice, Credit and Debit Note in this Module of the Study Material.*

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In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply. In case the person returning the time-expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.

Where the goods returned by the retailer/wholesaler as a fresh supply, are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of section 17(5)(h). It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

The clarification may also be applicable to return of goods for reasons other than being time expired.

(41) If a manufacturer has availed ITC of ₹ 10 at the time of manufacture of medicines valued at ₹ 100. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is ₹ 15. So, when the time expired goods are destroyed by the manufacturer, he would be required to reverse ITC of ₹ 15 and not of ₹ 10.

(x) Tax paid in fraud cases, detention, confiscation etc. [Clause (i) of section 17(5)]

Tax paid under sections 74, 129 and 130 is not available as ITC. These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

Clarification in respect of entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement[23]

Insurance companies engaged in providing general insurance services in respect of insurance of motor vehicles (MV) settle claims - either in cashless or reimbursement mode. Under both modes, the insurance company accounts for repair liability and

[23] *Circular No. 217/11/2024 GST dated 26.06.2024*

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is responsible for making payment of the approved repair charges to the garage. Invoices are generally issued by the garages in the name of the insurance company.

Under reimbursement mode of claim settlement, the insured avails repair services from non-network garages with which the insurance companies do not have routine business relationship. The said garages issue the invoice in the name of the insurance company while not extending credit facility for the repair costs.

Accordingly, the policy holder/ insured makes payment of such repair services, and subsequently, the insurance company reimburses the approved claim cost to the insured.

Further, irrespective of the fact that the payment of the repair services to the garage is first made by the insured, which is then reimbursed by the insurance company to the insured to the extent of the approved claim cost, the liability to pay for the repair service for the approved claim cost lies with the insurance company, and thus, the same is covered in the definition of "recipient" under section 2(93), to the extent of approved repair liability.

'Consideration' includes payment related to supply by the recipient or by any other person in terms of section 2(31).

ITC is available to insurance companies for MV repair expenses incurred under the reimbursement mode

Conditions

(i) Invoices are issued in the name of the insurance company and

(ii) ITC is claimed solely for the amount reimbursed to the insured.

Moreover, availment of ITC on motor vehicle repair services received by the insurance company for outward supply of insurance services for such MV is not barred under section 17(5). Section 17(5) provides that ITC in respect of services of repair of MVs is available where received by a taxable person engaged in the supply of general insurance services in respect of MVs insured by him.

Accordingly, it is clarified that ITC is available to Insurance Companies in respect of MVs repair expenses incurred by them in case of reimbursement mode of claim settlement.

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Following issues have been clarified in respect of ITC availment by insurance companies in case of reimbursement mode of claim settlement.

Issue	Clarification
What is the extent of ITC available to the insurer in case of issue of two separate invoices by the garage for repair service - one to the insurance company for the approved claim cost & another to the customer for any excess amount?	ITC is available to insurance company only on the invoice issued to it subject to reimbursement of said amount by insurance company to customer.
What is the extent of ITC available to the insurer in case of issue of single invoice by the garage - covering the full amount for repair service & the insurance company reimburses only the approved claim cost.	ITC is available to the insurance company only to the extent of the reimbursement of the approved claim cost to the insured, and not on the full invoice value.
Whether ITC is available to the insurer if invoice for vehicle repair is not in insurance company's name?	ITC is not available to the insurance company as it does not meet the requirements of section 16(2)(a) and 16(2)(aa).

5. CREDIT IN SPECIAL CIRCUMSTANCES [SECTION 18]

	STATUTORY PROVISIONS	
Section 18	**Availability of credit in special circumstances**	
Sub-section	**Clause**	**Particulars**
(1)	*Subject to such conditions and restrictions as may be prescribed—*	

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	(a)	*a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;*
	(b)	*a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;*
	(c)	*where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:*
		Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;
	(d)	*where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:*
		Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.
(2)	*A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services*	

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	or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.
(3)	*Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.*
(4)	*Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:*
	Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.
(5)	*The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.*
(6)	*In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:*
	Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

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Chapter V: Input Tax Credit of CGST Rules		
Rule 40	**Manner of claiming credit in special circumstances**	
Sub-rule	**Clause**	**Particulars**
(1)	*The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely -*	
	(a)	*the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.*
	(b)	*the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in* ***FORM GST ITC-01*** *to the effect that he is eligible to avail the input tax credit as aforesaid:*
		Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.
	(c)	*the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods–*

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		(i)	*on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub- section (1) of section 18;*
		(ii)	*on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;*
		(iii)	*on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;*
		(iv)	*on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub- section (1) of section 18;*
	(d)		*the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;*
	(e)		*the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in* ***FORM GSTR-1 and in FORM GSTR-1A, if any,*** *or as the case may be, in* ***FORM GSTR- 4,*** *on the common portal.*
(2)	*The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.*		

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Rule 41	**Transfer of credit on sale, merger, amalgamation, lease or transfer of a business**
Sub-rule	**Particulars**
(1)	*A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in **FORM GST ITC-02**, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:*
	Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.
	Explanation: - For the purpose of this sub-rule, it is hereby clarified that the "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.
(2)	*The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.*
(3)	*The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in **FORM GST ITC-02** shall be credited to his electronic credit ledger.*
(4)	*The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.*
Rule 41A	**Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory**
(1)	*A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule*

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	*11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in **FORM GST ITC-02A** electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:*	
	Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.	
	Explanation.- For the purposes of this sub-rule, it is hereby clarified that the 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.	
(2)	*The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in **FORM GST ITC-02A** shall be credited to his electronic credit ledger.*	
Rule 44	**Manner of reversal of credit under special circumstances**	
Sub-rule	**Clause**	**Particulars**
(1)	*The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,-*	
	(a)	*for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;*
	(b)	*for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.*

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(2)	*The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.*
(3)	*Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.*
(4)	*The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in* ***FORM GST ITC-03,*** *where such amount relates to any event specified in sub-section (4) of section 18 and in* ***FORM GSTR-10,*** *where such amount relates to the cancellation of registration.*
(5)	*The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.*
(6)	*The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:*
	Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in ***FORM GSTR-1****.*

ANALYSIS

Section 18 provides for

(1) entitlement of ITC on inputs in stock and inputs contained in finished goods or work-in-progress, and in last two cases in respect of capital goods as well (i) at the time of registration/voluntary registration, (ii) on coming into regular tax-paying status by exiting composition levy, (iii) on coming into tax-paying

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status on account of exempt supply becoming taxable supply for a registered person

(2) reversal of ITC on inputs in stock and inputs contained in finished goods or work-in-progress and capital goods (i) at the time of exit from regular tax-paying status by opting for composition levy, (ii) at the time of exit from tax-paying status on account of taxable supply becoming exempt supply for a registered person

(3) amount payable on supply of capital goods or plant and machinery on which ITC has been taken

(4) transfer of ITC on account of change in constitution of the registered person

(i) Entitlement of ITC at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-sections (1) and (2) of section 18 read with rule 40]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/tax-paying status is available in the following manner:

S. No.	Persons eligible to take credit	Goods entitled to ITC		Restriction/conditions
		Inputs held in stock/capital goods	As on	
(1)	(2)	(3)	(4)	(5)
1.	Person who has applied for **registration within 30 days from the date on which he becomes liable to**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax	➔ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.

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	registration and has been granted such registration			
2.	Person who is not required to register, but obtains **voluntary registration**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration	
3.	Registered person **who ceases to pay composition tax and switches to regular scheme**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock **and capital goods**	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	➔ ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice. ➔ ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier. ➔ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.
4.	Registered person whose exempt supplies become taxable supplies	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply **and capital goods exclusively used for such exempt supply**	The day immediately preceding the date from which such supply becomes taxable	

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In all the above cases, the registered person has to make an electronic declaration in the prescribed form[24] on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within 30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant/Cost Accountant.

(42) 'Z' becomes liable to pay tax on 1st August and has obtained registration on 15th August w.e.f. 1st August. 'Z' is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 31st July. 'Z' cannot take ITC on capital goods.

(43) 'A' applies for voluntary registration on 5th June and obtains registration w.e.f. 22nd June. 'A' is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 21st June. 'A' cannot take ITC on capital goods.

(44) 'B', a registered taxable person, was paying tax under composition scheme upto 30th July. However, w.e.f. 31st July, 'B' becomes liable to pay tax under regular scheme. 'B' will be eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of the invoice.

(ii) Reversal of ITC on switching to composition levy or exit from tax-paying status [Section 18(4) read with rule 44]

- Section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.

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[24] *Declaration is to be filed in Form GST ITC-01 where a registered person ceases to pay composition tax and switches to regular scheme or his exempt supplies become taxable supplies.*

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- ITC on **inputs** should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption. The details furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant/ Cost Accountant.

- ITC involved in the remaining useful life (in months) of the **capital goods** should be reversed on *pro-rata* basis, taking the useful life as 5 years.

(45) Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months = 5 months ignoring a part of the month.

ITC taken on such capital goods = C

ITC attributable to remaining useful life that should be reversed

= C x 5/60

- The registered person has to debit the electronic credit or cash ledger by the reversal amount in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods on the day immediately preceding the date of switch over/ date of exemption. *[Provisions relating to electronic cash ledger have been discussed in detail in Chapter 11: Payment of Tax in this Module of the Study Material.]*

- Balance of ITC, if any, lying in the electronic credit ledger lapses.

- Cancellation of registration also requires reversal of ITC on inputs held in stock/ contained in semi-finished goods or finished goods held in stock, capital goods or plant and machinery on the day immediately preceding the cancellation date. The amount to be reversed on inputs and capital goods is computed in the manner as applicable for sub-sections (4) and (6) of section 18 (discussed above). Such amount is

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then compared with the output tax payable on such goods, and the higher of the two amounts is finally paid by the registered person.

- ITC to be reversed on inputs and capital goods is calculated separately for ITC of CGST, SGST/UTGST and IGST.
- The reversal amount is added to the output tax liability of the registered person.

(iii) Amount payable on supply of capital goods or plant and machinery on which ITC has been taken [Section 18(6) read with rule 40(2) & rule 44(6)]

- If capital goods or plant and machinery on which ITC has been taken are supplied outward by the registered person, he must pay an amount that is the **higher of the following:**
  - ✓ ITC taken on such goods reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods [i.e., ITC pertaining to remaining useful life of the capital goods (in quarters)]*, or
  - ✓ tax on transaction value of such capital goods/plant & machinery
- ITC pertaining to remaining useful life of the capital goods should be computed separately for ITC of CGST, SGST/UTGST and IGST.
- Where the amount of ITC remaining so determined exceeds the tax payable on the transaction value of the capital goods, such amount need to be paid and thus, should be added to the output tax liability.
- If refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value.

***Note:** Under rule 44(6), ITC involved in the remaining useful life (in months) of the capital goods is reversed on *pro rata* basis, taking the useful life as 5 years.

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Clarification on ITC availability on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers[25]

As per provisions of section 16(1), every registered taxpayer is entitled to take ITC charged on any supply of goods and services made to him, where such goods/services are used in the course or furtherance of business of such person.

Also, as per section 2(19), "capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business.

ITC availment on demo vehicles – Not affected by way of capitalisation

Since the demo vehicles are used by the authorized dealers to promote further sale of motor vehicles of the similar type and therefore, such vehicles appear to be used in the course or furtherance of business of the authorized dealers.

Where such vehicles are capitalized in the books of accounts by the authorized dealer, the said vehicle falls in the definition of "capital goods". As per provision of section 16(1), a recipient of goods is entitled to take ITC in respect of tax charged on the inward supply of any goods, which as per definition of "goods" under section 2(52) of CGST Act, includes even capital goods.

Accordingly, availability of ITC on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.

Following issues have also been clarified in respect of ITC availment on capitalized demo vehicles

Issue	Clarification
Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961	In case of capitalization of demo vehicles, availability of ITC would be subject to provisions of section 16(3), thus, ITC on the said tax component shall not be allowed.

[25] *Circular No. 231/25/2024 GST dated 10.09.2024*

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In case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer	The authorized dealer shall have to pay an amount or tax as per provisions of section 18(6) read with rule 44(6).

(iv) Transfer of ITC on account of change in constitution of registered person [Section 18(3) read with rule 41]

In case of sale, merger, demerger, amalgamation, lease, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. *Circular No. 96/15/2019 GST dated 28.03.2019* has clarified that transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.

The above provisions have been explained with the help of the diagram given below:

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In the case of demerger, ITC will be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. *Circular No. 133/3/2020 GST dated 23.03.2020* has clarified that the said formula for apportionment of ITC shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities and not just demerger. Here, **"value of assets"** means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the details of change in constitution in the prescribed form (ITC - 02) on the common portal and submit a certificate from practicing Chartered Account/Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities. Upon acceptance of such details by the transferee on the common portal, the unutilized ITC gets credited to his electronic credit ledger. The transferee should record the inputs and capital goods so transferred in his books of account.

Circular No. 133/3/2020 GST dated 23.03.2020 has clarified the following in relation to apportionment of ITC in cases of business reorganization:

(1) For the purpose of apportionment of ITC pursuant to a demerger, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level. The transferor would be required to file Form GST ITC-02 only in those States where both transferor and transferee are registered.

(46) Company XYZ, registered in both Madhya Pradesh (MP) and Uttar Pradesh (UP), holds assets valued at ₹100 crore: ₹60 crore in MP and ₹40 crore in UP. A portion of XYZ's business is being demerged into Company ABC. As part of this demerger, assets worth ₹30 crore from MP and ₹10 crore from UP, totaling (at all-India level) ₹40 crore, are transferred from XYZ to ABC.

The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e. 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P, i.e. 10/40 = 0.25.

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(2) The ratio of value of assets shall be applied to the total amount of unutilized ITC of the transferor, i.e. sum of CGST, SGST/ UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/ SGST/ IGST). Further, the said formula shall also be applicable for apportionment of cess between the transferor and transferee.

(47) The ITC balances of transferor A in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, A transfers 60% of its assets to transferee B.

Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.

(3) The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/ UTGST and IGST credit) should not exceed the amount of ITC to be transferred [Refer point (2) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/ UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.

(47A)

(1)	(2)	(3)	(4)	(5)	(6)
State	**Asset Ratio of Transferee**	**Tax Heads**	**ITC balance of Transferor (pre-apportion-ment) as on the date of filing GST ITC–02)**	**Total amount of ITC transferred to the Transferee under GST ITC-02**	**ITC balance of Transferor (post-apportion-ment) after filing of GST ITC–02) [Col (4) – Col (5)]**
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0

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		IGST	30,00,000	15,00,000	15,00,000
		Total	50,00,000	35,00,000	15,00,000
M.P.	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		Total	70,00,000	28,00,000	42,00,000

(4) The apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of Form GST ITC – 02 by the transferor.

(5) For the purpose of apportionment of ITC, the ratio of the value of assets should be taken as on the "appointed date of demerger" as specified in the respective scheme for demerger. Thus, for the purpose of apportionment of ITC, the ratio of the value of assets taken as on the "appointed date of demerger" should be applied on the ITC balance of the transferor on the date of filing Form GST ITC – 02.

(v) Transfer of ITC on obtaining separate registrations for multiple places of business within a State/ Union Territory [Rule 41A]

Section 25 enables a taxpayer to obtain separate registrations for multiple places of business within a State/ Union territory *[Provisions of section 25 are discussed under Chapter 8: Registration in this Module of the Study Material]*. The registered person (transferor), having separate registrations for multiple places of business within a State/Union Territory, can transfer the unutilised ITC (wholly or partly) lying in his electronic credit ledger to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration. Here, the 'value of assets' means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations. Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC gets credited to his electronic credit ledger.

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6. DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR [SECTIONS 20 & 21]

	STATUTORY PROVISIONS	
Section 20	**Manner of distribution of credit by input service distributor**	
Sub-section	**Clause**	**Particulars**
(1)		***Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9 of the CGST Act, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.***
(2)		***The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 of CGST Act, paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.***
(3)		***The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed.***
Section 21	**Manner of recovery of credit distributed in excess**	
	Where the input service distributor distributes the credit in	

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	contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74 ***or section 74A***[26]**,** as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Chapter V: Input Tax Credit of CGST Rules

Rule 39	**Procedure for distribution of input tax credit by Input Service Distributor**	
Sub-rule	**Clause**	**Particulars**
(1)	***An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely:***	
	(a)	***the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter VIII of these rules***
	(b)	***the amount of the credit distributed shall not exceed the amount of credit available for distribution;***
	(c)	***the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;***
	(d)	***the credit of tax paid on input services attributable to more than one recipient of credit shall be***

[26] *Section 74A contains the provisions relating to determination of tax not paid/short paid or erroneously refunded or ITC wrongly availed/utilized for any reason pertaining to Financial Year 2024-25 onwards. Further, the provisions of sections 73 and 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24.*

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		distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;
	(e)	***the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period;***
	(f)	***the input tax credit that is required to be distributed in accordance with the provisions of clauses (d) and (e) to one of the recipients "R1", whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipients who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula -*** $C_1 = (t_1/T) \times C$ ***where,*** ***"C" is the amount of credit to be distributed,*** ***"t_1" is the turnover, as referred to in clauses (d) and (e), of person R1 during the relevant period, and*** ***"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of clauses (d) and (e);***

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	(g)		*the Input Service Distributor shall, in accordance with the provisions of clauses (d) and (e), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;*
	(h)		*the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clauses (d) and (e);*
	(i)		*the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;*
	(j)		*the input tax credit on account of central tax and State tax or Union territory tax shall-*
		(i)	*in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;*
		(ii)	*in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient as referred to in clauses (d) and (e);*
	(k)		*the Input Service Distributor shall issue an Input Service Distributor invoice, as provided in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;*

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	(l)		*the Input Service Distributor shall issue an Input Service Distributor credit note, as provided in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;*
	(m)		*any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (j) and the amount attributable to any recipient shall be calculated in the manner provided in clause (f) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;*
	(n)		*any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (f), and the amount so apportioned shall be-*
		(i)	*reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or*
		(ii)	*added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.*
(1A)	*For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of section 9, a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may*		

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		be, a credit or debit note as per the provisions of sub-rule (1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).
(2)		*If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (n) of sub-rule (1) shall apply, mutatis mutandis, for reduction of credit.*
(3)		*Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (l) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.*
Explanation.—For the purposes of this rule,—		
(i)	*the term "relevant period" shall be—*	
	(a)	*if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or*
	(b)	*if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;*

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(ii)	***the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;***
(iii)	***the term ''turnover'', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.***

ANALYSIS

(i) Role of an input service distributor (ISD)

Companies may have their Head Office at one place and units at other places which may be registered separately. The Head Office would be procuring certain services which would be for common utilization of one or more units or all units across the country.

The bills for such expenses would be raised on the Head Office but the Head Office itself would not be providing 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 one or more units or all units, it is but natural that the credit of input services in respect of such common invoices should be apportioned between the consuming units.

ISD is an office of a business which receives tax invoices for input services and distributes available ITC to other branch offices of the same business.

ISD mechanism enables proportionate distribution of credit of input services amongst the consuming units. The concept of ISD under GST is a legacy carried over from the service tax regime.

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Thus, the concept of ISD is a facility made available to business having a large share of common expenditure and where billing/payment is done from a centralized location. The mechanism is meant to simplify the credit taking process for entities and the facility is meant to strengthen the seamless flow of credit under GST.

It is important to note that ISD framework covers the services received which are taxable under reverse charge mechanism, i.e. credit of the services taxable under reverse charge received by ISD can also be distributed by the ISD.

It is important to note that the ISD mechanism is meant only for distributing the credit on common invoices pertaining to INPUT SERVICES and not goods (inputs or capital goods).

The credit pertaining to common input services received must be MANDATORILY DISTRIBUTED through ISD mechanism.

The credit on common invoices includes the credit on invoices of services liable to tax under reverse charge under section 9(3)/9(4) of the CGST Act, 2017.

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(ii) Separate registration for an ISD

Compulsory separate registration for ISD

An entity receiving common input services (including services taxable under reverse charge) is compulsorily required to obtain a separate registration as an ISD even though it may be separately registered. There is no threshold limit for registration for an ISD. The other locations may be registered separately. Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as the output services are being provided there.

Can a company have multiple ISDs?

Yes, different offices of a company like marketing division, security division etc. may apply for separate ISD registration.

(iii) Manner of distribution of credit by an ISD

ITC of input services is distributed ONLY amongst those registered persons who have used the input services in the course or furtherance of business.

The ISD is required to maintain arithmetical accuracy and ensure that the credit distributed does not exceed the credit available with it for distribution. Further, in distributing the credit among different locations of the entity - which are supplying goods and/or services and have same PAN as that of the ISD ('recipients') - it must follow these principles:

(a) The credit connected to an input service must be distributed only to the particular recipient to whom that input service is attributable.

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(b) If the input service is attributable to more than one recipient, the relevant ITC is distributed to such recipients in the ratio of turnover of the recipient in a State / Union Territory *[See definition of turnover in State or turnover in Union Territory]* to the aggregate turnover *[See definition of aggregate turnover]* of all the recipients to whom the input service is attributable and which are operational during the current year.

(c) ITC pertaining to input services which are common for all units, is distributed to all the recipients in the ratio of turnover as described in (b) above.

(d) Both ineligible and eligible ITC are distributed separately.

(e) ITC of CGST, SGST/UTGST and IGST are distributed separately.

Proportionate distribution of credit to more than one recipient/all the recipients

- For working out such *pro rata* distribution (as mentioned in (b) and (c) above), the turnover **during the relevant period** is to be considered, both for turnover of the recipient in a State / Union Territory as well as for aggregate turnover of all recipients.
- **"Relevant period"** for working out the above distribution is the previous financial year, if all the recipients of credit had turnover in their State / Union Territory during that year.

  If some or all the recipients did not have turnover in their State / Union territory during the previous financial year, then the last quarter for which details of turnover of all the recipients is available, prior to the month for which credit is to be distributed, will be the "relevant period".
- If there are two or more locations of a recipient in a State / Union territory, the sum of their turnover is to be considered in working out the proportion of the credit that will be distributed to that registration. (This is because a PAN number will have a single registration for all its locations within a business vertical in a State / Union territory – *Refer Chapter 9: Registration in this Module of the Study Material for more details*.)
- The credit attributable to a recipient is distributed even if such recipient is unregistered or is making exempt supplies.

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- Where both taxable and non-taxable goods are supplied, the **"turnover"** excludes central excise duty, State excise duty, central sales tax and VAT.

- **Formula for distribution of credit**

$$C_1 = (t_1 \div T) \times C$$

where,

"C" is the credit to be distributed,

"t_1" is the turnover of the recipient during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable

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(48) ABC Ltd, a confectionary manufacturer, has paid bills of an advertising company amounting to ₹ 24 lakh for advertising campaigns for two varieties of cakes, which are manufactured at separate locations in Pune and Bangalore. The company had a total turnover of ₹ 112 crores in the previous financial year. During relevant period, the turnover of the Pune unit was ₹ 5 crores, and the turnover of the Bangalore unit was ₹ 10 crores. The aggregate turnover here is taken as ₹ 15 crores, as advertising was for cakes, which are manufactured at these two units only.

The ITC is to be distributed between Pune and Bangalore units in the ratio 1:2. Therefore, Pune unit will be given ITC of ₹ 8 lakhs, and Bangalore unit will be given ITC of ₹ 16 lakhs from the advertising bills.

Distribution of taxes

- ITC of CGST, SGST/UTGST in respect of recipient located in the same State/Union Territory is distributed as CGST and SGST/UTGST respectively.
- ITC of CGST and SGST/UTGST, in respect of a recipient located in a different State/Union territory, is distributed as IGST (total of ITC of CGST and SGST/UTGST which were to be distributed to such recipient).
- ITC on account of IGST is distributed as IGST.

Note: *Section 20 provides that credit of integrated tax be distributed as "integrated tax or central tax". However, rule 39 of CGST Rules provides that "input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient." The above diagram is based on the position as stated in rule 39.*

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(49) The Corporate office of ABC Ltd. is at Bangalore, with its business locations of selling and servicing of goods at Bangalore, Chennai, Mumbai and Kolkata. Software license and maintenance is used at all the locations, but invoice for these services (indicating CGST and SGST) are received at Corporate Office. Since the software is used at all the four locations, the ITC of entire services cannot be claimed at Bangalore. The same has to be distributed to all the four locations. For that reason, the Bangalore Corporate office has to act as ISD to distribute the credit.

If the corporate office of ABC Ltd, an ISD situated in Bangalore, receives invoices indicating ₹ 4 lakh of CGST, ₹4 lakh of SGST and ₹ 7 lakh of IGST, it can distribute the ITC of CGST, SGST as well as IGST of ₹ 15 lakh amongst its locations at Bangalore, Chennai, Mumbai and Kolkata through an ISD invoice containing the amount of credit distributed.

ILLUSTRATION 1

XYZ Ltd, having its head Office at Mumbai, is registered as ISD. It has three units in different cities situated in different States namely 'Mumbai', 'Jabalpur' and 'Delhi' which are operational in the current year.

M/s XYZ Ltd furnishes the following information for the month of July:

(i) CGST paid on services used only for Mumbai Unit: ₹ 3,00,000

(ii) IGST, CGST & SGST paid on services used for all units: ₹ 12,00,000

Total turnover of the units for the previous financial year are as follows: -

Unit	*Turnover (₹)*
Total Turnover of three units	*₹ 10,00,00,000*
Turnover of Mumbai unit	*₹ 5,00,00,000*
Turnover of Jabalpur unit	*₹ 3,00,00,000*

Determine the credit to be distributed by XYZ Ltd. to each of its three units.

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Answer

Particulars	Credit distributed to all units (₹)			
	Total credit available	Mumbai	Jabalpur	Delhi
CGST paid on services used only for Mumbai Unit	300000	300000	0	0
IGST, CGST & SGST paid on services used for all units Distribution on *pro rata* basis to all the units which are operational in the current year	12,00,000	6,00,000	3,60,000	2,40,000
Total	**15,00,000**	**9,00,000**	**3,60,000**	**2,40,000**

Note 1: Credit distributed *pro rata* on the basis of the turnover of all the units is as under: -

(a) Unit Mumbai: (₹ 5,00,00,000/ ₹ 10,00,00,000) * ₹ 12,00,000 = ₹ 6,00,000

(b) Unit Jabalpur: (₹ 3,00,00,000/ ₹ 10,00,00,000) * ₹ 12,00,000 = ₹ 3,60,000

(c) Unit Delhi: (₹ 2,00,00,000/ ₹10,00,00,000) * ₹ 12,00,000 = ₹ 2,40,000

Note 2: Distribution of IGST, CGST & SGST paid on services for all units would be as follows:

(a) Unit Mumbai: Distribution of IGST, CGST & SGST as IGST, CGST & SGST, respectively.

(b) Unit Jabalpur: Distribution of IGST, CGST & SGST as IGST only

(c) Unit Delhi: Distribution of IGST, CGST & SGST as IGST only

(iii) Procedural aspects of distribution of credit

- The ISD has to issue an ISD invoice, as prescribed in rule 54(1) of the CGST Rules, for distributing ITC. It should be clearly indicated in such invoice that it is issued only for distribution of ITC.

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- The ISD needs to issue a ISD credit note, as prescribed in rule 54(1) of the CGST Rules, for reduction in credit if the distributed credit gets reduced for any reason.
- The ISD invoice and ISD credit note must contain the following information:
  - Name, address and GSTIN of the ISD and recipient of credit;
  - A consecutive serial number up to 16 characters, containing alphabets or numerals or special characters or any combination thereof, for a financial year;
  - Date of issue;
  - Amount of the credit distributed;
  - Signature of the ISD or his authorized representative.

  Relaxation for banks & FIs: If the ISD is a banking company/ financial institution including NBFC, the document for distributing credit need not be serially numbered.
- ITC available for distribution in a month is to be distributed in the same month.
- Details of distribution of credit and all ISD invoices issued should be furnished by ISD in monthly GSTR-6 within 13 days after the end of the month. The details in the returns are made available to the respective recipients in their GSTR 2A. An ISD is not required to file annual return. *[Refer Chapter 13: Returns in this Module of the Study Material for detailed discussion on GSTR-6].*

(iv) Issue of debit note and credit note on ISD

Issue of a debit note

- The additional ITC on account of issue of a debit note to the ISD is distributed by the ISD, in accordance with the provisions discussed above, in the month in which such debit note is included in GSTR-6.

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Issue of a credit note

- If a credit note is issued to the ISD, the ITC to be reduced is apportioned amongst the relevant recipients in the same ratio in which the original credit was distributed.
- Such apportioned credit is reduced from the credit to be distributed in the month in which the credit note is included in GSTR-6. If the apportioned credit exceeds the credit to be distributed, the same is added to the output tax liability of the recipient.
- This process is also followed in case of reduction of credit already distributed for any other reason e.g., when the credit is distributed to a wrong recipient.

(v) Cross charge under GST

In case where one unit (generally the Head Office) provides internal services or goods—such as HR, IT, admin, legal or accounting support—to another unit (such as a branch) of the same legal entity registered in another State, unit supplying said goods/services need to cross charge the receiving unit, even though they belong to same entity. No separate registration is required for the same and supply of goods by HO to branches can also be cross-charged. This is different from ISD mechanism where services for utilization the branches are commonly received by HO and ITC on the same is distributed to the branches to which said input service pertains.

(vi) Recovery of excess credit distributed to a recipient [Section 21]

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If the ISD has distributed excess credit to any recipient, the excess will be recovered from the recipient with interest as if it was tax not paid by initiating action under section 73 or 74 or section 74A[14] *[Refer Chapter 19 : Demands and Recovery in Module 3 of this Study Material for detailed discussion on section 74A]*. Penalties may be applicable depending on the circumstances. *Circular No. 71/45/2018 GST dated 26.10.2018* has clarified that the ISD would also be liable to a general penalty under section 122(1)(ix).

7. HOW ITC IS UTILISED

	STATUTORY PROVISIONS	
Section 49	***Payment of tax, interest, penalty and other amounts (Relevant extract)***	
Sub-section	***Clause***	***Particulars***
(5)	*The amount of input tax credit available in the electronic credit ledger of the registered person on account of––*	
	(a)	*integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;*
	(b)	*the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;*

[14] *Section 74A contains the provisions relating to determination of tax not paid/short paid or erroneously refunded or ITC wrongly availed/utilized for any reason pertaining to Financial Year 2024-25 onwards. Further, the provisions of sections 73 and 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24.*

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	(c)	*the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;*
		Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;
	(d)	*the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;*
		Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;
	(e)	*the central tax shall not be utilised towards payment of State tax or Union territory tax; and*
	(f)	*the State tax or Union territory tax shall not be utilised towards payment of central tax.*
Section 49A	***Utilisation of input tax credit subject to certain conditions***	
	Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.	
Section 49B	***Order of utilisation of input tax credit***	
	Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of	

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	section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.		
Chapter IX: Payment of Tax of the CGST Rules			
Rule 86A	***Conditions of use of amount available in electronic credit ledger***		
(1)	***(a)***	*the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-*	
		i.	*issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
		ii.	*without receipt of goods or services or both; or*
	(b)	*the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or*	
	(c)	*the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*	
	(d)	*the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,*	
	may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any		

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	refund of any unutilised amount.	
(2)	*The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.*	
(3)	*Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.*	
Rule 86B	***Restrictions on use of amount available in electronic credit ledger***	
	Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:	
	Provided that the said restriction shall not apply where -	
	(a)	*the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or*
	(b)	*the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or*
	(c)	*the registered person has received a refund amount of*

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			more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or
	(d)		*the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or*
	(e)		*the registered person is -*
		(i)	*Government Department; or*
		(ii)	*a Public Sector Undertaking; or*
		(iii)	*a local authority; or*
		(iv)	*a statutory body:*
	Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit		
Rule 88A	***Order of utilization of input tax credit***		
	Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order.		
	Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.		

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ANALYSIS

ITC is credited to a registered person's electronic credit ledger. A taxable person is entitled for ITC of CGST, SGST/UTGST and IGST depending upon the nature of supplies received by him.

To illustrate, a supplier making purchases intra-State, inter-State and via import (of goods) is eligible for ITC as under:

The person may use the ITC to pay his output tax liability. As we know that Indian GST is a dual GST wherein two taxes viz, CGST and SGST/UTGST are levied concurrently on a supply transaction. While the CGST revenue accrues to Central Government, SGST and UTGST revenue accrue to respective State Government and Union Territory respectively. Hence, ITC of CGST and SGST/UTGST is not inter-changeable and thus, cross utilisation of CGST and SGST/UTGST is not permissible.

IGST is a transitory tax. IGST paid by taxpayer initially goes to the Central Clearing Authority. ITC of IGST can be utilised for payment of CGST or SGST/UTGST (or *vice versa*). Thus, cross utilization of IGST and CGST, SGST/UTGST is permissible. Flexibility has been provided to the taxpayer to utilise ITC of IGST (after payment of IGST first) for payment of CGST and/or SGST/UTGST in any proportion and in any order subject to the condition that the

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entire input tax credit of Integrated tax is completely exhausted before the input tax credit of Central Tax or State/Union territory tax can be utilized. If ITC of IGST is used for payment of SGST/UTGST (or *vice versa*), corresponding debit/credit is made to respective State Government/Union Territory.

Sections 49(5), 49A, 49B, rule 88A and *Circular No. 98/17/2019 GST dated 23.04.2019* together prescribe the sequence of utilisation of ITC. A combined reading of such provisions shows that the order of utilization of ITC is as per the order (of numerals) given below:

ITC of	**Output IGST liability**	**Output CGST liability**	**Output SGST/ UTGST liability**
IGST	(I)	(II) – In any order and in any proportion	
(III) ITC of IGST to be completely exhausted mandatorily			
CGST	(V)	(IV)	Not permitted
SGST/UTGST	(VII) Only after ITC of CGST has been utilized fully	Not permitted	(VI)
The numerals given above can be further explained in the following manner:			
(I)	IGST credit should be first utilized towards payment of IGST.		
(II)	Remaining IGST credit, if any, can be utilized towards payment of CGST and SGST/UTGST in any order and in any proportion, i.e. remaining ITC of IGST can be utilized – • first towards payment of CGST and then towards payment of SGST; or • first towards payment of SGST and then towards payment of CGST; or • towards payment of CGST and SGST simultaneously in any proportion e.g. 50: 50, 30: 70, 40: 60 and so on.		

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(III)	Entire ITC of IGST should be fully utilized before utilizing the ITC of CGST or SGST/UTGST.
(IV) & (V)	ITC of CGST should be utilized for payment of CGST and IGST in that order. ITC of CGST cannot be utilized for payment of SGST/UTGST
(VI) & (VII)	ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order. However, ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully. ITC of SGST/UTGST cannot be utilized for payment of CGST.

- Cross-utilization of credit is available only between CGST - IGST and SGST/UTGST - IGST.
- CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment of CGST.
- ITC of IGST need to be exhausted fully before proceeding to utilize the ITC of CGST and SGST/UTGST in that order.

example

(50) Amount of ITC available and output tax liability under different tax heads

Head	Output tax liability (₹)	ITC (₹)
IGST	1000	1300
CGST	300	200
SGST/UTGST	300	200
Total	**1600**	**1700**

Option 1

ITC of	Discharge of output IGST liability (₹)	Discharge of output CGST liability (₹)	Discharge of output SGST/UTGST liability (₹)	Balance of ITC (₹)
IGST	1000	200	100	0
ITC of IGST has been completely exhausted				

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CGST	0	100	-	100
SGST/UTGST	0	-	200	0
Total	**1000**	**300**	**300**	**100**

Option 2

ITC of	**Discharge of output IGST liability (₹)**	**Discharge of output CGST liability (₹)**	**Discharge of output SGST/UTGST liability (₹)**	**Balance of ITC (₹)**
IGST	1000	100	200	0
ITC of IGST has been completely exhausted				
CGST	0	200	-	0
SGST/UTGST	0	-	100	100
Total	**1000**	**300**	**300**	**100**

Option 3

ITC of	**Discharge of output IGST liability (₹)**	**Discharge of output CGST liability (₹)**	**Discharge of output SGST/UTGST liability (₹)**	**Balance of ITC (₹)**
IGST	1000	150	150	0
ITC of IGST has been completely exhausted				
CGST	0	150	-	50
SGST/UTGST	0	-	150	50
Total	**1000**	**300**	**300**	**100**

There can be other options also for utilization of ITC of IGST against CGST and SGST liabilities. In this example, three options for utilizing ITC of IGST against CGST and SGST liabilities are shown.

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Restrictions on utilisation of ITC [Rule 86A]

The Commissioner/ an officer (not below the rank of an Assistant Commissioner) authorised by him is empowered to impose restrictions on utilization of ITC available in the electronic credit ledger if he has **reasons to believe** that such ITC has been fraudulently availed or is ineligible.

The restrictions can be imposed in the following circumstances:

(i) ITC has been availed by the registered person on the basis of tax invoices/debit notes/prescribed documents -

- issued by a non-existent registered person (supplier) or by a supplier not conducting any business from the place declared in registration; or
- without actual receipt of goods or services or both; or
- in respect of any supply the tax in respect of which has not been paid to the Government

(ii) the registered person availing ITC has been found non-existent or not to be conducting any business from the registered place of business; or

(iii) the registered person availing ITC is not in possession of tax invoice/ debit note or any other prescribed valid document for it.

If the ITC is so availed, the restrictions can be imposed by not allowing such ITC to be used for discharging any liability under section 49 or not allowing refund of any unutilised amount of such ITC. Such restrictions can be imposed for a period up to 1 year from the date of imposing such restrictions. However, the Commissioner/officer authorised by him, can withdraw such restriction if he is satisfied that conditions for imposing the restrictions no longer exist.

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 in the next page:

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Total amount of ineligible or fraudulently availed ITC	Officer to disallow debit of amount from electronic credit ledger under rule 86A
Not exceeding ₹ 1 crore	Deputy Commissioner/ Assistant Commissioner
Above ₹ 1 crore but not exceeding ₹ 5 crore	Additional Commissioner/ Joint Commissioner
Above ₹ 5 crore	Principal Commissioner/Commissioner

The Additional Director General /Principal Additional Director General of DGGI can also exercise the powers assigned to the Commissioner under rule 86A. The monetary limits for authorization for exercise of powers under rule 86A to the officers of the rank of Assistant Director and above of DGGI by the Additional Director General /Principal Additional Director General may be same as mentioned for equivalent rank of officers in the table above[15].

Restrictions on the use of amount available in electronic credit ledger [Rule 86B]

Rule 86B restricts the use of ITC available in the electronic credit ledger for discharging output tax liability. The aforesaid rule starts with a non-obstante clause and thus, has an over-riding effect on any other provisions of the CGST Rules.

❑ Applicability of rule 86B

- ❖ Rule 86B is applicable to the registered person having value of taxable supply (other than exempt supply and zero-rated supply) in a month exceeding ₹ 50 lakh.
- ❖ Therefore, in cases wherein value of taxable supply in a month is upto ₹ 50 lakh, then this restriction would not be applicable.

❑ Nature of restriction imposed

The registered person to whom the said rule is applicable cannot use ITC to discharge the output tax liability in excess of 99% of such tax

Minimum 1% of the output tax liability be discharged using electronic cash ledger

[15] *CBIC - 20/16/05/2021 GST/1552 dated 02.11.2021*

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liability. In other words, amount available in electronic credit ledger shall be utilized only to the extent of 99% of the output tax liability while discharging such tax liability. Balance 1% of the output tax liability needs to be discharged from electronic cash ledger.

The above restriction can be explained with the help of numerical example:

(51) The total value of inter-State supply of Raman & Sons for the month of February is of ₹ 100 lakh. Said supply is taxable @ 18% IGST. Thus, total output tax liability of Raman & Sons is ₹ 18 lakh. Amount available in electronic credit ledger is ₹ 20 lakh (IGST).

In terms of restriction imposed by rule 86B, Raman & Sons can discharge 99% of its output tax liability, i.e. ₹ 17,82,000 (99% of ₹ 18,00,000) from the amount available in electronic credit ledger. However, it has to mandatorily discharge the balance 1% of the output tax liability i.e. ₹ 18,000 (1% of ₹ 18,00,000) through electronic cash ledger only.

Exceptions to rule 86B

In order to strike a balance between restricting potential misuse of ITC and providing relief to compliant taxpayers, few exceptions to rule 86B have been carved out. They take into account different circumstances and ensure that taxpayers who have fulfilled certain criteria are not unduly burdened by the restrictions imposed by rule 86B.

Payment of income tax of more than ₹ 1 lakh

Restriction under rule 86B is not applicable in cases where the below mentioned person(s) have paid a sum of more than ₹ 1 lakh as income tax (under the Income -tax Act, 1961) in each of the last 2 FYs for which the time limit to file return of income under section 139(1) of the Income-tax Act has expired:

- Registered person/Karta/proprietor/managing director/ any of its two partners
- Whole-time directors,
- Members of Managing Committee of Associations
- Board of Trustees

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- **Receipt of refund of input tax credit of more than ₹ 1 lakh**

  Rule 86B is not applicable where the registered person has received a refund amount of more than ₹ 1 lakh on account of unutilized ITC under:

  - zero-rated supplies made without payment of tax
  - inverted duty structure

  It is pertinent to note that refund should have been received in preceding FY.

- **Payment of output tax liability through electronic cash ledger in excess of 1% of total output tax liability in current FY**

  If the registered person has discharged his output tax liability through the electronic cash ledger for an amount in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year, the restrictions under rule 86B shall not apply.

  This exception provides relief to registered persons who have consistently made substantial cash payments towards their GST liabilities. The total cash payment of GST made by the registered person is considered cumulatively for all preceding months of the current FY. The cumulative approach ensures that the registered person is given credit for its consistent cash payments throughout the year, rather than assessing each month in isolation.

  (52) Assuming a scenario wherein in the current FY upto September month, the value of outward supply is ₹ 80 lakh. Output tax liability discharged through electronic cash ledger till August month is ₹ 1 lakh. Rule 86B would not be applicable in the September month even though the value of supply during this month exceeds ₹ 50 lakh, since cumulative payment of tax made in cash is more than 1% of total output tax liability (1% of ₹ 80 lakh is ₹ 80,000).

  It is pertinent to note that GST liability paid under reverse charge mechanism should not be taken into account while calculating the total output liability paid through electronic cash ledger.

- **Specified registered persons**

  Rule 86B is not applicable in case of below-mentioned registered person:

  - Government Department; or

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- a Public Sector Undertaking; or
- a local authority; or
- a statutory body.

However, Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit

ILLUSTRATION 1

Vijay Sales, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of ₹ 10 lakh, from various suppliers during the month of October.

Out of 100 invoices, details of 80 invoices involving GST of ₹ 6 lakh have been furnished by the suppliers in their respective GSTR-1s (which are not amended in GSTR-1A) filed on the prescribed due date therefor and are reflected in GSTR-2B of Vijay Sales.

Compute the ITC that can be claimed by Vijay Sales in its GSTR-3B for the month of October to be filed by 20th November assuming that GST of ₹ 10 lakh is otherwise eligible for ITC.

ANSWER

ITC to be claimed by Vijay Sales in its GSTR-3B for the month of October to be filed by 20th November will be computed as under-

Invoices	**Amount of ITC involved in the invoices (₹)**	**Amount of ITC that can be availed (₹)**
80 invoices furnished in GSTR-1	6 lakh	6 lakh [Refer Note 1]
20 invoices not furnished in GSTR-1	4 lakh	Nil [Refer Note 2]
Total	10 lakh	6 lakh

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Notes:

(1) 100% ITC can be availed on invoices furnished by the suppliers in their GSTR-1s and reflected in GSTR-2B of Vijay Sales.

(2) As per rule 36(4), the ITC in respect of invoices not furnished by the suppliers in their GSTR-1s and thus, not being reflected in GSTR-2B of recipient, cannot be claimed. Thus, in respect of 20 invoices which are not furnished in GSTR-1s of suppliers and are not reflected in GSTR-2B of Vijay Sales, no ITC can be availed[16].

ILLUSTRATION 2

PQR Company Ltd., a registered supplier of Bengaluru (Karnataka), is a manufacturer of goods. The company provides the following information pertaining to GST paid on inward supplies during the month of April (current financial year):

S. No.	***Items***	***GST paid in (₹)***
(i)	*Life Insurance premium paid by the company for the life insurance of factory employees as per the policy of the company. There is no legal obligation for such insurance for employees.*	*1,50,000*
(ii)	*Raw materials purchased for which invoice is missing but delivery challan is available*	*38,000*
(iii)	*Raw materials purchased which are used for zero rated supply*	*50,000*
(iv)	*Works contractor's service used for repair of factory building which is debited in the profit and loss account of company*	*30,000*
(v)	*Company purchased the capital goods for ₹ 4,00,000 and claimed depreciation of ₹ 44,800 (@ 10%) on the full amount of ₹ 4,48,000 under Income Tax Act, 1961*	*48,000*

[16] *Let us suppose, subsequently, the suppliers of these 20 invoices furnish the details of said invoices in their GSTR-1s for the month of November, the details shall be reflected in GSTR-2B of Vijay Sales of November month and Vijay Sales can take credit of such invoices in its GSTR-3B for the month of November.*

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Other information:

(1) In the month of September of previous financial year, PQR Company Ltd. availed ITC of ₹ 2,40,000 on purchase of raw material which was directly sent to job worker's premises under a challan on 25th September (previous financial year). The said raw material has not been received back from the job worker up to 30th April (current financial year).

(2) All the above inward supplies except at S. No. (iii) above have been used in the manufacture of taxable goods. Inward supplies at S. No. (iii) above have been used in the manufacture of exempt goods.

Compute the amount of net ITC that can be availed by PQR Company Ltd. for the month of April with necessary explanations for the treatment of various items as per the provisions of the CGST Act. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

ANSWER

Computation of ITC available with PQR Company Ltd. for the month of April

Particulars	**ITC (₹)**
Life Insurance premium paid by the company on the life of factory employees [Note 1]	Nil
Raw materials purchased [Note 2]	Nil
Raw materials used for zero rated supply [Note 3]	50,000
Work contractor's service [Note 4]	30,000
Capital goods purchased in respect of which depreciation is claimed on the tax component [Note 5]	Nil
Goods sent to job worker's premises [Note 6]	-
Total ITC available	**80,000**

Notes:

(1) ITC on life insurance service is available only when it is obligatory for an employer to provide said services to its employees under any law for the time being in force. Since it is not obligatory for the employer in the instant

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case and thus, the ITC thereon is blocked [Second proviso to section 17(5)(b)].

(2) ITC cannot be taken since invoice is missing and delivery challan is not a valid document to avail ITC [Section 16(2)(a)].

(3) ITC can be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply [Section 16(2) of the IGST Act].

(4) ITC is blocked on works contract services when supplied for construction of an immovable property. However, "construction" includes only that repairs which are capitalized along with the said immovable property.

In this case, since repairs of building is debited to P & L Account, the same does not amount to 'construction' and hence ITC thereon is available [Section 17(5)(c)].

(5) ITC is not available when depreciation has been claimed on the tax component of the cost of capital goods under the Income-tax Act [Section 16(3)].

(6) The principal is entitled to take ITC of inputs sent for job work even if the said inputs are directly sent to job worker. However, where said inputs are not received back by the principal within a period of 1 year of the date of receipt of inputs by the job worker, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were received by the job worker [Sub-sections (2) and (3) of section 19[17]].

Hence, the ITC taken by PQR Company Ltd. in the month of September last year is valid and since one year period has yet not lapsed in April, there will be no tax liability on such inputs.

ILLUSTRATION 3

Siddhi Ltd. is a registered manufacturer engaged in taxable supply of goods. Siddhi Ltd. purchased the following goods during the month of January. The following particulars are provided by the company:

[17] *Provisions of section 19 have been discussed in Chapter 16 – Job work in Module 3 of this Study Material.*

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S. No.	Particulars	GST (₹)
1.	Capital goods purchased on which depreciation has been taken on full value including GST paid thereon	15,000
2.	Goods purchased from Ravi Traders (Invoice of Ravi Traders is received in month of January but goods were received after two months in the month of March)	20,000
3.	Car purchased for making further supply of such car. Such car is destroyed in accident while being used for test drive by potential customers.	30,000
4.	Truck purchased for delivery of finished products	80,000

Determine the amount of ITC that can be availed by Siddhi Ltd. for the month of January by giving necessary explanations for treatment of various items as per the provisions of the CGST Act. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

ANSWER

Computation of ITC available with Siddhi Ltd. for the month of January

Particulars	GST (₹)
Capital goods [Note 1]	Nil
Goods purchased from Ravi Traders [Note 2]	Nil
Cars purchased for making further supply [Note 3]	Nil
Trucks purchased for delivery of output goods [Note 4]	80,000
Total ITC available with Siddhi Ltd.	**80,000**

Notes:

(1) Since depreciation has been claimed on the tax component of the value of the capital goods, ITC of such tax cannot be availed in terms of section 16(3).

(2) ITC in respect of goods not received cannot be availed in terms of section 16(2)(b).

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Since the goods have been received in the month of March, ITC thereon can be availed in the month of March and not in the month of January even though the invoice for the same has been received in the month of January.

(3) Though ITC on motor vehicles used for further supply of such vehicles is not blocked, ITC on goods destroyed for whatever reason is blocked [Clauses (a) and (h) of section 17(5)].

(4) Section 17(5)(a) blocks ITC in respect of only those motor vehicles which are used for transportation of persons albeit with certain exceptions. Thus, ITC on motor vehicles used for transportation of goods is allowed.

LET US RECAPITULATE

I. Definitions of certain key terms are summarized by way of diagrams as under:

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II. Provisions of section 16 relating to eligibility and conditions for taking ITC read with relevant rules are summarized below:

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If depreciation claimed on tax component

- ITC not allowed

Goods received in lots

- ITC allowed upon receipt of last lot

Time limit for availing ITC

- ITC pertaining to a particular FY can be availed by 30th November of next FY or filing of annual return, whichever is earlier.

Exception

Re-availment of ITC reversed earlier

- Proportionate ITC to be reversed/paid with interest if whole/part of value + tax of goods and /or services is not paid within 180 days of the issuance of invoice.
- On payment, the ITC could be re-availed without any time limit.

EXCEPTIONS

- Reverse charge supplies
- Deemed supplies without consideration
- Additions made to value of supplies on account of supplier's liability being incurred by the recipient of the supply

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III. Provisions of section 17 relating to apportionment of credit and blocked credits read with relevant rules are summarized as under:

A. Apportionment of credit

Exempt supplies include reverse charge supplies & transactions in securities and exclude activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier and the value of such activities/transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.

B. Special provisions for banking companies and NBFCs

- Balance will be reversed in GSTR-3B.
- Restriction of 50% shall not apply to the tax paid on supplies received from another registration within the same entity.
- Option once exercised cannot be withdrawn during remaining part of the year.

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C. Apportionment of common credit in case of inputs and input services

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- C_3 will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- $\sum (D_1 + D_2)$ will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already reversed every month, the differential amount will be reversed in any of the month till September of succeeding year along with interest @ 18% from 1st April of succeeding year till the date of payment.
- If this amount is less than the amount reversed every month, the additional amount paid has to be claimed back as credit in the return of any month till September of the succeeding year.
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, *and* supply of warehoused goods before clearance for home consumption* (ii) services of accepting deposits, extending loans/advances where the consideration is interest/discount and the same are provided by persons other than banking company/financial institution including NBFC, and (iii) the value of supply of Duty Credit Scrips specified in *Notification No. 35/2017 CT (R) dated 13.10.2017*

  *Value of supply of warehoused goods before clearance for home consumption includes the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.
- Aggregate value of exempt supplies and total turnover exclude central excise duty, state excise duty, central sales tax and VAT.
- Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.

IT	=	Input tax
I	=	Inputs
IS	=	Input services
ECrl	=	Electronic Credit Ledger
ZRS	=	Zero rated supply
ES	=	Exempt supplies

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D. Apportionment of common credit on capital goods

Total input tax (IT) on capital goods (CG)

(a)

IT on CG used exclusively for non-business/exempt supplies

Not credited in Electronic Credit Ledger (ECrL)

(b)

IT on CG used exclusively for taxable supplies including zero rated supply (ZRS)

Credited to ECrL

(c)

IT on CG not covered under (a) & (b) denoted as 'A' and useful life of such CG → 5 years from date of invoice

Credited to EcrL

T_c

Common credit on CG ⇒ **T_c = ∑ (A of common CG whose useful life remains during the tax period)**

⇒ If CG under (a) subsequently gets covered under (c), then 'A' = IT on CG under (a), and 'A' to be credited to ECrL. T_{ie} = 5% of 'A' for every quarter or part thereof when CG was under (a) and T_{ie} to be added to output tax liability of the tax period when 'A' is claimed.

⇒ If CG under (b) subsequently gets covered under (c), then IT claimed on CG under (b) to be added to T_c

T_m

Common credit of CG for a tax period during their useful life

$$T_m = T_c/60$$

T_e

Common credit towards exempted supplies

$$T_e = \frac{E}{F} \times T_r$$

E → Aggregate value of exempt supplies during the tax period; F → Total turnover in State during the tax period. If no turnover during the tax period/values not available, values for last tax period may be used.

Added to output tax liability along with interest

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- T_m is to be computed during the useful life of capital goods which is five years from the date of invoice.
- T_{ie} and T_e are to be computed separately for ITC of CGST, SGST/ UTGST and IGST and declared in GSTR-3B
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude:

  (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, and supply of warehoused goods before clearance for home consumption*

  (ii) services of accepting deposits, extending loans/advances where the consideration is interest/discount and the same are provided by persons other than banking company/financial institution including NBFC, and

  (iii) the value of supply of Duty Credit Scrips specified in *Notification No. 35/2017CT (R) dated 13.10.2017*

  *****Value of supply of warehoused goods before clearance for home consumption includes the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.
- Aggregate value of exempt supplies and total turnover exclude central excise duty, state excise duty, central sales tax and VAT.
- Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.

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Ineligible MV-Motor vehicle for transportation of persons with seating capacity of ≤ 13 persons (including driver); Ves & AC-Vessel & Aircraft; GI-General insurance; R&M-Repairs & maintenance; F&B-Food & beverages; Outcat-Outdoor catering; BT-Beauty treatment; HS-Health services; C&PS-Cosmetic & plastic surgery; LI-Life insurance; HI-Health insurance; NRTP-Non-resident taxable person; WCS-Works contract service; LTC-Leave Travel Concession; HT-Home town; trptn-transportation; P & M-Plant & machinery; ,P or M-Plant or machinery

(A) Construction includes re-construction/ renovation/ addition/ alterations/ repairs to the extent of capitalisation to said immovable property.

(B) P & M means apparatus, equipment, & machinery fixed to earth by foundation or structural supports but excludes land, building/ other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

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IV. Provisions of section 18 read with relevant rules are summarized as under:

A. Special circumstances enabling availing of credit

ITC, in all the above cases, is to be availed within 1 year from the date of issue of invoice by the supplier.

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Conditions for availing above credit:

(i) Filing of electronic declaration giving details of inputs held in stock/contained in semi-finished goods and finished goods held in stock and capital goods on the days immediately preceding the day on which credit becomes eligible.

(ii) Declaration has to be filed within 30 days from becoming eligible to avail credit.

(iii) Details in (i) above to be certified by a CA/ Cost Accountant if aggregate claim of CGST, SGST/ IGST credit is more than ₹ 2,00,000.

B. Special circumstances leading to reversal of credit/payment of amount

Special circumstances leading to reversal of credit /payment of amount

- Registered person (who has availed ITC) switching from regular scheme of payment of tax to composition levy
- Supplies of registered person getting wholly exempted from tax
- Cancellation of registration
- Supply of capital goods (CG)/ plant and machinery (P& M) on which ITC has been taken

Amount to be reversed is equivalent to ITC on :

- Inputs held in stock/ inputs contained in semi-finished or finished goods held in stock
- Capital goods

on the day immediately preceding the date of switch over/ date of exemption/date of cancellation of registration

Manner of reversal of credit on inputs and capital goods & other conditions

(i) Inputs ⇒ Proportionate reversal based on corresponding invoices. If such invoices not available, prevailing market price on the effective date of switch over/ exemption/cancellation of registration should be used with due certification by a practicing CA/ Cost Accountant

(ii) Capital goods ⇒ Reversal on *pro rata* basis pertaining to remaining useful life (in months), taking useful life as 5 years.

(iii) ITC to be reversed will be calculated separately for ITC of CGST, SGST/UTGST and IGST.

(iv) Reversal amount will be added to output tax liability of the registered person.

(v) Electronic credit/cash ledger will be debited with such amount. Balance ITC if any will lapse.

Amount to be paid is equivalent to higher of the following:

(i) ITC on CG or P&M less 5% per quarter or part thereof from the date of invoice

(ii) Tax on transaction value of such CG or P & M

- If amount at (i) exceeds (ii), then reversal amount will be added to output tax liability.
- Separate ITC reversal is to be done for CGST, SGST/UTGST and IGST
- Tax to be paid on transaction value when refractory bricks, moulds, dies, jigs & fixtures are supplied as scrap.

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Transfer of unutilised ITC on account of change in constitution of registered person	In case of sale, merger, amalgamation, lease or transfer of business, unutilised ITC can be transferred to the new entity if there is a specific provision for transfer of liabilities to the new entity. The inputs and capital goods so transferred should be duly accounted for by the transferee in his books of accounts.
	In case of demerger, ITC is apportioned in the ratio of value of entire assets (including assets on which ITC has not been taken) of the new units as per the demerger scheme.
	Details of change in constitution are to be furnished on common portal along with request to transfer unutilised ITC. CA/Cost Accountant certificate is to be submitted certifying that change in constitution has been done with specific provision for transfer of liabilities.
	Upon acceptance of such details by the transferee on the common portal, the unutilized ITC is credited to his Electronic Credit Ledger.

Transfer of unutilised ITC on obtaining separate registrations for multiple places of business within a State/UT	Registered person having separate registrations for multiple places of business can transfer the unutilised ITC to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration.
	Value of assets means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.
	The resgistered person should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations.
	Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC is credited to his electronic credit ledger.

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V. Provisions of section 20 and 21 read with relevant rules are summarized as under:

ISD is basically an office meant to receive tax invoices towards receipt of input services (including services taxable under reverse charge) and distribute the credit of taxes paid on such input services to supplier units (having the same PAN) proportionately

An ISD is required to obtain a separate registration even though it may be separately registered. The threshold limit of registration is not applicable to ISD.

- ITC of input services is distributed only amongst those recipients to whom the input services are attributable.
- ITC is distributed amongst the operational units only **and in the ratio of turnover in a State/UT of the recipient during the relevant period to the aggregate of turnover of all recipients during the relevant period to whom input service being distributed is attributable.**
- Relevant period is previous FY or last quarter prior to the month of distribution for which turnover of all recipients is available.
- Distributed ITC should not exceed the credit available for distribution.

- ISD should issue an ISD invoice for distributing ITC. It should be clearly indicated in such invoice that it is issued only for distribution of ITC.
- The ISD needs to issue a ISD credit note, for reduction in credit if the distributed credit gets reduced for any reason.
- ITC available for distribution in a month is to be distributed in the same month.
- Details of distribution of credit and all ISD invoices issued should be furnished by ISD in monthly GSTR-6 within 13 days after the end of the month.

If the ISD has distributed excess credit to any recipient, the excess will be recovered from the recipient with interest as if it was tax not paid.

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VI. Provisions relating to utilization of ITC are summarized as under:

TEST YOUR KNOWLEDGE

1. *Flamingo Ltd. is an airline providing passenger transportation services by air. The company offers meals of premium quality to passengers on board the aircraft. The value of such meals is compulsorily included in the price of the air ticket. The company avails outdoor catering services of Dhaniaram Pvt. Ltd. for providing such meals to its customers.*

   Examine whether Flamingo Ltd. can avail ITC on such outdoor catering service availed by it.

2. *Jumbo Sales Pvt. Ltd., a supplier of readymade garments, announced 'Buy One get Two free' offer on Men's T-Shirts on Diwali to boost its sales. You are required to advise the company on the availability of ITC in respect of inward supplies used in relation to such supply.*

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3. *A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a notification issued under section 11 of the CGST Act. The fabric is exclusively procured for such supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory as well.*

   The turnover (exclusive of taxes) of the other products of the factory and exempted uniforms in July is ₹ 4 crore and ₹ 1 crore respectively, the ITC on thread and lining material procured in July is ₹ 5000 and ₹ 15000 respectively.

   Calculate the amount of eligible ITC in respect of procurement of thread and lining material.

4. *Ceramity Ltd. has following units:*

   A: *Factory in Tumkur, Karnataka; turnover of ₹ 27 crores in preceding F.Y.;*

   B: *Service centre in Hyderabad, Telangana; turnover of ₹ 1 crore in preceding F.Y.;*

   C: *Service centre in Chennai, Tamil Nadu; turnover of 2 crores in preceding F.Y.;*

   Ceramity Ltd.'s corporate office functions as an ISD. It has to distribute ITC of ₹ 9 lakh for May of current financial year. Of this, an invoice involving tax of ₹ 3 lakh pertains to technical consultancy for Tumkur unit.

   Explain in brief in what manner should the ITC be distributed?

5. *A registered supplier of taxable goods supplied goods valued at ₹ 2,24,000 (inclusive of CGST ₹ 12,000 and SGST ₹ 12,000) to Mohan Ltd. under forward charge on 15th August for which tax invoice was also issued on the same date. The inputs were received by Mohan Ltd. on 15th August. Mohan Ltd. availed credit of ₹ 24,000 on 20th September by filing Form GSTR-3B for August month. However, Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier. Is Mohan Ltd. eligible to avail ITC on such supply?*

   Discuss ITC provisions if Mohan Ltd. makes the payment of ₹ 2,24,000 to the supplier on 18th March of next calendar year.

6. *State the conditions that need to be followed by an input service distributor for distribution of credit.*

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7. *With reference to the provisions of section 17, examine the availability of ITC in the following independent cases:*

   (i) *MBF Ltd., an automobile company, has availed works contract service for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently.*

   (ii) *Shah & Constructions procured cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients.*

   (iii) *ABC Ltd. availed maintenance & repair services from "Jaggi Motors" for a truck used for transporting its finished goods.*

8. *On 25th August, M/s Agarwal & Agarwal, a registered supplier of taxable goods located in Bengaluru (Karnataka), purchased one machine for ₹ 12,39,000 (including IGST) from one supplier of Maharashtra who issued the invoice on the same date. M/s Agarwal & Agarwal received the machinery on the same day and availed ITC for the eligible amount.*

   M/s Agarwal & Agarwal used the machine in the process of manufacture of taxable goods. However, M/s Agarwal & Agarwal sold this machine to Mr. Suresh Kumar of Andhra Pradesh on 20th August of next year for ₹ 7,50,000 (excluding IGST).

   With reference to section 18(6), determine the amount payable, if any, by M/s Agarwal & Agarwal at the time of sale of the machine.

   Note: The applicable rate of IGST is 18%.

9. *Krishna Motors is a car dealer selling cars of an international car company. It also provides maintenance and repair services of the cars sold by it as also of other cars. It seeks your advice on the availability of ITC in respect of the cars purchased from the manufacturer for making further supply of such cars. Two of such cars are destroyed in accidents while being used for test drive by potential customers.*

10. *With the help of information given below in respect of a manufacturer for the month of September, compute the ITC credited to the Electronic Credit Ledger, for the month. Also, compute the amount of ITC to be added to the output tax liability for the month of September. Ignore interest, if any.*

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Particulars	***Amount (₹)***
Outward supply of taxable goods (exclusive of taxes)	*70,000*
Outward supply of exempt goods	*40,000*
Total turnover	*1,10,000*
Inward supplies	***GST paid (₹)***
Capital goods used exclusively for taxable outward supply	*2,000*
Capital goods used exclusively for exempt outward supply	*1,800*
Capital goods used for both taxable and exempt outward supply	*4,200*

Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

11. *X, a manufacturer of roofing sheets, is having ₹ 1,60,000 as opening balance of ITC for June month. He provides the following information pertaining to the goods and services procured during the month of June:*

    (1) Input tax on raw materials is ₹ 40,000. The raw material is used for making both taxable and exempt supplies.

    (2) Input tax on catering services procured from 'Harvest Caterers' in connection with his housewarming ceremony is ₹ 10,000.

    (3) Input tax on raw materials used exclusively in manufacture of exempt supplies of ₹ 2 lakh is ₹ 20,000.

    (4) Input tax on cosmetic and plastic surgery of manager of the factory is ₹ 30,000.

    Total taxable turnover for the month of June is ₹ 60 lakh exclusive of tax.

    Compute the ITC credited for the month of June to the Electronic Credit Ledger and net GST payable from Electronic Cash Ledger by X for the month of June. Rate of GST is 18% (Ignore CGST, SGST or IGST and provisions of rule 86B for the sake of simplicity).

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Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. All the purchases are made from registered suppliers.

12. *Sarani Weavers, at Pune, Maharashtra is a registered input service distributor and intends to distribute ITC for the month of March. The following are the details available for such distribution:*

Branch	***Turnover of the last quarter (₹)***	***ITC specifically attributable to the branch (₹)***
Ganganagar Branch (Rajasthan)	*10,00,000*	*IGST – ₹ 12,000* *CGST – ₹ 3,000* *SGST –₹ 3,000*
Madhugiri Branch (Karnataka)	*5,00,000*	*Nil*
Kosala Branch (UP)	*15,00,000*	*Nil*
Mumbai Branch (Maharashtra)	*20,00,000*	*IGST – ₹ 1,50,000* *CGST– ₹ 15,000* *SGST– ₹ 15,000*

ITC available on input services used commonly for all branches is as under:

CGST - ₹ 60,000

SGST - ₹ 60,000

IGST - ₹ 1,20,000

ITC (IGST) of ₹ 10,000 pertaining to March (last year) was inadvertently not distributed. Whether the same can be considered for distribution in March this year?

Madhugiri, Karnataka branch uses input services to manufacture exempted products. Turnover excludes duties & taxes payable to Central and State Government.

Determine the manner of input tax distribution.

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13. *George Pvt. Ltd., a registered supplier of goods at Kerala who pays GST under regular scheme, has made the following transactions (exclusive of tax) during a tax period:*

Purchases (₹)	Sales (₹)	Tax Rate
5,00,000 [Purchases made from registered person in New Delhi]	10,00,000 [Sale made to registered person in New Delhi]	IGST - 18% CGST – 9% SGST- 9%
2,50,000 [Purchases made from registered person in Trivandrum, Kerala]	8,00,000 [Sales made to registered person in Trivandrum, Kerala]	

The company has complied with all the conditions for availing the ITC. The following further information regarding various opening balances available with it for the tax period, is provided by the company:

CGST (₹)	SGST (₹)	IGST (₹)
50,000	30,000	1,00,000

Compute maximum net CGST, SGST and IGST payable from the Electronic Cash Ledger by George Pvt. Ltd. for the tax period as also ITC to be carried forward to next tax period, if any.

14. *Quanto Enterprises is not required to register under the CGST Act. However, it applied for voluntary registration on 17th September. Registration certificate has been granted to the firm on 25th September. The CGST and SGST liability of the firm for the month of September is ₹ 24,000 each. The firm is not engaged in making inter-State outward taxable supplies.*

Quanto Enterprises provides the following information regarding capital goods and inputs held in stock by it as on 24th September:

Particulars	Amount (₹)
Inputs procured on 2nd September lying in stock	

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- CGST @ 6%	*4,500*
- SGST @ 6%	*4,500*
Input received on 21st July contained in semi-finished goods held in stock:	
- CGST @ 6%	*7,500*
- SGST @ 6%	*7,500*
Value of inputs contained in finished goods held in stock- ₹ 2,00,000 [Such inputs were procured on 19th September last year. Invoice for the goods was also issued on the same day]	
- IGST @ 18%	*36,000*
Inputs valued at ₹ 50,000 procured on 13th September lying in stock:	
- IGST @ 18%	*9,000*
Capital goods procured on 12th September	
-CGST @ 6%	*12,000*
-SGST @ 6%	*12,000*

You are required to compute the net GST payable from Electronic Cash Ledger by Quanto Enterprises for the month of September assuming that conditions for availing ITC are fulfilled subject to the information given above.

You are also required to mention reasons for treatment of all above items.

15. *B & D Company, a partnership firm, registered in Nagpur, Maharashtra is a wholesaler of taxable product 'P' and product 'Q' exempted by way of a notification. The firm supplies these products only in the eastern part of Maharashtra. All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.*

    B & D Company has furnished the following details with respect to its turnover (exclusive of taxes) and stock (exclusive of taxes):

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Particulars	Turnover for the quarter ended 30th June (₹)	Turnover for the quarter ended 30th September (₹)
'P'	60,00,000	50,00,000
'Q'	17,65,000	17,00,000

Particulars	Stock as on 30th June (₹)	Stock as on 30th September (₹)	Stock as on 31st October (₹)
'P'	25,00,000	10,00,000	3,60,000
'Q'	10,00,000	2,00,000	1,20,000

The entire stock of the product's 'P' and 'Q' available with the firm as on 30th September is purchased during the said half year except a consignment of product 'P' valuing ₹ 3,00,000, which was purchased in the April month of the preceding financial year. The said stock could not be sold during the month of October. In the current financial year, in the month of October, no purchases were made, and the products were sold with a profit margin of 20% on sales value [exclusive of taxes].

The extract of the only bill book maintained by the firm showed the following details-

Bill No.	Date	Value of products (exclusive of taxes)		
		'P' (₹)	'Q' (₹)	Total (₹)
2306	1st October	2,00,000	3,000	2,03,000
2307	1st October	1,33,000	5,250	1,38,250
2308	2nd October	67000	39,250	1,06,250
2309	3rd October	58,750	33,750	92,500
2310	5th October	1,00,000	-	1,00,000
2311	6th October	94,000	6,000	1,00,000

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2312	6th October	-	17,000	17,000
2313	8th October	50,000	6,000	56,000
2314	9th October	60,000	9,000	69,000
2315	.....	.....	.....	.....
.....	.....	.....	.....	.....

All the above amounts are exclusive of taxes, wherever applicable

Compute the ITC to be credited to the Electronic Credit Ledger of the B & D Company, when it exits composition scheme and becomes liable to pay tax under regular scheme, in accordance with the provisions of section 18(1)(c).

Note: Make suitable assumptions wherever required. Stock is valued at cost price.

16. *XYZ Pvt. Ltd. is a manufacturing company registered under GST in the State of Uttar Pradesh. It manufactures two taxable products 'Alpha' and 'Beta' and one exempt product 'Gama'. On 1st October, while product 'Beta' got exempted through an exemption notification, exemption available on 'Gama' got withdrawn on the same date. The turnover (exclusive of taxes) of 'Alpha', 'Beta' and 'Gama' in the month of October was ₹ 9,00,000, ₹ 10,00,000 and ₹ 6,00,000 respectively.*

XYZ Pvt. Ltd. has furnished the following details:

S. No.	Particulars	Price (₹)	GST (₹)
(a)	Machinery 'U' purchased on 1st October for being used in manufacturing all the three products	2,00,000	36,000
(b)	Machinery 'V' purchased on 1st October for being used in manufacturing product 'Alpha' and 'Gama'	1,00,000	18,000
(c)	Machinery 'W' purchased on 1st October for being exclusively used in manufacturing product 'Beta'	3,00,000	54,000

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(d)	*Machinery 'Y' purchased on 1st October four years ago for being exclusively used in manufacturing product 'Beta'. From 1st October, such machinery will also be used for manufacturing product 'Gama'.*	*4,00,000*	*72,000*
(e)	*Machinery 'Z' purchased on 1st October two years ago for being used in manufacturing all the three products*	*3,00,000*	*54,000*
(f)	*Raw Material used for manufacturing 'Alpha' purchased on 5th October*	*1,50,000*	*27,000*
(g)	*Raw Material used for manufacturing 'Beta' purchased on 10th October*	*2,00,000*	*36,000*
(h)	*Raw Material used for manufacturing 'Gama' purchased on 15th October*	*1,00,000*	*18,000*

Compute the following:

(i) Amount of ITC to be credited to Electronic Credit Ledger, for the month of October

(ii) Amount of aggregate value of common credit (T_c)

(iii) Common credit attributable to exempt supplies, for the month of October

(iv) GST liability of the company payable through Electronic Cash Ledger, for the month of October if opening balance of ITC is nil.

Note: Assume that all the procurements made by the company are from States other than Uttar Pradesh. Similarly, the company sells all its products in States other than Uttar Pradesh. Rate of IGST is 18%. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. Ignore interest, if any and make suitable assumptions wherever required.

17. 'All-in-One Store' is a retail chain of departmental store having presence in almost all metro cities across India. Both exempted as well as taxable goods

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are sold in such Stores. The Stores operate in rented properties. All-in-One Stores pay GST under regular scheme.

In Mumbai, the Store operates in a rented complex, a part of which is used by the owner of the Store for personal residential purpose.

All-in-One Store, Mumbai furnishes following details for a month:

(i) Aggregate value of various items sold in the Store:

Taxable items – ₹ 42,00,000

Items exempted vide a notification – ₹ 12,00,000

Items not leviable to GST – ₹ 3,00,000

(ii) Mumbai Store transfers to another All-in-One Store located in Goa certain taxable items for the purpose of distributing the same as free samples. The value declared in the invoice for such items is ₹ 5,00,000. Such items are sold in the Mumbai Store at ₹ 8,00,000.

(iii) Aggregate value of various items procured for being sold in the Store:

Taxable items – ₹ 55,00,000

Items exempted vide a notification – ₹ 15,00,000

Items not leviable to GST – ₹ 5,00,000

(iv) Freight paid to goods transport agency (GTA) for outward transportation of taxable items – ₹ 1,00,000

(v) Freight paid to GTA for outward transportation of exempted items – ₹ 80,000

(vi) Freight paid to GTA for outward transportation of non-taxable items - ₹ 20,000

(vii) Monthly rent payable for the complex – ₹ 5,50,000 (one third of total space available is used for personal residential purpose).

(viii) Activity of packing the items and putting the label of the Store along with the sale price has been outsourced. Amount paid for packing of all the items – ₹ 2,50,000

(ix) Salary paid to the regular staff at the Store – ₹ 2,00,000

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(x) GST paid on inputs used for personal purpose – ₹ 5,000

(xi) GST paid on rent a cab services availed for transportation of employees, which is not obligatory under any law – ₹ 4,000

(xii) GST paid on items given as free samples – ₹ 4,000

Given the above available facts, you are required to compute the following:

A. Input tax credit (ITC) credited to the Electronic Credit Ledger

B. Common Credit

C. ITC attributable towards exempt supplies out of common credit

D. Eligible ITC out of common credit

E. Net GST payable from Electronic Cash Ledger for the month if opening balance of ITC is nil.

Note:

(1) GTA has not exercised the option to pay tax itself. Tax is payable on such services @ 5%. Rate of GST in all other cases is 18% (Ignore CGST, SGST or IGST for the sake of simplicity).

(2) All the inward supplies are procured from registered suppliers.

(3) Wherever applicable, the amounts given are exclusive of taxes.

(4) Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

18. Vansh Shoppe is a retail supplier of both taxable and exempted goods, registered under GST in the State of Rajasthan. Vansh Shoppe has furnished the following details for a month:

		(₹)
(1)	Details of sales:	
	Supply of taxable goods	50,00,000
	Supply of goods not leviable to GST	10,00,000
(2)	Details of goods purchased for being sold in the shop:	

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	Taxable goods	*45,00,000*
	Goods not leviable to GST	*4,00,000*
(3)	*Details of expenses:*	
	Monthly rent payable for the shop	*3,50,000*
	Telephone expenses paid (₹ 30,000 for bills of land line phone installed at the shop and ₹ 20,000 towards mobile phone bills of the employees – Mobile phones are also given to employees for official use)	*50,000*
	Audit fees paid to a Chartered Accountant (₹ 35,000 for the statutory audit of preceding financial year and ₹ 25,000 for certification work)	*60,000*
	Premium paid on health insurance policies taken for specified employees of the shop as per company policy.	*10,000*
	Freight paid to goods transport agency (GTA) [service taxable @ 5%] for outward transportation of goods not leviable to GST	*50,000*
	Freight paid to goods transport agency (GTA) [service taxable under reverse charge @ 5%] for outward transportation of taxable goods	*1,50,000*
	Goods given as free samples (Not included in taxable goods value of 45,00,000)	*5,000*

All the above amounts are exclusive of all kinds of taxes, wherever applicable.

All the outward and outward supplies made by Vansh Shoppe are from/to registered suppliers within Rajasthan.

Assume, wherever applicable, for purpose of reverse charge payable by Vansh Shoppe, the CGST, SGST and IGST rates as 2.5%, 2.5% and 5% respectively. CGST, SGST and IGST rates to be 6%, 6% and 12% respectively in all other cases.

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There is no opening balance in the electronic cash ledger or electronic credit ledger. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

You are required to compute the following:

(1) Input Tax Credit (ITC) credited to Electronic Credit Ledger

(2) Common credit available for apportionment

(3) ITC attributable towards exempt supplies out of common credit

(4) Net GST payable from Electronic Cash Ledger for the month

19. Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures three taxable products 'M', 'N' and 'O'. Tax on 'N' is payable under reverse charge. The firm also provides taxable consultancy services.

The firm has provided the following details for a tax period:

Particulars	**(₹)**
Turnover of 'M' (excluding export sales)	14,00,000
Turnover of 'N'	6,00,000
Turnover of 'O' (excluding export sales)	10,00,000
Export of 'M' with payment of IGST (not eligible to avail benefit of merchant exports under Notification No. 41/2017)	2,50,000
Export of 'O' under letter of undertaking	10,00,000
Consultancy services provided to unrelated clients located in foreign countries. In all cases, the consideration has been received in convertible foreign exchange	20,00,000
Sale of building (excluding stamp duty of ₹ 2.50 lakh, being 2% of value) [Entire consideration is received post issuance of completion certificate; building was occupied thereafter]	1,20,00,000

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Interest received on investment in fixed deposits with a bank	*4,00,000*
Sale of shares (Purchase price ₹ 2,40,00,000/-)	*2,50,00,000T*
Legal services received from an advocate in relation to product 'M'	*3,50,000*
Common inputs and input services used for supply of goods and services mentioned above [Inputs - ₹ 35,00,000; Input services - ₹ 15,00,000]	*50,00,000*

With the help of the above-mentioned information, compute the net GST liability of Surana & Sons, payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the tax period.

Note: Assume that rate of GST on goods and services are 12% and 18% respectively (Ignore CGST, SGST or IGST for the sake of simplicity). Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. Turnover of Surana & Sons was ₹ 85,00,000 in the preceding financial year.

20. *M/s XYZ, a registered supplier, supplies the following goods and services for construction of buildings and complexes -*

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

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

M/s XYZ receives the following services:

- *Maintenance services for excavators;*
- *Health insurance for operators of the excavators;*
- *Scientific and technical consultancy for soil testing and seismic evaluation.*

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For a given month, the receipts (exclusive of GST) of M/s XYZ are as follows:

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

The GST paid during the said month on services received by M/s XYZ is as follows:

- *Maintenance for excavators - ₹ 1,00,000*
- *Health insurance for excavator operators - ₹ 11,000*
- *Scientific and technical consultancy for soil testing and seismic evaluation - ₹ 1,00,000*

Compute the net GST payable by M/s XYZ from Electronic Cash Ledger for the given month.

Assume the rates of GST to be as under:

Hiring out of excavators – 12%

Supply of manpower services and soil-testing and seismic evaluation services – 18%

(Ignore CGST, SGST or IGST for the sake of simplicity).

Note: - Opening balance of ITC of GST is nil.

21. *V-Supply Pvt. Ltd. is a registered manufacturer of auto parts in Kolkata, West Bengal. The company has a manufacturing facility registered under Factories Act, 1948 in Kolkata. It procures its inputs indigenously from both registered and unregistered suppliers located within as well as outside West Bengal as also imports some raw material from China.*

The company reports the following details for a tax period:

Payments	**(₹) (in lakh)**	**Receipts**	**(₹) (in lakh)**
Raw material	3.5	Sales	15

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Consumables	*1.25*		
Transportation charges for bringing the raw material to factory	*0.70*		
Salary paid to employees on rolls	*5.0*		
Premium paid on life insurance policies taken for specified employees	*1.60*		
Audit fee	*0.50*		
Telephone expenses	*0.30*		
Bank charges	*0.10*		

All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by the company.

Further, following additional details are furnished by the company in respect of the payments and receipts reported by it:

(i) Raw material amounting to ₹ 0.80 lakh is procured from Bihar and ₹ 1.5 lakh is imported from China. Basic customs duty of ₹ 0.15 lakh, social welfare surcharge of ₹ 0.015 lakh and integrated tax of ₹ 0.2997 lakh are paid on the imported raw material.

Remaining raw material is procured from suppliers located in West Bengal. Out of such raw material, raw material worth ₹ 0.30 lakh is procured from unregistered suppliers; the remaining raw material is procured from registered suppliers.

Further, raw material worth ₹ 0.05 lakh purchased from registered supplier located in West Bengal has been destroyed due to seepage problem in the factory and thus, could not be used in the manufacturing process.

(ii) Consumables are procured from registered suppliers located in Kolkata and include diesel worth ₹ 0.25 lakh for running the generator in the factory.

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(iii) Transportation charges comprise of ₹ 0.60 lakh paid to Goods Transport Agency (GTA) in Kolkata and ₹ 0.10 lakh paid to horse pulled carts. GST applicable on the services of GTA is 5% payable under reverse charge.

(iv) Life insurance policies for specified employees have been taken by the company to fulfill a statutory obligation in this regard. The life insurance service provider is registered in West Bengal.

(v) Audit fee is paid to M/s Goyal & Co., a firm of Chartered Accountants registered in West Bengal, for the statutory audit of the preceding financial year.

(vi) Telephone expenses pertain to bills for landline phone installed at the factory and mobile phones given to employees for official use. The telecom service provider is registered in West Bengal.

(vii) Bank charges are towards company's current account maintained with a Private Sector Bank registered in West Bengal.

(viii) The breakup of sales is as under:

Sales in West Bengal – ₹ 7 lakh

Sales in States other than West Bengal – ₹ 3 lakh

Export under LUT – ₹ 5 lakh

(ix) The opening balance of ITC with the company for the tax period is:

CGST - ₹ 0.15 lakh

SGST - ₹ 0.08 lakh

IGST - ₹ 0.09 lakh

Compute (i) Total ITC available with V-Supply Pvt. Ltd. for the tax period; and (ii) Net GST payable [CGST, SGST or IGST, as the case may be] from Electronic Cash Ledger by V-Supply Pvt. Ltd. for the tax period.

Note-

(i) CGST, SGST & IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

(ii) The necessary conditions for availing ITC have been complied with by V-Supply Pvt. Ltd., wherever applicable.

You are required to make suitable assumptions, wherever necessary.

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22. *ABC Company Ltd. of Bengaluru is a manufacturer and registered supplier of machineries. It has provided the following details for a tax period:*

Inward supplies	***GST paid (₹)***
Health insurance of factory employees as required by the Factories Act, 1948	*20,000*
Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month	*18,000*
Work contractor's service used for installation of plant and machinery	*12,000*
Purchase of manufacturing machine sent directly to job worker's premises under delivery challan	*50,000*
Purchase of car used by director exclusively for the purpose of business meetings	*25,000*
Outdoor catering service availed for business meetings	*8,000*

ABC Company Ltd. also provides service of hiring of machines along with manpower for operation. As per trade practice, machines are always hired out along with operators and also operators are supplied only when machines are hired out.

Outward supply (exclusive of GST) for the tax period are as follows:

Particulars	***Value (₹)***
Hiring receipts for machine	*5,25,000*
Service charges for supply of manpower operators	*2,35,000*

Assume the rates of GST to be as under:

(i) Service of hiring of machine 12%

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(ii) Supply of manpower operator service 18%

(Ignore CGST, SGST or IGST for the sake of simplicity)

Compute the amount of ITC available as also the net GST payable from the Electronic Cash Ledger for the tax period by giving necessary explanations for treatment of various items.

Note: Opening balance of ITC is Nil.

23. *Pari Ltd. of Jodhpur (Rajasthan) is a registered manufacturer of cosmetic products. Pari Ltd. has furnished following details for a tax period:*

Particulars		(₹)
Details of Outward supplies		
(i)	Supplies in Rajasthan	8,75,000
(ii)	Supplies in States other than Rajasthan	3,75,000
(iii)	Export under LUT	6,25,000
Details of expenses		
(i)	Raw materials purchased from registered suppliers located in Rajasthan	1,06,250
(ii)	Raw materials purchased from unregistered suppliers located in Rajasthan	37,500
(iii)	Raw materials purchased from Punjab from registered supplier	1,00,000
(iv)	Integrated tax paid on raw materials imported from USA	22,732
(v)	Consumables purchased from registered suppliers located in Rajasthan including high speed diesel (Excise and VAT paid) valuing ₹31,250 for running the machinery in the factory	1,56,250

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(vi)	*Monthly rent for the factory building to the owner in Rajasthan*	*1,00,000*
(vii)	*Salary paid to employees on rolls*	*6,25,000*
(viii)	*Premium paid on life insurance policies taken for specified employees. Life insurance policies for specified employees have been taken by Pari Ltd. to fulfill a statutory obligation in this regard. The life insurance service provider is registered in Rajasthan.*	*2,00,000*

All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by Pari Ltd.

The opening balance of ITC with Pari Ltd. for the given tax period is-

CGST ₹ 20,000

SGST ₹ 15,000

IGST ₹ 15,000

Assume CGST, SGST and IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

Assume that all the other necessary conditions to avail the ITC have been complied with by Pari Ltd., wherever applicable.

Compute (i) ITC available with Pari Ltd. for the tax period; and (ii) Net GST payable [CGST, SGST or IGST, as the case may be] from Electronic Cash Ledger by Pari Ltd. for the tax period.

24. *Flowchem Palanpur (Gujarat) has entered into a contract with R Refinery, Abu Road (Rajasthan) on 1st July to supply 10 valves on FOR basis. The following information is provided in this regard:*

    (1) List price per valve is ₹ 1,00,000, exclusive of taxes.

    (2) One of the conditions of the contract is that Flowchem should ensure a two stage third party inspection for the valves during the manufacturing process. Cost of two stage inspection of ₹ 15,000 (for 10 valves) is directly paid by R Refinery to testing agency.

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(3) R Refinery requires a special packing for the valves. Cost of special packing is ₹ 10,000 (for 10 valves).

(4) Flowchem arranges for erection and testing of the valves supplied by it at R Refinery's site. Cost of erection etc. is ₹ 15,000 (for 10 valves).

(5) Goods are dispatched with tax invoice on 20th July and they reach the destination at Abu-Road on 21st July. Lorry freight of ₹ 5,000 has been paid by R Refinery directly to the lorry driver.

Assume CGST and SGST rates to be 9% each and IGST rate to be 18%. Opening balance of ITC of IGST is Nil, CGST is ₹ 20,000 and SGST is ₹ 20,000. All the given amounts are exclusive of GST, wherever applicable.

Flowchem has also undertaken following local transactions during the month of July on which it has paid CGST and SGST as under:

S. No.	Particulars	Amount paid CGST (₹)	Amount paid SGST (₹)
1.	Availed services of works contractor to erect foundation for fixing the machinery to earth, in the factory.	5,000	5,000
2.	It has entered into an agreement with a travel company to provide home travel facility to its employees when they are on leave.	2,500	2,500
3.	It has entered into an agreement with a fitness center to provide wellness services to its employees after office hours	2,000	2,000

Work out the net GST [CGST, SGST or IGST, as the case may be] payable from Electronic Cash Ledger of Flowchem, Palanpur (Gujarat) for the month of July after making suitable assumptions, if any.

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ANSWERS

1. As per section 17(5)(b)(i), ITC on supply of *inter alia* food and beverages and outdoor catering is blocked. However, ITC in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

In the given case, Flamingo Ltd. is availing outdoor catering service to provide outdoor catering (meals) to the passengers on board the aircraft. Since ITC in respect of outdoor catering is available if the same is used for making an outward taxable supply as an element of a taxable composite or mixed supply, Flamingo Ltd. can avail ITC on outdoor catering service procured by it as it will be considered as supply of an ancillary service to the passenger transportation services supplied by it (principal supply).

2. It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration.

As per clause (a) of section 7(1) read with clause (c) thereof, goods or services which are supplied free of cost (without any consideration) shall not be treated as supply except in case of activities mentioned in Schedule I.

Circular No. 92/11/2019 GST dated 07.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of sales promotional scheme like 'buy one get one free'. Such promotional offers are not individual supplies of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.

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ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

Therefore, the given case is not the case of individual supplies of free goods, but a case of three individual supplies where a single price is being charged for the entire supply. Thus, Jumbo Sales Pvt. Ltd. will be entitled to avail ITC on inputs, input services and capital goods used in relation to supply of T-Shirts as part of such offer.

3. Thread and lining material are inputs which are used for making taxable as well as exempt supplies. Therefore, credit on such items will be apportioned and credit attributable to exempt supplies will be reversed in terms of rule 42.

Credit attributable to exempt supplies = Common credit x (Exempt turnover/ Total turnover)

Common credit = ₹ 15,000 + ₹ 5,000 = ₹ 20,000

Exempt turnover = ₹ 1 crore

Total turnover = ₹ 5 crore [₹ 1 crore + ₹ 4 crore]

Credit attributable to exempt supplies = (₹ 1 crore /₹ 5 crore) x ₹ 20,000 = ₹ 4,000.

Ineligible credit of ₹ 4,000 will be reversed in Form GSTR-3B. Credit of ₹ 16,000 will be eligible credit for the month of July.

4. As per section 20 read with rule 39 relating to ITC, -

- ₹ 3 lakh is attributable to Tumkur unit, and will be transferred to Tumkur unit only.
- ₹ 6 lakh have to be distributed among Tumkur unit and the service centres in Hyderabad and Chennai in proportion of their turnover in the previous FY, that is, in 2023-24
    - Tumkur unit will get (27 crore / 30 crore) x 6 lakh = ₹ 5.4 lakh;
    - Hyderabad service centre will get (1 crore /30 crore) x 6 lakh = ₹ 20,000; and

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- Chennai service centre will get (2 crore /30 crore) x 6 Lakh = ₹ 40,000.

Ceramity Ltd. should issue ISD invoices (from GSTN obtained separately for ISD) for distributing ITC (as calculated above) to its units. It should be clearly indicated in the invoices that the same are issued only for distribution of ITC.

5. As per section 16, Mohan Ltd. is eligible to avail ITC of the tax paid on inputs received by it on the basis of the invoice issued by the supplier provided other conditions for availing ITC are fulfilled.

Payment of value of the goods along with the tax to the supplier is not a pre-requisite at the time of availing credit, but Mohan Ltd. has to pay the said amount within 180 days from the date of issue of invoice. If Mohan Ltd, fails to do so, Mohan Ltd. shall pay an amount equal to the ITC availed in respect of such supply (ITC of ₹ 24,000), proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in Form GSTR-3B for the tax period immediately following the period of 180 days from the date of the issue of the invoice.

If Mohan Ltd. makes the payment of ₹ 2,24,000 (Value + tax) to the supplier on 18th March of next calendar year, i.e. after the expiry of 180 days from date of issue of invoice, Mohan Ltd. can avail the credit of ₹ 24,000 while filing Form GSTR-3B for the month of March.

6. The following conditions need to be followed by an input service distributor (ISD) for distribution of credit:

(i) The ISD is required to obtain a separate registration for distribution of credit.

(ii) The credit can be distributed to the recipients of credit against an ISD invoice containing prescribed details.

(iii) The amount of the credit distributed shall not exceed the amount of credit available for distribution.

(iv) The credit related to an input service must be distributed only to the particular recipient to whom that input service is attributable.

(v) If the input service is attributable to more than one recipient, the relevant ITC is distributed *pro rata* to such recipients in the ratio of

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turnover of the recipient in a State/ Union Territory to the aggregate turnover of all the recipients to whom the input service is attributable and which are operational during the current year.

(vi) ITC pertaining to input services which are common for all units, is distributed to all the recipients in the ratio of turnover in the prescribed manner.

(vii) ITC available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in the prescribed form.

(viii) Both ineligible and eligible ITC are to be distributed separately.

(ix) ITC of CGST, SGST/UTGST and IGST are to be distributed separately.

(x) ITC of CGST, SGST/UTGST in respect of recipient located in the same State/Union Territory is distributed as CGST and SGST/UTGST respectively.

(xi) ITC of CGST and SGST/UTGST, in respect of a recipient located in a different State/Union territory, is distributed as IGST (total of ITC of CGST and SGST/UTGST which were to be distributed to such recipient).

(xii) ITC on account of IGST is distributed as IGST.

7. (i) Section 17(5)(c) blocks input tax credit in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Further, the term "plant and machinery" means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods and/or services **and includes such foundation or structural support** but excludes land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Thus, in view of the above-mentioned provisions, **ITC is available in respect of works contract service availed by MBF Ltd. as the same is used for construction of plant and machinery which is not blocked under section 17(5)(c)**. It is assumed that the expenditure incurred towards works contract service is capitalised in the books of MBF Ltd. and no depreciation has been claimed on the tax component.

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(ii) Section 17(5)(d) blocks ITC on goods and/or services received by a taxable person for construction of an immovable property (other than plant or machinery) **on his own account** including when such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use notwithstanding the fact that the immovable property being constructed will be used in the course or furtherance of his business.

In the given case, **Shah & Constructions has used the goods and services for construction of immovable property for some other person and not on its own account**. Hence, ITC in this case will be allowed.

(iii) On a conjoint reading of section 17(5)(a) and 17(5)(ab), it can be concluded that ITC is allowed on repair and maintenance services relating to motor vehicles, which are eligible for input tax credit. Further, as per section 17(5)(a) ITC is allowed on motor vehicles which are used for transportation of goods.

Thus, **ITC on maintenance & repair services availed from "Jaggi Motors" for a truck used for transporting its finished goods is allowed to ABC Ltd.**

8. As per section 18(6), if capital goods/ plant and machinery on which ITC has been taken are supplied (outward) by a registered person, he must pay an amount that is higher of the following:

(a) ITC taken on such goods reduced by 5% per quarter or part thereof from the date of issue of invoice for such goods or

(b) tax on transaction value of such outward supply determined under section 15.

Accordingly, the amount payable on supply of machinery by M/s Agarwal & Agarwal shall be computed as follows:

Particulars	Amount (₹)
ITC taken on the machinery (₹ 12,39,000 × 18/118)	1,89,000

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Less: Input tax credit to be reversed @ 5% per quarter for the period of use of machine (i) For the previous year = (₹ 1,89,000 × 5%) × 3 quarters (ii) For the current year = (₹ 1,89,000 × 5%) × 2 quarters	 28,350 18,900
Amount required to be paid by adding the reversal amount to the output tax liability) **(A)** **	1,41,750
Duty leviable on transaction value (₹ 7,50,000 × 18%) **(B)**	1,35,000
Amount payable towards disposal of machine is higher of **(A)** and **(B)**	1,41,750
Thus, M/s Agarwal & Agarwal is required to pay an amount of ₹ 1,41,750 at the time of sale of machinery by adding the same to the output tax liability.	

** In the above solution, amount payable towards disposal of machine has been computed on the basis of rule 40(2), i.e. ITC to be reversed for the period of use of capital goods/machine has been computed @ 5% for every quarter or part thereof from the date of the issue of invoice.

However, the said amount can also be computed in accordance with rule 44(6), i.e. ITC involved in the remaining useful life (in months) of the capital goods/ machine can be reversed on *pro-rata* basis, taking the useful life as 5 years.

9. As per section 16(1), every registered person can take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. However, section 17(5) specifies certain goods and services on which the input tax credit is not available.

Section 17(5)(a) specifically blocks ITC on motor vehicles for transportation of passengers having approved seating capacity of not more than thirteen persons. However, the same is allowed when the motor vehicles are used, *inter alia,* for further supply of such vehicles. Thus, ITC on cars purchased from the manufacturer for making further supply of such cars will be allowed.

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However, ITC on the cars fully destroyed in accident will not be allowed as the ITC on goods destroyed for whichever reason is specifically blocked under section 17(5)(h).

10. Computation of ITC credited to Electronic Credit Ledger and amount of ITC to be added to the output tax liability for the month of September

Particulars	ITC (₹)
Capital goods used exclusively for taxable supply [Since used exclusively for taxable supply, full ITC is available under rule 43(1)(b)]	2,000
Capital goods used exclusively for exempt supply [Since used exclusively for exempt supply, ITC is not available under rule 43(1)(a)]	Nil
Capital goods used for both taxable and exempt supply - Common credit (T_c) [Commonly used for taxable and exempt supplies – Rule 43(1)(c)]	4200
Total ITC credited to Electronic Credit Ledger for the month of September	**6,200**
Common credit for the month of September (T_m) $= T_c \div 60 = 4{,}200 \div 60$ [Rule 43(1)(e)]	70
Common credit attributable to exempt supplies in a month (T_e) $= (E \div F) \times T_r$ [14] where,	25.45

[14] *Prior to the amendment vide Notification No. 16/2020 CT dated 23.03.2020, clause (f) of rule 43(1) provided that the amount of ITC, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term "T_r" becomes redundant in the formula provided in rule 43(1)(g). However, for the sake of computation of common credit attributable to*

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'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period [Rule 43(1)(g)] = (40,000/1,10,000) × ₹ 70 (rounded off)	
Amount to be added to the output tax liability for the month of September[15] [Rule 43(1)(h)]	**25.45**

11. Computation of ITC available and net GST payable from Electronic Cash Ledger for the month of June

Particulars		Amount (₹)
GST on taxable turnover for the month of June [₹ 60,00,000 × 18%]		10,80,000
Less: ITC available for June month in terms of rule 42		
Opening balance of ITC available in the Electronic Credit Ledger	₹ 1,60,000	
Add: ITC credited to the Electronic Credit Ledger for the month of June [Refer working note below]	₹ 40,000	
Less: ITC out of common credit attributable to exempt supply [Refer working note below]	(₹ 1,290)	1,98,710
Net GST payable from Electronic Cash Ledger		**8,81,290**

exempt supply, value of 'T_m' has been used here. It may be noted that as per the erstwhile clause (f) of rule 43(1) value of 'T_r' was the aggregate of 'T_m.'.

[15] Practically while filing GSTR-3B, ITC attributable to exempt supplies as per rule 42 and rule 43 are reversed.

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Working Note:

Computation of ITC (out of common credit) attributable to exempt supplies

Particulars	Amount (₹)
Input tax on raw materials [Note1]	40,000
Input tax on catering for housewarming [Note 2]	Nil
Input tax on inputs contained in exempt supplies [Note 3]	Nil
Input tax on cosmetic and plastic surgery of CEO of company [Note 4]	Nil
ITC credited to the Electronic Credit Ledger in terms of rule 42 in the month of June	40,000
Common credit [Note 5]	40,000
ITC attributable towards exempt supplies to be reversed [Note 6]	**1,290**

Notes:

(1) Being used in the course or furtherance of business, input tax on raw materials is available as ITC and is credited to the Electronic Credit Ledger [Section 16(1)].

(2) ITC on outdoor catering is blocked in terms of section 17(5) if the same is not used for making an outward supply of outdoor catering or as an element of a taxable composite/mixed supply. Hence, the same is not credited to the Electronic Credit Ledger [Rule 42].

(3) Input tax on inputs used exclusively for making exempt supplies is not available as ITC and thus, not credited to the Electronic Credit Ledger in terms of rule 42.

(4) ITC on cosmetic and plastic surgery is blocked in terms of section 17(5) if the same are not used for making the same category of outward

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supply or as an element of a taxable composite/ mixed supply. Hence, the same is not credited to the Electronic Credit Ledger [Rule 42].

(5) Since there are no inputs and input services which are used exclusively for effecting taxable supplies, the entire ITC credited to Electronic Credit Ledger, i.e. ₹ 40,000 will be the common credit [Rule 42].

(6) ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period / Total turnover in the State during the tax period)

= ₹ 40,000 × ₹ 2,00,000/ ₹ 62,00,000 - (rounded off)

= ₹ 1,290 (rounded off)

12. As per section 20 read with rule 39:

(i) Total GST credit (CGST+ SGST + IGST) of ₹ 18,000 specifically attributable to Ganganagar Branch, Rajasthan will be distributed as IGST credit of ₹ 18,000 only to Ganganagar Branch, Rajasthan [Since recipient and ISD are located in different states].

(ii) IGST credit of ₹ 1,50,000, CGST credit of ₹ 15,000 and SGST credit of ₹ 15,000 specifically attributable to Mumbai Branch, Maharashtra will be distributed as IGST credit of ₹ 1,50,000, CGST credit of ₹ 15,000 and SGST credit of ₹ 15,000 respectively, only to Mumbai Branch, Maharashtra [Since recipient is located in the same State in which ISD is located].

(iii) CGST credit of ₹ 60,000, SGST credit of ₹ 60,000 and IGST credit of ₹1,20,000 have to be distributed among the three branches and Mumbai Branch, Maharashtra in proportion of their turnover of the last quarter.

- Ganganagar Branch, Rajasthan will get: ₹ 48,000 [₹ 2,40,000 x (₹ 10,00,000/ ₹ 50,00,000)] as IGST credit.
- Madhugiri Branch, Karnataka will get: ₹ 24,000 [₹ 2,40,000 x (₹ 5,00,000/ ₹ 50,00,000)] as IGST credit.
- The credit attributable to a recipient is distributed even if such recipient is making exempt supplies.

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- Kosala Branch, UP will get: ₹ 72,000 [₹ 2,40,000 x (₹ 15,00,000/ ₹ 50,00,000)] as IGST credit.
- Mumbai Branch, Maharashtra will get:

₹ 24,000 [₹ 60,000 x (₹ 20,00,000/ ₹ 50,00,000)] as CGST credit,

₹24,000 [₹ 60,000 x (₹ 20,00,000/ ₹ 50,00,000)] as SGST credit and

₹ 48,000 [₹ 1,20,000 x (₹ 20,00,000/ ₹ 50,00,000)] as IGST credit.

(iv) ITC of ₹ 10,000 of March (last year) cannot be distributed in March this year as ITC available for distribution in a month is to be distributed in the same month.

13. Computation of net CGST, SGST and IGST payable from the electronic cash ledger by George Pvt. Ltd. for the tax period

Particulars	Amount (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Sales made outside Kerala (New Delhi) – [Being inter-State sale, the same is liable to IGST]	10,00,000			1,80,000
Sales made in Trivandrum [Being intra-State sale, the same is liable to CGST & SGST]	8,00,000	72,000	72,000	
Less: ITC available during the tax period for set off [Refer Working Note Below]		(72,000) CGST	(10,000) IGST	(1,80,000)
			(52,500) SGST	
Net tax liability payable in cash		**Nil**	**9,500**	**Nil**
ITC to be carried forward to next tax period		500 (72,500-72,000)	Nil (52,500-52,500)	Nil (1,90,000-1,90,000

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Working Note:

ITC available during the tax period is computed as under:				
Opening balance of ITC		50,000	30,000	1,00,000
Purchases from New Delhi [Being inter-State purchase, IGST would have been paid on it.]	5,00,000			90,000
Purchases from Trivandrum	2,50,000	22,500	22,500	
Total input tax credit		**72,500**	**52,500**	**1,90,000**
Note: Since sufficient balance of ITC of CGST is available for paying CGST liability and cross-utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) as credit of CGST and SGST can be utilized only after IGST credit has been fully utilized.				

14. Computation of net GST payable from Electronic Cash Ledger by Quanto Enterprises for the month of September

Particulars	**CGST (Rs)**	**SGST (Rs)**
Output tax liability for the month	24,000	24,000
Less: ITC [Notes 1 & 2]	9,000 (IGST)	12,000 (SGST)
	12,000 (CGST)	
Net GST payable (from electronic cash ledger)	**3,000**	**12,000**

Notes:

1. Credit of IGST is first utilized towards payment of IGST and thereafter for CGST and SGST in any order and in any proportion. Credit of CGST and SGST can be utilized only after IGST credit has been fully utilized [Rule 88A read with sections 49(5), 49A and 49B].

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Since Quanto Enterprises does not make any inter-State supply, in the above answer, entire credit of IGST has been utilized towards payment of CGST. Credit of IGST can also be utilised against SGST liability or against both CGST and SGST liabilities in any proportion and thus, the final answer will change accordingly.

2. As per section 18(1)(b) a person who takes voluntary registration is entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished/ finished goods held in stock on the day immediately preceding the date of grant of registration.

However, he cannot take ITC in respect of capital goods held on the day immediately preceding the date of grant of registration.

ITC on inputs needs to be availed within 1 year from the date of issue of the invoice by the supplier [Section 18(2)].

In this case, since Quanto Enterprises has been granted voluntary registration on 25th September, it will be entitled to ITC on inputs held in stock and inputs contained in semi-finished/ finished goods held in stock, on 24th September. In view of the said provisions, eligible ITC for Quanto Enterprises is computed as follows:

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Inputs held in stock since 2nd September	4,500	4,500	
Inputs received on 21st July contained in semi-finished goods held in stock	7,500	7,500	
Inputs contained in finished goods held in stock which were procured on 19th September last year [Invoice issued prior to one year, hence ITC cannot be availed]			Nil
Inputs held in stock since 13th September			9,000

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Capital goods procured on 12th September	Nil	Nil	
Total ITC	**12,000**	**12,000**	**9,000**

15. As per section 10(3) read with *Notification No.14/2019 CT dated 07.03.2019* as amended, the option availed of by a registered person to pay tax under composition scheme shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds ₹ 1.5 crore [₹ 75 lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir].

As per section 2(6), aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same PAN, to be computed on all India basis but excludes CGST, SGST/UTGST, IGST and GST Compensation Cess.

In the given case, the firm is registered under the composition scheme in the State of Maharashtra. The aggregate turnover of the firm exceeds ₹ 1.5 crore on 3rd October [aggregate of both taxable and exempt turnover from 1st April to 3rd October, i.e. ₹ 1,50,05,000 (₹ 1,44,65,000 + ₹ 2,03,000 + ₹ 1,38,250 + ₹ 1,06,250 + ₹92,500)].

Thus, the firm will pay tax under regular scheme (Section 9) from 3rd October.

As per section 18(1)(c) read with rule 40, where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9.

Further, ITC on supplies of inputs and capital goods shall not be available after the expiry of one year from the date of issue of tax invoice [Section 18(2)].

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In the light of the above-mentioned provisions, the ITC credited to the Electronic Credit Ledger of the B & D Company on inputs held in on **2nd October** will be computed as under:

Particulars	Amount (₹)
Stock of taxable inputs as on 30th September [Since no tax is paid on exempt purchases, there does not arise any question of availing ITC on the same. Hence, stock of only taxable inputs is considered]	10,00,000
Add: Purchases [No purchases are made in October]	Nil
Less: Cost of taxable goods sold from 1st October to 2nd October [(2,00,000 + 1,33,000 + 67,000]) x 80%]	3,20,000
Stock of taxable inputs as on 2nd October [Since the bill numbers are in continuation, it can be concluded that no sales are missing from the extract]	6,80,000
Less: Stock with invoice issued prior to one year	3,00,000
Stock of inputs on which ITC can be claimed	3,80,000
ITC of CGST @ 9% [Since all purchases are intra-State and from the suppliers registered under regular scheme]	**34,200**
ITC of SGST @ 9%	**34,200**

16.

S. No.	Particulars	ITC (₹)
(i)	**Amount of ITC credited to Electronic Credit Ledger, for the month of October**	
	Machinery 'U' - 'A' [Note 1]	36,000
	Machinery 'V' [Note 2]	18,000
	Machinery 'W' [Note 3]	-
	Machinery 'Y' [Note 4]	-

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	Machinery 'Z' [Note 5]	-
	Raw Material used for manufacturing 'Alpha' [Note 6]	27,000
	Raw Material used for manufacturing 'Beta' [Note 6]	-
	Raw Material used for manufacturing 'Gama' [Note 6]	18,000
	Amount of ITC credited to Electronic Credit Ledger, for the month of October	**99,000**
(ii)	**Aggregate value of common credit (T_c) – Note 7**	
	Value of 'A' for Machinery 'U' purchased on 1st October	36,000
	Value of 'A' for Machinery 'Z' purchased on 1st October 2 years ago for effecting both taxable and exempt supplies	54,000
	Input tax claimed on Machinery 'Y' purchased on 1st October 4 years ago for effecting taxable supplies but used for effecting both taxable and exempt supplies from 1st October in the current year [Note 8]	72,000
	Aggregate value of common credit (T_c)	**1,62,000**
(iii)	**Common credit attributable to exempt supplies, for the month of October**	
	Common credit for the month of October (T_m) [Note 9]	2,700
	Common credit attributable to exempt supplies, for the month of October (T_e) – Note 10	**1,080**
(iv)	**Computation of GST liability of the company for October payable through Electronic Cash Ledger**	
	IGST payable on 'Alpha' [₹ 9,00,000 x 18%]	1,62,000

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	IGST payable on 'Beta' [Exempt]	Nil
	IGST payable on 'Gama' [₹ 6,00,000 x 18%]	1,08,000
	Total IGST payable on outward supply	2,70,000
	Common credit attributable to exempt supplies for the month of October [Note 11]	1,080
	Total output tax liability of October	2,71,080
	Less: ITC available in the Electronic Credit Ledger	99,000
	IGST payable from Electronic Cash Ledger	**1,72,080**

Notes:

(1) ITC in respect of capital goods used commonly for effecting taxable supplies and exempt supplies denoted as 'A' shall be credited to the electronic credit ledger [Rule 43(1)(c)].

(2) ITC in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be credited to the electronic credit ledger [Rule 43(1)(b)].

(3) ITC in respect of capital goods used or intended to be used exclusively for effecting exempt supplies shall not be credited to electronic credit ledger [Rule 43(1)(a)].

(4) Machinery 'Y' is being used for effecting both taxable and exempt supplies from 1st October. Prior to that it was exclusively used for effecting taxable supplies. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.

(5) Machinery 'Z' is being used for effecting both taxable and exempt supplies from 1st October two years ago. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.

(6) ITC in respect of inputs used for effecting taxable supplies will be credited in Electronic Credit Ledger. ITC in respect of inputs used for effecting

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exempt supplies will not be credited in the electronic credit ledger [Rule 42].

(7) The aggregate of the amounts of 'A' credited to the electronic credit ledger in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'Tc', shall be the common credit in respect of such capital goods [Rule 43(1)(d)].

(8) Where any capital goods which were used exclusively for effecting taxable supplies are subsequently also used for effecting exempt supplies, the ITC claimed in respect of such capital goods shall be added to arrive at the aggregate value of common credit 'T_c' [Proviso to rule 43(1)(d)].

(9) ITC attributable to a month on common capital goods during their useful life (T_m) shall be computed in accordance with rule 43(1)(e) as under:

$= T_c \div 60$

= ₹ 1,62,000 ÷ 60

= ₹ 2,700

The useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods

(10) The amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and shall be calculated as:

$T_e = (E \div F) \times T_r$* where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period [Rule 43(1)(g)].

$$= T_r \times \frac{\text{Turnover of exempt supplies during the month of October}}{\text{Total turnover of XYZ Pvt. Ltd. during the month of October}}$$

$$= ₹\ 2{,}700 \times \frac{10{,}00{,}000}{25{,}00{,}000} = ₹\ 1{,}080$$

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(11) Common credit attributable to the exempt supplies (T_e) along with the applicable interest (which is to be ignored in this case) shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit [Rule 43(1)(h)].

**Prior to the amendment vide Notification No. 16/2020 CT dated 23.03.2020 clause (f) of rule 43(1) provided that the amount of ITC, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods. However, clause (f) has been omitted vide the said notification. Consequently, the term "T_r" becomes redundant in the formula provided in rule 43(1)(g). However, for the sake of computation of common credit attributable to exempt supply, value of 'T_m' has been used here. It may be noted that as per the erstwhile clause (f) of rule 43(1) value of 'T_r' was the aggregate of 'T_m.'*

17. A. Computation of ITC credited to Electronic Credit Ledger

As per rule 42, the ITC in respect of inputs or input services being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies.

ITC credited to the electronic credit ledger of registered person ['C_1'] is calculated as under-

$C_1 = T - (T_1+T_2+T_3)$

Where,

T = Total input tax involved on inputs and input services in a tax period.

T_1 = Input tax attributable to inputs and input services intended to be used exclusively for non-business purposes

T_2 = Input tax attributable to inputs and input services intended to be used exclusively for effecting exempt supplies

T_3 = Input tax in respect of inputs and input services on which credit is blocked under section 17(5)

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Computation of total input tax involved [T]

Particulars	(₹)
GST paid on taxable items [₹ 55,00,000 x 18%]	9,90,000
Items exempted vide a notification [Since exempted, no GST is paid]	Nil
Items not leviable to tax [Since non-taxable, no GST is paid]	Nil
GST paid under reverse charge on freight paid to GTA for outward transportation of taxable items - [₹ 1,00,000 x 5%]	5,000
GST paid under reverse charge on freight paid to GTA for outward transportation of exempted items - [₹ 80,000 x 5%]	4,000
GST paid under reverse charge on freight paid to GTA for outward transportation of non-taxable items - [₹ 20,000 x 5%]	1,000
GST paid on monthly rent - [₹ 5,50,000 x 18%]	99,000
GST paid on packing charges [₹ 2,50,000 x 18%]	45,000
Salary paid to staff at the Store [Services by an employee to the employer in the course of or in relation to his employment is not a supply in terms of para 1 of the Schedule III and hence, no GST is payable thereon].	Nil
GST paid on inputs used for personal purpose	5,000
GST paid on rent a cab services availed for business purpose	4,000
GST paid on items given as free samples	4,000
Total input tax involved during the month [T]	**11,57,000**

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Computation of T_1, T_2, T_3

Particulars	(₹)
GST paid on monthly rent attributable to personal purposes [1/3 of ₹ 99,000]	33,000
GST paid on inputs used for personal purpose	5,000
Input tax exclusively attributable to non-business purposes [T_1]	**38,000**
GST paid under reverse charge on freight paid to GTA for outward transportation of exempted items [As per section 2(47), exempt supply means, *inter alia,* supply which may be wholly exempt from tax by way of a notification issued under section 11. Hence, input service of outward transportation of exempt items is exclusively used for effecting exempt supplies.]	4,000
GST paid under reverse charge on freight paid to GTA for outward transportation of non-taxable items [Exempt supply includes non-taxable supply in terms of section 2(47). Hence, input service of outward transportation of non-taxable items is exclusively used for effecting exempt supplies.]	1,000
Input tax exclusively attributable to exempt supplies [T_2]	**5,000**
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(i) as the same is not used by All-in-One Store for providing the rent a cab service or as part of a taxable composite or mixed supply.	4,000
GST paid on items given as free samples	4,000

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[ITC on goods *inter alia,* disposed of by way of free samples is blocked under section 17(5)(h)].	
Input tax for which credit is blocked under section 17(5) [T3] **	**8,000**

**Since GST paid on inputs used for personal purposes has been considered while computing T_1, the same has not been considered again in computing T_3.

ITC credited to the electronic credit ledger

$C_1 = T - (T_1+T_2+T_3)$

= ₹ 11,57,000 – (₹ 38,000 + ₹ 5,000 + ₹ 8,000) = ₹ 11,06,000

B. Computation of Common Credit

$C_2 = C_1 - T_4$

where C_2 = Common Credit

T_4 = Input tax credit attributable to inputs and input services intended to be used exclusively for effecting taxable supplies

Computation of T_4,

Particulars	(₹)
GST paid on taxable items	9,90,000
GST paid under reverse charge on freight paid to GTA for outward transportation of taxable items	5,000
Input tax exclusively attributable to taxable supplies [T_4]	**9,95,000**

Common Credit $C_2 = C_1 - T_4$

=₹ 11,06,000 – ₹ 9,95,000 = ₹ 1,11,000

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C. Computation of ITC attributable towards exempt supplies out of common credit

ITC attributable towards exempt supplies is denoted as 'D_1' and calculated as-

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

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period

Aggregate value of exempt supplies during the month

= ₹ 15,00,000 (₹ 12,00,000 + ₹3,00,000)

Total turnover in the State during the tax period

= ₹ 65,00,000 (₹ 42,00,000 + ₹ 12,00,000 + ₹3,00,000 + ₹ 8,00,000)

Note: Transfer of items to Store located in Goa is inter-State supply in terms of section 7 of the IGST Act, 2017 and hence includible in the total turnover. Such supply is to be valued as per rule 28. However, the value declared in the invoice cannot be adopted as the value since the recipient Store at Goa is not entitled for full credit because the goods are to be distributed as free samples, ITC on which is blocked. Therefore, open market value of such goods, which is the value of such goods sold in Mumbai Store, is taken as the value of items transferred to Goa Store.

D_1 = (15,00,000 ÷ 65,00,000) x 1,11,000

= ₹ 25,615 (rounded off)

D. Computation of Eligible ITC out of common credit

Eligible ITC attributed for effecting taxable supplies is denoted as 'C_3', where-

$C_3 = C_2 - D_1$

= ₹ 1,11,000 - ₹ 25,615

= ₹ 85,385

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E. Computation of Net GST liability for the month

Particulars	GST (₹)
GST liability under forward charge	
Taxable items sold in the store [₹ 42,00,000 x 18%]	7,56,000
Taxable items transferred to Goa Store [₹ 8,00,000 x 18%]	1,44,000
Total output tax liability under forward charge	9,00,000
Less: ITC credited to the electronic ledger	**10,80,385**
ITC carried forward to the next month	1,80,385
Net GST payable [A]	Nil
GST liability under reverse charge	
Freight paid to GTA for outward transportation of taxable items [₹ 1,00,000 x 5%]	5,000
Freight paid to GTA for outward transportation of exempted items [₹ 80,000 x 5%]	4,000
Freight paid to GTA for outward transportation of non-taxable items [₹ 20,000 x 5%]	1,000
Total tax liability under reverse charge [B]	10,000
Net GST liability to be paid in cash [A] + [B] As per section 49(4), amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82). Therefore, tax payable under reverse charge cannot be set off against the ITC and thus, will have to be paid in cash.	**10,000**

Note: While computing net GST liability, ITC credited to the electronic ledger can alternatively be computed as follows:

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Particulars	(₹)
GST paid on taxable items [₹ 55,00,000 x 18%]	9,90,000
Items exempted vide a notification [Since exempted, no GST is paid]	Nil
Items not leviable to tax [Since non-taxable, no GST is paid]	Nil
GST paid under reverse charge on freight paid to GTA for outward transportation of taxable items [₹ 1,00,000 x 5%]	5,000
GST paid under reverse charge on freight paid to GTA for outward transportation of exempted items [₹ 80,000 x 5%] [As per section 2(47), exempt supply means, *inter alia,* supply which may be wholly exempt from tax by way of a notification issued under section 11. Hence, input service of outward transportation of exempt items is exclusively used for effecting exempt supplies. Input tax exclusively attributable to exempt supplies is to be excluded]	Nil
GST paid under reverse charge on freight paid to GTA for outward transportation of non-taxable items [₹ 20,000 x 5%] [Exempt supply includes non-taxable supply in terms of section 2(47). Hence, input service of outward transportation of non-taxable items is exclusively used for effecting exempt supplies. Input tax exclusively attributable to exempt supplies is to be excluded]	Nil
GST paid on monthly rent – for business purposes [(₹ 5,50,000 x 18%) – 1/3 of [(₹ 5,50,000 x 18%)]	66,000
GST paid on packing charges [₹ 2,50,000 x 18%]	45,000

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Salary paid to staff at the Store [Services by an employee to the employer in the course of or in relation to his employment is not a supply in terms of para 1 of the Schedule III to CGST Act and hence, no GST is payable thereon]	Nil
GST paid on inputs used for personal purpose [ITC on goods or services or both used for personal consumption is blocked under section 17(5)(g)]	Nil
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(i) as the same is not used by All-in-One Store for providing the rent a cab service or as part of a taxable composite or mixed supply.]	Nil
GST paid on items given as free samples [ITC on goods *inter alia,* disposed of by way of free samples is blocked under section 17(5)(h)]	Nil
Total ITC credited to the electronic ledger	**11,06,000**
Less: ITC reversal [ITC of common credit, attributable to exempt supplies]	(25,615)
Net ITC available for credit	**10,80,385**

18. (1) Computation of ITC credited to Electronic Credit Ledger

ITC of input tax attributable to inputs and input services intended to be used for business purposes is credited to the electronic credit ledger. Input tax attributable to inputs and input services intended to be used exclusively for non-business purposes, for effecting exclusively exempt supplies and on which credit is blocked under section 17(5) is not credited to electronic credit ledger [Sections 16 and 17].

In the light of the aforementioned provisions, the ITC credited to electronic credit ledger of Vansh Shoppe is calculated as under:

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Particulars	Amount (₹)	CGST @ 6% (₹)	SGST @ 6% (₹)
GST paid on taxable goods	45,00,000	2,70,000	2,70,000
Goods not leviable to GST [Since non-taxable, no GST is paid]	4,00,000	Nil	Nil
GST paid on monthly rent for shop	3,50,000	21,000	21,000
GST paid on telephone expenses	50,000	3,000	3,000
GST paid on Chartered Accountant Fee	60,000	3,600	3,600
GST paid on premium of health insurance policies as per company policy [ITC on health insurance service is allowed only if it is obligatory for employers to provide such services to its employees under any law for the time being in force-Proviso to section 17(5)(b)].	10,000	Nil	Nil
Taxable Goods given as free samples [ITC on goods disposed of by way of free samples is blocked under section 17(5)(h)]	5,000	Nil	Nil

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Particulars	Amount (₹)	CGST @ 2.5% (₹)	SGST @ 2.5% (₹)
Freight paid to GTA for outward transportation of non-taxable goods under reverse charge [Since definition of exempt supply under section 2(47) specifically includes non-taxable supply, the input service of outward transportation of non-taxable goods is being exclusively used for effecting exempt supplies.]	50,000	Nil	Nil
Freight paid to GTA for outward transportation of taxable goods under reverse charge	1,50,000	3,750	3,750
ITC credited to the electronic ledger		**3,01,350**	**3,01,350**
Less: ITC reversal [ITC out of common credit, attributable to exempt supplies] (Refer point no. 2 & 3 below)		(4,600)	(4,600)
Net ITC available		**2,96,750**	**2,96,750**

(2) Computation of common credit available for apportionment

Common Credit = ITC credited to Electronic Credit Ledger – ITC attributable to inputs and input services intended to be used exclusively for effecting taxable supplies [Section 17 read with rule 42].

Particulars	CGST (₹)	SGST (₹)
ITC credited to Electronic Credit Ledger	3,01,350	3,01,350
Less : ITC on taxable goods	2,70,000	2,70,000

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Less: ITC on freight paid to GTA for outward transportation of taxable goods	3,750	3,750
Common credit	**27,600**	**27,600**

(3) Computation of ITC attributable towards exempt supplies out of common credit

ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period/ Total turnover during the tax period)[Section 17 read with rule 42].

Particulars	CGST (₹)	SGST (₹)
ITC attributable towards exempt supplies [₹ 27,600 x (₹ 10,00,000/₹ 60,00,000)]	4,600	4,600

(4) Computation of net GST liability for the month

Particulars	CGST (₹)	SGST (₹)
GST liability under forward charge		
Supply of taxable goods [₹ 50,00,000 x 6%]	3,00,000	3,00,000
Total output tax liability under forward charge	3,00,000	3,00,000
Less: ITC	2,96,750	2,96,750
Net GST payable **[A]**	**3,250**	**3,250**
GST liability under reverse charge		
Freight paid to GTA for outward transportation of taxable goods [₹ 1,50,000 x 2.5%]	3,750	3,750
Freight paid to GTA for outward transportation of non-taxable goods [₹ 50,000 x 2.5%]	1,250	1,250

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Total tax liability under reverse charge **[B]**	**5,000**	**5,000**
Net GST liability [A] + [B]	**8,250**	**8,250**

Note: Amount available in the electronic credit ledger may be used for making payment towards output tax [Section 49]. However, tax payable under reverse charge is not an output tax in terms of definition of output tax provided under section 2(82). Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

19. Computation of net GST liability of Surana & Sons for the tax period

Particulars	(₹)
GST payable on outward supply [Refer Working Note 1]	3,18,000
Less: Input tax credit (ITC) [Refer Working Note 3]	2,78,180
GST payable from Electronic Cash Ledger **[A]**	39,820
Add: GST payable on legal services under reverse charge [₹ 3,50,000 X 18%] **[B]** [Tax on legal services provided by an advocate to a business entity, is payable under reverse charge by the business entity in terms of *Notification No. 13/2017 CT (R) dated 28.06.2017*. Further, such services are not eligible for exemption provided under *Notification No. 12/2017 CT (R) dated 28.06.2017* as the turnover of the business entity (Surana & Sons) in the preceding financial year exceeds ₹ 20 lakh.]	63,000
Total GST paid from Electronic Cash Ledger [A] + [B] [As per section 49(4) amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82). Therefore, input tax credit cannot be used to pay tax payable under reverse charge and thus, tax payable under reverse charge will have to be paid in cash.]	**1,02,820**

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Working Note 1

Computation of GST payable on outward supply

Particulars	Value (₹)	GST (₹)
Turnover of 'M' [liable to GST @ 12%]	14,00,000	1,68,000
Turnover of 'N' [Tax on 'N' is payable under reverse charge by the recipient of such goods]	6,00,000	Nil
Turnover of 'O' [liable to GST @ 12%]	10,00,000	1,20,000
Export of 'M' with payment of IGST @ 12%	2,50,000	30,000
Export of 'O' under letter of undertaking (LUT) [Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]	10,00,000	Nil
Consultancy services provided to independent clients located in foreign countries. [The activity is an export of service in terms of section 2(6) of the IGST Act, 2017 as- • the supplier of service is located in India; • the recipient of service is located outside India; • place of supply of service is outside India (in terms of section 13(2) of the IGST Act, 2017); • payment for the service has been received in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and • supplier of service and recipient of service are not merely establishments of distinct person. [Export of services is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without	20,00,000	Nil

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payment of tax under a LUT in terms of section 16(3)(a) of that Act.] It is assumed that export has been made under LUT		
Sale of building [Sale of building is neither a supply of goods nor a supply of services in terms of para 5 of Schedule III to the CGST Act, provided the entire consideration has been received after issue of completion certificate by the competent authority or after its occupation, whichever is earlier. Hence, the same is not liable to GST]	1,20,00,000	Nil
Interest received on investment in fixed deposits with a bank [Exempt vide *Notification No. 12/2017 CT (R) dated 28.06.2017*]	4,00,000	Nil
Sale of shares [Shares are neither goods nor services in terms of section 2(52) and 2(102). Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to any tax.]	2,50,00,000	Nil
Total GST payable on outward supply		**3,18,000**

Working Note 2

Computation of common credit attributable to exempt supplies during the tax period

Particulars	(₹)
Common credit on inputs and input services [Tax on inputs - ₹ 4,20,000 (₹ 35,00,000 x 12%) + Tax on input services – ₹ 2,70,000 (₹ 15,00,000 x 18%)]	6,90,000
Common credit attributable to exempt supplies (rounded off)	4,74,820

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= Common credit on inputs and input services x (Exempt turnover during the period / Total turnover during the period) = ₹ 6,90,000 x ₹ 1,33,50,000/ ₹ 1,94,00,000 Exempt turnover = ₹ 1,33,50,000 and total turnover = ₹1,94,00,000 [Refer note below]	

Note:

As per section 17(3), value of exempt supply includes supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. As per explanation to Chapter V of the CGST Rules, the value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Further, as per explanation to rule 42, the aggregate value of exempt supplies *inter alia* excludes the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances.

Therefore, value of exempt supply in the given case will be the sum of value of output supply on which tax is payable under reverse charge (₹ 6,00,000), value of sale of building (₹ 2,50,000 / 2 x 100 = ₹ 1,25,00,000) and value of sale of shares (1% of ₹ 2,50,00,000 = ₹ 2,50,000), which comes out to be ₹ 1,33,50,000.

Total turnover = ₹ 1,94,00,000 (₹ 14,00,000 + ₹ 6,00,000 + ₹ 10,00,000 + ₹ 2,50,000 + ₹ 10,00,000 + ₹ 20,00,000 + ₹ 1,25,00,000 + ₹ 4,00,000 + ₹ 2,50,000)

Working Note 3

Computation of ITC available in the Electronic Credit Ledger of the Surana & Sons for the tax period

Particulars	(₹)
Common credit on inputs and input services	6,90,000

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Legal services used in the manufacture of taxable product 'M'	63,000
ITC available in the Electronic Credit Ledger	**7,53,000**
Less: Common credit attributable to exempt supplies during the tax period [Refer Working Note 2]	4,74,820
Net ITC available	**2,78,180**

20. Computation of net GST payable by M/s XYZ

Particulars	GST payable (₹)
Gross GST liability [Refer Working Note 1 below]	2,63,400
Less: ITC [Refer Working Note 2 below]	2,00,000
Net GST payable from Electronic Cash Ledger	**63,400**

Working Notes

(1) Computation of gross GST liability

Particulars	Value received (₹)	Rate of GST	GST payable (₹)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400
Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
Gross GST liability			**2,63,400**

Notes:

(i) Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is

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hired out, it is a case of composite supply under section 2(30) wherein the principal supply is the hiring out of the excavator.

As per section 8(a), the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators (ancillary supply) will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

(ii) Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.

(2) Computation of ITC available for set off

Particulars	GST paid (₹)	ITC available (₹)
Maintenance services for excavators [Refer Note 1]	1,00,000	1,00,000
Health insurance for excavator operators [Refer Note 2]	11,000	-
Scientific and technical consultancy [Refer Note 1]	1,00,000	1,00,000
Total ITC available		**2,00,000**

Notes:

(i) Section 17(5)(d) blocks credit on goods/ or services received by a taxable person for construction of an immovable property on his own account. Here, though the excavators are used for building projects, the same are not used by M/s. XYZ on its own account for construction of immovable property instead they are used for outward taxable supply of hiring out of machinery. Further, excavators are special purpose vehicles whose credit is not restricted under section 17(5)(a), therefore, ITC on maintenance service for excavators shall be allowed.

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Therefore, the maintenance service for the excavators does not get covered by the bar under section 17 and the credit thereon will be available. The same applies for scientific & technical consultancy for construction projects because in this case also, the service is used for providing the outward taxable supply of soil testing and seismic evaluation service and not for construction of immovable property.

(ii) Section 17(5)(b)(i) allows input tax credit on health insurance only where an inward supply of such services is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In the given case, it is assumed that it is not obligatory for employer to provide health insurance to its employees under any law for the time being in force, therefore the credit thereon will not be allowed.

21. Computation of ITC available with V-Supply Pvt. Ltd. for the tax period

S. No.	Particulars	ITC			
		CGST* ₹	SGST* ₹	IGST* ₹	Total ₹
1.	Opening balance of ITC	15,000	8,000	9,000	32,000
2.	Raw Material				
	Raw material purchased from Bihar [Refer Note 1(i)]			14,400	14,400
	Raw material imported from China [Refer Note 1(ii)]			29,970	29,970

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	Raw material purchased from unregistered suppliers within West Bengal [Refer Note 1(iii)]	Nil	Nil		Nil
	Raw material destroyed due to seepage [Refer Note 1(iv)]	Nil	Nil		Nil
	Remaining raw material purchased from West Bengal [Refer Note 1(i)] [₹ 3.5 - ₹ 1.5 – ₹ 0.80 – ₹ 0.30 – ₹ 0.05] = ₹ 0.85]	7,650	7,650		15,300
	Total ITC for raw material	7,650	7,650	44,370	59,670
3.	Consumables [Refer Note 2]	9,000	9,000		18,000
4.	Transportation charges for bringing the raw material to factory [Refer Note 3]	1,500	1,500		3,000
5.	Salary paid to employees on rolls [Refer Note 4]	Nil	Nil	Nil	Nil
6.	Premium paid on life insurance policies taken for specified employees [Refer Note 5]	14,400	14,400	-	28,800

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7.	Audit fee [Refer Note 6]	4,500	4,500	-	9,000
8.	Telephone expenses [Refer Note 6]	2,700	2,700		5,400
9.	Bank charges [Refer Note 6]	900	900		1,800
Total ITC available for the tax period		**55,650**	**48,650**	**53,370**	**1,57,670**

Computation of net GST payable

Particulars	CGST* ₹	SGST* ₹	IGST* ₹	Total ₹
On Intra-state sales in West Bengal	63,000	63,000		1,26,000
On Inter-state sales other than West Bengal			54,000	54,000
On exports under LUT [Note 7]	Nil	Nil	Nil	Nil
Total output tax liability	63,000	63,000	54,000	1,80,000
Less: ITC available for being set off [Note 8 and Note 9]	(55,650)	(48,650)	(53,370)	(1,57,670)
Net GST payable from Electronic Cash Ledger [A]	7,350	14,350	630	22,330
GST payable on inward supply of GTA services under reverse charge through Electronic Cash Ledger [Note 3 and 10] **[B]**	1,500	1,500		3,000
Net GST payable through Electronic Cash Ledger [A] + [B]	**8,850**	**15,850**	**630**	**25,330**

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Notes:

(1) (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16(1).

(ii) IGST paid on imported goods qualifies as input tax in terms of section 2(62)(a). Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16(1).

(iii) Tax on intra-State procurements made by a registered person from an unregistered supplier is levied only on notified categories of goods and services. [Section 9(4)].

(iv) ITC is not available on destroyed inputs in terms of section 17(5)(h).

2. Consumables, being inputs used in the course or furtherance of business, input tax credit is available on the same in terms of section 16(1). However, levy of CGST on diesel has been deferred till such date as may be notified by the Government on recommendations of the GST Council [Section 9(2)]. Hence, there being no levy of GST on diesel, there cannot be any ITC.

3. GST is payable under reverse charge on transportation service received from GTA. Tax payable under section 9(3) of the CGST/SGST Act qualifies as input tax in terms of clauses (b) and (d) of section 2(62). Thus, input tax paid under reverse charge on GTA service will be available as ITC in terms of section 16(1) as the said service is used in course or furtherance of business.

   Furthermore, intra-State services by way of transportation of goods by road except the services of a GTA and a courier agency are exempt from CGST vide *Notification No. 12/2017 CT (R) dated 28.06.2017*. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.

4. Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with para 1 of

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Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services

5. ITC on supply of life insurance service is not blocked if it is obligatory for an employer to provide such service to its employees under any law for the time being in force. [Proviso to section 17(5)(b)]. Therefore, GST paid on premium for life insurance policies will be available as ITC in terms of section 16(1) as the said service is used in the course or furtherance of business.

6. Audit fee, telephone expenses and bank charges are all services used in the course or furtherance of business and thus, credit of input tax paid on such service will be available in terms of section 16(1).

7. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under LUT is made without payment of integrated tax [Section 16(3)(a) of the IGST Act].

8. Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available [Section 16 of the IGST Act read with section 17(2) of the CGST Act].

9. As per section 49(5) read with rule 88A, ITC of-

   (i) IGST is utilised towards payment of IGST first and then CGST and SGST in any proportion and in any order.

   (ii) CGST is utilised towards payment of CGST and IGST in that order. ITC of CGST shall be utilized only after ITC of IGST has been utilised fully.

   (iii) SGST is utilised towards payment of SGST and IGST in that order. ITC of SGST shall be utilized only after ITC of IGST has been utilised fully.

10. Section 49(4) lays down that the amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82). Therefore, tax payable under reverse charge cannot be set off against the ITC and thus, will have to be paid in cash.

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*11. CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

22. Computation of net GST payable by ABC Company Ltd.

Particulars	GST payable (₹)
Gross GST liability [Refer working note (2) below]	91,200
Less: Input tax credit [Refer working note (1) below]	82,000
Net GST payable from Electronic Cash Ledger	**9,200**

Working Notes:

(1) Computation of ITC available with ABC Company Ltd.

Particulars	GST (₹)
Health insurance of factory employees [Note – 1]	20,000
Raw material received in factory [Note – 2]	Nil
Work's contractor's service used for installation of plant and machinery [Note -3]	12,000
Manufacturing machinery directly sent to job worker's premises under challan [Note -4]	50,000
Purchase of car used by director for business meetings only [Note -5]	Nil
Outdoor catering service availed for business meetings [Note -6]	Nil
Total ITC available	**82,000**

Notes:

1. ITC of health insurance is available in the given case in terms of proviso to section 17(5)(b) since it is obligatory for employer to provide health insurance to its employees under the Factories Act, 1948.

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2. Where the goods against an invoice are received in lots/ installments, ITC is allowed upon receipt of the last lot/ installment vide first proviso to section 16(2). Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second installment in next month.

3. Section 17(5)(c) provides that ITC on works contract services is blocked when supplied for construction of immovable property (other than plant and machinery) except when the same is used for further supply of works contract service.

   Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be allowed since such services are being used for installation of plant and machinery.

4. ITC on capital goods directly sent to job worker's premises under challan is allowed in terms of section 19(5) read with rule 45(1).

5. Section 17(5)(a) provides that motor vehicle for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making taxable supply of-

   (i) further supply of such vehicles,

   (ii) transportation of passengers,

   (iii) imparting training on driving, flying, navigating such vehicles and

   Since ABC Company Ltd is a supplier of machine and it does not use the car for transportation of passengers or any other use as specified, ITC thereon will not be available.

6. Section 17(5)(b)(i) provides that ITC on outdoor catering is blocked except where the same is used for making further supply of outdoor catering or as an element of a taxable composite or mixed supply.

   Since ABC Company Ltd is a supplier of machine, ITC thereon will not be available.

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(2) Computation of gross GST liability

	Value received (₹)	Rate of GST	GST payable (₹)
Hiring receipts for machine	5,25,000	12%	63,000
Service charges for supply of manpower operators	2,35,000	12%	28,200
		Gross GST liability	**91,200**

Note:

Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [Section 2(30) read with section 2(90)]. Therefore, service of supply of manpower operators will also be taxed at the rate applicable for hiring out of machines (principal supply), which is 12%, in terms of section 8(a).

23. Computation of ITC available with Pari Ltd.

S. No.	Particulars	Eligible input tax credit		
		CGST (₹)	SGST (₹)	IGST (₹)
1.	**Raw Material**			
	Purchased from local registered suppliers [Note 1(i)] (₹ 1,06,250 x 9%)	9,562.50	9,562.50	
	Purchased from local unregistered suppliers [Note 1(ii)]	Nil	Nil	
	Purchased from Punjab from registered supplier [Note 1(i)] (₹ 1,00,000 x 18%)			18,000

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	Raw material imported from USA [Note 1(iii)]			22,732
2.	Consumables [Note 2] (₹ 1,56,250- ₹ 31,250) x 9%]	11,250	11,250	
3.	Monthly rent for the factory building to the owner in Rajasthan [Note 3]	9,000	9,000	
4.	Salary paid to employees on rolls [Note 4]	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Note 5] (₹ 2,00,000 x 9%)	18,000	18,000	-
Total		47,812.50	47,812.50	40,732
Add: Opening balance of ITC		20,000	15,000	15,000
Total ITC [Note 7]		**67,812.50**	**62,812.50**	**55,732**

Computation of net GST payable

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Intra-State supply	78,750	78,750	
Inter-State supply			67,500
Exports under LUT [Note 6]	Nil	Nil	Nil
Total output tax liability	**78,750**	**78,750**	**67,500**
Less: ITC	67,812.50	62,812.50	55,732
Net GST payable (rounded off)	**10,938**	**15,938**	**11,768**

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Notes:

1. (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16.

   (ii) Tax on procurements made by a registered person from an unregistered supplier is levied only in case of notified goods and services in terms of section 9(4). Therefore, since no GST is paid on such raw material purchased, there does not arise any question of ITC on such raw material.

   (iii) IGST paid on imported goods qualifies as input tax in terms of section 2(62). Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16.

2. ITC on consumables, being inputs used in the course or furtherance of business, is available. However, since levy of GST on high speed diesel has been deferred till a date to be notified by Government, there cannot be any ITC of the same.

3. ITC on monthly rent is available as the said service is used in the course or furtherance of business.

4. Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.

5. ITC on life insurance service is available if the same is obligatory for an employer to provide to its employees under any law for the time being in force as per proviso to section 17(5)(b).

6. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under LUT/bond is made without payment of IGST in terms of section 16(3)(a).

7. Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available as per section 17(2).

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24. Computation of net GST payable by Flowchem for the month of July

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Output tax liability [Working Note 1]			1,88,100
Less: ITC of CGST [Working Note 2]			(25,000)
Less: ITC of SGST has been utilized only after ITC of CGST has been utilized fully in terms of proviso to section 49(5)(c) [Working Note 2]			(25,000)
Net GST payable from Electronic Cash Ledger			**1,38,100**

Working Note 1

Computation of output tax liability of Flowchem for the month of July

Particulars	Amount (₹)
List price of 10 valves (₹ 1,00,000 x 10)	10,00,000
Add: Amount paid by R Refinery to testing agency [Note 1]	15,000
Add: Special packing [Note 2]	10,000
Add: Erection and testing at site [Note 2]	15,000
Add: Freight [Note 3]	5,000
Value of taxable supply	10,45,000
IGST @ 18% [Note 4]	**1,88,100**

Notes:

(1) As per section 15(2), any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, arranging inspection was the liability of the supplier, the same should be included in the value of supply charges for

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the same, however, have been paid directly to the third party service provider by the recipient. Therefore, the value shall be included in taxable value.

(2) As per section 15(2), any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of supply.

(3) As per section 15(2), any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, the supply contract is on FOR basis, payment of freight is the liability of supplier but the same has been paid by the recipient and thus, should be included in the value of supply.

(4) As per section 10(1) of the IGST Act, 2017, where the supply involves movement of goods, the place of supply is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, which in the given case is Abu Road (Rajasthan). Since the location of the supplier (Gujarat) and the place of supply (Rajasthan) are in two different States, the supply is an inter-State supply liable to IGST.

Working Note 2

Computation of ITC available with Flowchem for the month of July

Particulars	CGST (₹)	SGST (₹)
Opening ITC	20,000	20,000
Work contract services availed for erecting foundation for fixing the machinery to the earth in the factory [Note 1]	5,000	5,000
Services of travel company to provide home travel facility to employees Note 2]	Nil	Nil
Services of fitness center to provide wellness services to employees [Note 2]	Nil	Nil
Total ITC	**25,000**	**25,000**

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Notes:

(1) As per section 17(5), ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service, is blocked. Further, plant and machinery includes foundation and structural supports used to fix the machinery to earth.

(2) As per section 17(5), ITC on travel benefits extended to employees on home travel concession and membership of health and fitness center is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of section 17(5)(d) and section 20 are compared with the provisions as amended by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2025	Remarks
17(5)(d)	goods or services or both received by a taxable person for construction of an immovable property (other than ***plant or machinery***) on his own account including when such goods or services or both are used in the course or furtherance of business.	goods or services or both received by a taxable person for construction of an immovable property (other than ***plant and machinery***) on his own account including when such goods or services or both are used in the course or furtherance of business. Explanation 1 — For the purposes of clauses (c) and (d), the expression "construction" includes	Clause (d) of sub-section (5) of section 17 is to be amended to substitute the words "plant or machinery" with words "plant and machinery".

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	Explanation — For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.	re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property. ***Explanation 2- For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery".***	
20(1)	Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-	Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9	Section 20(1) and Section 20(2) are to be amended to explicitly provide for distribution of input tax credit by the Input Service Distributor in respect of inter-state supplies, on which tax has to be

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	section (4) of section 9 for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.	***of this Act or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act, 2017***, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.	paid on reverse charge basis, by inserting reference to sub-section (3) and sub-section (4) of section 5 of IGST Act in said sub-sections. ***The amendment will be effective from 1st April, 2025.***
20(2)	The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9,paid by a distinct person registered in the same State as the	The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 of this Act **or** ***under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act,***	

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	said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.	***2017***, paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.	

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CHAPTER 8

REGISTRATION

The section numbers referred to in the chapter pertain to the CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After reading this chapter, you will be able to:

- understand the concept of the taxable person
- explain when a person becomes liable to get registered under GST.
- identify the scenarios where registration is compulsory.
- identify the persons who are not liable for registration.
- describe the procedure for obtaining registration under GST.
- explain the procedure for amendment of registration.
- describe the cancellation of registration and revocation of cancellation of registration in specified circumstances.

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1. INTRODUCTION

Under any taxation law, registration is the most fundamental requirement for the identification of persons liable to pay tax thereby ensuring tax compliance in the economy. Under the indirect tax regime, without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him. It is the first step towards becoming compliant under any tax law. Registration under GST legally recognizes a person as a supplier of goods or services or both and legally authorizes him to collect taxes from his customers and pass on the credit of the taxes paid on the goods or services supplied to the purchasers/recipients. He can claim the input tax credit of taxes paid and can utilize the same for payment of taxes due on the supply of goods or services. Registration ensures the seamless flow of input tax credit from suppliers to recipients at the national level.

Under GST law, a supplier is required to obtain State-wise registration. There is no concept of a centralized registration under GST like the erstwhile service tax regime. A supplier has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Such a supplier is not required to obtain registration in a State/UT from where he makes only a non-taxable supply.

Since registration in GST is PAN based, once a supplier is liable to register in any one State, he has to obtain registration in each of the States/UTs in which he makes taxable supply under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he has an option either to get a single registration for said State/UT [wherein he can declare one place as principal place of business (PPoB) and the other places/branches as additional place(s) of business (APoB)] or to get separate registrations for each place of business in such State/UT.

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Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and GST compensation cess.

Chapter VI - Registration [Sections 22 to 30] of the CGST Act, 2017 and Chapter III – Registration [Rules 8 to 26] of the CGST Rules, 2017 contain the provisions relating to registration. State GST laws also prescribe identical provisions in relation to Registration.

Before proceeding to understand the registration provisions, let us first go through a few relevant definitions.

2. RELEVANT DEFINITIONS

- **Agent:** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].
- **Common portal:** means the common goods and services tax electronic portal referred to in section 146 [Section 2(26)].
- **Council:** means the Goods and Services Tax Council established under article 279A of the Constitution [Section 2(36)].
- **Place of business:** includes [Section 2(85)]:

  - a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
  - a place where a taxable person maintains his books of account; or
  - a place where a taxable person is engaged in business through an agent, by whatever name called.

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- **Appellate Authority:** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].
- **Exempt supply:** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 of the CGST Act, or under section 6 of the IGST Act, and includes non-taxable supply [Section 2(47)].
- **Online gaming:** means offering of a game on the internet or an electronic network and includes online money gaming [Section 2(80A)].
- **Online money gaming:** means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force [Section 2(80B)].
- **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109)].
- **Taxable person:** means a person who is registered or liable to be registered under section 22 or section 24 *[The concept of taxable person has been discussed in detail in subsequent paras]* [Section 2(107)].
- **Principal place of business:** means the place of business specified as the principal place of business in the certificate of registration [Section 2(89)].
- **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 [Section 2(91)].
- **Registered person:** means a person who is registered under section 25, but does not include a person having a Unique Identity Number [Section 2(94)].

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- **Fixed establishment:** means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(50)].
- **Tax period:** means the period for which the return is required to be furnished [Section 2(106)].
- **Business:** includes [Section 2(17)]–

(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 (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets 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, as the case may be;

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

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club

(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.

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3. CONCEPT OF TAXABLE PERSON [SECTION 2(107)]

Under GST law, the concept of taxable person is significant since tax on supplies of goods and/or services, is to be paid by a taxable person. So, let us understand the concept of taxable person. As per section 2(107), taxable person means a person who is registered or liable to be registered under section 22 or section 24 *[These sections have been discussed in detail subsequently in this Chapter]*.

Thus, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

In the subsequent paras, we will see when a person becomes liable to get registered, what is the procedure for getting registered under GST, how to get the registration amended, when can the registration be cancelled and when the cancellation of the registration initiated by the Department or by the registered person be revoked.

Following sections of Chapter VI – Registration of the CGST Act shall be discussed in this chapter to understand the registration provisions:

Section 22	Persons liable for registration
Section 23	Persons not liable for registration
Section 24	Compulsory registration in certain cases
Section 25	Procedure for registration.

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Section 26	Deemed registration
Section 27	Special provisions relating to casual taxable person and non-resident taxable person
Section 28	Amendment of registration
Section 29	Cancellation or suspension of registration
Section 30	Revocation of cancellation of registration

4. PERSONS LIABLE FOR REGISTRATION [SECTION 22]

STATUTORY PROVISIONS

Section 22	***Persons liable for registration***
Sub-section	***Particulars***
(1)	*Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.* *Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.* *Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified.*

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		Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified. *Explanation—For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.*
(2)		*Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day.*
(3)		*Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.*
(4)		*Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.*
	Explanation—For the purposes of this section, —	
	(i)	*the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals*
	(ii)	*the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods*

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		by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker
	(iii)	*the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution except the State of Jammu and Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.*

ANALYSIS

(i) Threshold limit for registration

- Every supplier of goods or services or both is required to obtain registration
- in the State or the Union territory from where he makes the taxable supply
- if his **aggregate turnover** exceeds specified threshold limit in a FY.

Aggregate Turnover

Before, we study what is the applicable threshold limit for various States/ UTs, let us first understand the concept of **aggregate turnover**.

Aggregate turnover is a crucial parameter for deciding the eligibility of a supplier to avail the benefit of threshold exemption from registration and eligibility for composition scheme *[Discussed in Chapter 2 – Charge of GST in Module 1 of the Study Material]*.

'Turnover' in common parlance is the total volume of business in monetary terms. The term 'aggregate turnover' as defined under section 2(6) has been presented in the diagrammatic form as follows:

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Aggregate turnover

Value of all outward supplies --Taxable supplies --Exempt supplies --Exports --Inter-State supplies of persons having same PAN to be computed on all India basis	--CGST --SGST --UTGST --IGST --Compensation cess --Value of inward supplies on which tax is payable under reverse charge

The definition of 'aggregate turnover' Section 2(6) [as given above] read with explanation (i) and (ii) to section 22 has been analysed as follows:

(A) Aggregate turnover to exclude inward supplies on which tax is payable under reverse charge: It may be noted that the inward supplies on which recipient is required to pay tax under Reverse Charge Mechanism (RCM) do not form part of the 'aggregate turnover'. The law stipulates certain supplies like, Goods Transport Agency services, legal services, sponsorship services, to name a few, where the recipient of service is required to pay the tax to the Government – *Discussed in detail in Chapter 2 – Charge of GST*. The value of such supplies would not form part of the 'aggregate turnover' of recipient of such supplies.

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(1) Raghubir Private Ltd. pays GST on sitting fees paid to its directors for the services rendered by them, taxable under reverse charge. The value of services provided by the independent directors to Raghubir Private Ltd. will form part of the aggregate turnover of the directors and not of Raghubir Private Ltd even though tax is to be paid by Raghubir Private Ltd.

(B) Aggregate turnover excludes the elements of tax i.e. CGST, SGST, UTGST, and IGST and compensation cess

(C) Aggregate turnover includes total turnover of all branches (i.e. all GST registrations) under same PAN

Aggregate turnover is calculated by taking together the value in respect of the activities carried out on all-India basis.

(2) A dealer 'X' has two offices – one in Delhi and another in Haryana. In order to determine the aggregate turnover of 'X', turnover of both the offices would be taken into account subject to provisions of section 24.

(D) Value of exported goods/ services, exempted goods/services, inter-State supplies including inter-State supplies between distinct persons having same PAN, to be included in aggregate turnover

(3) Madhur Oils, Punjab, is engaged in supplying machine oil as well as petrol. Supply of petrol is not leviable to GST, but supply of machine oil is taxable. In order to determine the aggregate turnover of Madhur Oils, turnover of both non-taxable as well as taxable supplies would be taken into account.

(E) Aggregate turnover to include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. [Explanation (i) to Section 22]

(4) Mohini Enterprises has appointed M/s Bestfords & Associates as its agent. M/s Bestfords & Associates makes supply of goods on its own account as well as on behalf of Mohini Enterprises where invoices are issued in name of M/s Bestfords & Associates only.

All the supplies of goods made by M/s Bestfords & Associates as

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agent of Mohini Enterprises as well as on its own account will be included in the aggregate turnover of M/s Bestfords & Associates.

(F) 'Aggregate turnover' Vs. 'Turnover in a State': The definition of 'Turnover in a state' is similar to the definition of 'Aggregate turnover' with a difference that the definition of 'Turnover in a state' considers the taxable, exempt and export supplies made from the relevant State. Aggregate turnover is used for determining the threshold limit for registration and the eligibility for the composition scheme *[Discussed in Chapter 2 – Charge of GST]*. However, once a person is eligible for composition levy, GST payable under composition levy would be calculated as a specified % of 'turnover in the State/UT'.

(G) Value of goods, after completion of job work, supplied directly from the premises of the registered job worker not to be included in aggregate turnover of the job worker [Explanation (ii) to Section 22]

Job-work implies undertaking any treatment or process by a person on goods belonging to another registered taxable person.

The person who is treating or processing the goods belonging to other person is called **'job worker'** and the person to whom the goods belong is called **'principal'**. Schedule II of the CGST Act stipulates that job work is a service.

The principal can supply the goods directly from the premises of the job worker without bringing it back to his own premises.

In case the job worker is unregistered, principal should declare job worker's premises as his additional place of business and remove goods from the same.

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If the job worker is a registered person/ principal supplies notified goods, goods can be supplied directly from the premises of the job worker.

Supply of goods, after completion of job work, directly from a registered job worker's premises is treated as supply of goods by the principal.

Further, the value of such goods supplied will be included in the aggregate turnover of the principal and not job worker.

Applicable threshold limit

The threshold limit prescribed under section 22(1) is ₹ 20 lakh in a FY, i.e. every supplier, whose aggregate turnover in a financial year exceeds ₹ 20 lakh, is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods and/or services.

However, the limit of ₹ 20 lakh will be reduced to ₹ 10 lakh if the person is carrying out business in **Special Category States**. As per Article 279A(4)(g)

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of the Constitution, there are 11 Special Category States, namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand. However, as per the explanation (iii) to section 22, for the purposes of registration, only Mizoram, Tripura, Manipur and Nagaland are Special Category States. Therefore, the threshold limit ₹ 10 lakh is applicable for Mizoram, Tripura, Manipur and Nagaland.

Government is empowered to enhance the threshold limit of ₹ 20 lakh upto ₹ 40 lakh for a supplier engaged exclusively in the supply of goods, at the request of a State and on the recommendations of the Council. This shall be subject to such conditions and limitations, as may be notified.

For the purposes of section 22(1), a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Further, *Notification No. 10/2019 CT dated 07.03.2019* exempts any person who is engaged exclusively in supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 lakh, from the requirement to obtain a registration.

Exceptions to this exemption are as follows:

(a) Persons required to take compulsory registration under section 24.

(b) Persons engaged in making supplies of

(i) ice cream and other edible ice, whether or not containing cocoa [2105 00 00],

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(ii) pan masala [2106 90 20],

(iii) all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes,

(iv) fly ash bricks; fly ash aggregates; fly ash blocks [6815],

(v) bricks of fossil meals or similar siliceous earths [6901 00 10],

(vi) building bricks [6904 10 00],

(vii) earthen or roofing tiles [6905 10 00].

(c) Persons engaged in making **intra-State supplies** in the States of Arunachal Pradesh, Uttarakhand, Meghalaya, Sikkim, Telangana, Puducherry and Special Category States as per section 22 [Nagaland, Mizoram, Manipur, Tripura]. **Inter-State supplies of goods** are nevertheless liable to compulsory registration under section 24 and are already covered in exception (a) above.

(d) Person who has opted for **voluntary registration** or such registered persons who intend to continue with their registration under the CGST Act.

In view of the above discussion, the registration requirements under GST can be summarised as follows:

The above information is presented in an alternate manner as follows:

			Threshold limit for persons engaged	
			exclusively in supply of goods	**exclusively in supply of services/ in supply of both goods & services**
States/UTs other than Special Category States		Puducherry	₹ 20 lakh	₹ 20 Lakh
		Telangana	₹ 20 lakh	₹ 20 Lakh
		Others	₹ 40 lakh	₹ 20 Lakh

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Special Category States/ UTs as per Constitution	**Special Category States as per section 22**	Manipur	₹ 10 lakh	₹ 10 Lakh
		Mizoram	₹ 10 lakh	₹ 10 Lakh
		Nagaland	₹ 10 lakh	₹ 10 Lakh
		Tripura	₹ 10 lakh	₹ 10 Lakh
	Other States/ UTs	Jammu and Kashmir	₹ 40 lakh	₹ 20 Lakh
		Assam	₹ 40 lakh	₹ 20 Lakh
		Himachal Pradesh	₹ 40 lakh	₹ 20 Lakh
		Arunachal Pradesh	₹ 20 Lakh	₹ 20 Lakh
		Meghalaya	₹ 20 Lakh	₹ 20 Lakh
		Sikkim	₹ 20 Lakh	₹ 20 Lakh
		Uttarakhand	₹ 20 Lakh	₹ 20 Lakh

The above information is presented in an alternate manner as follows:

States with threshold limit of ₹ 10 lakh for supplier of goods and/or services	**States/UTs with threshold limit of ₹ 20 lakh for supplier of goods and/or services**	**States/UTs with threshold limit of ₹ 20 lakh for supplier of services/ both goods and services and threshold limit of ₹ 40 lakh for supplier of goods (Intra-State)**
❑ Manipur ❑ Mizoram ❑ Nagaland ❑ Tripura	❑ Arunachal Pradesh ❑ Meghalaya ❑ Sikkim ❑ Uttarakhand ❑ Puducherry ❑ Telangana	❑ Jammu and Kashmir ❑ Assam ❑ Himachal Pradesh ❑ All other States

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(5) Prithiviraj of Assam is exclusively engaged in intra-State supply of shoes. His aggregate turnover in the current financial year is ₹ 22 lakh. In view of the discussion in the above paras, the applicable threshold limit for registration for Prithviraj in the given case is ₹ 40 lakh. Thus, he is not liable to get registered under GST.

If in the above example, all other things remaining the same, Prithiviraj is exclusively engaged in the supply of pan masala instead of shoes, he will not be eligible for higher threshold limit of ₹ 40 lakh and the applicable threshold limit for registration in that given case will be ₹ 20 lakh. Thus, Prithiviraj will be liable to get registered under GST.

If instead of pan masala, Prithiviraj is exclusively engaged in supply of taxable services, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Prithiviraj will be liable to get registered under GST.

Further, if Prithiviraj is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will still remain ₹ 20 lakh only. Thus, Prithiviraj will be liable to get registered under GST.

(6) Shivaji of Telangana is exclusively engaged in intra-State supply of toys. Its aggregate turnover in the current financial year is ₹ 22 lakh. Since Shivaji is making taxable supplies from Telangana, he will not be eligible for higher threshold limit available in case of exclusive supply of goods. The applicable threshold limit for registration for Shivaji in the given case is ₹ 20 lakh. Thus, he is liable to get registered under GST.

If in the above example, all other things remaining the same, if Shivaji is exclusively engaged in supply of taxable services instead of toys or is engaged in the supply of both taxable goods and services, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Shivaji will be liable to get registered under GST in such cases.

(7) Ashoka of Manipur is exclusively engaged in intra-State supply of paper. Its aggregate turnover in the current financial year is ₹ 12 lakh. Since Ashoka is making taxable supplies from Manipur which is a Special Category State, the applicable threshold limit for registration for Ashoka in the given case is ₹ 10 lakh. Thus, he is liable to get registered under GST.

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If in above example, all other things remaining the same, Ashoka is exclusively engaged in supply of taxable services instead of paper, the applicable threshold limit for registration will still be ₹ 10 lakh. Thus, Ashoka will be liable to get registered under GST.

Further, if Ashoka is engaged in supply of both taxable goods and services, the applicable threshold limit for registration in that given case will be ₹ 10 lakh only. Thus, Ashoka will be liable to get registered under GST.

(8) Raghav of Assam is exclusively engaged in intra-State supply of readymade garments. His turnover in the current FY from Assam showroom is ₹ 28 lakh. He has another showroom in Tripura with a turnover of ₹ 11 lakh in the current FY. Since Raghav is engaged in supplying garments from a Special Category State as per section 22, the applicable threshold limit for him gets reduced to ₹ 10 lakh. Further, Raghav is liable to get registered under GST in both Assam and Tripura on his aggregate turnover crossing the threshold limit of ₹ 10 lakh.

(ii) Registration to be obtained only for a place of business from where taxable supply takes place

A supplier is required to obtain registration with respect to his each place of business in India from where a taxable supply has been made. However, a supplier is not liable to obtain registration in a State/UT from where he makes an exempt/non-taxable supply.

It is pertinent to note here that a supplier is required to obtain registration only in the State(s) **"from where taxable supply is made"** and not **"where taxable supply is made"**. It may be noted that if goods and/or services are supplied **in** different States, GST registration is not required in each such State(s).

Thus, if a person has only liaison office or marketing office in a State and if there is no taxable supply from that State, he is not required to obtain registration in that State, even if he is registered in other State/s. Thus, in that State where liaison office or marketing office is located, he will be treated as 'unregistered'.

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(9) Mr. X has a registered office in Delhi. He imports goods which are landed at Mumbai sea port. Mr. X enters into a sales agreement with Mr. Y located in Mumbai to directly sell the goods from the Mumbai port. In this case, Mr. X is not required to obtain registration in Mumbai as he has no fixed establishment in Mumbai.

Further, in a State from where taxable supply has been made, registration is required to be obtained only if the supplier has a "fixed establishment" in such State. This aspect is more relevant in respect of supply of services like repair & maintenance, transportation, security, erection & commissioning services and construction contracts etc.

Further, the threshold limit of a person having places of business in more than one State/UT in India gets reduced to ₹ 10 lakh only when such person makes **taxable supplies** of goods or services or both **from any of the Special Category States** as per section 22. However, in case he makes exempt/non-taxable supply from a Special Category State and taxable supplies from a State other than Special Category State, the threshold limit shall not be so reduced.

(10) Uday Enterprises is engaged in supply of taxable goods and services in Maharashtra. It also supplies alcoholic liquor for human consumption from Nagaland. Its turnover in the current financial year is ₹ 14 lakh in Maharashtra and ₹ 11 lakh in Nagaland.

Since Uday Enterprises is engaged in making taxable supplies of goods and services from Maharashtra, the applicable threshold limit for obtaining registration is ₹ 20 lakh. However, the threshold limit will not be reduced to ₹ 10 lakh in this case, as supply of alcoholic liquor for human consumption from Nagaland (one of the Special Category States) is non-taxable supply[1].

In the given case, since the aggregate turnover of Uday Enterprises exceeds the applicable threshold limit of ₹ 20 lakh, it is liable to obtain registration. It will obtain registration in Maharashtra but is not required to obtain registration in Nagaland as he is not making any taxable supplies from the said State.

[1] *in terms of section 9(1)*

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(iii) Person liable for registration in case of transfer of business

Where a business is transferred, whether on account of succession or any other reason [including transfer/change in the ownership of business due to death of the sole proprietor[2]], to another person as a going concern, the transferee/ successor, is to be registered with effect from the date of such transfer/succession.

Where the business is transferred, pursuant to sanction of a scheme/ arrangement for amalgamation/ de-merger of two or more companies, pursuant to an order of a High Court/Tribunal, the transferee is to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order.

5. COMPULSORY REGISTRATION IN CERTAIN CASES [SECTION 24]

As we have seen above that a supplier is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods and/or services only if his aggregate turnover in a financial year exceeds the applicable threshold limit. However, there are certain cases wherein a supplier is mandatorily required to obtain registration irrespective of the quantum of his aggregate turnover. In other words, these are the cases wherein a supplier is compulsorily required to obtain registration even though his aggregate turnover does not exceed the applicable threshold limit.

However, certain exemptions from registration have also been provided under section 23. These exceptions have been incorporated briefly at the relevant places in the discussion under this heading in order to provide a holistic picture. The exceptions have also been explained in detail in the next *heading 6. Persons not liable for registration*.

The category of persons requiring compulsory registration under GST have been enlisted below with the relevant exceptions:

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[2] *clarified vide Circular No. 96/15/2019 GST dated 28.03.2019*

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(1) **Persons making any inter-State taxable supply**. However, threshold limit of ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of inter-State supply of **taxable services** and of notified handicraft goods and notified handmade goods.

(2) **Casual taxable persons (CTP) making taxable supply.** However, threshold limit of ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of CTP who is making inter-State taxable supplies of notified handicraft goods and notified hand-made goods and is availing the benefit of exemption from registration as mentioned in point 1 above.

(3) **Persons who are required to pay tax under reverse charge on inward supplies received.** However, persons engaged exclusively in making outward supplies, tax on which is liable to be paid on reverse charge basis under section 9(3) [except suppliers of metal scrap (Chapter 72 to 81)] are exempt from registration.

(4) **Non-resident taxable persons (NRTP) making taxable supply.**

(5) **E-commerce:**

- **(i)** Every ECO (Electronic Commerce Operator) who is required to collect tax at source under section 52,
- **(ii)** Persons who are required to pay tax under section 9(5)[3] i.e. e-commerce operator who is required to pay tax on specified services.
- **(iii)** Persons who supply goods and/or services, other than supplies specified under section 9(5), through such ECO who is required to collect TCS under section 52. Exceptions are as follows:
  - ❑ The threshold limit of ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of suppliers supplying **services** through ECO.

[3] *The provisions of section 9(5) of the CGST Act, 2017 where the ECO is required to pay tax are discussed in detail in Chapter 12 – Electronic Commerce Transactions of this Module of the Study Material.*

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- The threshold limit for registration is available to persons making intra-State supplies of **goods** through ECO.

(6) Persons who are required to deduct tax under section 51, whether or not separately registered under this Act.

(7) Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise.

(8) Every person supplying online information and data base access or retrieval (OIDAR) services from a place outside India to a person in India, other than a registered person.

(9) Input Service Distributor, whether or not separately registered under CGST Act.

(10) Every person supplying online money gaming from a place outside India to a person in India.

(11) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

In case a person already registered under GST is required to deduct tax under section 51, he is required to take separate registration for the purpose of deducting tax under section 51.

An ISD is required to obtain a separate registration even though it may be separately registered.

Note: Concept of CTP and NRTP is explained subsequently in this chapter.

6. PERSONS NOT LIABLE FOR REGISTRATION [SECTION 23]

Section 23 lists the persons who are not liable to obtain a registration. As mentioned above, a person who is not registered under the GST but is liable to be registered and a person who is registered (whether voluntarily or otherwise) is considered to be a taxable person. Accordingly, it can be said that persons listed as not liable to be registered under section 23 would not fall in the definition of the 'taxable persons'.

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(i) Persons not liable to registration

Section 23(1) lists the following persons as not liable to be registered. Thus, the persons so listed will not be the 'taxable persons'.

(A) Person engaged exclusively in the business of supplying goods and /or services not liable to tax/wholly exempt from tax: Any person engaged exclusively in the business of supplying goods or services or both that is not liable to tax or is wholly exempt from tax under CGST Act/ IGST Act shall not be liable to registration. This provision can be understood with the help of following examples:

(11) Madhur Oils, Punjab, is exclusively engaged in supplying petrol. Supply of petrol is not leviable to GST. Thus, Madhur Oils is not liable for registration as it is engaged exclusively in supplying goods not leviable to tax.

(12) Bhavyajyoti Foundation, a charitable trust registered under section 12AB of the Income-tax Act, 1961, is exclusively engaged in supply of services by way of charitable activities. Services by an entity registered under section 12AB of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. Bhavyajyoti Foundation is not liable for registration as it is exclusively engaged in supplying services exempt from tax.

(B) An agriculturist, to the extent of supply of produce out of cultivation of land: An agriculturist to the extent of supply of produce out of cultivation of land is also not liable to registration. The term agriculturist has been defined under section 2(7) as an individual/Hindu Undivided Family (HUF) who undertakes **cultivation of land**—

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour

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under personal supervision or the personal supervision of any member of the family.

From the above definition, it is clear that the benefit of not being liable to registration is only restricted to the agriculturists who are individuals or HUFs. Further, if an agriculturist is also engaged in making any supply other than supply of produce out of cultivation of land, he shall be liable to registration based on applicable threshold limit.

(13) Deshbandhu is an agriculturist engaged in cultivation of wheat in his field in the State of Punjab. He was exclusively engaged in intra-State supply of wheat cultivated in his field in the previous year. Thus, he was not liable to registration as he was exclusively engaged in supply of produce out of cultivation of land.

In the current year, he decided to start trading in pre-packaged and labelled puffed rice apart from supplying his wheat produce. His turnover in the current year is ₹ 32 lakh from supply of wheat produced and ₹ 9 lakh from trading of pre-packaged and labelled puffed rice.

Since he is engaged in trading of pre-packaged and labelled puffed rice also, he is not covered under section 23 above. The threshold limit for registration applicable to a person exclusively engaged in supply of goods in the State of Punjab is ₹ 40 lakh. The aggregate turnover of Deshbandhu in the current year is ₹ 41 lakh [₹ 32 lakh + ₹ 9 lakh] which exceeds the threshold limit. Thus, he will be liable to registration.

(ii) Specified category of persons notified by the Government exempted from obtaining registration

Section 23(2) provides that notwithstanding anything to the contrary contained in section 22(1) or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act. Thus, section 23 (2) grants the Government, a power to notify category of persons as being exempted from obtaining registration under GST law.

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The following category of persons have been notified under the said section:-

A. Persons making only reverse charge supplies

Persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3) have been exempted from obtaining registration

However, although the tax on the supply of metal scrap, falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975 is payable by the recipient under reverse charge mechanism, above exemption from registration is not applicable in said case.

Thus, any person exclusively engaged in the supply of metal scrap will not be exempted from registration.

[Notification No. 5/2017 CT dated 19.06.2017]

(14) Manikaran Transporters is a Goods Transport Agency (GTA) engaged exclusively in supplying GTA services liable to tax under reverse charge [since tax is beng paid on GTA services @ 5% and Manikaran has not exercised the option to pay GST itself]. Thus, it is exempt from registration as it is engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis.

Further, Manikaran Transporters supplies the said service to Diwakar Manufacturing Pvt. Ltd. whose aggregate turnover does not exceed the applicable threshold limit.

However, since Diwakar Manufacturing Pvt. Ltd. has to pay tax on GTA services [@ 5%] under reverse charge, it will be required to obtain registration mandatorily irrespective of the quantum of its aggregate turnover.

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B. Persons making inter-State supplies of taxable services up to ₹ 20 lakh

The persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakh in a financial year have been exempted from obtaining compulsory registration.

However, the aggregate value of such supplies, computed on all India basis, should not exceed an amount of ₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland *[Notification No. 10/2017 IT dated 13.10.2017]*.

(15) Dhola & Co., located in Delhi, is engaged in supply of taxable goods[4] in the neighbouring States of Punjab and Haryana.

Its aggregate turnover in current FY is ₹ 10 lakh. Since it is engaged in making inter-State taxable supply of goods, it is required to register mandatorily under GST irrespective of its aggregate turnover.

However, if in the above case, Dhola & Co. is engaged in inter- State supply of taxable services instead of goods, it will be eligible for exemption from registration till its aggregate turnover does not exceed ₹ 20 lakh.

C. Persons making inter-State taxable supplies of notified handicraft goods and notified handmade goods up to ₹ 20 lakh

As we have seen earlier that as per section 24 read with *Notification No. 10/2017 IT*, a person making inter-State supplies of goods is liable to be registered compulsorily under GST irrespective of the threshold limit.

However, in the following cases, **persons making inter-State supplies** of goods have been exempted from obtaining registration:

[4] *other than notified handicraft goods and notified hand-made goods*

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(a) Persons making inter-State taxable supplies of notified handicraft goods[5].

(b) Persons making inter-State taxable supplies of notified products[6], when made by craftsmen predominantly by hand even though some machinery may also be used in the process.

Conditions to be fulfilled:

1. The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakh [₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] in a FY.

2. Such persons have obtained a PAN and have generated an e-way bill[7] *[Notification No. 3/2018 IT dated 22.10.2018]*.

(16) Ariza Pvt. Ltd., located in Madhya Pradesh, is a supplier of taxable and notified handicraft goods. It supplies these goods in the neighbouring States of Uttar Pradesh and Orissa. Its aggregate turnover till the month of October is ₹ 15 lakh. Although, Ariza Pvt. Ltd. is engaged in making inter-State supplies of taxable goods, it is not liable to obtain registration till its

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[5] *Handicraft goods referred herein are goods as defined and notified in Notification No. 21/2018 CT (R) dated 26.07.2018. This notification notifies the handicraft items which are eligible for concessional rate of tax, for instance, handcrafted candles, articles made of paper mache, coir articles, handbags including pouches and purses; jewellery box, hand embroidered articles, art ware of iron/aluminium, etc. These examples are only for the purpose of knowledge and are not relevant for examination purposes.*
Handicraft goods are defined under said notification as goods predominantly made by hand even though some tools or machinery may also have been used in the process; such goods are graced with visual appeal in the nature of ornamentation or in-lay work or some similar work of a substantial nature; possess distinctive features, which can be aesthetic, artistic, ethnic or culturally attached and are amply different from mechanically produced goods of similar utility.

[6] *Some of the notified products are leather articles, carved wood products, wood turning and lacquer ware, bamboo products, textiles hand printing, theatre costumes, musical instruments, dolls and toys, etc. These examples are only for the purpose of knowledge and are not relevant for examination purpose.*

[7] *The provisions relating to e-way bill have been discussed in detail in Chapter 10 in this Module of the Study Material.*

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aggregate turnover does not exceed ₹ 20 lakh as it has availed the exemption from registration under *Notification No. 03/2018 IT*[8].

D. Casual Taxable Persons making inter-State taxable supplies of notified handicraft goods and notified handmade goods up to ₹ 20 lakh

As we have seen earlier that as per section 24, a CTP is liable to be registered compulsorily under GST irrespective of the threshold limit.

However, following categories of CTPs have been exempted from obtaining registration:

(a) CTPs making inter-State taxable supplies of **notified handicraft goods**, [as referred in Point C above] or

(b) CTPs making inter-State taxable supplies of **notified products** [as referred in Point C above], when made by the craftsmen predominantly by hand even though some machinery may also be used in the process.

Conditions to be fulfilled:

1. CTPs are availing benefit of *Notification No. 03/2018 IT dated 22.10.2018* [discussed above].
2. The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakh [₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] in a FY.
3. Such persons have obtained a PAN and have generated an e-way bill *[Notification No. 56/2018 CT dated 23.10.2018]*.

E. Persons making supplies of services through an ECO [other than supplies specified under section 9(5)] with aggregate turnover up to ₹ 20 lakh

Persons making supplies of services, other than supplies specified under section 9(5), through an ECO who is required to collect tax at source under section 52, and having an aggregate turnover, to be computed on all India basis, not exceeding **₹ 20 lakh** (**₹ 10 lakh** in case

[8] *subject to fulfilment of other conditions prescribed under said notification.*

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of Special Category States of Mizoram, Tripura, Manipur and Nagaland) in a FY, have been exempted from obtaining compulsory registration *[Notification No. 65/2017 CT dated 15.11.2017]*.

Therefore, all service providers, whether supplying intra-State, inter-State or through ECO, will be exempt from obtaining registration, provided their aggregate turnover does not exceed ₹ 20 lakh (₹ 10 lakh in special category States of Mizoram, Tripura, Manipur and Nagaland).

(F) Persons making intra-State supplies of goods through an ECO with aggregate turnover up to the threshold limit

The persons making supplies of goods through an ECO who is required to collect TCS under section 52 and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the threshold limit in accordance with the provisions of section 22(1), are exempted from obtaining registration, subject to the following conditions, namely:

(i) such persons shall **not make any inter-State supply** of goods;

(ii) such persons shall **not make supply** of goods through ECO **in more than one State**/Union territory;

(iii) such persons shall be **required to have a PAN** issued under the Income-tax Act, 1961;

(iv) such persons shall, before making any supply of goods through ECO, declare on the common portal:

a. their PAN

b. address of their place of business and

c. State/UT in which such persons seek to make such supply,

which shall be subjected to validation on the common portal;

(v) such persons have been **granted an enrolment number** on the common portal on successful validation of the PAN declared above;

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(vi) such persons shall not be granted more than one enrolment number in a State/UT;

(vii) no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under section 25, the enrolment number shall cease to be valid from the effective date of registration.

[Notification No. 34/2023 CT dated 31.07.2023]

Liability to register in respect of services provided by the commission agent as per APMC Act for sale/ purchase of agricultural produce

CBIC has clarified[9] the issue as to whether the services provided by the commission agent as per Agricultural Produce Marketing Committee Act (APMC Act) in connection to the sale/ purchase of agricultural produce qualify as supply under GST with the help of the following example. It further examines and clarifies the registration requirements of such commission agents.

Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the APMC Act of the State[10]. Mr. B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A.

In case where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I. However, in case where the invoice is issued by Mr. B to the buyer, Mr. B is an agent as covered under Para 3 of Schedule I to the CGST Act. Hence, in such cases, the services supplied by commission agent Mr. B on behalf of the principal without consideration shall be deemed to be a supply – *Concept of Deemed Supply under Schedule-I has been discussed in detail in Chapter 1 – Supply under GST in Module 1 of the Study Material*.

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[9] *Circular No. 57/31/2018 GST dated 04.09.2018*

[10] *As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.*

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The registration requirements of the commission agents in such cases have been examined and clarified as follows:

(i) As we have already seen, as per section 24, a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other taxable persons.

Accordingly, a commission agent will be liable to get mandatorily registered under this provision only when both the following conditions are satisfied:

(a) the principal should be a taxable person; and

(b) the supplies made by the commission agent should be taxable.

However, generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist who is not a taxable person if he supplies produce out of cultivation of land[11] [as seen above].

Thus, a commission agent, who is making supplies on behalf of non-taxable person [viz. agriculturist], is not liable for compulsory registration under this provision.

(ii) Further, since the services provided by the commission agent for sale/ purchase of agricultural produce are exempt from GST[12], **such commission agents are not liable to be registered in accordance with provisions of section 23(1)(a)** [as discussed above].

(iii) However, where a commission agent is liable to pay tax under reverse charge for any other services procured by him, such an agent will be required to get registered compulsorily (We have already seen under previous heading that persons liable to pay tax under reverse charge are required to obtain registration mandatorily).

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[11] *in terms of section 23(1)(a)*

[12] *Notification No. 12/2017 CT (R) dated 28.06.2017 [Discussed in Chapter 3 – Exemptions from GST in Module 1 in Module-1 of the Study material.]*

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The provisions of section 23 can be summarized in the following diagram:

7. PROCEDURE FOR REGISTRATION [SECTIONS 25, 26 & 27]

STATUTORY PROVISIONS

Section 25	Procedure for registration
Sub-section	**Particulars**
(1)	*Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed.* *Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.* *Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.* *Explanation—Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.*

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(2)	*A person seeking registration under this Act shall be granted a single registration in a State or Union territory.* *Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.*
(3)	*A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.*
(4)	*A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act*
(5)	*Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.*
(6)	*Every person shall have a Permanent Account Number issued under the Income- tax Act, 1961 in order to be eligible for grant of registration:* *Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.*
(6A)	*Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed.* *Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe.*

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	Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.
(6B)	*On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification.* *Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.*
(6C)	*On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendation of the Council, specify in the said notification* *Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.*
(6D)	*The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.*

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	Explanation—For the purposes of this section, the expression "Aadhaar number" shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016	
(7)	*Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed*	
(8)	*Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed*	
(9)	*Notwithstanding anything contained in sub-section (1),––*	
	(a)	*any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries ; and*
	(b)	*any other person or class of persons, as may be notified by the Commissioner,*
	shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.	
(10)	*The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.*	
(11)	*A certificate of registration shall be issued in such form and with effect from such date as may be prescribed*	
(12)	*A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under*	

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	sub-section (10), if no deficiency has been communicated to the applicant within that period
Section 26	**Deemed registration**
(1)	*The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.*
(2)	*Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.*
Section 27	**Special provisions relating to casual taxable person and non-resident taxable person**
(1)	*The certificate of registration issued to a casual taxable person or a non- resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration.* *Provided that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding ninety days.*
(2)	*A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.* *Provided that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional*

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	amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.
(3)	*The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilised in the manner provided under section 49.*

ANALYSIS

The procedure for registration is governed by section 25 read with the relevant CGST Rules, 2017. Relevant provisions of CGST Rules, 2017 have been incorporated at the relevant places. Further, special provisions have been provided for registration of casual taxable person and non-resident taxable person under section 27. Concept of deemed registration has been elaborated under section 26.

Under GST, the application for registration has to be submitted electronically at the GST Common Portal – www.gst.gov.in, duly signed or verified.

A large number of forms/formats relating to registration have been prescribed in the CGST Rules. For every process in the registration chain such as application for registration, acknowledgment, query, rejection, registration certificate, show cause notice for cancellation, reply, cancellation, amendment, field visit report etc., there are separate standard formats[13]. This makes the process uniform all over the country. The decision-making process has also been expedited. Strict time-lines have been stipulated for completion of different stages of registration process.

(i) Where and by when to apply for registration? [Section 25(1)]

Particulars	Where	When
Person who is liable to be registered under section 22 or section 24	in every such State/UT in which he is so liable	within 30 days from the date on which he becomes liable to registration

[13] *For knowledge purposes students are advised to go through various forms/formats relating to registration which are a part of the CGST Rules. The online forms can also be viewed at http://www.gst.gov.in*

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A casual taxable person or a non-resident taxable person		at least 5 days prior to the commencement of business
Every person who makes a supply from the territorial waters of India	in the coastal State/UT where the nearest point of the appropriate base line is located.	within 30 days from the date on which he becomes liable to registration

(17) Sugam Services Ltd. is engaged in taxable supply of services in Delhi. The turnover of Sugam Services Ltd. exceeded ₹ 20 lakh on 1st November. It is liable to get registered by 1st December in Delhi.

(ii) State-wise registration [Section 25(2) read with rule 11]

(A) One registration per State

- Registration needs to be taken State-wise, i.e. there is no centralized registration under GST. A business entity having its branches in multiple States will have to take separate State-wise registration for its branches in different States.
- Further, within a State, an entity with different branches shall normally be granted a single registration wherein it can declare one place as principal place of business (PPoB) and other branches as additional places of business (APoB) The exception to this is provided below:

(B) Separate registration for different places of business within a State/UT may be granted

- Although a taxpayer having multiple places of business in one State is not mandatorily required to obtain a separate registration for each such place of business in the State, he has an option to obtain independent registrations with respect to

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each such separate place of business based on business requirements.

- In case a separate registration for each place of business has been obtained, such separately registered places of business of such person shall have to pay tax on supply of goods/ services/ both made to another registered place of business, of such person and issue a tax invoice/bill of supply, for such supply.
- A registered person opting to obtain separate registration for a place of business shall submit a separate application in Form GST REG 01 in respect of such place of business.

(18) Meethalal & Sons - a supplier in Maharshtra - has three branches in Mumbai, Pune and Mahabaleshwar. Mumbai and Pune branches are engaged in supply of garments and Mahabaleshwar branch engaged in supply of shoes. Either it can obtain single registration for Mahrashtra declaring one of the branches as PPoB and other two branches as APoB or it can obtain separate GST registration for each of the three branches in Mumbai, Pune and Mahabaleshwar as separate places of business.

In case Meethalal & Sons opts to have separate registrations for its all three branches and Mumbai branch sends some garments [liable to GST] for sale to Pune branch, Mumbai branch must raise a tax invoice and pay tax on such transfer of garments to Pune branch.

(C) Composition levy in case of separate registration for multiple places of business within a State/UT

- If a person is paying tax for one of his places of business under normal scheme, he cannot opt to pay tax under composition levy for any other place of business.
- If one of the places of business [separately registered] of a registered person becomes ineligible to pay tax under composition levy, all other registered places of business of said

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person would also become ineligible to pay tax under composition levy.

- The provisions of rules 9 and 10 *[Discussed in subsequent paras]* relating to verification and grant of registration shall mutatis mutandis apply to an application submitted under this rule.

(iii) Voluntary registration [Section 25(3)]

A person who is not liable to be registered under section 22 or section 24 may get himself registered voluntarily. In case of voluntary registration, all provisions of this Act, as are applicable to a registered person, shall apply to such voluntarily registered person.

However, once a person obtains voluntary registration, he has to pay tax even though his aggregate turnover does not exceed the applicable threshold limit for registration (₹ 40 lakh/ ₹ 20 lakh/ ₹ 10 lakh, as the case may be). Voluntary registration is usually obtained by businesses for ensuring seamless flow of credit to their customers.

(iv) Distinct Persons/ establishments of distinct persons [Section 25(4) & (5)]

A person who has obtained/ is required to obtain more than one registration, whether in one State/ Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons**.

Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons**. *These concepts have already been discussed in detail in Chapter 1– Supply under GST.*

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(v) PAN must for obtaining registration [Section 25(6) & (7)]

A Permanent Account Number is mandatory to be eligible for grant of registration.

- A Non-Resident Taxable Person (NRTP) may be granted registration on the basis of other prescribed documents *[Elaborated in subsequent paras]*.

- A person required to deduct tax under section 51 may have, in lieu of a PAN, a Tax Deduction and Collection Account Number issued under the Income Tax Act in order to be eligible for grant of registration.

(vi) Unique Identity Number (UIN) [Section 25(9) & (10) read with rule 17]

Any specialized agency of the United Nations Organization or any Multilateral Financial institution and organization as notified under the United Nations (Privileges and Immunities) Act, 1947, consulate or embassy of foreign countries and any other person notified by the Commissioner, is required to obtain a UIN from the GSTN portal.

This UIN is needed for claiming refund of taxes paid on notified supplies of goods and/or services received by them, and for such other purpose as may be notified. The UIN granted would be a centralized UIN i.e. it shall be applicable to the whole territory of India. A person having UIN is not considered as a registered person and thus, is not a taxable person.

The proper officer may, upon submission of an application in prescribed form or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a UIN to the said person and issue a certificate in Form GST REG 06 within **3 working days** from the date of submission of application.

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(vii) *Suo-motu* registration by the proper officer [Section 25(8) read with rule 16]

Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act** has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in prescribed form.

****Such person shall either:**

(i) submit an application for registration in prescribed form within 90 days from the date of grant of temporary registration, or

(ii) file an appeal against such temporary registration.

In case (ii), if the Appellate Authority upholds the liability to registration, application for registration shall be submitted within 30 days from the date of issuance of such order of the Appellate Authority.

Provisions relating to verification and issue of registration certificate [as contained in rules 9 and 10] *[discussed in subsequent paras]* shall, *mutatis mutandis*, apply to such application submitted by the person granted temporary registration.

GSTIN thereafter granted shall be effective from the date of order of proper officer granting temporary registration.

(viii) Procedure for registration [Section 25 read with rules 8, 9 & 10]

Provisions relating to procedure for application for registration, verification of the application and approval & issue of registration certificate are contained in the rules 8, 9 and 10 respectively. The same have to be read in conjunction with the provisions of section 25.

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The procedure for obtaining registration as prescribed under rules 8, 9 and 10 is also applicable to a person paying tax under composition levy, every person seeking voluntary registration as well as a casual taxable person.

Such persons shall apply for registration in **Form GST REG 01.** The application for registration in GST Form REG 01 is divided into two parts – Part A and Part B.

Above procedure will not apply to:

- **Non-resident taxable person (NRTP)**
- **A person required to deduct tax at source under section 51**
- **A person required to collect tax at source under section 52**
- **A person supplying OIDAR services from a place outside India to a non-taxable online recipient referred to in section 14 of the IGST Act.**
- **A person supplying online money gaming from a place outside India to a person in India referred to in section 14A of the IGST Act.**

Facilitation centres

In order to cater to the needs of tax payers who are not IT savvy, Facilitation centres have been established which help the taxpayer in submitting the application for registration, amending the registration certificate, submitting application for cancellation of registration, revocation of cancellation of registration, etc. Facilitation Centre shall be responsible for the digitization and/or uploading of the forms and documents.

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Application for registration by Special Economic Zone (SEZ) [Second proviso to section 25(1)]:__A person having unit in SEZ/an SEZ developer will have to make a separate application for registration as distinct from his place of business located outside SEZ in the same State/UT.

SEZ is a geographically bound zone where the economic laws relating to export and import are more liberal as compared to other parts of the country. SEZ is considered to be a place outside India for all tax purposes.

Thus, there may be a case where two units of a tax payer are located in same State/UT - one in SEZ and another outside SEZ. In that case, separate registrations have to be obtained for each of the two units as separate places of business.

(19) Suvarna Industries is engaged in manufacturing activities in Uttar Pradesh. It has two manufacturing units in UP - one in SEZ and another outside SEZ. Under GST, one registration per State is required. However, since in this case, one of the two units of Suvarna Industries is located in SEZ, SEZ unit will have to compulsorily make a separate application for registration as a place of business distinct from unit located outside SEZ in the same State

Application for registration by Input Service Distributor [Second proviso to rule 8(1)]: Every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor. There is no threshold limit for registration for an ISD. A person who follows ISD mechanism is required to obtain a separate registration even though it may be otherwise registered in the same State, though the application shall be made in Form GST REG 01 only. An office of a person like marketing division, security division etc. which receives common services getting consumed by different GST registered locations may apply for a separate ISD registration.

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Procedure for registration has been depicted by way of a diagram below:

Procedure for registration

Part I

Every person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN) and State/UT in **Part A of FORM GST REG-01** on GST Common Portal.

PAN is validated online by Common Portal from CBDT database and is also be verified through separate OTPs sent to the PAN linked mobile number and e-mail address.

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.

Part B of application contains the details, such as, constitution of business, jurisdiction, option for composition, date of commencement of business, reason to obtain registration, address of PPoB and nature of activity carried out therein, details of APoB, details of bank account(s), details of authorized signatory, aadhaar authentication, etc.

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A **Casual Taxable Person (CTP)** applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.*

Application shall be forwarded to the Proper Officer.

The procedure after receipt of application by the Proper Officer is depicted in Part II.

** Discussed in detail in subsequent paras.*

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Deemed Approval of Application

If the proper officer fails to take any action in the following cases within the stipulated time, the application for grant of registration shall be deemed to have been approved-

in cases where a person is covered in (B) above	•within a period of 30 days from the date of submission of the application
in case of a person covered in (A) above	•within a period of 7 working days from the date of submission of the application
in cases covered in (C) above	•within 7 working days from the date of receipt of clarification, information or documents furnished by the applicant

To summarise Deemed Approval:

- **In case of successful authentication of Aadhaar and <u>no SCN being issued</u>, registration will be deemed to be approved within 7 working days.**
- **Tax Officer <u>can issue SCN</u> within 7 working days, for grant of registration, in cases of successful Aadhar authentication.**
- **If Aadhar authentication is not opted for/ aadhaar authentication fails in validation/ PO deems it fit to carry out site verification and <u>no SCN is issued</u>, registration will be deemed to be approved within 30 days by tax officer. However, the PO can issue SCN upto 30 days.**
- **In both the cases above where SCN is issued, applicants can submit their reply within 7 working days from issue of SCN.**

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AADHAAR AUTHENTICATION

[Section 25(6A), (6B), (6C) & (6D) read with rules 8, 9, 10B and 25]

As seen above, there's a simplified registration procedure under GST. However, this easy registration procedure was unduly misused by fly-by-night operators. Thus, in an endeavor to curb/check such operators and to increase compliance, aadhaar e-KYC based registration has been introduced under the GST law. Aadhaar authentication is mandatory for the new applicants (whether an individual applicant or otherwise) in order to be eligible for grant of registration. Aadhaar Authentication is required to be complied with, by the persons applying for GST registration as normal taxpayer/ composition/ casual taxable person/ Input Service Distributor (ISD)/ SEZ Developer/ SEZ Unit etc. in Form GST REG 01.

Existing registrants (those who are already registered under GST) are also required to undergo aadhaar authentication.

How is the aadhaar authentication done?

New registrants

While filing the application for registration, the applicant gets an option as to whether he wants to opt for an Aadhaar authentication or not. If he opts 'Yes' for Aadhaar authentication, GST system sends "authentication link" on the mobile numbers and email ids (mentioned in the registration application) of promotor/partner, and primary authorized signatory which are selected by the applicant[14].

On clicking the verification link, a window for Aadhaar authentication opens where they enter the Aadhaar Number and the OTP received by them on the mobile number and email id linked with Aadhaar.

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[14] *While opting for Aadhaar authentication, the applicant needs to select atleast 1 Primary Authorized Signatory and 1 Promoter/ Partner/Karta/Director/Member for authentication purposes.*

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Once Aadhaar authentication has been successfully validated, his application will be deemed to be approved within 7 working days and the registration application submitted by him will not be marked for mandatory site visit, unless the tax official raises a show cause notice within stipulated time.

However, in case the applicant does not opt for Aadhaar authentication while applying for registration or where his Aadhar authentication fails in validation, the applicant who has undergone aadhaar authentication is identified for site visit based on data analysis and risk parameters or proper officer deems it fit to carry out site visit, registration application will not be deemed approved within 7 working days and it will be marked for mandatory site visit and approval thereafter, by the tax official. Registration application will get deemed approved after 30 calendar days, if tax official doesn't take any action.

If tax official raises SCN within 30 calendar days, then applicant has 7 working days to reply to it. Tax official can take further action on that reply within 7 working days. If tax official doesn't take any action after receipt of applicant's reply within next 7 working days, his application will get deemed approved.

Existing registrants

All the regular taxpayers and composition taxpayer are required to get Aadhaar authenticated for existing GST registration. An existing taxpayer can get himself Aadhaar authenticated on GST portal using either Aadhaar authentication link or uploading E-KYC documents[15].

Let us go through the aadhaar authentication process in detail:

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[15] *It is not mandatory for every authorized signatory, promoter or partner to get Aadhaar authenticated for an existing GST registration. The Aadhaar authentication will be needed only for 1 Primary Authorized Signatory and 1 Promoter/ Partner/ Karta/ Director/ Member.*

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A. AADHAAR AUTHENTICATION PROCESS

As per section 25(6A), (6B) and (6C), following persons are required to undergo aadhaar authentication:

(1) New applicant [Rule 8(4A), (4B) and (5)]

Every (i) individual applicant or (ii) an applicant, other than an individual, shall undergo authentication/furnish proof of possession of Aadhaar number, in the manner prescribed in rule 8[16].

(i) Where an applicant opts for authentication of Aadhaar number:

Rule 8(4A) provides that where an applicant opts for authentication of Aadhaar number, he shall, while submitting an application for registration, undergo authentication of Aadhaar number. **Said authentication is required to be eligible for grant of registration.**

Date of submission of the application in such cases shall be earlier of:

(a) the date of authentication of the Aadhaar number,

or

(b) 15 days from the submission of the application in Part B of Form GST REG-01.

Whose aadhaar numbers shall be verified?

In case applicant is an individual, he shall undergo authentication of his own aadhaar number.

In case applicant is other than individual, the authentication will be of aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other notified class of persons *[authorised signatory of all types, Managing and*

[16] *Notification No. 18/2020 CT dated 23.03.2020*

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Authorised partners of a partnership firm and Karta of a Hindu Undivided Family, have been so notified[17]*]*. (E)

Risk-based biometric-based aadhaar authentication of registration applicants[18]

An applicant who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by **biometric-based Aadhaar authentication and taking photograph**:

(i) of the applicant where the applicant is an individual

or

(ii) of notified individuals (mentioned as (E) above) in relation to the applicant where the applicant is not an individual,

along with the verification of the original copy of the documents uploaded with the application form at one of the notified Facilitation Centres.

The application shall be deemed to be complete only after completion of the process laid down hereunder.

An acknowledgement shall be issued to the applicant only after completion of biometric-based authentication.

(ii) Where an applicant does not opt for authentication of Aadhaar number[19]: The application of a person who has not opted for authentication of Aadhaar number, shall be followed by taking photograph:

- of the applicant where the applicant is an individual or
- of notified individuals (mentioned as (E) above) in relation to the applicant where the applicant is not an individual,

[17] *Notification No. 19/2020 CT dated 23.03.2020*
[18] *First proviso to rule 8(4A)*
[19] *Second proviso to rule 8(4A)*

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along with the verification of the original copy of the documents uploaded with the application form at one of the notified Facilitation Centers.

The application shall be deemed to be complete only after completion of the process laid down hereunder.

(2) Persons already registered

Every registered person shall undergo authentication/furnish proof of possession of Aadhaar number, in prescribed form and manner and within the prescribed time.

The manner in which aadhaar authentication needs to be done by a registered person is prescribed as under:-

A registered person, who has been issued a certificate of registration under GST, shall undergo authentication of the Aadhaar number of:-

- Proprietor, in the case of proprietorship firm,
- Any partner, in the case of a partnership firm,
- Karta, in the case of a Hindu undivided family,
- Managing director or any whole-time director, in the case of a company,
- Any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or
- Trustee in the Board of Trustees, in the case of a Trust;

and of the Authorized Signatory,

in order to be eligible for the following purposes:

- ✓ for filing of application for revocation of cancellation of registration [Rule 23]
- ✓ for filing of refund application in Form RFD-01 [Rule 89]
- ✓ for refund of the IGST paid on goods exported out of India [Rule 96[20]].

[20] *Provisions of rules 89 and 96 have been discussed in detail in Chapter 15 – Refunds in Module 3 of this Study Material.*

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B. WHERE AADHAAR NUMBER IS NOT ASSIGNED

(1) In case of new applicant

If an aadhaar number is not assigned to a new applicant – either (i) an individual or (ii) person/class of persons (other than individual), such individual/person/class of persons shall be offered alternate and viable means of identification in the manner specified in rule 9[21].

Proviso to rule 9(1) provides that where

(i) a person fails to undergo authentication of aadhaar number or does not opt for authentication of Aadhaar number, or

(ii) a person, who has undergone authentication of Aadhaar number, is identified on the common portal, based on data analysis and risk parameters for carrying out physical verification of places of business

(iii) the proper officer (PO), with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business

the registration shall be **granted within 30 days** of submission of application **only after physical verification** of the principal place of business, in the prescribed manner (specified in rule 25 discussed subsequently) and verification of such documents as the proper officer may deem fit.

2. In case of already registered persons [Rule 10B]

If an Aadhaar number is not assigned to an **existing registered person**, such person shall be offered alternate and viable means of identification in the prescribed manner[22].

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[21] *Provisos to section 25(6B) and 25(6C) read with Notification No.s 18 and 19/2020 CT both dated 23.03.2020*

[22] *First proviso to section 25(6A)*

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Such manner has been prescribed as follows:

If Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

(a) his/ her Aadhaar Enrolment ID slip; and

(b) (i) Bank passbook with photograph; or

(ii) Voter identity card issued by the Election Commission of India; or

(iii) Passport; or

(iv) Driving license issued by the Licensing Authority

However, once Aadhaar number is allotted to such person, he shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

In case of failure to undergo aadhaar authentication/furnish proof of possession of Aadhaar number/furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration[23].

C. Persons/class of persons exempt from aadhaar authentication

Section 25(6D) stipulates that above provisions shall not apply to such person or class of persons or any State or Union territory or part thereof, as may be notified.

Following persons have been notified in this regard[24]:

- A person who is not a citizen of India
- Department or establishment of State Government or Central Government
- Local authority

[23] *Second proviso to section 25(6A)*
[24] *Notification No. 03/2021 CT dated 23.02.2021*

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- Statutory body
- Public Sector Undertaking
- A person applying for Unique Identity Number under section 25(9)

Deficiency in registration application [Rule 9(2), (3) and (4)]

(i) Where the application submitted under rule 8 is found to be deficient, either in terms of any **information** or any **document** required to be furnished under the said rule, or

(ii) Where the proper officer requires **any clarification** with regard to any information provided in the application or documents furnished therewith,

he may issue a **notice to the applicant** electronically in prescribed form **within a period of 7 working days** from the date of submission of the application.

The applicant shall furnish such clarification, information or documents electronically within a period of **7 working days** from the date of the receipt of such notice [Rule 9(2)].

However, in such cases, i.e. where:

(i) a person fails to undergo Aadhaar authentication/does not opt for Aadhaar authentication or

(ii) a person, who has undergone authentication of Aadhaar number, is identified on the common portal, based on data analysis and risk parameters for carrying out physical verification of places of business

(iii) PO deems it fit to carry out site verification,

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the notice (in prescribed form) seeking clarifications/ information/ documents from the applicant may be issued by the proper officer not later than 30 days from the submission of the application for registration [Proviso to rule 9(2)].

Where the **proper officer is satisfied with the clarification**, information or documents furnished by the applicant, he may approve the **grant of registration** to the applicant **within a period of 7 working days** from the date of the receipt of such clarification or information or documents.

Where **no reply is furnished by the applicant** in response to the notice issued or where the proper officer is not satisfied with the clarification, information or documents furnished, he may, for reasons to be recorded in writing, **reject such application** and inform the applicant electronically in prescribed form.

Furnishing of bank account details [Rule 10A]

As seen in the diagram outlining the procedure for registration, while filing the application for registration on GST portal, in Part B of the application form, a person is required to furnish the details of his bank account. Rule 10A relaxes this requirement to a limited extent. In pursuance to the same, the registered person is allowed to furnish information within a period of 30 days from the date of grant of registration, or before furnishing the details of outward supplies of goods or services or both under section 37 in GSTR-1 or using IFF, whichever is earlier, furnish information with respect to details of bank account on the common portal.

In short, a taxpayer has an option to give his bank account details after obtaining registration, **within 30 days from the date of grant of registration or the due date of furnishing details of outward supplies, whichever is earlier.**

However, this relaxation is not available for those who have been granted registration as TDS deductor/ TCS collector under rule 12 or *suo-motu* registration under rule 16. They are mandatorily required to furnish the bank account details at the time of filing the application for registration.

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Physical verification of business premises in certain cases [Rule 25]

(1) **Where the proper officer is satisfied that the physical verification of the place of business of a person is required AFTER the grant of registration:** he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal within a period of 15 working days following the date of such verification.

(2) **Where the physical verification of the place of business of a person is required BEFORE the grant of registration in the circumstances specified in the proviso to rule 9(1) [as given in (B) earlier]:** the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal at least 5 working days prior to the completion of the time period specified in the said proviso.

Issuance of registration certificate [Rule 10]

Where the application for grant of registration has been approved, a certificate of registration [duly signed or verified through EVC by the proper officer] in **Form GST REG-06** showing the PPoB and APoB is made available to the applicant on the Common Portal and a Goods and Services Tax Identification Number (hereinafter referred to as "GSTIN") i.e. the GST registration no. is communicated to applicant, within 3 days after the grant of registration.

GSTIN format

State Code		PAN										Entity Code		Check sum character

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Display of registration certificate and GSTIN on the name board [Rule 18]

Every registered person shall display his registration certificate in a prominent location at his PPoB and at every APoB. Further, his GSTIN also has to be displayed on the name board exhibited at the entry of his PPoB and at every APoB.

(ix) Effective date of registration [Rule 10]

Where an applicant submits application for registration	Effective date of registration is
Within 30 days from the date the person becomes liable to registration	Date on which person becomes liable to registration
After 30 days from the date the person becomes liable to registration	Date of grant of registration

(20) Sugam Services Ltd. is engaged in taxable supply of services in Madhya Pradesh. The turnover of Sugam Services Ltd. exceeded ₹ 20 lakh on 1st November. It is required to submit the application for registration upto 1st December [30 days] in the State of Madhya Pradesh. It applies for registration on 28th November and is granted registration certificate on 5th December. The effective date of registration of Sugam Services Ltd. is 1st November.

(21) In above example, if Sugam Services Ltd. applies for registration on 3rd December and is granted registration certificate on 10th December. The effective date of registration of Sugam Services Ltd. is 10th December.

(x) Special provisions for grant of registration in case of Non-Resident Taxable Person (NRTP) and Casual Taxable Person (CTP) [Sections 25 & 27 read with rules 13 & 15]

(A) Meaning of casual taxable person and non-resident taxable person

Before going into nuances of the registration provisions of CTP and NRTP, let us first understand the meaning of casual taxable person and non-resident taxable person:

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Casual Taxable Person

There may be case where a person has a registered business in some State in India, but wants to effect supplies from some other State in which he does not have any fixed place of business. Such person needs to register in the State from where he seeks to supply as a 'casual taxable person'.

CGST Act defines a **casual taxable person** as a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in **a State/UT where he has no fixed place of business** [Section 2(20)]. Further, he cannot exercise the option to pay tax under composition levy.

(22) Krishnadev & Co., engaged in supplying taxable goods, is registered in Rajasthan. It wishes to participate in a 5 days' business exhibition being held in Delhi. However, it does not have a fixed place of business in Delhi.

In this case, Krishnadev & Co. has to obtain registration as a casual taxable person in Delhi.

Non-Resident Taxable Person

A person who is a foreigner and occasionally wants to effect taxable supplies from any State in India needs GST registration for the same. Such person needs to register in the State from where he seeks to supply as a non-resident taxable person. CGST Act defines **non-resident taxable person** as any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business

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or residence in India [Section 2(77)]. He cannot exercise the option to pay tax under composition levy.

Based on the aforesaid definitions, following points merit consideration:

- A CTP does not have a fixed place of business in the State/UT where he undertakes supply though he might be registered with regard to his fixed place of business in some other State/UT, while a NRTP does not have fixed place of business/residence in India at all.
- A CTP has to undertake transactions in the course or furtherance of business whereas the business test is absent in the definition of NRTP.

(B) Special registration provisions of casual taxable person and non-resident taxable person

GST law prescribes special procedure for registration, as also for extension of the operation period of such casual or non-resident taxable persons. They have to apply for registration at least 5 days in advance before making any supply. Also, registration is granted to them or period of operation is extended, only after they make advance deposit of the estimated tax liability. The **special registration procedure** pertaining to CTP and NRTP is as follows:

(A) Both CTP[25] and NRTP have to compulsorily get registered under GST irrespective of the threshold limit, at least 5 days prior to commencement of business.

(B) As per section 25(6), every person must have a PAN to be eligible for registration. Since NRTP will generally not have a PAN of India, he may be granted registration on the basis of other prescribed documents.

[25] *Subject to exemption from registration under Notification No. 56/2018 CT dated 23.10.2018*

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Thus, a NRTP being an individual has to submit a self-attested copy of his **valid passport** along with the application duly signed or verified through electronic verification code by his authorized signatory who is an Indian Resident having valid PAN. However, in case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its PAN, if available.

CTP and NRTP will make taxable supplies only after the issuance of the certificate of registration.

Application will be submitted by NRTP in a different prescribed form whereas CTP will submit the application for registration in the normal form for application for registration i.e. Form GST REG 01 and his registration of CTP will be a PAN based registration.

(C) Period of validity of registration certificate granted to CTP/NRTP

Registration Certificate granted to CTP/NRTP will be valid for:

(i) Period specified in the registration application, or

(ii) 90 days from the effective date of registration [can be extended further by a period not exceeding 90 days by making an application before the end of the validity of registration granted to him**]

whichever is earlier.

Provisions relating to verification of application and grant of registration [under rules 9 and 10] will apply *mutatis mutandis*, to an application for registration filed by NRTP.

(D) Advance deposit of tax

At the time of submitting the registration application, CTP/NRTP are required to make an **advance deposit of tax** of an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

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Further, CTP/NRTP will get a Temporary Reference Number (TRN) for making an advance deposit of tax which shall be credited to his electronic cash ledger. An acknowledgement of receipt of application for registration is issued only after said deposit

Such advance tax deposit amount should be calculated after considering the due eligible ITC which might be available to such casual taxable person *[Circular No. 71/45/2018 GST dated 26.10.2018]*.

***Where extension of time is sought, CTP/NRTP will deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.*

Registration of participants of long running exhibitions

In case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.

While applying for normal registration, the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business.

In such cases, he would not be required to pay advance tax [Refer Point D] for the purpose of registration. He can surrender such registration once the exhibition is over *[Circular No. 71/45/2018 GST dated 26.10.2018]*.

(xi) Deemed registration [Section 26]

Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cess.

Grant of registration/UIN under any SGST Act/ UTGST Act is deemed to be registration/UIN granted under CGST Act provided application for registration has not been rejected under CGST Act.

Further, rejection of application for registration/UIN under SGST Act/UTGST Act is deemed to be rejection of application for registration under CGST Act.

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(xii) Special provisions for grant of registration in case of persons required to deduct tax at source under section 51 or to collect tax at source under section 52 [Rule 12]

An application for registration has to be submitted by such persons in a different prescribed form at GST Common Portal. They would be granted registration within **3 working days** from the date of submission of application after due verification.

When a person is applying for registration to collect TCS or to deduct TDS in a State/UT where he does not have a physical presence, he shall mention name of said State/UT in Part A of prescribed application form for registration. Further, the name of the State/UT in which his principal place of business is located is to be mentioned in Part B of the application form. Thus, States/UTs mentioned in Part A and Part B of the application form may be different.

Where, on a request made in writing by a person to whom a registration has been granted under rule 12(2) or upon an enquiry or pursuant to any other proceeding under the CGST Act, the proper officer is satisfied that a person to whom a certificate of registration has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued and such cancellation shall be communicated to the said person electronically in prescribed form. Proper Officer shall follow the procedure laid down for cancellation of registration prescribed under this Act and rules therein.

(xiii) Special provisions for grant of registration in case of (i) person supplying online information and data base access or retrieval services (OIDAR services) from a place outside India to a non-taxable online recipient (ii) person supplying online money gaming from a place outside India to a person in India [Rule 14]

Application for registration has to be submitted by such persons in a different prescribed form. They would be granted registration subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

In this Chapter, while elaborating the registration provisions contained in Chapter - III Registration of CGST Rules, 2017, only Registration forms - Form GST REG-01 and Form GST REG-06 have been discussed. Students are advised to go through various forms/formats relating to registration at http://www.cbic.gov.in. for knowledge purposes.

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8. AMENDMENT OF REGISTRATION [SECTION 28]

STATUTORY PROVISIONS

Section 28	*Amendment of registration*
Sub-section	*Particulars*
(1)	*Every registered person and a person to whom a Unique Identity Number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in such form and manner and within such period as may be prescribed.*
(2)	*The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed.* *Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.* *Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.*
(3)	*Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.*

ANALYSIS

A **registered person or UIN holder** may need to make some changes/amendments in the registration application. There are two categories of details in registration application – core and non-core fields.

Core fields are name of the business, (legal name) if there is no change in PAN, addition / deletion of stakeholders[26], principal place of business (other than change in State) or additional place of business (other than change in State). All

[26] *Refer diagram given on next page.*

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other fields are **non-core fields** like name of day to day functionaries, e-mail ids, mobile numbers etc.

In case the change is in **core information** in the registration application, the taxable person will apply for amendment within 15 days of the event necessitating the change. The proper officer, then, will approve the amendment within next 15 days. For other changes – **non-core information**, no approval of the proper officer is required, and the amendment can be affected by the taxable person on his own on the common portal.

The provisions relating to amendment of registration are contained in section 28 read with rule 19.

The significant aspects of the same are discussed hereunder:

- Where there is any change in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, **within 15 days** of such change, along with documents relating to such change at the Common Portal.
- **In case of amendment of core fields of information**, the proper officer may, on the basis of information furnished or as ascertained by him, approve or reject amendments in the registration particulars in the prescribed manner. Such amendment shall take effect from the date of occurrence of event warranting such amendment.
- However, **where change relates to non-core fields of information**, registration certificate shall stand amended upon submission of the application for amendment on the Common Portal.
- The proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.
- Any rejection or approval of amendments under the SGST/UTGST Act shall be deemed to be a rejection or approval under this Act also.
- Any particulars of the application for registration shall not stand amended with effect from a date earlier than date of submission of application for amendment on common portal except with order of Commissioner for

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reasons to be recorded in writing and subject to conditions specified by Commissioner in the said order.

- Application for amendment of registration cannot be filed for change in PAN because GST registration is PAN-based. One needs to make fresh application for registration in case there is change in PAN. Thus. where a change in the constitution of any business results in change of PAN of a registered person, the said person shall apply for fresh registration.
- Similarly, application for amendment of registration form cannot be filled if there is change in place of business from one State to the other because GST registrations are State-specific. If one wishes to relocate his business to another State, he must voluntarily cancel his current registration and apply for a fresh registration in the State he is relocating his business.

Core fields of information

Permission of proper officer required if change relates to **core fields of information**

And such change does not warrant cancellation of registration under section 29

- **Legal name of business**
- **Address of PPoB/APoB**
- Addition, deletion or retirement of stakeholders (partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for day to day affairs of the business)

Change of these two particulars shall be applicable for all registrations of a registered person obtained under provisions of this Chapter on same PAN.

Mobile no./e-mail address of authorised signatory can be amended only after online verification through GST Portal.

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If the proper officer fails to take any action,-

(a) within a period of 15 working days from the date of submission of the application, or

(b) within a period of 7 working days from the date of the receipt of the reply to the show cause notice,

the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

(23) Varun Enterprises, a sole proprietorship firm, is engaged in supply of electrical goods in Delhi. The firm is registered under GST. Varun is the proprietor of the firm. He wishes to expand his business and his friend – Arun - approaches him to provide additional capital for his business if he is made a partner in Varun's business.

Varun agrees and changes the constitution of his business and forms a partnership firm – Varun Arun & Co. Since the change in constitution of business from sole proprietorship firm to partnership firm results in change in PAN of the registered person, the partnership firm has to apply for fresh registration. The reason for the same is that GSTIN is PAN based. Any change in PAN would warrant a new registration.

9. CANCELLATION OR SUSPENSION OF REGISTRATION AND REVOCATION OF CANCELLATION [SECTIONS 29 & 30]

STATUTORY PROVISIONS

Section 29	*Particulars*
Sub-section	*Cancellation or suspension of registration*
(1)	*The proper officer may, either on his own motion or on an application filed by the registered person or by his legal*

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	heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where:	
	(a)	*the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of*
	(b)	*there is any change in the constitution of the business*
	(c)	*the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25.*
	Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.	
(2)	*The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,–*	
	(a)	*a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed*
	(b)	*a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return*
	(c)	*any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed*

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	(d)	*any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration*
	(e)	*registration has been obtained by means of fraud, wilful misstatement or suppression of facts*
	Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.	
	Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.	
(3)	*The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.*	
(4)	*The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.*	
(5)	*Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed.*	

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	Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.
(6)	*The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.*
Section 30	***Revocation of cancellation of registration***
(1)	*Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in such manner, within such time and subject to such conditions and restrictions, as may be prescribed.*
(2)	*The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application.* *Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.* *Provided further that such revocation of cancellation of registration shall be subject to such conditions and restrictions, as may be prescribed.*
(3)	*The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.*

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ANALYSIS

The provisions relating to cancellation of registration and its revocation are contained in sections 29 & 30 respectively read with rules 20 to 23. The registration granted under GST can be cancelled for specified reasons. The cancellation can either be initiated by the Department on their own motion or the registered person can apply for cancellation of their registration.

(i) Circumstances where registration is liable to be cancelled [Section 29(1) & (2)]

A. Circumstances when the registration can be cancelled either *suo motu* by proper officer or on an application of the registered person or his legal heirs (in case death of such person)

Cancellation by the registered person on its own or by the Department		
--Business discontinued --Transferred fully for any reason *including death of the proprietor* --Amalgamated with other legal entity --Demerged or --Otherwise disposed of	Change in the constitution of the business	Taxable person who is no longer liable to be registered under section 22 or section 24 or who intends to opt out of the voluntary registration.

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B. Circumstances when the proper officer can cancel registration on his own

In the following cases, registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit after giving an opportuniy of being heard:

(I) Prescribed contraventions which make a registered person liable to cancellation of registration **[Rule 21]:** The registered person-

(a) does not conduct any business from the declared place of business, or

(b) issues invoice/bill without supply of goods/services in violation of the provisions of this Act, or the rules made thereunder.

(c) violates the provisions of section 171. *Section 171 contains provisions relating to anti-profiteering measure – discussed in detail in Chapter 24 – Miscellaneous Provisions in Module 3 of the Study Material.*

(d) violates the provision of rule 10A *(discussed earlier in this chapter).*

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(e) avails input tax credit in violation of the provisions of section 16[27] of the CGST Act or the rules made thereunder.

(f) furnishes the details of outward supplies in Form GSTR-1**,** as amended in FORM GSTR-1A if any, under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods.

(g) violates the provision of rule 86B[28].

(ga) violates the provisions of third or fourth proviso to rule 23(1).

(h) required to file return under section 39(1) for each month or part thereof (i.e. **monthly return filer**), has **not furnished returns for a continuous period of 6 months.**

(i) required to file return under proviso to section 39(1) for each quarter or part thereof **(Quarterly return under QRMP scheme),** has **not furnished returns for a continuous period of 2 tax periods.**

C. Suspension of registration [First proviso to section 29(1) and second proviso to section 29(2) read with rule 21A]

Once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, the proper officer may suspend his registration during pendency of the proceedings relating to cancellation of registration. In this way, a taxpayer is barred from the routine compliances, including filing returns, under GST law during the pendency of the proceedings related to cancellation of registration.

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[27] *Provisions of section 16 have been discussed in detail in Chapter 7 – Input tax credit in this Module of the Study Material.*

[28] *Provisions of rule 86B have been discussed in detail in Chapter 7 – Input tax credit of Module 2 of this Study Material.*

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The period and manner of suspension of registration is as follows:

1. **Where registered person has applied for cancellation of registration:** Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from:

(a) the date of submission of the application

or

(b) the date from which the cancellation is sought,

whichever is later,

pending the completion of proceedings for cancellation of registration.

2. **Where cancellation of the registration has been initiated by the Department on its own motion:** Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may suspend the registration of such person **with effect from a date to be determined by him**, pending the completion of the proceedings for cancellation of registration.

Where,-

(a) (i) a comparison of the returns furnished by a registered person under section 39 with:

- the details of outward supplies furnished in Form GSTR-1, as amended in GSTR-1A if any, or
- the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their Form GSTR-1, as amended in GSTR-1A if any, of the previous tax period, if any,

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OR

(ii) such other analysis, as may be carried out on the recommendations of the Council,

show that there are significant differences or anomalies indicating contravention of the provisions of the CGST Act or the rules made thereunder, leading to cancellation of registration of the said person, or

(b) there is a contravention of the provisions of rule 10A by the registered person, the registration of such person shall be suspended.

Said person shall be intimated in prescribed form by sending a communication to his e-mail address provided at the time of registration or as amended from time to time. In this intimation for suspension and notice for cancellation of registration, the said differences and anomalies are highlighted and said person is asked to explain, within a period of 30 days, as to why his registration shall not be cancelled.

In cases where the cancellation is initiated by the Department on its own and registration of a person has been suspended, such person shall not be granted any refund under section 54, during the period of suspension of his registration.

3. A registered person, whose registration has been suspended as above:

- **shall not make any taxable supply**** during the period of suspension and
- shall not be required to furnish any return under section 39.

The expression "shall not make any taxable supply**" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension.

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4. The **suspension of registration shall be deemed to be revoked** upon **completion of the cancellation** proceedings by the proper officer. Such revocation shall be effective from the date on which the suspension had come into effect.

   The suspension of registration may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

5. Further, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending GST returns, where GST registration was suspended due to non-filing of GST return for a financial year beyond 3 months from the due date of furnishing the said return by a composition taxpayer or returns for such continuous tax period as may be prescribed by registered persons (other than composition taxpayer) **subject to the condition that the registration has not been cancelled by the proper officer under rule 22.**

6. Further also, where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A [furnishing of bank account details] and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A.

7. Where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [revised tax invoices[29]] and section 40 [first return[30]] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

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[29] *Provisions relating to revised tax invoice have been discussed in detail in Chapter 9 - Tax Invoice; Credit and Debit Notes in this Module of the Study Material.*

[30] *Provisions relating to first return have been discussed in detail in Chapter 13 - Returns in this Module of the Study Material.*

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(ii) Procedure for cancellation of registration [Rules 20 and 22]

(a) Voluntary cancellation by registered person

Application

- A registered person seeking cancellation of registration[31] shall electronically submit the application for cancellation of registration in prescribed form within 30 days of occurrence of the event warranting cancellation.
- He is required to furnish in the application the details of inputs held in stock or inputs contained in semi-finished/finished goods held in stock and of capital goods **held in stock on the date from which cancellation of registration is sought**, liability thereon, details of the payment, if any, made against such liability and may furnish relevant documents thereof.

Order

- Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered, proper officer shall issue the order of cancellation of registration within 30 days from the date of submission of application for cancellation.

(b) *Suo-motu* cancellation by the Department

- Where the proper officer cancels the registration *suo-motu*, he shall not cancel the same without giving a show cause notice and without giving a reasonable opportunity of being heard, to the registered person. The reply to such show cause notice (SCN) has to be submitted within 7 days of service of notice.

- If reply to SCN is satisfactory, proper officer shall drop the proceedings and pass an order in prescribed form. However, where the person instead of replying to the SCN served for failure to furnish

[31] *under section 29(1)*

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returns for a continuous period of 6 months or 2 tax periods, as the case may be (return for a F.Y. beyond 3 months from due date of furnishing the said return in case of composition scheme supplier)[32] furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order.

Where registration of a person is liable to be cancelled, proper officer shall issue the order of cancellation of registration within 30 days from the date of reply to SCN.

(c) Effective date of cancellation

- The cancellation of registration shall be effective from a date to be determined by the proper officer and mentioned in the cancellation order. The taxable person will be directed in the said order to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5).

(iii) Amount payable on cancellation of registration [Section 29(5) & (6)]

A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by **an amount equivalent to**:

(i) Input tax credit (ITC) in respect of:

- stock of inputs and inputs contained in semi-finished/finished goods' stock or
- capital goods or plant and machinery

on the day immediately preceding the date of cancellation, or

(ii) the output tax payable on such goods

whichever is higher, calculated **in such manner as may be prescribed**.

However, **in case of capital goods or plant and machinery**, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as

[32] *i.e., contravention of the provisions contained in section 29(2)(b)/(c) read with clauses (h) & (i) of rule 21*

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may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

The manner of determination of amount of credit to be reversed is prescribed under rule 44. On conjoint reading of section 29(5) and rule 44, it can be inferred as follows:

Amount of credit to be reversed in respect of INPUTS:

** Discussed in detail in Chapter-7: Input Tax Credit*

***If tax invoices are not available, the ITC to be reversed will be based on the prevailing market price (MP) of such goods on the date of cancellation.*

Amount of credit to be reversed in respect of CAPITAL GOODS OR PLANT & MACHINERY:

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(24) Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.

ITC taken on such capital goods = C

ITC attributable to remaining useful life = C x 5/60

It is important to note that this requirement to debit the electronic credit and/or cash ledger by suitable amounts is not a prerequisite for applying for cancellation of registration. This can also be done at the time of submission of Final Return[33].

(iv) Other points about cancellation

- A person to whom a UIN has been granted under rule 17 cannot apply for cancellation of registration [Rule 20].
- The cancellation of registration will not affect liability of registered person to pay tax and other dues under the Act for any period prior to the date of cancellation[34] [Section 29(3)].

(25) The proper officer cancelled the registration of Naman Associates on 11th October. The tax dues of Naman Associates for July-September quarter (determined by the proper officer on 16th December) are ₹ 50,000. The cancellation of registration of Naman Associates shall have no effect on his liability of tax dues of ₹ 50,000 even though the tax dues are determined after the cancellation of registration.

- The cancellation of registration under either SGST Act/UTGST Act shall be deemed to be a cancellation of registration under CGST Act [Section 29(4)].
- Once registration is cancelled by the tax authority, the taxpayer will be intimated about the same via sms and email. Order for cancellation of

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[33] *A taxable person whose GST registration is cancelled or surrendered has to file a return known as Final Return. This is statement of stocks held by such taxpayer on day immediately preceding the date from which cancellation is made effective. Detailed provisions of Final Return are discussed in Chapter 13 -Returns.*

[34] *whether or not such tax and other dues are determined before or after the date of cancellation.*

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registration will be issued and intimated to the primary authorized signatory by email and SMS.

- Taxpayer would not be allowed by the Common portal to file return for the period after date of cancellation mentioned in the cancellation order. However, he can submit returns of the earlier period (i.e. for the period before date of cancellation mentioned in the cancellation order for which registration was active).

(v) Revocation of cancellation of registration [Section 30 read with rule 23]

(A) Procedure for revocation of cancellation

- Where the registration of a person is cancelled *suo-motu* by the proper officer, such registered person, subject to the provisions of rule 10B, may apply for revocation of the cancellation to such proper officer, within a period of 90 days** from the date of the service of the order of cancellation of registration.

  **Said period of 90 days may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner/Joint Commissioner, as the case may be, for a further period not exceeding 180 days.

- Thus, a registered person, whose registration is cancelled by the proper officer on his own motion, may subject to provisions of rule 10B submit an application for revocation of cancellation of registration, in prescribed form, to such proper officer, within a period of 90 days from the date of the service of the order of cancellation of registration at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

- If the proper officer is satisfied that there are sufficient grounds for revocation of cancellation, he may revoke the cancellation of registration, by an order **within 30 days** of receipt of application and communicate the same to applicant.

- Otherwise, he may reject the revocation application. However, before rejecting the application, he has to first issue SCN to the applicant who shall furnish the clarification within 7 working days

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of service of SCN. The proper officer shall dispose the application (accept/reject the same) within 30 days of receipt of clarification.

(B) Where registration was cancelled for failure of registered person to furnish returns

Where registration was cancelled for failure of registered person to furnish returns, before applying for revocation, the person has to make good the defaults, i.e. the person needs to file such returns and pay any amount due as tax along with any amount payable towards interest, penalty and late fee in respect of the said returns. However, the registration may have been cancelled by the proper officer either from the date of order of cancellation of registration or from a retrospective date.

(1) Where the registration has been cancelled with effect from the date of order of cancellation of registration

As we have already seen that the common portal does not allow furnishing of returns for the period after the effective date of cancellation, but returns for the earlier period (i.e. for the period before date of cancellation mentioned in the cancellation order) can be furnished after cancellation.

Where the registration is cancelled with effect from the date of order of cancellation of registration, person applying for revocation of cancellation has to furnish all returns due till the date of such cancellation before the application for revocation can be filed and has to pay any amount due as tax, in terms of such returns along with any amount payable towards interest, penalties or late fee payable in respect of the said returns.

However, since the portal does not allow to furnish returns for the period after the date of cancellation of registration, all returns due for the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished within a period of 30 days from the date of the order of revocation.

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(26) The registration of Naman Associates was cancelled by the proper officer by an order dated 1st June for its failure to furnish returns. The registration was cancelled with effect from 1st June itself. It applied for revocation of cancellation of registration and the order for revocation of cancellation of Naman Associates is passed on 31st July. In this case, Naman Associates shall be required to furnish all the returns for the period from 1st June to 31st July within a period of 30 days from 31st July, i.e. by 30th August.

(2) Where the registration has been cancelled with retrospective effect

Where the registration has been cancelled with retrospective effect, it is not possible to furnish the returns before filing the application for revocation of cancellation of registration.

In that case, the application for revocation of cancellation of registration is allowed to be filed, subject to the condition that all returns relating to the period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.

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(27) The registration of Naman Associates was cancelled by the proper officer by an order dated 1st June for its failure to furnish returns. The registration was cancelled with effect from 1st January itself. It applied for revocation of cancellation of registration and the order for revocation of cancellation of Naman Associates is passed on 31st July. In this case, Naman Associates shall be required to furnish all the returns for the period from 1st January to 31st July within a period of 30 days from 31st July, i.e. by 30th August.

Points to be noted

- **UIN Holders (i.e. UN Bodies, Embassies and Other Notified Persons), GST Practitioner cannot apply for revocation of cancelled registration.**
- **In case the registration is cancelled on the request of the taxpayer or his legal heir, one cannot apply for revocation of cancelled registration.**
- **The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act.**

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LET US RECAPITULATE

Nature of registration

The registration in GST is PAN based and State specific.

One registration per State/UT.

However, a business entity having separate places of business in a State may obtain separate registration for each of its places of business .

GST identification number called "GSTIN" - a 15-digit number and a certificate of registration incorporating therein this GSTIN is made available to the applicant on the GSTN common portal.

Registration under GST is not tax specific, i.e. single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.

Persons liable to registration

Those who exceed threshold limit	•Threshold limit elaborated separately in the diagram below.
In case of transfer of business on account of succession, etc.	•**Transferee** liable to be registered from the date of succession of business
In case of amalgamation/ demerger by an order of High Court etc.	•**Transferee** liable to be registered from the date on which Registrar of Companies issues incorporation certificate giving effect to order of High Court etc.

Taxable Supplies + Exempt supplies + Exports + Inter State supplies = **Aggregate Turnover**

Aggregate Turnover will be computed on All-India basis for same PAN

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Applicable threshold limit

States with threshold limit of ₹ 10 lakh for supplier of goods and/or services	•Manipur, Mizoram, Nagaland and Tripura
States/UTs with threshold limit of ₹ 20 lakh for supplier of goods and/or services	•Arunachal Pradesh, Meghalaya, Sikkim, Uttarakhand, Puducherry and Telangana
States/UTs with threshold limit of ₹ 20 lakh for supplier of services/both goods and services and threshold limit of ₹ 40 lakh for supplier of goods (Intra-State)	•Jammu and Kashmir, Assam, Himachal Pradesh, All other States

Compulsory registration in certain cases

- Persons making any inter-State taxable supply
- Casual taxable person who does not have a fixed place of business in the State or Union Territory from where he wants to make supply
- A person receiving supplies on which tax is payable by recipient on reverse charge basis
- Those ecommerce operators who are notified as liable for tax payment under section 9(5)
- Non-resident taxable persons who do not have a fixed place of business in India
- Persons who are required to deduct tax under section 51 (TDS)
- A person who supplies on behalf of some other taxable person (i.e. an Agent of some Principal)
- Suppliers other than notified under section 9(5) who supply through an e-commerce operator
- Every e-commerce operator who is required to collect TCS
- Every person supplying OIDAR services from a place outside India to a person in India other than a registered person
- Input Service Distributor, whether or not separately registered
- Person supplying online money gaming from a place outside India to a person in India
- Person/ class of persons notified by the Central/ State Government

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Persons not liable for registration

- Person engaged exclusively in supplying goods/ services/ both not liable to tax/ wholly exempt from tax
- Agriculturist limited to supply of produce out of cultivation of land
- Persons making only reverse charge supplies except supplier of metal scrap.
- Persons making inter-State supplies of taxable services up to ₹ 20 lakh**
- Persons making inter-State taxable supplies of notified handicraft goods and notified hand-made goods up to ₹ 20 lakh**
- Casual Taxable Persons making inter-State taxable supplies of notified handicraft goods and notified hand-made goods up to ₹ 20 lakh**
- Persons making intra-State supplies of goods through an ECO with aggregate turnover not exceeding threshold limit and not making supply in more than one State/UT, with one enrolment no.
- Persons making supplies of services through an ECO [other than supplies specified under section 9(5)] with aggregate turnover up to ₹ 20 lakh**

**₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland

Where and by when to apply for registration?

Person who is liable to be registered under section 22 or section 24

- in every such State/UT in which he is so liable
- within 30 days from the date on which he becomes liable to registration

A casual taxable person or a non-resident taxable person

- in every such State/UT in which he is so liable
- at least 5 days prior to the commencement of business

A person who makes a supply from the territorial waters of India

- in the coastal State/UT where the nearest point of the appropriate base line is located.
- within 30 days from the date on which he becomes liable to registration

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Voluntary Registration and UIN

Voluntary Registration

Person not liable to be registered under sections 22/24 may get himself registered voluntarily.

Unique Identification Number (UIN)

In respect of supplies to some notified agencies of United Nations organisation, multinational financial institutions and other organisations, a UIN is issued.

Effective date of registration

Application submitted **within 30 days** of the applicant becoming liable to registration

- Effective date is the date on which he becomes liable to registration

Application submitted after **30 days** of the applicant becoming liable to registration

- Effective date is date of grant of registration

Deemed registration

Deemed registration	
Grant of registration/UIN under any SGST Act/ UTGST Act is deemed to be registration/UIN granted under CGST Act provided application for registration has not been rejected under CGST Act.	Rejection of application for registration/UIN under SGST Act/UTGST Act is deemed to be rejection of application for registration under CGST Act.

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Procedure for registration

Part I

Every person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN) and State/UT in **Part A of FORM GST REG-01** on GST Common Portal.

PAN is validated online by Common Portal from CBDT database and ***is*** also be verified through separate OTPs sent to the PAN linked mobile number and e-mail address.

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.

Part B of application contains the details, such as, constitution of business, jurisdiction, option for composition, date of commencement of business, reason to obtain registration, address of PPoB and nature of activity carried out therein, details of APoB, details of bank account(s), details of authorized signatory, aadhaar authentication, etc.

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A **Casual Taxable Person (CTP)** applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.*

Application shall be forwarded to the Proper Officer.

The procedure after receipt of application by the Proper Officer is depicted in Part II.

* *Discussed in detail in subsequent paras.*

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Special procedure for registration of CTP and NRTP

Casual Taxable Person

A Casual taxable person is one who has a registered business in some State in India, but wants to effect supplies from some other State in which he is not having any fixed place of business.

Such person needs to register in the State from where he seeks to supply as a Casual taxable person.

Non-resident Taxable Person

A Non-Resident taxable person is one who is a foreigner and occasionally wants to effect taxable supplies from any State in India, and for that he needs GST registration.

Casual Taxable Person | Non-resident taxable person

↓

GST law prescribes special procedure for registration, as also for extension of the operation period of such Casual or Non-Resident taxable persons.

↓

They have to apply for registration at least 5 days in advance before making any supply.

↓

Registration is granted to them or period of operation is extended only after they make advance deposit of the estimated tax liability.

↓

Registration is granted to them for the period specified in the registration application or 90 days from the effective date of registration.

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Amendment of Registration

Except for the changes in some core information in the registration application, a taxable person shall be able to make amendments without requiring any specific approval from the tax authority.

In case the change is core feilds of information, the taxable person will apply for amendment within 15 days of the event necessitating the change. The Proper Officer, then, will approve the amendment within the next 15 days.

For changes in non-core fields, no approval of the Proper Officer is required, and the amendment can be affected by the taxable person on his own on the common portal.

Cancellation or suspension of registration and revocation of cancellation of registration

Registration can be cancelled either by proper officer or on an application of the registered person

- --Business discontinued/ Transferred/ Amalgamated with other legal entity/ Demerged or Otherwise disposed of
- Change in the constitution of the business
- Taxable person no longer liable to be registered or intends to opt out of voluntary registration

Registration can be cancelled by the proper officer on his own

- A registered person has contravened the prescribed provisions
- A registered person has not filed returns for *continuous 6 months* or 2 tax periods (return for a F.Y. beyond 3 months from due date of furnishing the said return for composition supplier)
- Voluntarily registered person has not commenced the business within 6 months from the date of registration
- Registration was obtained by means of fraud, wilful misstatement or suppression of facts

Once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, proper officer may suspend his registration during pendency of proceedings relating to cancellation of registration filed by such registered person.

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Procedure for cancellation

Where the registered person applies for cancellation

Registered person seeking cancellation shall apply for the same within **30 days** of occurrence of the event warranting cancellation, in prescribed form, furnishing the details of inputs held in stock or inputs contained in semi-finished/finished goods held in stock and of capital goods held in stock on the date from which cancellation of registration is sought, liability thereon, payment, if any made & relevant documents.

Proper officer (PO) shall issue the order of cancellation within 30 days of submission of application for the same.

Where the proper officer cancels the registration

PO shall issue a SCN to the registered person who has to reply to said notice

- Proceedings shall be dropped
  - If reply to SCN is satisfactory
  - Where instead of replying to SCN, person furnishes all pending returns & makes full payment of tax along with interest & late fee.
- Cancellation order shall be issued within 30 days of reply to SCN where registration is liable to be cancelled

Revocation of cancellation

In case where registration is cancelled *suo-motu* by the proper officer, the taxable person can apply within 90 days (extendible by 180 days by Commissioner or officer authorised not below the rank of Additional/Joint Commissioner) of service of cancellation order, requesting the officer for revoking the cancellation ordered by him.

However, before so applying, the person has to make good the defaults (by filing all pending returns, making payment of all dues and so) for which the registration was cancelled by the officer.

If satisfied, the proper officer will revoke the cancellation earlier ordered by him.

However, if the officer concludes to reject the request for revocation of cancellation, he will first observe the principle of natural justice by way of issuing notice to the person and hearing him on the issue.

However, there shall be deemed revocation of cancellation upon furnishing of pending GST returns subject to the condition that the registration has not been cancelled by the proper officer under rule 22

Revocation of cancellation of registration shall be subject to such conditions and restrictions, as may be prescribed.

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TEST YOUR KNOWLEDGE

1. *Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of ready-made garments at multiple locations, i.e. in Himachal Pradesh, Uttarakhand and Tripura in the month of June.*

   It has furnished the following details relating to the supply made at such multiple locations for the month of June:-

Particulars	***Himachal Pradesh***	***Uttarakhand***	***Tripura***
	*(₹) **	*(₹) **	*(₹) **
Intra-State supply of taxable goods	*22,50,000*	*-*	*7,00,000*
Intra-State supply of exempted goods	*-*	*-*	*6,00,000*
Intra-State supply of non-taxable goods	*-*	*21,00,000*	*40,000*

** excluding GST*

With the help of the above mentioned information, answer the following questions giving reasons:-

(1) Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case assuming that it is not required to pay any tax on inward supplies under reverse charge.

(2) Explain with reasons whether your answer in (1) will change in the following independent cases:

(a) If Mahadev Enterprises is dealing exclusively in taxable supply of goods only from Himachal Pradesh;

(b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh;

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(c) If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh and has also effected inter-State supplies of taxable goods (other than notified handicraft goods and notified hand-made goods) amounting to ₹ 4,00,000.

2. *LMN Pvt. Ltd., Coimbatore, Tamil Nadu, exclusively manufactures and sells product 'X' which is exempt from GST vide a notification issued under relevant GST legislations. The company sells product 'X' only within Tamil Nadu and is not registered under GST. Further, all the inward supply of the company are taxable under forward charge. The turnover of the company in the previous year was ₹ 45 lakh. The company expects the sales to grow by 30% in the current year. The company purchased additional machinery for manufacturing 'X' on 1st July. The purchase price of the capital goods was ₹ 30 lakh exclusive of GST @ 18%.*

However, effective from 1st November, exemption available to 'X' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30th September was ₹ 45 lakh.

(a) Examine the above scenario and advise LMN Pvt Ltd. whether it needs to get registered under GST.

(b) If the answer to the above question is in affirmative, advise LMN Pvt. Ltd. whether it can avail input tax credit on the additional machinery purchased exclusively for manufacturing "X"?

3. *SNP Pvt. Ltd., Coimbatore, Tamil Nadu, exclusively manufactures and sells product 'Z' which is exempt from GST vide notifications issued under relevant GST legislations. The company sells product 'Z' only within Tamil Nadu and it not registered under GST. Further, all the inward supplies of the company are taxable under forward charge. The turnover of the company in the previous year was ₹ 55 lakh. The company expects the sales to grow by 20% in the current year. Owing to the growing demand for the product, the company decided to increase its production capacity and purchased additional machinery for manufacturing 'Z' on 1st July. The purchase price of such capital goods was ₹ 20 lakh exclusive of GST @ 18%.*

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However, effective from 1st November, exemption available on 'Z' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30th September was ₹ 50 lakh.

(a) The Board of Directors of SNP Pvt. Ltd. wants to know whether they have to register under GST.

(b) In case in the above question, SNP Pvt. Ltd. is already registered with respect to certain taxable supplies being made by it along with manufacture of exempt product 'Z', other facts remaining the same, can it take input tax credit on additional machinery purchased exclusively for manufacturing 'Z'? If yes, then how much credit can be availed?

Advice SNP Pvt. Ltd. on the above issues with reference to the provisions of GST law.

4. Rishabh Enterprises – a sole proprietorship firm – started an air-conditioned restaurant in Virar, Maharashtra in the month of February wherein the customers are served cooked food as well as cold drinks/non-alcoholic beverages. In March, the firm opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Determine whether Rishabh Enterprises is liable to be registered under GST law with the help of the following information:

Particulars	**February**	**March**
	(₹) *	**(₹) ***
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	5,50,000	6,50,000
Sale of alcoholic liquor for human consumption in Uttarakhand		5,00,000
Supply of packed food items from restaurant in Maharashtra	1,50,000	2,00,000

** excluding GST*

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You are required to provide reasons for treatment of various items given above.

5. *With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the financial year, determine the aggregate turnover for the purpose of registration under the CGST Act.*

Sl. No.	Particulars	Amount (₹)
(i)	Sale of diesel on which VAT is levied by Rajasthan Government.	1,00,000
(ii)	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal by declaring the place of M/s Jayant Enterprises as its additional place of business.	3,00,000
(iii)	Export of goods to England (U.K.)	5,00,000
(iv)	Supply to its own additional place of business in Rajasthan.	5,00,000
(v)	Outward supply of services on which GST is to be paid by recipient under reverse charge.	1,00,000

All the above amounts are excluding GST.

You are required to provide reasons for treatment of various items given above.

6. *Rajesh Dynamics, having its head office in Chennai, Tamil Nadu carries on the following activities with respective turnovers in a financial year:*

	₹
Supply of petrol at Chennai, Tamil Nadu	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	9,00,000
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to	1,50,000

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Bengaluru, Karnataka without payment of consideration	
Value of taxable supplies at Manipur branch	*11,50,000*

It argues that it does not have taxable turnover crossing threshold limit of ₹ 40,00,000 either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur branch. Further, it believes that the determination of aggregate turnover is not required for the purpose of obtaining registration but is required for determining the eligibility for composition levy.

Determine the aggregate turnover of Rajesh Dynamics. You are also required to review the technical veracity of the arguments of Rajesh Dynamics.

ANSWERS

1. As per section 22 read with *Notification No. 10/2019 CT dated 07.03.2019,* a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.

(iii) ₹ 40 lakh for rest of India.

The threshold limit for a person exclusively making taxable supply of services or supply of both goods and services is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the rest of India.

As per section 2(6), aggregate turnover includes the aggregate value of:

(i) all taxable supplies,

(ii) all exempt supplies,

(iii) exports of goods and/or services and

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(iv) all inter-State supplies of persons having the same PAN.

The above is to be computed on all India basis.

In the light of the afore-mentioned provisions, the aggregate turnover of Mahadev Enterprises is computed as under:

Computation of State-wise aggregate turnover of Mahadev Enterprises

Particulars	Himachal Pradesh	Uttarakhand	Tripura
	(₹)*	(₹)*	(₹)*
Intra-State supply of taxable goods	22,50,000	-	7,00,000
Intra-State supply of exempted goods	-	-	6,00,000
Intra-State supply of non-taxable goods (Refer Note below)	-	21,00,000	40,000
Aggregate Turnover	**22,50,000**	**21,00,000**	**13,40,000**

Note: As per section 2(47), exempt supply includes non-taxable supply. Thus, intra-State supply of non-taxable goods in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, included in the aggregate turnover.

In the given case, Mahadev Enterprises is engaged in exclusive intra-State supply of goods from Himachal Pradesh, Tripura and Uttarakhand. However, since Mahadev Enterprises makes taxable supply of goods from one of the specified Special Category States (i.e. Tripura), it will not be eligible for the higher threshold limit of ₹ 40 lakh; instead, the threshold limit for registration will be reduced to ₹ 10 lakh.

(1) In view of the above-mentioned provisions, Mahadev Enterprises is liable to be registered under GST law with the aggregate turnover amounting to ₹ 56,90,000 (computed on all India basis) of the States of Himachal Pradesh, Uttarakhand and Tripura since the applicable threshold limit of registration in this case is ₹ 10 lakh. Further, he is

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not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand.

(2) (a) If Mahadev Enterprises is dealing in supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be ₹ 40 lakh. Thus, Mahadev Enterprises will not be liable for registration as its aggregate turnover would be ₹ 22,50,000.

(b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh then higher threshold limit of ₹ 40 lakh will not be applicable as the same applies only in case of exclusive supply of goods. Therefore, in this case, the applicable threshold limit will be ₹ 20 lakh and hence, Mahadev Enterprises will be liable to registration.

(c) In case of inter-State supplies of taxable goods other than notified handicraft goods or notified hand-made products, section 24 requires compulsory registration irrespective of the quantum of aggregate turnover. Thus, Mahadev Enterprises will be liable to registration.

2. (a) Section 22(1) read with *Notification No. 10/2019 CT dated 07.03.2019 inter alia* provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, *i.e.* States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

Further, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a).

In the given case, the turnover of the company for the half year ended on 30th September is ₹ 45 lakh which is more than the applicable threshold limit of ₹ 40 lakh. Therefore, as per above mentioned provisions, the company should be liable to registration. However, since LMN Pvt. Ltd. supplied exempted goods till 31st October, it was

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not required to be registered till that day; though voluntary registration was allowed under section 25(3).

However, the position will change from 1st November as the supply of goods become taxable from that day and the turnover of company is above ₹ 40 lakh. It is important to note here that in terms of section 2(6), the aggregate turnover limit of ₹ 40 lakh includes exempt turnover also.

Therefore, turnover of 'X' prior to 1st November will also be considered for determining the limit of ₹ 40 lakh even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 1st November (the date on which it becomes liable to registration) in terms of section 25(1).

(b) Section 18(1)(a) provides that a person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Thus, LMN Pvt. Ltd. cannot avail credit for additional machinery purchased exclusively for manufacturing X as input tax credit of only inputs is allowed when a person gets registered for the first time.

3. **(a)** Section 22(1) read with *Notification No. 10/2019 CT dated 07.03.2019 inter alia* provides that every supplier who is exclusively **engaged in intra-State supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, *i.e.* States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

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However, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a).

In the given case, the turnover of the company for the half year ended on 30th September is ₹ 50 lakh which is more than the applicable threshold limit of ₹ 40 lakh. Therefore, as per section 22, the company will be liable to registration. However, since SNP Pvt. Ltd. supplied exempted goods till 31st October, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3).

However, the position will change from 1st November as the supply of goods become taxable from that day and the turnover of company is above ₹ 40 lakh. It is important to note here that in terms of section 2(6), the aggregate turnover limit of ₹ 40 lakh includes exempt turnover also.

Therefore, turnover of 'Z' will be considered for determining the threshold limit even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 1st November (the date on which it becomes liable to registration) in terms of section 25(1).

Further, the company cannot avail exemption of ₹ 40 lakh from 1st November as the GST law does not provide any threshold exemption from payment of tax but threshold exemption from obtaining registration (which in this case had been crossed).

(b) Rule 43(1)(a) disallows input tax credit on capital goods used or intended to be used exclusively for effecting exempt supplies.

However, as per section 18(1)(d), where an exempt supply of goods and/or services by a registered person becomes a taxable supply, such person gets entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

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Rule 40(1)(a) lays down that the credit on capital goods can be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of the invoice.

Therefore, in the given case, SNP Pvt. Ltd. could not claim credit on machinery till the time the supply of product 'Z' for which said machinery was being used was exempt. However, it can claim credit of in respect of said machinery once the supply of product 'Z' became taxable.

Further, SNP Pvt. Ltd. can take following amount of ITC on said machinery for its remaining useful life by making an electronic declaration in prescribed form specifying the details of said machinery:

Date of purchase of machinery	1st July
Date on which credit becomes eligible	31st October
Number of quarters for which credit is to be reduced	2 (including part of quarter)
GST paid on machinery [₹ 20,00,000 x 18%]	₹ 3,60,000
Credit to be reduced [₹ 3,60,000 x 5% x 2]	₹ 36,000
Amount of credit that can be taken [₹ 3,60,000 – ₹ 36,000]	**₹ 3,24,000**

4. As per section 22 read with *Notification No. 10/2019 CT dated 07.03.2019*, a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.

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(iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the rest of India.

As per section 2(6), aggregate turnover includes the aggregate value of:

(i) all taxable supplies,

(ii) all exempt supplies,

(iii) exports of goods and/or services and

(iv) all inter-State supplies of persons having the same PAN.

The above is computed on all India basis. Further, the aggregate turnover excludes central tax, State tax, Union territory tax, integrated tax and cess. Moreover, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of 'aggregate turnover'.

In the given question, since Rishabh Enterprises is engaged in making taxable supplies of goods and services from Maharashtra and non-taxable supplies from Uttarakhand, the threshold limit for obtaining registration is ₹ 20 lakh.

In the light of the afore-mentioned provisions, the aggregate turnover of Rishabh Enterprises is computed as under:

Computation of aggregate turnover of Rishabh Enterprises

Particulars	Turnover of February (₹)	Cumulative turnover of February & March (₹)
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	5,50,000	12,00,000 [₹ 5,50,000 + ₹ 6,50,000]

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Add: Sale of alcoholic liquor for human consumption in Uttarakhand [As per section 2(47), exempt supply includes non-taxable supply. Thus, supply of alcoholic liquor for human consumption in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, includible while computing the aggregate turnover.]		5,00,000
Add: Supply of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [₹ 1,50,000 + ₹ 2,00,000]
Aggregate Turnover	7,00,000	20,50,000

Rishabh Enterprises was not liable to be registered in the month of February since its aggregate turnover did not exceed ₹ 20 lakh in that month. However, since its aggregate turnover exceeds ₹ 20 lakh in the month of March, it should apply for registration within 30 days from the date on which it becomes liable to registration. Further, he is not liable to be registered in Uttarakhand since he is not making any taxable supply from Uttarakhand. It should obtain registration in Maharashtra.

5. Computation of aggregate turnover of M/s Jayant Enterprises for the FY

Particulars	**₹**
Supply of diesel on which Sales Tax (VAT) is levied by Rajasthan Government [Note-1]	1,00,000
Supply of goods, after the completion of job work, from the place of Jayant Enterprises, directly by the principal [Note-2]	Nil
Export supply to England [Note-3]	5,00,000

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Supply to its own additional place of business in Rajasthan[35] [Note-4]	Nil
Outward supply of services on which GST is to be paid by recipient under reverse charge [Note-5]	1,00,000
Aggregate turnover	**7,00,000**

Notes:-

1. As per section 2(47), exempt supply includes non-taxable supply. Thus, supply of diesel, being a non-taxable supply, is an exempt supply and exempt supply is specifically includible in aggregate turnover in terms of section 2(6).

2. Supply of goods after completion of job work by a principal by declaring the place of business of job worker its additional place of business shall be treated as the supply of goods by the principal in terms of explanation (ii) to section 22.

3. Export supplies are specifically includible in the aggregate turnover in terms of section 2(6).

4. Supply made without consideration to units within the same State is a not a supply and hence not includible in aggregate turnover.

5. Outward supplies taxable under reverse charge would be part of the "aggregate turnover" of the supplier of such supplies. Such turnover is not included as turnover in the hands of recipient.

   As per section 22 read with *Notification No. 10/2019 CT dated 07.03.2019,* a supplier is liable to be registered in the State/ Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

   (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

[35] *The above solution has been worked out on the assumption that supply to another place of business is without consideration (as per general business practices).*

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(ii) ₹ 20 lakh for the States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.

(iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

(i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.

(ii) ₹ 20 lakh for the rest of India.

The applicable turnover limit for registration, in the given case, will be ₹ 20 lakh as Rajasthan is not a Special Category State and M/s. Jayant Enterprises is engaged in supply of goods and services. Although, the aggregate turnover of M/s Jayant Enterprises does not exceed ₹ 20 lakh, it is compulsorily required to register in terms of section 24(i) irrespective of the turnover limit as it is engaged in making inter-State supply of goods in the form of exports to England.

6. Computation of aggregate turnover of Rajesh Dynamics:

Particulars	**₹**
Supply of petrol at Chennai, Tamil Nadu [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover vide section 2(6)]	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	Nil
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration [Being a taxable supply, it is includible in aggregate turnover]	1,50,000
Value of taxable supplies of Manipur Branch	11,50,000
Aggregate turnover	**33,00,000**

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Rajesh Dynamics is not liable to be registered in Chennai, Tamil Nadu, if his aggregate turnover in a financial year does not exceed ₹ 40 lakh. However, since Rajesh Dynamics also makes taxable supplies from Manipur, a specified Special Category State, the threshold exemption gets reduced to ₹ 10 lakh in terms of section 22(1) *[Notification No.10/2019-CT dated. 07.03.2019]*.

Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of ₹ 40 lakh is not being crossed either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur is not correct as firstly, the aggregate turnover to be considered in its case is ₹ 10 lakh and not ₹ 40 lakh and secondly, the same is computed on all India basis and not State-wise.

Apart from this, Rajesh Dynamics is also wrong in believing that aggregate turnover is computed only for the purpose of determining the eligibility limit for composition levy since the aggregate turnover is required for determining the eligibility for both registration and composition levy.

Last but not the least, Rajesh Dynamics is compulsorily required to register under section 24 irrespective of the turnover limit as it is liable to pay tax on inward supplies under reverse charge and it also makes inter-State taxable supply.

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CHAPTER 9

TAX INVOICE, CREDIT AND DEBIT NOTES

The section numbers referred to in the Chapter pertain to the CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this chapter, you will be able to- –

- describe and analyze the provisions relating to tax invoice in case of taxable supply of goods and in case of taxable supply of services – time limit and manner of issuing the same.
- enumerate the particulars of a tax invoice.
- understand the provisions relating to e-invoicing.
- explain the provisions relating to revised tax invoice, bill of supply, receipt voucher, refund voucher, payment voucher, etc.
- explain the provisions relating to transportation of goods without issuance of invoice.
- describe the provisions relating to issuance of credit and debit notes.
- explain the provisions relating to prohibition of unauthorised collection of tax.
- describe the provisions relating to amount of tax to be indicated in tax invoice and other documents.

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1. INTRODUCTION

An invoice is a commercial instrument issued by a supplier of goods/services to a recipient. It identifies both the parties involved, and lists, describes the items sold/services supplied, quantifies the items sold, shows the date of shipment and mode of transport, prices and discounts, if any, and the delivery and payment terms (in case of supply of goods).

Invoicing is very crucial aspect for ensuring tax compliance under any indirect taxation system. In order to ensure transparency, issuance of invoice for every taxable transaction is a pre-requisite. In case of supply of goods or provision of services, an invoice is raised by the supplier of such goods or services to the recipient of the same. Tax invoice acts as a document evidencing the payment of the value of the goods or services or both as also the tax portion in the same. In certain cases, an invoice serves as a demand for payment and becomes a document of title when paid in full.

Under the GST regime, an "invoice" or "tax invoice" means the tax invoice referred to in section 31 of the CGST Act, 2017. This section mandates the issuance of an invoice or a bill of supply for every supply of goods or services. Under GST law, a tax invoice is an important document. It not only evidences supply of goods or services, but is also an essential document for the recipient to avail Input Tax Credit (ITC). A registered person cannot avail input tax credit unless he is in possession of a tax invoice or a debit note.

The provisions relating to tax invoices, credit and debit notes are contained in Chapter VII - Tax Invoice, Credit and Debit Notes [Sections 31 to 34] of the CGST Act and Chapter-VI: Tax Invoice, Credit and Debit Notes [Rules 46 to 55A] of Central Goods and Services (CGST) Rules, 2017. State GST laws also prescribe identical provisions in relation to Tax Invoice, Credit and Debit Notes.

Provisions of Tax invoice, Credit and Debit Notes under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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Before proceeding to understand the provisions of Tax Invoice, Credit and Debit Notes, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- **Credit note:** means a document issued by a registered person under sub-section (1) of section 34 [Section 2(37)].
- **Debit note:** means a document issued by a registered person under sub-section (3) of section 34 [Section 2(38)].
- **Continuous supply of goods:** means [Section 2(32)]:

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

- **Continuous supply of services:** means [Section 2(33)]:

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

- **Document:** includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)]. Information Technology Act defines electronic record as data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer-generated micro fiche.

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- **Exempt supply:** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47)].
- **Invoice or tax invoice:** means the tax invoice referred to in section 31 *(discussed subsequently)* [Section 2(66)].
- **Quarter:** shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year [Section 2(92)].
- **Return:** means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder [Section 2(97)].

3. TAX INVOICE [SECTION 31]

STATUTORY PROVISIONS

Section 31	*Tax invoice*
Sub-section	*Particulars*
(1)	*A registered person supplying taxable goods shall, before or at the time of,—* *(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or* *(b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:* *Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.*

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(2)	*A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed.* *Provided that the Government may, on the recommendations of the Council, by notification—* *(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;* *(b) subject to the condition mentioned therein, specify the categories of services in respect of which—* *(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or* *(ii) tax invoice may not be issued.*
(3)	*Notwithstanding anything contained in sub-sections (1) and (2)–* *(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;* *(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;* *(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:* *Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;* *(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue*

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	a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment; *(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;* *(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall* ***within the period as may be prescribed*** *issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;* *(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.* ***Explanation—For the purposes of clause (f), the expression "supplier who is not registered" shall include the supplier who is registered solely for the purpose of deduction of tax under section 51.***
(4)	*In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.*
(5)	*Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,––* *(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;* *(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;*

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	(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.
(6)	*In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.*
(7)	*Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.*
Explanation.––For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.	
Section 31A	***Facility of digital payment to recipient***
	The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed.

ANALYSIS

The provisions relating to Tax Invoice are provided under Section 31 of the CGST Act as well as Chapter-VI: Tax Invoice, Credit and Debit Notes of Central Goods and Services (CGST) Rules, 2017. The provisions contained in these rules have been incorporated at the relevant places.

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There is no format prescribed for the Tax Invoice. Only certain fields have been prescribed as mandatory fields.

A. TAX INVOICE ISSUED BY A SUPPLIER OF TAXABLE GOODS/ TAXABLE SERVICES

A tax invoice shall be issued by a registered person supplying taxable goods or taxable services or both. Such tax invoice shall show the prescribed particulars.

(i) Time limit for issuance of invoice [Sections 31(1), (2), (4) & (5) read with rule 47]

The time for issuing an invoice would depend on the nature of supply viz. whether it is a supply of goods or supply of services.

A registered person supplying taxable goods shall issue a tax invoice, before or at the time of removal of goods (where supply involves movement of goods) or in any other case, before or at the time of delivery or making available the said goods to the recipient.

In case of supply of taxable services, tax invoice may be issued before or after the provision of services, but within the specified period.

Government may notify the categories of services in respect of which any other document issued in relation to supply shall be deemed to be a tax invoice or tax invoice may not be issued subject to specified conditions.

The Government may, on the recommendations of the Council, by notification, specify the categories of goods or services supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

In case of taxable supply of goods	In case of taxable supply of services
Invoice shall be issued **before or at the time of**,—	Invoice shall be issued **before or after** the provision of service, but within a period of **30 days*** from the date of supply of service.
(a) removal of goods for	***45 days** in case of an insurer or banking company or financial institution, including a non- banking

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supply to the recipient, **where the supply involves movement of goods**; or	financial company (NBFC)
(b) delivery of goods or making available thereof to the recipient, in any other case.	An insurer or a banking company or a financial institution, including NBFC, or a telecom operator, or any other class of supplier of services as may be notified by the Government, making taxable supplies of services between distinct persons as specified in section 25 → may issue the invoice → before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made

In case of continuous supply of goods	**In case of continuous supply of services**	
Where successive statements of accounts/ successive payments are involved, the invoice shall be issued before/at the time each such statement is issued or each such payment is received.	**Where**	**the invoice shall be issued**
	(a) due date of payment is ascertainable from the contract	on or before the **due date of payment**
	(b) due date of payment is not ascertainable from the contract	before or at the time when the **supplier** of service **receives the payment**
	(c) payment is linked to the completion of an event	on or before the **date of completion of that event**.

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(1) Ritu Manufacturers, Delhi supplies goods to Prakhar Electronics, Haryana. The goods were removed from its factory in Delhi on 23rd September. Ritu Manufacturers needs to issue a tax invoice on or before 23rd September.

(2) Katyani Security Services Ltd. provides security services to Royal Jewellers for their Jewellery Exhibition to be organized on 5th October. Katyani Security Services Ltd. needs to issue a tax invoice within 30 days of supply of security services, i.e. on or before 4th November.

(ii) Where supply of services ceases before its completion [Section 31(6)]

In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

(iii) Goods sent on sale or return basis [Section 31(7)]

Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:

(i) before/at the time of supply

or

(ii) 6 months from the date of removal

whichever is earlier.

The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan *[discussed subsequently in this Chapter in detail]* along with the e-way bill[1] wherever applicable. The invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the

[1] *E-way bill is a document which is required to be carried by the person-in charge of the conveyance for the movement of goods from the supplier's premises to the recipient's premises. Detailed provisions have been discussed in Chapter 10 – Accounts and Records; E-way Bill in this Module of the Study Material.*

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invoice book with him so that he can issue the invoice in accordance within the time stipulated above, once the supply is fructified.

Goods sent/ taken out of India for exhibition or on consignment basis for export promotion

Sometimes the goods are sent or taken out of India for exhibition or on consignment basis for export promotion. The activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfies the tests laid down in Schedule I (hereinafter referred to as specified goods), do not constitute supply as the said activity does not fall within the scope of section 7 as there is no consideration at that point in time.

The specified goods sent/taken out of India are required to be either sold or brought back within the stipulated period of 6 months from the date of removal as per the provisions contained in section 31(7).

The supply would be deemed to have taken place, on the expiry of 6 months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.

If the specified goods are sold abroad, fully or partially, within the specified period of 6 months, the supply is effected, in respect of quantity so sold, on the date of such sale. In that case, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in section 12 and section 31 read with rule 46.

When the specified goods sent / taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of 6 months, as laid down in section 31(7), the sender shall issue a

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tax invoice on the date of expiry of 6 months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 read with rule 46 *[Circular No. 108/27/2019 GST dated 18.07.2019]*.

The above position is explained by way of example below:

(3) M/s. ABC sends 100 units of specified goods out of India. The activity of merely sending/ taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case, but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55.

In case the entire quantity of specified goods is brought back within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

In case, however, the entire quantity of specified goods is neither sold nor brought back within 6 months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 with rule 46 within the time period stipulated under section 31(7).

(iv) Particulars of a tax invoice [Sections 31(1) & (2) read with rule 46]

As discussed earlier, there is no format prescribed for an invoice, but rules make it mandatory for an invoice to have the following fields (only applicable fields are to be filled):

Name, address and GSTIN of the supplier;	
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets/numerals/special characters hyphen or dash and slash, and any combination thereof, unique for a FY;	
Date of its issue;	
If recipient is registered - Name, address and GSTIN or UIN of recipient	
If recipient is unregistered and value of supply is	**Particulars of invoice**

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₹ 50,000 or more	Name and address of the recipient and the address of delivery, along with the name of State and its code
less than ₹ 50,000	unregistered recipient may still request the aforesaid details to be recorded in the tax invoice
In cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is unregistered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.	
HSN code for goods or services;	
Description of goods or services;	
Quantity in case of goods and unit or Unique Quantity Code thereof;	
Total value of supply of goods or services or both;	
Taxable value of supply of goods or services or both taking into account discount or abatement, if any;	
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);	
Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);	
Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;	
Address of delivery where the same is different from the place of supply;	
Whether the tax is payable on reverse charge basis; and	
Signature or digital signature of the supplier or his authorized representative (not required in case of issuance of an electronic invoice in accordance with the provisions of the Information Technology (IT) Act, 2000).	

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Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case e-invoice has been issued[2]

Note: The taxpayers exempted from the mandatory requirement of e-invoicing (discussed subsequently) are required to provide a declaration on the tax invoice stating that though their aggregate turnover exceeds the notified aggregate turnover for e-invoicing, they are not required to prepare an e-invoice.

(v) Number of HSN digits required on tax invoice and class of registered person not required to mention HSN [Rule 46]

Board may, on the recommendations of the Council, by notification, specify:

(i) the number of digits of Harmonised System of Nomenclature (HSN) code for goods or services that a class of registered persons shall be required to mention; or

(ii) a class of supply of goods or services for which specified number of digits of HSN code shall be required to be mentioned by all registered taxpayers; and

(iii) the class of registered persons that would not be required to mention the HSN code for goods or services.

This provision is also applicable to Bill of Supply [The concept of Bill of Supply is discussed in subsequent paras].

In view of the above powers, following has been notified vide *Notification No. 12/2017 CT dated 28.06.2017* as amended.

S.No.	Aggregate Turnover (AT) in the preceding FY	Number of Digits of HSN Code
1.	AT ≤₹ 5 crores	For B2B supply - 4 For B2C supply – 4 (optional)*

[2] *in the manner prescribed under rule 48(4)*

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2.	AT >₹ 5 crores	For B2B supply and B2C supply – 6

*As mentioned above, a registered person having aggregate turnover up to ₹ 5 crores in the previous financial year have been exempted from the requirement of mentioning the HSN Code in the manner specified in above table in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.

(vi) Manner of issuing the invoice [Sections 31(1) & (2) read with rule 48]

In case of taxable supply of goods	**In case of taxable supply of services**
Invoice shall be prepared in **TRIPLICATE**	Invoice shall be prepared in **DUPLICATE**
Triplicate	**Duplicate**
Original copy → **ORIGINAL FOR RECIPIENT** **Duplicate copy** → **DUPLICATE FOR TRANSPORTER** **Triplicate copy** → **TRIPLICATE FOR SUPPLIER**	**Original copy** → **ORIGINAL FOR RECIPIENT** **Duplicate copy** → **DUPLICATE FOR SUPPLIER**

The serial number of invoices issued during a tax period shall be furnished electronically [through the Common Portal – www.gst.gov.in], in FORM GSTR-1 [Details of outward supplies of goods or services] or GSTR-1A.

(vii) Invoice in case of export of goods or services [Third proviso to rule 46]

In the case of the export of goods or services, the invoice shall carry an endorsement **"SUPPLY MEANT FOR EXPORT/ SUPPLY TO SEZ UNIT/SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF**

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INTEGRATED TAX" or "SUPPLY MEANT FOR EXPORT / SUPPLY TO SEZ UNIT/SEZ DEVELOPER FOR AUTHORISED OPERATIONS UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF INTEGRATED TAX", as the case may be.

It is important to note that particulars of an Export Invoice are same as a Tax Invoice. However, where recipient is unregistered and value of supply is ₹ 50,000 or more, instead of name of State and its code, in case of an export invoice, **name of the country of destination** is to be mentioned.

Key points from aforesaid discussion have been summarized as follows:

1. All GST taxpayers are free to design their own Tax Invoice Format.
2. The law requires that only certain fields as mandatory fields in the Tax Invoice. The same have been listed under heading (iv) above. The mandatory fields have also been circled in the Sample Tax Invoice given subsequently.
3. The time period for issuance of invoice is different for goods and services. For goods, it is any time before or at its delivery and for services, it is within 30 days from the date of supply of services.

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Sample Tax Invoice

ABC Enterprises Pvt. Ltd.

GSTIN 22AAAAA0000A1Z5
Branch Karnatka (22)
PAN AAAAA0000A

Total ₹ 6500.00

Invoice Date 10/05/2017
Invoice No. CLR-00054
Reference No. PO-9987

TAX INVOICE

Customer Name
Kantech Solutions Private Ltd.

Customer GSTIN
22BBBBB0007A1Z5

Billing Address
Kantech Solutions Private Ltd.
Ground Floor, Building 2A, 23 & 24
AMR Tech Park Internal Road
Hongasandra, Bengaluru
Karnatka 560068

Shipping Address
Kantech Solutions Private Ltd.
Ground Floor, Building 2A, 23 & 24
AMR Tech Park Internal Road
Hongasandra, Bengaluru
Karnatka 560068

Payment Terms Net 15 Due Date 19/06/2016 Place of Supply Karnataka (22)

	Item	HSN	Qty.	Rate/ Item(₹)	Discount/ Item(₹)	Taxable Value(₹)	SGST	CGST	CESS	Total
1.	Himalaya Herbal Cream Neem Edition	440003	10 kg	1000.00	30.00	9700.00	970.00 @10%	970.00 @10%	00.00 @0%	11640.00
2.	Himalaya Herbal Cream Neem Edition	440003	10 kg	1000.00	30.00	9700.00	970.00 @10%	970.00 @10%	00.00 @0%	11640.00
3.	Himalaya Herbal Cream Neem Edition	440003	10 kg	1000.00	30.00	9700.00	970.00 @10%	970.00 @10%	00.00 @0%	11640.00
4.	Frieght Charges	–	1 no	1000.00	–	1000.00	50.00 @5%	50.00 @5%	00.00 @0%	1100.00
				Total (₹)		30100.00	2960.00	2960.00	00.00	36020.00

Taxable amount	₹ 30100.00
Total Tax*	₹ 5920.00
Invoice Total	₹ 36020.00
Invoice Total (In words)	Thirty Six Thousand Twenty Only

*Tax to be paid on Reverse Charge

Notes
All payments to be made in cash.
Contact us for queries on these quotations.

DUPLICATE
For Transporter

for ABC Enterprises Pvt. Ltd.
(Signature)

Thank you for your business.

Powered by clearTax

ABC Enterprises Pvt. Ltd., Ground Floor, Building 2A, 23 & 24, AMR Tech Park Internal Road, Hongasandra, Bengaluru, Karnatka 560068
+91-9876543210, +91-9876543210, contact@abcenterprises.in

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E-invoicing

E-invoicing' has been introduced for reporting of business to business (B2B) invoices to GST System for certain notified category of taxpayers.

All registered businesses with an aggregate turnover (based on PAN) in any preceding financial year from 2017-18 onwards greater than ₹ 5 crores (hereinafter referred to as 'notified persons') will be required to issue e-invoices. E-invoicing is not voluntary; only notified persons are enabled to report invoices on Invoice Registration Portal (IRP).

Before we proceed further, let us first understand what is 'e-invoicing'? E-invoicing is not generation of invoice by a Government portal. Taxpayers will continue to create their GST invoices on their own Accounting/Billing/ERP Systems as per e-invoice scheme. These invoices will then be reported to 'IRP'. On such reporting, IRP will generate a unique 'Invoice Reference Number (IRN)', digitally sign it and return the e-invoice to the supplier. A GST e-invoice will be valid only with a valid IRN.

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Presently, invoices, credit notes and debit notes, when issued by notified persons (to registered persons (B2B) or for the purpose of exports) are covered under e-invoice. Though different documents are covered, for ease of reference and understanding, the system is referred as 'e-invoicing'.

Advantages of e-invoicing

E-invoice has many advantages for businesses. One such advantage is auto-reporting of invoices into GST return and auto-generation of e-way bill (wherever required). Under e-invoicing, business has to report the B2B invoice data only once in the e-invoice form and the same is reported in multiple forms (GSTR-1, e-way bill etc.). E-way bill can be auto-generated using e-invoice data. GSTR-1 can also be auto-populated with the e-invoice data. It will become part of the business process of the taxpayer.

Consequently, there will be a substantial reduction in transcription errors as same data will get reported to tax department as well as to the buyer to prepare his inward supplies (purchase) register. On receipt of information through GST System, buyer can reconcile the same with his Purchase Order.

Thus, it will facilitate standardisation and inter-operability leading to reduction of disputes among transacting parties, improve payment cycles, reduction of processing costs and thereby greatly improving overall business efficiency.

Further, since a complete trail of B2B invoices is available with the Department, it will enable the system-level matching of input tax credit and output tax thereby reducing the tax evasion.

Last but not the least, e-invoicing will eliminate the fake invoices. Claiming fictitious input tax credit (ITC) by raising fake invoices is also one of the biggest challenges currently faced by tax-authorities. The e-invoice system

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will help to curb the actions of unscrupulous taxpayers and reduce the number of fraud cases as the tax authorities will have access to data in real-time.

E-invoicing statutory provisions

Rule 48(4) stipulates that the e-invoice shall be prepared by notified class of registered persons, by uploading such particulars as contained in Form GST INV-01 on the Common GST Electronic Portal[3] and obtain an IRN (Invoice Reference Number), in prescribed manner and subject to prescribed conditions and restrictions.

However, the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of e-invoice under rule 48(4) for a specified period, subject to such conditions and restrictions as may be specified in the said notification.

Every invoice, issued by above persons, in any manner other than the manner specified in rule 48(4) shall not be treated as an invoice. Where e-invoicing is applicable, there is no need of issuing invoice copies in triplicate/duplicate.

Class of persons notified to mandatorily issue e-invoice

In view of said powers, a registered person (except specified class of persons[4]), whose aggregate turnover in any preceding financial year from

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[3] *Ten dedicated Invoice Reference Portals have been notified as Common Goods and Service Tax (GST) Electronic Portal for the purpose of preparing e-invoice. These portals are enlisted in subsequent paras.*

[4] *Special Economic Zones and insurer or banking company or financial institution including NBFC, GTA, supplier of passenger transportation service, person supplying services by way of admission to exhibition of cinematograph films in multiplex screens, a Government*

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2017-18 onwards exceeds ₹ 5 crore, has been notified as class of persons who shall prepare e-invoice in respect of B2B supplies (supply of goods or services or both to a registered person) and for exports[5]. Thus, presently, such notified persons are not required to report B2C invoices on IRP. However, reporting of B2C invoices will be brought under e-invoice in the next phase. However, they will be brought under e-invoice in the next phase. Further, e-invoicing is also not applicable to invoices issued by Input Service Distributor (ISD).

If the invoice issued by a notified person is in respect of supplies made by him, tax on which is payable under reverse charge under section 9(3), e-invoicing is applicable.

(4) A taxpayer (say a firm of advocates) having aggregate turnover in a FY of more than ₹ 5 crore is supplying services to a company (who will be discharging tax liability as recipient under reverse charge mechanism), such invoices have to be reported by said tax payer (since it is a notified person) on IRP.

On the other hand, where specified category of supplies are received by notified person from unregistered persons [attracting reverse charge under section 9(4)] or through import of services, e-invoicing doesn't arise/ not applicable. E-invoicing is also not applicable for import of goods (Bills of Entry).

Exemption from e-invoicing

Following entities are exempt from the mandatory requirement of e-invoicing:

- Special Economic Zone units**
- Insurer or banking company or financial institution including NBFC
- GTA supplying services in relation to transportation of goods by road in a goods carriage

Department and a local authority.

[5] *Notification No. 13/2020 CT dated 21.03.2020 as amended*

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- Supplier of passenger transportation service
- Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
- a Government Department and a local authority

Thus, above mentioned entities are not required to issue e-invoices even if their turnover exceeds ₹ 5 crore in any preceding financial year from 2017-18 onwards.

Further, the above taxpayers exempted from the mandatory requirement of e-invoicing are required to provide a **declaration as below:-**

that invoice is not required to be issued in the manner specified under rule 48(4), in all cases where an invoice is issued, other than in the manner so specified under the said rule 48(4), by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under rule 48(4) [presently its ₹ 5 crore]-

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

**It is important to note here that only SEZ units and not SEZ developers are exempt from issuing e-invoices. Thus, SEZ developers whose turnover exceeds ₹ 5 crore in any preceding financial year from 2017-18 onwards are mandatorily required to issue e-invoices. Further, in case of supplies made by notified persons to SEZ units, e-invoices need to be issued.

(5) Maharaja Private Limited has an SEZ unit and a regular DTA unit (both having same PAN). The aggregate total turnover of Maharaja Private Limited is more than ₹ 5 crore (considering both the GSTINs). However, the turnover of DTA unit is ₹ 2.5 crore for preceding financial year.

In this scenario, SEZ unit is exempt from e -invoicing. However, e-invoicing will be applicable to DTA Unit because the aggregate turnover of Maharaja

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Private Limited in this case is > ₹ 5 crore. The applicability is based on annual aggregate turnover on the common PAN.

It has been clarified[6] that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

(6) A banking company providing banking services, may also be involved in making supply of some goods, including bullion.

The said banking company is exempted from mandatory issuance of e-invoice in terms of Notification No. 13/2020 CT dated 21.03.2020, for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.

How e-invoice is generated?

The taxpayer first prepares and generates his invoice using his own ERP/ accounting/ billing system or manual system[7]. The invoice must conform to the e-invoice schema (It is a standard notified format which is discussed in detail subsequent paras) and must have the mandatory parameters.

The details of this invoice are uploaded/reported by the taxpayer to the Invoice Registration Portal (IRP).

This way taxpayer registers his supply transaction on IRP. On uploading, IRP returns the e-invoice with a unique 'Invoice Reference Number (IRN)' (explained in detail subsequent paras) after digitally signing the e-invoice and adding a QR Code (Quick Response Code).

Then, the supplier shares the e-invoice with the receiver (along with QR Code).

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[6] *Circular No. 186/18/2022 GST dated 27.12.2022*

[7] *For entities not having their own ERP/Software solutions, they can use the free offline utility ('bulk generation tool') downloadable from the e-invoice portal. Through this, invoice data can be easily reported to IRP and obtain IRN/signed e-invoice*

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06/12/2019 11:40PM

Schema version: 1.0
Tax scheme: GST

e-Invoice System

Original For Recipient

e-Invoice

1. GSTIN 05AAACG2207L1ZY
2. Name GSTN LTD
3. Address GODREJ, VIKHROLI, Mumbai, Maharashtra, 400076
4. Serial No. of Invoice GSTN001
5. Date of Invoice 06/12/2019
6. IRN No. 05AAACG2207L1ZY/GSTN001/2019-20

Dispatch from:05AAACG2207L1ZY, GSTN LTD
Address: GODREJ, VIKHROLI, Mumbai
State: Maharashtra
Pincode: 400076

Details Of Receiver(billed to)	
Name	ABC INDIA LTD
Address	Mumbai
Pin Code	400011
State	Maharashtra
State Code (Place of supply)	MH
GSTIN/Unique ID	05AAACG2314E1ZD

Details Of Consignee(Shipped to)	
Name	ABC INDIA LTD
Address	Mumbai
Pin Code	400011
State	Maharashtra
State Code (Place of supply)	MH
GSTIN/Unique ID	05AAACG2140A1ZL

Sample e-Invoice

Supply type: Outward
Transaction mode: Tax Invoice

S.No	Description of supply / Item description	HSN Code	Quantity	Rate per unit of quantity	GST rate (aggregate of CGST+SGST/IGST)	Taxable Value	CGST		SGST		IGST		CESS	
							%	Amount	%	Amount	%	Amount	%	Amount
1	LAPTOP	8703	2.00	50000.00	18.00	100000.00	9.00	9000.00	9.00	9000.00	0.00	0.00		0.00
					Total	100000.00		9000.00		9000.00		0.00		

Total Invoice Value(In figure): 118000.00
Amount of Tax subject to Reverse Charges : No

Payee Information:
Payee name: KPMG
Account number:
payment mode: Cash
IFSC code:

Total Taxable Amount	100000.00
Total Tax Amount	18000.00
Final Amount	118000.00
Amount paid in advance	10000.00
Amount outstanding	98000.00

Remarks 1
Remarks 2

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How e-invoice data is consumed by GST System for generation of e-way bill or populating relevant parts of GST Returns?

On successful reporting of invoice details to IRP, the invoice data (payload) including IRN, will be saved in GST System.

The GST system will auto-populate them into GSTR-1 of the supplier and GSTR-2A of respective receivers. IRN and IRN date will also be shown along with source marked as 'e-invoice' (except where such details were modified/re-uploaded by taxpayer).

The e-invoice schema *(discussed subsequently)* includes parameters e.g. 'Transporter ID' and 'Vehicle Number', etc. that are required for creating and generating e-way bills. These can be entered if available with seller, at the time of generation of e-invoice so that e-way bill can be created using this data without any further requirement of data entry by the user. The e-invoice reporting software already allows reporting of e-invoice and generation of e-way bill with same data.

Cancellation/amendment of reported invoice

Where needed, the seller can **cancel IRN** for an e-invoice already reported **by reporting it on IRP** within specified time[8].

Amendment of e-invoice already uploaded on IRP will be done only on GST portal (while filing GSTR-1). Amendment of invoices is not possible through the IRP.

Implications for businesses

As apparent from the above discussion, e-invoicing does not mean that the invoice needs to be prepared/generated on the Government portal. It is only intimating the Government portal that invoice has been issued to the buyer, by registering that particular invoice on the Government portal. Consequently, businesses will continue to issue invoices as they were doing earlier. Necessary changes on account of e-invoicing requirement (i.e. to enable reporting of invoices to IRP and obtain IRN), be made by ERP/Accounting and Billing Software providers in their respective software. They need to get the updated version having this facility.

[8] *However, if the connected e-way bill is active or verified by officer during transit, cancellation of IRN will not be permitted.*

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Important terms

E-invoice Schema

Businesses use various accounting/billing software, each generating and storing invoices in their own electronic formats. These different formats are neither understood by GST System nor by the systems of suppliers and receivers.

(7) An invoice generated by SAP system cannot be read by a machine which is using 'Tally' system, unless a connector is used. With more than 300 accounting/billing software products, there was no way to have connectors for all.

In this scenario, 'e-invoicing' was introduced aiming at machine-readability and uniform interpretation. To ensure this complete 'inter-operability' of e-invoices across the entire GST eco-system, an invoice standard is a must. By this, e-invoices generated by one software can be read by any other software, thereby eliminating the need of fresh/manual data entry. Since there was no such standard for e-invoice available earlier, as a first step, a standard/format for e-invoice has been finalized.

This uniform standard format (containing specified fields) applicable for all the businesses across the country is known as 'e-invoice schema'. It is notified as Form GST INV-1. E-invoice schema mandates what particulars shall be reported in electronic format to IRP. Invoice details in prescribed schema to be reported to IRP in JSON format *(JavaScript Object Notation)*. 'JSON' can be understood as a common language for systems/machines to communicate between each other and exchange data.

Invoice Registration Portal (IRP)

IRP is the website for uploading/reporting of invoices by the notified persons. Following IRPs have been notified for the purpose of preparation of the e-invoice:

www.einvoice1.gst.gov.in

www.einvoice2.gst.gov.in

www.einvoice3.gst.gov.in

www.einvoice4.gst.gov.in

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www.einvoice5.gst.gov.in

www.einvoice6.gst.gov.in

www.einvoice7.gst.gov.in

www.einvoice8.gst.gov.in

www.einvoice9.gst.gov.in

www.einvoice10.gst.gov.in

Invoice Reference Number

As seen earlier, GST invoice will be valid only with a valid IRN. IRN is different from invoice number. Invoice no. (e.g. ABC/1/2019-20) is assigned by supplier and is internal to business. Its format can differ from business to business and also governed by relevant GST rules. IRN, on other hand, is a unique reference number (hash) generated and returned by IRP, on successful registration of e-invoice, for instance, IRN is a unique 64-character hash, e.g.

35054cc24d97033afc24f49ec4444dbab81f542c555f9d30359dc75794e06bbe

Other points:

- The e-invoicing system is also available for the E-Commerce Operators (ECO) to report the invoices to the Invoice Registration portal, generated by them on behalf of the suppliers.
- Bulk uploading of invoices to IRP is also possible[9].
- CBIC has clarified[10] that there is no requirement to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier. Whenever e-invoice has been generated, production of the Quick Reference (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

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[9] *Discussion on e-invoicing is primarily based on the relevant rules, notifications and FAQS on e-invoicing hosted on GSTN website.*

[10] *Circular No. 160/16/2021 GST dated 20.09.2021*

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Quick Response (QR) code

Upon successful registration of invoice on IRP, it will return a signed e-invoice to the supplier with IRN and QR Code. IRN is embedded in the QR Code which shall be extracted and printed on the invoice. The QR code enables quick view, validation and access of the invoices from the GST system from hand-held devices. The digitally signed QR code will have a unique IRN which can be verified on the central portal as well as by an offline app by the officer. This will be helpful for tax officers checking the invoice offline on the roadside where internet may not be available all the time.

The QR code consists of the following e-invoice parameters:

- GSTIN of supplier
- GSTIN of recipient
- Invoice number as given by supplier
- Date of generation of invoice
- Invoice value (taxable value and gross tax)
- Number of line items
- HSN code of main item (the line item having highest taxable value)
- Unique Invoice Reference Number (hash)
- Date of generation of IRN

E-invoicing applicable to Government Departments/PSUs etc. registered solely for the purpose of deduction of tax at source as per provisions of section 51

- The issue which arose for consideration was whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments/ Government agencies/ local authorities/ PSUs which are registered solely for the purpose of deduction of TDS as per provisions of section 51.

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- It is clarified that Government Departments or establishments/ Government agencies/ local authorities/ PSUs, which are required to deduct TDS under section 51, are liable for compulsory registration in accordance with section 24(vi).
- Therefore, Government Departments or establishments/ Government agencies/ local authorities/ PSUs, registered solely for the purpose of deduction of TDS as per provisions of section 51, are to be treated as registered persons under the GST law as per provisions of section 2(94).
- Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc. under rule 48(4)[11].

Dynamic QR code on B2C invoices

All B2C invoices issued by a registered person whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹ 500 crores will have a QR code.

Sixth proviso to rule 46 has empowered the Government to specify that the tax invoice shall have Quick Response (QR) code. Resultantly, it has been notified[12] that invoice issued by a registered person [except specified class of persons *(discussed subsequently)*], whose aggregate turnover in a financial year exceeds ₹ 500 crores, in respect of B2C supplies (supply of goods or services or both to an unregistered person) shall have Dynamic QR code.

A Dynamic Quick Response (QR) code made available to buyer by such registered person through digital display (with payment cross-reference) shall be deemed to be having QR code. **The purpose of this provision is to enable and encourage digital payments where buyer can scan the dynamic QR code and make payment from mobile wallet directly.**

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[11] *Circular No. 198/10/2023 GST dated 17.07.2023*

[12] *Notification No. 14/2020 CT dated 21.03.2020*

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Today, many shops have static QR code at the payment counter which is scanned by the buyer, but the buyer has to enter the amount to be paid to the shop in the mobile payment App. The dynamic QR code, on the other hand, will have the payment details and thus 'scan and pay' in one go is possible.

This has no relevance or applicability to the e-invoicing in respect to B2B supplies by notified class of taxpayers. Dynamic QR Code will be generated by the seller himself either on the Point of Sale (PoS) machine or the invoice issued.

Dynamic QR Code in case of an invoice, issued to person having a UIN

Any person, who has obtained a Unique Identity Number (UIN), is not a "registered person" as per the definition of registered person provided in section 2(94). Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.

Non-applicability of requirement of Dynamic QR code

Dynamic QR code is not applicable to an invoice issued to an unregistered person by following suppliers:

(i) Insurer or banking company or financial institution including NBFC

(ii) Goods transport agency supplying services in relation to transportation of goods by road in a goods carriage

(iii) Supplier of passenger transportation service

(iv) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens

(v) Supplier of online information and database access or retrieval (OIDAR) services.

No Dynamic QR code in case of exports: As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, since e-invoices are required to be issued in respect of supplies for exports treating them as B2B supplies, Dynamic QR

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code requirement will not be applicable to them.**Parameters/ details to be captured in the Dynamic QR Code**

Dynamic QR Code, inter-alia, shall contain the following information: -

- Supplier GSTIN number
- Supplier UPI ID
- Payee's Bank A/c number and IFSC
- Invoice number & invoice date,
- Total invoice value and
- GST amount along with breakup i.e. CGST, SGST, IGST, Cess, etc.

Further, Dynamic QR Code should be such that it can be scanned to make a digital payment.

Compliance with the Dynamic QR Code requirements in certain cases

The purpose of dynamic QR Code is to enable the recipient/ customer to scan and pay the amount to be paid to the merchant/ supplier in respect of the said supply. If the supplier has issued invoice having Dynamic QR Code for payment, the said invoice shall be deemed to have complied with Dynamic QR Code requirements. Compliance with the Dynamic QR Code requirements has been examined in the following cases:

Case-I: If a supplier provides/ displays Dynamic QR Code, but the customer opts to make payment without using Dynamic QR Code and supplier provides the cross reference of such payment made without use of Dynamic QR Code, on the invoice

In cases where the supplier, has digitally displayed the Dynamic QR Code and the customer pays for the invoice: -

i. using any mode like UPI, credit/ debit card or online banking or cash or combination of various modes of payment, with or without using Dynamic QR Code, and the **supplier provides a cross reference of the payment** (transaction id along with date, time and amount of payment, mode of payment like UPI, Credit card, Debit card, online banking etc.) on the invoice; or

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ii. in cash, without using Dynamic QR Code and the **supplier provides a cross reference of the amount paid in cash**, along with date of such payment on the invoice;

The said invoice shall be deemed to have complied with the requirement of having Dynamic QR Code.

Case-II: If a supplier makes available to customers an electronic mode of payment like UPI Collect, UPI Intent or similar other modes of payment, through mobile applications or computer-based applications, where though Dynamic QR Code is not displayed, but the details of merchant as well as transaction are displayed/ captured otherwise

In such cases, if the cross reference of the payment made using such electronic modes of payment is made on the invoice, the invoice shall be deemed to comply with the requirement of Dynamic QR Code.

However, if payment is made after generation/ issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

Case-III: In case of pre-paid invoices i.e. where payment has been made before issuance of the invoice

If cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code.

In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

Case-IV: In case where the e-commerce operator (ECO)/online application has complied with the Dynamic QR Code requirements, whether the suppliers using such e-commerce portal or application will still be required to comply with the requirement of Dynamic QR Code?

Dynamic QR code requirements apply to each supplier/registered person separately, if such person is liable to issue invoices with Dynamic QR Code for B2C supplies.

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In case, the supplier is making supply through the e- commerce portal or application, and the said supplier gives cross references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of Dynamic QR Code.

In cases other than pre-paid supply i.e. where payment is made after generation / issuance of invoice, the supplier shall provide Dynamic QR Code on the invoice.

Case-V: No Dynamic QR code required on an invoice issued to a recipient located outside India for supply of services whose POS is in India and payment received in FOREX

In cases, where an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of the IGST Act, and the payment is received by the supplier, in convertible FOREX or in Indian Rupees wherever permitted by the RBI (such supply of services is not considered as export of services as per the IGST Act), such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier.

Case-VI: In case of retail sales over the counter, the payment from the customer is received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment.

In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction.

In such cases, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such

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payment along with unique order ID/ sales reference number are also provided on the invoice.

Case - VII: In case part-payment is received before dynamic QR code is generated.

When the part-payment for any supply has already been received from the customer/ recipient, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against "invoice value".

The details of total invoice value, along with details/ cross reference of the part payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice[13].

The detailed process of uploading of e-invoices on invoice registration portal (IRP) has been given for the information of the students in the Annexure to this chapter. The same is not relevant for examination purposes.

Key Points

- E-invoices will not be generated at the IRP Portal.
- E-Invoice schema issued by GST System will be used by the all kind of businesses. The Schema has mandatory and non-mandatory fields, mandatory fields has to be filled by all the taxpayers. Non-mandatory field is for the business to choose.
- E-Invoice will be authenticated with the digital signature of the IRP.
- Each E-Invoice will be uploaded for registration on IRP within time line.
- E-Invoice mechanism has an option to cancel the invoice within 24 hours of registration of IRP.

[13]*The discussion on Dynamic QR code is based primarily on sixth proviso to rule 46 alongwith Notification No. 14/2020 CT dated 21.03.2020 and Circular no. 146/02/2021 GST dated 23.02.2021, Circular no. 156/12/2021 GST dated 21.06.2021 and Circular No. 165/21/2021 GST dated 17.11.2021.*

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C. SPECIAL CASES

(i) Revised Tax Invoice [Section 31(3)(a) read with rule 53]

When issued?

Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of the issuance of the registration certificate.

> *For the purposes of this section, the expression **"tax invoice"** shall include any **revised invoice** issued by the supplier in respect of a supply made earlier [Explanation to section 32].*

Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. The words "Revised Invoice" shall be indicated prominently on such invoices.

This provision is necessary, as a person who becomes liable for registration has to apply for registration within 30 days of becoming liable for registration. When such an application is made within the stipulated time period and registration is granted, the effective date of registration is the date on which the person became liable for registration.

Thus, there would be a time lag between the date of grant of certificate of registration and the effective date of registration. For supplies made by such person during this intervening period, the law enables the issuance of a revised invoice, so that ITC can be availed by the recipient on such supplies.

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(8) Sarabhai Private Ltd. commenced business of supply of goods on 1st April in Delhi. Its turnover exceeded the applicable threshold limit on 3rd September. Thus, it became liable to registration on 3rd September. It applied for registration on 29th September and was granted registration certificate on 5th October. Since it applied for registration within 1 month of becoming liable to registration, registration granted is effective from 3rd September.

Sarabhai Private Ltd. may issue Revised Tax Invoices on or before 5th November in respect of taxable supplies effected between 3rd September and 5th October.

Consolidated Revised Tax Invoices in certain cases

A registered person may issue a Consolidated Revised Tax Invoice in respect of all taxable supplies made to an unregistered recipient **during such period**.

However, **in case of inter-State supplies** where the value of supply does not exceed ₹ 2.5 Lakh, a consolidated revised invoice may be issued separately in respect of all unregistered recipients located in a State.

Thus, a revised/ consolidated revised invoice may be issued within one month from the date of registration as follows:

- **For each inter-State B2C taxable supply up to ₹ 2,50,000:** State-wise consolidated revised invoice
- **For each inter-State B2C taxable supply more than ₹ 2,50,000:** Recipient wise revised invoice
- **For all intra-State B2C taxable supplies irrespective of the amount:** Recipient wise Consolidated revised invoice

Particulars of Revised Tax Invoice

Name, address and GSTIN of the supplier;
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash and any combination thereof, unique for a FY;

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Date of issue of the document;
Name, address and GSTIN or UIN, if registered, of the recipient;
Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
Serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
Signature/digital signature of the supplier/his authorized representative.

Note: Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words ***"INPUT TAX CREDIT NOT ADMISSIBLE"***

Section 74 - *Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts*[14]

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

Section 130 - *Confiscation of goods or conveyances and levy of penalty*[15]

(ii) No Tax Invoice required to be issued if value < ₹ 200 – A consolidated Tax Invoice can be issued [Section 31(3)(b) read with fourth proviso to rule 46]

A registered person may not issue a Tax Invoice if:

(i) Value of the goods/services/both supplied < ₹ 200,

(ii) the recipient is unregistered; and

(iii) the recipient does not require such invoice.

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[14] ***It may be noted that the provisions of section 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24.***

[15] *Provisions of sections 129 and 130 have been discussed in detail in Chapter 21- Offences and Penalties and Ethical aspects under GST in Module 3 of the Study Material.*

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Instead, such registered person shall issue a **Consolidated Tax Invoice** for such supplies at the close of each day in respect of all such supplies.

Thus, small taxpayers, like small retailers, doing a large number of small transactions for upto a value of ₹ 200 per transaction to unregistered customers need not issue invoice for every such transaction. They can issue one consolidated invoice at the end of each day for all transactions done during the day. However, they need to issue an invoice when the customer demands.

However, this option is not available to a supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens.

Above provision is also applicable to Bill of Supply.

(iii) Bill of Supply [Section 31(3)(c) read with rule 49]

Section 31(3)(c) stipulates that a registered person supplying exempted goods or services or both or a registered person paying tax under composition levy, shall issue a bill of supply instead of a tax invoice. Person opting for composition levy shall mention the words **"composition taxable person, not eligible to collect tax on supplies"** at the top of the bill of supply issued by him[16].

[16] *Fourth proviso to rule 49 stipulates that the Bill of supply shall have a Quick Response Code. However, the same is not yet made effective.*

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Particulars of Bill of Supply

A registered person opting for the composition levy does not collect tax from the recipient on outward supplies made by him. Similarly, in case of a registered person supplying exempted goods and/or services, no tax implications are there. Recipients should not expect Tax Invoice from such suppliers as they cannot issue tax invoice.

Since no tax is collected from the recipient by a registered person opting for the composition levy and a registered person supplying exempted goods and/or services, Bill of Supply issued by such persons does not contain the details pertaining to rate of tax and amount of tax. Further, value to be mentioned in the Bill of Supply is not a taxable value. A Bill of Supply shall be issued containing the following details, namely:

Name, address and GSTIN of the supplier;
A consecutive serial number not exceeding 16 characters, in one or more multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash and any combination thereof, unique for a FY;
Date of its issue;
Name, address and GSTIN or UIN, if registered, of the recipient;
HSN Code for goods or services;
Description of goods or services or both;
Value of supply of goods or services or both taking into account discount/ abatement, if any; and
Signature or digital signature of the supplier or his authorized representative (not required in case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology (IT) Act, 2000).

Note: Any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as bill of supply for the purposes of the Act.

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(9) Patel & Sons is a manufacturer of goods who has opted for composition levy under section 10(1) and (2). It will issue a Bill of Supply to the buyers of goods and not the tax invoice.

Invoice-cum-bill of supply [Rule 46A]

Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies. Rule 46A is notwithstanding anything contained in rule 46 or rule 49 or rule 54 of CGST Rules. The said single "invoice-cum-bill of supply" shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.

(iv) Receipt Voucher [Section 31(3)(d) read with rule 50]

A registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a Receipt Voucher evidencing receipt of such payment.

Particulars of Receipt Voucher

Name, address and GSTIN of the supplier;
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY
Date of its issue;
Name, address and GSTIN or UIN, if registered, of the recipient;
Description of goods or services;
Amount of advance taken;
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

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Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
Whether the tax is payable on reverse charge basis; and
Signature/digital signature of supplier/his authorized representative

Where at the time of receipt of advance, rate of tax and/or nature of supply is not determinable

Where at the time of receipt of advance	
(i) rate of tax is not determinable	tax shall be paid at the rate of **18%**
(ii) nature of supply is not determinable	same shall be treated as **inter-State supply**

(v) Refund Voucher [Section 31(3)(e) read with rule 51]

Where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a **Receipt Voucher**, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a **Refund Voucher** against such payment.

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Particulars of Refund Voucher

Name, address and GSTIN of the supplier;
A consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY;
Date of its issue;
Name, address and GSTIN or UIN, if registered, of the recipient;
Number and date of Receipt Voucher issued
Description of goods/services in respect of which refund is made
Amount of refund made
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess)
Amount of tax paid in respect of such goods or services (central tax, State tax, integrated tax, Union territory tax or cess)
Whether the tax is payable on reverse charge basis; and
Signature/digital signature of supplier/his authorized representative

(vi) Invoice and Payment Voucher [Section 31(3)(f) & (g) read with rule 46, *rule 47A* and rule 52]

The recipient is liable to pay tax on reverse charge basis where he receives supply of such goods/services/both which are notified for reverse charge purposes under section 9(3). Such supplies can be received from a registered or an unregistered supplier.

Further, a builder/promoter is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:

(i) A builder/promoter must purchase 80% of inputs and input services used in supplying the service from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such

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inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

(ii) Where cement is received from an unregistered person, promoter/builder has to pay tax on supply of such cement on reverse charge basis and

(iii) GST on capital goods purchased from unregistered person is payable by the promoter on reverse charge basis.

Invoice to be issued by recipient if he is liable to pay tax under section 9(3)/(4) and receives supplies from an unregistered person

A registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall ***within the prescribed period*** issue an **invoice** in respect of goods or services or both **received by him from the supplier who is not registered on the date of receipt of goods or services or both.**

Further, the expression "supplier who is not registered" shall include the supplier who is registered solely for the purpose of deduction of tax under section 51. In other words, a supplier registered solely for the purposes of tax deduction at source under section 51[17] of the CGST Act, 2017 shall not be considered as a registered person for the purposes of section 31(3)(f).

Thus, invoice to be issued by recipient within the prescribed time if he is liable to pay tax under section 9(3)/(4) and receives supplies from an unregistered person

Further, the time limit for issuing tax invoice in case of reverse charge mechanism supplies has been prescribed in rule 47A.

[17] ***The provisions of section 51 of the CGST Act, 2017 are discussed in detail in Chapter-11 of this Module of the Study Material.***

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Rule 47A provides that where an invoice referred to in rule 46 is required to be issued under clause (f) of section 31(3) by a registered person, who is liable to pay tax under section 9(3)/9(4), he shall issue the said invoice within a period of 30 days from the date of receipt of the said supply of goods and/or services, as the case may be.

Thus, invoice to be issued within a period of 30 days from the date of receipt of the said supply of goods and/or services, as the case may be.

Payment voucher to be issued by recipient at the time of making payment if he is liable to pay tax under section 9(3)/(4)

Besides, a registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall issue a **Payment Voucher** at the time of making payment to the supplier.

Particulars of Payment Voucher

Name, address and GSTIN of the supplier if registered;
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and any combination thereof, unique for a FY
Date of its issue;
Name, address and GSTIN of the recipient;
Description of goods or services;
Amount paid;
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

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Amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
Signature/digital signature of supplier/his authorized representative

(vii) Delivery challan [Rule 55]

Rule 55 specifies the cases where for the purpose of transportation of goods without issue of Invoice, Delivery Challan be issued:

These are provided in the following table:

Nature of supply	Deliver challan to be issued	Particulars of Delivery Challan
(1) Supply of liquid gas **where the quantity at the time of removal** from the place of business of the supplier **is not known**, (2) Transportation of goods for **job work**, (3) Transportation of goods for reasons **other than by way of supply**, or (4) Such other supplies as may be **notified** by the Board	• serially numbered not exceeding 16 characters • in one or multiple series • at the time of removal of goods for transportation	Date and number of the delivery challan Name, address and GSTIN of the consigner, if registered Name, address and GSTIN or UIN of the consignee, if registered HSN code and description of goods, Quantity (provisional, where the exact quantity being supplied is not known)

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		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
		Signature

A. Delivery challan in Triplicate

The delivery challan shall be prepared **in TRIPLICATE**, in case of supply of goods, in the following manner:

Original copy	→	**ORIGINAL FOR CONSIGNEE**
Duplicate copy	→	**DUPLICATE FOR TRANSPORTER**
Triplicate copy	→	**TRIPLICATE FOR CONSIGNOR**

B. Declaration in E-way Bill

Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in E-Way Bill[18].

C. Tax invoice to be issued after delivery of goods

Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of

[18] *The provisions of E-way Bill have been discussed in Chapter-10: Accounts and Records; E-way Bill in this Module of the Study Material.*

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goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

D. Goods transported in SKD/CKD condition or in batches or lots

Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots,

(a) the supplier shall issue the complete invoice before dispatch of the first consignment;

(b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;

(c) Copies of the corresponding delivery challan shall accompany each consignment along with a duly certified copy of the invoice; and

(d) the original copy of the invoice shall be sent along with the last consignment.

E. Goods may be moved within the State/from the State of registration to another State for supply on approval basis and art works may be sent by artists to galleries for exhibition on delivery challan along with e-way bill wherever applicable

Suppliers of jewellery etc. who are registered in one State may have to visit other States (other than their State of registration) and need to carry the goods (such as jewellery) along for approval. In such cases if jewellery etc. is approved by the buyer, then the supplier issues a tax invoice only at the time of supply. Since the suppliers are not able to ascertain their actual supplies beforehand and while ascertainment of tax liability in advance is a mandatory requirement for registration as a casual taxable person, the supplier is not able to register as a casual taxable person. Such goods are also carried within the same State for the purposes of supply.

In view of relevant provisions of rule 55, it is clarified that the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such

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supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified *[Circular No. 10/10/2017 GST dated 18.10.2017]*.

Likewise, in case where artists supply art works in different States - other than the State in which they are registered as a taxable person and if the art work is selected by the buyer, then the supplier issues a tax invoice only at the time of supply, it is clarified that the art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work *[Circular No. 22/22/2017 GST dated 21.12.2017]*.

(viii) Supplier permitted to issue any document other than tax invoice [Proviso to section 31(2) read with rules 54]

Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which––

(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(b) tax invoice may not be issued.

Following suppliers may issue a tax invoice, but they are also permitted to issue any other document in lieu of tax invoice, by whatever name called:

Supplier of taxable service	Document in lieu of the tax invoice	
	Optional information	Mandatory information
Insurer/ Banking company/ Financial	• Serial number (It is not mandatory for a bank/ insurance	Other information (other than serial no. and address of recipient) as prescribed for a Tax Invoice, under rule 46.

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institution, including NBFC	company to serially number the invoices/ document). • Address of the recipient of taxable service.	A customer may avail numerous services from the bank / insurer in a given tax period. Such entities may issue a consolidated tax invoice/ statement/ advice, any other document in lieu thereof, by whatever name called may be issued/ made available, physically/ electronically, for supply of services made during a month at the end of the month. However, the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000.
Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road in a **goods carriage**		Gross weight of the consignment Name of the consignor and the consignee Registration number of goods carriage in which the goods are transported Details of goods transported

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		Details of place of origin and destination
		GSTIN of the person liable for paying tax whether as consignor, consignee or GTA
		Other information as prescribed for a tax invoice, under rule 46
Supplier of **passenger transportation service**	• Serial number • Address of the recipient of taxable service	Tax invoice shall include ticket in any form, by whatever name called.
		Other information (other than serial no. and address of recipient) as prescribed for a tax invoice, under rule 46. However, signature or digital signature of the supplier or his authorized representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000.
Registered person supplying **services by way of admission to exhibition of cinematograph films in multiplex screens**	Details of recipient of service	Supplier is required to issue an electronic ticket and the said electronic ticket shall be deemed to be a tax invoice.
		Other information (other than details of recipient of service) as prescribed for a tax invoice, under rule 46.

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		However, supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.

★ It is important to note here that keeping in view the large number of transactions in banking, insurance and passenger transportation sector, taxpayers need not mention the address of the customer and the serial number in their invoices.

(ix) Tax invoice in case of Input Service Distributor (ISD) [Rule 54(1) & 54(1A)]

An ISD invoice or, as the case may be, an ISD credit note issued by an ISD shall contain the following details:-

Name, address and GSTIN of the ISD
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and any combination thereof, unique for a FY
Date of its issue
Name, address and GSTIN of the recipient to whom the credit is distributed
Amount of credit distributed
Signature/digital signature of ISD/his authorized representative

However, where the ISD is an office of a banking company or a financial institution, including NBFC, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as mentioned above.

A registered person, having the same PAN and State code as an ISD, may issue an invoice or, as the case may be, a credit/debit note to transfer the credit of common input services to the ISD, which shall contain the following details:-

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Name, address and GSTIN of the registered person having the same PAN and same State code as ISD
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and any combination thereof, unique for a FY
Date of its issue
GSTIN of supplier of common service and original invoice number whose credit is sought to be transferred to the ISD
Name, address and GSTIN of the ISD
Taxable value**, rate and amount of the credit to be transferred
Signature/digital signature of the registered person/his authorized representative

** The taxable value in the invoice issued hereunder shall be the same as the value of the common services.

(x) Tax invoice or bill of supply to accompany transport of goods [Rule 55A]

Person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

4. CREDIT AND DEBIT NOTES [SECTION 34]

STATUTORY PROVISIONS

Section 34	*Credit and Debit Notes*
Sub-section	*Particulars*
(1)	*Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable*

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	in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed
(2)	*Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the 30th day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:* *Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.*
(3)	*Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.*
(4)	*Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.*
	Explanation — For the purposes of this Act, the expression "debit note" shall include a supplementary invoice.

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ANALYSIS

(i) **Issuance of Credit Note:** During the course of trade or commerce, after the invoice has been issued, Credit Note can be issued under the following circumstances:

- The supplier has erroneously declared a value which is more than the actual value of the goods or services provided. (Taxable Value found to exceed the taxable value in respect of such supply)
- The supplier has erroneously declared and charged a higher tax rate or tax amount than what was actually applicable and required to be charged for the said supply of goods and / or services. (Tax Charged exceeds the Tax payable)
- The goods supplied are returned by the Recipient (Sales Return)
- The quality of the goods or services or both supplied is not to the satisfaction of the recipient (Quality issues)
- Any other similar reasons

In order to regularize these kinds of situations, the supplier is allowed to issue a document called as **credit note** to the recipient. Once the credit note has been issued, the tax liability of the supplier will reduce. Simultaneously whenever a Credit Note in consonance with the provisions of Section 34 of the CGST Act, 2017 is issued reducing the liability of GST by the supplier, the corresponding reduction in Input Tax Credit is envisaged at the recipient's end.

The credit note is a convenient and legal method by which the value of the goods or services in the original tax invoice can be amended or revised. The issuance of the credit note easily allows the supplier to decrease his tax liability in his returns without requiring him to undertake any tedious process of refunds.

Section 34(1) provides that where **one or more tax invoices have been issued** for supply of any goods or services or both and the taxable value or tax charged in that/those tax invoice(s) is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are

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returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient **one or more credit notes for supplies made in a financial year** containing the prescribed particulars.

Secondary discounts

It is important to note that credit note(s) are not permitted to be issued in case secondary discounts[19] are allowed by the supplier since the tax liability of the supplier does not get reduced in such case. However, supplier can issue financial/ commercial credit note(s) to reduce the value of supply payable by the recipient to the supplier *[Circular 92/11/2019 GST dated 07.03.2019]*. The Tax Liability of the Supplier is not reduced on issuance of Financial / Commercial Credit Notes.

(ii) Issuance of Debit Note: There can be situations when after the invoice has been issued:

- The supplier has erroneously declared a value which is less than the actual value of the goods or services or both provided.
- The supplier has erroneously declared a lower tax rate than what is applicable for the said supply of the goods or services or both supplied.
- Any other similar reasons

In order to regularize the above situations, the supplier is allowed to issue a document called as **debit note** to the recipient.

Debit note *shall include a supplementary invoice.*

Section 34(3) provides that where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or

[19] *Secondary discounts are the discounts which are not known at the time of supply/are offered after the supply is already over. These discounts are not excluded from the value of supply since conditions laid down in section 15(3)(b) are not satisfied. Refer Chapter 6 - Value of supply in Module 1 of the Study Material for detailed discussion on the same.*

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more debit notes for supplies made in a financial year containing the prescribed particulars.

The issuance of a debit note/supplementary invoice creates additional tax liability. The treatment of a debit note/supplementary invoice is identical to the treatment of a tax invoice as far as returns and payment are concerned.

The debit note/supplementary invoice is a convenient and legal method by which the value of the goods and/or services in the original tax invoice can be enhanced. The issuance of the debit note allows the supplier to pay his enhanced tax liability in his returns without requiring him to undertake any other tedious process.

It is to be noted that a debit note issued by the supplier in accordance with the provisions of Section 34 of CGST Act, 2017 is a valid document to take Input Tax Credit at the end of the recipient [Rule 36(1)(c) of CGST Rules, 2017].

(iii) Details of Debit Note/Credit Note to be declared in return

I. Credit Note:

Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than:

(i) 30th November following the end of the financial year in which such supply was made,

or

(ii) the date of furnishing of the relevant annual return,

whichever is earlier.

The tax liability shall be adjusted in such manner as may be prescribed. However, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

A single Credit / Debit Note may also be issued against more than one invoice to reduce / increase the tax liability.

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Procedure in case of return of time expired medicines/drugs

It is a common trade practice in the pharmaceutical sector that the drugs or medicines are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. Such goods have a defined life term which is normally referred to as the date of expiry. Goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

In case of return of time expired medicines/drugs, either of the following two options can be followed:

(A) Return of time expired goods to be treated as fresh supply

In case the person returning the time expired goods is:

- **A registered person (other than a composition taxpayer):** he may, at his option, return the said goods by treating it is as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler/ manufacturer, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply subject to the fulfilment of conditions specified in section 16 of the CGST Act.
- **A composition supplier:** he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. No ITC will be available to recipient of return supply.
- **An unregistered person:** he may return the said goods by issuing any commercial document without charging any tax on the same.

Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, ITC

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treatment in such case has already been discussed in Chapter 7: Input Tax Credit in this Module of the Study Material.

(B) Return of time expired goods by issuing Credit Note

The manufacturer/wholesaler who has supplied the goods to the wholesaler/ retailer has the option to issue a credit note in relation to the time expired goods returned. Retailer/wholesaler may return the time expired goods by issuing a delivery challan.

If the credit note is issued within the time limit specified in Point (iii)(I.) above, the tax liability may be adjusted by the supplier, subject to the condition that the person returning the time expired goods has either not availed the ITC or if availed has reversed the ITC so availed against the goods being returned.

However, if said time limit has lapsed, a credit note may still be issued by the supplier for such return of goods but the tax liability cannot be adjusted by him in his hands.

Further, if time expired goods are returned beyond the time period specified in Point (iii)(I.) and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (i.e. by the person who has issued the credit note) as tax liability cannot be adjusted in this case.

Where such returned time expired goods are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of section 17(5)(h) of the CGST Act.

The clarification may also be applicable to return of goods for reasons other than being time expired. *[Circular No. 72/46/2018 GST dated 26.10.2018]*.

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Example

Date of Supply*	Date of return**	Treatment in terms of tax liability & credit
01.07.2023	20.09.2024	Credit note will be issued by supplier (manufacturer/ wholesaler) and the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler / retailer) has either not availed the ITC or if availed has reversed the ITC.
01.07.2023	20.10.2024	Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently tax liability cannot be adjusted by such supplier. The ideal course of action in this case would be that the retailer / wholesaler returning the time expired goods should issue a tax invoice treating the same as fresh supply.

** of goods from manufacturer/ wholesaler to wholesaler/ retailer*

***of time expired goods from retailer/ wholesaler to wholesaler/ manufacturer*

II. Debit Note:

Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued. The tax liability shall be adjusted in such manner as may be prescribed.

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(iv) Particulars of the Debit and Credit Notes [Rule 53(1A)]

There is no prescribed format, but credit and debit note issued by a supplier must contain the following particulars, namely:–

Name, address and GSTIN of the supplier.
Nature of the document.
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash and any combination thereof, unique for a FY.
Date of issue of the document.
Name, address and GSTIN or UIN, if registered, of the recipient.
Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered.
Serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply.
Value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient
Signature/digital signature of the supplier/his authorized representative.

5. PROHIBITION OF UNAUTHORISED COLLECTION OF TAX [SECTION 32]

A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act. No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

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(9) Rujuta is engaged in providing grooming services. She is not registered under GST law as her turnover is below the threshold limit. Rujuta cannot collect tax on the grooming services provided by her as a person who is not a registered person cannot collect any amount by way of tax under GST law in respect of any supply of goods or services or both.

6. AMOUNT OF TAX TO BE INDICATED IN TAX INVOICE AND OTHER DOCUMENTS [SECTION 33]

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

LET US RECAPITULATE

Who can raise a tax invoice?

Registered Person

- Supplying taxable goods or services
- Receiving taxable goods or services from unregistered supplier

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Time limit for issuance of invoice

In case of continuous supply of goods

- before/at the time each successive statements of accounts is issued or each successive payment is received

In case of continuous supply of services

due date of payment is ascertainable from the contract	on/before due date of payment
not so ascertainable	before/at the time of receipt of payment
payment is linked to the completion of an event	on/before the date of completion of that event

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Important contents of tax invoice

- Name, address & GSTIN of supplier
- Consecutive Serial Number & date of issue
- Name, address & GSTIN of recipient, if registered
- Name & address of recipient alongwith delivery address , name & State code, if not registered
- HSN
- Description of goods or services
- Quantity in case of goods
- Total Value of supply
- Taxable Value of supply
- Tax rate – Central tax & State tax or Integrated tax, cess
- Amount of tax charged
- Place of supply
- Address of delivery where different than place of supply
- Tax payable on reverse charge basis
- Signature of supplier or authorised signatory - not req. if e-invoice issued as per IT Act, 2000
- QR code having embedded IRN in it - in case if e-invoice issued

Manner of issuing the invoice

Supply of Goods	**Supply of services**
Triplicate	Duplicate
Original copy for recipient Duplicate copy for transporter; and Triplicate copy for supplier	Original copy for recipient; and Duplicate copy for supplier
The serial number of invoices issued during a month / quarter shall be furnished electronically in FORM GSTR-1.	

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E-invoicing

A. Class of persons mandatorily required to issue e-invoice [hereinafter referred to as notified persons]

B. Important terms

E-invoice schema

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Invoice Registration Portal [IRP]

website
for uploading or reporting of invoices
by notified persons

Invoice Reference Number [IRN]

Unique reference number

generated and returned by IRP

on successful registration of e-invoice

GST invoice will be valid only with a valid IRN

C. Advantages of e-invoicing

- Auto-reporting of invoices into GST return
- Auto-generation of e-way bill
- Substantial reduction in transcription errors
- Early payment
- Cost reduction
- Improved efficiency of business
- Reduction of tax evasion
- Elimination of fake invoices

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D. Situations in which e-invoicing is applicable

Supply of goods and/or services to a registered person by notified person [B2B supplies]	•Applicable
Exports by notified persons	•Applicable
B2C supplies by notified persons	•Not applicable
Invoices issued by Input Service Distributor	•Not applicable
Supplies made by notified person, tax on which is payable under reverse charge under section 9(3)	•Applicable
Where specified category of supplies are received by notified persons from unregistered persons [attracting reverse charge under section 9(4)] or through import of services	•Not applicable
Import of goods (Bills of Entry)	•Not applicable

E. No requirement of issuing invoice copies in triplicate/duplicate

Where e-invoicing is applicable → No need of issuing invoice copies in triplicate/duplicate

F. Exemption from e-invoicing

- Special Economic Zone units
- Insurer/banking company/financial institution including NBFC
- GTA supplying services in relation to transportation of goods by road in a goods carriage
- Supplier of passenger transportation service
- Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens
- Government Department and local authority

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G. Overall work flow of e-invoice

H. Generation of e-way bill/populating relevant parts of GST return through e-invoicing data

I. Cancellation of reported invoice

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J. Amendment of reported invoice

Amendment of e-invoice already uploaded on IRP

- Possible only on GST portal
- Not possible through the IRP

Revised Tax Invoice

Revised Tax Invoices to be issued in respect of taxable supplies effected during this period

- **Effective date of registration**
- **Date of issuance of certificate of registration**

Consolidated Revised Tax Invoice (CRTI) may be issued in respect of taxable supplies made to an **unregistered recipient** during this period

In case of Inter-State supplies, where the value of a supply does not exceed ₹ 2,50,000, a **CRTI** may be issued separately in respect of all unregistered recipients located in a State.

Consolidated Tax Invoice

Tax invoice is not required to be issued

- Value of supply < ₹200
- Recipient is unregistered
- Recipient does not require such invoice

Consolidated Tax Invoice shall be issued for such supplies at the close of each day in respect of all such supplies

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Where at the time of receipt of advance, rate of tax/ nature of supply is not determinable

Where at the time of receipt of advance	
(i) rate of tax is not determinable	tax shall be paid at the rate of **18%**
(ii) nature of supply is not determinable	same shall be treated as **inter-State supply**

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Invoice and Payment Vouchers

Payment Voucher

Invoice

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Credit Notes

Where one or more tax invoices have been issued for supply of any goods or services or both

Taxable value in invoice > Taxable value in respect of such supply

Tax charged in invoice > Tax payable in respect of such supply

OR

where the goods supplied are returned by the recipient

OR

where goods or services or both supplied are found to be deficient

Registered Supplier of goods or services or both → **may issue one or more credit notes for supplies made in a FY** → **Recipient of goods or services or both**

Debit Notes

Where one or more tax invoices have been issued for supply of any goods or services or both

Taxable value in invoice < Taxable value in respect of such supply

Tax charged in invoice < Tax payable in respect of such supply

Registered Supplier of goods or services or both → **may issue one or more debit notes for supplies made in a FY** → **Recipient of goods or services or both**

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TEST YOUR KNOWLEDGE

1. *Jai, a registered supplier, runs a general store in Ludhiana, Punjab. Some of the goods sold by him are exempt whereas some are taxable. You are required to advise him on the following issues:*

   (i) Whether Jai is required to issue a tax invoices in all cases, even if he is selling the goods to the end consumers?

   (ii) Jai sells some exempted as well as taxable goods valuing ₹ 5,000 to a school student. Is he mandatorily required to issue two separate GST documents?

   (iii) Jai wishes to know whether it's necessary to show tax amount separately in the tax invoices issued to the customers. You are required to advise him.

2. *Avtaar Enterprises, Kanpur started trading exclusively in ayurvedic medicines from July 1. Its turnover exceeded ₹ 40 lakh on October 3. The firm applied for registration on October 31 and was issued registration certificate on November 5.*

   Examine whether any revised invoice can be issued in the given scenario. If the answer to the first question is in affirmative, determine the period for which the revised invoices can be issued as also the last date up to which the same can be issued.

3. *Discuss the provisions relating to issue of an invoice/document in the following circumstances:*

   (i) Advance payment is received against a supply, but subsequently no supplies are made.

   (ii) Goods are sent on approval for sale or return and are removed before the supply takes place.

   (iii) Mr. Mohan provides continuous supply of services to his client, where the due date of payment for such services is not ascertainable. No advance has been received in this behalf.

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4. *Pari & Sons is an unregistered dealer of taxable supplies in Kerala. On 10th August, aggregate turnover of Pari & Sons exceeded ₹ 20,00,000. The firm applied for registration on 27th August and was granted the registration certificate on 1st September.*

Under CGST Rules, 2017, you are required to advise Pari & Sons as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of revised tax invoices.

ANSWERS

1. **(i)** No, he is not required to issue tax invoice in all cases. As per section 31(1), every registered person supplying taxable goods is required to issue a 'tax invoice'. Section 31(3)(c) stipulates that every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice.

Further, rule 46A provides that a registered person supplying taxable as well as exempted goods or services or both to an un-registered person may issue a single 'invoice-cum-bill of supply' for all such supplies.

However, as per section 31(3)(b) read with rule 46 and 49, a registered person may not issue a tax invoice/bill of supply if:

(i) value of the goods supplied <₹ 200,

(ii) the recipient is unregistered; and

(iii) the recipient does not require such invoice.

Instead, such registered person shall issue a Consolidated Tax Invoice/bill of supply for such supplies at the close of each day in respect of all such supplies.

(ii) As per rule 46A, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single **"invoice-cum-bill of supply"** may be issued for all such supplies. Thus, there is no need to issue a tax invoice and a bill of supply

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separately to the school student in respect of supply of the taxable and exempted goods respectively.

(iii) As per section 33, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

As per rule 46(m), a tax invoice shall contain the various particulars, *inter alia,* namely, amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

Hence, Jai has to show the tax amount separately in the tax invoices issued to customers.

2. As per section 31(3)(a), a registered person may, within one month from the date of issuance of certificate of registration, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

Further, rule 10(2) lays down that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

In the given case, Avtaar Enterprises has applied for registration within 30 days of becoming liable for registration. Thus, the effective date of registration is the date on which Avtaar Enterprises became liable for registration i.e., October 3. Therefore, since in the given case there is a time lag between the effective date of registration (October 3) and the date of grant of certificate of registration (November 5), revised invoices can be issued. The same can be issued for supplies made during this intervening period i.e., for the period beginning with October 3 till November 5. Further, the revised invoices can be issued for the said period till December 5.

3. **(i)** As per section 31(3)(e), where advance payment is received against a supply for which receipt voucher has been issued, but subsequently no supplies are made and no tax invoice is issued in pursuance thereof, a refund voucher may be issued to the person who had made the advance payment.

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(ii) As per section 31(7), where the goods are sent on approval for sale or return and are removed before the supply takes place, the invoice shall be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier.

(iii) As per section 31(5)(b), in case of continuous supply of services, where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment

4. Section 22(1) provides that every supplier is liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the threshold limit (₹ 20 lakh).

Section 25(1) provides that a supplier whose aggregate turnover in a financial year exceeds the threshold limit in a State/UT is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e., the date of crossing the threshold limit).

Where the application is submitted within the said period, the effective date of registration is the date on which the person becomes liable to registration vide rule 10(2); otherwise it is the date of grant of registration in terms of rule 10(3).

In the given case, since Pari & Sons have applied for registration on 27th August which is within 30 days from the date of becoming liable to registration (10th August), its effective date of registration is 10th August.

Further, every registered person who has been granted registration with effect from a date earlier than the date of issuance of registration certificate to him, may issue revised tax invoices in respect of taxable supplies effected during this period within one month from the date of issuance of registration certificate [Section 31(3)(a) read with rule 53(2)].

In view of the same, Pari & Sons may issue revised tax invoices against the invoices already issued during the period between effective date of registration (10th August) and the date of issuance of registration certificate (1st September), on or before 1st October.

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Annexure

UPLOADING OF E-INVOICES ON INVOICE REGISTRATION PORTAL (IRP)

Under E-Invoicing, all the invoices created by accounting software will be authenticated electronically by GSTN for further use (like return preparation, E-way bill creation).

There are lots of myths or misconception about e-invoice. E-Invoice does not mean generation/creation of invoice from central portal or tax department because practically it is not possible it will create unnecessary restrictions on trade and industry and different industry have different business requirement, which cannot be met out by software.

E-Invoice is a submission of already generated Invoices from accounting software to GST Portal and we all are aware that there are hundreds of accounting & billing software, which generate invoices, but they all use their own formats to store information electronically and data in such different formats which GST System cannot understand, hence it was not possible to submit the data from accounting software to GST System.

So, need was felt to issue a standard format (Schema) in which data will be shared with other systems, although from user's prospective it's same as earlier, there would not be any change in print or electronically creation of invoice. Only standard schema needs to be implemented by all the accounting and billing software, so that it can generate JSON of each invoice in such format which can be uploaded on GST Portal for further authentication and approval.

The main objective is to enable inter-operability across the entire GST eco-system i.e. an e-invoice generated by one software should be capable of being read by any other software. Basically, through machine readability, an invoice can be uniformly interpreted.

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The overall workflow of e-invoice generation, its reporting/registration and receipt of confirmation is depicted in the diagrams below:

A. Interaction between the business (supplier) and the Invoice Registration Portal (IRP).

B. Interaction between the IRP and the GST/E-Way Bill Systems and the Buyer.

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IT (Information Technology) plays a significant role in preparing e-invoices (electronic invoices) efficiently and accurately. E-invoices are standardized digital invoices that are generated electronically and adhere to specific formats and regulations. Further, the GST portal ensures that e-invoices generated by a taxpayer get automatically populated into Form GSTR-1 of the entity (without any manual intervention) and the figure of outward supplies in Form GSTR-1 automatically gets populated into Form GSTR-3B. Thus, generating an e-invoice effectively translates into automating the declaration of the outward supplies in Form GSTR-3B thereby avoiding errors or mismatches. This e-invoice generation leads to an end-to-end reporting of invoices in Form GSTR-1 and Form GSTR-3B of the supplier of goods/services and Form GSTR-2B of the recipient of supplies as well.

By automating e-invoicing, manual effort, errors, and delays in the invoicing process can be significantly reduced while enhancing customer satisfaction and compliance with regulatory requirements.

The process for filing bulk invoices on the Invoice Registration Portal (IRP) may vary based on the specific requirements and systems in place. The IRP is primarily used for generating and validating e-invoices in compliance with e-invoicing regulations.

Here's a general guide on how to file bulk invoices on the IRP portal:

Offline Method of Bulk IRN Generation

The sheer number of invoices raised by large businesses can be staggering and tedious for the taxpayer to generate Invoice Reference Number (IRN). Bulk IRN generation facility is provided by the Invoice Registration Portal (IRP) where multiple invoices can be uploaded at once. Generation of IRN is the responsibility of the supplier who will be required to report the same to Invoice Registration Portal (IRP) for authentication, After successful verification, the portal will generate a unique Invoice reference number (IRN) and digitally sign the e-invoice and a QR code.

The e-invoice system being implemented by tax departments across the globe consists of two important parts namely,

(a) Generation of invoice in a standard format so that invoice generated on one system can be read by another system.

(b) Reporting of e-invoice to a central system.

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Step by Step Process to Generate Invoice reference number[20]

The e-invoice system provides a provision of offline method to generate the multiple Invoice reference number in one-go by the tax payers.

In order to download this tool, visit the e-invoice portal (https://einvoice1.gst.gov.in/). Go to Help> Tools > Bulk Generation Tools option provided in E-Invoice portal as shown below.

E-invoicing system will display 4 different JSON preparation Tools as Format A, Format B, Format C and Format D. These formats have been made as per the requirements of different classes of tax payers and transactions.

Taxpayer can select and download the most appropriate format of JSON preparation tool as shown below under 'Bulk generation Tools. There are four formats of utility available:

[20] *It may be noted that the specific steps and user interface might differ based on the updates and changes made to the IRP portal. Always refer to the official documentation or guidelines provided by the relevant authorities for accurate and up-to-date instructions on how to file bulk invoices on the IRP portal.*

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The brief description of four formats of utility is discussed as under:-

(1) E-Invoice JSON Preparation – Format A

Format A consists of a **single worksheet** in which invoice and items details can be entered to prepare JSON file to upload the large number of e-Invoices by a single upload to the Invoice Registration Portal (IRP). Businesses having 1 or 2 items in the invoice can use this format. This format is advisable for invoices with B2B transactions. The seller GSTIN details are entered in the Profile as a one time entry. As the item details are entered in the same worksheet, it is to be ensured that the same invoice details repeat for all the items of the invoice.

Payment details and Reference details cannot be entered in Format A.

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(2) E-Invoice JSON Preparation – Form B

Format B consists of a two worksheets in which invoice and items details can be entered separately. This format is advisable for the businesses having many items in the invoice. As the item details are entered in different worksheet, ensure that every item will be referenced with Document number, Document type and document date of the invoice. Payment details and Reference details cannot be entered in Format B. The other information such as Export details can be entered in the Invoice worksheet itself. If e-way bill needs to be generated, the part-B details can also be entered in the Invoice sheet.

(3) E-Invoice JSON Preparation – Form C

Format C consists of a five worksheets in which invoice details, items details, payment details, reference details and additional details can be entered separately. This format is advisable for the businesses having many items in the invoice with payment details and reference details etc. As the item details are entered in different worksheet, ensure that every item will be referenced with Document number, Document type and document date of the invoice. The other information such as Export details can be entered in the Invoice sheet itself. If e-way bill needs to be generated, the part-B details can also be entered in the Invoice sheet.

(4) E-Invoice JSON Preparation – Form D

Format D consists of a single worksheet in which invoice details, items details, payment details, reference details and additional details can be entered in the same worksheets. This format is advisable for the businesses having large number of items in the invoice having payment details and reference details etc. The other information such as Export details can be entered in the Invoice sheet. If e-waybill needs to be generated, the part-B details can also be entered in the Invoice sheet itself.

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After downloading the aforementioned utility, follow these steps:

Step 1: Enter all the seller GSTIN details as required in the 'Profile' sheet.

Step 2: Enter all the details of the invoices in the necessary fields as given in the 'Invoice' sheet.

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Step 3: Once the invoice details are entered, to ensure that e-invoice schema is followed, validate the details using the 'Validate' button.

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Step 4: Upon successful validation, click on the 'Prepare JSON' button. The JSON file will now be generated containing details of the multiple invoices entered.

Step 5: Log in to the e-invoice portal and go to E-invoice -> E Invoice Bulk Upload and select the JSON file to be uploaded. It is to be ensured that the JSON file is not more than 2MB.

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Step 6: A summary of the invoices uploaded will be displayed on the screen. Each invoice is assigned a 64-character length IRN, and the same can be invoice excel utility download or in e-invoice JSON file download. In case any errors are noted, it has to be corrected and re-uploaded.

The system will also update the invoice details to E-Way bill system. E-Way bill system will create Part-A of e-way bill using this data to which only vehicle number will have to be attached in Part-B of the e-way bill.

Note:

1 The hash computed by e-invoice system will become the IRN (Invoice Reference Number of 64 character length) of the e-invoice.

2 The JSON must conform to the e-invoice schema (standards) that is published and have the mandatory parameters. The optional parameters can be according to the business need of the supplier.

3 Downloading the Bulk IRN Generation Tool is a one-time activity. However, the Tool may get updated in future. So, always use the latest version available on the E-Invoice Portal.

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or, January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of section 34(2) of the CGST Act, 2017 are compared with the provisions as amended by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Section 34	Existing provisions	Provisions as amended by the Finance Act, 2025	Remarks
(2)	Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the 30th day of November following the end of the financial year in which such	Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the 30th day of November following the end of the financial year in which such	Proviso to sub-section (2) of section 34 is proposed to be amended to explicitly provide for requirement of reversal of corresponding input tax credit in respect of a credit-note, if availed, by the registered recipient, for the purpose of reduction of tax liability of the

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	supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed. Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.	supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed. ***Provided that no reduction in output tax liability of the supplier shall be permitted, if the—*** ***(i) input tax credit as is attributable to such a credit note, if availed, has not been reversed by the recipient, where such recipient is a registered person*** ***(ii) incidence of tax on such supply has been passed on to any other person, in other cases.***	supplier in respect of the said credit note.

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CHAPTER 10

ACCOUNTS AND RECORDS; E-WAY BILL

The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After reading this Chapter, you shall be equipped to:

- enumerate the accounts and other records required to be maintained under GST by registered person.
- list the additional records required to be maintained by agent, manufacturer, service provider.
- describe the accounts and records to be maintained by person executing works contract, clearing and forwarding agent.
- Enumerate the accounts and records to be maintained by owner/operator of a warehouse/godown and transporter.
- describe the period for which the books of accounts or other records are required to be maintained.
- explain the provisions relating to e-way bills.

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1. INTRODUCTION

Assessment in GST is mainly focused on self-assessment by the taxpayers themselves. Every taxpayer is required to self-assess the taxes payable and furnish a return for each tax period i.e. the period for which return is required to be filed.

The compliance verification is done by the Department through scrutiny of returns and/or investigation. Thus, the compliance verification is to be done through documentary checks rather than physical controls. This requires certain obligations to be cast on the taxpayer for keeping and maintaining accounts and records. Such accounts and records may be used by the department for compliance verification.

Every registered person shall keep and maintain all records at his principal place of business. Responsibility has been casted on the owner or operator of warehouse or godown or any other place used for storage of goods and on every transporter to maintain specified records even if they are not registered under GST. They need not enroll for this purpose.

Further, Commissioner is empowered to notify a class of taxable persons to maintain additional accounts or documents for specified purpose or to maintain accounts in other prescribed manner. Similarly, the Commissioner can permit a class of taxable persons to maintain accounts in such manner as may be prescribed if that class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of GST Laws.

It is not mandatory to maintain the accounts in electronic form. Accounts and records may be maintained either electronically or manually. Further, there is no prescribed format for maintaining the accounts.

Chapter VIII – Accounts and Records [Sections 35 and 36] of the CGST Act and Chapter VII – Accounts and Records [Rules 56 to 58] of the CGST Rules, 2017,

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enumerates the accounts and records required to be maintained by a taxpayer and the period for which such accounts and records are required to be preserved. Further, E-way Bill provisions discussed in this Chapter are contained in section 68 read with rules 138, 138A, 138B, 138C 138D and 138E [Chapter XVI] of the CGST Rules, 2017. State GST laws also prescribe identical provisions in relation to accounts and records; E-Way Bill.

Provisions relating to Accounts and Records; E-way Bill under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the accounts and records provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- **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 carried on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].
- **Commissioner:** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act. [Section 2(24)]
- **Common portal:** means the common goods and services tax electronic portal referred to in section 146 [Section 2(26)].
- **Manufacture:** means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly. [Section 2(72)]
- **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].

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- **Place of business:** includes [Section 2(85)]:

  - a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
  - a place where a taxable person maintains his books of account; or
  - a place where a taxable person is engaged in business through an agent, by whatever name called.

- **Taxable person:** means a person who is registered or liable to be registered under section 22 or section 24 [Section 2(107)].
- **Principal place of business:** means the place of business specified as the principal place of business in the certificate of registration [Section 2(89)].
- **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 [Section 2(91)].
- **Registered person:** means a person who is registered under section 25, but does not include a person having a Unique Identity Number [Section 2(94)].
- **Tax period:** means the period for which the return is required to be furnished [Section 2(106)].
- **Document:** includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)].
- **Voucher:** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].
- **Conveyance:** includes a vessel, an aircraft and a vehicle [Section 2(34)].

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- **Works Contract:** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119)]

3. ACCOUNTS AND OTHER RECORDS [SECTION 35]

STATUTORY PROVISIONS

Section 35	*Accounts and Other Records*
Sub-section	*Particulars*
(1)	*Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of* *(a) production or manufacture of goods;* *(b) inward and outward supply of goods or services or both;* *(c) stock of goods;* *(d) input tax credit availed;* *(e) output tax payable and paid; and* *(f) such other particulars as may be prescribed* *Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:* *Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.*

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(2)	*Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.*
(3)	*The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.*
(4)	*Where the Commissioner considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.*
(6)	*Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74* ***or section 74A*** *, as the case may be, shall, mutatis mutandis, apply for determination of such tax.*

ANALYSIS

The provisions relating to accounts and records required to be maintained under GST are contained in sections 35 and 36 read along with Chapter VII - Accounts and Records of CGST Rules, 2017. Relevant provisions of CGST Rules, 2017 have been incorporated at relevant places.

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(I) Who is required to maintain books of accounts and at which place? [1]

Every registered person shall keep and maintain, books of accounts at his **principal place of business** (hereinafter referred to as PPoB) and books of account relating to additional place of business (hereinafter referred to as APoB) [as mentioned in the certificate of registration].

Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

Supply of goods through an auction like tea, rubber, coffee

In terms of above provision, the books of accounts relating to each and every place of business are required to be maintained in that place itself. However, in case where goods like tea, rubber, coffee, etc. are supplied through an auction the difficulties were being faced by the principal and auctioneer in maintaining books of accounts at each and every APoB related to stock of said goods.

Consequently, it has been clarified that in such cases, the principal and the auctioneer may declare the warehouses, where such goods are stored, as their APoB. The buyer is also required to disclose such warehouse as his APoB if he wants to store the goods purchased through auction in such warehouses. For the purpose of supply of tea through a private treaty, the principal and an auctioneer may also comply with the said provisions.

Further, the principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, may maintain the books of accounts relating to APoB at their PPoB instead of such APoB. Such principal and auctioneer shall intimate their jurisdictional proper officer in writing about the maintenance of books of accounts relating to APoB at their PPoB.

[1] *Section 35(1) read with rule 56(7) and 56(10)*

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ITC availment: It is further clarified that the principal and the auctioneer for the purpose of auction of tea, coffee, rubber etc., or the principal and the auctioneer for the purpose of supply of tea through a private treaty, shall be eligible to avail ITC subject to the fulfilment of other provisions of the CGST Act read with the rules made thereunder[2] *[Circular No. 23/23/2017 GST dated 21.12.2017 and Circular No. 47/21/2018 GST dated 08.06.2018].*

Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

(II) Which accounts and records are required to be maintained?

A true and correct account of following is to be maintained:

(a) production or manufacture of goods;

(b) inward and outward supply of goods or services or both;

(c) stock of goods;

(d) input tax credit availed;

(e) output tax payable and paid

(f) such other particulars as may be prescribed

The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.[3]

Where the Commissioner considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.[4]

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[2] *Refer Chapter 7 – Input Tax Credit in this Module for detailed provisions relating to ITC.*
[3] *Section 35(3)*
[4] *Section 35(4)*

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The additional records to be maintained by specified persons are as under:-

(i) Registered person

In addition to the particulars mentioned in section 35(1), the rules also provide that the registered person[5] is required to maintain a true and correct account of:

- the goods/services imported/exported,
- supplies attracting payment of tax on reverse charge along with relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers6.
- separate account of advances received, paid and adjustments made thereto.

- particulars of:
  - ✓ names and complete addresses of suppliers **from whom he has received** the goods or services chargeable to tax under the Act;
  - ✓ names and complete addresses of the persons **to whom he has supplied** goods or services, where required under the provisions of this Chapter.
- particulars of the complete address of the **premises where goods are stored** by him, including goods stored during transit along with the particulars of the stock stored therein.

  However, if any taxable goods are found to be stored at any place(s) other than those so declared without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.

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[5] *Rule 56(1), (3), (5) and (6)*

[6] *The detailed provisions relating to all such documents have already been discussed in Chapter 9: Tax invoice, Credit and Debit Notes of this Module.*

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A supplier is required to maintain following records relating to stock of goods and tax details. However, a supplier who has opted for composition scheme is not required to maintain such records[7]..

(a) Stock of goods: Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

(b) Details of tax: Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

(ii) Agent[8]

Every agent shall maintain accounts depicting the-

(a) particulars of authorisation received by him from each principal to receive or supply goods/services on behalf of such principal separately;

(b) particulars including description, value and quantity (wherever applicable) of goods /services received on behalf of every principal;

(c) particulars including description, value and quantity (wherever applicable) of goods/services supplied on behalf of every principal;

(d) details of accounts furnished to every principal; and

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[7] *Rule 56(2) and (4)*

[8] *Rule 56(11)*

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(e) tax paid on receipts or on supply of goods/services effected on behalf of every principal.

(iii) Manufacturer[9]

Apart from other records, every registered person manufacturing goods has to maintain monthly production accounts showing quantitative details of raw materials/services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

(iv) Service Provider[10]

Every registered person supplying services has to additionally maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

(v) Person executing works contract[11]

Every registered person executing works contract shall keep separate accounts for works contract showing -

- the names and addresses of the persons on whose behalf the works contract is executed;
- description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- description, value and quantity (wherever applicable) of goods/services utilized in the execution of works contract;
- the details of payment received in respect of each works contract; and

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[9] *Rule 56(12)*
[10] *Rule 56(13)*
[11] *Rule 56(14)*

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- the names and addresses of suppliers from whom he received goods/services.

(vi) Custodian/clearing and forwarding agent[12]

- Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

(vii) Owner/operator of a warehouse/ godown and transporter[13]

Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

Enrolment, if not already registered in GST[14]**:** If such persons are not already registered, they shall obtain a unique enrollment number by applying electronically[15] at the GST Common Portal.

The person enrolled as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union territory.

Such person may also amend the details furnished in the prescribed form. Such person, once obtained unique enrollment number, shall not be eligible to use any of the GSTIN.

- **Transporter**[16] **:** Any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with GSTIN of the registered consignor and consignee for each of his branches.

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[12] *Rule 56(17)*
[13] *Section 35(2) read with rule 58*
[14] *Rule 58(1), 58(2) & 58(3)*
[15] *in Form GST ENR-01*
[16] *Rule 58(4)(a)*

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- **Owner/operator of a warehouse/ godown[17]:-**

  Every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods.

  The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

(III) How the accounts and records will be maintained[18]?

- **Records may be maintained manually**
  - ✓ **Each volume of books of account maintained manually by the registered** person **shall be serially numbered.**
- **Records may be maintained in electronic form**

  - ✓ Books of account include any electronic form of data stored on any electronic device.
  - ✓ The registered person may keep and maintain such accounts and other particulars in electronic form stored on any electronic device and record so maintained shall be authenticated by means of a digital signature.
  - ✓ Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.
  - ✓ The registered person maintaining electronic records shall

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[17] *Rule 58(4)(b) & rule 58(5)*

[18] *Second proviso to section 35(1) read with rule 56(7), (8), (9), (15), (16) and (18) and rule 57*

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produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.

- ✓ Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

- **No entry to be erased/overwritten**

  - ✓ Any entry in registers, accounts and documents shall not be erased, effaced or overwritten.
  - ✓ All incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and there after correct entry shall be recorded.
  - ✓ Where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

- Accounts maintained by the registered person together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36 *[discussed subsequently in this Chapter]* and shall, where such accounts and documents are maintained manually, be kept at every related place of business mentioned in the certificate of registration and shall be accessible at every related place of business where such accounts and documents are maintained digitally.

- Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.

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(IV) What are the consequences of failure to maintain the accounts[19] ?

Where the registered person fails to account for the goods and/or services in accordance with the provisions of section 35(1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73/section 74/ ***section 74A***[20], as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.

4. PERIOD OF RETENTION OF ACCOUNTS [SECTION 36]

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of section 35(1) shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

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[19] *Section 35(6)*

[20] ***The provisions of section 74A contain provisions relating to determination of tax not paid/short paid or erroneously refunded or ITC wrongly availed/utilized for any reason pertaining to Financial Year 2024-25 onward. Detailed provisions of this section are discussed in Chapter-19 of Module-3 of the Study material. The provisions of sections 73 and 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24.***

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5. ELECTRONIC WAY BILL [SECTION 68 READ WITH RELEVANT CGST RULES, 2017]

Under GST regime, for quick and easy movement of goods across India without any hindrance, 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.

The idea is that the taxpayer be made to upload the details of each transaction to a common portal through the internet, and once uploaded, the common portal would automatically generate a document which can be tracked and verified easily by any stakeholder.

Statutory requirement

Section 68 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.

Rule 138 prescribes e-way bill as the document to be carried for the consignment of goods in certain prescribed cases.

What is e-way bill?

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 and the details include name of consignor, consignee, the point of origin of the consignment, its destination, and route.

Electronic Way Bill (E-Way Bill) is a compliance mechanism wherein by way of a digital interface the person causing the movement of goods uploads the relevant

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information prior to the commencement of movement of goods and generates e-way bill on the GST portal. In other words, E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

What are the benefits of e-way bill?

Following are the benefits of e-way bill mechanism:

(i) Physical interface to pave way for digital interface resulting in elimination of state boundary check-posts

(ii) It will facilitate faster movement of goods

(iii) It will improve the turnaround time of trucks and help the logistics industry by increasing the average distances travelled, reducing the travel time as well as costs.

E-way Bill is generated **electronically** in **Form GST EWB 01** on the common portal (www.ewaybillgst.gov.in). 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.

Registration requirement of the person generating the e-way bill

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. 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 using his GSTIN.

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Unregistered transporters: If the transporter is generating the e-way bill, but he is not registered person under GST law, it is mandatory for him to get enrolled on e-waybill portal before generation of the e-way bill to get 15-digit Unique Transporter Id called TRANSIN.

TRANSIN or Transporter id is a unique number generated by e-way bill system for unregistered transporter, once he enrolls on the system. It is similar to GSTIN format and is based on State code, PAN and check sum digit. This TRANSIN or Transporter id can be shared by transporter with his clients, who may enter this number while generating e-way bills for assigning goods to him for transportation.

Common enrolment process for registered transporters having GSTIN in multiple states with same PAN: There may be a transporter who is registered and has registration in more than one State/UT; then, he would have more than one GSTIN as well. A transporter who is registered in more than one State/UT having the same PAN, may apply for a **Unique Common Enrolment Number** by submitting the details in prescribed form using any one of his GSTINs.

Upon validation of the details furnished, a unique common enrolment number shall be generated and communicated to the said transporter. Once a transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the GSTIN for the purposes of e-way bills under Chapter XVI of these rules.

This way the transporters who are GST registered can generate a Common Enrolment number which will allow him to use one registration number for generating the e-way bills and updating Part-B of e-way bill throughout the country. Only registered transporters, which are having GSTIN in multiple states with same PAN number, can register in common enrolment process[21].

E-way Bill provisions [as contained in rules 138, 138A, 138B, 138C, 138D and 138E – Chapter XVI of the CGST Rules, 2017] are elaborated as under:

(1) When is e-way bill required to be generated? [Rule 138(1)]

Whenever there is a movement of goods of consignment value exceeding ₹ 50,000:

(i) in relation to a supply; or

[21] *Rule 58(1A) of the CGST Rules, 2017*

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(ii) for reasons other than supply; or

(iii) 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.

It is important to note that "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".

Who causes movement of goods?

If supplier is registered and undertakes to transport the goods, movement of goods is caused by the supplier. If recipient arranges transport, movement is caused by him. If goods are supplied by an unregistered supplier to a registered recipient, movement shall said to be caused by such recipient , if

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the recipient is known at the time of commencement of the movement of goods.

Meaning of consignment value of goods

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[22].

(1) Bhanupratap Shoe Manufacturers, registered in Punjab, sold shoes to a retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%) and wants to send the consignment of such shoes to Gujarat. The consignment value will be ₹ 56,640 [₹ 48,000 × 118%]. Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.

(2) Sindhi Textiles of Ludhiana, registered in Punjab, sends cloth to a job worker in Jalandhar, Punjab on a delivery challan. The value of cloth mentioned in the delivery challan is ₹ 48,000. Since the movement of goods is for reasons other than supply, the value given in the delivery challan is adopted for the purposes of the e-way bill. Such value does not exceed ₹ 50,000. Consequently, e-way bill is not required to be issued in this case.

[22] *As clarified by CBIC FAQs on E-way Bill.*

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Special situations where e-way bill needs to be issued even if the value of the consignment is less than ₹ 50,000:

(i) Inter-State transfer of goods by principal to job-worker

Where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment [Third proviso to rule 138(1)].

(ii) 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 [Fourth proviso to rule 138].

*__Handicraft goods__ are the goods specified in ***Notification No. 56/2018 CT dated 23.10.2018*** which exempts the casual taxable persons making inter-State taxable supplies of such handicraft goods from obtaining registration upto specified turnover limit *[Refer Chapter 8 – Registration]*.

E-way Bill in case of 'Bill To Ship To' Model

In a "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:

'A' is the person who has ordered 'B' to send goods directly to 'C'.

'B' is the person who is sending goods directly to 'C' on behalf of 'A'.

'C' is the recipient of goods.

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In this complete scenario. two supplies are involved and accordingly two tax invoices are required to be issued:

Invoice -1: which would be issued by 'B' to 'A'.

Invoice -2: which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017, for the movement of goods which is taking place from "B" to "C" on behalf of "A", 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 *[Press Release dated 23.04.2018]*.

(2) Information to be furnished in e-way bill:

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

(I) **Part A** [comprising of details of GSTIN of supplier & recipient, place of delivery (indicating PIN Code also), document (Tax invoice, Bill of Supply, Delivery Challan or Bill of Entry) number and date, value of goods, HSN code, and reasons for transportation, etc.]: to be furnished by the **registered person** who is causing movement of goods** of consignment value exceeding ₹ 50,000/- and

(II) **Part B** (transport details) [Transporter document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and Vehicle number, in case of transport by road]: to be furnished by the **person who is transporting the goods**.

**However, information in Part-A may be furnished:

- ✓ by the transporter, on an authorization received from such registered person [First proviso to rule 138(1)] or
- ✓ 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 [Second proviso to rule 138(1)].

Once the consignor/consignee enters all the details in Part-A of e-way bill, a Part-A slip is generated which contains a temporary number. This slip can be shared with the transporter or used by the supplier himself

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later to enter the details in Part-B of e-way bill and generate the e-way bill.

This will be useful, when supplier has prepared invoice relating to his business transaction, but doesn't have the transportation details. Thus, he can enter invoice details in Part A of e-way bill and keep it ready for entering details of mode of transportation in Part B of e-way bill.

Once the goods are ready for movement from the business premises and transportation details are known, the user can enter the Part-B details and generate the e-way bill for movement of goods. **E-way Bill can be generated only after entering the details of Part-B.**

(3) Who is mandatorily required to generate e-way bill?

E-way bill is to be generated by the consignor or consignee himself if the transportation is being done in own/hired conveyance or by railways by air or by vessel. If the goods are handed over to a transporter for transportation by road, e-way bill is to be generated by the transporter. Where neither the consignor nor consignee generates the e-way bill and the value of goods is more than ₹ 50,000, it shall be the responsibility of the transporter to generate it. This has been explained in detail below:

- **Where the goods are transported by a registered person - whether as consignor or recipient 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) [Rule 138(2)].

- **Where the e-way bill is not generated by the registered person and 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 [Rule 138(3)].

- **Where the goods are transported by railways or by air or by 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

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commencement of movement, furnish, information in part B [viz transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number)] on the common portal [Rule 138(2A)].

Other important points:

- **Where the goods are transported by railways:** there is no requirement to carry e-way bill along with the goods, but railways has to carry invoice or delivery challan or bill of supply as the case may be along with goods. Further, 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 [Proviso to rule 138(2A)].
- The registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than ₹ 50,000 [First proviso to rule 138(3)].
- **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 [Second proviso to rule 138(3)].
- **Where the goods are supplied by an unregistered supplier to a recipient who is registered**, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods [Explanation 1 to rule 138(3)].
- ***Generation of unique enrolment number***

  Following persons required to generate the e-way bill shall submit the details electronically on the common portal in prescribed form and, upon validation of the details so furnished, a unique enrolment number shall be generated and communicated to the said person:-

  (i) An unregistered person making inter-State transport of handicraft goods exempted from obtaining compulsory registration and required to

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generate e-way bill irrespective of the value of the consignment.

(ii) An unregistered person opting to generate e-way bill

[Fourth proviso to rule 138(3)]

(4) When is it not mandatory to furnish the details of conveyance in Part-B?

E-way bill is valid for movement of goods by road only when the information in Part-B is furnished[23].

Exceptions:

Details of conveyance may not be furnished in Part-B of the e-way bill where the goods are transported **for a distance of upto 50 km** within the State/Union territory:

- ❑ from the place of business of the consignor to the place of business of the transporter for further transportation[24] or
- ❑ from the place of business of the transporter finally to the place of business of the consignee[25].

(5) Unique e-way bill number (EBN)

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 [Rule 138(4)].

(6) 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 [Rule 138(5)].

Consignment of goods may be required to be transferred from the original conveyance to due to unforeseen exigencies like break down of the vehicle.

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[23] *Explanation 2 to rule 138(3)*

[24] *Third proviso to rule 138(3)*

[25] *Proviso to rule 138(5)*

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In such case, the transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of the conveyance.

In some cases, consignments are transported by the transporter through transshipment using multiple vehicles (same mode of transportation) for carrying the same consignment before it is delivered to the recipient at the place of destination. Hence for each movement from one place to another, the transporter needs to update the vehicle number in which he is transporting that consignment in part B of the e-way bill.

The user can update Part-B (Vehicle details) as many times as he wants for movement of goods to the destination. However, the updating should be done within the validity period.

There can also be a case where one e-way bill can go through multiple modes of transportation before reaching destination. As per the mode of transportation, the EWB can be updated with new mode of transportation by using the option of 'Update Vehicle Number'.

(3) Babbal Associates is moving the goods from Cochin to Chandigarh through road, ship, air and road again. First, Babbal Associates generates the EWB by entering first stage of movement (by road) from its place to shipyard and enters the vehicle number. Next, it will submit the goods to shipyard and update the mode of transportation as ship and transport document number on the e-way bill system.

After reaching Mumbai, Babbal Associates or concerned transporter updates movement as road from shipyard to airport with vehicle number. Thereafter, Babbal Associates or transporter updates using 'update vehicle number' option on the portal, the Airway Bill number.

Again, after reaching Delhi, Babbal Associates updates movement through road with vehicle number. This way, the e-way bill will be updated with multiple modes of transportation.

Assigning the e-way bill number to another transporter

The consignor/recipient, who has furnished the information in **Part A**, or the transporter, may assign the e-way bill number to another registered/enrolled transporter for updating the information in **Part B** for further movement of

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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, as the case may be, who has furnished the information in **Part A** shall not be allowed to assign the e-way bill number to another transporter [Proviso to rule 138(5A)].

(7) Consolidated E-way bill

After e-way bill has been generated, where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **Form GST EWB-02** may be generated by him on the said common portal prior to the movement of goods [Rule 138(6)].

Consolidated e-way bill is a document containing the multiple e-way bills for multiple consignments being carried in one conveyance (goods vehicle). That is, 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.

Consolidated EWB is like a trip sheet and it contains details of different e-way bills in respect of various consignments being transported in one vehicle and these e-way bills will have different validity periods. Hence, 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.

Further, where the consignor/consignee has not generated the e-way bill in Form GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in Form GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in **Form GST EWB-02** on the common portal prior to the movement of goods [Rule 138(7)]. The generation of **Form GST EWB-02** is optional and not mandatory.

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However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of Form GST EWB-01 may be furnished by such e-commerce operator or courier agency [Proviso to rule 138(7)]. This proviso is not yet effective.

(8) Information submitted for e-way bill can be used for 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)].

(9) 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 [First proviso to rule 138(9)].

Further, unique EWB number generated is valid for a period of 15 days for updation of Part B [Second proviso to rule 138(9)].

(10) Validity period of e-way bill/consolidated e-way bill [Rule 138(10)]

The validity of e-way bill depends on the distance to be travelled by the goods. For a distance of less than 200 km the e-way bill will be valid for a day from the relevant date. For every 200 km thereafter, the validity will be additional one day from the relevant date.

Sl. No.	Distance within country	Validity period from relevant date*
1.	Upto 200 km	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

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2.	For every 200 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
3.	Upto 20 km	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every 20 km or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

***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.

This can be explained by following examples –

(i) Suppose an e-way bill is generated at 00:04 hrs. on 14th March. Then first day would end on 12:00 midnight of 15 -16 March. Second day will end on 12:00 midnight of 16 -17 March and so on.

(ii) Suppose an e-way bill is generated at 23:58 hrs. on 14th March. Then first day would end on 12:00 midnight of 15 -16 March. Second day will end on 12:00 midnight of 16 -17 March and so on[26].

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. It may be noted that validity is not re-calculated for subsequent entries in Part-B[27].

[26] *As clarified by FAQs on E-way Bill by CBIC.*

[27] *As clarified by FAQs on E-way Bill web portal.*

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(4) A consignor hands over his goods for transportation on Friday to transporter. However, the assigned transporter starts the movement of goods on Monday. The validity period of e-way bill starts only after the details in Part B are updated by the transporter for the first time.

In the given situation, consignor can fill the details in Part A on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill Part B i.e. the assigned transporter can fill the details in Part B on Monday and the validity period of the e-way bill will start from Monday *[CBIC Press Release dated 31.03.2018]*.

(5) A registered person has to transport goods from its warehouse to its depot located at a distance of 500 km in a normal cargo. In the given case, if e-way bill is generated, it will be valid for 3 days.

****Over dimensional cargo** means a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988.

Extension of validity period

If validity of the e-way bill expires, the goods are not supposed to be moved. In general, the validity of the e-way bill cannot be extended However, the validity of the e-way bill can be extended in following cases:

Extension by Commissioner for certain categories of goods: 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 in exceptional circumstances: Under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B, if required.

Thus, the transporter, who is carrying the consignment as per the e-way bill system at the time of expiry of validity period, can extend the validity period. Such 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

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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[28]. The validity of the e-way bill may be extended within 8 hours from the time of its expiry.

(11) Acceptance of e-way bill

The details of the e-way bill generated shall be made available to the -

(a) supplier, if registered, where the information in Part A has been furnished by the recipient/transporter; or

(b) recipient, if registered, where the information in Part A has been furnished by the supplier/transporter,

on the common portal, and the supplier/recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill [Rule 138(11)].

In case, the person to whom the information in Part-A is made available, does not communicate his acceptance or rejection within the specified time, it shall be deemed that he has accepted the said details. The time-limit specified for this purpose is:

(i) 72 hours of the details being made available to him on the common portal

or

(ii) the time of delivery of goods,

whichever is earlier [Rule 138(12)].

(12) E-way bill generated in one State is valid in another State

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)].

[28] *As clarified by FAQs on E-way Bill web portal.*

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Points to remember

1. E-way bill is not valid for movement of goods without vehicle number on it.
2. If there is a mistake, incorrect or wrong entry in the e-way bill, then it cannot be edited or corrected. Only option is cancellation of e-way bill within 24 hours of generation and generate a new one with correct details.
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.
5. If multiple invoices are issued by the supplier to recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. That is, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one Consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

(13) Situations where e-way bill is not required to be generated

Notwithstanding anything explained above, no e-way bill is required to be generated in the following cases:

(a) where the goods being transported are the ones given below:

S. No.	Description of Goods
1.	Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)

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5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) [excepting imitation Jewellery (7117)]
6.	Currency
7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)]

(b) where the goods are being transported by a non-motorised conveyance

(c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs

(d) in respect of movement of goods within such areas as are notified under of rule 138(14)(d) of the State or Union territory GST Rules in that particular State or Union territory

(e) where the goods [other than de-oiled cake], being transported, are exempt from tax[29]

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel

(g) where the supply of goods being transported is treated as no supply under Schedule III of the CGST Act[30]

(h) where the goods are being transported -

(i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or

(ii) under customs supervision or under customs seal

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[29] *vide Notification No. 2/2017 CT(R) dated 28.06.2017*

[30] *Provisions of Schedule III have been discussed in detail in Chapter 1 – Supply under GST of Module 1.*

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(i) where the goods being transported are transit cargo from or to Nepal or Bhutan

(j) where the goods being transported are exempt from tax under *Notification No. 7/2017 CT (R) 28.06.2017* [Supply of goods by the CSD to the Unit Run Canteens or to the authorized customers and supply of goods by the Unit Run Canteens to the authorized customers] and Notification No. 26/2017 CT (R) 21.09.2017 [Supply of heavy water and nuclear fuels by Department of Atomic Energy to Nuclear Power Corporation of India Ltd. (NPCIL)]

(k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee

(l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail

(m) where empty cargo containers are being transported

(n) where the goods are being transported upto 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.

(o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply

(14) Documents and devices to be carried by a person-in-charge of a conveyance [Rule 138A]

The person-in-charge of a conveyance shall carry -

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a RFID** embedded on to the conveyance [except in case of movement of goods by rail or by air or vessel] in such manner as may be notified by the Commissioner.

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*Carrying e-way bill number in electronic form implies that person-in-charge of conveyance can merely quote the e-way bill number to the proper tax officer. Tax officer will do all the requisite verifications, based on that number.

**RFIDs are Radio Frequency Identification Device used for identification.

However, in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of e-way bill.

Invoice Reference Number in lieu of tax invoice

In case, e-invoice is issued[31], the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) in it, may be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

In such a case, 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 relating to e-invoice.

The Commissioner may, by notification, require a class of transporters to obtain a unique RFID and get the said device embedded on to the conveyance and map the e-way bill to the RFID prior to the movement of goods.

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:

(a) tax invoice or bill of supply, or bill of entry; or

(b) a delivery challan, where the goods are transported for reasons other than by way of supply.

[31] *in the manner prescribed under sub-rule (4) of rule 48*

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(15) 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.

The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf.

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.

(16) Inspection and verification of goods [Rule 138C]

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.

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, 3 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,

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unless a specific information relating to evasion of tax is made available subsequently.

The hard copies of the notices/orders issued by a tax authority may be shown as proof of initiation of action by a tax authority by the transporter/registered person to another tax authority as and when required.

Only such goods and/or conveyances should be detained/confiscated in respect of which there is a violation of the provisions of the GST Acts or the rules made thereunder.

(6) Where a conveyance carrying 25 consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of 20 consignments, but is unable to produce the same with respect to the remaining 5 consignments, detention/ confiscation can be made only with respect to the 5 consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer[32].

(17) Facility for uploading 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.

(18) Blocking of e-waybill generation facility [Rule 138E]

Blocking of e-waybill generation facility means disabling a taxpayer from generating the e-way bill. 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.

As per rule 138E, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the

[32] *As clarified vide Circular No. 49/23/2018 GST dated 21.06.2018*

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information in Part A of Form GST EWB-01 in respect of any outward movement of goods of a registered person, who -

(i) being a person paying tax under composition scheme[33] has not furnished the statement for payment of self-assessed tax for 2 consecutive quarters, or

(ii) being a person paying tax under regular scheme has not furnished the returns for a consecutive period of 2 tax periods, or

(iii) being 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.

(iv) being a person whose registration has been suspended under the provisions of rule 21A of the CGST Rules.

However, Commissioner (jurisdictional 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.

(19) It may be noted that the expressions 'transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' used in the provisions discussed above does not include cases where leasing of parcel space by railways takes place.

(7) Mr. A, a registered person paying tax under regular scheme in Delhi, has not filed Form GSTR-1 for last 2 months. Mr. B, Haryana, (a regular return filer) wants to generate an e-way bill for goods to be supplied to Mr. A.

[33] *or under Notification No. 2/2019 CT (R) dated 07.03.2019*

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There will be no restriction in generating e-way Bill for Mr. B who is making outward movement of goods, as he is a regular return filer.

Mr. A wants to generate an e-way bill in respect of an outward an outward supply of goods to Mr. H. E-way bill generation is blocked in this case as it's an outward movement of goods of Mr. A who has not filed Form GSTR-1 for past 2 months.

Consignee/ recipient taxpayer storing goods in the transporter's godown

Generally, textile traders use transporters' godown for storage of their goods due to their weak financial conditions. The transporter takes delivery of the goods and temporarily stores them in his warehouse for further transportation of the goods till the consignee/recipient taxpayer's premises. In this case, the recipient taxpayer has to declare the transporter's godown as an APoB.

Supplier's premises

Transporter's godown
Recipient taxpayer's APoB

Recipient taxpayer's PoB

E-way Bill requirements

The goods in movement including when they are stored in the transporter's godown (even if the godown is located in the recipient taxpayer's city/town) prior to delivery shall always be accompanied by a valid e-way bill. The transportation under the e-way bill shall be deemed to be concluded once the goods have reached the transporter's godown (recipient taxpayer's APoB). Hence, e-way bill validity in such cases will not be required to be extended. Further, whenever the goods move from the transporter's godown to the recipient taxpayer's any other PoB, a valid e-way bill shall be required.

Requirement of maintaining accounts and records

1. **Transporter**, being a warehouse keeper, has to maintain accounts and records as specified in section 35 read with rule 58 *[as discussed earlier in this chapter]*.

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2. **Recipient taxpayer** shall also maintain accounts and records as required under rules 56 and 57 *[as discussed earlier]*. Furthermore, as per rule 56(7), books of accounts in relation to goods stored at the transporter's godown (i.e., the recipient taxpayer's APoB) by the recipient taxpayer may be maintained by him at his PPoB. Thus, the facility of declaring APoB by the recipient taxpayer is in no way putting any additional compliance requirement on the transporters. *[Circular No. 61/35 /2018 GST dated 04.09.2018]*

LET US RECAPITULATE

Who is required to maintain his books of accounts and at which place?

Accounts and records required to be maintained

Records which are to be maintained only by a supplier other than a supplier opting for composition levy

Account of stock of goods received and supplied including opening balance, receipt, supply, goods lost/stolen, destroyed, written off, gifted, free samples, stock balance.	**Account of details of tax** payable,collected and paid, ITC claimed, together with register of tax invoice, credit-debit notes, delivery challan issued/received during any tax period

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Accounts and records required to be maintained

Records to be maintained by agent

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Records to be additionally maintained by a manufacturer and service provider

Separate records for works contract to be maintained by a person executing works contract

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Records to be maintained by owner or operator of godown or warehouse and transporters provider

Records to be maintained by owner or operator of godown or warehouse and transporters provider

↓

whether registered or not

↓

records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed

Transporter — Records of
- goods transported, delivered
- goods stored in transit by him
- GSTIN of the registered consignor and consignee
- for each of his branches

Owner or operator of godown or warehouse — Books of accounts
- for the period for which particular goods remain in the warehouse
- including the particulars relating to dispatch, movement, receipt, and disposal of such goods

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How the accounts and records will be maintained?

Records in electronic form be authenticated by a digital signature

Proper electronic back-up of records be maintained and preserved

Records in electronic form

(Books of account include any electronic form of data stored on any electronic device.)

Such records need to be prodcued, on demand, in hard copy or in any electronically readable format

Details of files, their passwords and explanation for codes,and any other info required for access

No entry to be erased/overwritten

Incorrect entries, other than those of clerical nature, be scored out under attestation and there after correct entry be recorded.

In case electronic records beng maintained, a log of every entry edited or deleted shall be maintained.

Books of account maintained manually be serially numbered

Books of accounts, are required to be produced, on demand.

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Failure to maintain the accounts

Failure to maintain the accounts

- PO shall determine the tax payable on the unaccounted goods and/or services, as if the same had been supplied by such person
- Provisions of section 73/74/74A shall, *mutatis mutandis*, apply for determination of such tax

Period of retention of accounts

72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records

Where an appeal/ revision/ any other proceedings before any Appellate/ Revisional Authority or Appellate Tribunal or Court, or an investigation is going on

1 year after final disposal of such appeal/revision/proceedings/investigation

or

72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records

whichever is later

E-Way Bill

E-way bill requirement and Exceptions

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Persons required to furnish Part A of e-way bill

Who can generate the E-way bill?

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Navigating E-way bill compliance

Consignment Value of Goods

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E-way bill Cancellation

Generating a consolidated E-way bill

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Validity period of e-way bill/consolidated e-way bill based on distance

Acceptance/Rejection of e-way bill

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Verification of documents and conveyances

Inspection and verification of goods

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Blocking of e-way bill generation facility

Restriction on furnishing of information in Part A of Form GST EWB-01

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TEST YOUR KNOWLEDGE

1. *Mala Services Ltd. is a supplier of management consultancy services registered in Haryana. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained?*

2. *Essel Groups has started making taxable supplies and gets registered under GST law. You are required to advice it about the accounts and records required to be maintained by it as required under section 35(1).*

3. *Swad Restaurant has opted for composition scheme in the current financial year. Discuss the records which are not to be maintained by a supplier opting for composition levy though required to be maintained by a normal tax-payer as enumerated in rule 56.*

4. *ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf wherein the invoice for supply or procurement on behalf of ABC Manufacturers Ltd. is issued by Raghav & Sons in its own name. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Enumerate the accounts required to be maintained by Raghav & Sons as per rule 56(11).*

5. *Sindhi Toys Manufacturers, registered in Punjab, sold electronic toys to a retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%). It wants to send the consignment of such toys to the retail seller in Gujarat.*

   You are required to advise Sindhi Toys Manufacturers on the following issues:

   (a) Whether e-way bill is mandatorily required to be generated in respect of such movement of goods?

   (b) If yes, who is required to generate the e-way bill?

   (c) What will be the consequences for non-issuance of e-way bill?

6. *Power Electricals Ltd., a registered supplier of air-conditioners, is required to send from Mumbai (Maharashtra), a consignment of parts of air-conditioner to be replaced under warranty at various client locations in Gujarat. The value of consignment declared in delivery challan accompanying the goods is ₹ 70,000. Power Electricals Ltd. claims that since movement of goods to Gujarat*

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is caused due to reasons other than supply, e-way bill is not mandatorily required to be generated in this case.

You are required to examine the technical veracity of the claim made by Power Electricals Ltd.

7. *Beauty Cosmetics Ltd. has multiple wholesale outlets of cosmetic products in Mumbai, Maharashtra. It receives an order for cosmetics worth ₹ 1,20,000 (inclusive of GST leviable @ 18%) from Prasannaa, owner of a retail cosmetic store in Delhi. While checking the stock, it is found that order worth ₹ 55,000 can be fulfilled from the company's Dadar (Mumbai) store and remaining goods worth ₹ 65,000 can be sent from its Malad (Mumbai) store. Both the stores are instructed to issue separate invoices for the goods sent to Prasannaa. The goods are transported to Prasannaa in Delhi, in a single conveyance owned by Radhey Transporters.*

   You are required to advise Beauty Cosmetics Ltd. with regard to issuance of e-way bill(s).

ANSWERS

1. Section 36 stipulates that every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

However, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

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2. Section 35(1) stipulates that a true and correct account of following is to be maintained:

(a) production or manufacture of goods;

(b) inward and outward supply of goods or services or both;

(c) stock of goods;

(d) input tax credit availed;

(e) output tax payable and paid

(f) such other particulars as may be prescribed.

3. Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4), but are required to be maintained by a normal tax payer:

(I) **Stock of goods:** Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

(II) **Details of tax:** Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

4. Rule 56(11) provides that every agent shall maintain accounts depicting the-

(a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;

(b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;

(c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;

(d) details of accounts furnished to every principal; and

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(e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

5. **(a)** Rule 138(1) provides that e-way Bill is mandatorily required to be generated if the goods are moved, *inter alia*, in relation to supply and the consignment value exceeds ₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes CGST, SGST/UTGST, IGST 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.

Accordingly, in the given case, the consignment value will be as follows:

= ₹ 48,000 × 118%

= ₹ 56,640.

Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.

(b) An e-way bill contains two parts namely, Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹ 50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill on the common portal after furnishing information in Part B [Rule 138(2)].

Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B [Rule 138(2A)].

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Where the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].

Where the consignor or the consignee has not generated the e-way bill and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000/, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill on the common portal prior to the movement of goods [Rule 138(7)].

(c) It is mandatory to generate e-way bill in all cases where the value of consignment of goods being transported is more than ₹ 50,000/- and it is not otherwise exempted in terms of rule 138(14). If e-way bills, wherever required, are not issued in accordance with the provisions contained in rule 138, the same will be considered as contravention of rules.

As per section 122(1)(xiv), a taxable person who transports any taxable goods without the cover of specified documents (e-way bill is one of the specified documents) shall be liable to a penalty of ₹ 10,000/- or tax sought to be evaded (wherever applicable) whichever is greater. Moreover, as per section 129(1), where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the Rules made thereunder, 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.

6. The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1), *inter alia*, stipulates that every registered person who causes movement of goods of consignment value exceeding ₹ 50,000:

(i) in relation to a supply; or

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(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, generate an electronic-way bill (E-way Bill) before commencement of such movement.

CBIC vide FAQs on E-way Bill has also clarified that even if the movement of goods is caused due to reasons others than supply [including replacement of goods under warranty], e-way bill is required to be issued.

Thus, in the given case, since the consignment value exceeds ₹ 50,000, e-way bill is required to be mandatorily generated. Therefore, the claim of Power Electricals Ltd. that e-way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply, is not correct.

7. Beauty Cosmetics Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

The *FAQs on E-way Bill* issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

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CHAPTER 11

PAYMENT OF TAX

The section numbers referred to in the Chapter pertain to the CGST Act, 2017 unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand three kinds of ledgers/registers available to a registered person- electronic cash ledger, electronic credit ledger and electronic liability register.
- comprehend the types of ledger to be utilised for payment of tax/ interest/ penalty/ other amounts
- analyse and apply the methodology of cross utilization of credit for payment of taxes
- identify and analyse the circumstances under which penal interest is applicable.
- understand and apply the provisions relating to transfer of amount from one major head to another in electronic cash ledger.
- explain the procedure for transfer of input tax credit between Central and State Government.
- understand and analyse the provisions relating to TDS, i.e. tax deduction at source including the list of deductors, standard rate of deduction, value of supply.
- explain the remittance period and the time within which the TDS certificate is to be issued.

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1. INTRODUCTION

In the GST regime, 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/ Union Territory. The mechanism for allocation of such tax amount has been constitutionally devised in the interest of Centre and all States/Union territories. For any inter-state supply, tax to be paid is Integrated GST (IGST) which have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay to the Government, Tax Deducted at Source (TDS) and Tax Collected at Source (TCS[1]). In addition, wherever applicable, interest, penalty, fees and any other payment will also be required to be made.

The introduction of Electronic ledger(s) is a unique feature under the GST regime. Electronic Ledgers or E-Ledgers are of two types. One set is auto-populated upon the action taken by the taxpayer (i) Electronic Cash Ledger, which gets updated upon payment made by the taxpayer on GST Portal and (ii) Electronic Credit Ledger, which gets updated as soon as any input tax credit is claimed or utilized by the taxpayer on the GST Portal. Second set is "Electronic Liability register" auto-populated on the basis of returns furnished by the Registered person or the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings.

Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Cash & Input Tax Credit ledger) and an electronic tax liability register related functionality is available which is unique for each GSTIN and is accessible to the taxpayer.

Chapter X of the CGST Act, 2017 prescribes the provisions relating to payment of tax containing sections 49 to 53A. Bird's eye view of coverage under these sections is as under-

[1] *The provisions relating to TCS have been discussed in Chapter-12: Electronic Commerce Transactions of this Module of the Study Material.*

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- Section 49 discusses the three ledgers namely the electronic cash ledger, electronic credit ledger and electronic liability register,
- Section 49A & 49B discusses about the utilisation of input tax credit and its order of utilisation.
- Section 50 discusses about the interest on delayed payment of tax.
- Section 51 lays down the circumstances in which tax deduction at source (TDS) becomes mandatory.
- Section 52 deals with the circumstances when tax is to be collected at source (TCS) by the Electronic Commerce Operator.
- Further, the manner of transfer of ITC is laid down in section 53 and
- Transfer of certain amounts is discussed in section 53A.

TDS stands for Tax Deduction at Source (TDS). Tax Deduction at Source (TDS) is a system, initially introduced by the Income Tax Department. Under GST, it is one of the modes/methods to collect tax, under which, certain percentage of amount is deducted by a recipient at the time of making payment to the supplier in case of specified supply transactions. It facilitates sharing of responsibility of tax collection between the deductor and the tax administrator. This concept of TDS ensures regular inflow of tax collection to the Government. This mechanism acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail. Also, with the integration of data furnished by the Supplier and recipient on the GST common portal, there exists an audit trail to ensure for harmony of taxes paid by the supplier.

TDS

Section 51[2] of CGST Act, 2017 provides for deduction of tax at source in certain circumstances. This Section specifically lists out the deductor's who are mandated by the Central Government to deduct tax at source, the rate of tax deduction and the procedure for remittance of the tax deducted.

[2] *Students may refer "Standard Operating Procedure on TDS" issued by CBIC from CBIC website.*

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The amount of tax deducted is reflected in the Electronic Cash Ledger of the deductee respectively.

Provisions of payment of tax including TDS under CGST Act, 2017 have also been made applicable to IGST Act, 2017 vide section 20 of the IGST Act, 2017.

Chapter IX of CGST Rules, 2017 containing Rules 85 to 88D deals with provisions relating to payment of tax. Amongst these rules, rule 86A and 86B have already been discussed in detail in Chapter-7: Input tax credit. Rule 88C and Rule 88D will be discussed in Chapter-13: Returns.

Before proceeding to understand the provisions of section 49, 49A, 49B, 50,51,53, 53A & the relevant rules, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- **Agent** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].
- **Authorised bank** shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act [Section 2(14)].
- **Central Tax** means the central goods and services tax levied under Section 9 [Section 2(21)].
- **Cess** shall have same meaning as assigned to it in the Goods and Service Tax (Compensation to States) Act [Section 2(22)].
- **Common portal** means the common goods and services tax electronic portal referred to in section 146 [Section 2(26)].
- **Council** means the Goods and Services Tax Council established under article 279A of the Constitution [Section 2(36)].
- **Electronic Cash ledger** means the electronic cash ledger referred to in sub-section (1) of Section 49 [Section 2(43)].

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- **Electronic Credit ledger** means the electronic credit ledger referred to in sub-section (2) of section 49 [Section 2(46)].
- **Integrated tax** means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act [Section 2(58)].
- **Input tax** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
  - the integrated goods and services tax charged on import of goods;
  - the tax payable under the provisions of sub-sections (3) and (4) of section 9;
  - the tax payable under the provisions of sub-section (3) and (4) of section 5 of the IGST Act;
  - the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act; or
  - the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act,

  but does not include the tax paid under the composition levy [Section 2(62)].
- **Input Tax Credit** means the credit of input tax [Section 2(63)].
- **local authority** means-
  - a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
  - a "Municipality" as defined in clause (e) of article 243P of the Constitution;
  - a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
  - a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
  - a Regional Council or District Council constituted under the Sixth Schedule to the Constitution;

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- a Development Board constituted under article 371 and article 371J of the Constitution; or
- a Regional Council constituted under article 371A of the Constitution. [Section 2(69)].

❖ **Notification** means a notification published in the Official Gazette and the expression "notify" and "notified" shall be construed accordingly [Section 2(80)].

❖ **Output tax** in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis [Section 2(82)].

❖ **Person includes:-**

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a limited liability Partnership;

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

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

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

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

(j) a local authority;

(k) Central Government or a State Government;

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

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(m) trust; and

(n) every artificial juridical person, not falling within any of the above [Section 2(84)].

- **Recipient** of supply of goods or services or both, means—

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

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

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

  and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

- **State Tax** means the tax levied under any State Goods and Services Tax Act [Section2(104)].

- **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

  Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims; [Section 2(105)].

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- **Tax Period** means the period for which the return is required to be furnished [Section 2(106]
- **Taxable person** means a person who is registered or liable to be registered under Section 22 or section 24 [Section 2(107)].
- **Taxable supply** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- **Valid return** means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full [Section 2(117)].

After going through the various definitions relevant to this Chapter, let us discuss the provisions of Chapter X of the CGST Act.

3. PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS [SECTION 49]

	STATUTORY PROVISIONS	
Section 49	**Payment of tax, interest, penalty and other amounts**	
Sub-Section	**Clause**	**Particulars**
(1)	*Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.*	
(2)	*The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.*	

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(3)	*The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made there under in such manner and subject to such conditions and within such time as may be prescribed.*	
(4)	*The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and restrictions within such time as may be prescribed.*	
(5)	*The amount of input tax credit available in the electronic credit ledger of the registered person on account of—*	
	(a)	*integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;*
	(b)	*the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;*
	(c)	*the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;* *Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;*
	(d)	*the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;* *Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of*

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		integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax
	(e)	*the central tax shall not be utilised towards payment of State tax or Union territory tax; and*
	(f)	*the State tax or Union territory tax shall not be utilised towards payment of central tax.*
(6)	*The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.*	
(7)	*All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.*	
(8)	*Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:–*	
	(a)	*self-assessed tax, and other dues related to returns of previous tax periods;*
	(b)	*self-assessed tax, and other dues related to the return of the current tax period;*
	(c)	*any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74* ***or section 74A****;*
(9)	*Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.*	

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(10)	*A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,—*	
	(a)	*integrated tax, central tax, State tax, Union territory tax or cess; or*
	(b)	*integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:*
	Provided that, no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.	
(11)	*Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section(1).*	
(12)	*Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the IGST Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.*	
Explanation—For the purposes of this section,—		
	(a)	*the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;*
	(b)	*the expression,—*

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		(i)	*"tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and*
		(ii)	*"other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made there under.*
Section 49A	**Utilisation of input tax credit subject to certain conditions**		
	Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.		
Section 49B	**Order of utilisation of input tax credit**		
	Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub section (5) ofsection 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.		
Section 53	**Transfer of input tax credit**		
	On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.		

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Section 53A	Transfer of certain amounts
	Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.

Chapter IX: Payment of Tax of the CGST Rules

Rule 85	Electronic Liability Register	
(1)	*The electronic liability register specified under sub- section (7) of section 49 shall be maintained in **FORM GST PMT-01** for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.*	
(2)	*The electronic liability register of the person shall be debited by:-*	
	(a)	*the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;*
	(b)	*the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person; or*
	(d)	*any amount of interest that may accrue from time to time.*
(3)	*Subject to the provisions of section 49, section 49A and section 49B, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.*	
(4)	*The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis,*	

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	or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.
(5)	*Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.*
(6)	*The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.*
(7)	*A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in* ***FORM GST PMT-04****.*
Rule 86	**Electronic Credit Ledger**
(1)	*The electronic credit ledger shall be maintained in* ***FORM GST PMT-02*** *for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.*
(2)	*The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B.*
(3)	*Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.*
(4)	*If the refund so filed is rejected, either fully or partly, the amount debited under sub- rule (3), to the extent of rejection, shall be re-*

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	*credited to the electronic credit ledger by the proper officer by an order made in **FORM GST PMT-03**.*
(4A)	*Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.*
(4B)	*Where a registered person deposits the amount of erroneous refund sanctioned to him, -*
	(a) under sub-section (3) of section 54 of the Act, or
	(b) under sub-rule (3) of rule 96
	along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.
(5)	*Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.*
(6)	*A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04**.*
Explanation	*For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.*
Rule 86A	**Conditions of use of amount available in electronic credit ledger.-**
(1)	*The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons*

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	to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as	
	(a)	*the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-* *(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or* *(ii) without receipt of goods or services or both; or*
	(b)	*the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or*
	(c)	*the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
	(d)	*the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,*
	may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.	
(2)	*The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.*	
(3)	*Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.*	

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Rule 87	Electronic Cash Ledger	
(1)	*The electronic cash ledger under sub-section (1) of section 49 shall be maintained in **FORM GST PMT-05** for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.*	
(2)	*Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.*	
	Provided that the challan in FORM GST PMT-06 generated at the common portal shall be valid for a period of fifteen days.	
(3)	*The deposit under sub-rule (2) shall be made through any of the following modes, namely:-*	
	(i)	*Internet Banking through authorised banks;*
	(ia)	*Unified Payment Interface (UPI) from any bank;*
	(ib)	*Immediate Payment Services (IMPS) from any bank;*
	(ii)	*Credit card or Debit card through the authorised bank;*
	(iii)	*National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or*
	(iv)	*Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:*
	Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by –	
	(a)	*Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;*

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	(b)	*Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;*
	(c)	*Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:*
	Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.	
Explanation	*For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.*	
(4)	*Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.*	
(5)	*Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement or Immediate Payment Service mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:*	
	Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.	
(6)	*On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan*	

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	Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.
(7)	*On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.*
(8)	*Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in FORM GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.* *Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.*
(9)	*Any amount deducted under section 51 or collected under section 52 and claimed by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger.*
(10)	*Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.*
(11)	*If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in* ***FORM GST PMT-03.***
(12)	*A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in* ***FORM GST PMT-04****.*

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(13)	*A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.*
(14)	*A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in FORM GST PMT-09:* *Provided that no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.*
Explanation 1	*The refund shall be deemed to be rejected if the appeal is finally rejected.*
Explanation 2	*For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.*
Rule 88	**Identification number for each transaction**
(1)	*A unique identification number shall be generated at the common portal for each debit or credit to the electronic cash or credit ledger, as the case may be.*
(2)	*The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.*
(3)	*A unique identification number shall be generated at the common portal for each credit in the electronic liability register for reasons other than those covered under sub-rule (2).*

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Rule 88A	Order of utilization of input tax credit

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order:

Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

ANALYSIS

A. ELECTRONIC CASH LEDGER [SECTION 49(1),(3),(6),(10) & (11) READ WITH RULE 87 OF CGST RULES]

The Electronic Cash Ledger contains a summary of all the deposits/payments made by a taxpayer. Electronic Cash Ledger is maintained on the GST Portal. The Electronic Cash Ledger has to be maintained in prescribed form on the common portal by a person liable to pay tax.

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 deposit in the electronic cash ledger shall be made through any of the following modes, namely:-

(i) Internet Banking through authorised banks;

(ii) Unified Payment Interface (UPI) from any bank;

(iii) Immediate Payment Services (IMPS) from any bank;

(iv) Credit card or Debit card through the authorised bank;

(v) National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) from any bank; or

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(vi) Over the Counter payment through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:

It may be noted that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment will not apply to deposit to be made by –

(a) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;

(b) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

(c) Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit.

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Payment by Challan

❑ What is CPIN, CIN, BRN and E-FPB?

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.

CIN is generated by the authorized banks/Reserve Bank of India (RBI) when payment is 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

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/IMPS Transactions, RBI will act as E-FPB.

❑ Are manual Challans applicable as allowed under the erstwhile indirect tax regimes?

Manual or physical Challans are not allowed under the GST regime. It is mandatory to generate Challans online on the GST Common Portal.

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- **How many types of Challans are prescribed for various taxes and payments to be paid under the GST regime?**

  There is single Challan prescribed for all taxes, fees, penalty, interest, and other payments to be made under the GST regime.

Other Aspects relating to Challan

- Any person, or a person on his behalf, can generate a challan in prescribed form [Form PMT 06] on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.
- 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.

Validity of challan-15 days

- The mandate form obtained after making NEFT/RTGS/IMPS payment has to be submitted in the Bank. The validity of the mandate form is 15 days.
- On successful credit of amount in the concerned (Central/State) Government Account maintained in the authorized bank, a Challan Identification Number (CIN) will be generated by the collecting bank which will be indicated in the challan.
- 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.
- 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 through which the payment has been made.
- 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.

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- 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.
- Any amount deducted under section 51 [TDS] or collected under section 52 [TCS] and claimed by the registered taxable person from whom the said amount was deducted or collected shall be credited to his electronic cash ledger.
- In case any discrepancy is noticed in electronic cash ledger, the registered person shall communicate the same to the officer exercising jurisdiction in the matter, through the common portal in prescribed form.
- An unregistered person has to make payment through electronic cash ledger on the basis of temporary identification number generated through common portal.

Manner of utilization of amount reflected in Electronic Cash Ledger

Sub-section 3 of section 49 of the CGST Act lays down the following:

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.

In the e-ledger, information is kept minor head-wise for each major head. 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.

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. The Cash deposits can be used for making payment(s) like tax liability, interest, penalties, fee, and others.

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Transfer of amount reflected in Electronic Cash Ledger

Sub-sections (10) and (11) of section 49 of the CGST Act, 2017 facilitates a registered person to transfer an amount from one (major/minor) head to another (major/minor) head in the electronic cash ledger or to transfer any amount available in the electronic cash ledger, to the electronic cash ledger for IGST/CGST of a distinct person, provided there is no unpaid liability in his electronic liability register.

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.

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Further, a registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger to the electronic cash ledger for central tax or integrated tax of a distinct person as specified in sub-section (4) or, as the case may be, sub-section (5) of section 25, in Form GST PMT-09.

However, no such transfer shall be allowed if the said registered person has any unpaid liability in his electronic liability register.

This Form 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) transfer of any of the amounts already lying unutilised under any of the minor heads in Electronic Cash ledger or

(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 ₹ 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.

Section 53A of the CGST Act provides for transfer of amount between Centre and States in accordance with 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.

A Registered person has to claim the Tax Deducted at Source under Section 51 or Tax Collected at Source under Section 52 to appear in his Electronic Cash ledger. There is no automatic updation of this deduction/collection currently on the common portal. Similar to a claim of TDS credits under Income Tax Act, 1961 at the time of filing Income tax return, the Registered person has to claim for the TDS/TCS in his periodical returns to get updated in the Electronic Cash ledger.

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Other peculiar aspects of Electronic Cash Ledger

- ✓ An unregistered person has to make payment through electronic cash ledger on the basis of temporary identification number generated through common portal.
- ✓ Where the person has claimed refund of any amount from electronic cash ledger, the amount of refund claimed would be debited from the electronic cash ledger
- ✓ Where the refund claimed by a person is rejected either fully or partly, the amount debited earlier shall be credited to electronic cash ledger by the Proper office to the extent of amount of refund rejected.

Electronic Cash Ledger

Electronic Cash Ledger — Trisla Dealers Private Limited 20AAECT5548F1ZK

Select Period

* indicates mandatory fields

From * 15/06/2017 To * 30/06/2017 GO

Viewing Ledger details from 15/06/2017 to 30/06/2017

Sr.No	Date of deposit/Debit	Time of deposit	Reporting date (by bank)	Reference No.	Tax Period, if applicable	Description	Transaction Type (Debit/ Credit)	Amount debited / credited (₹			
								Integrated Tax	Central Tax	State Tax	Cess
1	-	-	-	-	-	Opening Balance	-	-	-	-	-
2	26/06/2017	-	26/06/2017	111452	-	Amount deposited	Credit	2.00	7.00	1.00	2.00
3	28/06/2017	11:21:00	26/06/2017	111476	-	Amount deposited	Credit	1.00	1.00	2.00	1.00
4	-	-	-	-	-	Closing Balance	-	-	-	-	-

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B. ELECTRONIC CREDIT LEDGER [SECTION 49(2), (4) & (5), SECTION 49A, SECTION 49B READ WITH RULE 86, 86A, 86B AND 88A OF CGST RULES]

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 his Electronic Credit Ledger or **Electronic Input Tax Credit Ledger**. This is to be maintained in the prescribed form.

Input Tax Credit as self-assessed in monthly returns will be reflected in the ITC Ledger. The credit in this ledger can be used to make payment of ONLY TAX and not other amounts such as interest, penalty, fees etc.

Non-utilisation of ITC for tax liability under reverse charge mechanism

The amount available in the electronic credit ledger may be used for making any payment towards output tax under CGST, SGST, UTGST or IGST. It is pertinent to note that "output tax" " [as defined in Section 2(18)] in relation to a taxable person, means the tax chargeable under this Act [i.e. SGST/ UTGST/ CGST Act, 2017 respectively] on taxable supply of goods and/or services made by him, but excludes tax payable by him on reverse charge basis. Thus, ITC available in Electronic Credit ledger, cannot be utilised for tax payable under reverse charge mechanism under Section 9(3) or 9(4) of CGST/SGST Act, 2017 read with Section 5(3) or 5(4) of IGST Act, 2017.

Manner of utilisation of ITC [Combined reading of section 49(5), 49A, 49B, rule 88A and Circular No. 98/17/2019 GST dated 23.04.2019][3]

Manner of utilisation of ITC [Combined reading of section 49(5), 49A, 49B, rule 88A and *Circular No. 98/17/2019 GST dated 23.04.2019*][4]

Output / Input	IGST	CGST	SGST/UTGST
IGST	(1)	(2) [refer1(i)]	(2) [refer1(i)]

[3] *The detailed provisions have been discussed in Chapter-7: "Input tax credit" of this Module of the Study Material.*

[4] *The detailed provisions have already been discussed in Chapter-7: "Input tax credit" of this Module of the Study Material.*

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CGST	(2) [refer 2 & 3(i)]	(1) [refer 2 & 3]	Not allowed
SGST/ UTGST	(2) [refer 2 & 4(i)]	Not allowed	• (1) • [refer 2 & 4]

1. Available IGST credit in the credit ledger should first be utilized towards payment of IGST. Remaining amount if any, can be utilized towards the payment of CGST and SGST/UTGST in any order and in any proportion, i.e. ITC of IGST can be utilized either against CGST or SGST.
2. Entire ITC of IGST is to be fully utilised first before the ITC of CGST or SGST/UTGST can be utilized.
3. Available CGST Credit in the credit ledger shall first be utilized for payment of CGST. Remaining amount if any, will be utilized for payment of IGST
4. Available SGST /UTGST credit in the credit ledger shall first be utilized for payment of SGST/UTGST. Remaining amount if any, will be utilized for payment of IGST, only when credit of CGST is not available for payment of IGST

CGST credit cannot be utilized for payment of SGST/UTGST.
Similarly, SGST/UTGST credit cannot be utilized for payment of CGST.

Conditions of use of amount available in electronic credit ledger [Rule 86A]

In case the Commissioner or an officer authorised 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 , after recording reasons in writing, prohibit use of ITC for discharge of any liability under section 49 or for claim of any refund of any unutilised amount. [Such provisions have already been discussed in detail in Chapter 7: Input Tax Credit.]

Restrictions on use of amount available in electronic credit ledger [Rule 86B]

Rule 86B restricts the amount available in electronic credit ledger which a registered person can use to discharge his output tax liability to 99% of such tax liability in

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cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds ₹ 50 lakh. [Such provisions have already been discussed in detail in Chapter 7: Input Tax Credit]

Other Aspects of Electronic Credit Ledger

- In case any discrepancy is noticed in the electronic credit ledger, the registered person shall communicate the same to the officer exercising jurisdiction in the matter, through the common portal in prescribed form.
- No entry shall be made directly in the electronic credit ledger under any circumstance except as provided in the provisions.

Clarifications[5] regarding utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities:-

Issue 1:

Whether the amount available in the electronic credit ledger can be used for making payment of any tax under the GST Laws?

Clarification:

In terms of section 49(4), the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or the IGST Act, subject to the provisions relating to the order of utilisation of ITC as laid down in section 49B read with rule 88A.

Rule 86(2) provides for debiting of the electronic credit ledger to the extent of discharge of any liability in accordance with the provisions of section 49/49A/49B.

Further, output tax in relation to a taxable person (i.e. a person who is registered or liable to be registered under section 22 or section 24) is defined in section 2(82) as the tax chargeable on taxable supply of goods or services or both but excludes tax payable on reverse charge mechanism.

Accordingly, it is clarified that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

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[5] *vide Circular No. 172/04/2022 GST dated 06.07.2022*

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It is further reiterated that as output tax does not include tax payable under reverse charge mechanism, implying thereby that the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

Issue 2:

Whether the amount available in the electronic credit ledger can be used for making payment of any liability other than tax under the GST laws?

Clarification:

As per section 49(4), the electronic credit ledger can be used for making payment of output tax only under the CGST Act or the IGST Act. It cannot be used for making payment of any interest, penalty, fees or any other amount payable under the said Acts. Similarly, electronic credit ledger cannot be used for payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash.

Issue 3:

Whether the amount available in the electronic cash ledger can be used for making payment of any liability under the GST laws?

Clarification:

As per section 49(3), the amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the GST laws.

Common Points for Electronic Cash & Credit Ledger

- 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.
- A unique identification number shall be generated at the common portal for each debit or credit to the electronic cash or credit ledger.
- Similarly, the unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.

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Electronic Credit Ledger

Dashboard : Ledger English

Electronic Credit Ledger Bhogovalli shailaja 07FBXPS5061N2ZI

Select Period

From 24/05/2021 To 24/05/2021 GO

Viewing Electronic Credit ledger details from 24/05/2021 to 24/05/2021

Sr. No.	Date	Reference No.	Tax Period,if any	Description	Transaction Type (Debit/ Credit)	Credit / Debit (₹)				
						Integrated tax (₹)	Central tax	State Tax	Cess	Total
1	-	-	-	Opening Balance	-	-	-	-	-	-
2	24/05/2021	BL0705210002005	May-21	Blocked	Debit	7,77,425.00	1,61,025.00	1,61,025.00	0.00	10,99,475.0
3	24/05/2021	UB0705210000008	May-21	Unblocked	Credit	2,00,000.00	1,61,025.00	1,61,025.00	0.00	5,22,050.0
4	-	-	-	Closing Balance	-	-	-	-	-	-

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C. ELECTRONIC LIABILITY REGISTER [SECTION 49(7), (8) & (9) READ WITH RULE 85 OF CGST RULES]

- Sub-section (7) of section 49 enumerates about the third kind of ledger [Auto updated on common portal] viz. **Electronic Liability Register**. While the terms "Electronic Cash Ledger" and "Electronic Credit Ledger" are defined in the Act, the term "Electronic Liability Register" is not defined. The Section lays down that all liabilities of a taxable person will be recorded & maintained in a separate register named 'Electronic Liability Register'.

> **Electronic Liability Register will reflect the total tax liability of a taxpayer for a particular tax period.**

- **Order of discharge of tax and other dues**

  Sub-section (8) prescribes the chronological order in which the liability of a taxable person has to be discharged:

  - ✓ self-assessed tax, and other dues related to returns of previous tax periods have to be discharged first;.
  - ✓ self-assessed tax, and other dues related to the return of the current tax period next.
  - ✓ Once these two steps are exhausted, thereafter any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74 ***or section 74A***[6]; comes last. This sequence has to be mandatorily followed.

  The expression "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and "other dues" referred above mean interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.

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[6] ***The provisions of section 74A contain provisions relating to determination of tax not paid/short paid or erroneously refunded or ITC wrongly availed/utilized for any reason pertaining to Financial Year 2024-25 onward. Detailed provisions of this section are discussed in Chapter-19 of Module-3 of the Study material. The provisions of sections 73 and 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24.***

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- **Presumption that incidence of tax is passed on**

Sub-section (9) contains a deeming clause. This part of the section provides that when a taxable person has paid the GST under the corresponding Act, the taxable person is deemed to have passed on the incidence of such payment of tax to the recipient of such goods and /or services. Thus, if tax has been paid under the CGST Act, 2017 then the taxable person is deemed to have passed on the incidence of such payment of CGST to the recipient. This is subject to the contrary being proved. Onus to establish that incidence of tax has not been passed on to the recipient, becomes relevant in case of Section 54 dealing with "Refund of tax"

- **Chapter IX of CGST Rules provide the following:**

(I) Debit to electronic liability register:

- ✓ 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
- ✓ a proper officer or as ascertained by the said person;
- ✓ interest payable under Section 50 that may accrue from time to time.

(II) Debit to Electronic Credit/Cash ledger:

Debit to Electronic Credit Ledger and Credit to Electronic Liability Register	Debit to Electronic Cash Ledger and Credit to Electronic Liability Register
Payment of all the liabilities of a registered person as per his return subject to section 49 or section 49A or section 49B.	Payment of all the liabilities of a registered person as per his return subject to section 49 or section 49A or section 49B.

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	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.

- **How do the payment systems benefit the taxpayer and the Commercial Tax Department?**
  - ✓ No more queues and waiting for making payments as payments can be made online 24 X 7.
  - ✓ Instant online receipts for payments made online.
  - ✓ Tax Consultants can make payments on behalf of the clients.
  - ✓ Single Challan form to be created online, replacing the three or four copy Challan.
  - ✓ Revenue will come earlier into the Government Treasury as compared to the old system.
  - ✓ Greater transparency.
  - ✓ Online payments made after 8 pm will be credited to the taxpayer's account on the same day.

Electronic Liability Register

The Electronic Liability Register page is displayed in the following manner:-

Part-I: Return related Liabilities

Part-II: Other than return related liabilities

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Part - 1 Return related liabilities

Part - II: Other than return related liabilities

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4. INTEREST ON DELAYED PAYMENT OF TAX [SECTION 50]

	STATUTORY PROVISIONS
Section 50	**Interest on delayed payment of tax**
Sub-section	**Particulars**
(1)	*Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.* *Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74* ***or section 74A*** *in respect of the said period, shall be payable on that portion of the tax that is paid by debiting the electronic cash ledger.*
(2)	*The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*
(3)	*Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding 24% as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.*

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Rule 88B	Manner of calculating interest on delayed payment of tax.
(1)	*In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74* ***or section 74A*** *in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under sub-section (1) of section 50.* *Provided that where any amount has been credited in the Electronic Cash Ledger as per provisions of sub-section (1) of section 49 on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.*
(2)	*In all other cases, where interest is payable in accordance with sub section (1) of* section 50*, the interest shall be calculated on the amount of tax which remains unpaid, for the period starting from the date on which such tax was due to be paid till the date such tax is paid, at such rate as may be notified under sub-section (1) of* section 50.
(3)	*In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50, the interest shall be calculated on the amount of input tax credit wrongly availed and utilised, for the period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount, at such rate as may be notified under said sub-section (3) of section 50.*

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Explanation	*For the purposes of this sub-rule, -*	
(1)	*Input tax credit wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, and the extent of such utilization of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.*	
(2)	*the date of utilisation of such input tax credit shall be taken to be, -*	
	(a)	*the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or*
	(b)	*The date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.*

ANALYSIS

To promote greater discipline amongst taxpayer and timeliness in payment of tax, the tax dues which are not paid within the stipulated time are made liable to interest payment. This mechanism is automatic in nature by virtue of the provisions laid under any tax laws. Interest liability is imposed on taxpayer who has withheld the payment of any tax as and when it is due and payable. Basically, it is compensatory in character and totally different from penalty which is penal in character.

On similar lines, section 50 of the CGST Act, 2017 provides for applicability of interest for default in payment of taxes within the stipulated time. Under GST law, a registered person, can make the payment of tax through electronic credit ledger or electronic cash ledger in terms of section 49 of CGST Act, 2017. Usually, the

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balance in electronic credit ledger is exhausted first (subject to provisions of rule 86B) before utilizing the balance available in the electronic cash ledger for discharging tax liabilities. This practice is adopted for a better working capital management.

In case a registered person does not have sufficient amount available in electronic credit ledger to pay the tax dues for a particular tax period and also if the registered person does not have sufficient money for making deposit of balance tax amount in electronic cash ledger then in such a situation, GST common portal doesn't have a mechanism to allow a registered person to make part payment of taxes.

If the law maker demands tax dues along with interest on the gross payments i.e. tax paid through electronic cash ledger and credit ledger both, it may be an unhealthy practice from business perspective. To counter such recovery mechanism, the proviso under Section 50 provides that when a registered person has paid his taxes through a return specified under Section 39 of CGST Act, 2017 belatedly, interest shall be applicable only on the net taxes paid through electronic cash ledger and not on the gross taxes paid for such tax period.

As per the said proviso, the interest in cases where the tax return has been furnished after the due date (but furnished before commencement of proceedings under Section 73 or Section 74 ***or section 74A***[7]) shall be levied on that portion of the output tax which is being paid by debiting the electronic cash ledger. This means that the interest liability shall not arise on that portion of the output tax liability which is paid using the ITC available in the electronic credit ledger.

Accordingly, 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.

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[7] ***The provisions of section 74A contain provisions relating to determination of tax not paid/short paid or erroneously refunded or ITC wrongly availed/utilized for any reason pertaining to Financial Year 2024-25 onward. Detailed provisions of this section are discussed in Chapter-19 of Module-3 of the Study material. The provisions of sections 73 and 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24.***

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When interest is payable?

Interest is payable in case of delay in payment of tax, in full or in part within the prescribed period.

Rate of interest

The rate of interest shall be notified by the Government on the basis of recommendation of the Council. However, such rate to be notified **shall not exceed 18%** in case of belated payment of tax i.e. on failure to pay tax (or part of tax) to the Government's account and in case of wrongful availment and utilization of input tax credit[8].

Computation of period for calculation of interest

Generally, the period of interest will be from the date following the due date of payment to the actual date of payment of tax.

Manner of calculating interest on delayed payment of tax [Rule 88B]

In case, where the supplies made during a tax period are declared by the registered person in the return for the said period and the said return is furnished after the due date in accordance with provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 ***or section 74A*** in respect of the said period, the interest on tax payable in respect of such supplies shall be calculated on the portion of tax which is paid by debiting the electronic cash ledger, for the period of delay in filing the said return beyond the due date, at such rate as may be notified under section 50(1).

However, where any amount has been credited in the Electronic Cash Ledger as per provisions of section 49(1) on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.

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[8] *Notification No. 13/2017 CT dated 28.06.2017 has notified the rate of interest as 18% per annum.*

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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-

(i) 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.

(ii) the date of utilisation of such input tax credit shall be taken to be-

(a) the date, on which the return is due to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

❑ Other relevant points relating to interest

- ✓ The term "tax" here means the tax payable under the Act read with underlying Rules made thereunder.
- ✓ The payment of interest in case of belated payment of tax should be made voluntarily i.e. even without a demand.

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- ✓ The interest payable under this section shall be debited to the Electronic Liability Register.
- ✓ The liability for interest can be settled by adjustment with balance in Electronic Cash Ledger **but not with balance in electronic credit ledger.**

Clarification on charging of interest under section 50(3) in cases of wrong availment of IGST credit and reversal thereof[9]

The issues which arose for consideration are as to:

(i) whether in the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B, whether the balance of ITC available in electronic credit ledger (ECL) under the head of IGST only needs to be considered or total ITC available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.

Since the amount of ITC available in ECL, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total ITC available in ECL, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B and for determining as to whether the balance in the ECL has fallen below the amount of wrongly availed ITC of IGST, and to what extent the balance in ECL has fallen below the said amount of wrongly availed credit.

Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under section 50(3) if, during the time period starting from such availment and up to such reversal, the balance of ITC in the ECL, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in ECL individually falls below the amount of such wrongly availed IGST credit.

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[9] *Circular No. 192/04/2023 GST dated 17.07.2023*

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However, when the balance of ITC, under the heads of IGST, CGST and SGST of ECL taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in ECL under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per section 50(3) read with section 20 of the IGST Act, 2017 and of rule 88B(3).

(ii) whether the credit of compensation cess available in ECL shall be taken into account while considering the balance of ECL for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Since ITC in respect of compensation cess can be utilised only towards payment of compensation cess. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads. Accordingly, credit of compensation cess available in ECL cannot be taken into account while considering the balance of ECL for the purpose of calculation of interest under rule 88B(3) in respect of wrongly availed and utilized IGST, CGST or SGST credit.

5. TAX DEDUCTION AT SOURCE [SECTION 51 OF CGST ACT]

	STATUTORY PROVISIONS	
Section 51	**Tax deduction at source**	
Sub-Section	**Clause**	**Particulars**
(1)	*Notwithstanding anything to the contrary contained in this Act, the Government may mandate, —*	

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	(a)	*a department or establishment of the Central Government or State Government; or*
	(b)	*local authority; or*
	(c)	*Governmental agencies; or*
	(d)	*such persons or category of persons as may be notified by the Government on the recommendations of the Council,*
	(hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees :	
	Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.	
Explanation	*For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.*	
(2)	*The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.*	
(3)	*A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.*	
(5)	*The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.*	
(6)	*If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in*	

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	accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.
(7)	*The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74* ***or section 74A****.*
(8)	*The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54 :*
	Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

ANALYSIS

❑ Deductors of Tax at Source

Under the GST regime, section 51 of the CGST Act, 2017 prescribes the authority and procedure for 'tax deduction at source'. The TDS provisions empower the Central Government to make it mandatory for the following persons (the deductor) to deduct tax at source from payments made to the suppliers of taxable goods and/or services.

- **Central/State Government department or establishment [Section 51(1)(a)]**
- **Local Authority [Section 51(1)(b)]**
- **Governmental Agencies [Section 51(1)(c)]**
- **Notified Persons/category of persons [Section 51(1)(d)]**

With respect to deductors under section 51(1)(a), provisions of TDS are applicable to certain prescribed authorities of Ministry of Defence, remaining authorities under the Ministry of Defence are exempt. Detailed list has been specified under *Notification 57/2018 CT dated 23.10.2018.*

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The following persons have been notified under clause (d) of sub-section (1) of section 51 of the CGST Act by the Central Government[10]:

(a) an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 51% or more participation by way of equity or control, to carry out any function;

It has been clarified vide *Circular No. 76/50/2018 GST dated 31.12.2018* that the rider of 51% or more participation by way of equity or control is applicable to both the items (i) and (ii). Thus, the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which 51% or more participation by way of equity or control is with the Government.

(b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;

(c) public sector undertakings;

(d) any registered person receiving supplies of metal scrap falling under Chapters 72 to 81 in the First Schedule to the Customs Tariff Act, 1975, from other registered person

❑ Categories of persons not liable to deduct TDS

Tax is not liable to be deducted at source in the following cases:-

(i) When goods and/or services are supplied from a public sector undertaking (PSU) to another PSU, whether or not a distinct person

(ii) When supply of goods and/or services takes place between one person to another person specified under clauses (a), (b), (c) and (d) of section 51(1) of the said Act, except the person referred to in clause (d).

[10] *Notification No. 50/2018 CT dated 13.09.2018*

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Deductees

The deductees are the suppliers whose total value of supply of taxable goods and/or services under a contract exceeds ₹ 2,50,000 exclusive of tax & cess as per the invoice.

❑ Standard Rate of deduction

TDS-1% +1% [CGST + SGST] on net value of taxable supplies

The tax would be deducted @ 1% under CGST Act, 2017 of the payment made to the supplier (the deductee) of taxable goods and/or services, where the total value of such supply, under a contract, exceeds ₹ 2,50,000 (excluding the amount of Central tax, State tax, Union Territory tax, Integrated tax and cess indicated in the invoice). Thus, individual supplies may be less than ₹ 2,50,000/-, but if total value of supplies under a contract is more than ₹ 2,50,000/-, TDS has to be deducted.

The deductors have to deduct tax at the rate of 1% from the payment made or credited to the supplier of taxable goods and/or services under CGST Act, 2017.

It may be noted that Section 20 of IGST Act provides that in the case of tax deducted at source, the deductor shall deduct tax at the rate of 2% from the payment made or credited to the supplier.

❑ NO TDS

The Proviso to Section 51(1) lays down that when the location of the supplier and the place of supply is in a State/ Union territory which is different from the State/ Union territory of registration of the recipient, there will be no TDS.

The above statement can be explained in the following situations:

(a) Supplier, place of supply and recipient are in the same state.

It would be intra-State supply and TDS (Central plus State tax) shall be deducted. It would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.

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(b) Supplier as well as the place of supply are in different states.

In such cases, Integrated tax would be levied. TDS to be deducted would be TDS (Integrated tax) and it would be possible for the supplier (i.e. the deductee) to take credit of TDS in his electronic cash ledger.

(c) Supplier as well as the place of supply are in State A and the recipient is located in State B.

The supply would be intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax of State B) to the cash ledger of the supplier (Central tax + State tax of State A) would be difficult. So, in such cases, TDS would not be deducted.

Thus, when both the supplier as well as the place of supply are different from that of the recipient, no tax deduction at source would be made.

Location of Supplier	Place of Supply	Registration of Recipient	TDS u/s 51
State A	State A	State A	Yes
State A	State A	State B	No
State A	State B	State B	Yes
UT1	UT1	UT1	Yes
UT1	UT2	UT2	Yes
UT1	UT1	UT2	No

❑ Value of Supply

The amount indicated in the invoice excluding the Central tax, State tax, Union territory tax, Integrated tax and cess element, is the value of supply for the purpose of TDS under Section 51 of CGST Act, 2017.

Value of supply shall exclude tax & cess

❑ Deposit of TDS with the Government

The amount of tax deducted at source should be deposited to the Government account by deductor by 10th of the succeeding month in which the deduction is made.

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❑ TDS Certificate

A TDS certificate is required to be issued by deductor (the person who is deducting tax) in prescribed form to the deductee (the supplier from whose payment TDS is deducted).

The content of Form GSTR 7A (TDS Certificate) are given below:

1. TDS Certificate No.
2. GSTIN of deductor
3. Name of deductor
4. GSTIN of deductee
5. (a) Legal name of the deductee
   (b) Trade name, if any
6. Tax period in which tax deducted and accounted for in GSTR-7
7. Details of supplies
8. Amount of tax deducted

❑ Non- remittance by the deductor

If the deductor has not remitted the amount deducted as TDS to the Government within the prescribed time limit, he is liable to pay interest under Section 50 in addition to the amount of tax deducted.

❑ Reflection of amount of TDS

The amount of tax deducted is reflected in

- Electronic Cash Ledger of deductee.
- Return filed by deductor under section 39(3).[GSTR-7][Refer Chapter:13 Returns for detailed discussion on GSTR-7].

The deductee can claim credit of the tax deducted, in his electronic cash ledger. This provision enables the Government to cross check whether the amount deducted by the deductor is correct and that there is no mis-match between the amount reflected in the electronic cash ledger and the amount shown in the return filed by deductor.

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This is similar to existing practice in income tax relating to E-TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of transactions by deductee.

- **Determination of amount in Default**

Any default in determination of the amount under Section 51 shall be made in the manner specified in Section 73 or section 74 ***or section 74A***,[11] as the case may be.

- **Refund on excess/erroneous deduction**

The deductor or the deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 54 relating to refunds would apply in such cases. However, if the deducted amount is already credited to the electronic cash ledger of the supplier, the same shall not be refunded.

(1) Supplier makes a supply worth ₹ 20 lakh to a recipient and the GST at the rate of 18% is required to be paid. The recipient, while making the payment of ₹ 20 lakh to the supplier, shall deduct 2% [CGST 1% + SGST 1%] viz ₹ 40,000 as TDS.

The value for TDS purpose shall not include 18% GST. The TDS, so deducted, shall be deposited in the account of Government by 10th of the succeeding month.

The TDS so deposited in the Government account shall be reflected in the electronic cash ledger of the supplier (i.e. deductee) who would be able to use the same for payment of tax or any other amount.

- **Registration[12] [Rule 12 of CGST Rules, 2017]**

Any person required to deduct tax in accordance with the provisions of section 51 shall electronically submit a registration application in prescribed

[11] ***The provisions of section 74A contain provisions relating to determination of tax not paid/short paid or erroneously refunded or ITC wrongly availed/utilized for any reason pertaining to Financial Year 2024-25 onward. Detailed provisions of this section are discussed in Chapter-19 of Module-3 of the Study material. The provisions of sections 73 and 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24.***

[12] *The provisions relating to registration have already been discussed in Chapter-8 of this Module of the Study Material..*

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form through the common portal. The proper officer shall, after due verification, grant registration within 3 working days from the date of the application. Also, on a request or upon an enquiry or pursuant to any other proceeding under the Act, if the proper officer is satisfied that a person is no longer liable to deduct tax at source under section 51, then the said officer may cancel the said registration, following procedures as provided in Rule 22 of the CGST Rules for the cancellation of registration.

6. 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, in terms of section 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, in terms of section 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 equivalent to the amount so reduced in IGST account to the CGST/UTGST account.

However, if the amount of IGST is utilised towards dues of SGST then, in terms of section 18 of the IGST Act, there shall be reduction in the amount of IGST, equal to the credit so utilized, and will be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the respective State Government. Here, "appropriate State" in relation to a taxable person, means the State or Union territory where taxable person is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

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LET US RECAPITULATE

The provisions relating to payment of tax, interest and other amounts have been summarised by way of table and diagrams to help students remember and retain the provisions in a better and effective manner:-

Definitions of certain key terms

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Payments to be made in GST regime

Key Features of Payment process

- ✓ Electronically generated challan from GSTN common portal in all modes of payment and no use of manually prepared challan;
- ✓ Facilitation for the tax payer by providing hassle free, anytime, anywhere mode of payment of tax;
- ✓ Convenience of making payment online;
- ✓ Logical tax collection data in electronic format;
- ✓ Faster remittance of tax revenue to the Government Account;
- ✓ Paperless transactions;
- ✓ Speedy Accounting and reporting;
- ✓ Electronic reconciliation of all receipts;
- ✓ Simplified procedure for banks;
- ✓ Warehousing of Digital Challan.

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What are E-Ledgers/Registers?

Electronic ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic liability register.

Types of Electronic ledgers/Registers

A. Electronic Cash Ledger

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Modes of deposit in Electronic Cash Ledger

Internet banking	•No limit
Credit/Debit card	•No limit
UPI	•No limit
NEFT/RTGS/IMPS	•No limit
Over the counter	•₹ 10,000 per challan per tax period

Major and minor Heads of payment

Major Heads
- IGST
- CGST
- SGST/UTGST
- CESS

Each of these Major Heads have the five following Minor Heads

Minor Heads
- Tax
- Interest
- Penalty
- Fee
- Others

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Date of deposit of tax dues

Which date is considered as date of deposit of the tax dues ?		
(i)	Date of presentation of cheque	×
(ii)	Date of payment	×
(iii)	Date of credit of amount in the account of government by Debit of Electronic Cash Ledger/Electronic credit ledger	√

B. Electronic credit ledger

Order of utilisation of input tax credit available in electronic credit ledger

ITC	Order of utilisation	
	(1)	(2)
IGST	IGST	CGST/SGST/UTGST- any order
ITC of IGST to be completely exhausted first, mandatorily		
CGST	CGST	IGST
ITC of CGST has been utilized fully before utilizing SGST for payment of IGST		
SGST/UTGST	SGST/UTGST	IGST

The CGST credit cannot be utilized for payment of SGST/UTGST.

The SGST/UTGST credit cannot be utilized for payment of CGST.

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C. Electronic liability register

Order of discharge of liability of taxable person

Manner of making payment

Through debit of Electronic Credit Ledger	In cash, by debit in the Electronic Cash Ledger
Through debit of Credit Ledger of the tax payer maintained on the Common portal – **ONLY Tax can be paid.**	Payment can be made in cash, by debit in the Cash Ledger of the tax payer maintained on the common portal.

E-Ledgers

Electronic Cash Ledger	•It will reflect all deposits made in cash, and TDS/TCS made on account of the tax payer. •This ledger can be used for making **ANY PAYMENT** towards tax, interest, penalty, fees or any other amount on account of GST.
Electronic Credit Ledger	•It will reflect Input Tax Credit as self-assessed in monthly returns. •The credit in this ledger can be used to make payment of **ONLY TAX** i.e. output tax and not other amounts such as interest, penalty, fees etc.
Electronic Liability Register	•Electronic Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.

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Payment of tax via Electronic Ledger

A. Electronic Cash Ledger

(Assume it as an account statement provided by bank, for easy understanding)

Debit Amount (DR)	Credit Amount (CR)
• Credit amount of this ledger may be used for payment of tax, interest, fees etc. • Remaining credit balance amount after payment of above tax etc. can be claimed as refund by taxable person.	• Any deposit made towards tax, interest, penalty, late fee etc. via internet banking, RTGS, IMPS/ fund transfer etc. • TDS/TCS claimed

B. Electronic Credit ledger

Debit Amount (DR)	Credit Amount (CR)
• Credit amount of this ledger may be used for payment of output tax viz IGST, CGST, SGST, UTGST in the prescribed order.	• Input Tax credit as self-assessed in the return in the form of IGST, CGST, SGST, UTGST

C. Electronic Liability Register

Debit Amount (DR)	Credit Amount (CR)
• Amount payable towards tax, interest, fees etc. • Tax or interest payable due to mismatch • Any other dues	• Electronic cash ledger
• Amount payable towards output tax	• Electronic credit ledger

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Interest on delayed payment of tax [Section 50]

Interest payable on the net cash liability of taxes [Section 50(1)]

Interest payable on the gross tax liability [Section 50(1)]

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Interest payable due to wrongful availment and utilisation of ITC [Section 50(3)]

TDS

Rate of TDS

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Manner of account of TDS by TDS deductor

1.	Such deductor need to get compulsorily registered under section 24 of the CGST/SGST Act.
2.	They need to remit such TDS collected by the 10th day of the month succeeding the month in which TDS was collected.
3.	The amount deposited as TDS will be reflected in the electronic cash ledger of the supplier.

Manner of account of TDS by supplier

- Any amount shown as TDS will be reflected in the electronic cash ledger of the concerned supplier.
- He can utilize this amount towards discharging his liability towards tax, interest fees and any other amount.

Applicability of TDS

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Consequences of not complying with TDS provisions

S. No.	Event	Consequence
1.	TDS not deducted	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law
2.	TDS deducted but not paid to the Government or paid later than 10th of the succeeding month	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law

Transfer of input tax credit [Section 53 of CGST Act & Section 18 of IGST Act]

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TEST YOUR KNOWLEDGE

1. *Miss Nitya has following balances in her Electronic Cash Ledger as on 28th February as per GST portal.*

Major Heads	Minor Heads	Amount (₹)
CGST	Tax	40,000
	Interest	1,000
	Penalty	800
SGST	Tax	80,000
	Interest	400
	Penalty	1,200
	Fee	2,000
IGST	Tax	45,000
	Interest	200
	Penalty	Nil

She furnishes return on monthly basis. Her tax liability for the month of February for CGST and SGST was ₹ 75,000 each. She failed to pay the tax and contacted you as legal advisor on 12th April to advise her as to how much amount of tax or interest she is required to pay, if any. In order to optimize the interest liability as per GST provisions, she is willing to make any transfer from the cash ledger between any of the major or minor heads as the case may be. She wants to pay the tax on 20th April.

Other information:

(i) Date of collection of GST was 18th February.

(ii) No other transaction after this up to 20th April.

(iii) Ignore penalty and late fee for this transaction.

(iv) No other balance is available.

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You are required to advise her with reference to legal provisions with brief notes on the legal provisions applicable.

2. *A makes intra-State supply of goods valued at ₹ 50,000(excluding taxes) to B within State of Karnataka. There is no input tax credit balance available with A. B makes inter-State supply to X Ltd. (located in Telangana) after adding 10% as its margin on the value of goods excluding taxes. Thereafter, X Ltd. sells it to Y in Telangana (Intra-State sale) after adding 10% as his margin on the value of goods excluding taxes.*

   Assume that the rate of GST chargeable is 18% (CGST and SGST at 9% each and IGST chargeable at 18%) and every person involved in the aforesaid supplies are registered tax payers. Calculate tax payable at each stage of the transactions detailed above. Wherever input tax credit is available and can be utilized, calculate the net tax payable in cash. At each stage of the transaction, indicate which Government will receive the tax paid and to what extent.

3. *Can one use input tax credit for payment of interest, penalty or payment of GST under reverse charge?*

4. *M/s PPC & Co. have availed input tax credit of ₹ 42,500 during September under IGST head, instead of availing ₹ 21,250 under CGST & SGST heads. Mr. X, accountant of the above entity would like to use Form GST PMT-09 for making a transfer from IGST head to respective CGST & SGST heads.*

   Examine the scenario and offer your comments.

5. *ABC Ltd. has belatedly filed GST return (under section 39) for the month of January after 60 days from the due date for filing such return. Total tax paid in such return is as below:*

Particulars	**IGST (₹)**	**CGST (₹)**	**SGST (₹)**
Output tax payable	4,50,000	2,85,000	2,85,000
Tax payable under reverse charge	18,000	32,000	32,000
Input tax available for utilisation	2,50,000	55,000	55,000
Tax paid through Electronic Cash Ledger	2,18,000	2,62,000	2,62,000

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Examine the interest payable as per the provisions of GST law with the help of above information.

What would be your answer, if entire tax for the month of January has to be paid through Electronic Credit Ledger except taxes to be paid on reverse charge basis?

6. *Examine the taxes to be paid for the month of July on the basis of below information furnished by M/s Zinc & Co.:*

Particulars	IGST (₹)	CGST (₹)	SGST (₹)
Output tax payable	14,75,000	28,34,000	28,34,000
Tax payable under reverse charge	36,000	1,44,000	1,44,000
Balance in Electronic Credit Ledger	26,52,000	18,32,000	18,32,000

Output tax reported under IGST column pertains to the month of February, which was not paid for the said period. Also, note that input tax credit available in Electronic Credit Ledger pertains to input tax on purchases made during the month of July and no opening balance exists from previous tax period. It furnishes return on monthly basis.

7. *M/s Neptune & Co. is registered under GST in the state of Maharashtra. They have made zero-rated supply of goods worth ₹ 84,50,000 without payment of IGST for ₹ 10,14,000 during the month of May. The refund application under section 54 for the above supply has been rejected by the proper officer.*

   Mr. A, taxation manager of the firm, has sought for recrediting the Electronic Credit Ledger as per the provisions of rule 86 for the above rejection. Examine the scenario and offer your comments.

8. *Manihar Enterprises, registered in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51. It has provided the information relating to the supplies made, their contract values and the payment due against each of them in the month of October, respectively as under:*

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S.No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000
(ii)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000
(iii)	Supply of a heavy machinery to Public Sector Undertaking located & registered in Uttarakhand	5,90,000	25,000
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000
(v)	Interior decoration of Andhra Bhawan located in Delhi. Service contract is entered into with the Government of Andhra Pradesh (registered only in Andhra Pradesh)	12,39,000	12,39,000
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [Out of total contract value of ₹ 9,72,000, contract value for supply of books (exempt from GST) is ₹ 7,00,000 and for supply of printed post cards	9,72,000	50,000 for books & 20,000 for printed post cards

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	(taxable under GST) is ₹ 2,72,000.]		
(vii)	*Maintenance of street lights in Municipal area of East Delhi* [The maintenance contract entered into with the Municipal Corporation of Delhi also involves replacement of defunct lights and other spares. However, the value of supply of goods is not more than 25% of the value of composite supply.]* **an activity in relation to any function entrusted to a Municipality under article 243W of the Constitution*	*3,50,000*	*3,50,000*

You are required to determine amount of tax, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

Will your answer be different, if Manihar Enterprises is registered under composition scheme?

9. *Yash Shoppe, a registered supplier of Jaipur, is engaged in supply of various goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51.*

Receivables are given below (independent cases). Assume that the payments as per the contract values are made on 31st October. The rates of CGST, SGST and IGST may be assumed to be 6%, 6% and 12% respectively.

(1) Supply of computer stationery to Public Sector Undertaking (PSU) located & registered in Mumbai. Total contract value is ₹ 2,72,000 (inclusive of GST)

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(2) Supply of air conditioner to GST department located & registered in Delhi. Total contract value is ₹2,55,000 (exclusive of GST)

(3) Supply of a generator renting service to Municipal Corporation of Jaipur. Total contract value is ₹3,50,000 (inclusive of GST)

ANSWERS

1. As per section 49(10) of the CGST Act, 2017, any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the CGST Act, 2017 can be transferred to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed. Thus, amount entered under any Minor head (Tax, Interest, Penalty, etc.) and Major Head (CGST, IGST, SGST/UTGST) of the Electronic Cash Ledger can be transferred to any other major or minor head. Consequently, cross-utilization among Major and Minor heads is also possible.

Further, as per rule 88B of the CGST Rules, 2017, where any amount has been credited in the Electronic Cash Ledger as per provisions of section 49(1) on or before the due date of filing the said return, but is debited from the said ledger for payment of tax while filing the said return after the due date, the said amount shall not be taken into consideration while calculating such interest if the said amount is lying in the said ledger from the due date till the date of its debit at the time of filing return.

Thus, as per section 49(10) read with rule 88B, since the amount available in the Electronic Cash Ledger from the due date till the date of its debit at the time of filing return is more than the GST payable, no interest is payable in the given case.

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Further, Miss Nitya is liable to pay the following amount of tax as under:

	CGST (₹)	SGST (₹)
Tax Liability	75,000	75,000
Balances in Electronic cash ledger in same major/minor head	40,000	80,000
Balance transferred from other major/minor head	35,000 (Note)	Nil
Amount payable in cash	**Nil**	**Nil**

Note – ₹ 35,000 shortfall amount has been transferred from cash ledger balance available in Major Head IGST. Since there is no restriction in intra-head or inter-head transfer of available balance in cash ledger as per the relevant provisions, it is upon the taxpayer to decide from which account the shortfall has to be made good.

2. I. Intra-State supply of goods by A to B

	₹
Value charged for supply of goods	50,000
Add: CGST @ 9%	4,500
Add: SGST @ 9%	4,500
Total price charged by A from B	59,000

A does not have credit of CGST, SGST or IGST. Thus, the entire CGST (₹ 4,500) & SGST (₹ 4,500) charged will be paid in cash by A, which shall be allocated to Central Government and Karnataka Government in specified manner.

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II. Inter-State supply of goods by B to X Ltd. – Margin @ 10%

	₹
Value charged for supply of goods (₹ 50,000 x 110%)	55,000
Add: IGST @ 18%	9,900
Total price charged by B from X Ltd.	64,900

Computation of IGST payable by B to Central Government in cash

	₹
IGST payable	9,900
Less: Credit of CGST	4,500
Less: Credit of SGST	4,500
IGST payable to Central Government in cash	900

Credit of CGST and SGST can be used to pay IGST provided the SGST credit shall be utilised towards payment of IGST only where the balance of CGST credit is not available for payment of IGST. [Section 49(5) of the CGST Act, 2017].

III. Intra-State supply of goods by X Ltd. to Y

	₹
Value charged for supply of goods (₹ 55,000 x 110%)	60,500
Add: CGST @ 9%	5,445
Add: SGST @ 9%	5,445
Total price charged by X Ltd. from Y	71,390

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Computation of CGST and SGST payable by X Ltd in cash

	₹
CGST payable	5,445
Less: Credit of IGST	5,445
CGST payable to Central Government in cash	Nil
SGST payable	5,445
Less: Available Credit of IGST [₹ 9,900 – ₹ 5,445]	4,455
SGST payable to Telangana Government in cash	990

Credit of IGST shall first be utilised towards payment of IGST and the amount remaining, if any, may be utilised towards the payment of CGST and SGST/UTGST, as the case may be, in any order and in any proportion. Here, there is no payment to be made with respect to IGST so its credit balance will be directly utilised for making payment of CGST or SGST, in any order. Central Government will transfer IGST of ₹ 4,455 utilised in the payment of SGST to Telangana Government.

3. No, as per section 49(4) the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'.

As per section 2(82), output tax means, the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis. Therefore, input tax credit cannot be used for payment of interest, penalty or GST payment under reverse charge.

4. As per provisions of section 49(10) read with rule 87(13) of CGST Rules, 2017, "A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount **available in the electronic cash ledger** under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09".

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It is important to note that only amounts available under Electronic Cash Ledger can be transferred to the respective heads using Form GST PMT-09 and not otherwise.

Accordingly, contention of the Accountant Mr. X of M/s PPC & Co., is not valid for transfer of ₹ 42,500 from head IGST to respective CGST & SGST in Electronic Credit Ledger.

5. Proviso to section 50 lays down that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period **furnished after the due date in accordance with the provisions of section 39**, except where such return is furnished after commencement of any proceedings under section 73 or section 74 or section 74A in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.

In the given scenario, ABC Ltd. has filed its return belatedly and as per the above provisions, interest is payable on the tax component paid through Electronic Cash Ledger only. A point relevant to note here is that tax payable on reverse charge basis also carries interest for the period of delay in remittance of tax and input tax credit cannot be used to pay the same (i.e. tax payable under reverse charge has to be paid in cash).

Accordingly, interest under section 50 payable for the tax paid through Electronic Cash Ledger is computed as below:

IGST: 218,000 *18%*60/365 = 6,450

CGST: 262,000*18%*60/365 = 7,752

SGST: 262,000*18%*60/365 = 7,752

Further, if entire tax payable for January is paid through Electronic Credit ledger, except for the taxes to be paid under reverse charge basis, then interest under section 50 is applicable only on the remittance of tax under reverse charge basis and not for tax payable on forward charge basis. Interest payable is given as below:

IGST: 18,000 * 18% * 60/365 = 533 (rounded off)

CGST: 32,000 * 18% * 60/365 = 947 (rounded off)

SGST: 32,000 * 18% * 60/365 = 947 (rounded off)

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6. Payment of taxes is governed as per the provisions laid in section 49 read with section 49A and 49B of CGST Act, 2017 along with rule 88A of CGST Rules, 2017

Also, section 49(8) of CGST Act, stipulates that every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:

(a) self-assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of the current tax period;

(c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74 or section 74A;"

As per the above provisions, self-assessed tax of previous tax period i.e. February shall be paid first and later self-assessed tax of current tax period i.e. July shall be paid.

Payment of taxes under forward charge

Particulars	IGST	CGST	SGST
Balance in electronic credit ledger for utilization	26,52,000	18,32,000	18,32,000
Output tax payable for July	14,75,000	28,34,000	28,34,000
Less: Utilization of input tax credit:			
a. IGST **[Refer Note1]**	14,75,000	5,88,500	5,88,500
b. CGST	0	18,32,000	0
c. SGST	0	0	18,32,000
Amount payable through electronic cash ledger	Nil	4,13,500	4,13,500

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Total amount payable through electronic cash ledger

Particulars	IGST	CGST	SGST
Amount payable through Electronic cash ledger under forward charge	Nil	4,13,500	4,13,500
Amount payable through electronic cash ledger under reverse charge [Refer Note-2]	36,000	1,44,000	1,44,000
Total amount payable through electronic cash ledger	36,000	5,57,500	557,500

Notes:-

1 After utilization of IGST credit towards output IGST liability, balance has been utilized equally amongst CGST & SGST

2 Input tax credit cannot be utilized for discharging tax liability under reverse charge basis, thus payable vide electronic cash ledger.

Since, M/s Zinc & Co., have defaulted in payment of taxes for the month of February and the same has been paid during July, interest is payable as per the provisions of section 50 of the CGST Act, 2017

7. Rule 86 of CGST Rules provides that where a registered person has claimed refund of any unutilized amount (i.e. ITC) from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

If the refund so filed is rejected, either fully or partly, the amount so debited to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer.

In the present case, M/s Neptune & Co., have made zero-rated supply without payment of IGST for ₹ 10,14,000 and the refund for the same has been rejected by the proper officer. Therefore, contention of Mr. A is not sustainable as debit entry in the Electronic Credit Ledger has not been made as per sub-rule (3) of Rule 86 towards "refund of any unutilized amount".

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8. As per section 51 read with section 20 of the IGST Act, 2017 and *Notification No. 50/2018 CT 13.09.2018,* following persons are required to deduct CGST @ 1% [Effective tax 2% (1% CGST + 1% SGST/UTGST)] or IGST @ 2% from the payment made/credited to the supplier (deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000:

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 51% or more participation by way of equity or control, to carry out any function; or

(e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or

(f) Public sector undertakings.

Further, for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding CGST, SGST/UTGST, IGST and GST Compensation Cess indicated in the invoice.

Since in the given case, Manihaar Enterprises is supplying goods and services exclusively to Government departments, agencies etc. and persons notified under section 51, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

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S. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST (₹)	SGST (₹)	IGST (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata (Note-1)	2,60,000	15,000	--		
(ii)	Supply of car rental services to Municipal Corporation of Delhi (Note-2)	2,95,000	20,000	--		
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand (Note-3)	5,90,000	25,000			500
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860 (Note-4)	6,49,000	50,000	500	500	
(v)	Interior decoration of Andhra Bhawan located in Delhi (Note-5)	12,39,000	12,39,000	--		
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office (Note-6)	9,72,000		--		
(vii)	Maintenance of street lights in Municipal area of East Delhi (Note-7)	3,50,000	3,50,000	--		

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Notes:

1. Being an inter-State supply of goods, supply of stationery to Fisheries Department, Kolkata is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

   = ₹ 2,60,000 × 100 / 118

   = ₹ 2,20,339 (rounded off)

   Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

2. Being an intra-State supply of services, supply of car rental services to Municipal Corporation of Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

   = ₹ 2,95,000 × 100 / 118

   = ₹ 2,50,000

   Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

3. Being an inter-State supply of goods, supply of heavy machinery to PSU in Uttarakhand is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

   = ₹ 5,90,000× 100 / 118

   = ₹ 5,00,000

   Since the total value of supply under the contract exceeds ₹ 2,50,000, PSU in Uttarakhand is required to deduct tax @ 2% of ₹ 25,000, i.e. ₹ 500.

4. Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

   = ₹ 6,49,000× 100 / 118

   = ₹ 5,50,000

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Since the total value of supply under the contract exceeds ₹ 2,50,000, National Housing Bank, Delhi is required to deduct tax @ 2% (1% CGST + 1% SGST) of ₹ 50,000, i.e. ₹ 1,000.

5. Proviso to section 51(1) of the CGST Act, 2017 stipulates that no tax shall be deducted 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.

   Section 12(3) of the IGST Act, 2017, *inter alia,* stipulates that the place of supply of services, directly in relation to an immovable property, including services provided by interior decorators, shall be the location at which the immovable property is located or intended to be located. Accordingly, the place of supply of the interior decoration of Andhra Bhawan shall be Delhi.

   Since the location of the supplier (Manihar Enterprises) and the place of supply is Delhi and the State of registration of the recipient i.e. Government of Andhra Pradesh is Andhra Pradesh, no tax is liable to be deducted in the given case.

6. If the contract is made for both taxable supply and exempted supply, tax shall be deducted if the total value of taxable supply in the contract exceeds ₹ 2,50,000. Being an intra-State supply of goods, supply of printed post cards to a West Delhi Post Office is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

   = ₹ 2,72,000× 100 / 118

   = ₹ 2,30,509 (rounded off)

   Since the total value of taxable supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

7. Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to, *inter alia*, local authority by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempt from GST. Thus, maintenance of street lights (an activity in relation to a function entrusted to a Municipality)

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in Municipal area of East Delhi involving replacement of defunct lights and other spares where the value of supply of goods is not more than 25% of the value of composite supply is a service exempt from GST. Since tax is liable to be deducted from the payment made or credited to the supplier of taxable goods or services or both, no tax is required to be deducted in the given case as the supply is exempt.

The answer will remain unchanged even if Manihar Enterprises is registered under composition scheme. Tax will be deducted in all cases where it is required to be deducted under section 51 of the CGST Act, 2017 including the scenarios when the supplier is registered under composition scheme.

9. As per section 51 of the CGST Act, 2017, Government departments, agencies, local authority and notified persons are required to deduct tax @ 2% (1% CGST + 1% SGST/UTGST) or IGST @ 2% from payment made to the supplier of taxable goods and/ or services where the total value of such supply [excluding tax and compensation cess indicated in the invoice], under a contract, exceeds ₹ 2,50,000.

Since in the given case, Yash Shoppe is supplying goods and services exclusively to Government departments, agencies, local authority and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value due to be received [excluding GST] (₹)	Tax to be deducted		
			CGST @ 1% (₹)	SGST @ 1% (₹)	IGST @ 2% (₹)
(1)	Supply of computer stationery to PSU in Mumbai [Since the total value of supply under the contract [excluding IGST (being	2,42,857 [2,72,000 × 100 / 112]	--	--	

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	inter-State supply)] does not exceed ₹ 2,50,000, tax is not required to be deducted.]				
(2)	Supply of air conditioner to GST Department in Delhi [Since the total value of supply under the contract [excluding IGST (being inter-State supply)] exceeds ₹ 2,50,000, tax is required to be deducted.]	2,55,000	--		5,100
(3)	Supply of a generator renting service to Municipal Corporation of Jaipur [Since the total value of supply under the contract [excluding CGST and SGST (being intra-State supply)] exceeds ₹ 2,50,000, tax is required to be deducted.]	3,12,500 [3,50,000× 100 / 112]	3,125	3,125	
	Total		**3,125**	**3,125**	**5,100**

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CHAPTER 12

ELECTRONIC COMMERCE TRANSACTIONS

The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this chapter, you will be able to –

- comprehend the meaning of electronic commerce and electronic commerce operator
- explain the taxability of electronic commerce transactions
- describe and analyse the provisions relating to the tax collected at source
- understand the registration requirements of electronic commerce operator and of the persons supplying goods and/or services through electronic commerce operator

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1. INTRODUCTION

Electronic commerce (e-commerce) has taken a center stage in India's business landscape in recent years revolutionizing the way commerce is conducted, by redefining business strategies and conventional market boundaries. It is the backbone of the modern digital economy and has transformed the way businesses and consumers interact. It enables the seamless exchange of goods, services and information through the internet, breaking geographical barriers and creating global marketplaces.

With the convenience of shopping anytime and anywhere, coupled with secure digital payment systems, e-commerce has redefined customer experiences and expanded opportunities for businesses of all sizes. Companies like Flipkart, Amazon and Myntra have become household names while small businesses and startups leverage platforms like Shopify and Meesho to reach a broader audience.

As e-commerce continues to expand its reach and influence, both businesses and consumers are utilizing advanced channels and technologies to streamline transactions and enhance the shopping experience. India proudly stands as one of the largest and most dynamic e-commerce markets globally, driving innovation and setting new benchmarks for growth.

2. RELEVANT DEFINITIONS

- **Agent:** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

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- **Aggregate turnover:** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess [Section 2(6)].

- **Inward supply:** in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration [Section 2(67)].

- **Outward supply:** in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business [Section 2(83)].

- **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].

- **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

  However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims [Section 2(105)].

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3. TAXABILITY OF ELECTRONIC COMMERCE TRANSACTIONS UNDER GST

	STATUTORY PROVISIONS
Section 2(44) of the CGST Act	***Definition of electronic commerce***
	Electronic commerce means the supply of goods or services or both, including digital products over digital or electronic network.
Section 2(45) of the CGST Act	***Definition of electronic commerce operator***
	Electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
Section 9(5) of the CGST Act	***Levy and collection (CGST)***
	The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: *Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:* *Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory,*

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	such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.
Section 5(5) of the IGST Act, 2017	***Levy and collection of tax (IGST)***
	The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: *Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:* *Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.*
Section 52 of the CGST Act	***Collection of tax at source***
Sub-section	***Particulars***
(1)	*Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the*

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	consideration with respect to such supplies is to be collected by the operator.
Explanation	*For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.*
(2)	*The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.*
(3)	*The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.*
(4)	*Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month:* *Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:* *Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.*

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(5)	*Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year* *Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein:* *Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.*
(6)	*If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:* *Provided that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.*
(7)	*The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.*

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(12)	*Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to —*	
	(a)	*supplies of goods or services or both effected through such operator during any period; or*
	(b)	*stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers,*
	as may be specified in the notice.	
(13)	*Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.*	
(14)	*Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.*	
(15)	*The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement:* *Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement.*	
Explanation	*For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.*	

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Chapter VIII: Returns of the CGST Rules	
Rule 67	***Form and manner of submission of statement of supplies through an e-commerce operator***
(1)	*Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in FORM GSTR-8 electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.*
(2)	*The details of tax collected at source under section 52(1) furnished by the ECO shall be made available electronically to each of the registered suppliers on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.*
Rule 78	***Matching of details furnished by the e-commerce operator with the details furnished by the supplier***
	The following details relating to the supplies made through an e-commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1, as amended in FORM GSTR-1A, if any, *(a) State of place of supply; and* *(b) net taxable value.* *Provided that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above-mentioned details shall be extended accordingly.* *Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.*

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ANALYSIS

(i) Meaning of electronic commerce

In simple words, electronic commerce or e-commerce, means buying and selling the goods or services over internet or computer mediated network. As per the definition provided under section 2(44), **electronic commerce** means the supply of goods and/or services, including digital products over digital or electronic network.

It includes trading through online platforms, digital marketplaces, online travel agencies and any other means of electronic communication. The definition includes supply of both goods and services which implies that the concept of e-commerce covers the transactions involving the sale of tangible goods as well as the provision of intangible services. The definition specifically includes digital products, implying that supplies of downloadable or electronically delivered products, such as e-books, software, digital music, online courses and digital videos, are also considered part of e-commerce. The term **"electronic network"** encompasses various digital platforms, such as websites, mobile applications and any other electronic means used for buying or selling of goods and/or services. Thus, the definition has a broad scope and is intended to cover a wide range of online transactions and digital activities involving the buying and selling of goods and services.

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(ii) Meaning of electronic commerce operator

In simple words, electronic commerce operator (hereinafter referred as ECO), is a person who owns, operates or manages a digital platform/marketplace where supply of goods and/or services take place directly or indirectly. As per the definition provided under section 2(45), **electronic commerce operator** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

The platform could be in the form of a website, mobile application or any other electronic medium. ECO's role is to provide a digital platform where sellers/suppliers can list their products or services, and buyers/recipients can place orders/make purchases. The definition of ECO is wide enough to cover various types of e-commerce platforms, such as online marketplaces, online travel agencies, food delivery platforms, ride-hailing apps, and other digital platforms that facilitate transactions between sellers and buyers.

(iii) Various electronic commerce models

Before understanding the taxability of e-commerce transactions, we should first be conversant with the various business models employed by e-commerce industry to facilitate transactions between suppliers and recipients. These are as follows:

1. **Online Marketplace Model:** In the online marketplace model, an online centralised platform is provided connecting manufacturers/ retailers with potential customers. The platform itself does not own or stock the products or has the expertise to provide services being sought by the customers; instead it merely facilitates the transactions and may offer additional services such as payment processing, customer support and logistics. The actual supply of goods is done by the respective suppliers. The platform generates revenue by charging from the supplier the fees or commissions for using the marketplace and accessing its customer base. The commission is typically a percentage of each supply made by the supplier.

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(1) Amazon, Flipkart, Alibaba, Myntra, etc.

Similarly, suppliers of services provide services like cab services, food delivery services through these platforms.

(2) Uber, Ola, Zomato, Swiggy, etc.

2. **Direct Sales Model:** In the direct sales model, businesses sell their products or services directly to consumers through their own online stores or websites. Customers browse the company's website, select products/services, and complete the purchase directly with the supplier.

(3) Urban ladder, Biba, etc.

3. **Inventory Model:** In the inventory model, inventory of goods/services is owned by the ECO that it supplies to customers. The platform takes responsibility for warehousing, inventory management, and fulfillment of orders. This model is typical for traditional retailers who also have an online presence.

(4) Amazon, Flipkart, Snapdeal, etc.

Above e-commerce business models are not exhaustive, and many e-commerce businesses may adopt a combination of these models to suit their specific needs and industry dynamics. E-commerce industry is constantly evolving, and new innovative models may emerge over time.

Another way of classifying the e-commerce transactions is on the basis of supplier-recipient combination, for instance, Business-to-Consumer (B2C), Business-to-Business (B2B), Consumer-to-Consumer (C2C), Consumer to Business (C2B), Consumer to Government (C2G), Government to Consumer (G2C) and Business to Government (B2G).

(iv) Taxability of e-commerce transactions

E-commerce transactions for supply of goods or services or both are leviable to GST similar to other supply transactions unless otherwise specifically exempted from GST. However, the taxability mechanism for E-commerce transactions and compliances for the suppliers and ECOs have been

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separately carved out in the law. Following provisions merit consideration in this regard:

TCS to be collected by ECO: There are many e-commerce operators, like Amazon, Flipkart, Myntra, Meesho, etc. operating in India. These operators also display/ list on their portal products as well as services which are supplied by some other person to the consumer.

The goods or services belonging to other suppliers are also displayed on the portals of the ECOs and consumers buy such goods/services through these portals.

On placing the order for a particular product/ service by the consumer, the actual supplier supplies the selected product/services to the consumer. The collection of supply consideration for the product/services, handling of goods, etc. is undertaken by the ECOs depending upon the arrangement between the supplier and ECO – Online Marketplace Model. The ECO thereafter deducts its commission from the consideration for the goods or services collected by it and passes on the net consideration to the supplier.

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In such cases, where a supplier **supplies GOODS AND/OR SERVICES** through an ECO portal and the payment for that supply is collected by the ECO, the **Government has placed a responsibility on such ECO to collect an amount @ *0.5%* from such supplier.**

ECO shall pay the supplier the price of the product /services, less the amount calculated @ **0.5%**. The said amount will be calculated on the net value of the goods/ services supplied (i.e. after considering returns) through the portal of the ECO.

(5) Suppose a certain product is sold at ₹ 1,000/- through an ECO by a seller. The ECO would collect tax @ 0.5% of the net value of ₹ 1000/- i.e. ₹ 5/-.

Exceptions:

(1) Where a **suppler supplies through an ECO those SERVICES which are notified under section 9(5) of the CGST Act/ section 5(5) of the IGST Act** [hereinafter referred as notified services or services notified under section 9(5)], **the tax on such services is to be paid by the ECO as if he is the supplier liable to pay tax on the supply of such services.**

(2) Where a supplier supplies the goods or services or both on his own account through a web site hosted by him, there is no requirement to collect tax at source.

The provisions of section 9(5) of the CGST Act/ section 5(5) of the IGST Act have been discussed in detail in next heading.

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(v) Tax payable by the electronic commerce operator on notified services

(A) Notified Services

The Government may, on the recommendations of the GST Council, notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the **ECO** if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.

Notification No. 17/2017 CT (R) dated 28.06.2017/ Notification No. 14/2017 IT (R) dated 28.06.2017 as amended has notified the following categories of services **supplied through ECO** for this purpose:

A services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motorcycle, or any other motor vehicle except omnibus.

B services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying

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such service through electronic commerce operator is liable for registration under section 22(1).

C services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1).

D supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

E services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.

**The tax on services by way of transportation of passengers by an omnibus provided by a company through ECO is not payable by ECO. It will be payable by the company itself.

Meaning of various terms

(i) **Radio taxi:** means a taxi including a radio cab, by whatever name called, which is in two- way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).

(ii) **Maxi cab:** means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.

Motor cab: means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.

Motor car: means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motorcycle or invalid carriage.

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Omnibus: means any motor vehicle constructed or adapted to carry more than 6 persons excluding the driver.

(iii) Specified premises: mean premises providing hotel accommodation service having declared tariff of any unit of accommodation above ₹ 7,500 per unit per day or equivalent.

(iv) Company: means a company incorporated under the Companies Act 2013 or any previous company law.

(B) Provisions applicable to supplier liable for paying the tax applicable to ECO: Tax on notified services supplied through ECO shall be paid by the ECO. All the provisions of the CGST/IGST Act shall apply to such ECO as if he is the supplier liable for paying the tax in relation to the supply of such notified services. This implies that the invoice for notified services will be issued by the ECO only and not by suppliers.

(C) Person liable to pay tax on notified services

	Person liable to pay tax
If the ECO is located in taxable territory	ECO
If the ECO does not have physical presence in the taxable territory	Person representing the ECO for any purpose in the taxable territory
If the ECO has neither the physical presence nor any representative in the taxable territory	Person appointed by the ECO for the purpose of paying the tax

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(D) Taxability of the notified services: In terms of the provisions of section 9(5) of the CGST Act/section 5(5) of the IGST Act read with relevant notifications, taxability of the services notified under section 9(5)/section 5(5) will be as follows:

(I) In case where services by way of transportation of passengers or restaurant service [as mentioned in points A D and E above] are being provided: ECO is liable to pay tax on such services supplied through it in all the cases irrespective of the fact whether the person supplying such services through it is registered/ liable to registration under section 22 or not[1].

(II) In case where accommodation or housekeeping service [as mentioned in points B and C above] are being provided: ECO is liable to pay tax on such services supplied through it only when the person supplying such services through it is NOT liable to registration under section 22, i.e. the aggregate turnover of supplier of services does not exceed the threshold limit of **₹ 20 lakh** (**₹ 10 lakh** in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland).

However, where the person supplying such service through

[1] *Provisions relating to registration under e-commerce transactions are discussed subsequently in this chapter.*

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ECO is liable for registration under section 22(1), the provisions of section 9(5) of the CGST Act/ section 5(5) of the IGST Act will not be applicable on such services.

In such a case, supplier shall obtain the registration and pay the tax on such services. In that case, ECO will not be liable to pay tax on such services. Further, TCS provisions shall apply in such cases.

(6) Champak of Delhi avails the services of a carpenter online through an ECO – Hastkala.com. The carpenter is unregistered under GST since his turnover has not yet crossed the threshold limit. In this case, GST on the services availed by Champak shall be paid by Hastkala.com in terms of section 9(5) and TCS provisions will not apply.

(7) Sampat of Delhi avails the services of a carpenter – M/s Dhruvtara Enterprises - online through an ECO – Hathkala.com. M/s Dhruvtara Enterprises is registered under GST.

In this case, GST on the services availed by Sampat shall be paid by M/s Dhruvtara Enterprises since it is registered. In other words, provisions of section 9(5) will not be applicable. Further, TCS provisions will apply. Hathkala.com will collect TCS in this case.

(E) Manner of reporting of notified services in GSTR-3B: The ECO may, on notified services, including on restaurant service provided through ECO, pay GST, by furnishing the details in Form GSTR-3B[2], reporting them as **OUTWARD TAXABLE SUPPLIES**.

Payment of tax on notified services is not allowed through input tax credit of ECO. It has to be paid in cash only[3].

[2] *Provisions relating to GST return in Form GSTR-3B have been discussed in Chapter 13 – Returns in this Module of the Study Material.*

[3] *Circular No. 167/23/2021 GST dated 17.12.2021*

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(vi) Tax collected at source (TCS) by ECO [Section 52]

(A) What is TCS?

Every ECO (not being an agent) is required to collect an amount calculated at the rate not exceeding 0.5% (0.5% IGST or 0.25% CGST and 0.25% SGST, as the case may be), as notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such ECO. The amount so collected is called as Tax Collection at Source (hereinafter referred as TCS).

Provisions of TCS under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act. It may be noted that section 20 of the IGST Act provides that in case of tax collected at source, the operator shall collect tax at such rate not exceeding 2%, as may be notified on the recommendations of the Council *(*actual rate notified is 0.5% - discussed subsequently herein), of the net value of taxable supplies.

(B) Who is liable to collect TCS and from whom?

Every Electronic Commerce Operator (ECO), not being an agent, has been mandated to collect tax at source (TCS) on the net value of taxable supplies made through it by suppliers, where the ECO collects the consideration on behalf of the supplier for such supplies.

However, it is important to note here that practically, ECOs don't actually collect this amount from the suppliers; they simply retain the TCS amount and their commission from the consideration received by them for supply of supply of goods/services made by the suppliers, and pay the remaining amount to the suppliers.

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✪ ***A composition taxpayer[4] cannot make supplies of services through an ECO [Section 10(2)(d)]. However, a composition taxpayer can make supplies of goods through an ECO. As a corollary, TCS has to be collected only in respect of supplies of goods made by the composition taxpayer through an ECO. A special procedure is required to be followed by ECOs in respect of supplies of goods through them by composition taxpayers. This is outlined below.***

Special procedure to be followed by ECOs in respect of supplies of goods through them by composition taxpayers

A special procedure[5] has been laid down under section 148 to be followed by ECO through which composition supplier supplies goods under which the ECOs would be required to declare the supplies made by such composition dealers through them through GSTR-8 statement[6]. ECOs would also be mandated to ensure that no inter-State supply through them is allowed in respect of supplies made by the composition dealers by making necessary checks and validations on their system/platform since a composition supplier cannot make an inter-State outward supply.

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[4] *Provisions relating to composition taxpayer have been discussed in detail in Chapter 2 – Charge of GST in Module 1 of this Study Material.*

[5] *vide Notification No. 36/2023 CT dated 04.08.2023.*

[6] *GSTR-8 statement has been explained in detail subsequently in this chapter.*

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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.

(C) What is the rate of TCS notified?

Rate of TCS notified is 0.25% of the net value of intra-State taxable supplies (under the CGST Act, 2017 and the respective SGST Act / UTGST Act respectively) and 0.5% of the net value of inter-State taxable supplies (under the IGST Act, 2017).

(D) What is the value on which TCS is to be collected?

TCS is collected @ 0.5% on **net value of taxable supplies**. The **"net value of taxable supplies"** means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by ECO u/s 9(5), made during any month by all registered persons through such ECO reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Net Value of Taxable Supplies

It is important to note here that the value of net taxable supplies is calculated at **GSTIN level** on monthly basis. Further, the value of only

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TAXABLE SUPPLIES is to be taken into consideration. Moreover, an ECO is required to collect tax only on the **NET** value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) are to be adjusted from the aggregate value of taxable supplies made by each supplier. This is to adjust the return of goods made by the customers to ECOs which is a very common feature of said business.

Sometimes sales return are more than sales. However, negative amount cannot be declared. There will be no impact in next tax period also. In other words, if returns are more than the supplies made during any tax period, the same would be ignored in current as well as future tax period(s).

(8) If two suppliers "A" and "B" are making supplies through an ECO, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case.

NET VALUE OF TAXABLE SUPPLIES

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✪ ***Since TCS is to be collected on "net value of TAXABLE supplies" made through it, TCS is not required to be collected on EXEMPT supplies.***

✪ ***TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.***

✪ ***TCS is not liable to be collected on IMPORT OF GOODS OR SERVICES. Since import of goods would fall within the domain of the Customs Act, 1962, it is outside the purview of TCS. Further, TCS is not liable to be collected on import of services since the recipient is liable to pay tax on said supplies under the reverse charge mechanism.***

(9) Shiksha Book Depot is selling books through an ECO - Zamazon Ltd. Books are exempted/zero-tax goods. As per section 52(1), TCS is to be collected on "net value of **taxable** supplies" made through an ECO. When the supply itself is not taxable, the question of TCS does not arise. Thus, Zamazon Ltd. is not required to collect TCS on the sale of books.

(E) Which monthly statement is required to be furnished by an ECO? [Sub-sections (3), (4), (6) and (7) of section 52 read with rule 67]

(a) Form GSTR-8

An **ECO liable to collect TCS** shall furnish a monthly statement 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, amount of consideration collected by ECO pertaining to

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supplies made through ECO and the amount of TCS collected on such supplies.

CONTENTS OF GSTR- 8

Table 3	**Details of supplies attracting TCS**
Table 4	**Amendment to details of supplies attracting TCS in respect of earlier statement**
Table 5	**Details of Interest on account of late payment of TCS amount (Auto calculated on GST Portal)**
Tables 6 & 7	**Payment of Tax**

(b) Last date of filing statement and for deposit of TCS

The details in **GSTR-8** should be furnished on/before 10th day of the month succeeding the calendar month in which tax has been collected at source.

The due date of filing GSTR-8 may be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST for a class of taxable persons by way of a notification.

Further, the amount of tax collected by ECO (TCS amount) is also required to be deposited separately under the respective tax head (i.e. Central tax / State tax / Union Territory tax / Integrated tax) by 10th day of the month succeeding the calendar month in which TCS has been collected.

Due date for filing GSTR-8	**10th of next month**
Due date for payment	**10th of next month**

The ECO can file Form GSTR 8 only when full TCS liability has been discharged.

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(10) If the TCS has been collected in the month of July, the amount has to be remitted into the Government Treasury on or before 10th August.

(c) TCS details available to registered suppliers on common portal and claiming of TCS by suppliers

The details of TCS furnished by the ECO in GSTR-8 shall be made available electronically to each of the registered suppliers who supplied goods and/or services through ECO on the common portal after filing of GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

The amount of TCS shall be credited to the cash ledger of the said supplier who has supplied the goods/services through the ECO in the respective tax head in which TCS amount was deposited by ECO. The said credit can be used at the time of discharge of tax liability by the actual supplier.

If the supplier is not able to use the amount lying in the said cash ledger, the actual supplier may claim refund of the excess balance lying in his electronic cash ledger in accordance with the provisions contained in section 54(1)[7].

(d) Rectification of errors/omissions in GSTR-8

If after submission of GSTR-8, the ECO discovers any discrepancy therein on his own - not being the result of any scrutiny, audit, inspection or enforcement proceedings - he should rectify such discrepancy in GSTR-8 to be filed for the month during which such discrepancy is noticed, subject to payment of interest under section 50.

Maximum time limit within which such amendments are permissible is earlier of the following dates:

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[7] *The provisions relating to refund of excess balance in electronic cash ledger has been discussed in detail in Chapter 15 – Refunds under GST in Module 3 of this Study Material.*

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- 30th day of November following the end of the financial year to which such details pertain or
- Date of filing of the relevant annual statement [GSTR-9B].

(e) Late fees for delay in filing GSTR-8 [Section 47]

Following late fee is applicable for delay in furnishing of TCS statement in Form GSTR-8:

(f) Whether Nil GSTR-8 needs to be filed in case if there is no TCS liability in a tax period?

Filing of GSTR-8 for every tax period is **not mandatory**. ECO is required to file Form GSTR-8 for a particular tax period, only when goods are supplied through such ECO and they have collected any TCS during the said tax period or they have to amend any details declared in earlier return on their own or on account of any details rejected by supplier.

If ECO does not have any TCS liability in any particular tax period and also there is no transaction that has been auto-populated in Table 4 of GSTR-8 of that particular tax period due to rejection of TCS details by the supplier in TDS/TCS credit received table, filing of Form GSTR-8 will not be mandatory for the said tax period. Otherwise, it is mandatory to file Form GSTR-8 for a particular tax

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period in which TCS has been collected or details are auto populated in Table 4[8] [9].

(g) Maximum time-limit for furnishing Form GSTR-8

Maximum time-limit upto which ECO can furnish Form GSTR-8 is **3 years** from the relevant due date of filing such statement. This time limit can be extended by the Government for an ECO or a class of ECOs subject to such conditions and restrictions as may be specified therein.

(F) Which annual statement is required to be furnished by an ECO?

An ECO required to collect TCS is required to file an annual statement referred to in section 52(5) in **Form GSTR-9B** (yet to be notified). The statement for a financial year needs to be filed by **31st December of the next financial year**.

The due date of filing annual statement may be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST for a class of taxable persons by way of a notification.

(G) Interest on non-collection of TCS [Section 52(6)]

As per section 52(6), interest is applicable on omission as well in case of incorrect particulars noticed. In case of non-collection of TCS, interest is applicable since it is a case of omission. Further penalty under section 122(vi)[10] would also be leviable.

(H) At what time should the ECO collect TCS?

TCS is to be collected once supply has been made through the ECO and where the business model is that the consideration is to be collected by the ECO, irrespective of the actual collection of the consideration.

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[8] *It is not necessary to file Form GSTR-8 for the tax period in which there are only rejected documents in table 4 and there is no TCS liability.*

[9] *Based on the FAQs on Form GSTR-8 given on www.gst.gov.in*

[10] *Penal provisions have been discussed in detail in Chapter 21 – Offences and Penalties and Ethical aspects of GST in Module 3 of this Study Material.*

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(11) If the supply has taken place through the ECO on 30th October, but the consideration for the same has been collected in the month of November, then TCS for such supply has to be collected and reported in the statement for the month of October.

(I) Authority not below the rank of Deputy Commissioner may serve a notice requiring ECO to furnish the details of their supplies of goods or services or both as well as stock of goods held by the suppliers

The power conferred on the ECO to collect TCS, is without prejudice to other modes of recovery from ECO. The powers of ECO is restricted only to the extent of TCS under circumstances specified therein and nothing more.

An officer not below the rank of Deputy Commissioner can issue notice to an ECO, asking him to furnish the details relating to volume of the goods/ services supplied, stock of goods lying in warehouses/ godowns etc. The ECO is required to furnish such details within 15 working days.

In case an ECO fails to furnish the information, besides being liable for penal action under section 122, it shall also be liable for general penalty up to ₹ 25,000.

Payment of TCS by ECO is not allowed through input tax credit of ECO. This implies that TCS has to be paid in cash only.

ILLUSTRATION 1

Nishpaksh Associates is a supplier selling its own products through a web site hosted by it. Does it fall under the definition of an "electronic commerce operator"? Whether Nishpaksh Associates is required to collect TCS on such supplies?

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ANSWER

As per the definitions in sections 2(44) and 2(45), Nishpaksh Associates will come under the definition of an "electronic commerce operator".

However, according to section 52, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect TCS as per the provisions of this section. These transactions will be liable to GST at the prevailing rates.

Thus, Nishpaksh Associates is not required to collect TCS on the supplies made by it through its own website.

ILLUSTRATION 2

If Sitcom Technologies Ltd. purchases goods from different vendors and thereafter sells them on its own website under its own billing. Is TCS required to be collected on such supplies?

ANSWER

No. According to section 52, TCS is required to be collected on the net value of taxable supplies made through ECO by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - Sitcom Technologies Ltd. purchases the goods from the vendors, and thereafter those goods are sold through its own website.

For the first transaction, GST is leviable, and will need to be paid to vendor, on which credit is available to Sitcom Technologies Ltd. The second transaction is a supply on own account of Sitcom Technologies Ltd., and not by other suppliers and there is no requirement to collect TCS. The transaction will attract GST at the prevailing rates.

(vii) Clarification on service supplied by restaurants through ECOs

As seen earlier, supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises is a notified service for the purposes of section 9(5). *Circular No. 167/23/2021 GST dated 17.12.2021* has clarified the following issues with regard to said service:

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(i) ECOs not to collect TCS in respect of restaurant services so notified

ECOs will not be required to collect TCS and furnish Form GSTR-8 in respect of restaurant services since it pays tax on such services in terms of section 9(5).

(ii) ECOs not required to take separate registration for paying tax on restaurant service supplied through them

As ECOs are already registered in accordance with rule 8 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5)[11].

(iii) ECO to pay tax on restaurant services supplied through them by an unregistered person

ECOs will be liable to pay GST on any restaurant service supplied through them **including services supplied by an unregistered person**.

(iv) Supply of restaurant services to be included in aggregate turnover of person supplying restaurant services through ECO

The aggregate turnover of person supplying restaurant service through ECOs shall be computed in accordance with definition of aggregate turnover under section 2(6) and shall include the aggregate value of supplies made by the restaurant through ECOs.

Accordingly, for threshold consideration or any other purpose in the CGST Act, the person providing restaurant service through ECO shall account for such services in his aggregate turnover.

[11] *Separate registration apart from regular registration is only required in case where ECO is liable to collect TCS under section 52. Registration requirements of ECOs have been discussed subsequently in this chapter.*

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(v) Restaurant services provided through ECO not to be considered as inward supply for ECOs

ECOs are not the recipient of restaurant service supplied through them. Since these are not input services to ECO, these are not to be reported as inward supply (liable to reverse charge) in Form GSTR-3B. Indeed, they are **reported as Outward Taxable Supplies in GSTR-3B**.

(vi) GST to be paid by the supplier on services not notified under section 9(5) but supplied through ECO

ECO is required to pay GST on services notified under section 9(5), besides the services/other supplies made on his own account.

On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to collect TCS on such supplies.

Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

(vii) ECO to raise invoice in respect of restaurant service supplied through ECO

The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

(viii) Billing in case of 'restaurant service' and goods/services other than restaurant service being sold by a restaurant to a customer under the same order

There can a situation where 'restaurant service' and goods or services other than restaurant service are sold by a restaurant to a customer under the same order. The question arises as to who shall be liable for raising invoices in such cases.

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Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the CGST Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.

(ix) Reversal of proportionate ITC on input goods and services not required by ECO

ECOs provide their own services as an electronic platform and an intermediary for which it would acquire inputs/input services on which ECOs avail input tax credit (ITC).

The ECO charges commission/fee etc. for the services it provides. The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant).

The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before.

Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5). However, it may also be noted that on restaurant service so notified, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO). ***This principle also applies to the supplies made in respect of other services specified under section 9(5).***

Thus, it is clarified that ECO, who is liable to pay tax under section 9(5) on notified services, is not required to reverse the ITC on his

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inputs and input services proportionately under section 17(1)/17(2) to the extent of supplies made under section 9(5).

It is further clarified that ECO will be required to pay the full tax liability on account of supplies under section 9(5) in cash, i.e. only through electronic cash ledger. The credit availed by him in relation to the inputs and input services used to facilitate such supplies cannot be used for discharge of such tax liability under section 9(5).

- ***ECO liable to pay tax under section 9(5) for specified services.***
- ***NO REVERSAL of ITC on inputs & input services used to facilitate such supplies.***
- ***Full tax liability under section 9(5) to be paid in CASH.***

However, such credit can be utilized by him for discharge of tax liability in respect of supply of services on his own account[12].

(vii) Clarification on TCS liability in case of multiple ECOs in one transaction

In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO.

This ECO:

- collects the consideration from the buyer,
- deducts the TCS under section 52,
- credits the deducted TCS amount to the GST cash ledger of the seller and
- passes on the balance of the consideration to the seller after deducting their service charges.

[12] *Circular No. 167/23/2021 GST dated 17.12.2021 read with* ***Circular No. 240/34/2024 GST dated 31.12.2024***

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In the case of the ONDC Network (Open Network for Digital Commerce) or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO. In this context, clarity has been sought as to which ECO should deduct TCS and make other compliances under section 52 in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per section 2(45).

CBIC has clarified following issues in this regard:

Issue 1: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances under section 52 including collection of TCS?

Clarification: In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the **supplier-side ECO himself is not the supplier of the said goods or services**, the compliances under section 52, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.

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(12) Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, as applicable and pay the same to the Government in accordance with section 52 and also make other compliances under section 52.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 with respect to this particular supply.

Issue 2: In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the **Supplier-side ECO is himself the supplier of the said supply,** who is liable for compliances under section 52 including collection of TCS?

Clarification: In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.

(13) Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier [who is itself an ECO as per the definition in Sec 2(45)] In this scenario, the Buyer-side ECO will also be required to collect TCS, as applicable, pay the same to the Government in accordance with section 52 and also make other compliances under section 52.

[Circular No. 194/06/2023 GST dated 17.07.2023]

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4. REGISTRATION REQUIREMENTS

	STATUTORY PROVISIONS
Section 22 (Relevant Extract)	***Persons liable for registration***
Sub-section	***Particulars***
(1)	*Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.* *Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.* *Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified.* *Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.* *Explanation—For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by*

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	way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.
Section 24 (Relevant Extract)	***Compulsory registration in certain cases***
Clause	***Particulars***
	Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,-
(iv)	*persons who are required to pay tax under sub-section (5) of section 9*
(ix)	*persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52*
(x)	*every electronic commerce operator who is required to collect tax at source under section 52*

Chapter III – Registration of the CGST Rules	
Rule 12	***Grant of registration to persons required to deduct tax at source or to collect tax at source***
(1)	*Any person required to deduct tax in accordance with the provisions of section 51 or a person required to collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed or verified through electronic verification code, in FORM GST REG-07 for the grant of registration through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.*
(1A)	*A person applying for registration to deduct or collect tax in accordance with the provisions of section 51, or, as the case*

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	*maybe, section 52, in a State or Union territory where he does not have a physical presence, shall mention the name of the State or Union territory in **PART A** of the application in FORM GST REG-07 and mention the name of the State or Union territory in **PART B** thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in **PART A**.*
(2)	*The proper officer may grant registration after due verification and issue a certificate of registration in FORM GST REG-06 within a period of three working days from the date of submission of the application.*
(3)	*Where, on a request made in writing by a person to whom a registration has been granted under sub-rule (2) or upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person electronically in FORM GST REG-08:* *Provided that the proper officer shall follow the procedure as provided in rule 22 for the cancellation of registration.*

ANALYSIS

(i) Registration requirements of ECO

Every ECO who is required to collect TCS under section 52 as well as an ECO who is required to pay tax under section 9(5) are required to obtain registration compulsorily under section 24 irrespective of the quantum of their aggregate turnover.

Further, following special procedure has been laid down for registration of ECOs liable to collect TCS:

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Special provisions for grant of registration in case of persons required to collect TCS under section 52 [Rule 12]

An ECO has to obtain separate registration for TCS irrespective of the fact whether ECO is already registered under GST as a supplier or otherwise and has GSTIN. Application for registration has to be submitted by such persons in a different prescribed form at GST Common Portal. They would be granted registration within **3 working days** from the date of submission of application after due verification.

Sometimes, an ECO is required to collect tax in a State/UT where it does not have physical presence since suppliers listed on their e-commerce platform are located in said State/UT.

However, registration for TCS is required in each such State / UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In such case, in **Part-A** of the prescribed registration form, State/UT for which registration is required needs to be mentioned.

However, in **Part-B** of the registration form, the ECO may declare the Head Office as its place of business for obtaining registration in that State / UT where it does not have physical presence.

Registration will be cancelled if proper officer is satisfied that such person is no longer liable to collect tax at source. Cancellation of registration will be communicated to such person electronically in prescribed form. Proper Officer shall follow the procedure laid down for cancellation of registration prescribed under this Act and rules therein.

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(ii) Registration requirements of supplier making supplies of goods or services through ECO

(A) **Persons making supplies of GOODS through an ECO who is required to collect tax at source under section 52:** are required to obtain **REGISTRATION MANDATORILY** as per section 24[13].

However, unregistered persons can make **supply of goods** through ECOs subject to specified conditions. They would be required to declare their PAN and principal place of business so that it can be verified from the PAN that the turnover is less than the threshold limit.

The details of these supplies made by the unregistered persons through their PAN will be given in the GSTR 8 filed by the ECOs. In cases where the total supply approaches the threshold limit, it would be flagged to the concerned supplier to take registration and to officers for information. Further, the suppliers would not be required to pay any tax upto supplies of applicable threshold limits and ECOs would not collect TCS till the suppliers cross the threshold limit.

Accordingly, the persons making supplies of goods through an ECO who is required to collect TCS under section 52 and having an aggregate turnover in the preceding financial year and in the current financial year not exceeding the threshold limit in accordance with the provisions of section 22(1), are exempted from obtaining registration, subject to the following conditions, namely:

(i) such persons shall not make any inter-State supply of goods;

(ii) such persons shall not make supply of goods through ECO in more than one State/Union territory;

[13] *Provisions of section 9(5) also do not apply in case of supply of goods through ECO.*

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(iii) such persons shall be required to have a PAN issued under the Income-tax Act, 1961;

(iv) such persons shall, before making any supply of goods through ECO, declare on the common portal:

a. their PAN

b. address of their place of business and

c. State/UT in which such persons seek to make such supply,

which shall be subjected to validation on the common portal;

(v) such persons have been granted an enrolment number on the common portal on successful validation of the PAN declared above;

(vi) such persons shall not be granted more than one enrolment number in a State/UT;

(vii) no supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and

(viii) where such persons are subsequently granted registration under section 25, the enrolment number shall cease to be valid from the effective date of registration[14].

Special procedure to be followed by ECO through which unregistered persons supply goods

A special procedure has been laid down under section 148 to be followed by ECO through which above unregistered persons supply goods[15]. 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.

[14] *Notification No. 34/2023 CT dated 31.07.2023*
[15] *Notification No. 37/2023 CT dated 04.08.2023*

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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.

(B) Persons making supplies of SERVICES, other than services specified under section 9(5) through an ECO who is required to collect TCS under section 52: are required to obtain **REGISTRATION MANDATORILY** as per section 24.

However, unregistered persons having an aggregate turnover (to be computed on all India basis) not exceeding an amount of **₹ 20 lakh (₹ 10 lakh** in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland), in a financial year can make **supply of services** (other than notified services) through ECOs subject to specified conditions.

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Thus, the **THRESHOLD LIMIT OF ₹ 20 LAKH OR ₹ 10 LAKH IS APPLICABLE** in case of person supplying services other than those notified under section 9(5) through an ECO otherwise liable to collect TCS.

Since such suppliers are not liable for registration, ECOs are not required to collect TCS on supply of services being made by such suppliers through their portal[16]..

(14) Sudhakar Salon Services is engaged in providing salon services through an electronic commerce platform owned by Zykom Technologies Ltd.

Since Sudhakar Salon Services is supplying services other than notified services through the e-commerce platform owned by Zykom Technologies Ltd., it is exempted from obtaining compulsory registration since its aggregate turnover has not yet crossed the threshold limit for registration.

Consequently, it is unregistered under GST. Thus, Zykom Technologies Ltd. is not required to collect TCS on supply of services being made by Sudhakar Salon Services through its portal.

(C) Persons making supplies of SERVICES notified under section 9(5) through an ECO[17]: Such persons will be entitled for threshold exemption for registration of **₹ 20 lakh (₹ 10 lakh** in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland).

[16] *Notification No. 65/2017 CT dated 15.11.2017*

[17] *As per the provisions of section 52, such ECO will not be liable to collect TCS.*

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LET US RECAPITULATE

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TCS provisions under section 52

RATE OF TCS

NET VALUE OF TAXABLE SUPPLIES

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TEST YOUR KNOWLEDGE

1. *Starkart Limited owns and operates a web portal in the name of "Starkart" and is registered with the jurisdictional GST authorities in Delhi as an electronic commerce operator and is liable to collect tax at source under section 52. Starkart provides listing service to various sellers for selling the goods to ultimate customers. Besides this, Starkart also sells its own products through the same web portal.*

   For the listing services provided to sellers, Starkart charges a listing fee at the rate of 10% of turnover of goods sold by the seller in a particular month. Such listing fee is recovered from the seller irrespective of any return of goods sold through Starkart. The customers can choose from wide range of goods listed on the web portal and place an online order for goods.

   The payment is made by the customers through the payment gateway in online mode only. At the time of monthly settlement, Starkart makes the payment to the sellers after adjusting the tax collection at source at the applicable rates.

   The invoice for goods sold on Starkart is issued by the seller in the name of customers and tax is charged on the basis of location of seller and customer. The goods are shipped directly by the seller to the customer and there is no responsibility of shipping the goods on Starkart for such third-party sellers.

   In case of return of goods by the customer, the shipping is arranged by Starkart. It charges a fee equivalent to 20% of the value of goods returned as cancellation charges and refunds the balance amount to the customer.

   Further, 10% of the value of goods returned is collected from the seller by Starkart as handling charges for return of goods.

   In the month of January, Pulkit, a resident of Rajasthan, purchased following goods from Starkart:

   a. *Laptop having a value of ₹ 50,000 and a printer having a value of ₹ 10,000. Both the products are sold by Infocom Limited, a seller listed on Starkart and registered under GST in the State of Uttar Pradesh.*

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b. Mobile phone having a value of ₹ 30,000 sold by Starkart in its own capacity.

c. CCTV camera system having a value of ₹ 1,00,000 sold by Secure World, listed on Starkart and registered under GST in the State of Gujarat.

All the amounts given above are exclusive of GST, wherever applicable.

The opening balance of input tax credit for the relevant tax period for Starkart, Infocom Limited and Secure World is nil. Further, there is no other inward or outward supply transaction for Starkart, Infocom Limited and Secure World in January apart from the aforementioned transactions. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

GST is applicable on all inward and outward supplies at the following rates unless otherwise specified:

CGST - 9%, SGST - 9%, IGST - 18%

Compute the net tax liability (including amount collected as TCS) of Starkart Limited and net GST payable in cash (after set-off of credits, if any) of Infocom Limited and Secure World, for the month of January.

2. Whether the rate of tax of 0.5% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?

3. Is every e-commerce operator required to collect tax on behalf of actual supplier?

4. State whether the provisions pertaining to tax collected at source under section 52, will be applicable in below mentioned scenarios -

(a) Fitan sells watch on its own through its own website

(b) ABC limited who is dealer of Fitan brand sells watches through Slipkart, an electronic commerce operator

5. A is an e-commerce operator supplying goods through its electronic portal in capacity of an agent. The goods belong to B and the consideration for such supplies is received by A and remitted to B as per the contractual arrangement. A requires your help in arriving at the rate at which tax shall be collected from the amount which is received by it against the supplies?

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6. *X booked a Hotel in Udaipur, Rajasthan through an e-commerce portal for an amount of ₹ 25,000. As per the terms and conditions, the amount was payable at the hotel at the time of check in. Whether TCS provisions shall apply in the present case?*

7. *Sumitra Nandan books a Hotel – Hillpoint Residency, registered under GST- via Zitcom Technologies Ltd. – an ECO - who in turn is integrated with another ECO-Techsuper Ltd. who has agreement with Hillpoint Residency. You are required to determine who is required to collected TCS in the given case.*

8. *AB Pvt. Ltd., Pune, Maharashtra, provides house-keeping services. The company supplies its services exclusively through an e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd., Pune. The turnover of AB Pvt. Ltd. in the current financial year is ₹ 18 lakh.*

ANSWERS

1. **Computation of net tax liability (including amount collected as TCS) of Starkart Limited for January:**

Particulars	₹
TCS to be collected from Infocom Limited on supply of Laptop and a printer to Pulkit [Starkart is an ECO since it owns and operates a web portal through which Infocom Limited supplies goods. Further, IGST is applicable on said inter-State transaction since supplier - Infocom Limited is located in the State of Uttar Pradesh and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Thus, Starkart will collect TCS @ 0.5% of [₹ 50,000 + ₹ 10,000]	300
GST to be paid by Starkart on supply of mobile phone made on its own account @ 18% (IGST) of ₹ 30,000. IGST is applicable on said inter-State transaction since supplier - Starkart is located in Delhi and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of	5,400

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the IGST Act, 2017]. Since supply has been made by Starkart on its own account, no TCS needs to be collected.	
TCS to be collected from Secure World on supply of CCTV camera system to Pulkit [ECO - Starkart is liable to collect TCS on this transaction. Further, IGST is applicable on said inter-State transaction since supplier - Secure World is located in the State of Gujarat and place of supply is Rajasthan [i.e. where movement of goods terminates in terms of section 10(1)(a) of the IGST Act, 2017]. Thus, Starkart will collect TCS @ 0.5% of ₹ 1,00,000]	500
Listing services provided by Starkart to Infocom Limited and Secure Limited @ 10% of turnover for the month of January. Turnover of Infocom Limited and Secure Limited is ₹ 60,000 and ₹ 1,00,000 respectively. IGST @ 18% on (₹ 1,60,000 × 10%) is applicable on said inter-State transaction since supplier – Starkart is located in Delhi and place of supply is Uttar Pradesh and Gujarat respectively [i.e. location of recipient in terms of section 12(2) of the IGST Act, 2017]	2,880
Total GST liability (including TCS) of Starkart for January	**9,080**

Computation of net GST payable in cash by Infocom Limited for the month of January

Particulars	**₹**
Gross GST liability [18% of turnover for January (₹ 50,000 + ₹ 10,000)]	10,800
Less: ITC of GST payable on listing services received from [(10% of ₹ 60,000) ×18%]	(1,080)
Net GST payable from Electronic Cash Ledger	9,720
Less: TCS credited to Electronic Cash Credit Ledger	(300)
Net GST payable in cash	**9,420**

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Computation of net GST payable in cash by Secure World for the month of January

Gross GST Liability [18% of turnover for January (₹ 1,00,000)]	18,000
Less: ITC of GST payable on listing services received from [(10% of ₹ 1,00,000) ×18%]	(1,800)
Net GST payable from Electronic Cash Ledger	16,200
Less: TCS credited to Electronic Cash Credit Ledger	(500)
Net GST payable in cash	**15,700**

2. The rate of TCS as notified under CGST Act is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 0.5%.

3. Yes, every e-commerce operator is required to collect tax where consideration with **respect to the supply made through it is being collected by the e-commerce operator.**

However, no TCS is required to be collected in the following cases:-

(i) on supply of services notified under section 9(5) of the CGST Act, 2017.

(ii) on exempt supplies

(iii) on supplies on which the recipient is required to pay tax on reverse charge basis.

4. Answers for both the scenarios is as follows:

As per section 52, every electronic commerce 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

(a) 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.

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Hence, if the person sells on his own, provisions pertaining to tax collected at source (TCS) won't be applicable.

(b) If ABC limited who is dealer of Fitan brand sells watches through Slipkart, then the provision of TCS will be applicable to Slipkart.

5. As per section 52(1), the TCS provisions are not applicable in cases where the ECO is an agent of the supplier. In the present case, A being an ECO is supplying goods through the electronic portal in capacity of an agent and hence the liability to collect tax as per Section 52 shall not arise in this case.

6. No, as per the provisions under section 52, the TCS provisions shall trigger only when the ECO is receiving the consideration for supply from the recipient of supply. In the present case, the supplier i.e. the hotel is directly receiving the consideration from the recipient of the services i.e. X. Hence, the present transactions shall not trigger the TCS provisions under section 52.

7. The given case is a case of multiple e-commerce model wherein a customer orders supplies via ECO-1 who in turn is integrated with ECO-2 who has agreement with the supplier. In this case, ECO-1 will not have any GST information of the supplier. TCS is to be collected by that e-commerce operator who is making payment to the supplier for the particular supply happening through it, which is in this case will be ECO-2.

Thus, in the given case, TCS is to be collected by ECO-Techsuper Ltd. who is making payment to Hillpoint Residency for the supply happening through it,

8. As per section 22, every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds threshold limit in a financial year.

However, section 24 enlists certain categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such electronic commerce operator (ECO), who is required to collect tax at source under section 52, is one such person specified under clause (ix) of section 24. However, where the ECO is liable to pay tax on behalf of the suppliers of services under a notification issued under section 9(5), the suppliers of such services are entitled for threshold exemption.

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Section 2(45) defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined under section 2(44) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Hi-Tech Indya Pvt. Ltd. owns and manages a website for e-commerce where both goods and services are supplied, it will be classified as an ECO under section 2(45).

Notification No. 17/2017 CT (R) dated 28.06.2017 issued under section 9(5) specifies services by way of house-keeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the suppliers.

In the given case, AB Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Hi-Tech Indya is an ECO which is required to collect tax at source under section 52. However, house-keeping services provided by AB Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than ₹20 lakh, is a service notified under section 9(5). Thus, AB Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

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CHAPTER 13

RETURNS

The section numbers referred to in the Chapter pertain to CGST Act and rule numbers referred to in the Chapter pertain to CGST Rules, unless otherwise specified. Examples/Illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- comprehend and analyse provisions relating to statements furnishing details of outward supplies and inward supplies
- understand and analyse provisions relating to furnishing of returns under section 39
- understand and analyse provisions relating to furnishing of other returns/statements
- provide an overview of provisions relating to default/delay in furnishing return
- explain the provisions relating to GST practitioner

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1. INTRODUCTION

The term "return" ordinarily means statement of information (facts) furnished by the taxpayer, to tax administrators, at regular intervals. 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.

In any tax law, "filing of returns" constitutes the most important compliance procedure which enables the Government/ tax administrator to estimate the tax collection for a particular period and determine the correctness and completeness of the tax compliance of the taxpayers.

The returns serve the following purposes:

a) Mode for transfer of information to tax administration;

b) Compliance verification program of tax administration;

c) Finalization of the tax liabilities of the taxpayer within stipulated period of limitation;

d) Providing necessary inputs for taking policy decision;

e) Management of audit and anti-evasion programs of tax administration

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The taxpayer is generally 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. Hence, a study of various fields contained in the form of return *vis-à-vis* the relevant corresponding provisions of the tax law, can facilitate overall understanding of the tax law in a better manner.

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.

Under the GST laws, the correct and timely filing of returns is of utmost importance because of two reasons. Firstly, 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. The return, therefore, constitutes a kind of working sheet/supporting document for the tax authorities that can be relied upon as the basis on which the tax has been computed by the taxpayer. Secondly, under the GST regime, filing of returns not only determines the tax liability of the person filing the same, but it also has a huge bearing on determination of tax liability of other persons with whom the former has entered into transactions in course or furtherance of business.

Chapter IX of the CGST Act [Sections 37 to 48[1]] and sections 150 & 123 prescribe the provisions relating to filing of returns as under:

Section 37	Furnishing details of outward supplies
Section 38	Furnishing details of inward supplies
Section 39	Furnishing of returns

[1] *Sections 42, 43 and 43A have been omitted.*

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Section 40	First return
Section 41	Availment of input tax credit**
Section 44	Annual Return
Section 45	Final Return
Section 46	Notice to return defaulters
Section 47	Levy of late fee
Section 48	Goods and services tax practitioners
Section 150	Obligation to furnish information return
Section 123	Penalty for failure to furnish information return

Apart from this, section 52, *inter alia,* prescribes a statement for tax collection at source to be furnished by Electronic Commerce Operator. *The same has already been discussed in Chapter 12 – Electronic Commerce Transactions in this Module of the Study Material.*

***Provisions of section 41 relating to availment of input tax credit have already been discussed in Chapter 7 – Input Tax Credit in this Module of the Study Material; thus, said provisions are not discussed here.* The provisions relating to forms and manner, in which information is to be furnished through returns, are given under Chapter VIII of the CGST Rules [Rules 59-84[2]]. State GST laws also prescribe identical provisions in relation to filing of returns.

Provisions of returns, other than late fee, under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

All the returns under GST laws are to be filed electronically. 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

[2] *Rules 69, 70, 71, 72, 73, 74, 75, 76, 77 and 79 have been omitted.*

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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.

The details furnished by the taxpayer in the form of returns shall be consolidated and stored at the common portal which will be common for both, i.e. Central Government and State Governments.

2. RELEVANT DEFINITIONS

- **Common portal** means the common goods and services tax electronic portal referred to in section 146 [Section 2(26)].
- **Credit note** means a document issued by a registered person under sub-section (1) of section 34 [Section 2(37)].
- **Casual taxable person** means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business whether as principal, agent or in any other capacity, in a State or a Union Territory where he has no fixed place of business [Section 2(20)].
- **Debit note** means a document issued by a registered person under sub-section (3) of section 34 [Section 2(38)].
- **Electronic cash ledger** means the electronic cash ledger referred to in sub-section (1) of section 49 [Section 2(43)].

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- **Electronic credit ledger** means the electronic credit ledger referred to in sub-section (2) of section 49 [Section 2(46)].
- **Exempt supply** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47)].
- **Goods and services tax practitioner** means any person who has been approved under section 48 to act as such practitioner [Section 2(55)].
- **Invoice or tax invoice** means the tax invoice referred to in section 31 [Section 66].
- **Inward supply** in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration [Section 2(67)].
- **Input service distributor** means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office [Section 2(61)].
- **Non-resident taxable person** means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India [Section 2(77)].
- **Outward supply** in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business [Section 2(83)].
- **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].

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- **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 [Section 2(91)].
- **Quarter** shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year [Section 2(92)].
- **Recipient** of supply of goods or services or both, means—
  - where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
  - where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
  - where no consideration is payable for the supply of a service, the person to whom the service is rendered,

  and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].
- **Registered person** means a person who is registered under section 25 but does not include a person having a Unique Identity Number [Section 2(94)].
- **Return** means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder [Section 2(97)].
- **Reverse charge** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub- section (4) of section 5 of the Integrated Goods and Services Tax Act [Section 2(98)].
- **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

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However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims [Section 2(105)].

- **Tax period** means the period for which the return is required to be furnished [Section 106].
- **Taxable person** means a person who is registered or liable to be registered under section 22 or section 24 [Section 2(107)].
- **Taxable supply** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- **Valid return** means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full [Section 2(117)].
- **Online information and database access or retrieval services** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,—

  (i) advertising on the internet;

  (ii) providing cloud services;

  (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

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(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

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

(vi) digital data storage; and

(vii) online gaming [Section 2(17) of the IGST Act]

- **Zero rated supply** means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit [Section 16 of the IGST Act].

3. FURNISHING DETAILS OF OUTWARD SUPPLIES [SECTION 37 READ WITH RULE 59]

(i) Who is required to furnish the details of outward supplies? [Section 37(1) read with rule 59(1)]

The details of outward supplies *(see definition under Relevant Definitions)* of both goods and services are required to be furnished by every registered person including casual registered person except the following:

- input service distributor (ISD)
- non-resident taxable person (NRTP)
- person paying tax under composition scheme
- person deducting tax at source
- person collecting tax at source i.e., e-commerce operator (ECO), not being an agent

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- supplier of online information and database access or retrieval services (OIDAR) located in non-taxable territory and providing such services to a non-taxable online recipient *[Provisions relating to OIDAR services and non-taxable online recipient have been discussed in detail in Chapter 14: Import and Export under GST in Module 3 of this Study Material.]*

(ii) What is the form for submission of details of outward supplies? [Section 37(1) read with rule 59(1)]

The details of outward supplies are required to be furnished, electronically, in **Form GSTR-1 for the month or quarter.** 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.

(iii) What is the due date of submission of GSTR-1? [Section 37(1)]

GSTR-1 for a particular tax period is filed on or before the 10th day of the immediately succeeding tax period. In other words, GSTR-1 of a month/quarter can be filed any time between 1st and 10th day of the succeeding month/quarter. 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 time limit for furnishing the details of outward supplies in Form GSTR-1 is extended[3] as follows:

Class of registered person	Time limit for furnishing the details of outward supplies in Form GSTR-1 for each quarter/month
Registered persons opting for QRMP scheme[4]	**13th day** of the month succeeding such quarter
Others	**11th day** of the month succeeding such month

(iv) Invoice Furnishing Facility [IFF] for taxpayers opting for QRMP Scheme [Sub-rules (2) and (3) of rule 59]

Invoice Furnishing Facility (IFF) is a facility provided to quarterly taxpayers who are in QRMP scheme, to file their details of outward supplies in first two months of the quarter, to pass on the credit to their recipients.

Invoice furnishing facility (IFF) is not mandatory, but an optional facility made available to the registered persons under the QRMP scheme. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in Form GSTR-1 only, without using the IFF.

The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the Form GSTR-2A and Form GSTR-2B of the concerned recipient. Otherwise, in case where a buyer has made purchases from a person opting for QRMP scheme, he could not have claimed full ITC but due to introduction of IFF, such delay will not occur

[3] *vide Notification No. 83/2020 CT dated 10.11.2020*

[4] *QRMP scheme - a Quarterly Return scheme where payment has to be made on monthly basis - has been discussed in detail subsequently in this chapter.*

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as the details submitted using IFF will be reflected in the GSTR-2A, GSTR-2B, GSTR-4A[5] or GSTR-6A[6] of the recipients, as the case may be.

Taxpayers opting for QRMP Scheme may furnish the details of such outward supplies to a registered person, as he may consider necessary, for the 1st and 2nd months of a quarter, upto a cumulative value of ₹ 50 lakh in each of the first 2 months of the quarter using IFF electronically on the common portal. However, invoices pertaining to last month of a quarter are to be uploaded in GSTR-1 only.

The invoices are to be furnished in IFF till the 13th day of the succeeding month. After 13th of the month, this facility for furnishing IFF for previous month would not be available.

(1) The facility for the month of January will expire by 13th of February.

As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month. The said facility would however be available, say for the month of July, from 1st August till 13th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September[7].

The details of invoices furnished using IFF in the first 2 months of the quarter are not required to be furnished again in GSTR-1 for the said quarter.

(2) A registered person who has availed the QRMP scheme wants to declare 2 invoices out of the total 10 invoices issued in the 1st month of quarter since the recipient of supplies covered by those 2 invoices desires to avail ITC in that month itself. Details of these 2 invoices may be furnished using IFF.

The details of the remaining 8 invoices shall be furnished in Form GSTR-1 of

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[5] *Form GSTR-4A is the system generated statement of inward supplies of a composition supplier. It has been discussed subsequently in this chapter.*

[6] *Form GSTR-6A is the system generated statement of inward supplies of an ISD. It has been discussed subsequently in this chapter.*

[7] *Circular No. 143/13/2020 GST dated 10.11.2020*

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the said quarter. The two invoices furnished in IFF shall be reflected in Form GSTR-2B of the concerned recipient of the 1st month of the quarter and remaining 8 invoices furnished in Form GSTR-1 shall be reflected in Form GSTR-2B of the concerned recipient of the last month of the quarter.

There will be no late fee applicable on late filing of IFF, as IFF is neither mandatory nor allowed to be filed after the due date. However, if a registered person does not opt to upload invoices using IFF, then he has to upload invoice details for all the 3 months of the quarter in Form GSTR-1.

(v) What are the cases where a registered person is debarred from furnishing details of outward supplies in GSTR-1/IFF? [Section 37(4) read with rule 59(6)]

A registered person shall not be allowed to furnish the details of outward supplies for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him.

However, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies, even if he has not furnished the details of outward supplies for one or more previous tax periods [Section 37(4)].

Further, rule 59(6) stipulates that:

(i) a registered person shall not be allowed to furnish the details of outward supplies in Form GSTR-1, if he has **not furnished** the return in **Form GSTR-3B for the preceding month**.

(ii) a registered person, opting for QRMP scheme shall not be allowed to furnish the details of outward supplies in Form GSTR-1 or using IFF, if

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he has **not furnished the return in Form GSTR-3B for preceding tax period**.

(iii) a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88C(1) in respect of a tax period, shall not be allowed to furnish the details of outward supplies Form GSTR-1 or using IFF for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of rule 88C(2). Rule 88C has been discussed subsequently in this chapter.

(iv) a registered person, to whom an intimation has been issued on the common portal under the provisions of rule 88D(1) in respect of a tax period/periods, shall not be allowed to furnish GSTR-1/IFF for a subsequent tax period, 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 in respect of the amount of excess ITC that still remains to be paid, as required under the provisions of rule 88D(2). Rule 88D has been discussed subsequently in this chapter.

(v) a registered person shall not be allowed to furnish GSTR-1/IFF, if he has not furnished the details of the bank account as per the provisions of rule 10A[8].

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.

[8] *Provisions of rule 10A have been discussed in Chapter 9 – Registration in this Module of the Study Material.*

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(vi) What are the contents of GSTR-1?

CONTENTS OF GSTR- 1

Basic & Other Details	Details of Outward Supplies
• GSTIN • Legal name • Trade name, if any • Aggregate turnover in previous year • Year and Month • HSN-wise summary of outward supplies • Details of documents issued during the tax period	• B2B including UIN holders • B2C inter-State supplies where invoice value > ₹ 2.5 lakh • Consolidated details of other B2C supplies • Zero rated and 32 • Deemed exports • Debit/ Credit notes issued • Nil rated/ Exempted/ Non-GST • Amendments for prior period • Advances received/advances adjusted

GST is a destination-based consumption tax. Hence, the tax revenue is transferred to the State which is the place of supply[9] of the particular transaction. Since, the place of supply is crucial for determining the share of every State in the tax revenue, GSTR-1 also captures information relating to place of supply.

(vii) What kind of details of outward supplies are required to be furnished in GSTR-1 and IFF? [Explanation to section 37 read with sub-rules (4) and (5) of rule 59]

Uploading of invoices in IFF and GSTR-1 depends on whether the supply is B2B or B2C. Further, uploading of invoice in GSTR-1 also depends on whether

[9] *Principles determining the place of supply have been discussed in detail in Chapter 3 – Place of Supply in Module 1 of this Study Material.*

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the supply is intra-State or inter-State. Let us first understand what is B2B supply and what is B2C supply?

B2B means business to business transaction. In such type of transactions, the recipient is also a registered supplier and hence, takes ITC.

B2C means business to consumer transaction. In such type of transactions, the recipient is consumer or unregistered and hence, will not take or cannot take ITC.

(A) Details of outward supplies required to be furnished in IFF

In the IFF, the registered person has to submit the B2B (business to business) invoice details of both inter-State and intra-State supply transactions along with debit and credit notes of the B2B invoices issued during the month.

The details of outward supplies furnished using IFF shall include the –

(a) invoice wise details of inter-State and intra-State supplies made to the registered persons;

(b) debit and credit notes, if any, issued during the month for such invoices issued previously.

From the above discussion, it can be inferred that IFF shall include **invoices pertaining to B2B supplies** irrespective of whether they are intra-State or inter- State supplies. This is so because the recipients will take ITC basis such invoices.

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(B) Details of outward supplies required to be furnished in GSTR-1/GSTR-1A

The registered person is required to furnish:-

(i) details of invoices and revised invoices issued in relation to supplies made by him **to registered and unregistered persons** (i.e. B2B as well as B2C supplies) and debit notes and credit notes in GSTR-1 and

(ii) additional details or the amendments of the details of outward supplies of goods or services or both furnished in Form GSTR-1A, as per the requirement of the registered person

in the following manner:

Sl. No.	Invoice-wise details of ALL	Consolidated details of ALL	Debit and credit notes
(i)	Inter-State and Intra-State supplies made to registered persons, i.e. B2B supplies.	Intra-State supplies made to unregistered persons for each rate of tax	Issued during the month for invoices issued previously
(ii)	Inter-State supplies made to unregistered persons with invoice value exceeding ₹ **1,00,000**, i.e. B2C supplies	Inter-State supplies made to unregistered persons with invoice value upto ₹ **1,00,000** for each rate of tax separately for each State	

From the above discussion, it can be inferred that for B2B supplies, details of all invoices need to be uploaded in GSTR-1/ Form GSTR-1A irrespective of whether they are intra-State or inter- State supplies. This is so because the recipient will take ITC basis such invoices.

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For B2C supplies, uploading in general is not required as the buyer will not be taking ITC. However, still in order to implement the destination-based principle, invoices of value more than **₹ 1 lakh** in inter-State B2C supplies need to be uploaded. For inter-State B2C invoices upto **₹ 1 lakh**, State wise summary is sufficient and for all intra-State B2C invoices, only consolidated details need to be given.

(3) Mr. XY makes intra-State taxable supplies for ₹ 10,000 and ₹ 50,000 to Mr. AB, a registered person and ₹ 2,60,000 to Mr. DE, an unregistered person. He also makes inter-State taxable supplies for ₹ 1,00,000 and ₹ 45,000 to Mr. RS, a registered person and ₹ 90,000 to Mr. OP, an unregistered person.

Mr. XY will report invoice-wise details of, intra-State supplies made to Mr. AB and inter-State supplies made to Mr. RS, in GSTR-1 to be filed by him.

Invoices related details can be uploaded any time during the tax period and not just at the time of filing of IFF/ GSTR-1.

Details related to invoices can be modified/deleted any number of times till the submission of IFF/ GSTR-1 of a tax period. The uploaded invoice details are in a draft version till the time IFF/GSTR-1 is submitted and can be changed irrespective of due date.

Scanned copies of invoices are not required to be uploaded. Only certain prescribed fields of information from invoices need to be furnished 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 I of CGST Act, the taxable value will have to be worked out as prescribed and furnished.

Description of each item in the invoice need not be furnished. 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.

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Indication of HSN details

The minimum number of digits of HSN code that a filer has to upload depend on his turnover in the last year.

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.

The tax payer will be required to report HSN in GSTR-1 as under[10]:

Aggregate Annual turnover in the preceding financial year	Number of Digits of HSN Code
Upto ₹ 5 crore	For B2B supply - 4 For B2C supply – 4 (optional)
More than ₹ 5 crore	6

(4) The aggregate turnover of Yellow Lemon Pvt. Ltd., Red Pepper Pvt. Ltd. and Blue Berry Pvt. Ltd. in the previous financial year are ₹ 1.5 crore, ₹ 4.8 crore and ₹ 6 crore respectively. While Yellow Lemon Pvt. Ltd. and Red Pepper Pvt. Ltd. will be required to upload 4 digits of HSN code of the goods sold to registered persons, uploading of 4 digits HSN code will be optional for the two companies when the goods are sold to unregistered persons. Blue Berry Pvt. Ltd. will have to upload 6 digits of HSN code of goods sold by it.

[10] *Notification No. 78/2020 CT dated 15.10.2020*

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(viii) How are the details of outward supply furnished in the current period amended? [Proviso to rule 59(1)]

In cases where a taxpayer, after having filed Form GSTR-1, realizes that some amendment (downward or upward) is required to be made in his tax liability in Form GSTR-1, an optional Form GSTR-1A is provided to him.

This allows him to add any particulars of the current tax period missed out in reporting in Form GSTR-1 of current tax period or amend any particulars already declared in Form GSTR-1 of current tax period (including those declared in IFF, for the first and second months of a quarter, if any, for quarterly taxpayers).

A registered person may, after furnishing the details of outward supplies of goods or service or both in Form GSTR-1 for a tax period but before filing of return in Form GSTR-3B for the said tax period, at his own option, amend or furnish additional details of outward supplies of goods or services or both in Form GSTR-1A for the said tax period [Proviso to rule 59(1)].

(5) A supplier issued two invoices INV1 and INV2 in the month of January. Then, he furnished the details of the invoice INV1 on 8th Feb in Form GSTR-1. However, he misses one invoice INV2 and furnishes the details of the same in Form GSTR-1A on 15th Feb.

In this case, INV1 will go to Form GSTR-2B of the recipient for the month of January made available on 14th Feb. Further, INV2 will be made available in Form GSTR-2B of the recipient for the month of February made available on 14th March.

(6) A supplier issued two invoices INV 3 and INV 4 in the month of January. Then, he furnished the details of the invoice INV 3 on 15th Feb in Form GSTR-1.

However, he declared INV 4 in Form GSTR-1A on 16th Feb. In this case, both INV3 and INV4 will be made available in Form GSTR-2B of the recipient for the month of February made available on 14th March.

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Key features of Form GSTR-1A are as follows:

- Form GSTR-1A is an optional facility.
- It can be filed only once for a return period.
- It allows to amend the records filed in the Form GSTR-1 of current tax period only.
- The corresponding effect of the changes made through Form GSTR-1A on the liability of the taxpayer shall be reflected in Form GSTR-3B for the same tax period.
- At the recipient's end, the ITC for the supplies declared or amended by the suppliers through Form GSTR-1A will be available to the recipient in Form GSTR-2B generated for the next tax period.

Amendment of outward supplies for current tax period

- It can be amended only electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.
- There is no due date for filing of GSTR-1A. For the taxpayers filing Form GSTR-1 on monthly basis:
  - Form GSTR-1A will be available on the portal every month from the due date of filing of Form GSTR-1 or the actual date of filing of Form GSTR-1, whichever is later, and will be available till the actual filing of corresponding Form GSTR-3B of the same tax period.
  - From the liability perspective, the net impact of particulars declared or amended through Form GSTR-1A, along with the particulars declared in Form GSTR-1, shall be auto-populated in Form GSTR-3B for the same tax period as that of Form GSTR-1.
- For the QRMP taxpayers, who files Form GSTR-1 on Quarterly basis:
  - Form GSTR-1A shall be available quarterly after actual filing of Form GSTR-1 (Quarterly) or the due date of filing of Form GSTR -

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1 (Quarterly), whichever is later, and will be available till the actual filing of Form GSTR-3B of the same tax period.

- The supplies reported in Form GSTR-1 of the current tax period (including those declared in IFF, for the first month, M1 and second month, M2 of a quarter, if any) can be amended through corresponding quarterly GSTR-1A.
- From the liability perspective, the net impact of the particulars declared in GSTR 1A (Quarterly), along with particulars furnished in Form GSTR-1 (Quarterly) (or through IFF of Month M1 and M2, if filed), shall be auto-populated in Form GSTR-3B (Quarterly) of the same tax period.
- There will be no separate amendment facility available for records furnished through IFF for the months M1 and M2, during the months M1 and M2.

- In case where change is required to be made in GSTIN of a recipient for a supply reported in Form GSTR-1 of a tax period, the same can be rectified through Form GSTR-1 for the subsequent tax period only.

(ix) How are the details of outward supply furnished in prior periods amended? [Section 37(3)]

(a) Scope of amendment/ correction entries

Tables 9, 10 and 11(II) of GSTR-1 provide for amendments in details of taxable outward supplies furnished in earlier periods (hereinafter referred to as "Amendment Table").

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 Table 9 of the GSTR-1.

Ordinarily, in Amendment Table, the supplier is 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.

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(b) Rectification of errors

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.

(7) A supplier discovers a mistake in details of the invoice furnished in GSTR-1 for the month of August, in October. He can rectify the said mistake in the GSTR-1 for the month of October.

(c) Time limit for rectification

In above example, suppose for some reason, supplier could not make correction at the time of filing of GSTR-1 for the month of October then he can make such amendments in the subsequent periods. However, the maximum time limit within which such amendments are permissible is earlier of the following dates:

- **30th day of November** following the end of the financial year to which such details pertain or
- Date of filing of the **relevant annual return**

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(8) An entity has furnished the annual return for the previous financial year on 15th August in the current financial year. An error is discovered in respect of a transaction pertaining to the month of November of the previous financial year. In this case, any error pertaining to the transaction in the month of November of the previous financial year cannot be rectified beyond 15th August in the current financial year.

It may be noted that, the expression 'due date' is missing in time limit prescribed for making amendments u/s 37(3) [GSTR-1]. Therefore, such date apparently means actual date of filing and not the due date.

(x) Nil GSTR-1 [Rule 67A]

Filing of GSTR-1 is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-1 is required to be filed as prescribed under rule 67A.

A Nil GSTR-1 does not have any entry. For example, 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.

A taxpayer can file Nil GSTR-1, anytime from 1st day of the month subsequent of the tax period. For example, GSTR-1 for the calendar month of April, can be filed from 1st May onwards. GSTR-1 for the quarter of April to June can be filed from 1st July onwards.

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✪ ***Taxpayer opting for voluntary cancellation of GSTIN has to file GSTR-1 for active period.***

✪ ***In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer at the beginning of any financial year, 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.***

What are the precautions that a taxpayer is required to take for a hassle-free compliance under GST?

One of the most important things under GST is the timely uploading of the details of outward supplies in GSTR-1. How best this can be ensured will depend on the number of B2B invoices that the taxpayer issues.

If the number is small, the taxpayer can upload all the information in one go. However, if the number of invoices is large, the invoices (or debit/ credit notes) should be uploaded on a regular basis.

GST common portal allows regular uploading of details of invoices. Till the return is actually submitted, the system also allows the taxpayer to modify the uploaded invoices' details. Therefore, it would always be beneficial for the taxpayers to regularly upload the invoices.

Last minute rush makes uploading difficult and comes with higher risk of possible failure and default. For bulk uploading of invoices, offline utilities or ERP software can be used.

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The second thing would be to ensure that taxpayers follow up on uploading the invoices of their inward supplies by their suppliers. This would be helpful in ensuring that the ITC is available without any hassle and delay.

Follow up with suppliers to upload the invoices of inward supplies

Recipients can also encourage their suppliers to upload their invoices on a regular basis instead of doing it on or close to the due date. The system would allow recipients to see if their suppliers have uploaded invoices pertaining to them.

(xi) Maximum time-limit for furnishing Form GSTR-1 [Section 37(5)]

Maximum time-limit upto which a registered person can furnish the details of outward supplies in Form GSTR-1 for a tax period is **3 years** from the due date of furnishing such details. This time limit can be extended by the Government for a registered person or a class of registered persons subject to such conditions and restrictions as may be specified therein.

4. COMMUNICATION OF DETAILS OF INWARD SUPLIES AND INPUT TAX CREDIT [SECTION 38 READ WITH RULE 60]

The details of outward supplies furnished by the registered persons under section 37(1) and of such other supplies as may be prescribed, and an **Auto-Generated Statement** containing the details of ITC shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

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<u>Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return [Rule 88C]</u>**

Rule 88C provides the mechanism for dealing with difference in liability reported in statement of outward supplies between Form GSTR-1 and Form GSTR-3B. Accordingly, where the tax liability as per Form GSTR-1 for a tax period exceeds the tax liability as per Form GSTR-3B for that period by more than a specified extent, the registered person would be intimated on the portal of such difference and be directed to either (i) pay the differential tax liability along with interest, or (ii) explain the difference, within 7 days' period.

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Unless the taxpayer either deposits the amount specified in the said intimation or furnishes a reply explaining the reasons for any amount remaining unpaid, such a person should not be allowed to file Form GSTR-1/ IFF for the subsequent tax period.

Rule 88C reads as follows:

Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in Form GSTR-1 or using the IFF in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in Form GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference.

Such registered person shall be intimated in prescribed form, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address*.

In said intimation, the said difference between GSTR-1 and GSTR-3B will be highlighted and he will be directed to:

(a) **pay the differential tax liability, along with interest** under section 50, through prescribed form; or

(b) **explain the aforesaid difference** in tax payable on the common portal,

within a period of 7 days.

**email address which registered person has provided at the time of registration or as amended from time to time*

Such registered person shall, upon receipt of the aforesaid intimation, either:

(a) pay the amount of the differential tax liability, as specified in intimation, fully or partially, along with interest under section 50, and furnish the details thereof electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any,

within the period of 7 days.

Where any amount specified in the said intimation remains unpaid within 7 days' period and where no explanation or reason is furnished by the registered person in

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default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79[11].

Manner of dealing with difference in ITC available in Form GSTR-2B and Form GSTR-3B [Rule 88D]

Rule 88D provides the mechanism which allows system-based intimation to the taxpayer about the excess availment of ITC in Form GSTR-3B vis-a-vis that reported in Form GSTR-2B, above a particular threshold and with provision for self-compliance on the portal by the said taxpayer. A system-based intimation is sent to the registered person in those cases where difference between the ITC availed as per GSTR-3B and that available as per GSTR-2B exceeds such amount and such percentage as may be recommended by the Council. In such cases, the registered person shall be directed to pay an amount equal to the said excess amount of ITC availed along with interest or to give a reasonable explanation and if neither of these is done, then the amount can be demanded under section 73 or section 74 ***or section 74A***[12].

This provision would help in safeguarding the revenue by controlling the difference in ITC availed in Form GSTR-3B and that available as per Form GSTR-2B of the taxpayers and will reduce the ITC mismatches.

New rule 88D provides as follows:

Where the amount of ITC availed by a registered person in the return for a tax period(s) furnished by him in Form GSTR-3B exceeds the ITC available to such person in accordance with the auto-generated statement containing the details of ITC in Form GSTR-2B in respect of the said tax period(s), by specified amount and percentage, the said registered person shall be given an intimation in prescribed

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[11] Section 79 provides the provisions relating to recovery of tax. Same has been discussed in detail in Chapter 19 – Demands and Recovery in Module 3 of this Study Material.

[12] Section 74A contains the provisions relating to determination of tax not paid/short paid or erroneously refunded or ITC wrongly availed/utilized for any reason pertaining to Financial Year 2024-25 onwards. Further, the provisions of sections 73 and 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24. Section 74A has been discussed in detail in Chapter 19 – Demands and Recovery in Module 3 of this Study Material.

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form electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time. Said intimation shall highlight the said difference and will direct him to —

(a) pay an amount equal to the excess ITC availed in the said Form GSTR-3B, along with interest payable under section 50, through prescribed form, or

(b) explain the reasons for the aforesaid difference in ITC on the common portal,

within a period of 7 days.

Such registered person shall, upon receipt of said intimation, either,

(a) pay an amount equal to the excess ITC, as specified in intimation, fully or partially, along with interest payable, through prescribed form and furnish the details thereof, electronically on the common portal, or

(b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess ITC that has still remained to be paid,

within 7 days' period.

Where any amount specified in the intimation remains to be paid within 7 days' period and where no explanation/reason is furnished by the registered person in default or where the explanation/reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73/ section 74 ***or section 74A***.

Form and manner of ascertaining details of inward supplies – GSTR-2A and GSTR-2B [Rule 60]

Form GSTR-2A

Form GSTR-2A - is a system generated read only statement of inward supplies for a recipient. This statement is **updated on a real time basis**.

GSTR-2A

Details of outward supplies furnished by the supplier in Form GSTR-1 or using the IFF is made available electronically to the concerned registered persons (recipients) in Form GSTR-2A. Further, Form GSTR-4A is the system generated statement of

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inward supplies for composition taxpayer. System generated statement of inward supplies for an ISD is GSTR-6A.

Details of invoices furnished by a non-resident taxable person (NRTP) in Form GSTR-5, details of invoices furnished by an ISD in Form GSTR-6, details of TDS by deductor furnished in Form GSTR-7 and details of TCS by an e-commerce operator furnished in Form GSTR-8[13], are made available to the recipient, deductee or concerned person, in Form GSTR-2A.

Further, details of the IGST paid on the import of goods or goods brought in DTA from SEZ unit/developer on a bill of entry are also made available in Form GSTR-2A.

The details become available to the recipient for view/download and are updated incrementally as and when supplier(s) upload or change details in their respective form of return/statement, for the given tax period.

Form GSTR-2B

Form GSTR-2B – an **auto-generated statement** containing the details of eligible ITC - is made available to the registered person (recipient) for every month.

GSTR-2B

It is a **static statement** and is available only once a month.

It consists of –

(i) the details of outward supplies furnished by the suppliers in Form GSTR-1, other than a supplier who has opted for QRMP scheme, between the day immediately after the due date of furnishing of Form GSTR-1 for the previous month to the due date of furnishing of Form GSTR-1 for the month.

(ii) the details of invoices furnished by a non-resident taxable person in GSTR-5, details of invoices furnished by an ISD in his return in GSTR-6 and the details of outward supplies furnished by his supplier who has opted for QRMP scheme, in Form GSTR-1 or using the IFF, as the case may be,-

(a) for the 1st month of the quarter, between the day immediately after the due date of furnishing of Form GSTR-1 for the preceding quarter to

[13] *Form GSTR-8 has been discussed in detail in Chapter 12 – E-Commerce Transactions in this Module of the Study Material.*

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the due date of furnishing details using the IFF for the 1st month of the quarter;

(b) **for the 2nd month of the quarter**, between the day immediately after the due date of furnishing details using the IFF for the 1st month of the quarter to the due date of furnishing details using the IFF for the 2nd month of the quarter;

(c) **for the 3rd month of the quarter**, between the day immediately after the due date of furnishing of details using the IFF for the 2nd month of the quarter to the due date of furnishing of Form GSTR-1 for the quarter.

(iii) additional details or amendments in details of outward supplies furnished by his supplier in Form GSTR-1A filed between the day immediately after the due date of furnishing of Form GSTR-1 for the previous tax period to the due date of furnishing of Form GSTR-1 for the current tax period

(iv) the details of IGST paid on the import of goods or goods brought in the DTA from SEZ unit/developer on a bill of entry in the month.

Form GSTR-2B consists of all documents filed by suppliers/ISD in their Form GSTR-1, 5 & 6, between the cut-off dates. It also consists of import data for the period which are received within 13th of the succeeding month.

In case of monthly Form GSTR-1, the cut-off date is 00:00 hours on 12th of the relevant month to 23:59 hours, on 11th of the succeeding month. Whereas for quarterly Form GSTR-1/IFF, Form GSTR-5 and Form GSTR-6, the cut-off date is 00:00 hours on 14th day of relevant month to 23:59 hours, on 13th day of succeeding month.

The details filed in Form GSTR-1 & 5 (by supplier) & Form GSTR-6 (by ISD) would reflect in the next open Form GSTR-2B of the recipient irrespective of supplier's/ISD's date of filing.

example

(9) If a supplier opting for QRMP files an invoice dated 15th July on 13th August, it will get reflected in GSTR-2B of July (generated on 14th August).

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The statement in Form GSTR-2B for every month shall be made available to the registered person,-

(a) for the 1st and 2nd month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month,

- in the IFF by a registered person opting for QRMP, or
- in Form GSTR-1 by a registered person other than opting for QRMP,

whichever is later.

(b) in the 3rd month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in Form GSTR-1 by a registered person opting for QRMP.

(10) For the quarter July-September, Form GSTR-2B for a registered person (recipient) who has received supplies from QRMP suppliers as well as from other suppliers will be generated as follows:

Month	Date of generation of GSTR 2B
July	14th August
August	14th September
September	14th October

5. FURNISHING OF RETURNS UNDER SECTION 39

1. GSTR-3B [Section 39(1) read with rule 61 & 61A]

(a) Person eligible to file return [Section 39(1)]

Section 39(1) prescribes a monthly return for every registered person, other than an input service distributor or a non-resident taxable person or a composition taxpayer, a person deducting tax at source, a person collecting tax at source, i.e. an electronic commerce operator and supplier of OIDAR

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services located in non-taxable territory providing such services to non-taxable online recipient in such form and manner, and within such time, as may be prescribed.

However, the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to the specified conditions and restrictions. Under this proviso, QRMP scheme has been notified which has been discussed in subsequent paras.

(b) Return to be filed in Form GSTR-3B

GSTR-3B is the form prescribed for filing return under section 39. It contains 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. Further, a Nil GSTR-3B can be filed through an SMS using the registered mobile number of the taxpayer. GSTR-3B can be filed monthly or quarterly.

(c) Due date for filing return

(1) **Monthly GSTR-3B** -on or before **20th of the month** succeeding the month for which return is furnished.

(2) **Quarterly GSTR-3B-** on or before **22nd or 24th of the month** succeeding the quarter for which return is furnished in case of a taxpayer opting for QRMP scheme - *(discussed below).*

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(d) Quarterly Return Monthly Payment (QRMP) Scheme

Quarterly Return Monthly Payment (QRMP) Scheme is a trade facilitation measure which further eases the process of doing business.

Quarterly Return

Monthly payment

QRMP Scheme is an **optional return filing scheme**, introduced for small taxpayers having aggregate annual turnover (PAN based) of upto ₹ 5 crore in the preceding financial year to **furnish their Form GSTR-1 and Form GSTR-3B on a quarterly basis while paying their tax on a monthly basis** through a simple challan.

This will significantly reduce the compliance burden on such taxpayers as now the taxpayers need to file only 4 GSTR-3B returns instead of 12 GSTR-3B returns in a year. Similarly, they would be required to file only 4 GSTR-1 returns since Invoice Filing Facility (IFF) is provided under this scheme.

Opting of QRMP scheme is GSTIN wise. Distinct persons can avail QRMP scheme option for one or more GSTINs. It implies that some GSTINs for a PAN can opt for the QRMP scheme and remaining GSTINs may not opt for the said scheme.

QRMP scheme is GSTIN wise

(A) Eligibility for QRMP scheme

Registered persons[14], having **an aggregate turnover up to ₹ 5 crore** in the preceding financial year, and who have opted to furnish quarterly return under QRMP scheme[15] as the class of persons who shall **furnish a return for every quarter and pay the tax due every month[16].**

Thus, the taxpayers whose aggregate turnover is up to ₹ 5 crore in the preceding financial year are eligible for QRMP scheme. For computing

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[14] *other than supplier of online information and database access or retrieval services (OIDAR) located in non-taxable territory and providing such services to a non-taxable online recipient*

[15] *opted under rule 61A of the CGST Rules, 2017*

[16] *in accordance with the first proviso to section 39(7)*

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aggregate turnover, details furnished in returns for tax periods in the preceding financial year shall be taken into account.

Condition to be fulfilled for becoming eligible to opt for QRMP scheme

Registered persons under QRMP scheme must have furnished the return for the preceding month, as due on the date of exercising such option. A registered person shall not be eligible to opt for QRMP scheme if he has not **furnished the last return due on the date of exercising such option**.

(11) If a registered person intending to avail of QRMP scheme for the quarter 'July to September' is exercising his option on 27th July for the said quarter, he must have furnished the return for the month of June which was due on 20th July.

(B) Manner of exercising option of QRMP scheme

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.

(12) A registered person intending to avail of QRMP scheme for the quarter 'July to September' can exercise his option from 1st May to 31st July.

No need to exercise option every quarter

Registered persons under QRMP scheme are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

Further, where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless he–

(a) becomes ineligible for this scheme as per the conditions and restrictions notified in this regard; or

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(b) opts for furnishing of return on a monthly basis, electronically, on the common portal.

(C) Option of QRMP scheme to lapse

In case where a registered person's aggregate turnover crosses ₹ 5 crore during a quarter in a financial year, he shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter. He shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds ₹ 5 crore.

The facility for opting out of the scheme for a quarter will be available from 1st day of 2nd month of preceding quarter to the last day of the 1st month of the quarter.

(D) Form and manner of filing return – GSTR-3B under QRMP scheme

Due date for filing return in case of a taxpayer opting for QRMP scheme - Quarterly GSTR-3B **on or before 22nd or 24th of the month** succeeding the quarter for which return is furnished (Refer the Table given below for details**).

****Due dates for taxpayers opting for QRMP scheme**

Class of registered persons	Due date
Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Union territories of Daman & Diu & Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	**22nd day** of the month succeeding such quarter.
Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan,	**24th day** of the month

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Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	succeeding such quarter.

(e) Nil GSTR-3B

Filing of GSTR-3B is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-3B is required to be filed.

A Nil GSTR-3B does not have any entry in any of its tables. For example, a Nil GSTR-3B for a tax period cannot be filed, if the taxpayer has made any outward supply (including nil-rated, exempt or non-GST supplies) or has received any supplies which are taxable under reverse charge or it intends to take ITC etc.

A Nil GSTR-3B can be filed through an SMS using the registered mobile number of the taxpayer. GSTR-3B submitted through SMS is verified by registered mobile number-based OTP facility.

A taxpayer may file Nil GSTR-3B, anytime on or after the 1st day of the subsequent month/quarter for which the return is being filed for.

(f) Maximum time-limit for furnishing Form GSTR-3B [Section 39(11)]

Maximum time-limit upto which a registered person can furnish the return in Form GSTR-3B for a tax period is **3 years** from the due date of furnishing such return. This time limit can be extended by the Government for a registered person or a class of registered persons subject to such conditions and restrictions as may be specified therein.

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(g) Broad contents of GSTR-3B

The broad contents of GSTR-3B are given below

CONTENTS OF GSTR- 3B

Basic Details	Other details relating to supplies
• GSTIN • Legal name of the registered person • Year and Month/ Quarter	• Summarised details of outward supplies and inward supplies liable to reverse charge • Summarised details of inter-State supplies made to unregistered persons, composition taxable persons and UIN holders • Eligible and ineligible ITC • Values of exempt, nil-rated and non-GST inward supplies • Payment of tax • TDS/TCS credit

(g) Rectification of errors/omissions [Section 39(9)]

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In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes.

Instead of revising the return already submitted, the system allows changing 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- 3B 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 (including return filed by a composition supplier, return for TDS, ISD return and return by NRTP) 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.

Exception

It is important to note that section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities.

Hence, taxpayer may not be able to pass on the ITC to the receiver in respect of tax payments made by him in pursuance of any of the aforementioned situations.

Time limit for making rectification

The maximum time limit within which the rectification of errors/omissions is permissible is earlier of the following dates:

- **30th day of November** following the end of the financial year to which such details pertain 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**.

Hence, if annual return for a financial year is filed before 30th November (of next financial year), then no rectification of errors/omissions in returns pertaining to the said financial year would be permitted thereafter.

✪ A return furnished under section 39(1) on which self-assessed tax has been paid in full is considered as a valid return.

✪ Filing of returns for current month is possible only when returns for any of the previous tax periods and GSTR-1 for the said tax period has been furnished by him[17].

✪ 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).

2. GSTR-4 – Return for composition supplier [Section 39(2) and second proviso to section 39(7) read with rule 62]

(a) Person eligible to file return, periodicity and form of return

A registered person paying tax under composition levy (provisions of section 10), shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods and/or services, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.

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[17] *The Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under sub-section (1) of section 37 for the said tax period [Proviso to section 39(10)].*

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A composition supplier is required to file a return on yearly basis in **Form GSTR-4.**

GSTR-4 for a financial year or part of a financial year should be filed electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

Quarterly statement for payment of self-assessed tax

Every composition supplier shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.

The composition supplier are 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), by 18th day of the month succeeding such quarter.

While a composition supplier is required to file the return GSTR-4 yearly, he is required to pay the tax quarterly.

(b) Due date for filing Form GSTR-4 and Form GST CMP-08

GSTR-4 for a financial year should be furnished by **30th June** of the succeeding financial year.

Due date of filing GSTR-4 for a financial year → **By 30th day of June following the end of such financial year**

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GST CMP-08 (quarterly statement for payment of self-assessed tax) should be furnished by 18th day of the month succeeding such quarter.

Due date of filing GST CMP-08 for a quarter → **By 18th day of the month succeeding such quarter**

(c) What kind of details of outward supplies are required to be furnished in GSTR-4?

GSTR-4 shall include the—

(a) invoice-wise inter-State and intra-State inward supplies received from registered and unregistered persons; and

(b) consolidated details of outward supplies made.

(d) Auto-population of inward supplies

The inward supplies of a composition supplier received from registered persons filing GSTR-1 will be auto populated in **Form GSTR-4A** for viewing.

The broad contents of GSTR-4 are given below.

Consolidated details of outward supplies

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 (Table 6) 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 (Table 4).

Discharge of Tax liability

Since composition suppliers are not eligible to take ITC, they discharge their tax liability only by debiting electronic cash ledger.

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(e) Nil GST CMP-08 [Rule 67A]

Filing of GST CMP-08 is mandatory for all taxpayers who have opted to pay tax under composition scheme, 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.

A Nil GST CMP-08 does not have any entry in any of its tables. For example, a Nil GST CMP-08 for a tax period cannot be filed, if the taxpayer has made any outward supplies or has received any supplies which are taxable under reverse charge.

A Nil GST CMP-08 can be filed through an SMS using the registered mobile number of the taxpayer. A Nil GST CMP-08 submitted through SMS is verified by registered mobile number-based OTP facility.

(f) Broad contents of GSTR-4

CONTENTS OF GSTR- 4

Basic & Other Details	Details regarding Inward and Outward Supplies
• **GSTIN** • **Legal name and Trade name** • **TDS/TCS credit received [Table 7]** • **Tax, interest, late fee payable and paid [Table 8]** • **Refund claimed from Electronic cash ledger [Table 9]**	• **Invoice-wise details of all inward supplies (i.e., intra and inter-State supplies and from registered and unregistered persons) including reverse charge supplies and import of services [Table 4]** • **Summary of self-assessed liability as per GST CMP-08 (Net of advances, credit & debit notes and any other adjustments due to amendments etc.) [Table 5]** • **Tax rate wise details of outward supplies/inward supplies attracting reverse charge (Net of advances, credit & debit notes and any other adjustments due to amendments etc.) - Consolidated details of outward supplies [Table 6]**

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(g) Statements/ return for the period prior to opting for composition scheme

If a registered person opts to pay tax under composition scheme from the beginning of a financial year, he will, where required, furnish statements/return relating to the period prior to paying tax under composition scheme till the

- **due date of furnishing the return for the month of September** of the succeeding financial year, or
- furnishing of **annual return** of the preceding financial year,

whichever is earlier.

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.

(h) GSTR-4 for the period prior to exiting from 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-

(1) GST CMP-08 ↓ **(2) GSTR-4** ↓

relating to the period prior to his exiting from composition scheme

TILL

- **18th of the month succeeding the quarter in which the date of withdrawal falls**
- **30th April[18] following the end of the financial year during which such withdrawal falls**

[18] *As stated earlier, due date for filing Form GSTR-4 shall be 30th June following the end of such financial year, from FY 2024-25 onwards.*

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The provisions explained in points (f) and (g) above have been explained by way of a diagram given at next page:

As per section 29(2), a proper officer is empowered to cancel the registration of a taxable person if, *inter alia*,:

(a) a person paying tax under composition scheme has not furnished his GSTR-4 <u>for a financial year beyond 3 months from the due date of furnishing the said return</u>

(b) any other taxable person has not furnished returns for such <u>continuous tax period as may be prescribed</u>.

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3. GSTR-5 - Return for Non-Resident Taxable Persons [Section 39(5) read with rule 63]

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. They would normally import their products into India and make local supplies. The concept of Non-Resident Taxable Person has been *discussed in detail in Chapter 8 – Registration in this Module of the Study Material.*

(a) Monthly return

A registered NRTP is not required to file the Statement of Outward Supplies and return which are otherwise applicable for a normal taxpayer.

In place of the same, 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 an NRTP are incorporated in GSTR-5.

(b) Last date of filing return

GSTR-5 should be furnished within **13 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[19].

(c) Payment of interest, penalty, fees or any other amount payable

An NRTP should pay the tax, interest, penalty, fees or any other amount payable under the CGST Act or the provisions of the Returns Chapter under CGST Rules till the last date of filing GSTR-5.

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[19] *As per rule 63, GSTR-5 needs to be furnished within **20 days** after the end of the tax period or within 7 days after the last day of the validity period of registration, whichever is earlier.*

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4. GSTR-6 – Return for Input Service Distributor [Section 39(4) read with rule 65]

An ISD is required to distribute both eligible as well as ineligible credit as per rule 39.

(a) Monthly Return

ISD is not required to file statement of outward supplies with its return. It needs to file only a **monthly return** in **Form GSTR-6** for distribution of ITC amongst its units.

Form GSTR-6 contains the details of ITC received for distribution, total ITC/ eligible/ ineligible ITC to be distributed for the tax period, distribution of ITC (ISD invoices & ISD credit notes), details of debit/ credit notes received, 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.**

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(c) Auto-population of ITC received for distribution

The details of ITC received for distribution by an ISD will be auto populated in **Form GSTR-6A** when the registered suppliers file their GSTR-1.

Form GSTR-6A is a system generated 'draft' statement of inward supplies for an ISD and is a read only form. ISD can view the auto-populated details of ITC received for distribution in GSTR-6A.

(d) Nil Return

A 'Nil' return is to be filed in case of no ITC being available for distribution or no ITC is being distributed during the month.

5. GSTR-7 - Return for tax deducted at source [Section 39(3) and section 51 read with rule 66]

Normally, 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 where the total value of such supply exceeds ₹ 2,50,000.

(a) Monthly return

Deductor shall furnish a monthly return in **Form GSTR-7** ***for every calendar month of the deductions made during the month. Deductor shall furnish said return for every calendar month whether or not any deductions have been made during the said month.***

(b) Last date of filing return

The details in GSTR-7 should be furnished ***on/ or before 10th day of the month succeeding the calendar month***.

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(c) TDS details available to deductee on common portal

The details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7. The supplier can take this amount as credit in his electronic cash ledger after validation and use the same for payment of tax or any other liability.

(d) Tax Deduction at Source (TDS) Certificate

A TDS certificate is generated by the system in Form GSTR-7A for both deductor (the person who is deducting tax) and deductee (the supplier from whose payment, TDS is deducted). The certificate is generated once the deductor furnishes a return in Form GSTR-7 on the GST Portal and the deductee accepts the details uploaded by the deductor and files his return. 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.

Note - *It is not mandatory to file a nil Form GSTR-7 if no TDS is deducted in the tax period.*

6. DUE DATE FOR PAYMENT OF TAX [SECTION 39(7)]

Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

However, every registered person furnishing return under QRMP scheme shall pay to the Government, in such form and manner, and within such time, as may be prescribed –

(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, ITC availed, tax payable and such other particulars during a month; or

(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.

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Due dates for payment of tax in respect of the persons required to file monthly **GSTR-3B, GSTR-5 and GSTR-7 are linked with the due dates for filing of such returns**, i.e. the last dates (due dates) of filing such returns are also the due dates for payment of tax in respect of persons required to file such returns.

However, due dates for payment of tax in respect of the persons required to file quarterly **GSTR-3B under QRMP Scheme for 1st two months of the quarter is delinked**. Every registered person under QRMP scheme shall pay the tax due for each of the first 2 months of the quarter, by depositing the said amount in, by the 25th day of the month succeeding such month.

Similarly, in case of registered persons paying tax under **composition scheme**, the **due date for payment of tax and filing of GSTR-4 is delinked.** While GSTR-4 for a financial year is required to be filed by 30th June of the following financial year, tax for a quarter is to be paid by 18th of the month succeeding such quarter.

Further, **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).

Every registered person required to furnish return[20] shall, discharge their liability towards tax, interest, penalty, fees or any other amount payable under GST law by debiting the electronic cash ledger or electronic credit ledger and include the details in the return.

Monthly payment of tax under QRMP Scheme [First proviso to section 39(7) read with sub-rules (3) and (4) of rule 61]

The registered person under the QRMP Scheme would be required to pay the **tax due in 1st month or 2nd month or both** the months of the quarter by depositing the tax due in **GST PMT-06**. The payment is to be made **by 25th day of the month succeeding such month**.

However, the Commissioner may, on the recommendations of the Council, by notification, extend the due date for depositing the said amount in

[20] *subject to the provisions of section 49*

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Form GST PMT-06, for specified class of taxable persons. Further, any extension of time limit notified by the Commissioner of State tax/UT shall be deemed to be notified by the Commissioner:

While making a deposit of tax, such a registered person may –

(a) for the **1st month of the quarter**, take into account the balance in the electronic cash ledger.

(b) for the **2nd month of the quarter**, take into account the balance in the electronic cash ledger excluding the tax due for the 1st month.

At the time of filing the return for the said quarter in Form GSTR-3B, the amount deposited by the registered person in the first 2 months of the quarter shall be debited.

This amount is debited solely for the purposes of offsetting the liability furnished in that quarter's Form GSTR-3B. However, any amount left after filing of that quarter's Form GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters.

Options for making monthly payment of tax

While generating the challan, taxpayers should select **"Monthly payment for quarterly taxpayer"** as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first 2 months –

(a) **Fixed sum method:** If a taxpayer chooses this option, a facility is available on the GST portal for generating an auto-generated/pre-filled challan in Form GST PMT-06. The challan amount is calculated by the system which cannot be edited. The amount is equal to:

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(i) **35% of the tax paid in cash** in the return for the preceding quarter where the return was **furnished quarterly**; or

(ii) **tax liability paid in cash in the return** for the last month of the immediately preceding **quarter where the return was furnished monthly.**

For easy understanding, the same is explained by way of examples given below:

(i) **In case the last return filed was on quarterly basis for quarter ending March:**

Tax paid in cash in quarter (January - March)		Tax required to be paid in each of the months – April and May	
CGST	100	CGST	35
SGST	100	SGST	35
IGST	500	IGST	175
Cess	50	Cess	17.5

(ii) **In case the last return filed was monthly for tax period March:**

Tax paid in cash in March	Tax required to be paid in each of the months – April and May		
CGST	50	CGST	50
SGST	50	SGST	50
IGST	80	IGST	80
Cess	-	Cess	-

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However, no such amount may be required to be deposited-

(a) **for the 1st month of the quarter**, where the balance in the electronic cash ledger/electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability;

(b) **for the 2nd month of the quarter**, where the balance in the electronic cash ledger/electronic credit ledger is adequate for the cumulative tax liability for the 1st and the 2nd month of the quarter or where there is nil tax liability

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month.

A **complete tax period** means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

(b) **Self-Assessment Method:** The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the ITC available, in Form GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in Form GSTR-2B, for every month.

The registered person under QRMP is free to avail either of the two tax payment methods above in any of the two months of the quarter.

As already discussed earlier, at the time of filing the return for a quarter in Form GSTR-3B, the amount deposited by the registered person in the first 2 months of the quarter shall be debited. Further, any amount left after filing of that quarter's Form GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters.

However, such refund claim[21] shall be permitted only after the return in Form GSTR-3B for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

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[21] *Provisions relating to refund are discussed in Chapter 15 – Refunds in Module 3 of this Study Material.*

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Applicability of interest

A. For registered person making payment of tax by opting Fixed Sum Method

No interest would be payable in case the tax due is paid in the first 2 months of the quarter by way of depositing auto-calculated fixed sum amount (as discussed above) by the due date.

In other words, if while furnishing return in Form GSTR-3B, it is found that in any or both of the first 2 months of the quarter, the tax liability net of available credit on the supplies made /received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first 2 months and discharge their entire liability for the quarter in Form GSTR-3B of the quarter by the due date.

In case such payment of tax by depositing the system calculated amount in Form GST PMT-06 is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing Form GST PMT-06 till the date of making such payment.

Further, in case Form GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of section 50 for the tax liability net of ITC.

(13) A registered person, who has opted for the QRMP Scheme, had paid a total amount of ₹ 100/- in cash as tax liability in the previous quarter of October to December.

He opts to pay tax under fixed sum method. He therefore pays ₹ 35/- each on 25th February and 25th March for discharging tax liability for the first 2 months of quarter viz. January and February.

In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was ₹ 40/- and for February it was ₹ 42/-. However, no interest would be payable for the lesser amount of tax (i.e. ₹ 5 and ₹ 7 respectively) discharged in these 2 months provided that he discharges his entire liability for the quarter in the Form GSTR-3B of the quarter by the due date.

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(14) A registered person, who has opted for the QRMP Scheme, had paid a total amount of ₹ 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays ₹ 35/- each on 25th February and 25th March for discharging tax liability for the first 2 months of quarter viz. January and February.

In his return for the quarter, it is found that total liability for the quarter net of available credit was ₹ 125, but he files the return on 30th April. Interest would be payable at applicable rate on ₹ 55 [₹ 125 – ₹ 70 (deposit made in cash ledger in first and second month)] for the period between due date of quarterly GSTR 3B and 30th April.

B. For registered person making payment of tax by opting self-assessment method

Interest amount would be payable as per the provision of section 50 for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first 2 months of the quarter.

Interest payable, if any, shall be paid through Form GSTR-3B.

Note: It is clarified that no late fee is applicable for delay in payment of tax in first 2 months of the quarter.

7. OTHER RETURNS/ STATEMENTS

(i) 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, i.e. after becoming liable to registration but before grant of the certificate of registration.

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Now, in order to enable such registered person to declare the taxable supplies made by him for the period between the date on which he became liable to registration till the date on which registration has been granted so that ITC can be availed by the recipient on such supplies, firstly, 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 31(3)(a) read with rule 53– *Discussed in detail in Chapter-9: Tax Invoice, Credit and Debit Notes in this Module of the Study Material*].

Further, 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.

(ii) GSTR – 8 - Statement for tax collection at source *[The provisions relating to GSTR-8 have already been discussed in detail in Chapter 12 – Electronic Commerce Transactions in this Module of the Study Material.]*

(iii) GSTR – 9/9A and GSTR-9B - Annual Return & Annual Statement [Sections 44, 52(5) read with rule 80]

(a) Who is required to furnish the annual return and what is the due date for the same?

All registered persons are required to file an annual return. However, following persons are not required to file annual return:

(i) Casual taxable persons

(ii) Non-resident taxable person

(iii) Input service distributors

(iv) Persons authorized to deduct/collect tax at source under section 51/52, and

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The Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section.

The annual return for a financial year needs to be filed by 31st December of the next financial year.

(b) What is the prescribed form for annual return/statement?

The annual return is to be filed electronically in **Form GSTR-9** through the common portal.

Person registered under composition levy: A person paying tax under composition scheme is required to file the annual return in **Form GSTR-9A.**

> ★ It may be noted that an **ECO[22] required to collect tax at source** has to file an annual statement referred to in section 52(5) in **Form GSTR-9B (yet to be notified).** The statement for a financial year needs to be filed by **31st December** of the next financial year.

(c) Who is required to furnish a self-certified reconciliation statement?

(i) All registered persons are required to file furnish a self-certified reconciliation statement alongwith annual return if their aggregate turnover during a financial year exceeds ₹ 5 crores. However, following persons are not required to file self-certified reconciliation statement:

(a) Casual taxable persons

(b) Non-resident taxable person

(c) Input service distributors

[22] *The provisions relating to ECOs have been discussed in detail in Chapter 12 – Electronic Commerce Transactions in this Module of the Study Material.*

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(d) Persons authorized to deduct/collect tax at source under section 51/52, and

(ii) Such registered person should furnish, electronically, the annual return along with a copy of **self-certified reconciliation statement**, duly certified, in **Form GSTR-9C**[23].

Self-certified reconciliation statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement.

Value of supplies declared in Annual return | **Value of supplies declared in audited Annual Financial Statement**

(d) Exemption from the requirement of furnishing annual return including self-certified reconciliation statement

The department of the Central/State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, are exempt from the requirement of furnishing an annual return including self-certified reconciliation statement.

(e) Maximum time-limit for furnishing annual return

Maximum time-limit upto which a registered person can furnish an annual return for a financial year is **3 years** from the due date of furnishing said annual return. This time limit can be extended by the

[23] *Notification No. 15/2025 CT dated 17.09.2025 exempts a registered person whose aggregate turnover in the financial year 2024-25 is up to ₹ 2 crore rupees from filing annual return for the said financial year. This is only for information of the students and is not relevant for the examination purposes.*

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Government for a registered person or a class of registered persons subject to such conditions and restrictions as may be specified therein.

(iv) GSTR - 10 - Final Return [Section 45 read with rule 81]

(a) Who is required to furnish final return?

Every registered person who is required to furnish return u/s 39(1) and whose registration has been cancelled is required to file a **final return** electronically in **Form GSTR-10** through the common portal.

(b) What is the time-limit for furnishing final return?

The final return has to be filed within 3 months of the:

(i) date of cancellation

or

(ii) date of order of cancellation

whichever is **later**.

(v) GSTR – 11 - Details of inward supplies of persons having UIN [Rule 82]

Every person who has been issued a Unique Identity Number (UIN) is required to furnish the details of inward supplies in Form GSTR-11.

(a) When UIN is issued for claiming refund of taxes paid on inward supplies

Such person shall furnish the details of those 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.**

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(b) 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.**

(vi) GSTR-5A – Return for persons providing OIDAR services to non-taxable online recipient (NTOR) or registered person other than NTOR or online money gaming from a place outside India to a person in India [Rule 64]

Every registered person either providing:

(i) online money gaming from a place outside India to a person in India,

or

(ii) providing OIDAR services *(see definition from Relevant Definitions)* 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 **Form GSTR-5A** by **20th day of the month succeeding the calendar month/part thereof.**

Form GSTR-5A needs to be filed even if there is no business activity (i.e. it is a Nil Return) for a tax period.

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8. DEFAULT/DELAY IN FURNISHING RETURN [SECTIONS 46 & 47]

(i) Notice to return defaulters [Section 46 read with rule 68]

A notice in prescribed form 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 notice requires the registered person to furnish the return within 15 days, failing which the tax liability will be assessed under section 62, based on the relevant material available with the proper officer. In addition to tax so assessed, applicable interest and penalty will also be payable.

(ii) Late fees for delay in filing return [Section 47]

Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of section 47.

Delay in filing any of the following by their respective due dates, attracts late fee:

(A) Statement of Outward Supplies [Section 37]

(B) Returns (including returns under QRMP Scheme) [Section 39]

(C) Final Return [Section 45]

(D) TCS Statement [Section 52]

Quantum of late fee prescribed by section 47 is as under:

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It may be noted that the late fee payable by a registered person for delayed filing of a return and/or annual return under section 47 is with reference to only the CGST Act. An equal amount of late fee is payable by such person under the respective SGST/UTGST Act as well. Hence, the late fee amount mentioned herein pertains to both CGST as well as SGST/UTGST.

Rationalisation of late fees for delayed filing of Forms GSTR-1, GSTR-3B, GSTR-4, GSTR-7 and GSTR-9

The late fee can be waived off partially or fully by the Central Government [Section 128[24]]. In view of this, late fees for delayed filing of Forms GSTR-1, GSTR-3B, GSTR-4, GSTR-7 and GSTR-9 have been rationalized[25] as follows:

(i) For delayed filing of GSTR-7:-

Total amount of late fee payable under section 47 by any registered person, required to deduct tax at source under the provisions of section 51 for delayed filing of GSTR-7, shall be as follows:

Where the total amount of Central and State tax deducted at source in a month is Nil, the total amount of late fee stands waived.

[24] *Section 128 has been discussed at the Final level.*

[25] vide *Notification No. 4/2018 CT dated 23.01.2018, Notification No. 73/2017 CT dated 29.12.2017, Notification No. 76/2018 CT dated 31.12.2018, Notification Nos 19-22/2021 CT all dated 01.06.2021 and Notification No. 07/2023 CT dated 31.03.2023*

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(ii) For delayed filing of GSTR-1 and/or GSTR-3B:-

Amount of late fee payable under section 47 by the registered person who fail to furnish Form GSTR-1 and/or Form GSTR-3B by the due date, shall be as follows:

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(iii) For delayed filing of GSTR-4:-

Amount of late fee payable under section 47 by a composition supplier who fails to furnish Form GSTR-4 by the due date, shall be as follows:

Class of registered persons **Quantum of late fee**

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(iv) For delayed filing of GSTR-9:-

Class of registered persons **Quantum of Late fee**

Clarification on applicability of late fee for delay in furnishing of Form GSTR-9C

Late fee is leviable:

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(a) for delay in furnishing of complete annual return (Form GSTR-9 + Form GSTR-9C[26])

(b) for the period from the due date of furnishing of the said annual return upto the date of furnishing of the complete annual return, i.e.:

i. where Form GSTR-9C is not required to be furnished, the date of furnishing of Form GSTR-9;

ii. where Form GSTR-9C is required to be furnished along with Form GSTR-9,

a. date of furnishing of Form GSTR-9, if Form GSTR-9C is furnished alongwith Form GSTR-9; or

b. date of furnishing of Form GSTR-9C, if Form GSTR-9C is furnished subsequent to furnishing of Form GSTR-9.

Late fee is not separately leviable for delayed furnishing of Form GSTR-9 and Form GSTR-9C.

[Circular No. 246/03/2025 GST dated 30.01.2025]

9. GOODS AND SERVICES TAX PRACTITIONERS [SECTION 48]

Section 48 provides for the authorisation of an eligible person to act as approved Goods and Services Tax Practitioner (GSTP). A registered person may authorise an approved GSTP to furnish information, on his behalf, to the Government.

The manner of approval of GSTPs, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning have been prescribed in the rules 83, 83A and 84.

[26] *where FORM GSTR-9C is also required to be furnished*

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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.

Standardized formats have been prescribed for making application for enrolment as GSTP, certificate of enrolment, show cause notice for disqualification, order of rejection of application of enrolment, list of approved GSTPs, authorisation letter and withdrawal of authorisation.

A GSTP enrolled in any State or Union Territory shall be treated as enrolled in the other States/Union territories.

(i) What is the eligibility criteria for GSTP?

The eligibility criteria for GSTP has been explained by way of diagrams given at following page.

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Prescribed Qualifications

- (i) 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
- (ii) Degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i)
- (iii) Any other examination notified by the Government, on the recommendation of the Council, for this purpose
- (iv) Any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination
- (v) Has passed final examination of ICAI/ ICSI/ Institute of Cost Accountants of India.

(ii) What are the 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:

- Furnish details of outward supplies
- Furnish monthly, annual or final return
- Make deposit for credit into electronic cash ledger
- Furnish information for generation of e-way bill
- Furnish details of challan in the prescribed form
- File an application for amendment or cancellation of enrolment under rule 58
- File an intimation to pay tax under the composition scheme or withdraw from the said scheme
- File a claim for refund
- File an application for amendment/ cancellation of registration

Confirmation from the registered person shall be sought

Also allowed to appear as authorized representative before any officer of Department, Appellate Authority or Appellate Tribunal, on behalf of such a registered person provided he is enrolled as GSTP under rule 83.

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Furnishing returns through GSTP: When a registered person opts to furnish his return through GSTP, such registered person:

- Gives his consent in prescribed form to any GSTP to prepare and furnish his return
- Before confirming submission of any statement prepared by GSTP, ensures that the facts mentioned in the return are true and correct.

Thus, 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 on whose behalf such return and details are furnished. 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.

(iii) Other points

- A registered person gives his consent and authorises a GSTP in the prescribed form by listing the authorised activities in which he intends to authorise the GSTP. The GSTP accepts the authorisation in Part B of the same form.
- The GSTP can undertake only such tasks as indicated in the prescribed form. The registered person may, at any time, withdraw such authorization.
- Any statement furnished by the GSTP is made available to the registered person on the common portal. For every statement furnished by the GSTP, a confirmation is sought from the registered person over email or SMS.
- 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.

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(iv) What is the procedure for enrolment as GSTP?

The procedure for enrolment of GSTP has been depicted by way of a diagram is given below:

ENROLMENT OF GSTP

10. INFORMATION RETURN [SECTIONS 150 & 123]

(i) Who shall furnish the information return? [Section 150(1)]

Information return is based on the idea of verifying the compliance levels of registered persons through information procured from independent third party sources.

Authorities who are responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity

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or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an Information Return of the same in respect of such periods, within such time, in such form and manner and to such authority/agency as may be prescribed. The authorities required to furnish Information Return are given subsequently by way of a diagram.

(ii) Defective Information Return [Section 150(2)]

Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return.

He shall give such person an opportunity of rectifying the defect within a period of 30 days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow.

However, if the defect is not rectified within the said period of 30 days or, the further period so allowed], then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

(iii) Issuance of notice for failure to furnish the information return within stipulated time [Section 150(3)]

Where a person who is required to furnish information return has not furnished the same within the specified time*, the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding 90 days from the date of service of the notice and such person shall furnish the information return.

*time specified in sub-section (1) or sub-section (2) of section 150

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Taxable person

State Government's authority responsible for the collectiof VAT/sales tax/ State excise duty or Central Government's authority responsible for the collection of excise duty or customs duty

Income tax authority

Banking company within the meaning of section 45A(a) of the RBI Act, 1934

State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003 or any other entity entrusted with such functions by the Central Government or the State Government

Registrar/Sub-Registrar appointed under section 6 of the Registration Act, 1908

Local authority /other public body/association

Registrar within the meaning of the Companies Act, 2013

Registering Authority empowered to register motor vehicles under the Motor Vehicles Act, 1988

Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Recognised stock exchange

Depository

Officer of the RBI

GSTN

UIN holder

Any other specified person

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(iv) Penalty for failure to furnish information return [Section 123]

If the person to whom the notice has been issued under section 150(3) fails to furnish the information return within the period specified in said notice, the proper officer may direct that such person shall be liable to pay a penalty.

LET US RECAPITULATE

1. Meaning of Returns

Return

A statement of information furnished by the taxpayer, to tax administrators, at regular intervals.

Filing of returns constitutes the most important compliance procedure which enables the Government/ tax administrator to estimate the tax collection for a particular period and determine the correctness and completeness of the tax compliance of the taxpayers.

2. Modes of filing returns

All the returns are to be filed online.

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3. Furnishing details of outward supplies [Section 37 read with rule 59]

Who is required to furnish the details of outward supplies?

What is the form for submission of details of outward supplies?

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Due Dates for Submission of Form GSTR-1

Class of registered person	Time limit for furnishing the details of outward supplies in Form GSTR-1 for each quarter/month
Registered persons opting for QRMP scheme	**13th day** of the month succeeding such quarter
Others	**11th day** of the month succeeding said month

Invoice Furnishing Facility [IFF] for taxpayers opting for QRMP Scheme

IFF

- **an optional facility**
- **provided to quarterly taxpayers who are in QRMP scheme,**
- **to file their details of outward supplies in first 2 months of the quarter,**
- **between the 1st day of the succeeding month till the 13th day of the succeeding month**
- **upto a cumulative value of ₹ 50 lakh in each of the first 2 months of the quarter**
- **to pass on the credit to their recipients**

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What are the cases where a registered person is debarred from furnishing details of outward supplies in GSTR-1/IFF?

What kind of details of outward supplies are required to be furnished in GSTR-1/ GSTR-1A and IFF?

Details to be furnished through IFF

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Details to be furnished in GSTR-1/ GSTR-1A

Amendment of GSTR-1 for current period

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Rectification of errors in GSTR-1/ GST filed for previous periods

Particulars furnished in GSTR-1 of prior periods can be amended → **by way of Amendment Tables given in GSTR-1 of subsequent periods**

Maximum time limit within which such amendments are permissible is earlier of the following dates:

- 30th day of November following the end of the financial year to which such details pertain or
- Date of filing of the relevant annual return

Filing of Nil GSTR-1

Nil GSTR-1

- Filing of GSTR-1 is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period.

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4. Furnishing details of inward supplies [Section 38 read with rule 60]

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Form and manner of ascertaining details of inward supplies – GSTR-2A and GSTR-2B

GSTR- 2A and its features

- System generated read only statement of inward supplies
- Updated on Real Time basis
- Reflects details of invoices furnished by a non-resident taxable person in Form GSTR-5
- Reflects details of invoices furnished by Input Service Distributor in Form GSTR-6
- Reflects details of TDS by deductor furnished in Form GSTR-7
- Reflects details of TCS by an e-commerce operator furnished in Form GSTR-8

GSTR- 2B and its features

- Auto-generated statement containing the details of eligible ITC
- Available once a month
- Static statement
- Reflects details of outward supplies furnished by the suppliers in Form GSTR-1, 5 & 6, between the cut-off dates
- Details of outward supplies furnished by the supplier who has opted for QRMP scheme, in Form GSTR-1 or using the IFF between the cut off dates
- Reflects details of IGST paid on the import of goods, goods brought in the DTA from SEZ unit/developer

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5. Furnishing of returns under section 39

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Due dates for furnishing Form GSTR-3B

GSTR-3B can be filed monthly or quarterly and due date for filing are as follows:

- **Monthly GSTR-3B** on or before **20th** of the month succeeding the month for which return is furnished.
- **Quarterly GSTR-3B** on or before **22nd** and **24th** of the month (Depending upon State) succeeding the quarter for which return is furnished in case of a taxpayer opting for QRMP scheme.

QRMP scheme

- Optional return filing scheme
- Quarterly Return
- Monthly payment

Eligibility	•Taxpayers having aggregate turnover of up to ₹ 5 crore in the preceding financial year
Condition to be fulfilled for becoming eligible	•Taxpayer must have furnished the last return, as due on the date of exercising such option
Manner of Exercising option	•Taxpayers can opt in for any quarter from 1st day of 2nd month of preceding quarter to the last day of the first month of the quarter for which the option is being exercised
Validity of option once exercised	•Taxpayers are not required to exercise their option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

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Opting of QRMP Scheme is GSTIN wise

A person may avail QRMP scheme option for some GSTIN(s) and not for other GSTIN(s)

Opting out of the QRMP Scheme

Taxpayers opting out of the QRMP Scheme	• Aggregate turnover has exceeded ₹ 5 crore in the financial year
Availability of facility of opting out of QRMP Scheme for a quarter	• Available from from 1st day of 2nd month of preceding quarter to the last day of the first month of the quarter

Nil GSTR-3B

Nil GSTR-3B	• Filing of GSTR-3B is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period.

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Form GSTR-4 and GST CMP-08: For Composition dealers

❖ A composition supplier is required to file the return GSTR-4 yearly and is required to pay the tax quarterly in Form GST CMP-08.

GSTR-4 (Yearly Return) → **Details to be furnished:** (i) Invoice wise inward supplies (ii) Consolidated outward supplies → **Frequency:** Yearly → **Due Date:** By 30th day of June following the end of such financial year

GST CMP-08 (For quarterly payment of tax) → **Details to be furnished:** Details of payment of self-assessed tax → **Frequency:** Quarterly → **Due Date:** By 18th day of month succeeding such quarter

Note:

(1) The inward supplies of a composition supplier received from registered persons filing GSTR-1 will be auto populated in **FORM GSTR-4A** for viewing.

(2) **Filing of NIL GST CMP-08 is mandatory** for all taxpayers who have opted to pay tax under composition scheme if there is no business activity in any tax period.

Form GSTR-5: For Non-Resident Taxable Person (NRTPs)

GSTR-5 → **Details to be furnished:** (i) Details of inward supplies (ii) Details of outward supplies → **Frequency:** Monthly → **Due Date:** (i) within 13 days after the end of the calendar month, or (ii) within 7 days after the last day of validity period of the registration **whichever is earlier**

Note: An NRTP is not required to file an Annual Return.

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Form GSTR-6: **Return for Input Service Distributors** (ISDs)

GSTR-6

Details to be furnished:

(i) ITC received for distribution

(ii) Total ITC/ eligible/ ineligible ITC to be distributed for the tax period

(iii) Debit/credit notes received

Frequency:

Monthly

Due Date:

within **13 days** after the end of the calendar month

Note: An ISD is not required to file an Annual Return.

Form GSTR-7: For Tax Deducted at Source (TDS)

- GSTR-7 is a return for tax deducted at source, 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 and total value of supply exceeds ₹ 2,50,000.
- **GSTR-7A-** Form for issue of TDS certificate by deductor to the deductee.

GSTR-7*

(For TDS)

Frequency:

Monthly

Due Date:

On/before **10th of the month** succeeding the calendar month

GSTR-7 would be furnished even for a month, where no TDS is required to be deducted.

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6. Due date for payment of tax

Payment of tax under QRMP scheme

Options for making monthly payment of tax under QRMP scheme

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Method 1: Fixed Sum Method

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month.

Method 2: Self Assessment Method

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Applicability of Interest -

(1) For Fixed Sum method taxpayers

Where auto-calculated fixed sum amount for first 2 months of quarter is paid by due date	•No interest would be applicable even if the liability for the said month was found higher •If GSTR-3B of the quarter is filed by the due date by discharging the entire liability
Where tax payer makes monthly payment beyond due date	•Interest is payable at the applicable rate from due date of furnishing GST PMT-06 till date of making payment
Where Form GSTR-3B is furnished beyond due date	•Interest payable as per provisions of section 50 of the CGST Act, 2017 for the tax liability net of ITC

(2) For Self-assessment method taxpayers

Interest payable as per provisions of section 50 of the CGST Act

for tax or any part thereof (net of ITC) which remains unpaid/ paid beyond the due date

for the first 2 months of the quarter

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7. Rectification of errors/omissions

8. Other returns/ statements

(i) First return

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(ii) GSTR – 8 - Statement for tax collection at source

Statement for TCS (GSTR-8) → Monthly statement for E-Commerce Operator depicting supplies effecting through it → **Filed by:** E-Commerce Operator → **Due date:** 10th of the next month

(iii) Final return

Final Return (GSTR-10) → Taxable person whose registration has been surrendered or cancelled. → Within 3 months of the date of cancellation or date of order of cancellation, whichever is later.

(iv) Annual Return & Annual Statement

Annual return

- **Furnished by:** All registered persons
  - **excluding**
    - Casual Taxable Person
    - ISD
    - NRTP
    - Person deducting tax at source
    - Person collecting tax at source
- **Prescribed form**
  - GSTR-9 (For registered persons)
  - GSTR-9A (Composition tax payer)
  - GSTR-9B (ECO) [not yet notified]85

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(v) GSTR – 11 - Details of inward supplies of persons having UIN

(vi) GSTR – 5A - Return for persons providing OIDAR services

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9. Information return

(i) Who shall furnish the information return?

Taxable person
Local authority /other public body/association
State/Central Government's authority responsible for the collectiof VAT/sales tax/ State excise duty or excise duty or customs duty respectively
Income tax authority
Banking company
State Electricity Board or an electricity distribution or transmission or any other entity entrusted with such functions
Registrar/Sub-Registrar appointed under the Registration Act
Registrar within the meaning of the Companies Act, 2013
Registering Authority empowered to register motor vehicles under the Motor Vehicles Act, 1988
Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013
Recognised stock exchange
Depository
Officer of the RBI
GSTN
UIN holder
Any other specified person

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(ii) Defective Information Return

Commissioner/ any authorised officer, considers information furnished in the information return to be defective → He may intimate defect to the person who has furnished such information return → Defect to be rectified within 30 days from the date of such intimation or extended time → Otherwise, information return shall be treated as not furnished

(iii) Issuance of notice for failure to furnish the information return within stipulated time

Where a person required to furnish information return has not furnished it → Commissioner/ any authorised officer, may serve a notice on such person → requiring him to furnish such information return → within a period not exceeding **90 days** from the date of service of the notice

TEST YOUR KNOWLEDGE

1. *Which type of taxpayers need to file annual return under section 44? Enumerate.*
2. *Is an annual return under section 44 and a final return one and the same? Explain.*
3. *Do input service distributors (ISDs) need to file separate statement of outward supplies (GSTR-1) with their return? Discuss.*
4. *Is it compulsory for a taxpayer to file return by himself? Explain.*
5. *Mr. Anand Kumar, a regular taxpayer, filed GSTR-1 for the month of August before the due date. Later, in the month of February next year, he discovers error in the GSTR-1 of the month of August already filed and wants to revise it.*

   You are required to advise him on the future course of action in this scenario.
6. *B Ltd. has filed the return for the month of October belatedly. At the time of computing the late fee to be paid for delay in filing return, B Ltd. has taken a view*

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that if the late fee has been paid as per the provisions under the CGST Act, there is no requirement of paying the late fee under the SGST Act for the same default.

Whether B Ltd. has taken a correct view? Examine.

7. *Tax authorities have been scrutinizing the returns furnished by A Ltd. During the scrutiny process, A Ltd. has been made aware by the authorities about an incorrect disclosure in a return under section 39 filed by it for a particular tax period.*

   A Ltd. seeks your opinion to rectify the incorrect disclosure made in the return.

8. *ABC Ltd. applied for cancellation of GST registration in the month of March. In the month of September, the consultant of ABC Ltd. suggested to furnish the final return in said month. He advised the company that a final return needs to be furnished before the due date of furnishing the return for the month of September of subsequent financial year or before furnishing of annual return (for the financial year in which cancellation has been sought for), whichever is earlier. However, the jurisdictional authorities have yet not passed the order of cancellation due to reasons not known to ABC Ltd.*

   Whether the advice given by the consultant of ABC Ltd. is correct? Examine.

9. *XYZ Ltd. has deducted TDS from the consideration payable to A Ltd. for supplies made by it. The deductee, i.e. A Ltd., seeks your advice on taking credit for the TDS deducted by XYZ Ltd. Also, whether the tax deducted by XYZ Ltd. will be shown in the electronic credit ledger or electronic cash ledger of A Ltd.?*

10. *Whether GSTPs are required to furnish any return for disclosure of activities carried out by them for any of the registered person during a tax period? Elucidate.*

ANSWERS

1. Every registered person, other than ISD's, casual/non-resident taxpayers, tax deductors at source, tax collector at source are required to file an annual return in Form GSTR-9. Taxpayer under composition scheme are required to file annual return in Form GSTR-9A. The department of the Central/State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, are exempt from the requirement of furnishing the annual return.

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2. No. Annual return has to be filed by every registered person paying tax as a normal taxpayer, with certain exceptions. Final return has to be filed only by those registered persons whose registration under GST has been cancelled. The final return has to be filed within three months of the date of cancellation or the date of cancellation order, whichever is later.

3. No, the ISDs need to file only a return in Form GSTR-6 and the return has the details of credit received by them from the service provider and the credit distributed by them to the recipient units. Since their return itself covers these aspects, there is no requirement to file separate statement of outward supplies.

4. No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner(GSTP) as authorised by him subject to confirmation of registered person over mail or SMS each time when return filed by GSTP .

5. The mechanism of filing revised return for any correction of errors/omission is not available under GST. The rectification of errors/omission is allowed in the subsequent returns.

Therefore, Mr. Anand Kumar who discovered an error in GSTR-1 for the month of August cannot revise it. However, he should rectify said error in the GSTR-1 filed for the month of February and should pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February. The error can be rectified by furnishing appropriate particulars in the "Amendment Tables" contained in GSTR-1.

However, as per section 37(3), no rectification of details furnished in GSTR-1 shall be allowed after 30th day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

6. The understanding of B Ltd. is incorrect. For arriving at the late fee payable on account of delayed filing of GST return, the computation of late fee is made separately for CGST and SGST/UTGST. This is because the provisions of late fee on delayed filing of return are prescribed in both CGST Act and SGST/UTGST Act although a common return is filed for both the laws.

7. In terms of section 39(9), any rectification in the return (under section 39) furnished by the registered person is allowed only when the error or omission is discovered on account of reasons other than scrutiny, audit, inspection, or enforcement activity by the tax authorities.

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In the present case, since the incorrect disclosure has been highlighted to A Ltd. by the tax authorities during the process of scrutiny, the rectification of the incorrect disclosure cannot be made by A Ltd. on its own.

8. No, the advice of the consultant is not correct.

In terms of section 45 read with rule 81, every registered person who is required to furnish GSTR-3B and whose registration has been cancelled is required to file a final return within three months of the date of cancellation or date of order of cancellation, whichever is later.

In the given case, the registration of the company has not been cancelled. Therefore, requirement of filing final return will arise only when the registration of the company gets cancelled.

9. In terms of section 51(5) read with rule 66, the deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in GSTR-7 of the deductor, after validation. Similarly, rule 87(9), *inter alia*, provides that any amount deducted under section 51 shall be credited to the electronic cash ledger of the deductee.

Therefore, in the present case, A Ltd., can take credit of TDS amount deducted by XYZ Ltd. in its electronic cash ledger and use the same for payment of tax, interest, penalty, late fee or any other amount.

10. In terms of section 48(2), a registered person may authorise an approved GSTP to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or annual return under section 44 or final return under section 45 and to perform other prescribed functions**.** Thus, the GSTP can furnish the specified documents or information on behalf of the registered person with prior authority of the registered person.

However, there is no specific return furnishing mechanism for GSTP itself to disclose the activities carried out by it for any of the registered person during a tax period.

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, **the applicability or otherwise of such amendment for May 2026, September 2026 and/or January 2027 examinations shall be informed by the ICAI by way of an announcement.**

In the table given below, the existing provisions of sections 38 and 39 are compared with the provisions as amended by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Section	Existing provisions	Provisions as amended by the Finance Act, 2025	Remarks
38(1)	The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and ~~***an auto-generated statement***~~ containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such	The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and ***a statement*** containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and	Section 38(1) is to be amended to omit the expression "auto generated" with respect to statement of input tax credit in the said sub section.

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	conditions and restrictions as may be prescribed.	restrictions as may be prescribed.	
38(2)	The ~~***auto-generated statement under***~~ sub-section (1) shall consist of- (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; ~~***and***~~ (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,-- (i) by any registered person within such period of taking registration as may be	The ***statement referred in*** sub-section (1) shall consist of- (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, ***including*** on account of the details of the said supplies being furnished under sub-section (1) of section 37,-- (i) by any registered person within such period of taking	Section 38(2) is to be amended by omitting the expression "auto generated" with respect to statement of input tax credit in said sub section and also to insert the expression "including" after the words "by the recipient" in clause (b) of said sub-section to make the said clause more inclusive. Further, a new clause (c) is to be inserted in the said sub-section to provide for an enabling clause to prescribe other details to be made available in statement of input tax credit.

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	prescribed; or (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed,	registration as may be prescribed; or (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as	

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	exceeds the output tax paid by him during the said period by such limit as may be prescribed; or (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or (v) by any registered person,	may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or	

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	who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or (vi) by such other class of persons as may be prescribed.	(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or (vi) by such other class of persons as may be prescribed. ***(c) such other details as may be prescribed.***	
39(1)	Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax	Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person	Section 39(1) is to be amended so as to provide for an enabling clause to prescribe conditions and restriction for

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	under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, within such time, as may be prescribed:	paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, within such time, ***and subject to such conditions and restrictions,*** as may be prescribed:	filing of return under the said sub-section.

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Final Course

Study Material

(Modules 1 to 4)

Paper 5

Indirect Tax Laws

Part – I: Goods and Services Tax

Module – 3

(Relevant for May 2026, September 2026 and January 2027 examinations)

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Basic draft of this publication was prepared by CA. (Dr.) Rashmi Goel.

Edition	:	September, 2025
Committee/Department	:	Board of Studies (Academic)
E-mail	:	bosnoida@icai.in
Website	:	www.icai.org
Price	:	₹ /- (For All Modules)
ISBN No.	:	978-93-48313-44-7
Published by	:	The Publication & CDS Directorate on behalf of The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi 110 002 (India)
Printed by	:	

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CHAPTER 14

IMPORT AND EXPORT UNDER GST

The section numbers referred to in the Chapter pertain to IGST Act, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- determine if a given transaction is an import of goods or services
- comprehend and analyse the taxability of import of goods and import of services and appreciate the difference in the mechanism of levy and collection of tax between the two
- explain and analyse the provisions relating to registration of importer of goods and services and availing of credit in case of import of goods and services
- determine if a given transaction is an export of goods or services
- comprehend and analyse the concept of zero rating and the mechanism by which it works under the GST law
- comprehend and analyse the taxability of exports and deemed exports
- explain and analyse the provisions relating to merchant exports
- apply the above concepts in problem solving

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1. INTRODUCTION

India is well integrated into the web of international business transactions. There is inward as well as outward flow of goods and services between India and other countries.

GST, being a business tax, impacts import and export too. Provisions in the GST laws seek to (i) provide level playing field to domestic suppliers *vis a vis* international suppliers in case of import and (ii) make export more competitive.

The various provisions of GST law as applicable on import and export supplies are discussed in this Chapter in detail. First, the provisions relating to import of goods and services have been discussed followed by discussion on provisions relating to export of goods and services.

The relevant statutory provisions have been extracted first followed by the analysis thereof.

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2. RELEVANT DEFINITIONS

- **Customs frontiers of India** means the limits of a customs area as defined in section 2 of the Customs Act, 1962 [Section 2(4)].
- **Customs area** means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11) of the Customs Act, 1962].
- **Customs station** means any customs port, customs airport, international courier terminal, foreign post office or land customs station [Section 2(13) of the Customs Act, 1962].
- **Deemed exports** means such supplies of goods as may be notified under section 147 [Section 2(39) of the CGST Act].
- **Export of goods** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India [Section 2(5)].
- **Export of services** means the supply of any service when,–

  (i) the supplier of service is located in India;

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

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

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

  (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8 [Section 2(6)].
- **Fixed establishment** means a place other than the place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(7)].
- **Import of goods** with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India [Section 2(10)].

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- **Import of services** means the supply of any service, where –
  - (i) the supplier of service is located outside India;
  - (ii) the recipient of service is located in India; and
  - (iii) the place of supply of service is in India [Section 2(11)].
- **India** means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters [Section 2(56) of the CGST Act].
- **Input tax** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
  - (a) the integrated goods and services tax charged on import of goods;
  - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
  - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the IGST Act;
  - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
  - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

  but does not include the tax paid under the composition levy [Section 2(62) of the CGST Act].
- **Intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13)].

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- **Non-taxable online recipient** means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

  Explanation—For the purposes of this clause, the expression **"unregistered person"** includes a person registered solely in terms of section 24(vi) of the CGST Act, 2017 [Section 2(16)].

- **Location of the recipient of services** means:

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

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

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

  (d) in absence of such places, the location of the usual place of residence of the recipient [Section 2(14)].

- **Location of the supplier of services** means:

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

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

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

  (d) in absence of such places, the location of the usual place of residence of the supplier [Section 2(15)].

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- **Online information and database access or retrieval services** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,–

  (i) advertising on the internet;

  (ii) providing cloud services;

  (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

  (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

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

  (vi) digital data storage; and

  (vii) online gaming [Section 2(17)].

- **Place of business** includes-

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

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

  (c) a place where a taxable person is engaged in business through an agent, by whatever name called [Section 2(85) of the CGST Act]

- **Recipient** of supply of goods or services or both, means—

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

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- where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of the CGST Act].

❖ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of the CGST Act].

3. IMPORTS UNDER GST

Under the GST regime, Article 269A constitutionally mandates that supply of goods and/or services in the course of import into the territory of India shall be deemed to be supply of goods and/or services in the course of inter-State trade or commerce.

So, import of goods or services is treated as inter-State supplies and is subject to IGST. Supply of goods and/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.

In case of goods, the importer of goods pays IGST and in case of services, the importer of services pays IGST on reverse charge basis. However, in respect of import of online information and database access or retrieval (OIDAR) services by unregistered, non-taxable recipients, the supplier located outside India is

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responsible for payment of IGST. Either the supplier of OIDAR services has to take registration or has to appoint a person in India for payment of taxes.

Importer Exporter Code (IEC): PAN of an entity is to be used as IEC. If importer is registered under GST, he is required to declare only GSTIN as PAN is part of GSTIN[1].

A. IMPORT OF GOODS

	STATUTORY PROVISIONS
Section	***Particulars***
Levy of IGST on imported goods	
Section 5(1) of the IGST Act	*Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
Proviso to section 5(1) of the IGST Act	*Provided that the integrated tax on goods other than the goods as may be notified by the Government on the recommendations of the Council imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.*

[1] *DGFT's Trade Notice No. 09 dated 12.06.2017*

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Inter-State supply	
Section 7(2) of the IGST Act	*Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.*
Place of supply	
Section 11 of the IGST Act	*Place of supply of goods imported into, or exported from India* *[Refer Chapter 3: Place of Supply in Module 1 of this Study Material for discussion on these provisions]*
Levy of customs duty	
Section 12 of the Customs Act, 1962	*(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from, India.* *(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.*
Provisions for collection of IGST on imported goods and warehoused goods sold from a customs warehouse as also for determination of their value under section 3 of the Customs Tariff Act, 1975	
Section 3(7) of the Customs Tariff Act, 1975	*Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.*

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Section 3(8) of the Customs Tariff Act, 1975	*For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of-* *(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and* *(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).*
Section 3(8A) of the Customs Tariff Act, 1975	*Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub-section (7) shall be,-* *(a) where the whole of the goods are sold, the value determined under sub-section (8) or the transaction value of such goods, whichever is higher; or* *(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher:* *Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):*

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	Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8). *Explanation.- For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.*
Section 3(11) of the Customs Tariff Act, 1975	*The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.*
Section 14A of the IGST Act	***Special provision for specified actionable claims supplied by a person located outside taxable territory.***
(1)	*A supplier of online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.*
(2)	*For the purposes of complying with provisions of sub-section (1), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in sub-section (2) of section 14 of this Act:* *Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier:* *Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable*

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	territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.
(3)	*In case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.]*

ANALYSIS

(i) IGST on imported goods in addition to duty of customs [Section 7(2) read with section 5]

Import of goods means bringing goods in India [*See definition under the heading 'Relevant Definitions'*] from a place outside India [Section 2(10)]. Supply of goods imported into the territory of India till they cross the customs frontiers of India is deemed to be an inter-State supply.

IGST on goods imported into India is levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 [Proviso to section 5(1)]. Thus, though goods imported into India are leviable to IGST under the IGST Act, machinery of the customs law is used to levy and collect the same.

However, in case of intangible goods, it may not be possible to levy and collect IGST on imports in said manner, as the goods may not be physically crossing customs frontiers. Resultantly, the Government is empowered to notify certain goods for whom proviso to section 5(1) may not be applicable for levy and collection of IGST and in whose case, IGST shall be levied and collected in the manner specified in section 5(1) only. Supply of online money gaming has been notified for the said

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purpose[2]. This implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

The place of supply of goods, imported into India is the location of the importer [Section 11]. Thus, if an importer say is located in Rajasthan, the State tax component of the IGST accrues to the State of Rajasthan.

IGST on imported goods is levied in addition to other customs duties levied on the imported goods but the same is not customs duty. In addition, GST Compensation Cess, may also be leviable on import of certain luxury and de-merit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

Accordingly, goods imported into India are, in addition to the applicable customs duties, liable to IGST at such rate as is leviable under the IGST Act on a like article on its supply in India.

The bill of entry filed for import of goods now looks like this, with columns for customs duty, additional duty, and IGST:

[2] *vide Notification No. 03/2023 IT dated 29.09.2023*

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(ii) Point when IGST is levied on imported goods [Proviso to section 5(1)]

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, 1962. Customs duty is leviable when importation of goods gets complete, i.e. when the goods become part of the mass of goods within the country; the taxable event being reached at the time 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.

(iii) Taxable value of imported goods for levying IGST [Section 3(8) of the Customs Tariff Act, 1975]

The value of the goods for the purpose of levying IGST is the assessable value of the imported goods determined under section 14 of the Customs Act, 1962 plus customs duty levied under that Act and any other sum chargeable on the said goods under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess (wherever applicable).

Wherever the goods are also leviable to GST Compensation Cess, the same is collected on the value taken for levying IGST. In other words, IGST paid shall not be added to the value for the purpose of calculating GST Compensation Cess. In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as GST Compensation Cess also includes Anti-Dumping Duty and Safeguard duty *[Guidance Note for Importers and Exporters issued by DGFT after introduction of GST]*.

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Value for levying IGST on imported goods	**=**	**Value determined 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**

[For examples/illustrations showing calculation of IGST chargeable on imported goods, Chapters 2 & 4 of Module 4 on Customs Laws may be referred to.]

(iv) Applicability of IGST on goods supplied while being deposited in a customs bonded warehouse [Section 3(8A) of the Customs Tariff Act, 1975]

The Customs Act, 1962 permits goods that have entered India to be deposited in a bonded warehouse on filing 'into-bond' bill of entry, without payment of duty. The importer is at liberty to transfer the ownership of such goods to another person while the goods remain deposited in the warehouse.

The "transfer/sale of goods while being deposited in a customs bonded warehouse" is a common trade practice whereby the importer files an into-bond bill of entry and stores the goods in a customs bonded warehouse and thereafter, supplies such goods to another person who then files an ex-bond bill of entry for clearing the said goods from the customs bonded warehouse for home consumption.

However, 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 paragraph 8(a) of Schedule III to the CGST Act. Here, warehoused goods have the same meaning as assigned to it in the Customs Act, 1962.

Further, value of such activities or transactions as may be prescribed in respect of in-bond sales as specified in Schedule III is included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

GST is not leviable when goods deposited in customs bonded warehouse are sold before clearance; the same is leviable when ex-bond bill of entry is filed for clearing such warehoused goods for home consumption.

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It is to be noted that the basic customs duty paid on the warehoused goods at the stage of ex-bonding is calculated on the value determined under section 14 of the Customs Act, 1962 at the time of filing of the into-bond bill of entry.

However, value of imported goods for levying IGST in case of supply of warehoused goods is determined as under:

Value for levying IGST in case of supply of warehoused goods	**=**	**(a)**	**Transaction value (Sale value)**
			OR
		(b)	**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**
			WHICHEVER IS HIGHER

If 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 – (i) transaction value of the goods sold and (ii) proportionate value (of the goods sold) determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

The remaining goods (which are not sold) are assessed on the value determined under section 14 of the Customs Act plus basic customs duty and any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

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(v) Taxability of High Sea Sale

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the high sea sale of the goods, the customs declarations, i.e. bill of entry etc. is filed by the person who buys the goods from the original importer during the said sale.

However, supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

GST is not leviable on high sea sales. IGST is leviable only when the goods are cleared from customs for home consumption.

Further, value of such high sea sales is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry.

Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, 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.

Circular No. 33/2017 Cus dated 01.08.2017 has clarified that the importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original invoice, high seas sales contract, details of service charges/commission paid etc. to establish a link between the first contracted price of the goods and the last transaction.

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(vi) Third country shipments

Third country shipments or triangular trade is a common practice in international trade whereby goods move from one country to another without touching India; only invoicing is done by the registered person in India.

For example, 'A', a registered person in India, receives an order to supply goods to 'B' in USA. 'A', finds a supplier 'C' in Singapore and asks him to supply goods to 'B' in USA. Two invoices are raised here; one by 'A', the registered person in India, on 'B' in USA and the other by 'C' in Singapore on 'A' in India. The point to be noted here is that goods do not touch Indian shores; they are shipped by 'C' from Singapore to 'B' in USA.

Paragraph 7 of the Schedule III to CGST Act provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (third country shipments) is treated neither as a supply of goods nor a supply of services. Thus, there is no GST liability on such sales. Further, value of such third country shipments is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

(vii) Taxability of 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 leviable under section 3(7) of the Customs Tariff Act, 1975 vide *Notification No. 64/2017 Cus dated 05.07.2017*.

(viii) Taxability of goods imported by EOU

Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOU's are governed by *Notification No. 52/2003 Cus* as amended. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST will be subject to fulfilment of specified conditions.

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(ix) Import as baggage

Passenger baggage is exempted from IGST as well as GST Compensation Cess. The 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.

(x) Taxability of supply of online money gaming by a person located outside the taxable territory to a person in India [Section 14A]

- Online money gaming is taxable by virtue of Entry 6 of Schedule III of the CGST Act.
- Where a person located in India receives online money gaming from a person located outside India, the supplier is liable to pay IGST on such supply.
- For this purpose, said supplier will take a single registration under a Simplified Registration Scheme[3]. Further, they need to furnish return in Form GSTR-5A by 20th day of the month succeeding the calendar month/part thereof[4].
- 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.

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[3] *Said Simplified Registration Scheme has been provided in rule 14 of the CGST Act. Rule 14 of the CGST Act has been discussed in detail in Chapter 8 – Registration in Module 2 of this Study Material.*

[4] *Detailed provisions are contained in rule 64 of the CGST Act which has been discussed in detail in Chapter 13 – Returns in Module 2 of this Study Material.*

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- In case of failure to comply with the above provisions by the supplier, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier will be blocked for access by the public.

B. IMPORT OF SERVICES

STATUTORY PROVISIONS

Activities to be treated as supply even if made without consideration	
Paragraph (4) of Schedule I to the CGST Act	*Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.*
Levy of IGST on importation of services	
Section 5(1) of the IGST Act	*Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

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Reverse charge	
Section 5(3) of the IGST Act	*The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
Services provided through electronic commerce operator (ECO)	
Section 5(5) of the IGST Act	*The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:* *Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:* *Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.*
Inter-State supply	
Section 7(4) of the IGST Act	*Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*

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Supplies in territorial waters	
Section 9 of the IGST Act	*Notwithstanding anything contained in this Act,––* *(a) where the location of the supplier is in the territorial waters, the location of such supplier; or* *(b) where the place of supply is in the territorial waters, the place of supply,* *shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.*
Place of supply	
Section 13 of the IGST Act	*Place of supply of services where location of supplier or location of recipient is outside India.* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Special provision for payment of tax by a supplier of online information and database access or retrieval (OIDAR) services	
Section 14(1) of the IGST Act	*On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:* *Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:––*

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	(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory; *(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;* *(c) the intermediary involved in the supply does not authorise delivery; and* *(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.*
Section 14(2) of the IGST Act	*The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:* *Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:* *Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.*

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ANALYSIS

(i) Taxability of import of service [Section 7 of the CGST Act read with para 4 of Schedule I to the CGST Act]

To be taxable, the transaction of import of service needs to be a "supply". While the main definition of "supply" under section 7 of the CGST Act covers supply of goods or services for a consideration in the course or furtherance of business, clause (b) thereof includes services imported for a consideration even if the import is not in the course or furtherance of business. Supply under the IGST Act has been defined to mean the same as the supply under section 7 of the CGST Act.

Significance of consideration and business test in taxability of importation of services

As per section 7(1)(b) of the CGST Act, import of services for consideration whether or not in the course or furtherance of business, is considered as a supply. Thus, in general, import of services without consideration is not considered as supply. However, business test is not required to be fulfilled for treating import of service, made for a consideration, as supply.

Furthermore, in view of the 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.

A conjoint reading of aforesaid provisions with the provisions of section 14 *(discussed in the subsequent paras of this Chapter)*, import of free services from Google and Facebook by all of us, without any consideration, is not considered as supply. Import (downloading) of a song for consideration for personal use would be a supply of service, even though the same is not in the course or furtherance of business. Import of some services by an Indian branch from their parent company outside India, in the course or furtherance of business, even if without consideration, will be a supply.

Thus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business. The same has been explained in the table below:

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Nature of Service	Consideration	Business Test
Import of services	Necessarily Required	Not required
Import of services by a person from a related person or from his establishment outside India	Not required	Necessarily Required

Import of service into the territory of India is treated as inter-State supply in terms of section 7(4) and thus, is liable to IGST under section 5.

(ii) Meaning of import of service [Section 2(11)]

IGST Act defines import of services as supply of any service where the supplier is located outside India, the recipient is located in India, and the place of supply of service is in India.

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The concept discussed above has been explained by way of following examples:

Location of Supplier	Location of Recipient	Place of Supply	Whether qualifies as import of services?
London	Delhi	Delhi	Yes
London	Paris	Paris	No
Delhi	Paris	Delhi	No
London	Delhi	London	No

Thus, only where the location of supplier is outside India but the location of recipient and the place of supply is in India, the transaction shall qualify as import of services.

'India' is the sum of the territory of its States and also includes its territorial waters and Exclusive Economic Zone. This is an extended definition of 'India' over and above the area denoted by the expression in Article 1 of the Constitution and is enabled by the rights of nations under the United Nations Convention on the Law of the Seas. The definition enables taxation of services

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received from outside India into the area that is outside India as per the definition in the Constitution but within the 200 nautical miles limit of the Exclusive Economic Zone [Section 2(56) of the CGST Act].

The place of supply is to be determined in terms of section 13 of the IGST Act. Section 13 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. 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 [Section 9]. Thus, the State tax component of the IGST accrues to such coastal State.

In addition to the place of supply being in India and the provider of service being located outside India, the location of the recipient of service must be in India for the transaction to qualify as import of service. This means that the service should be received at the recipient's place of business or fixed establishment in India. In the absence of such a place, the usual place of residence of the recipient is taken to be his location[5].

(iii) Person liable to pay tax on importation of service

- In case of importation of service, the recipient of imported service who is located in India (other than non-taxable online recipient of OIDAR service) is the person who has to pay IGST on the service under reverse charge *[Section 5(3) of the IGST Act read with Entry 1 of Notification No. 10/2017 IGST (R) dated 28.06.2017]*.
- 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 upto the custom station of clearance in India, IGST is to be paid by the importer located in India. In other words, in case of foreign shipping lines providing inbound transportation of goods (from a place outside India upto the customs station of clearance in India), IGST is to be paid by

[5] *Provisions relating to place of supply, location of supplier of service, location of recipient of service, fixed establishment, place of business etc. have been discussed in detail in Chapter 3 – Place of Supply in Module 1 of this Study Material.*

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the importer *[Section 5(3) of the IGST Act read with Entry 10 of Notification No. 10/2017 IGST (R) dated 28.06.2017]*[6].

However, Supreme Court in case of Union of India vs. Mohit Minerals Pvt. Ltd. 2022 (61) G.S.T.L. 257 has held that since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of section 8 of the CGST Act, 2017 and would amount to double taxation. Hence, there cannot be a separate levy of IGST on the component of ocean freight paid by the foreign exporter to the foreign shipping line in the CIF contract.

- In case of importation of OIDAR services by a non-taxable online recipient, supplier of OIDAR services is liable to pay IGST *[Discussed in detail in subsequent paragraphs]*.
- In case of importation of notified services through ECO, ECO is liable to pay IGST *[Discussed in detail in subsequent paragraphs]*.

(iv) Exemptions related to import of service

Exemptions from IGST in context of cross border transactions relating to services are discussed in Chapter 4: Exemptions from GST in Module 1 of this Study Material. The relevant exemptions may be referred to from that Chapter.

(v) Importation of OIDAR services [Section 14]

Online Information Database Access and Retrieval services (OIDAR) is a category of services provided through the medium of internet and received by the recipient online; such services cannot be rendered in the absence of information technology *[See definition]*.

(1) Download of an e-book online for a payment would amount to receipt of OIDAR services by the consumer.

[6] *With effect from 01.10.2023, Entry 10 of Notification No. 10/2017 has been omitted vide Notification No. 13/2023 IT (R) dated 26.09.2023, consequent to SC judgment in case of Mohit Minerals.*

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❑ Taxability of OIDAR services imported by business entity and non-taxable online recipient

Importation of OIDAR services by a business entity

For any supply to be taxable under GST, the place of supply in respect of the subject supply should be in India. In case, both the supplier of OIDAR service and the recipient of such service are in India, the place of supply would be the location of the recipient of service, i.e. it would be governed by the default provision of place of supply and would be liable to GST under forward charge.

However, OIDAR services can also be provided online even from a remote location outside the taxable territory. In such cases also - where the supplier of OIDAR service is located outside India and the recipient is located in India - the place of supply[7] would be India and the transaction would be amenable to tax under reverse charge if the recipient is a business entity (excluding Government, Governmental authority or Local authority). Thus, in such cases the recipient located in India, will be liable to pay IGST under reverse charge and undertake necessary compliances.

Importation of OIDAR services by non-taxable online recipient

Now what happens if the supplier is located outside India and the recipient in India is an individual consumer! In such cases also, the place of supply would be India and the transaction would be amenable to levy of GST, but the problem would be, how such tax would be collected. It would be impractical to ask the individual in India to register and undertake the necessary compliances under GST for a one-off purchase on the internet. However, if a similar service is provided by an Indian service provider, from within the taxable territory, to individual consumer in India, the same would be taxable under forward charge. Therefore, overseas suppliers of such services would have an unfair tax advantage should the services provided by them be left out of the tax net.

For such cases, the IGST Act provides that on supply of OIDAR services by any person from a location outside India to an unregistered recipient in India [i.e.

[7] *Provisions relating to place of supply for OIDAR services under section 14 of the IGST Act have been discussed in detail in Chapter 3: Place of Supply in Module 1 of this Study Material.*

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to a non-taxable online recipient *(See definition)*], the supplier who is outside India is liable to pay IGST on the supply.

Provision or facilitation of OIDAR services by intermediary located outside India: Now if an intermediary *(See definition)* 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, if 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, and if his invoice clearly identifies the service and its supplier, the responsibility for registration remains with the supplier.

Provisions enabling supplier of OIDAR services located outside India to comply with the responsibilities entrusted under GST laws: The supplier (or intermediary) of OIDAR services shall, for payment of IGST, take a single registration under the Simplified Registration Scheme.

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.

❑ Examples of what could be or could not be OIDAR services

In order to determine whether a particular service is an OIDAR service, the following tests need to be applied:

Thus, a service qualifies as OIDAR services if above two conditions have been satisfied. The inclusive part of the definition is only indicative and not exhaustive.

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Service	Whether condition 'A' is fulfilled?	Whether condition 'B' is fulfilled?	Whether it is OIDAR service or not?
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

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

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- Software to block banner adverts, otherwise known as Banner blockers
- Download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
- Online automated installation of filters on websites
- Online automated installation of firewalls

Supply of images, text and information and making available of databases

- Accessing or downloading desktop themes
- Accessing or downloading photographic or pictorial images or screensavers
- The digitised content of books and other electronic publications
- Subscription to online newspapers and journals
- Weblogs and website statistics
- Online news, traffic information and weather reports
- Online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular, data such as continually updated stock market data, in real time)
- The provision of advertising space including banner ads on a website/web page
- Use of search engines and internet directories

Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events

- Accessing or downloading of music on to computers and mobile phones
- Accessing or downloading of jingles, excerpts, ringtones, or other sounds
- Accessing or downloading of films
- Downloading of games on to computers and mobile phones

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- Accessing automated online games which are dependent on the internet or other similar electronic networks, where players are geographically remote from one another

(vi) Services provided through ECO located outside India [Section 5(5)]

An ECO is required to pay IGST on notified services if these are supplied through its portal[8].

If the ECO does not have a physical presence in India but there is a person in India representing such overseas supplier in India for any purpose, such person (representative in India) is liable to pay IGST. However, if the ECO does not have a physical presence in India and does not have a representative here either, it is required to appoint a person in India for the purpose of paying tax on such notified services.

C. REGISTRATION AND ITC IN CASE OF IMPORT OF GOODS AND SERVICES

- **Registration**

Registration for importer of goods

Reverse charge provisions do not cover importers of goods. Importers are also not listed among the categories of persons in section 24 of the CGST Act for whom registration is compulsory. It may be noted here that it is mandatory for the importers who are registered under GST 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.

Registration in case of import of exempted goods

In terms of section 23 of the CGST Act, persons engaged exclusively in the supply of goods (import and export) that is either not liable to tax or is wholly exempt from tax under the CGST or IGST Acts are not required to obtain registration. In such cases, PAN (which is authorized as IEC by DGFT) of the importer and exporter would suffice *[Instruction No. 10/2017 Cus dated 06.07.2017]*.

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[8] *Provisions relating to Electronic Commerce Operator are discussed in detail in Chapter 12: Electronic Commerce Transactions in Module 2 of this Study Material.*

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Registration for importer of services

Section 24(iii) of the CGST Act mandates compulsory registration for persons, without any benefit of the threshold limit for registration, who are required to pay tax under reverse charge. Accordingly, 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.

Thus, recipient of imported services other than non-taxable online recipient must register compulsorily.

❑ Input Tax Credit

ITC of IGST paid on imported goods

The definition of "input tax" in relation to a registered person means *inter alia* integrated tax and includes IGST charged on import of goods [Section 2(62) of the CGST Act (*See definition)*]. Thus, ITC of IGST paid at the time of import is available to the importer subject to the conditions and restrictions provided under sections 16 and 17 of the CGST Act for availing such credit. Such ITC can be utilized by the registered person for payment of taxes on his outward supplies. GST Compensation Cess paid on import of goods is also available as ITC.

IGST and GST Compensation Cess paid at the time of import of goods thus, in essence, are a pass through to this extent. The ITC of GST Compensation Cess, however, can only be used for payment of GST Compensation Cess. Furthermore, ITC of basic customs duty and social welfare surcharge paid on the imported goods is not available.

ITC of IGST paid on importation of services

The definition of "input tax" in relation to a registered person means *inter alia* integrated tax and includes tax payable under reverse charge under sub-sections (3) and (4) of section 5 of the IGST Act [Section 2(62) of the CGST Act (*See definition)*]. Therefore, IGST paid on importation of services is available as ITC at par with IGST paid on any other supply subject to conditions and restrictions prescribed under sections 16 and 17 of the CGST Act for availing such credit.

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4. EXPORTS

One of the fundamental principle to make exports competitive in the international market is that taxes should not be exported. Hence, export to destinations outside India as well as supplies to SEZ have been 'zero-rated', i.e. the goods or services exported are relieved of GST levied upon them either at the input stage or at the final product stage by way of refund of taxes paid. Thus, it can be seen that supply to SEZ unit/developer is treated at par with physical exports.

Supplies made for export through merchant exporters are taxed at 0.1% with ITC benefit. Supplies of goods from Domestic Tariff Area (DTA) to EOU/ Electronic Hardware Technology Park (EHTP) Unit/ Software Technology Park (STP) Unit/ Bio-Technology Parks (BTP) Unit are considered as 'deemed exports' and are allowed some of the benefits that actual export enjoy.

	STATUTORY PROVISIONS
Inter-State supply	
Section 7(5) of the IGST Act	*Supply of goods or services or both,-* *(a) when the supplier is located in India and the place of supply is outside India;* *(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or* *(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,* *shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.*
Establishments of distinct persons	
Explanation 1 to section 8 of the IGST Act	*For the purposes of this Act, where a person has,––* *(i) an establishment in India and any other establishment outside India;* *(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*

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	(iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory, *then such establishments shall be treated as establishments of distinct persons.*
Explanation 2 to section 8 of the IGST Act	*A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.*
Place of supply	
Section 11 of the IGST Act	*Place of supply of goods imported into, or exported from India* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Section 13 of the IGST Act	*Place of supply of services where location of supplier or location of recipient is outside India* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Zero Rated Supply	
Section 16 of the IGST Act	*(1) "Zero rated supply" means any of the following supplies of goods or services or both, namely :-* *(a) export of goods or services or both; or* *(b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.* *(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.* *(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST*

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	Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed. *Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.* *(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—* *(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid* ***in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder;*** *(ii) a class of goods or services* ***or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.***
Deemed Exports	
Section 147 of the CGST Act	*The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.*

ANALYSIS

A supply of goods and/or services whose place of supply is outside India and is made by a supplier in India is treated as inter-State supply under the IGST Act.

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Further, supply of goods and/or services to a SEZ unit/developer or supply of goods and/or services by a SEZ unit/developer are also treated as inter-State supply under the IGST Act [Section 7(5)]. The place of supply of goods and services in cross border transactions is determined in accordance with the provisions of sections 11 and 13 respectively.

Inter-State supplies of goods and/or services are liable to IGST in terms of section 5. Hence, on a strict interpretation of section 5, IGST is payable on such supplies where the supplier is located in India and the place of supply is outside India. However, at the same time it can be argued that since IGST Act extends to whole of India, IGST cannot be levied on a supply whose place of supply is outside India. Also, fundamentally GST is a consumption tax and thus, tax cannot be levied if goods and/or services are consumed outside India.

An inter-State supply under section 7(5)(a) cannot automatically be construed as export of goods and/or services; only when the conditions stipulated in the definitions of export of goods and export of services are fulfilled, will such inter-State supplies be considered as exports and, in turn, be zero rated.

A. ZERO RATED SUPPLY [SECTION 16]

(i) What is Zero Rating?

By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the outward exempt from payment of tax but there is also no bar on taking/availing credit of taxes paid on the input side for making/providing the outward supply.

Under GST Law, exports and supplies to SEZ units/developers are zero rated. Supply to SEZ units/developers **for authorised operations** is zero-rated in the same manner as is applicable for the physical exports.

(ii) What is the need of zero rating?

As per section 2(47) of the CGST Act, a supply is said to be exempt, when it attracts nil rate of duty or is specifically exempted by a notification or kept out of the purview of tax (i.e. a non-GST supply). But if a goods or service is exempted from payment of tax, it cannot be said that it is zero rated. The reason is not hard to find. The inputs and input services which go into the making of the goods or provision of service have already suffered tax and only the final product is exempted. Moreover, when the output is exempted,

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tax laws do not allow availment/utilisation of credit on the inputs and input services used for supply of the exempted output. Thus, in a true sense the entire supply is not zero rated. Though the output suffers no tax, the inputs and input services have suffered tax and since availment of tax credit on input side is not permitted, it becomes a cost for the supplier. The concept of zero rating of supplies aims to correct this anomaly

(iii) How does zero rating work?

As already seen, the concept of zero rating of outward supplies requires the outward supplies as well as the inputs or input services used in supplying the outward supplies to be free of GST. This is done by employing the following means:

a) The outward supplies which are zero rated can be made without payment of integrated tax, under bond or Letter of Undertaking or where such zero-rated supplies are exempted, they may be supplied without payment of tax;

b) The refund of unutilized credit input tax credit on supply of goods or services or both used in supplying the zero rated supply is allowed;

Thus, a registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC. Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed. *The goods/services/suppliers that have been so notified have been given by way of Annexure to this Chapter. Same is not relevant for the examination, but has been given only for the purpose of information of the students.*

Circular No. 01/ 2017 CC dated 26.07.2017 has clarified that the provisions of section 16 relating to zero rated supply will apply to GST Compensation Cess also. Hence, (i) exporters can claim refund of GST Compensation Cess paid on goods exported by him in case of notified class of persons making zero-rated supply or export of notified class of goods or services, or (ii) GST Compensation Cess will not be charged on goods exported under bond/LUT and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.

Refer Chapter 15: Refunds in this Module for detailed discussion on provisions relating to refunds associated with zero rated supplies.

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(iv) How do zero rated and exempt supplies differ?

The difference between zero rated supplies and exempted supplies is tabulated as below:

Exempted Supplies	Zero rated supplies
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 means (i) export of goods and/or services or (ii) supply of goods and/or services for authorised operations to SEZ unit/SEZ developer.
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; Input supplies also to be tax free (by way of refund of ITC)
Credit of input tax needs to be reversed, if taken. No ITC on the exempted supplies.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC allowed on zero rated supplies.
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or	A person exclusively making zero rated supplies needs to register as refund of unutilized

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wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

Note: If exempt supplies are exported, they qualify as zero rated supplies.

B. EXPORT OF GOODS/SERVICES

Taxability of Export

Export of goods or services are treated as inter-State supply and zero rated. This means that even if there is full exemption for the supply, ITC is still available to the exporter. The exporter can export under Bond/LUT without payment of IGST and claim refund of ITC. The notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed. The objective is to make Indian exports competitive in the international market.

It may be noted that since exports are inter-State supplies, the tax associated with them will always be IGST.

Export of Goods

(i) Physical exports [Section 2(5)]

Export of goods requires taking the goods from India to a place outside India. India is defined as extending to the limits of its maritime zone, which is 200

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nautical miles from the coastal baseline. This is far beyond the normal definition of India, which only includes its territorial waters, which in turn extend 12 miles from the baseline. Given the extended meaning of India, export would require that the goods must travel beyond 200 miles from the baseline in order to qualify as having been exported.

Sending/ taking goods out of India for exhibition or on consignment basis for 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, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, does not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a 'supply', the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

Thus, activity of sending/ taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

(ii) Deemed exports

Deemed exports refers to supplies of goods manufactured in India **(and not services)** which are notified as deemed exports under section 147 of the CGST Act. Such supplies do not leave India and the payment for the same is received either in Indian rupees or in convertible foreign exchange.

Following categories of supply of goods have been notified as deemed exports by the Government vide *Notification No. 48/2017 CT dated 18.10.2017:*

(a) Supply of goods by a registered person against Advance Authorisation (AA)

If exports have already been made after availing ITC on inputs used in manufacture of such exports, the goods so supplied should be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a Chartered Accountant should be submitted to the jurisdictional Commissioner of

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GST or any other officer authorised by him within 6 months of such supply.

(b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation (EPCG)

(c) Supply of goods by a registered person to Export Oriented Unit (EOU)

(d) Supply of gold by a bank or Public sector Undertaking specified in *Notification No. 50/2017 Cus dated 30.06.2017* (as amended) against AA

"AA" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2023 for import or domestic procurement of inputs for physical exports.

"EPCG" means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2023 for import of capital goods for physical exports.

"EOU" means an EOU or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy, 2023.

The above have been discussed in detail in Chapter 8: Foreign Trade Policy in Module 4 of this Study Material.

Taxability of deemed exports

Deemed exports are not zero rated supplies by default, unlike the regular exports. Hence, all supplies notified as supply for deemed export are subject to levy of taxes, i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient. Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be. *[Refer Chapter 15: Refunds in this Module for detailed discussion on these provisions].*

(iii) Merchant exports

There is no specific provision in GST law for export through third parties, commonly known as merchant exports. However, a low rate of GST of 0.1%

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on supplies for export through third parties has been provided by way of exemption notifications. *[This is expressed as 0.1% IGST on inter-State supplies or 0.05% CGST plus 0.05% SGST on intra-State supplies]*.

Circular No. 125/44/2019 GST dated 18.11.2019 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) 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 as per the provisions of section 54(3)(ii) of the CGST Act[9]. 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.

Circular No. 08/08/2017 dated 04.10.2017 has clarified that there is no provision for issuance of CT-1 Form - which enables merchant exporters to purchase goods from a manufacturer without payment of tax - under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

Manufacturer exporter means a person who exports goods manufactured by him or intends to export such goods. Merchant exporter means a person engaged in trading activity and exporting or intending to export goods [As defined under Foreign Trade Policy 2023].

A registered supplier can supply goods to a merchant exporter at low rate of GST (0.1%) prescribed under *Notification Nos. 41/2017 IT(R) and 40/2017 CT(R) both dated 23.10.2017* if following conditions (specified in the said notifications) are fulfilled-

(a) the registered supplier (manufacturer) shall supply the goods to the registered recipient (merchant exporter) on a tax invoice;

(b) 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;

[9] *Provisions relating to refund of unutilized ITC on account of inverted duty structure have been discussed in detail in Chapter 15: Refunds in this Module of the Study Material.*

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(c) 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;

(d) the registered recipient shall be registered with an Export Promotion Council;

(e) 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;

(f) the registered recipient shall move the said goods from place of registered supplier –

i. directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or

ii. directly to a registered warehouse 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;

Registered principal place of business or registered additional place of business are deemed to be a registered warehouse [*Circular No. 42/2017 Cus dated 07.11.2017*].

(g) 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 warehouse 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;

(h) in case of situation referred to in condition (g), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

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(i) 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, to the registered supplier as well as jurisdictional tax officer of such supplier.

Merchant exporters may exclude commercially sensitive information while providing copies of shipping bills to registered suppliers *[Circular No. 42/2017 Cus dated 07.11.2017]*.

Export of Services [Section 2(6)]

Supply of service qualifies to be an 'export of service' if it fulfills the following conditions:

(a) the service is supplied from India to a recipient located outside India,

(b) the place of supply of the service is outside India,

(c) 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

(d) the transaction is between separate entities, i.e. not merely between two establishments of an entity

Branch and Head Office of one taxable person are not treated as two separate entities for this purpose. In other words, provision of outbound services *inter se* Head Office and Branch is not construed as export of service. However, *Notification No. 9/2017 IT(R) dated 28.06.2017* exempts the services provided by an Indian establishment to its foreign establishment from IGST if the place of supply is outside India – *For details, refer Chapter 4: Exemptions from GST in Module 1 of this Study Material*.

Apparently, subsidiary and holding companies may not be treated as mere establishments of one entity since these are two separate legal persons (with different PAN). Thus, seemingly, provision of outbound services *inter se* subsidiary company and holding company can be construed as export of service if all other condition of export of services are fulfilled. Under service tax law, similar view was taken by the Gujarat High Court in the case of *Linde Engineering India Private Limited Other vs. Union of India [R/Special Civil Application No. 12626 of 2018 dated 16.01.2020]*. Service tax law had identical provisions on this aspect.

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As in case of export of goods, in case of export of services also, India extends to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline.

For example, Raman of Delhi has supplied services to John of USA.

In the given example, supplier of service – Raman – is located in India, recipient of service – John – is located outside India and the place of supply of service is USA. Payment for services provided by Raman has been received in convertible FOREX and Raman and John are not merely establishments of a distinct person as per explanation to section 8 of IGST Act. Since all the requisite conditions have been satisfied, such services qualify as export of services.

In this regard, following circulars have been issued:

(A) Sub-contracting of services by an exporter of services to another person located outside India - *Circular No. 78/52/2018 GST dated 31.12.2018*

If an exporter of services outsources a portion of the services contract to another person located outside India, there may be instances where the full consideration for the outsourced services is not received by the exporter in India. The tax treatment of the said portion of the contract at the hands of the exporter has been explained as under:

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Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place: -

(a) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contact value;

(b) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) read with section 13(2) are satisfied.

The supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking ITC of the IGST so paid.

Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

(a) IGST has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India; and

(b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.

(2) ABC Ltd. India has received an order for supply of services amounting to $ 500,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in

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accordance with the Explanation 1 in section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay IGST on the same under reverse charge and also be eligible to take ITC of the IGST so paid.

Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided IGST on import of services has been paid on the part of services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

(B) 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.

Definition of "export of services" (discussed herein), places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of the IGST Act, cannot be treated as export. Thus, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

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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.

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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[10], it is observed that **a company incorporated**

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[10] ***Section 2(84) of the CGST Act*** *provides that* ***"person"*** *includes-*

(a) .....
(b) .....
(c) a company;
(d) .....
(e) .....
(f) .....
(g) .....
(h) any body corporate incorporated by or under the laws of a country outside India;
(i) .....
(j) .....
(k) Central Government or a State Government;
(l) .....
(m) .....
(n) .....

Definitions of company and foreign company as provided under section 2 of Companies Act 2013 are as under:

Company *means a company incorporated under this Act or under any previous company law.*

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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).

Foreign company *means any company or body corporate incorporated outside India which—*

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

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Common provisions/aspects for export of goods and services

(i) Supplies to a SEZ unit or SEZ developer

Supply to a SEZ unit/developer is zero-rated but all the supplies are not zero-rated. The supplies to a SEZ unit/developer shall be zero rated and the supplier shall be eligible for refund of unutilized ITC or tax paid as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorised 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 authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit – whether to be treated as an inter-State supply or an intra-State supply

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As per section 7(5)(b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply in the course of inter-State trade or commerce.

However, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located *[Please refer Chapter 3 – Place of Supply in Module 1 of this Study Material for detailed discussion of said provisions]*. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

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

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

It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply *[Circular No. 48/22/2018 GST dated 14.06.2018]*.

(ii) Transactions with EOUs

Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter *[Circular No. 8/8/2017 GST dated 04.10.2017 as amended]*.

However, supplies to EOUs are treated as deemed exports and refund of tax paid on deemed exports is admissible either to the supplier or the recipient.

(iii) Procedure for export under bond/LUT without payment of tax

Procedure for merchant exports

Refer point (iii) under heading "Export of goods".

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Procedure for direct exports [Rule 96A of the CGST Rules]

(a) Exporter has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within: -

Export of goods	Export of services
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.	15 days after the expiry of 1 year, or the period as allowed under FEMA[11] including any extension of such period as permitted by the RBI, whichever is later, from the date of issue of the invoice for export or such further period as may be allowed by the Commissioner, **if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the RBI.**

These provisions are also applicable in respect of zero-rated supply of goods and/or services to a SEZ unit/developer without payment of IGST.

Proviso to section 16(3) provides that the registered person making zero rated supply of goods, without payment of tax shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under section 16(3) along with the applicable interest under section 50 of the CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (FEMA) for receipt of foreign exchange remittances, in such manner as may be prescribed. Rule 96B prescribing the manner in relation to this, lays down that proceeds of export of goods need to be realized within the period allowed under FEMA for receipt of foreign exchange remittances. Non/partial realization of such proceeds may result in recovery of any refund paid to the taxpayer with interest under section 50 of the CGST

[11] *Foreign Exchange Management Act, 1999*

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Act. *[Provisions of rule 96B have been discussed in detail in Chapter 15 - Refunds in this Module of the Study Material.]*

(b) Failure to export goods and pay the tax due along with interest within the period specified in (a) 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]*.

(c) 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 ₹ 250 lakh *[Notification No. 37/2017 CT dated 04.10.2017]*.

(d) 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.

Clarification on furnishing of bond/LUT

Circular No. 08/08/2017 GST dated 04.10.2017 as amended vide *Circular No. 40/14/2018 GST dated 06.04.2018* & *Circular No. 88/07/2019 GST dated 01.02.2019* has clarified the following with regard to furnishing of bond/LUT for export without payment of tax:

(a) Validity of LUT: The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub-rule (1) of rule 96A of the CGST Rules (as given in the table above) and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

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(b) **Form for bond/LUT:** The registered person (exporter) shall fill the relevant form on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.

(c) **Documents for LUT:** No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

(d) **Acceptance of LUT/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*.

(e) **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 ₹ 250 lakh. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

(f) **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.

(g) **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

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would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

(h) **Realization of export proceeds in Indian Rupee:** Para A(v) Part-I of *RBI Master Circular No. 14/2015-16, dated 1st July, 2015* (updated as on 5th November, 2015) states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999.

Further, in terms of Para 2.52 of the Foreign Trade Policy (2023), 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.

(i) **Jurisdictional officer:** In exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, it is hereby stated that 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.

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(iv) Export to Nepal and Bhutan

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.

Export of services: In case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees is allowed in terms of section 2(6). As stated earlier, the RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan. Consequently, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees is considered as export of services subject to fulfillment of other conditions.

Therefore, exports of both goods and services to Nepal and Bhutan are treated as 'normal exports', i.e. goods and services can be exported to Nepal and Bhutan under LUT.

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Clarification regarding admissibility of export remittances received in Special Rupee Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services

As discussed earlier, one of the conditions mentioned in sub-clause (iv) of section 2(6) of the IGST Act in the definition of export of services (Refer definition of export of services] is that the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.

In this regard, it is clarified that when the Indian exporters, undertaking export of services, are **paid the export proceeds in Indian rupees 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, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars[12] and without prejudice to the permissions / approvals, if any, required under any other law .

[Circular No. 202/14/2023 GST dated 27.10.2023]

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[12] *Settlement of trade transactions in INR (Indian Rupees), as per Foreign Trade Policy, 2023 & extant RBI Circulars, shall take place through the Special Rupee Vostro Accounts opened by AD banks in India, as under:*

(a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.

(b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

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LET US RECAPITULATE

1. IMPORTS UNDER GST

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A. IMPORT OF GOODS

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Taxability of goods supplied while being deposited in a customs bonded warehouse

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Taxability of High Sea Sales

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance.

High Sea Sales → treated as → neither a supply of goods nor a supply of services → in terms of Schdeule III

Value of such High Sea Sale not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43

When bill of entry is filed for imported goods (High Sea Sales)

- **IGST is payable on**
- **Basic customs duty is payable on**

Price paid by the last high sea sales buyer who files the bill of entry for home consumption

Taxability of Third country shipments/ Triangular Trade

Third country shipments

- goods move from one country to another without touching India
- only invoicing is done by the registered person in India

Third country shipments → treated as → neither a supply of goods nor a supply of services → in terms of Schdeule III

Value of such Third country shipments not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43

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Taxability of supply of online money gaming by a person located outside the taxable territory to a person in India [Section 14A]

Supplier of Online Gaming Services located outside Taxable Territory.

Such Supplier itself is liable to pay IGST after obtaining single registration under **Simplified Registration Scheme (SRS)***

If the Supplier of Online Gaming does not have a physical presence in India.

If **person is available in India** representing such overseas supplier of Online Gaming.

Such person is liable to pay IGST.

If **person is not available in India** representing such overseas supplier of Online Gaming.

Supplier of online gaming is required to **appoint a person in India** for the purpose of paying tax on such services.

NOTE: *In case of failure to comply with the above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, any information generated, transmitted, received or hosted in any computer resource used for such supply shall be liable to be blocked for access by the public.*

** It is Simplified Registration Scheme, as referred to in section 14(2) of this CGST Act 2017.*

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Taxability of goods imported by SEZ

Taxability of goods imported by EOU

Import as Baggage

B. IMPORT OF SERVICES

(i) Taxability of import of service

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(ii) Meaning of import of service

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(iii) Person liable to pay tax on importation of service

<u>UOI v. Mohit Minerals Pvt. Ltd.</u>

Gist of this case: There cannot be a separate levy of IGST on the component of ocean freight paid by the foreign exporter to the foreign shipping line in the CIF contract, since it would be treated as composite supply.

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(iv) Importation of OIDAR services [Section 14]

Provision or facilitation of OIDAR services by intermediary located outside India

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Provisions enabling supplier of OIDAR services located outside India to comply with the responsibilities entrusted under GST laws

Supplier/intermediary of OIDAR Services	Only single registration is required under SRS
If representative available in India	he shall get registered and pay IGST on behalf of supplier.
If the ECO has neither the physical presence nor any representative in the taxable territory	OIDAR supplier may appoint a person in India for paying IGST.

MEANING OF OIDAR SERVICES

A: Services whose delivery is mediated by information technology over the internet/electronic network

+

B: Services are impossible to ensure in the absence of information technology

=

OIDAR Services

(v) Services provided through ECO located outside India

ELECTRONIC COMMERCE OPERATOR (ECO) LOCATED OUTSIDE INDIA

↓

If ECO supplies notified services through portal, ECO is required to pay IGST on notified services**

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**Services notified under section 9(5) of the CGST Act, 2017/ Section 5(5) of the IGST Act, 2017.

Registration and ITC in case of import of goods and services

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Input Tax Credit (ITC) in case of import of goods and services

Inter State Supply [Section 7(5) of IGST Act]

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Establishments of Distinct Person

Note: A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

ZERO RATED SUPPLY (ZRS)

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Difference between Exempted Supplies and Zero Rated Supply

Exempted Supplies	Zero rated supplies
Exempt supply means supply of any goods and/or services which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services for authorised operations to SEZ unit/SEZ developer.
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; IS also to be tax free (by way of refund of ITC)
Credit of input tax needs to be	Credit of input tax may be availed for

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reversed, if taken. No ITC on the exempted supplies.	making ZRS, even if such supply is an exempt supply. ITC allowed on ZRS.
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of ZRS shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making ZRS needs to register as refund of unutilized ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

EXPORT OF GOODS & SERVICES

Taxability of Export

- Treated as inter-State supply and zero rated.
- ITC is still available to the exporter even if there is full exemption for the supply.
- Tax associated with exports is always IGST.

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Export of Goods

Physical Exports → Taking the goods from India to a place outside India.

Deemed Exports → Goods (not services) supplied are manufactured in India → Supplies do not leave India. → Such supplies are notified as deemed exports. → Payment for supplier is received either in INR/ convertible FOREX.

Categories of supply of goods notified as deemed exports

Supply of goods by a registered person against Advance Authorisation (AA)
Supply of Capital Goods (CG) by a registered person against Export Promotion Capital Goods (EPCG) authorisation.
Supply of goods by a registered person to EOU.
Supply of gold by specified bank or PSU against AA.

Taxability of deemed exports

- Such supplies are subject to levy of taxes.
- Such supplies can be made on payment of tax and cannot be supplied under a bond/LUT.
- Refund of tax paid on supply, regarded as deemed export admissible to either the supplier or recipient.

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Merchant Exporter

Merchant Exports

Where a person who manufactures the goods (Manufacturer Exporter) export these goods through Merchant Exporter who buys goods from manufacturer and exports them outside India at concessional rate (CGST 0.05% CGST and SGST 0.05%) subject to the specified conditions.

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*** Registered principal place of business or registered additional place of business are deemed to be a registered warehouse.*

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Export of Services [Section 2(6)]

Conditions to be satisfied to qualify as Export of Services.

- Supplier- in India
  Recipient- Outside India
- POS = Outside India
- Transaction is between separate entities not between establishments of entities.
- Consideration in convertible FOREX / INR.

Common provisions/aspects for export of goods and services

(i) Supplies to SEZ unit/ developer.

Supply to a SEZ unit/ developer is zero rated.

Refund of Unutilized ITC or refund of IGST paid is available.

Condition - Such supplies are received for authorized operations by SEZ unit/ developer.

An endorsement from specified officer of zone is required to be issued.

(ii) Transactions with EOUs

Supplies **to** EOUs

- Zero rating not applicable.
- Taxable like any other taxable supplies.
- treated as deemed exports and refund of tax paid on deemed exports is admissible either to the supplier or the recipient.

Exports **of** EOUs

- eligible for zero rating.

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(iii) Procedure for direct exports [Rule 96A of the CGST Rules]

Exporter has to execute bond or LUT before export, and pay tax with 18% Interest within:

(i) Export of Goods: 15 days after end of 3 months (or further period as allowed by commissoner) from date of invoice issued, if goods ot exported outside India; or

(ii) Export of Services: 15 days after end of 1 year (or further period as allowed by commissoner) from date of invoice issued if the payment not received by exporter in convertible FOREX or INR.

Note: If registered person is making ZRS without payment of tax, then in case of non-realisation of sale proceeds, he would be be liable to deposit the refund so received under section 16(3) along with interest within 30 days after the expiry of time limit prescribed under FEMA for receipt of FOREX remittances.

Failure to export and paying tax with interest leads to withdrawal of facility of export without payment of IGST and recovery of the said amount under section 79 of the CGST Act.

This facility can be restored after the payment of said amount.

Registered persons are eligible to furnish a LUT in place of a bond. (Except those who have been prosecuted for cases involving an amount> Rs. 250 lakh)

The details of the export invoices should be submitted in GSTR-1.

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(iv) Export to Nepal and Bhutan

Export of goods:

- Such Exports falls within the definition of 'export of goods' under the IGST Act.
- RBI allow receipt of payment in INR in case of such exports.
- India has rupee trade with Nepal and Bhutan.
- Treated as zero rated and qualify for all the benefits available to ZRS.
- Non-realization of export proceeds within the time prescribed under FEMA may result in recovery of any refund.

Export of services:

- RBI allows receipt of payment in INR in case of exports of services to Nepal and Bhutan in case of supply of services and such supply in Nepal or Bhutan, against payment in INR is considered as export of services subject to fulfillment of other conditions.

TEST YOUR KNOWLEDGE

1. *Explain how imports are taxed under GST.*
2. *Describe how exports are taxed under GST.*
3. *Is it necessary to execute a bond for effecting zero rated supplies? Elucidate.*
4. *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? Analyze the scenario and offer your comments.

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5. *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.

6. *Whether services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ unit/developer by a supplier located in the same State as that of the SEZ unit/developer should be treated as an inter-State supply under section 7(5)(b) or an intra-State supply in terms of section 8(2) read with section 12(3)(c)? Examine.*

7. *Mr. Amar Kant, a Chartered Accountant, being a partner in GST registered firm orders a gaming software for his son from a company located in USA. He makes the payment for the same from his personal bank account.*

   Examine whether the transaction will be liable to GST. If yes, in whose hands the tax liability will arise?

8. *'Separate LUT is to be furnished for every export supply.'*

   With reference to the provisions of the GST law, examine the veracity or otherwise of the statement.

9. *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.

ANSWERS

1. All imports are deemed as inter-State supplies for the purposes of levy of GST (IGST). The incidence of tax follows the destination principle and the tax revenue accrues to the State where the imported goods and services are consumed. IGST paid on import of goods and services is available as ITC for

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set off against the output tax liability. IGST on import of goods is levied under the IGST Act but the machinery of the customs law is used to levy and collect the same.

2. Exports of goods and services are zero rated. The exporter can export under bond/LUT without payment of IGST and claim refund of ITC. In case of notified class of persons or notified goods or services, he may pay IGST at the time of export and claim refund thereof.

3. No. The facility to export under LUT has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of ₹ 2.5 crore) vide *Notification No. 37/2017 CT dated 4.10.2017*. The other conditions for executing LUT have been specified in *Circular No. 8/8/2017 GST dated 4.10.2017 as amended*.

4. As per the definition of export of goods provided under section 2(5), export of goods means taking goods out of India to a place outside India.

Since in the given case, the goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction between A Ltd. and B Ltd. cannot be treated as export of goods under GST.

5. As per section 16(2), ITC may be availed for making zero rated supplies, notwithstanding that such supplies are exempt supplies. However, the same is subject to provisions u/s 17(5) of the CGST Act, i.e. blocked credit.

Hence, A Ltd. can take credit of ₹ 2,00,000 even if the outward zero rated supply is exempt from GST. However, the credit would not be available in respect of the inputs and input services, the credit on which is blocked under section 17(5) of the CGST Act.

6. *Circular No. 48/22/2018 GST* has clarified on this issue as under:

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

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It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/developer. It is, therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ unit/developer shall be treated as an inter-State supply.

7. The supply of gaming software is in the nature of OIDAR service in terms of section 2(17).

The transaction is for personal consumption of Mr. Amar Kant and the payment has also been made from the personal bank account of Mr. Amar Kant and not from the bank account of his GST registered firm. Therefore, being an unregistered person receiving OIDAR service in taxable territory, Mr. Amar Kant is a non-taxable online recipient in terms of section 2(16).

Services received from a provider of service located in a non- taxable territory by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempt from IGST. However, such exemption is not available in case of OIDAR services *[Notification No. 9/2017 IT (R) dated 28.06.2017]*.

Therefore, being an OIDAR service provided by a supplier located outside India and received by a non-taxable online recipient, the same is liable to GST.

Tax on service supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient is payable by the recipient of such service under reverse charge. Therefore, tax on OIDAR services provided by the company located in USA to Mr. Amar Kant, a non-taxable online recipient, will be payable by such company under forward charge.

8. No, the statement is not correct.

The LUT remains valid for the whole financial year and there is no need to furnish separate LUT for each export supply.

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However, in case goods are not exported within the time limit specified in rule 96A(1) of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub rule, the facility of export under LUT will be deemed to have been withdrawn. However, if the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

Rule 96A(1) provides *inter alia* that an exporter of goods has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% 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.

9. AXT Ltd.'s view is partially correct.

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.'s view that GST is payable on a high-sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, 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.

Therefore, AXT Ltd.'s view that basic customs duty is payable at the time of filing the bill of entry for import of goods is correct.

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or, January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of paragraph 8 of Schedule III are compared with the provisions as amended by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2025	Remarks
Paragraph 8 of Schedule III of the CGST Act, 2017	(a) Supply of warehoused goods to any person before clearance for home consumption Explanation 2.—For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in	(a) Supply of warehoused goods to any person before clearance for home consumption ***(aa) Supply of goods warehoused in a Special Economic Zone or in a Free Trade Warehousing Zone to any person before clearance for exports or to the Domestic Tariff Area;";***	Schedule III of the CGST Act, 2017 is being amended, with effect from 01.7.2017 by inserting a new clause (aa) in paragraph 8 of Schedule III of the CGST Act, to provide that the supply of goods warehoused in a Special Economic Zone or in a Free Trade Warehousing Zone to any person before clearance for exports or to the

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	the Customs Act, 1962 (52 of 1962).	Explanation 2.—For the purposes of ***clause (a) of*** paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962). ***Explanation 3.—For the purposes of clause (aa) of paragraph 8, the expressions "Special Economic Zone", "Free Trade Warehousing Zone" and "Domestic Tariff Area" shall have the same meanings respectively as assigned to them in section 2 of the Special Economic Zones Act, 2005.***	Domestic Tariff Area shall be treated neither as supply of goods nor as supply of services. It further seeks to amend Explanation 2 of Schedule III of CGST Act, w.e.f. 01.07.2017 to clarify that the said explanation would be applicable in respect of clause (a) of paragraph 8 of the said Schedule. It further seeks to amend Schedule III of CGST Act, w.e.f. 01.07.2017 by inserting Explanation 3 to define the terms 'Special Economic Zone', 'Free Trade Warehousing Zone' and 'Domestic Tariff Area', for the purpose of the proposed clause (aa) in paragraph 8 of said Schedule.

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ANNEXURE

Class of persons who may make zero-rated supply or notified class of goods or services which may be exported on payment of IGST and claim refund thereof notified

As discussed in the chapter, as per section 16(4), a registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC.

Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed.

In pursuance of the same, following goods/services/suppliers have been notified:

(i) all goods or services (except the goods specified in note below) as the class of goods or services which may be exported on payment of IGST and on which the supplier of such goods/services may claim the refund of tax so paid; and

(ii) all suppliers to a Developer or a unit in SEZ undertaking authorised operations as the class of persons who may make supply of goods or services (except the goods specified in note below) to such Developer or a unit in SEZ for authorised operations on payment of IGST and on which the said suppliers may claim the refund of tax so paid.

[Notification No. 01/2023 IT dated 31.07.2023 as amended by Notification No. 05/2023 IT dated 26.10.2023]

Chapter / Heading/ Sub-heading/ Tariff item	Description of Goods
2106 90 20	Pan-masala
2401	Unmanufactured tobacco (without lime tube) – bearing a brand name
2401	Unmanufactured tobacco (with lime tube) – bearing a brand name
2401 30 00	Tobacco refuse, bearing a brand name

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2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
2403 19 10	Smoking mixtures for pipes and cigarettes
2403 19 90	Other smoking tobacco bearing a brand name
2403 19 90	Other smoking tobacco not bearing a brand name
2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name
2403 99 10	Chewing tobacco (without lime tube)
2403 99 10	Chewing tobacco (with lime tube)
2403 99 10	Filter khaini
2403 99 20	Preparations containing chewing tobacco
2403 99 30	Jarda scented tobacco
2403 99 40	Snuff
2403 99 50	Preparations containing snuff
2403 99 60	Tobacco extracts and essence bearing a brand name
2403 99 60	Tobacco extracts and essence not bearing a brand Name
2403 99 70	Cut tobacco
2403 99 90	Pan masala containing tobacco 'Gutkha'

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2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name
3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: ***a)*** Of peppermint (Mentha piperita); ***b)*** Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex- mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex- mentha citrate), Mentha arvensis

Note - *The list of notified goods given below is only for the sake of knowledge. Students are not expected to memorise the same for examination purpose.*

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CHAPTER 15

REFUNDS

The section numbers referred to in the Chapter pertain to CGST Act and rule numbers referred to in the Chapter pertain to CGST Rules, unless otherwise specified. Examples/Illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- identify the situations leading to refund claim
- explain the time limit for claiming refund and concept of 'relevant date' to calculate such time limit
- identify the conditions to be satisfied and documents to be filed to claim the refund in different circumstances
- illustrate the circumstances under which refund claim may be withheld by the Department
- explain the 'principle of unjust enrichment'
- describe the provisions relating to 'Consumer Welfare Fund'.
- explain provisions relating to refund to UN Bodies, Embassies, etc.
- explain the provisions relating to refund of tax wrongfully collected and paid to Central Government or State Government
- compute the interest payable to the applicant on delayed refunds

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1. INTRODUCTION

Timely refund mechanism is essential in tax administration, as it facilitates trade through the release of blocked funds for working capital, expansion and modernisation of existing business.

The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Under the GST regime, there is a standardised form for making any claim for refunds. The claim and sanctioning procedure is primarily online and time bound, which is a marked departure from the earlier time consuming and cumbersome procedure. Further, provisions relating to refund are more transparent as compared to provisions contained in the earlier indirect tax regime.

Chapter XI - Refunds [Sections 54 to 58] of the CGST Act, 2017 and Chapter X – Refund [Rule 89 to 97A] of the CGST Rules, 2017 stipulates the provisions relating to refunds. State GST laws also prescribe identical provisions in relation to refunds. Further, section 15 of the IGST Act, 2017 prescribes for the refund of integrated tax paid on supply of goods to tourist leaving India.

Provisions of Refunds under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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Following provisions have been discussed in this Chapter:

Chapter XI of CGST Act: Refunds	
Section	**Section**
54	Refund of tax
55	Refund in certain cases
56	Interest on delayed refunds
57	Consumer Welfare Fund
58	Utilisation of fund
Chapter VI of IGST Act: Refund of integrated tax to international tourist	
Section	**Particulars**
15	Refund of integrated tax paid on supply of goods to tourist leaving India.
Chapter X of CGST Rules: Refund	
Rule	**Particulars**
89	Application for refund of tax, interest, penalty, fees or any other amount
90	Acknowledgement
91	Grant of provisional refund
92	Order sanctioning refund
93	Credit of the amount of rejected refund claim
94	Order sanctioning interest on delayed refunds
95	Refund of tax to certain persons
95B	Refund of tax paid on inward supplies of goods received by Canteen Stores Department

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96	Refund of integrated tax paid on goods or services exported out of India
96A	Export of goods or services under bond or Letter of Undertaking
96B	Recovery of refund of unutilized input tax credit or integrated tax paid on export of goods where export proceeds are not realized within stipulated time
97	Consumer Welfare Fund
97A	Manual filing and processing

Before proceeding into detailed provisions of the chapter, let us first go through the relevant definitions.

2. RELEVANT DEFINITIONS

- **Drawback:** in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods; [Section 2(42)]
- **Refund:** Refund includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under section 54(3) [Explanation 1 to section 54].
- **Tourist**: "Tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes [Explanation to section 15].
- **Zero rated supply:** Zero-rated supply shall have the meaning assigned to it in section 16 [Section 2(23) of the IGST Act]. As per section 16(1) of IGST Act, "zero rated supply" means any of the following supplies of goods or services or both, namely:–

  (a) export of goods or services or both; or

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(b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.

❖ **Recipient of goods or services:** "Recipient" of supply of goods or services or both, means—

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

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

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

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

3. REFUND OF TAX [SECTION 54 OF THE CGST ACT]

A. Situations leading to refund claims

A claim for refund may arise in the following situations:

(i) Export/supply to SEZ developer/unit on payment of IGST

In case where notified class of goods and/or services are exported or, notified class of persons export goods and/or services or supply goods and/or services to an SEZ developer/unit, **on payment of IGST**, subject to such conditions, safeguards and procedure as may be prescribed, refund of such IGST paid on goods and/or services supplied is available [Section 16(4) of IGST Act].

(ii) Refund of unutilized ITC – In case of export/supply to SEZ developer/unit **without payment of IGST** or in case of inverted duty structure, refund of unutilized ITC is available.

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(iii) Refund of tax paid on the supply of goods regarded as deemed exports may be claimed.

(iv) Refund of 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 [Section 49(6)].

(v) Refund on account of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued (tax paid on advance payment).

(vi) Refund of tax wrongly collected and paid to the Government (i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa) [Section 77 of the CGST Act and section 19 of the IGST Act].

(vii) Refund of the IGST paid by tourist leaving India on any supply of goods taken out of India by him [Section 15 of IGST Act].

(viii) Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court.

(ix) On finalization of provisional assessment, if any tax becomes refundable to taxpayer (on account of assessed tax on final assessment being less than the tax deposited by the taxpayer) [Section 60].

(x) Refund of taxes on purchases made by UN bodies or embassies etc. [Section 54(2)].

(xi) Refund of advance tax deposited by a casual taxable person/ Non-resident taxable person [Section 54(13)].

(xii) Refund of additional IGST paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of IGST paid at the time of export of such goods has already been sanctioned [Section 54(1)].

(xiii) Refund of excess payment of tax.

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The list is only indicative and not exhaustive. Detailed provisions relating to some of the sections referred above have been discussed in the other chapters at respective places.

B. Application for refund claim [Rule 89]

1. Application Form for claiming refund [Section 54(1) and 49(6) read with rule 89]

- Any person[1] claiming refund of any tax, interest, penalty, fees or any other amount paid by him may file an application in **Form GST RFD-01** electronically through GST common portal [Section 54(1) read with rule 89(1)].

Refund in general cases

- Any person, claiming refund of additional IGST paid on account of upward revision in price of the goods subsequent to exports, and on which the refund of IGST paid at the time of export of such goods has already been sanctioned as per rule 96, may file an application for such refund of additional IGST paid, electronically in **Form GST RFD-01** through the common portal. [Section 54(1) read with rule 89(1B)].

Refund of additional IGST paid on account of upward revision in price of goods subsequent to exports

- 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 [Section 49(6) and proviso to section 54(1) read with rule 89(1)].

Refund in excess balance of electronic cash ledger.

[1] *except the persons covered by notification issued under section 55 like UN Bodies, Embassies etc.*

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Refund of TDS/TCS deposited in electronic cash ledger as excess balance in cash ledger: The amount deducted/collected as TDS/TCS by TDS/ TCS deductors/collectors under the provisions of section 51 /52 and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose of discharging tax liability.

TDS/TCS credited to electronic cash ledger can also be claimed as refund.

The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers.

Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under the CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger as above[2].

- 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 GST RFD-01.

- However, in case of **refund of IGST paid on goods exported out of India**[3], there is no need for filing a separate refund application in Form GST RFD-01 since the **shipping bill filed by the exporter is itself treated as a refund claim**.

Refund of tax paid on export of goods

Shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India [Rule 96]. *The provisions relating to refund of IGST on export of goods outside India have been discussed in detail subsequently in this chapter.*

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[2] *Circular No. 166/22/2021 GST dated 17/12/2021*

[3] *Refund of IGST paid on goods exported out of India is available either where class of goods exported are notified or class of persons making zero-rated supply of goods are notified u/s 16(4).*

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Filing of refund claim:

- **Supplies regarded as deemed exports**: In respect of supplies regarded as deemed exports, either recipient or supplier are allowed to file the refund application. The refund in respect of deemed export supplies is the refund of tax paid on such supplies. 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 [Second proviso to rule 89(1)].

> ***Either supplier or recipient allowed to file refund application in case of deemed exports.***

In a case when the refund is claimed by the recipients, the GST portal requires them to first debit the amount equivalent to the refund claimed from their electronic credit ledger. They have to furnish an undertaking stating that refund has been claimed only for those invoices which have been detailed in Form GST RFD-01 for the tax period for which refund is being claimed and the amount does not exceed the amount of ITC availed in the valid return filed for the said tax period[4].

Entire amount paid by the recipient available as ITC even if blocked in terms of section 17(5): Further, 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, the 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

[4] *Circular No. 147/03/2021 GST dated 12.03.2021*

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recipient will be available as ITC irrespective of the fact whether it is blocked in terms of section 17(5)[5][6].

Further, there arose a question as to whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the "Net ITC" for computation of refund of unutilised ITC under rule 89(4) & rule 89(5) *(discussed subsequently in this chapter)*. It is clarified that as seen above, since 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, **such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is NOT TO BE INCLUDED IN THE "NET ITC" FOR COMPUTATION OF REFUND OF UNUTILISED ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5)**[7].

- **Supplies to a Special Economic Zone unit or a Special Economic Zone developer**: In respect of supplies to a SEZ unit/developer, the application for refund shall be **filed by** the -

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

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[5] *Circular No. 172/04/2022 GST dated 06.07.2022*

[6] *Provisions of Blocked Credit are discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.*

[7] *Circular No. 172/04/2022 GST dated 06.07.2022*

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(b) Supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of SEZ [First proviso to rule 89(1)].

Explanation - For the purposes of this sub-rule, **"specified officer"** means a "specified officer" (Joint/ Deputy/ Assistant Commissioner of Customs for the time being posted in SEZ) or an "authorised officer" (Inspector/ Preventive Officer/ Superintendent of Customs posted in SEZ and authorised by specified officer to discharge any of his functions) under SEZ Rules.

- **Supplies by Casual taxable person (CTP) /Non-resident taxable person (NRTP)**[8]: The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)].

> ***Refund to be claimed in the last return required to be furnished by CTP/NRTP.***

Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Third proviso to rule 89(1)].

2. Time limit within which refund claim can be filed

Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of **2 years from the 'Relevant Date'** in prescribed form and manner [Section 54(1)].

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[8] *The concept of casual taxable person and non-resident taxable person has been explained in detail in Chapter 8 – Registration in Module 2 of this Study Material.*

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✪ ***It has been clarified that time limit of 2 years is not applicable in case of refund of excess balance in the electronic cash ledger***[9]

✪ ***In case where proper officer has issued a Deficiency Memo to the applicant requiring him to file a fresh refund claim, the time period from the date of filing of the refund claim till the date of communication of the deficiencies in the prescribed form by the proper officer, shall be excluded from the above period of '2 years' [Proviso to rule 90(3)].***

Meaning of 'Relevant Date' [Explanation 2 to section 54]

'Relevant Date' has been defined in Explanation 2 to section 54. Accordingly it **means**:-

S.No.	Cases	Relevant Date
1	**In case of goods exported out of India**[10] where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs/input services used in such goods and	
	(i) goods are exported by sea or air	date on which the ship or the aircraft in which such goods are loaded, leaves India
	(ii) goods are exported by land	date on which such goods pass the frontier
	(iii) goods are exported by post	date of dispatch of goods by the Post Office concerned to a place outside India

[9] *Circular No. 166/22/2021 GST dated 17/12/2021*

[10] *In case of upward revision of the price of the goods subsequent to exports, refund of additional IGST paid on the same can be claimed within 2 years from the relevant date mentioned here.*

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2	In case of supply of goods regarded as **deemed exports** where a refund of tax paid is available in respect of the goods	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[11].
3	In case of **zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit** where a refund of tax paid is available in respect of such supplies themselves (in case of zero-rated supply by notified class of persons), or as the case may be, the inputs or input services used in such supplies	Due date for furnishing of return under section 39 in respect of such supplies
4	**In case of services exported out of India** where a refund of tax paid is available in respect of services themselves (in case of zero-rated supply by notified class of persons or supply of notified class of services), as the case may be, the inputs or input services used in such services, and	
	(i) the supply of services had been completed	Date of receipt of payment in convertible foreign exchange or in

[11] *Circular No. 166/22/2021 GST dated 17/12/2021*

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	prior to the receipt of such payment	Indian rupees wherever permitted by the Reserve Bank of India
	(ii) payment for the services had been received in advance prior to the date of issue of the invoice	Date of issue of invoice
5	Where tax becomes refundable as a consequence of **judgment, decree, order or direction** of the Appellate Authority, Appellate Tribunal/any court	Date of communication of such judgment, decree, order or direction
6	In case of refund of **unutilised ITC** on account of inverted duty structure	Due date for furnishing of return under section 39 for the period in which such claim for refund arises
7	In the case where tax is paid provisionally under this Act/rules made thereunder	Date of adjustment of tax after the final assessment thereof
8	In the case of a person, other than the supplier	Date of receipt of goods or services or both by such person
9	Any other case	Date of payment of tax

Clarification on bunching of refund claims across financial years

It has been clarified that while filing the refund claim, an applicant may, at his option, 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; now said restriction has also been relaxed.

For instance, a registered person opting to file Form GSTR-1 on quarterly basis can apply for refund on a quarterly basis or clubbing successive quarters and these quarters may spread across different financial year. Thus, he can

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file refund claim for quarters: Jan-Mar, Apr-Jun and July-Sep, while filing the refund claim[12].

3. Documentary evidences for filing refund claim

The applicant need not file elaborate documents along with the refund claim. Standardised and easy to understand documents have been prescribed. Thus, for every claim the main document prescribed is a statement of relevant invoices/shipping bills (NOT THE INVOICES THEMSELVES) pertaining to the claim.

Documentary evidences required for filing refund claim has been provided under the provisions of section 54(4) read with rule 89(2).

Section 54(4)

Section 54(4) stipulates that the **application shall be accompanied by** —

(a) such documentary evidence as may be prescribed **to establish that a refund is due to the applicant**; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish **to establish that there is no unjust enrichment** (i.e. the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person).

[12] *Circular No.135/05/2020 GST dated 31.03.2020*

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However, where the amount claimed as refund is less than ₹ 2 lakh, it shall not be necessary for the applicant to furnish any documentary and other evidences but he **may file a declaration, based on the documentary or other evidences available with him, certifying that there is no unjust enrichment** i.e. the incidence of such tax and interest had not been passed on to any other person.

Rule 89(2)

In pursuance of said provisions, rule 89(2) has provided that the application for filing of refund claim shall be accompanied by any of the following documentary evidences as applicable, in Annexure 1 of Form GST RFD-01 for refund claim, to establish that a refund is due to the applicant:

In case where refund is on account of	*Documentary evidence to be submitted*[13]
A judgment, decree, order/direction of Appellate Authority, Appellate Tribunal/any Court	*The reference number of the order and 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(6) and section 112(8) claimed as refund (i.e. amount to be deposited at the time of filing of appeal before Appellate Authority or Appellate Tribunal).*
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*
export of goods, other than electricity	*a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices.* *It is important to note that realization of convertible foreign exchange or Indian Rupees wherever permitted by RBI is one of the conditions for export of services whereas in case of export of goods, realization of consideration is*

[13] *The documentary evidences as prescribed under rule 89(2) given in this table are given here only for the reference of the students. They are not relevant for the examination purpose.*

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	not a pre-condition. Consequently, documentary evidence in the form of a statement containing no. and date of relevant BRCs/FIRCs are not required here[14]. *However, in case of non-realization of consideration in terms of FEMA, the exporter shall deposit the amount so refunded to the extent of non-realization of sale proceed along with interest within 30 days [Rule 96B] [discussed in detail subsequently in this chapter].*
export of electricity	*(i) a statement containing:* ❑ *number and date of the export invoices,* ❑ *details of energy exported,* ❑ *tariff per unit for export of electricity as per agreement,* *(ii) copy of Statement of Scheduled Energy for exported electricity by Generation Plants[15] and* *(iii) the copy of agreement detailing the tariff per unit*
upward revision in price of the goods subsequent to exports	*A statement containing:* ❑ *number and date of export invoices along with copy of such invoices,* ❑ *the number and date of shipping bills or bills of export along with copy of such shipping bills or bills of export,* ❑ *the number and date of Bank Realisation Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) in respect of such shipping bills or bills of export along with copy of such BRC/FIRC.[16]* ❑ *the details of:* ✓ *refund already sanctioned,* ✓ *the number and date of relevant supplementary invoices or debit notes issued subsequent to the upward revision in prices*

[14] *Circular No. 37/11/2018-GST dated 15.03.2018*

[15] *This Statement is issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of sub-regulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010.*

[16] *foreign inward remittance certificate issued by Authorised Dealer-I Bank in respect of additional foreign exchange remittance received in respect of upward revision in price of exports.*

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	along with copy of such supplementary invoices/debit notes. ❑ *the details of:* ✓ *payment of additional amount of IGST,* ✓ *proof of payment of such additional amount of integrated tax and interest paid thereon,* ✓ *number and date of FIRC in respect of additional FOREX received in respect of upward revision in price of exports alongwith copy of such FIRC.* *Certificate issued by a practicing-chartered accountant or a cost accountant to the effect that the said additional FOREX remittance is on account of such upward revision in price of the goods subsequent to exports* *Copy of contract or other documents, as applicable.* *A reconciliation statement reconciling the value of supplies declared in supplementary invoices, debit notes or credit notes issued along with relevant details of BRC or FIRC.*	
supply of goods is made to a SEZ unit or a SEZ developer	*statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding goods admitted in full for authorized operations as endorsed by the specified officer of SEZ.*	*In addition, a declaration to the effect that tax has not been collected from the SEZ unit/ SEZ developer is also required to be furnished.*
supply of services made to a SEZ unit or a SEZ developer	*statement containing the number and date of invoices, the evidence regarding receipt of services for authorized operations as endorsed by the specified officer of SEZ, and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the SEZ Act, 2005.*	
deemed exports	*Statement containing the number and date of invoices along with an:* *(i) acknowledgment by the jurisdictional Tax officer of the Advance Authorisation (AA) holder or Export Promotion Capital Goods*	

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	(EPCG) Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said AA/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. *(ii) undertaking by the recipient of deemed export supplies that no ITC on such supplies has been availed of by him.* *(iii) undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund*[17]*.*
refund of any unutilised ITC accumulated on account of inverted duty structure	*a statement containing the number and the date of the invoices received and issued during a tax period*
finalisation of provisional assessment	*reference number of the final assessment order and a copy of the said order*
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*
excess payment of tax	*Statement showing the details of the amount of claim on account of excess payment of tax*
agreement or contract for supply of service has been cancelled or terminated and the refund is claimed by an unregistered person (Please refer the	*Statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the*

[17] *Notification No. 49/2017 CT dated 18.10.2017*

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*detailed discussion given after the Table**)*	*supplier against cancellation or termination of such agreement along with proof thereof*
	A certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices.

Note - Documentary evidence pertaining to passing of incidence of tax

Declaration *where refund claim ≤ ₹2 lakh*

Further, a declaration needs to be furnished to establish that there is no unjust enrichment in the case of the applicant[18], in a case **where the amount of refund claimed does not exceed ₹ 2 lakh**.

Certificate *where refund claim > ₹2 lakh*

However, **where the amount of refund claimed exceeds ₹ 2 lakh**, a Certificate in Annexure 2 of Form GST RFD-01 needs to be furnished by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant. However, said certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

No Certificate No declaration required

Further, **neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant** is required to be furnished in the following cases:

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilised ITC in case of zero rated supplies made without payment of tax or on account of inverted duty structure;

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[18] *Establishing that there is no unjust enrichment means establishing that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person. This concept has been discussed in detail later in this chapter.*

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(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which *invoice* has not been issued, or where a refund voucher has been issued. *The expression "**invoice**" referred here means invoice conforming to the provisions contained in section 31*[19].

(d) 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*.

(e) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Further, neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant is required to be furnished <u>in case of refund of excess balance in electronic cash ledger</u>[20]

Annexure-2

Certificate [rule 89(2)(m)]

This is to certify that in respect of the refund amounting to Rs <<>> ———— (in words) claimed by M/s———— (Applicant's Name) GSTIN/ Temporary ID——— for the tax period < —>, the incidence of tax and interest, has not been passed on to any other person. This certificate is based on the examination of the books of account and other relevant records and returns particulars maintained/ furnished by the applicant.

Signature of the Chartered Accountant/ Cost Accountant:

Name:

Membership Number:

Place:

Date:

Note - This Certificate is not required to be furnished by the applicant, claiming refund under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54 of the Act.

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[19] *Provisions relating to 'invoice' have been discussed in detail in Chapter 9 – Tax Invoice; Credit and Debit Notes in Module 2 of this Study Material.*

[20] *Circular No. 166/22/2021 GST dated 17/12/2021*

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**** Prescribing manner of filing an application for refund by unregistered persons**

There are cases where the unregistered buyers, who had entered into an agreement/ contract with a builder for supply of services of construction of flats/ building, etc. and had paid the amount towards consideration for such service, either fully or partially, along with applicable tax, had to get the said contract/ agreement cancelled subsequently due to non-completion or delay in construction activity in time or any other reasons. In a number of such cases, the period for issuance of credit note on account of such cancellation of service under the provisions of section 34 may already have got expired by that time. In such cases, the supplier may refund the amount to the buyer, after deducting the amount of tax collected by him from the buyer.

Similar situation may arise in cases of long-term insurance policies where premium for the entire period of term of policy is paid upfront along with applicable GST and the policy is subsequently required to be terminated prematurely due to some reasons. In some cases, the time period for issuing credit note under the provisions of section 34 may have already expired and therefore, the insurance companies may refund only the proportionate premium net off GST[21].

Section 54(1) provides that **ANY PERSON** can claim refund, by making an application upto 2 years from the relevant date. Further, in terms of section 54(8)(e), in cases where the unregistered person has borne the incidence of tax and has not passed on the same to any other person, the said refund shall be paid to him instead of being credited to Consumer Welfare Fund (CWF).

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[21] *Where the time period for issuance of credit note under section 34 has not expired at the time of cancellation/termination of agreement/contract for supply of services,the concerned suppliers can issue credit note to the unregistered person. In such cases, the supplier would be in a position to also pay back the amount of tax collected by him from the unregistered person and therefore, there will be no need for filing refund claim by the unregistered persons in these cases. Accordingly, the refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 has already expired. Provisions relating to credit note have been discussed in detail in Chapter 9 – Tax Invoice, Credit and Debit Notes in Module 2 of this Study Material.*

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Thus, in order to enable such unregistered person to file application for refund under section 54(1) in the situations discussed above, a functionality is available on the common portal which allows unregistered persons to take a temporary registration and apply for refund under the category '**Refund for Unregistered person**' in Form GST RFD -01. Further, rule 89(2) provides for the documents required to be furnished along with the application of refund by the unregistered persons and the statement to be uploaded along with the said refund application, as mentioned in Table given earlier.

Moreover, it has been provided that a certificate by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax even if the amount of refund claimed exceeds ₹ 2 lakh.

Relevant date for filing of refund

As seen earlier, the relevant date in respect of cases of refund by a person other than supplier is the date of receipt of goods or services or both by such person. In the given cases of refund, the date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier will be considered as the date of receipt of the services by the applicant.

In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person[22].

C. Procedure on receipt of refund claim

1. Acknowledgment of refund claim [Rule 90]

I. Where the application relates to:

(a) Claim for refund from the electronic cash ledger:

Acknowledgement of refund

An acknowledgment in prescribed form shall be made available to the applicant[23],

[22] *Circular No. 188/20/2022 GST dated 27.12.2022*

[23] *through the Common Portal electronically*

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clearly indicating the date of filing of the claim for refund [Rule 90(1)].

(b) Other refund claims:

- The application shall be forwarded to the proper officer.
- The proper officer shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness.
- Where the application is found to be complete in terms of rule 89, an acknowledgement in prescribed form shall be made available to the applicant through the common portal electronically [Rule 90(2)]. Refund acknowledgment clearly indicates the date of filing of the claim for refund.

II. Deficiencies in refund claim – Issuance of Deficiency Memo:

Deficiency Memo

- Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Deficiency memo[24], requiring him **to file a fresh refund application after rectification of such deficiencies** [Rule 90(3)].

  The time period from the date of filing of the refund claim till the date of communication of the deficiencies in the prescribed form by the proper officer, shall be excluded from the period of '2 years' as specified under section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

- Where deficiencies have been communicated to applicant under the SGST Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under CGST Rules, 2017 [Rule 90(4)].

[24] *through the Common Portal electronically*

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III. 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 for 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)].

2. Grant of provisional refund [Section 54(6) read with rule 91]

GST law provides for grant of provisional refund of 90% of the total refund claim, in case the claim relates for refund arising on account of zero-rated supplies. The provisional refund would be paid within 7 days after giving the acknowledgement. The remaining 10% can be refunded later after due verification of documents furnished by the applicant. The provisional refund would not be granted to such supplier who was, during any period of 5 years immediately preceding the refund period, was prosecuted for any offence where the amount of tax evaded exceeds ₹ 2.5 crores.

90% of the total refund claim is paid within 7 days where refund arises on account of zero-rated supplies

Detailed provisions have been outlined hereunder:

Section 54(6) stipulates that:

- The proper officer may, in the case of any claim for **refund on account of zero-rated supply of goods or services or both** made by registered persons,
- **other than** such category of registered persons as may be **notified** by the Government on the recommendations of the Council,
- **refund on a provisional basis, 90% of the total amount so claimed**,

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- in such manner and subject to such conditions, limitations and safeguards as may be prescribed** and
- thereafter make an order under section 54(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

****Conditions, limitations and safeguards** have been prescribed under rule 91. It stipulates as following:

- The provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law **where the amount of tax evaded exceeds ₹ 2.5 crores**.

- The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being *prima facie* satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

  However, said order shall not be required to be revalidated by the proper officer.

- The proper officer shall issue a payment order for the amount sanctioned. The same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund 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.

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- The Central Government shall disburse the refund based on the consolidated payment advice.

3. Order of refund [Section 54(5), (7) read with rule 92]

- Section 54(5) stipulates that if, on receipt of any such application, the proper officer is satisfied that the whole/part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund *[discussed in detail subsequently]*.

- However, in certain specified circumstances, the refundable amount is to be paid to the applicant instead of being credited to the Consumer Welfare Fund [Section 54(8)] – *Discussed in detail subsequently]*.

- **Refund order:** Rule 92(1) provides that

  - ✓ where, upon examination of the application, the proper officer is satisfied that **a refund** under section 54(5) **is due and payable to the applicant**,
  - ✓ he shall **make an order sanctioning the amount of refund** to which the applicant is entitled,
  - ✓ **mentioning therein** the (i) amount, if any, refunded to him on a provisional basis, (ii) amount adjusted against any outstanding demand[25] and (iii) the balance **amount refundable**.

- **Refund to be granted both in cash and credit, based on original mode of payment:** The refund of tax shall be made proportionately, 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 from and the amount attributable to credit as ITC shall be recredited in the electronic credit ledger by issuing prescribed form.

[25] *under the CGST Act or under any existing law*

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Where, upon examination of a refund application, the proper officer is satisfied that a refund under section 54(5) is due and payable to the applicant:

(i) the proper officer shall make a refund order in prescribed form sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and

(ii) for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue prescribed form re-crediting the said amount as ITC in electronic credit ledger.

The above provision shall not apply to the refund of tax paid on zero-rated supplies or deemed export [Rule 92(1A)].

- **Where the proper officer is satisfied that the amount refundable under rule 92(1)/(1A)/(2)[26] is payable to the applicant[27]** instead of being credited to Consumer Welfare Fund, he shall make an refund **order** in prescribed form and issue a payment order for the amount of refund.

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.

Refund credited to applicant's bank account

The refund order issued in prescribed form shall not be required to be revalidated by the proper officer.

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[26] *Rule 92(2)- withholding of refund - has been discussed subsequently*

[27] *under section 54(8)*

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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 [Rule 92(4)].

The Central Government shall disburse the refund based on the consolidated payment advice [Rule 92(4A)].

- **Where the proper officer is satisfied that the amount refundable under rule 92(1)/(1A)/(2) is not payable to the applicant[28],** he shall make a refund order and issue an payment order for the amount of refund to be credited to the Consumer Welfare Fund [Rule 92(5)].

Refund credited to Consumer Welfare Fund

- **Time-limit for issuance 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 [Section 54(7)].

  The time limit of 60 days shall be counted from the date of filing of the claim for refund as mentioned on the acknowledgment made available to the applicant [Section 54(7) read with rule 90(1) and 90(2)].

4. Issue of SCN and rejection of refund claim [Rule 92(3)]

In case the claim is sought to be rejected by the proper officer, a notice has to be given online to the applicant stating the ground on which the refund is sought to be rejected. The applicant needs to respond online within 15 days from the receipt of such notice. Thus, no claim can be rejected without putting the applicant to notice. The detailed provisions have been discussed hereunder:

- Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant in prescribed form.

[28] *under section 54(8)*

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- Applicant will be required to furnish a reply within **15 days** of the receipt of such notice in prescribed form.
- The proper officer shall, after considering the reply furnished by applicant and after giving him an opportunity of being heard, 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 and the provisions of rule 92(1) relating to order sanctioning refund shall, *mutatis mutandis*, apply to the extent refund is allowed.
- No application for refund shall be rejected without giving the applicant an opportunity of being heard.

5. Withholding of refund claim [Section 54(10), (11) & (12)]

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.

The detailed provisions are as under:

Rule 92(2) stipulates that where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11), he shall pass an order informing the applicant the reasons for withholding of such refund.

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.

- **Section 54(10)** stipulates that where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court,

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Tribunal or Appellate Authority by the **specified date****, the proper officer may:

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

****Specified date** shall mean the last date for filing an appeal under this Act.

- **Section 54(11)** stipulates that 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 under section 54(11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to **interest @ 6% p.a.***, if as a result of the appeal or further proceedings he becomes entitled to refund [Section 54(12)].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

6. Credit of the amount of rejected refund claim [Rule 93]

- Where any deficiencies in refund claim have been communicated under rule 90(3) *[Rule 90(3) is discussed earlier]*, the amount earlier debited under rule 89(3) shall be re-credited to the electronic credit ledger [Rule 93(1)].

- Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in prescribed form [Rule 93(2)].

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- For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal [Explanation to rule 93].

D. Principle of Unjust Enrichment [Section 54(8), (8A) & (9)]

1. Theory of unjust enrichment

Theory of unjust enrichment

- **'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.

  This principle stipulates that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of 'unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity[29].

- 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'**. [Explanation (ii) to rule 89]

- Under unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every refund claim if sanctioned is first transferred to the Consumer Welfare Fund.

- If the claim of refund (barring specified exceptions) passes the test of unjust enrichment, it is paid to the applicant. The GST law makes this test inapplicable in case of refund of unutilized ITC, refund on account of exports, refund of payment of wrong tax (IGST

[29] *Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs 2005 (181) ELT 328 S.C*

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instead of CGST + SGST and vice versa), refund of tax paid on a supply, which is not provided or when refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person *[These cases have been given in detail in next point]*. In all other cases, the test of unjust enrichment needs to be satisfied for the claim to be paid to applicant.

- As discussed earlier, for crossing the bar of unjust enrichment, if the refund claim is upto ₹ 2 lakh, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding ₹ 2 lakh, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

2. Cases where theory of unjust enrichment is not applicable

Section 54(8) stipulates that the refundable amount shall, instead of being credited to the **Consumer Welfare Fund**, be paid to the applicant, if such amount is relatable to —

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77, 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;

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(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

3. Disbursement of refund of State Tax

The Government may disburse the refund of the State tax in such manner as may be prescribed [Section 54(8A)].

4. Refundable amount to be credited to Consumer Welfare Fund in all other cases

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of section 54(8). Instead, refundable amount shall be credited to Consumer Welfare Fund [Section 54(9)]

E. Refund of unutilized ITC

The provisions relating to refund of unutilized ITC have been compiled and discussed as under:

1. Accumulation of Input Tax Credit (ITC)

Accumulation of Input Tax Credit (ITC) happens when the tax paid on inward supply is more than the tax liability on outward supply. Such accumulation can be utilized by the registered person for payment of output tax liability.

However, the GST Law permits refund of unutilised ITC at the end of a tax period in two scenarios, namely if such credit accumulation is on account of zero rated supplies or on account of inverted duty structure, subject to certain exceptions. In such cases, the Electronic Credit Ledger is to be debited by the applicant by an amount equal to the refund so claimed [Rule 89(3)].

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2. Cases where refund of unutilized ITC is available

As per section 54(3), a registered person may claim refund, of any **unutilised ITC at the end of any tax period**[30],in the following cases:

(a) Zero rated supplies without payment of tax: Zero Rated supply means supply of goods and/ or services for authorised operations to an SEZ developer/unit or export of goods and/or services. A registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC[31].

(b) Inverted duty structure: The term **'inverted duty structure'** has not been defined in the GST, however it refers to a situation where the rate of tax on inputs is higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supply of goods or services as may be notified by the government.

Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST, as the case may be], under *Notification No. 40/2017 CT (R) dated 23.10.2017/ Notification No. 41/2017 IT (R) dated 23.10.2017*, subject to certain conditions specified in said notifications *[Discussed in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material],* are also eligible for refund on account of inverted tax structure.

Supply of specified goods/services where refund of unutilized ITC on account of inverted duty structure is NOT allowed: Government may, on the recommendations of the Council, notify supplies of certain goods or services or both where no refund of unutilized ITC on account of inverted duty structure is allowed.

For instance, supply of construction of complex services specified in para 5(b) of Schedule II of the CGST Act, rail locomotives powered from

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[30] *A tax period is the period for which return is required to be furnished [Section 2(106)].*

[31] *It is important to note that notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed.*

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an external source of electricity or by electric accumulators, soya bean oil, olive oil, palm oil, coal, lignite, peat etc [32].

However, it is clarified that this restriction on refund of unutilized ITC of GST paid on inputs is not applicable in case of zero-rated supply of specified goods or services, i.e. (a) exports of said goods or services or both; or (b) supply of said goods or services or both to a SEZ developer/unit *[Circular No. 18/18/2017 GST dated 16.11.2017]*.

3. Application Form for claiming refund

The application for refund in such cases shall be filed in Form RFD-01.

4. Time-limit for claiming refund

Refund claim on account of inverted duty structure or on account of accumulated ITC in case of exports of goods/ services made against LUT/ bond without payment of IGST, the refund claim can be filed within 2 years from the relevant date; *relevant date is discussed earlier in heading B in this chapter*.

5. Doctrine of unjust enrichment not applicable

In such cases, the refundable amount shall, instead of being credited to the **Consumer Welfare Fund**, be paid to the applicant. In other words, doctrine of unjust enrichment is not applicable in these cases.

6. Amount to be claimed as refund

(i) **Rule 89(4)** stipulates that in the case of **zero-rated supply of goods or services or both** without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{\text{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

[32] *Notification No. 15/2017 CT (R) dated 28.06.2017 and Notification No. 5/2017 CT (R) dated 28.06.2017. Examples given herein are only for information purpose.*

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where,-

A. **"Refund amount"** means the maximum refund that is admissible;

B. **"Net ITC"** means ITC availed on inputs *(see "Clarification on the term input" given subsequently)* and input services during the relevant period.

C. **"Turnover of zero-rated supply of goods"** means

(i) the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/letter of undertaking

or

(ii) value which is **1.5 times the value of like goods domestically supplied** by the same or, similarly placed, supplier, as declared by the supplier,

whichever is less.

D. **"Turnover of zero-rated supply of services"** means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.

E. **"Adjusted Total Turnover"** means the sum total of the value of:

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding turnover of services; &

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

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excluding **the value of exempt supplies other than zero-rated supplies during the relevant period**.

F. "Relevant period" means the period for which the claim has been filed.

Explanation – For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or

(ii) the value declared in tax invoice or bill of supply,

whichever is less.

Clarifications regarding manner of calculation of 'ADJUSTED TOTAL TURNOVER' under rule 89(4)

(1) Value of goods exported out of India

The **value of goods exported out of India** to be included while calculating **"Adjusted Total Turnover" WILL BE SAME** as being determined as per the above Explanation inserted in the said sub-rule[33].

(2) Restriction of 'Turnover of zero-rated supply of goods' to 1.5 times the value of like goods domestically supplied

As seen above, **"Adjusted Total Turnover"** includes "Turnover in a State/UT". As per section 2(112), "Turnover in a State/UT" includes turnover/ value of export/ zero-rated supplies of goods.

Now the definition of the term **'Turnover of zero-rated supply of goods'** used in the above formula restricts the same to 1.5 times the value of like goods domestically supplied by the same/similarly placed supplier/as declared by the supplier.

[33] *Circular No. 197/09/2023 GST dated 17.07.2023*

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It is clarified that the same value of zero-rated/ export supply of goods, as calculated as per the definition of **"turnover of zero-rated supply of goods"**, needs to be taken into consideration while calculating "turnover in a State or a Union Territory", and accordingly, in "adjusted total turnover" for the purpose of this sub-rule.

Thus, the restriction of 1.5 times of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "adjusted total turnover" here.

In short, for the purpose of rule 89(4), the value of export/ zero-rated supply of goods to be included while calculating "adjusted total turnover" **WILL BE SAME** as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in this sub-rule.

The same can explained by the following example where actual value per unit of goods exported is more than 1.5 times the value of same/ similar goods in domestic market, as declared by the supplier:

Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

Net admissible ITC = ₹ 270

Outward Supply	Value per unit (₹)	No of units supplied	Turnover (₹)	Turnover as per amended definition (₹)
Local (Quantity 5)	200	5	1,000	1,000

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Export (Quantity 5)	350	5	1,750	1,500 [1.5×(5×200)]
Total			2,750	2,500

The formula for calculation of refund as per rule 89(4) is:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC ÷Adjusted Total Turnover

Turnover of zero-rated supply of goods (as per amended definition) = ₹ 1,500

Adjusted Total Turnover= ₹ 1,000 + ₹ 1,500 = ₹ 2,500 [and not ₹ 1,000 + ₹ 1,750]

Net ITC = ₹ 270

Refund Amount = ₹ (1,500 × 270)/2,500 = ₹ 162

Thus, the admissible refund amount in the instant case is ₹ 162[34].

(iv) **Rule 89(5)** stipulates that in the case of refund on account of **inverted duty structure**, maximum refund of ITC shall be granted as per the following formula –

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

[34] *Circular No. 147/03/2021 GST dated 12.03.2021*

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where,-

A. **"Net ITC"** means ITC availed on **inputs** during the relevant period *(See Notes – 1 & 2 and "Clarification on the term input" given below)*; and

B. **"Adjusted Total turnover and Relevant period"** have the same meaning as assigned in sub-rule (4) above.

Note - 1: It may be noted that in rule 89(5), in 'Net ITC', ITC availed on only inputs is covered. Since the definition of inputs[35] doesn't include services or capital goods, it is apparent here that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of ITC accumulated on account of inverted duty structure[36].

Note - 2: If there are multiple inputs attracting different rates of tax, 'Net ITC' in rule 89(5) covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax. The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

(i) Suppose a manufacturing process involves the use of an input A (attracting 5% GST) and input B (attracting 18% GST) to manufacture output Y (attracting 12% GST). No input services are being availed.

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) read with rule 89(5), which prescribes the formula for the maximum refund amount permissible in such situations.

(iii) Further assume that the claimant supplies the output Y having value of ₹ 3,000/- during the relevant period for which the refund

[35] *under section 2(59)*
[36] *Circular No. 79/53/2018 GST dated 31.12.2018*

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is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹ 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹ 3,000/-.

(iv) If we assume that Input A, having value of ₹ 500/- and Input B, having value of ₹ 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹ 385/- (₹ 25/- and ₹ 360/- on Input A and Input B respectively).

(v) Therefore, maximum refund amount, as per rule 89(5) is as follows:

= [(₹ 3,000 × ₹ 385)/ ₹ 3,000] – (₹ 3,000 x 12% x 385/385)[37]

(vi) Thus, maximum refund amount is ₹ 25/-[38].

There arose an issue for consideration as to whether an applicant can seek refund of unutilized ITC on account of inverted duty structure, under section 54(3)(ii), in a case where the inversion is due to change in the GST rate on the same goods. For example, 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%.

It has been clarified that, in such cases, the input and output being the same, though attracting different tax rates at **different points in time**, do not get covered under section 54(3)(ii).

There may, however, be cases where though inputs and output goods are same, but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.

In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to section 54(3), other than the cases where

[37] *Modified as per revised formula for determining refund under inverted duty structure.*
[38] *Circular No. 79/ 53/ 2018 GST dated 31.12.2018*

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output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause[39].

Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST, as the case may be], under Notification No. 40/2017 CT (R) dated 23.10.2017/ Notification No. 41/2017 IT (R) dated 23.10.2017, subject to certain conditions specified in said notifications [Discussed in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material], are also eligible for refund on account of inverted tax structure as per above clarification.

Clarification on the term "input"

On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of 'Net ITC' on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input.

There are also instances where stores and spares, although charged to revenue, are considered as capital goods. Consequently, the ITC availed on them is not included in 'Net ITC', even though the value of these goods has not been capitalized in his books of account by the claimant.

In this regard, it is clarified that ITC of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST law. **The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5).** Further, capital goods have been clearly defined in section 2(19) as goods whose value

[39] *Circular No. 135/05/2020-GST dated 31.03.2020 as amended by Circular No. 173/05/2022 GST dated 06.07.2022*

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has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. **Hence, stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods**[40].

7. Refund of ITC under section 54(3) restricted to the extent of invoice details are reflected in Form GSTR-2B

In terms of sub-rule (4) to rule 36 *[discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material]*, the refund of accumulated ITC is also restricted to ITC as per those invoices, the details of which are uploaded by supplier in Form GSTR-1 and are reflected in Form GSTR-2B of the applicant for the said tax period or for any of the previous tax periods and on which the ITC is available to the applicant.

However, this does not in any way impact the refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) etc. ITC availed on imports, ISD invoices, RCM etc. are not reflected in Form GSTR-2B of the applicant. Therefore, it is clarified that refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will not be barred by not being reflected in Form GSTR 2B.

8. Determination of refundable amount in case of refund of unutilised ITC on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure

In case of refund of unutilized input tax credit (ITC) on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit/SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure, the common portal calculates the refundable amount as the least of the following amounts:

a) The maximum refund amount as per the above formula specified in rule 89(4) or rule 89(5) [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];

[40] *Circular No. 79/53/2018 GST dated 31.12.2018*

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b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in Form GSTR-3B for the said period has been filed; and

c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

After calculating the **least of the above 3 amounts**, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant in the following order:

a) Integrated tax, to the extent of balance available;

b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case)[41].

9. Cases where refund of ITC is NOT allowed

(i) Refund of unutilized ITC shall not be allowed if the **goods exported** out of India are **subjected to export duty** [Second proviso to section 54(3)]. The term **'subjected to export duty'** means where the goods are actually leviable to export duty and suffering export duty at the time of export.

Therefore, goods in respect of which either **Nil rate is specified** in Second Schedule to the Customs Tariff Act, 1975 or which are **fully exempted** from payment of export duty by virtue of any customs notification or which are **not covered under Second Schedule** to the Customs Tariff Act, 1975, **cannot be subjected to any export duty** under Customs Tariff Act, 1975.

Such goods would not be covered by the restriction imposed under the second proviso to section 54(3) for the purpose of availment of refund of accumulated ITC.

[41] *Master Circular on Refunds – Circular No. 125/44/2019 GST dated 18.11.2019*

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Accordingly, it is clarified that **only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under said restriction.**

(ii) Refund of ITC shall not be allowed if the **supplier** of goods or services or both **avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.**

Thus, no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax. It is clarified that if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess. It is also clarified that refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax[42].

F. Minimum refund claim [Section 54(14)]

No refund shall be paid to an applicant, if the amount is less than ₹ 1,000. The limit of ₹ 1,000 shall apply for each tax head separately and not cumulatively. Further, the limit would not apply in cases of refund of excess balance in the electronic cash ledger[43].

G. Refund in case of goods or services exported out of India

As discussed in *Chapter 14 – Import and Export under GST*, exports of goods and services are zero rated. A registered person making zero rated supply may supply the goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC.

Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed. In the ensuing paras, refund under each of these two cases has been discussed in detail:

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[42] *Master Circular on Refunds – Circular No. 125/44/2019 GST dated 18.11.2019*

[43] *Circular No. 59/ 33/ 2018 GST dated 04.09.2018*

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(I) Refund on account of export of goods or services [with payment of tax] [Rule 96]

In case where notified class of persons export goods and/or services or notified class of **goods or services are exported, on payment of IGST** and **refund of such tax paid on goods and/or services supplied is claimed**, provisions relating to refund of IGST are as follows:

Export of goods

(1) Application for refund claim: The shipping bill/ bill of export filed by the exporter of goods shall be deemed to be an application for refund and the taxpayer is not required to file separate refund application in this case.

Further, such application shall be **deemed to have been filed** only when:

(a) the **person in charge** of the conveyance carrying the export goods duly **files a departure manifest**[44]; **or an export manifest or an export report** covering the number and the date of shipping bills/bills of export; and

(b) the applicant has **furnished a valid return** in Form GSTR-3B.

If there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in Form GSTR-1, as amended in Form GSTR-1A if any, such application for refund shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter.

[44] *Governed by Sea Cargo Manifest and Transhipment Regulations 2018 which has come into force on 01.08.2019 vide Notification No. 38/2018 Cus (NT) dated 11.05.2018 as amended by Notification No. 17/2019 Cus (NT) dated 27.02.2019.*

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(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B.

The exporter of goods may file an application electronically in Form GST RFD-01 through the common portal for refund of additional IGST paid on account of upward revision in price of goods subsequent to export of such goods and on which the amount of IGST paid at the time of export of such goods has already been refunded and such application shall be dealt with in accordance with the provisions of rule 89.

GST portal shares the details of the relevant export invoices in respect of export of goods contained in Form GSTR-1, as amended in Form GSTR-1A, if any, with the system designated by the Customs viz. ICEGATE. The said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

(2) Processing of refund claim: Upon receipt of the information regarding the furnishing of a valid return in Form GSTR 3B from common portal, ICEGATE system / 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/ 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.

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(3) Withholding of refund of IGST: The claim for refund shall be withheld where [Rule 96(4)]:

(a) a request has been received from the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of section 54(10)/(11); or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(c) the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

Where refund is withheld in accordance with the provisions of clause (a) or clause (c) above, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated Form GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission [Rule 96(5A)].

Where refund is withheld in accordance with the provisions of clause (b) above and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962, then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated Form GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common

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portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission [Rule 96(5B)].

The application for refund in Form GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89. [Rule 96(5C)]

(4) Refund to the Government of Bhutan on the 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.

Clarification on whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back

The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India[45].

Further, the supply would be deemed to have taken place:

(i) 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

[45] *Discussed in detail in Chapter 14 – Import and Export under GST in this Module of the Study Material.*

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(ii) 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[46].

It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent / taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) read with rule 89(4), in respect of zero-rated supply of goods after he has issued the tax invoice on the dates. It is further clarified that refund claim cannot be preferred under rule 96 as supply is taking place at a time after the goods have already been sent/taken out of India earlier[47].

The above position has been explained by way of example below:

example

M/s. ABC sends 100 units of specified goods out of India. The activity of sending/ taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55.

If 10 units of specified goods are sold abroad say after one month of sending/ taking out and another 50 units are sold say after two months of sending/ taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 read with rule 46.

If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 read with rule 46.

Further, M/s ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in subsection (3) of section 54 read with sub-rule (4) of rule 89 in respect of zero-rated supply of 60 units.

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[46] *Discussed in detail in Chapter 9 – Tax Invoice, Credit and Debit Notes in Module 2 of this Study Material.*

[47] *Circular No. 108/27/2019 GST dated 18.07.2019*

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Export of services

Refund application: Rule 96(9) provides that the application for refund of IGST paid on the services exported out of India shall be filed in **Form GST RFD-01** and shall be dealt with in accordance with the provisions of rule 89 *[as discussed earlier]*.

(II) Refund of ITC paid on export of goods or services under bond or Letter of Undertaking (LUT) [Rule 96A]

In case where goods/services are exported by a class of persons other than notified class of persons or where goods/services other than notified class of goods or services are exported, only option available with the exporter of goods or services or both is **to export under bond/LUT without payment of IGST and claim refund of ITC**. *The provisions relating to export of goods/services without payment of IGST under bond/LUT [Rule 96A] have already been discussed in detail in Chapter 14 – Import and Export under GST*. Further, as already discussed, in such cases, refund of unutilised ITC at the end of any tax period, of amount determined under rule 89(4), shall be granted to the applicant and the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed *[discussed earlier in detail]*.

Clarification in respect of admissibility of refund where an exporter applies for refund subsequent to compliance of the provisions of sub-rule (1) of rule 96A

As per rule 96A(1) *[as discussed in detail in Chapter 14 – Import and Export under GST]*, a registered person availing of the option to export without payment of IGST is required to furnish a bond/LUT, prior to export, binding himself to pay the tax due along with applicable interest within a period of —

(a) 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,

Where the goods are not exported out of India

if the goods are not exported out of India; or

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(b) 15 days after the expiry of 1 year, or the period as allowed under FEMA[48] including any extension of such period as permitted by the RBI, whichever is later, from the date of issue of the invoice for export or such further period as may be allowed by the Commissioner,

Where payment for services is not received in convertible FOREX

if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the RBI.

There are instances where exporters have voluntarily made payment of due IGST, along with applicable interest, in cases where goods could not be exported or payment for export of services could not be received within time frames specified above.

A doubt arose as to whether subsequent to export of the said goods or realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized ITC on account of export but also refund of the IGST and interest so paid in compliance of the provisions of rule 96A(1).

As long as goods are actually exported or payment is realized in case of export of services, even if it is beyond the time frames as prescribed in rule 96A(1), the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or as the case may be, on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized ITC in terms of section 54(3), if otherwise admissible.

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, the **said exporters would be entitled to claim refund of the IGST so paid earlier on account of goods not being exported, or the payment not being realized for export**

[48] *Foreign Exchange Management Act, 1999*

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of services, within the time frame specified above. However, **no refund of the interest paid** in compliance of rule 96A(1) shall be admissible[49].

(III) Recovery of refund of unutilized input tax credit or integrated tax paid on export of GOODS where export proceeds are not realized within stipulated time [Proviso to section 16(3) read with rule 96B]

As per proviso to section 16(3), the registered person making zero rated supply of goods, without payment of tax shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under section 16(3) along with the applicable interest under section 50 within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA) for receipt of foreign exchange remittances, in such manner as may be prescribed.

Rule 96B prescribes the manner in relation to this. It provides that proceeds of export of goods must be realised within the period allowed under FEMA. In case of non-realisation/ partial realisation of such proceeds, any refund paid would be subject to be recovered from the taxpayer with interest, except in those cases wherein RBI writes off the requirement of such realization on merits.

In case any refund is recovered on account of non-realisation of proceeds and the realization was made later on within the extended period permitted by the RBI, the proper officer (PO) shall refund the amount so recovered to the taxpayer.

The detailed provisions of said rule are elaborated as follows:

Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the FEMA, including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds.

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[49] *Circular No. 197/09/2023 GST dated 17.07.2023*

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The amount so refunded, to the extent of non-realisation of sale proceeds have to be deposited along with applicable interest within 30 days of the expiry of the said period or, as the case may be, the extended period. In case of failure to do so, the amount refunded shall be recovered in accordance with the provisions of sections 73 or 74 ***or section 74A***, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50.

However, where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the FEMA, but the RBI writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him and the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by RBI.

4. REFUND OF TAX WRONGLY COLLECTED AND PAID [SECTION 77 READ WITH RULE 89(1A)]

Section 77 of the CGST Act, 2017 contains the provisions regarding tax wrongfully collected and paid to Central Government or State Government. It provides that a registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid **in such manner and subject to such conditions as may be prescribed**.

A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

Similar provisions are contained in **section 19 of the IGST Act, 2017**. It provides that a registered person who has paid integrated tax on a supply considered by

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him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid **in such manner and subject to such conditions as may be prescribed**.

A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable. *The provisions of section 77 of the CGST Act and section 19 of the IGST Act have also been discussed in Chapter 19 – Demands and Recovery in this Module of the Study Material.*

Time Limit for filing refund claim

As per rule 89(1A), any person claiming refund of any tax paid under aforesaid provisions may file an application in prescribed form, before the expiry of a period of **2 years** from the date of payment of tax under correct head on said supply.

Thus, said refund can be claimed before the expiry of 2 years from the date of payment of tax under the correct head, i.e. IGST paid afterwards in respect of subsequently held inter-State supply, or CGST and SGST paid afterwards in respect of subsequently held intra-State supply, as the case may be. Refund would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 in respect of the said transaction[50].

5. REFUND TO UN BODIES, EMBASSIES, ETC. [SECTION 55 READ WITH SECTION 54(2) OF CGST ACT]

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.

However, the UN bodies and other entities notified under section 55 can claim refund of the taxes paid by them on their inward supplies. The claim has to be made

[50] *Circular No. 162/18/2021 GST dated 25.09.2021*

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before the expiry of **2 years** from the last day of the quarter in which such supply was received. Detailed provisions have been discussed hereunder:

A. Who is entitled to refund under section 55?

Government may, on the recommendations of the Council, by notification, specify:

(i) any specialised agency of the United Nations Organisation; or

(ii) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947; or

(iii) Consulate or Embassy of foreign countries; and

(iv) any other person or class of persons as may be specified in this behalf,

who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.

In exercise of above power, following persons have been notified, subject to fulfilment of specified conditions:

(i) United Nations or a specified international organization**; and

(ii) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein[51].

****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.

[51] *Notification No. 16/2017 CT (R) dated 28.06.2017/ Notification No. 13/2017 IT (R) dated 28.06.2017*

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Further, in exercise of said power, Canteen Stores Department (CSD), under the Ministry of Defence, has been notified as a person who shall be entitled to claim a refund of 50% of the applicable CGST/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[52].

For the purpose of claiming the said refund, Canteen Stores Department:

- shall apply for refund in different prescribed form once in every quarter, electronically on the common portal.
- Such application shall be dealt in a same manner as application for refund filed in Form GST RFD-01 in accordance with the provisions of rule 89.
- The refund of tax paid by the applicant shall be available, if-

  (i) the inward supplies of goods were received from a registered person against a tax invoice and details of such supplies have been furnished by the said registered person in his details of outward supply in Form GSTR-1

  AND

  supplier has furnished his return in Form GSTR-3B for the concerned tax period;

  (ii) name and GSTIN of the applicant is mentioned in the tax invoice; and

[52] *Notification No. 6/2017 CT (R) dated 28.06.2017/ Notification No. 6/2017 IT (R) dated 28.06.2017*

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(iii) goods have been received by CSD for the purpose of subsequent supply to the Unit Run Canteens of the CSD or to the authorised customers of the CSD [Rule 95B]

B. Time Limit for filing refund claim [Section 54(2) read with rule 95(1)]

Persons eligible to claim refund under section 55 *[as mentioned in point A. above]*, entitled to refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, once in every quarter, but before the expiry of **2 years** from the last day of the quarter in which such supply was received.

C. Form and documents for filing the refund claim [Rule 95(1)]

Persons eligible to claim refund under section 55 shall submit the application for refund:

- in a **prescribed form**[53], once in every quarter
- along with a **Statement of the Inward Supplies of goods or services or both** in **Form GSTR-11** *[discussed in detail in Chapter 13- Returns in Module 2 of this Study Material]*.

D. Acknowledgment for refund claim [Rule 95(2)]

An acknowledgement for receipt of the application for refund shall be issued in a prescribed form.

E. Conditions to be satisfied for sanction of refund [Rule 95(3) & (4)]

Refund of tax paid by the applicant shall be available if all the following conditions are satisfied-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice.

(b) name and GSTIN/UIN of the applicant is mentioned in the tax invoice**.

(c) such other restrictions or conditions as may be specified in the notification are satisfied.

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[53] *electronically or otherwise on the common portal*

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**However, where UIN of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall still be available if the copy of the invoice, duly attested by the authorised representative of the applicant, is submitted along with the refund application in prescribed form. In other words, if UIN is not mentioned in the tax invoice, then refund shall be available to the applicant on submission of the attested copy of such invoice in the prescribed form.

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.

F. Supremacy provision in case of inconsistency [Rule 95(5)]

Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of these rules, such treaty or international agreement shall prevail.

G. Specialized agencies notified under section 55 entitled to refund of IGST paid on import of goods

As seen above, section 55 provides refund of taxes paid on the notified supplies of goods and/or services by notified specialized agencies like United Nations or a specified international organisation. Section 3(7) of the Customs Tariff Act, 1975 provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. Therefore, on this principle of parity, specialised agencies ought to get the refund of the IGST paid on imported goods.

6. INTEREST ON DELAYED REFUNDS [SECTION 56 OF THE CGST ACT]

A. Interest on amount refundable consequent to order passed by Proper Officer under section 54(5)

- Where any tax ordered to be refunded under section 54(5) to any applicant is **not refunded within 60 days** from the date of receipt of application under section 54(1), interest shall be payable to the applicant.

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- Interest is **payable on such refund @ 6% p.a.***.
- Interest is payable to the applicant for the period of delay beyond 60 days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed [Section 56].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

B. Interest on amount refundable consequent to order passed in an appeal or further proceedings

- Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is **not refunded within 60 days from the date of receipt of application** filed consequent to such order, interest shall be payable on such refund.
- Interest is **payable on such refund @ 9% p.a.***.
- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. [Proviso to Section 56].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

For the purpose of this section, the order of refund made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under section 54(5), shall also be deemed to be an order passed under the said section 54(5) [Explanation to section 56].

C. Order sanctioning interest on delayed refunds [Rule 94]

- Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in prescribed form.

- Such order shall specify therein:
  - the **amount of refund** which is delayed,
  - the **period of delay** for which interest is payable and
  - the **amount of interest** payable.

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- 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.

7. CONSUMER WELFARE FUND [SECTIONS 57 & 58 OF THE CGST ACT]

Consumer Welfare Fund was created to promote and protect the welfare of consumer, create consumer awareness and strengthen consumer movement in the country, particularly in rural areas. Amount of refund which is not payable to the applicant is credited to the Consumer Welfare Fund.

As already discussed in this chapter, amount of refund is paid to the applicant in case where there is no unjust enrichment; i.e. the incidence of tax has not been passed by the supplier to the recipient as also in the circumstances where the principle of unjust enrichment is not applicable [specified in section 54(8)]. Otherwise, the said amount is credited to the Consumer Welfare Fund.

A. Amount to be credited to Consumer Welfare Fund

Section 57 stipulates that the Government shall constitute a Fund, to be called the **Consumer Welfare Fund** and there shall be credited to the Fund:

(a) Amount of refund determined by an order passed under section 54(5),

(b) any income from investment of the amount credited to the Fund; and

(c) such other monies received by it,

in such manner as may be prescribed. Such manner has been prescribed under rule 97.

B. Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97]

- All amounts of duty/ CGST/ SGST/ IGST/ UTGST/ cess and income from investment along with other monies specified in section 12C(2) of the erstwhile Central Excise Act, 1944, section 57 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017, section 21 of the UTGST Act, 2017 and section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund *[discussed earlier in this chapter]* [Rule 97(1)].

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- An amount equivalent to 50% of the amount of IGST determined under section 54(5) of the CGST Act, read with section 20 of the IGST Act, shall be deposited in the Fund [Proviso to rule 97(1)].
- An amount equivalent to 50% of the amount of compensation cess determined under section 54(5) of the CGST Act, read with section 11 of the GST (Compensation to States) Act, shall be deposited in the Fund. [Second Proviso to rule 97(1)]
- Any amount, having been credited to the Consumer Welfare Fund, 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 [Rule 97(2)].

C. Utilisation of Consumer Welfare Fund [Section 58 read with rule 97]

- All sums credited to the Consumer Welfare Fund shall be utilized by the Government for the welfare of the consumers in such manner as may be prescribed [Section 58(1)].

- 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 [Rule 97(4)].

8. REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA [SECTION 15 OF THE 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.
- As of now the manner, procedure and form has not been prescribed for the refund made to the international tourist.

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Manual filing and processing

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules [Rule 97A].

Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST laws

S. No.	Issue	Clarification
1.	An advance is received by a supplier for a service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through **Form GST RFD-01**.
2.	An advance is received by a supplier for a Service contract which got cancelled	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for

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	subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?	which no invoice has been issued in terms of section 31(2), he is required to issue a "refund voucher" in terms of section 31(3)(e) read with rule 51. The taxpayer can apply for refund of GST paid on such advances by filing **Form GST RFD-01** under the category "Refund of excess payment of tax".
3.	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34. There is no need to file a separate refund claim in such a case. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through **Form GST RFD-01**.

[Circular No. 137/07/2020 GST dated 13.04.2020]

TEST YOUR KNOWLEDGE

1. *Is there any time limit for sanctioning of refund under section 54?*
2. *Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2).*

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3. *In case of refund under exports of goods, whether BRC/FIRC is necessary for granting refund?*

4. *When is a deficiency memo issued in respect of a refund claim made under section 54?*

5. *State the exceptions to the principle of unjust enrichment as applicable to refund claims.*

6. *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) of the IGST Act, 2017.*

   The company has made the following supplies during a tax period:

S. No.	Particulars	(₹)
(i)	Export of product 'A' to UK for $ 10,000 (Assessable value under customs in Indian rupees.) [Export duty is payable on product 'A' at the time of exports. Further, value of like goods domestically supplied by the similarly placed supplier is ₹ 6,00,000]	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)	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 (Value of like goods domestically supplied by the similarly placed supplier is ₹ 5,00,000)	6,00,000

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The ITC available for the above tax period is as follows:

S.No.	Particulars	(₹)
(i)	On inputs	3,50,000
(ii)	On input service	1,50,000
(iii)	On capital goods	1,20,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period.

7. *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	500,000	5%	54,000 (Goods)	18%
B	350,000	5%	54,000 (Goods)	18%
C	100,000	18%	10,000 (Service)	18%

**excluding GST*

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) 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.

8. *With reference to section 54(3), mention the cases where refund of unutilised input tax credit is allowed.*

9. *State few 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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ANSWERS

1. Yes, refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest @ 6% p.a. will have to be paid in accordance with section 56.

However, in case where provisional refund to the extent of 90% of the amount claimed is refundable in respect of zero-rated supplies made by certain categories of registered persons in terms of sub-section (6) of section 54, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

2. The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

3. In case of refund on account of export of goods, the refund rules do not prescribe BRC/FIRC as a necessary document for filing of refund claim. However, for export of services details of BRC/FIRC is required to be submitted along with the application for refund.

However, in case of non-realization of consideration in terms of FEMA, the exporter shall deposit the amount so refunded to the extent of non realization of sale proceed along with interest within 30 days [Rule 96B].

4. Rule 90(3) provides for communication in prescribed form (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

Further the time period, from the date of filing of the refund claim in Form GST RFD-01 till the date of communication of the deficiencies by the proper

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officer, shall be excluded from the period of two years as specified under Section 54(1), in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

5. The principle of unjust enrichment is applicable in all cases of refund except in the following cases:-

(a) Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.

(b) Unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued.

(d) refund of tax in pursuance of section 77 of CGST/SGST Act i.e. tax wrongfully collected and paid to Central Government or State Government.

(e) if the incidence of tax or interest paid has not been passed on to any other person.

(f) such other class of persons who has borne the incidence of tax as the Government may notify.

6. Computation of maximum amount of refund admissible to Kailash Global (P) Ltd.

Particulars	(₹)
Exports of product 'A' to UK [Note (i)]	Nil
Domestic supplies of taxable product 'B' during the period [Note (ii)]	90,000
Supply of goods to Export Oriented Unit [Note (iii)]	Nil
Export of exempt supplies [Note (iv)]	1,07,143
Total refund claim admissible	**1,97,143**

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Notes:

(i) Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Further, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3) of the IGST Act, 2017.

Therefore, as per clause (i) of first proviso to section 54(3), a registered person may claim refund, of any unutilised ITC in the case of zero rated supply made without payment of tax at the end of any tax period. However, second proviso to section 54(3) lays down that refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty.

(ii) Refund of unutilised ITC is allowed in case of inverted duty structure, i.e. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Clause (ii) of the first proviso to section 54(3)].

Rule 89(5) stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula –

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

where-

"Net ITC" means ITC availed on inputs during the relevant period

"Adjusted total turnover" means the sum total of the value of:

(a) the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; &

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(b) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services,

excluding:

(i) the value of exempt supplies other than zero-rated supplies during the relevant period.

"Relevant period" means the period for which the claim has been filed.

Tax payable on inverted rated supply of goods = ₹ 10,00,000 × 5% = ₹ 50,000

Here, Net ITC = ₹ 3,50,000,

Adjusted Total Turnover = ₹ 28,00,000 [₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹ 6,00,000] and Turnover of inverted rated supply of goods = ₹ 10,00,000

Thus, maximum refund amount under rule 89(5) = ₹ 3,50,000 x 10,00,000/ ₹ 28,00,000 – (₹ 50,000×{₹ 3,50,000/(₹ 3,50,000+₹ 1,50,000)} = ₹ 90,000

(iii) As per section 2(39), deemed exports means such supplies of goods as may be notified under section 147. Supplies to EOU is notified as deemed export under section 147 vide *Notification No. 48/2017 CT dated 18.10.2017*. In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases 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 [Third proviso to rule 89(1)]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.

(iv) Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 17(5) of the CGST Act, ITC may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Section 54(3) of the CGST Act, 2017 allows refund of ITC in the case of zero rated supply made without payment of tax.

Rule 89(4) stipulates that in the case of zero-rated supply of goods or services or both without payment of tax under bond/LUT in accordance

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with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{\text{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

where-

"Net ITC" means ITC availed on inputs and input services during the relevant period.

"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/LUT, or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less.

"Adjusted total turnover" means the same as explained in point ii above.

Here, Turnover of zero rated supply of goods = ₹ 6,00,000 (Lower of ₹ 6,00,000 or 1.5 times of ₹ 5,00,000 i.e. 7,50,000 whichever is lower), Net ITC = ₹ 5,00,000 and Adjusted Total Turnover = ₹ 28,00,000 (as computed in point ii above)

Thus, maximum refund amount under rule 89(4) = ₹ 5,00,000 x ₹ 6,00,000/ ₹ 28,00,000 = ₹ 1,07,143.

7. Section 54(3)(ii) allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilised ITC shall be allowed under section 54(3)(ii). Further rate of tax on input used in the product C is carrying same rate of tax on output

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supplies hence it is not the case of inverted duty structure. Therefore, no refund on the Product C.

Therefore, only Product A is eligible for refund under section 54(3)(ii).

Further, rule 89(5) stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula -

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

where,-

A. **"Net ITC"** means input tax credit availed on inputs during the relevant period;

B. Adjusted Total Turnover means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in specified manner and non-zero-rated supply of services, excluding-

the value of exempt supplies other than zero-rated supplies during the relevant period.

C. Relevant period means the period for which the claim has been filed.

In accordance with the aforesaid provisions, the maximum refund amount which Super Engineering Works is eligible to claim shall be computed as follows:

Tax payable on inverted rated supply of Product A = ₹ 5,00,000 × 5% = ₹ 25,000

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Net ITC = ₹ 108000 (₹ 54,000 + ₹ 54,000) [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not - *Circular No. 79/53/2018-GST dated 31.12.2018*]

Adjusted Total Turnover = ₹ 9,50,000 (₹ 5,00,000 + ₹ 3,50,000 + ₹ 1,00,000)

Turnover of inverted rated supply of Product A = ₹ 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

= [(₹ 5,00,000 × ₹ 108000)/ ₹ 9,50,000] – (₹ 25,000 x 108,000/118,000)

= ₹ 33,961 (rounded off)

8. As per section 54(3), a registered person may claim refund of unutilised input tax credit at the end of any tax period in the following cases:

(i) **Zero rated supplies made without payment of tax:** Supply of goods or services or both for authorised operations to an SEZ developer/unit or export of goods or services or both qualifies as zero rated supplies.

(ii) **Accumulated ITC on account of inverted duty structure:** Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

However, refund of unutilized input tax credit shall not be allowed if:

- the goods exported out of India are subjected to export duty;
- the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

9. Section 54(8) provides that the refundable amount shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to —

(a) refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;

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(b) refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax paid on a transaction treating it to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by notified class of applicants.

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CHAPTER 16

JOB WORK

The section numbers referred to in the Chapter pertain to the CGST Act, 2017 unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the term 'job work'.
- explain the various aspects including procedure pertaining to removal of goods for the purposes of job work.
- understand the provisions relating to removal of processed goods from job worker's premises.
- understand the provisions relating to availing input tax credits in relation to goods sent for job work.

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1. INTRODUCTION

Job-work sector constitutes a significant industry in the Indian economy. It includes outsourced activities that may or may not culminate into manufacture. The term **job-work** itself explains the meaning. It is processing of goods – inputs/ semi-finished goods - supplied by the **principal**, for further processing. Further, entry 3 of Schedule II to the CGST Act, 2017 provides that any treatment or process which is applied to another person's goods is a supply of services.

Here, a Principal is a registered person who sends the inputs/capital goods to a job worker for carrying out the job work. Many facilities, procedural concessions have been given to the job workers as well as the principal supplier who sends goods for job-work. The whole idea is to make the principal responsible for meeting the compliances on behalf of the job-worker on the goods processed by him (job worker), considering the fact that typically the job-workers are small persons/processing units who are unable to comply with the discrete provisions of the law.

The GST law makes special provisions with regard to (i) removal of goods for job-work and receiving the goods back after processing from the job-worker without the payment of GST and (ii) removal of goods from the job worker's premises for supply to the ultimate customer. The benefit of these provisions shall be available both to the principal and the job worker.

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Section 2(68) defines job work as '**any treatment or process undertaken by a person on goods belonging to another registered person'**. E.g. Painting, packing, fitting, etc. The person who does the said job would be termed as **'job worker'**. The job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each caseIt is imperative to note that the ownership of the goods does not transfer to the job worker, and it rests with the principal only.

There may arise a doubt as to whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. In this regard, it is clarified[1] that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

Supply of job work services

Where the principal and the job worker are located in different States, the requirement for registration flows from clause (i) of section 24 of the CGST Act which provides for compulsory registration of suppliers making any inter-State supply of services. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed an amount of ₹ 20 lakh [₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] in a financial year.

In view of the above discussion, it can be inferred that the job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the above threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

[1] *Circular No. 38/12/2018 GST dated 26.03.2018*

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The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered in view of the aforesaid criteria. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31.

The value of services would be determined in terms of section 15 and would include not only the service charges, but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal.

In certain cases, the principal may provide specific items like moulds and dies, jigs and fixtures or tools along with the inputs, to the job worker for processing of inputs in a specified manner. The question may arise whether value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services?

Section 15(2)(b) *[Discussed in detail in Chapter 6 – Value of Supply in Module 1 of the Study Material]* stipulates that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply.

Accordingly, it is clarified[2] that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

The provisions relating to job work are, *inter alia*, covered in section 19 and 143 of the CGST Act. State GST laws also prescribe identical provisions in relation to job work.

Provisions of job work under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

[2] *Circular No. 38/12/2018 GST dated 26.03.2018*

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2. RELEVANT DEFINITIONS

- **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- **Place of business:** includes [Section 2(85)]:
  - a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
  - a place where a taxable person maintains his books of account; or
  - a place where a taxable person is engaged in business through an agent, by whatever name called.
- **Capital goods:** means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business [Section 2(19)].
- **Input:** means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business [Section 2(59)].
- **Registered person:** means a person who is registered under section 25 but does not include a person having a Unique Identity Number [Section 2(94)].

3. JOB WORK PROCEDURE [SECTION 143]

The provisions related to job work are encapsulated under section 143 of the CGST Act. It is important to note that the provisions of said section are applicable to a registered person. Thus, a principal, who can send the goods for job work under the said provisions, must be a registered person.

However, the principal is not obligated to follow the said provisions. It is his choice whether or not to avail the benefit of these special provisions. In case the principal is not availing the benefit of provisions under section 143, the sending of inputs for processing to be undertaken by the job worker will attract the provisions relating to a normal supply on both the principal and the job worker.

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The provisions of section 143 have been discussed as follows:

Principal can send goods to job worker <u>without payment of tax</u>

- A registered person (Principal) is allowed to **send inputs/ capital goods without payment of tax to a job-worker** and from there **to another job-worker** and after completion of job-work **bring back such goods without payment of tax** or **remove** the processed **goods from the job workers premises for supply to the customer**. Such goods need to be removed **under intimation to proper officer** and subject to certain prescribed conditions.

  Goods sent without payment of tax from principal's premises to job worker's premises

  The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to the job-worker without payment of tax.

- The principal can also send inputs/capital goods **directly to the job-worker without bringing them to his premises** and can still avail the credit of tax paid on such inputs or capital goods.

  Goods sent without payment of tax directly to job worker's premises

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- However, inputs and/or capital goods [other than moulds and dies, jigs and fixtures, or tools] sent to a job- worker are required to be **returned to the principal within 1 year and 3 years** respectively, from the date of sending such goods to the job-worker. However, the period of 1 year and 3 years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding 1 year and 2 years respectively. Extension of time is allowed to cover the situations where the period of 1 year specified is not adequate in respect of job works such as hull construction/ fabrication of vessels (for defense purposes), since these processes complete in a period of around 14 to 16 months. The provision of return of goods is **not applicable in case of moulds and dies, jigs and fixtures or tools** supplied by the principal to job worker.

> ***Goods must be returned within stipulated time-limit***

- After processing of goods, the job-worker may clear / dispatch the goods under the instructions of the principal to-
  - another job-worker for further processing, or
  - any of the place of business of the principal without payment of tax, or
  - the ultimate customer against payment of tax by the principal as applicable for supply.

Supply of goods directly from job worker's place of business/premises

- After processing of goods, the principal also has the option to clear the goods for supply to third party, directly from job-worker's premises, on payment of tax within India or without payment of tax for export outside India on fulfilment of prescribed conditions.
- The facility of supply of goods by the principal to the third party directly from the premises of the job- worker, on payment of tax in India likewise with or without payment of tax for export, may be availed by principal after **declaring premise of the job-worker as his additional place of**

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business in his GST registration. However, such declaration is not required by the principal where:

- job worker is registered under section 25; or
- principal is engaged in supply of notified goods.

- In such cases of direct supply, the supply of goods will be regarded as supply by the principal and not by the job worker. Resultantly, it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal. It is also clarified[3] that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal. These principles would apply mutatis mutandis in case of supply of waste and scrap generated during job work *[discussed subsequently in this heading]*.

(1) The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business / premises, the invoice (along with electronic way bill) will be issued by the supplier (principal) located in State A to the recipient located in State C.

Procedure for sending goods to job worker

- Before supply of goods to the job-worker, the principal would be required to send intimation the proper officer containing the details of the description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job-worker. The said intimation shall also contain the details of the other job-workers, if any. The inputs or capital goods shall be sent to the job worker under the cover of a delivery challan issued by the principal. The delivery challan shall be issued even for the inputs or capital goods sent directly to the job worker. The delivery challan shall contain the specified details. Along with the delivery challan, an electronic waybill shall be issued as per the relevant provisions under GST Law and related rules[4].

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[3] *Circular No. 38/12/2018 GST dated 26.03.2018*

[4] *The documents and intimation required for movement of goods from principal to job worker have been discussed in detail subsequently in this chapter.*

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Responsibility for keeping accounts for inputs/capital goods

- The responsibility for keeping proper accounts for the inputs or capital goods **lies with the principal**.

Goods not received within the stipulated time deemed as supply

- In case the inputs/capital goods are not received back or not supplied from the job worker's premises, within specified time limit [1 year/3 years/extended time period], it shall be deemed to be a supply from Principal to the Job worker from the day when it was sent for job work. Accordingly, the principal would be liable to tax along with interest as applicable.
- Thus, goods sent for job work acquire the character of supply when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/premises of the job worker within 1 year/3 years/extended time-period, of being sent out. It may be noted that the responsibility for sending the goods for job work in accordance with the prescribed procedure as well as bringing them back or supplying them has been cast on the principal.
- In such cases where the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) are neither returned nor supplied from the job worker's place of business/ premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of 1 year/3 years or extended time period has expired.
- **Date of supply**: The date of supply shall be the date on which such inputs or capital goods were initially sent to the job worker. Further, interest for the intervening period shall also be payable on the tax by the principal.
- If such goods are returned by the job worker after the stipulated time-period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder.

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- Further, it may be reiterated that there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

For the purposes of job work, **input** includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

4. TAKING INPUT TAX CREDIT IN RESPECT OF INPUTS AND CAPITAL GOODS SENT FOR JOB WORK [SECTION 19]

STATUTORY PROVISIONS

Section 19	*Taking input tax credit in respect of inputs and capital goods sent for job work*
Sub-section	*Particulars*
(1)	*The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job-worker for job-work.*
(2)	*Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without being first brought to his place of business.*
(3)	*Where the inputs sent for job work are not received back by the principal after completion of job-work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out:*

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	Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.
(4)	*The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.*
(5)	*Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job-work without being first brought to his place of business.*
(6)	*Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:*
	Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.
(7)	*Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.*
Explanation.–*For the purpose of this section, "principal" means the person referred to in section 143.*	
Chapter V: Input Tax Credit of CGST Rules	
Rule 45	***Conditions and restrictions in respect of inputs and capital goods sent to the job worker***
Sub-rule	***Particulars***
(1)	*The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal,*

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		including where such goods are sent directly to a job-worker, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:
		Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:
		Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.
(2)		*The challan issued by the principal to the job worker shall contain the details specified in rule 55.*
(3)		*The details of challans in respect of goods dispatched to a job worker or received from a job worker during the specified period shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the said period or within such further period as may be extended by the Commissioner by a notification in this behalf:*
		Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.
Explanation.- For the purposes of this sub-rule, the expression "specified period" shall mean. -		
	(a)	*the period of six consecutive moths commencing on the 1st day of April and the 1st day of October in respect of a principal whose aggregate turnover during the immediately preceding financial year exceeds five crore rupees; and*
	(b)	*a financial year in any other case*
(4)		*Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that*

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	*such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in **FORM GSTR-1** and the principal shall be liable to pay the tax along with applicable interest.*	
***Explanation.**- For the purposes of this Chapter,-*		
(1)	*the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;*	
(2)	*for determining the value of an exempt supply as referred to in sub-section (3) of section 17-*	
	(a)	*the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and*
	(b)	*the value of security shall be taken as one per cent. of the sale value of such security.*

ANALYSIS

Section 19 deals with ITC on inputs and capital goods sent for job work.

(i) Credit on inputs and/or capital goods sent for job work [Sub-sections (1), (2), (4) and (5) of section 19]

- A principal is entitled to take the credit of input tax paid on inputs and/or capital goods sent to the job-worker for the job work.
- The principal can also take ITC even when the inputs and/or capital goods have been directly sent to the job worker without being brought into his premises. The principal need not wait till the inputs and/or capital goods are first brought to his place of business *[See definition of place of business]*.

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Job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered[5].

(ii) Time limits for the return of inputs/capital goods sent for job-work or supply from job worker's place of business after required processing or treatment [Sub-sections (3), (6) and (7) read with rule 45 of CGST Rules]

- Inputs and capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 1 year and 3 years[6] respectively **from the date of sending them to the job worker***.

  **Where inputs/capital goods are sent directly to a job worker, said period shall be computed from the date of receipt of inputs/ capital goods by the job worker.*

- As discussed earlier, if the above time-lines are not met, it is deemed that the inputs and capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them by the principal along with interest) on the day they were sent out to the job worker.

  The said supply is required to be declared in GSTR-1 [Details of Outward Supplies] and the principal is liable to pay tax along with applicable interest.

  In such a case, return of the inputs and capital goods by the job worker, after the stipulated time, will be treated as a separate supply on which tax shall be paid by the job worker as per normal provisions under the GST Law.

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[5] *Circular No. 38/12/2018 GST dated 26.03.2018*

[6] *Extendible by further period not exceeding 1 year and 2 years respectively.*

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(2) A supplier of notebooks for schools sends the paper of required dimensions and GSM to a job worker for making the notebooks as per the design given by him.

However, the Government changes the specifications of notebooks for supply to its schools. The supplier sends a fresh stock of paper with fresh instructions to the job worker and instructs him to hold the earlier consignment in stock till a buyer is found. The new notebooks are easily sold, but the paper and semi-finished notebooks of the old design lie in the godown of the job worker for over a year and an extension from the proper officer is not sought. Here, sending of paper by the notebook supplier to the job worker in the first lot will be deemed as a supply and thus, tax would be payable on the same.

(iii) Special procedure for sending goods for job work [Rule 45 of CGST Rules]

The procedure for sending the goods for job work, in accordance with rule 45 read with *Circular No. 38/12/2018 dated 26.03.2018*, has been discussed below:

(a) Where goods are sent by principal to only one job worker: Principal has to send the inputs and/or capital goods to the job worker under the cover of a delivery **challan** issued by him. Such delivery challan should contain the details specified in rule 55 namely, date & number of delivery challan, name, address & GSTIN of consignor & consignee, HSN code & description of goods, quantity, taxable value, tax rate and tax amount, place of supply and signature. [*Refer Chapter 9: Tax Invoice, Credit and Debit Notes in Module 2 of the Study Material, for detailed discussion on rule 55*].

The principal shall prepare **in triplicate**, the delivery challan in terms of rules 45 and 55, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said delivery challan along with the goods, while returning them to the principal.

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Further, the principal would be required to send an intimation the Jurisdictional Officer. Form GST ITC-04 will serve as the intimation. The intimation will contain the details of the description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job-worker.

(b) Where goods are sent from one job worker to another job worker: In such cases, the goods may move under the cover of a delivery challan issued either by the principal or the job worker. Alternatively, the delivery challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers, indicating therein the quantity and description of goods.

(c) Where the goods are returned to the principal by the job worker: The job worker should send one copy of the delivery challan [as received by him from the principal] while returning the goods to the principal after carrying out the job work.

(d) Where the goods are sent directly by the supplier of the principal to the job worker: In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e., the principal). Job worker's name and address should also be mentioned as the consignee in such invoice.

Further, the buyer (i.e., the principal) shall issue the delivery challan[7] and send the same to the job worker directly.

In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of Entry and the principal shall issue the delivery challan under rule 45 and send the same to the job worker directly.

(e) Where goods are returned in piecemeal by the job worker: In case the goods after carrying out the job work, are sent in piecemeal quantities by a

[7] *required to be issued under rule 45*

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job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh delivery challan is required to be issued by the job worker.

(f) Submission of intimation: It is clarified that it is the responsibility of the principal to include the details of all the delivery challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom during **the specified period** in Form GST ITC-04 by the 25th day of the month succeeding the **said period**. This period can be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST. The Form GST ITC-04 will serve as the intimation as envisaged under section 143.

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
upto ₹ 5 crore	annual basis	25th April
greater than ₹ 5 crore	half yearly basis	25th October & 25th April

(g) Requirement to generate E-way Bill: In case of job work, e-way bill[8] shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/ Union territory.

Further, the e-way bill shall be generated by the principal, wherever required, in case the job worker is unregistered[9].

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[8] *Rule 138, inter alia, stipulates that an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding ₹ 50,000 even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work). However, in case of goods sent by a principal located in one State/UT to a job worker located in any other State/UT, the e-way bill needs to be generated irrespective of the value of the consignment. Provisions of e-way bill have been discussed in detail in Chapter 10 – Accounts and Records; E-way Bill in Module 2 of the Study Material.*

[9] *Since where the goods are supplied by an unregistered supplier to a registered recipient, 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 [Rule 138].*

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5. REGISTRATION REQUIREMENTS

(i) Registration requirements when both the principal and the job worker are located in the same State: The job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (i.e., ₹ 20 lakh or ₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) in case both the principal and the job worker are located in the same State [Section 22(1)].

(ii) Registration requirements when the job worker is located in a State different from that of the principal: Where the principal and the job worker are located in different States, the requirement for registration flows from section 24(i) of the CGST Act, which provides for compulsory registration of suppliers making any inter-State supplies. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed ₹ 20 lakh or ₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland in a financial year vide *Notification No. 10/2017 IT dated 13.10.2017 as amended*.

Therefore, it is clarified that a job worker, being a supplier of service, is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States[10].

(iii) Value of goods, after completion of job work, supplied directly from the premises of the registered job worker not to be included in its aggregate turnover: As discussed earlier in this chapter, principal can supply the goods directly from the premises of the job worker without bringing it back to his own premises. It is clarified that the supply of goods by the principal from the place of business/premises of the job worker will be regarded as supply by the principal and not by the job worker[11].

Therefore, the value of such goods supplied will be included in the aggregate turnover of the principal and not job worker [Explanation (ii) to section 22].

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[10] *Circular No. 38/12/2018 GST dated 26.03.2018*

[11] *Circular No. 38/12/2018 GST dated 26.03.2018*

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6. SUPPLY OF WASTE & SCRAP [SECTION 143(5)]

Notwithstanding anything contained in aforesaid provisions, 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.

LET US RECAPITULATE

Job work Procedure

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Time limits for the return of inputs/capital goods sent for job-work or supply from job worker's place of business after required processing or treatment

- Principal can take credit on goods (inputs and capital goods) sent for job work.
- Credit can be taken even if the said goods are sent directly to job worker without being first brought to the principal's place of business.

Time limit for return of goods sent for job work/supply from job worker's place of business

- **Inputs -** 1 year (extendable by another 1 year)
- **Capital goods** - 3 years (extendable by another 2 years)

from the date of sending the same for job work or from the date of receipt of the same by the job worker.

- On failing to comply with the timelines, the goods will be deemed to have been supplied to the job worker on the day they were sent out.
- Principal is liable to pay tax along with applicable interest on such supply.
- Subsequent return of the goods by the job worker will be treated as a separate supply.

Time-lines do not apply to moulds and dies, jigs and fixtures or tools sent out for job work.

TEST YOUR KNOWLEDGE

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?*
2. *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?*
3. *Who is responsible for the maintenance of proper accounts related to job work?*
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.*

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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?

5. *Sudama Industries Ltd., registered in the State of Jammu & Kashmir, manufactures plastic pipes for other suppliers on job-work basis.*

On 10th January, Plasto Manufacturers (registered in the State of Himachal Pradesh) sent plastic worth ₹ 4 lakh and moulds worth ₹ 50,000, free of cost, to Sudama Industries Ltd. to make plastic pipes. Sudama Industries Ltd. also used its own material - a special type of lamination material for coating the pipes - worth ₹ 1 lakh in the manufacture of pipes. It raised an invoice of ₹ 2 lakh as job charges for making pipes and returned the manufactured pipes through delivery challan to Plasto Manufacturers on 20th October in the same financial year.

The same quality and quantity of plastic pipes, as was made for Plasto Manufacturers, were made by Sudama Industries Ltd. from its own raw material and sold to Solid Pipes (registered in Jammu and Kashmir) for ₹ 7.5 lakh on 20th October.

Examine the scenario and offer your views on the following issues with reference to the provisions relating to job work under the GST laws:

(i) Is there any difference between the manufacture of plastic pipes by Sudama Industries Ltd. for Plasto Manufacturers and for Solid Pipes?

(ii) Whether Sudama Industries can use its own material even when it is manufacturing the plastic pipes on job-work basis?

(iii) Whether sending the plastic and moulds to Sudama Industries Ltd. by Plasto Manufacturers is a supply and a taxable invoice needs to be issued for the same?

(iv) Whether Sudama Industries should include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges?

6. *Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth ₹ 50 lakh under a delivery challan to M/s Prem Tools, a registered job worker, for job work on 28th January. The scope of job work included mounting the steel cabinets on a metal frame and sending the mounted panels back to Alok Pvt.*

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Ltd. The metal frame is to be supplied by M/s Prem Tools. M/s Prem Tools has agreed to a consideration of ₹5 lakh for the entire mounting activity including the supply of metal frame. During the course of mounting activity, metal waste is generated which is sold by M/s. Prem Tools for ₹45,000. M/s Prem Tools sent the steel cabinets mounted on the metal frame to Alok Pvt. Ltd. on 3rd December in the same financial year.

Assuming GST rate for metal frame as 28%, for metal waste as 12% and standard rate for services as 18%, you are required to compute the GST liability of M/s Prem Tools. Also, give reason(s) for inclusion or exclusion of the value of cabinets in the job charges for the purpose of payment of GST by M/s Prem Tools.

7. *Bedi Manufacturers, a registered person, instructs its supplier to send the capital goods directly to Rajesh Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 10th April and were received by the job worker on 15th April. Rajesh Enterprises carried out the job work, but did not return the capital goods to their principal - Bedi Manufacturers. Discuss whether Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods. What action under the GST Act is required to be taken by Bedi Manufacturers.*

   What would be your answer if in place of capital goods, jigs and fixtures are supplied to the job worker and the same has not been returned to the principal?

8. *Nandeeshwar Manufacturers, a registered person, sends certain category of yarn for processing to the job worker in January. The job worker undertakes the processing work on the yarn as per the requirement of Nandeeshwar Manufacturers. During the process, the job worker uses his own material also. The processed yarn is sold by Nandeeshwar Manufacturers directly from the job worker's premises in the month of March. The balance quantity of yarn and waste material is sent back by the job worker to Nandeeshwar Manufacturers in April.*

   The accountant of job worker is of the opinion that since the job worker is using his own material also in the processing, the supply being made by it to Nandeeshwar Manufacturers is in the nature of supply of goods as well as services. Do you agree with the opinion of accountant of the job worker?

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ANSWERS

1. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely (i) where the job worker is a registered taxable person or (ii) where the principal is engaged in supply of such goods as may be notified by the Commissioner.

2. If the inputs or capital goods are not received back by the principal or are not supplied from the place of business of job worker within the prescribed time limit, it would be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out by the principal (or on the date of receipt by the job worker where the inputs or capital goods were sent directly to the place of business of job worker). Thus, the principal would be liable to pay tax accordingly along with interest. Further, if the job worker is registered, when the processed goods are sent back by it to the principal, the same shall also be considered as a supply over and above the charges for job work.

3. It is completely the responsibility of the principal to maintain proper accounts of job work related inputs and capital goods.

4. Genie Engineers should reply on the following lines:

Under section 19(6), the principal may take ITC on capital goods sent to a job worker for job work without being first brought to his place of business.

The capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 3 years [extendible by another 2 years] from sending them to the job worker or direct receipt by the job worker from the supplier. If the above time-lines are not met, it is deemed that the capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them) on the day they were sent out to the job worker [Section 19(6)].

However, sub-section (7) of section 19 provides that the time-limit of three years in sub-section (6) for bringing back the capital goods from the job worker does not apply to moulds.

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Accordingly, Genie Engineers have correctly availed the ITC in respect of the moulds delivered to their job worker and not brought back even after completion of four years.

5. **(i)** 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. The registered person on whose goods (inputs or capital goods) job work is performed is called the principal. Thus, the job worker is expected to work on the goods sent by the principal.

Therefore, when the goods are manufactured by Sudama Industries Ltd. for Plasto Manufacturers, it is job work as the process is undertaken on inputs (plastic and moulds) supplied by the principal (Plasto Manufacturers). However, when goods are manufactured for Solid Pipes, it is manufacture by Sudama Industries Ltd on own account as the pipes are manufactured from their own raw material. Further, processing or treatment on job work basis is a supply of service in terms of para 3 of Schedule II to the CGST Act, 2017 and manufacture and selling of pipes on own account is a supply of goods.

(ii) It has been clarified vide *Circular No. 38/12/2018 GST dated 26.03.2018* that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

(iii) Section 143 provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work. Subsequently, on completion of the job work, the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/ premises of the job worker within one year in case of inputs or within three years in case of capital goods (except moulds and dies, jigs and fixtures or tools). Thus, the provision relating to return of goods is not applicable in case of moulds, dies, jigs, fixtures and tools.

If the time frame of one year/ three years for bringing back or further supplying the inputs/ capital goods is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/ capital goods were sent out

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by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/ capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/ premises of the job worker within one/ three years of being sent out.

Therefore, the activity of sending of plastic and moulds by Plasto Manufacturers to Sudama Industries Ltd. (job worker) is not supply as the manufactured pipes are received back within the stipulated time and the provisions relating to return of goods are not applicable in case of moulds.

Rule 45 provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a delivery challan issued by the principal.

Therefore, Plasto Manufacturers need not issue a taxable invoice for sending the inputs to Sudama Industries Ltd. but should send the inputs under the cover of a challan.

(iv) As per section 15(2)(b), any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both, is includible in the value of supply. However, Sudama Industries Ltd. should not include the value of free of cost plastic and moulds supplied by Plasto Manufacturers in its job charges as Sudama Industries Ltd. is manufacturing the plastic pipes on job work basis. The scope of supply of Sudama Industries Ltd. is to manufacture plastic pipes from the raw material supplied by the Plasto Manufacturers. Thus, at no point of time was Sudama Industries Ltd. (supplier of job work service) is liable to pay for the raw material and therefore, the value thereof should not be included in its job charges even though the same has been incurred by Plasto Manufacturers (recipient of job work service).

6. As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

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In the given case, M/s Prem Tools (job worker) undertakes the process of mounting the steel cabinets of Alok Pvt. Ltd. (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act cited above, the mounting activity classifies as a service even though the metal frames are also supplied as a part of the mounting activity. Accordingly, the job charges will be chargeable to GST at a rate of 18%, which is the applicable rate for services.

Further, the value of steel cabinets will not be included in the value of taxable supply made by M/s Prem Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s Prem Tools. M/s Prem Tools is only required to mount the steel cabinets, which are to be supplied by Alok Pvt. Ltd., on metal frames, which are to be supplied by it.

As regards sale of waste generated during the job work, since M/s Prem Tools is registered, the tax leviable on the supply will have to be paid by it in terms of section 143(5). Such supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

Accordingly, the GST liability of M/s Prem Tools will be computed as under:

Particulars	Amount (₹)
Job charges	5,00,000
GST @ 18% (A)	90,000
Sale of metal waste	45,000
GST @ 12% (B)	5,400
Total GST payable (A) + (B)	**95,400**

7. As per section 19(5), the principal is entitled to take input tax credit of capital goods sent for job work even if the said goods are directly sent to job worker.

Further, section 19(6) stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, it shall be deemed that such capital goods had been supplied by the principal to the

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job worker on the day when the said capital goods were received by the job worker.

In view of aforementioned provisions, Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods.

However, if the capital goods are not returned by Rajesh Enterprises within 3 years from 15th April (date of receipt of capital goods by job worker), it shall be deemed that such capital goods had been supplied by Bedi Manufacturers to Rajesh Enterprises on 15th April and Bedi Manufacturers shall be liable to pay the tax along with applicable interest.

However, there is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [Section 19(7)].

However, if Rajesh Enterprises does not return the jigs and fixtures to Bedi Manufacturers, it shall not be considered as a supply of jigs and fixtures to Rajesh Enterprises by Bedi Manufacturers. In this case also, Bedi Manufacturers will be eligible to retain the input tax credit availed by them.

8. No, the opinion of the accountant of the job worker is not correct. Section 7(1A) provides that when certain activities or transactions constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as a supply of goods or supply of services as referred to in Schedule II. Any processing activity carried on any other person's goods is treated as supply of service in terms of Schedule II. *Circular No. 38/12/2018 GST dated 26.03.2018* has also clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work. These goods are not supply *per se*, but are being used in the processing activity carried out by it.

Thus, the activity undertaken by the job worker, in the given case, squarely falls within the purview of Schedule II and shall be considered as supply of service by the job worker to Nandeeshwar Manufacturers.

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CHAPTER 17

ASSESSMENT AND AUDIT

The section numbers referred to in the Chapter pertain to the CGST Act, 2017 unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After reading this chapter, you shall be equipped to:

- understand and explain the different types of assessment which a registered or unregistered person may be subjected to.
- describe the concept of self-assessment and provisional assessment.
- identify and appreciate the different types of audit which may be conducted against the registered person.
- gain knowledge pertaining to circumstances under which special audit can be conducted.

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1. INTRODUCTION

Assessment means determination of tax liability. There are several types of assessments in the GST regime i.e., self-assessment, provisional assessment, summary assessment and best judgment assessment.

GST is a trust-based taxation regime wherein the assessee is first required to self-assess his tax liability and furnish returns for declaring the taxable turnover, tax payable or refundable, input tax credit availed etc. (i.e., self-assessment). At this stage, there is no intervention by the tax officials.

Since the tax regime relies on self-assessment, there is a need to put in place a robust 'audit' mechanism in order to measure and ensure proper compliances of the provisions of law by the taxable person.

Chapter XII – Assessment [Sections 59 to 64] and Chapter XIII-Audit [Section 65 and 66] of the CGST Act contain the provisions relating to assessment and audit respectively. State GST laws also contain identical provisions in relation to assessment and audit.

Section 59 of the CGST Act requires each registered person to self-assess the tax payable. Section 60 stands for provisional assessment. Sections 61 provides for scrutiny of returns. Sections 62 to 64 give power to departmental officer for carrying out assessment in different situations. Sections 65 and 66 pertain to audit by tax authorities and by CA/CWA nominated by Commissioner, respectively.

Before going through the detailed study of Assessment and Audit provisions, let us first go through few relevant definitions.

Provisions of assessment and audit under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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2. RELEVANT DEFINITIONS

- **Assessment** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment. [Section 2(11)]
- **Audit** means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder. [Section 2(13)]
- **Chartered Accountant** means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949; [Section 2(23)]
- **Cost Accountant** means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959; [Section 2(35]
- **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council. [Section 2(87)]
- **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; [Section 2(91)]

3. SELF ASSESSMENT [SECTION 59]

Every person registered under the Act shall himself assess the tax payable by him for a tax period and after such self-assessment, he shall file the return required under section 39.

4. PROVISIONAL ASSESSMENT [SECTION 60]

Situations demanding Provisional Assessment

Provisional assessment provides a method for determining the tax liability in case the taxable person is unable to

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(a) determine the value of taxable goods and/or services; or

(b) determine the rate of tax applicable thereto at the time of supply.

There might be situations when these two determinants might not be readily possible and may be subject to the outcome of a process that requires deliberation and time.

Thus, where the taxable person is unable to determine—

(a) value of goods or services or both to be supplied by him; or

(b) the rate of tax applicable to the goods or services or both to be supplied by him,

he may furnish an application in prescribed form stating therein the reasons for payment of the tax on a provisional basis along with the documents in support of his request, electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The proper officer may, on receipt of the application, issue a notice in the prescribed form requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in**,** and may appear in person before the said officer if he so desires.

The proper officer shall issue an order**,** within a period not later than ninety days from the date of receipt of such request, allowing payment of the tax on a provisional basis indicating -

(a) the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis, and

(b) the amount* for which the bond is to be executed and security to be furnished. The value of security cannot exceed 25% of the amount* covered under the bond.

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Furnishing of Bond and Security

The payment of tax on a provisional basis may be allowed, if the taxable person executes a bond in the prescribed form along with the security.

The bond is a document whereby the taxpayer binds himself (i.e., agrees) to pay the differential tax, if any, payable on finalization of the provisional assessment. The security is required to be furnished in the form of a bank guarantee for an amount* as the proper officer may deem fit (subject to 25% of the amount* covered under the bond).

In order to save a taxpayer from the requirement of submitting separate bonds for different taxes, the GST law provides that the bond furnished to the proper officer under the Central/State Goods and Services Tax Act/Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the other Acts and the rules made thereunder.

*the term "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of such transaction.

Finalization of Provisional Assessment

The final assessment order has to be passed by the proper officer within a period of 6 months from the date of the communication of the order of provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the above period of 6 months may be extended:

(a) by the Joint/Additional Commissioner for a further period not exceeding 6 months, and

(b) by the Commissioner for such further period as he may deem fit not exceeding 4 years

For finalization of assessment, proper officer shall issue a notice in prescribed form, calling for such information and records, as may be required and shall issue a final assessment order specifying the amount payable by the registered person or the amount refundable, if any.

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- **Where the tax liability as per the final assessment is higher than the provisional assessment,** i.e. the tax becomes due consequent to the order of final assessment: The registered person in addition to the differential tax shall be liable to pay interest on the tax due but not paid, at the rate specified under section 50(1) from the date the tax was due to be paid originally till the date of actual payment.

  In simple words, in case any tax amount becomes payable subsequent to finalization of the provisional assessment, then interest at the specified rate will also be payable by the taxable person from the first day after the due date of payment of the tax till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

- **Where the tax liability as per the final assessment is less than in provisional assessment** i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 for any period exceeding 60 days from the date of receipt of application moved in accordance with the provisions of Section 54(1), till the date of refund of such tax.

  In simple words, in case any tax amount becomes refundable subsequent to finalization of the provisional assessment, then interest (subject to the eligibility of refund and absence of unjust enrichment) is payable at the specified rate for the period of delay (i.e., beyond 60 days from the date of the final assessment order).

Release of Security

The applicant may file an application for release of the security furnished after issue of the final assessment order.

The proper officer shall release the security after ensuring that applicant has paid the amount specified in the final assessment order and issue an order within a period of 7 working days from the date of receipt of the application.

Illustration 1

ABC Limited is a supplier of medical equipment to various hospitals. While supplying the equipment ABC Limited is not sure about the rate of IGST

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applicable on such supplies, i.e. 18% or 28%. You are required to advise ABC Ltd. in this situation.

Answer

In such an event, ABC Limited can move an application for provisional assessment for seeking permission to discharge the tax liability provisionally @ 18% upon the submission of bond and security and subject to finalization of the assessment.

Upon finalization of the assessment, ABC Limited would be liable to pay the differential tax liability along with applicable interest if it is found that the applicable rate was 28% whereas ABC Limited paid the tax @ 18% pursuant to the order passed initially on its application for seeking provisional assessment.

5. SCRUTINY OF RETURNS [SECTION 61]

Verifying the correctness of return

The return furnished by a registered person may be selected for scrutiny by proper officer to verify its correctness. Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same with reference to the information available with him.

Issue of notice

In case any discrepancy is found during scrutiny of return, proper officer shall issue a notice to the said person informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding 30 days from the date of service of the notice, or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

Reply to notice

The registered person to whom notice is issued within a period of 30 days from the date of service of the notice or such further period as may be permitted by the proper officer may–

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- accept the discrepancy as mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same; or
- furnish an explanation for the discrepancy to the proper officer regarding non-acceptance of discrepancy.

Action by Proper Officer

Where the explanation furnished by the registered person or the information submitted is found to be acceptable, the proper officer shall inform him accordingly and no further action shall be taken in this regard.

In case no satisfactory explanation is furnished by registered person or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may take recourse to any of the following provisions, namely:

(a) proceed to conduct audit under section 65 of the Act;

(b) direct the conduct of a special audit under section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or

(c) undertake procedures of inspection, search and seizure under section 67 of the Act; or

(d) initiate proceeding for determination of tax and other dues under Section 73 or 74 ***or 74A***[1] of the Act.

[1] ***The provisions of section 74A contain provisions relating to determination of tax not paid/short paid or erroneously refunded or ITC wrongly availed/utilized for any reason pertaining to Financial Year 2024-25 onward. Detailed provisions of this section are discussed in Chapter-19 of this Module of the Study material. The provisions of sections 73 and 74 are applicable for tax determination relating to the past period up to the Financial Year 2023–24.***

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6. ASSESSMENT OF NON-FILERS OF RETURNS [SECTION 62]

Best Judgment Assessment

Notwithstanding anything to the contrary contained in section 73 or section 74 ***or 74A***, where a registered person–

- fails to furnish the return under section 39 (monthly/quarterly) or under section 45 (final return), and
- a notice under section 46 has been issued by proper officer to the defaulting taxable person requiring him to furnish the return within a period of 15 days and taxable person fails to file return within the given time;

the proper officer may proceed to assess the tax liability of said person (i.e. Return Defaulter) to the best of his judgement taking into account all the relevant material which is available or which he has gathered.

Time Limit for Assessment Order

The order of best judgment assessment shall be issued by proper officer in the prescribed form and a summary thereof shall be uploaded electronically in the prescribed form.

The Assessment Order shall be issued by Proper Officer within a period of 5 years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates (When the due date is extended, the extended due date becomes the said date for calculation of 5 years period).

example

1. Let's assume that the due date of filing of Annual Return for F/Y 2024-25 is 31.12.2025. If a person defaults in filing of return for any tax period falling in F/Y 2024-25, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2024-25 i.e. 31.12.2025. Accordingly, the best judgment assessment can be made by Proper Officer on or before 31.12.2030.

Withdrawal of Assessment Order

Where the registered person furnishes a valid return for the default period within 60 days of the service of the assessment order passed on best judgment basis, the said assessment order shall be deemed to have been

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withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of ₹ 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) or to pay late fee under section 47 shall continue.

Guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns

(i) System generated message would be sent to all the registered persons 3 days before the due date to nudge them about the filing of return by the due date.

(ii) Once the due date for furnishing return under section 39 is over, a system generated mail/ message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/ message is to be sent to the authorized signatory as well as the proprietor/ partner/ director/ karta, etc.

(iii) After 5 days of due date of furnishing the return, notice under section 46 shall be issued electronically to the defaulters requiring then to furnish return within 15 days.

(iv) If the return is not filed within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said defaulter under section 62, to the best of his judgment taking into account all the relevant material which is available or which he has gathered and would issue assessment order. The proper officer would upload the summary of such order in the prescribed form.

(v) For the purpose of assessment of tax liability under section 62, the proper officer may take into account the following:

- Details of outward supplies available in GSTR-1

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- Details of inward supplies auto-populated in GSTR-2A
- Information available from e-way bills
- Any other information available from any other source including inspection under section 71 of the CGST Act

(vi) If the defaulter furnishes a valid return within 60 days of the service of assessment order under section 62, the said assessment will be deemed to have been withdrawn.

(vii) If the said return remains unfurnished within the statutory period of 60 days from the service of assessment order under section 62, the proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

Based on facts available, in some cases, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of assessment order under section 62. Further, proper officer would initiate action under section 29(2) of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29

[Circular No. 129/48/2019 GST dated 24.12.2019]

7. ASSESSMENT OF UNREGISTERED PERSONS [SECTION 63]

Best Judgment Assessment

Notwithstanding anything to the contrary contained in section 73 or section 74 ***or 74A*** ,where a taxable person–

- fails to obtain registration even though liable to do so; or
- whose registration has been cancelled under sub-section (*2*) of section 29, for any of the following reason, namely—

  (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

  (b) a person paying tax under composition levy under section 10 has

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not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or

(c) any registered person, other than a person specified in clause (*b*), has not furnished returns for such continuous tax period as may be prescribed; or

(d) any person who has taken voluntary registration under sub-section (*3*) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said unregistered person to the best of his judgement for the relevant tax periods.

Issue of Notice

Before making the assessment, proper officer shall issue a notice to a taxable person containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in the prescribed form. The taxable person shall be given 15 days' time to furnish his reply, if any. Thereafter, an order shall be passed and summary thereof shall be uploaded electronically in the prescribed form.

However, no such assessment order shall be passed without giving the person an opportunity of being heard.

Time Limit for Assessment Order

The assessment order shall be issued by proper officer within a period of 5 years from the due date for furnishing the annual return for the financial year to which non-payment of tax relates.

2. Let's assume that the due date of filing of Annual Return for F/Y 2024-25 is 31.12.2025. If the liability of a person to take registration arises at any time in the F/Y 2024-25 for the reason that his turnover crosses the prescribed threshold limit, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2024-25 i.e. 31.12.2025. Accordingly, best judgment assessment can be made by proper officer on or before 31.12.2030.

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8. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES [SECTION 64]

When Summary Assessment can be made

Summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional Commissioner/Joint Commissioner when:

- the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and
- the proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

The summary assessment order and a summary thereof shall be uploaded electronically in the prescribed form.

Withdrawal of Assessment Order

The Summary Assessment Order may be withdrawn by Additional Commissioner/Joint Commissioner, –

(a) on an application filed by taxable person for withdrawal of the summary assessment order within 30 days from the date of receipt of order; or

(b) on his own motion, where he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 ***or 74A*** to determine the tax liability of such taxable person.

Deemed taxable person in case of supply of goods

Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

example

3. When tax evaded goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax.

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9. AUDIT BY TAX AUTHORITIES [SECTION 65]

Who may conduct the audit?

Audit of any registered person may be undertaken by:

- the Commissioner; or
- any officer authorized by him, by way of a general or a specific order,

Audit may be carried out at the place of business of the registered person or in their office. The period of audit could be for a financial year or part thereof or multiples thereof.

Thus, the Commissioner or any officer authorized by him, by way of a general or special order, may undertake audit of any registered person even for a part of financial year or for multiple financial years.

Where it is decided to undertake the audit of a registered person, the proper officer shall issue a notice not less than 15 working days prior to the conduct of audit.

What is meant by commencement of audit?

The term 'commencement of audit' is important because audit has to be completed within a given time frame in reference to this date of commencement. Commencement of audit means the later of the following:

a) the date on which the records/accounts called for by the audit authorities are made available to them, or

b) the actual institution of audit at the place of business of the taxpayer.

Time limit for completion of audit

The audit is required to be completed within 3 months from the date of commencement of audit. The period is extendable for a further period of a maximum of 6 months by the Commissioner.

How to conduct audit

The proper officer authorised to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him may verify the following and record

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the observations in his audit notes:

- documents on the basis of which the books of account are maintained and the returns and statements furnished under the Act and the rules made thereunder;
- the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues.

During the course of audit, the authorised officer may require the registered person,—

a) to facilitate the verification of accounts/records available or requisitioned by the authorities,

b) to provide such information as the authorities may require for the conduct of the audit, and

c) to render assistance for timely completion of the audit.

Finalisation of Audit

The proper officer may inform the registered person of the discrepancies noticed, if any, as observations of the audit and the said person may file his reply.

The proper officer shall finalize the findings of the audit after due consideration of the reply furnished by registered person to the audit observations.

On conclusion of audit, the proper officer shall within 30 days inform the registered person whose records are audited, about the audit findings and the reasons for such findings. The proper officer shall also inform the said person his rights and obligations against such observations.

Where the audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74 ***or 74A*** .

Practical points for reference:

(a) Unlike direct taxes regime, in the GST regime separate assessment order is not passed by the tax authorities for each financial year. In the GST

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regime the tax authorities may conduct audit of a taxpayer involving one or more financial year (including a part thereof). At the end of the audit, the tax authorities are required to communicate the findings of the audit for the entire audit period along with the reasons of such finding to the registered person whose audit is undertaken.

(b) Further, in the GST regime audit exercise may be carried out at the place of business of the office of the registered person. In such cases, a team of department's officials visits the premises of the registered person and carries out the audit as per the audit schedule communicated to the registered person.

10. SPECIAL AUDIT [SECTION 66]

When Special Audit may be directed and from whom?

If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that –

- the value (of goods and/or services) has not been correctly declared; or
- the credit availed is not within the normal limits,

he may, with the prior approval of the Commissioner, issue a direction to the registered person to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner and specified in the said direction.

The provisions of special audit shall have effect even if the accounts of the registered person have been audited under any other provisions of the GST Act or any other law for the time being in force.

Time limit within which audit to be completed

The Chartered Accountant or cost accountant as nominated by Commissioner shall submit a report of such audit duly signed and certified by him within the

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period of 90 days to the said Assistant Commissioner mentioning there in such other particulars as may be specified:

The Assistant Commissioner may extend the said period 90 days by a further period of 90 days –

- on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant; or
- for any material and sufficient reason.

Who will bear the expenses of audit?

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final.

How Special Audit Report to be dealt with?

The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the process of demand and recovery will be initiated against the registered person under section 73 or section 74 ***or 74A***.

Practical points for reference:

(a) Upon the conclusion of an audit under section 65 or special audit under section 66, the registered person is communicated the proposed tax, interest and other liabilities, if any, along with the audit findings and the registered person is called upon to discharge the liabilities.

(b) In case the registered person discharges the liabilities as proposed, no further action is taken. Otherwise, the authorities may initiate the proceedings against the registered person under sections 73 or 74 ***or 74A*** for determination of the tax liability of the person audited.

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(c) Thus, non-payment of the liability proposed on the culmination of audit or special audit does not automatically results in initiation of the recovery proceedings under the law. In the case of such non-payment, further proceedings are required to be initiated under section 73 or 74 ***or 74A*** for determination of the tax liability.

LET US RECAPITULATE

The discussion under this chapter are summarised by way of diagrams to help students remember and retain the key provisions in a better and effective manner:

Different ways to assess the tax liability by a registered person

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*This is not an exhaustive list of assessments under the GST law. In addition to the types of assessments listed herein above, determination of the liability of a taxpayer can be made under Sections 73 or 74 ***or 74A*** of the CGST Act (discussed in detail separately).

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Audit

Audit by Tax Authorities

- Commissioner or any officer authorized by him may undertake audit of any registered person
- Audit may be conducted at the place of business or in their office
- At least 15 days prior notice should be given
- Time Period : 3 months from the date of conduct of audit
- Extension : not exceeding six months
- On conclusion, registered person shall be informed about findings, rights and obligations
- If results in demand of tax, proceedings may be initiated under section 73 or 74 ***or 74A***.

Special Audit

- At any stage of scrutiny, inquiry or investigation
- Assistant Commissioner is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits
- May nominate a Chartered Accountant or Cost Accountant
- Time period : 90 days
- Extension : further 90 days
- Audit will be conducted even if accounts have already been audited
- If results in demand of tax, proceedings may be initiated under section 73 or 74 ***or 74A***.

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TEST YOUR KNOWLEDGE

1. *Is summary assessment order to be necessarily passed against the registered person?*
2. *Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?*
3. *Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017?*
4. *Explain the difference between Audit by Tax Authorities under section 65 and Special Audit under section 66 of the CGST Act, 2017.*
5. *Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017.*
6. *Write a brief note on Summary Assessment in certain special cases as per section 64 of the CGST Act, 2017.*
7. *Kulbhushan & Sons has entered into a contract to supply a consignment of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.*

   On 12th January, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

   Kulbhushan & Sons complies with the same and supplies the goods on 25th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

   Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21st March, a tax of ₹ 1,80,000 becomes due on the consignment.

   Kulbhushan & Sons pays the tax due on 9th April. Determine the interest payable, if any, by Kulbhushan & Sons in the above case.

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Assuming all the other facts remaining the same, if consequent to the final assessment order passed on 21st March, a tax of ₹4,20,000 becomes refundable on the consignment, refund of which is applied by Kulbhushan & Sons on 9th April and tax was refunded to it on 5th June, determine the interest receivable, if any, by Kulbhushan & Sons in the given case.

ANSWERS

1. No. In certain cases, like when goods are under transportation or are stored in a warehouse, and the registered person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the registered person and will be assessed to tax.

2. Yes, principal of natural justice is must to be followed before passing assessment order against an unregistered person seeking to impose any financial burden on him.

3. Assessment order passed by the proper officer may be withdrawn in following cases:-

(i) **Assessment of non-filers of returns**-The best judgement order passed by the proper officer under section 62 of the CGST Act shall automatically stand withdrawn where a registered person files a valid return within 60 days of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017 or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.

However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of ₹ 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under section 50(1) or to pay late fee under section 47 shall continue.

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(ii) **Summary assessment-**As per section 64(2) of the CGST Act, 2017,a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/ Joint Commissioner within 30 days of the date of receipt of the order.

If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 or 74A of the CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

4. Audit by Tax authorities under section 65 of the CGST Act, 2017:-

1 The Commissioner or any officer authorized by him can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

2 The audit shall be completed within a period of 3 months from the date of commencement of audit. However, the Commissioner can extend this period by a further period upto maximum 6 months.

Special Audit under section 66 of the CGST Act, 2017:-

1 The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

2 Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

5. If proper explanation is not furnished for the discrepancy detected in return filed, while conducting scrutiny of returns under section 61 of the CGST Act, 2017 of a registered person, the proper officer may:

(i) conduct audit of the registered person; or

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(ii) direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or.

(iii) exercise the powers of inspection, search and seizure with respect to the registered person, or

(iv) proceed to determine the tax and other dues of the registered person under Sections 73 or 74 or 74A of the Act.

6. As per section 64 of the CGST Act, 2017, summary assessments can be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and any delay by him in passing an assessment order may adversely affect the interest of revenue.

Additional/Joint Commissioner may withdraw summary assessment order on an application filed by taxable person within 30 days from the date of receipt of order or on his own motion, if he finds such order to be erroneous and may instead follow the procedures laid down in section 73 or section 74 or 74A to determine the tax liability of such taxable person.

Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

7. Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25th January under provisional assessment is 20th February.

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In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of the consignment of goods supplied:

= ₹ 1,80,000 × 18% × 48/365

= ₹ 4,261 (rounded off)

If, in the given case, it is assumed that consequent to the final assessment order passed on 21st March, a tax of ₹ 4,20,000 becomes refundable to Kulbhushan & Sons, answer would be as follows:

Section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05thJune) within 60 days from the date of receipt of application of refund (09thApril), interest is not payable to Kulbhushan& Sons on tax refunded.

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CHAPTER 18

INSPECTION, SEARCH, SEIZURE AND ARREST

The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- understand and explain the meaning of inspection, search, seizure and summons.
- understand and describe the legislative power to arrest.
- identify and appreciate the rights and duties of persons against such actions.
- gain knowledge pertaining to the procedural requirements to be complied in this regard.

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1. INTRODUCTION

The provisions related to Inspection, Search, Seizure and Arrest are provided in tax laws in order to protect the interest of genuine taxpayers (as the Tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers). These provisions are also required to safeguard the Government's legitimate dues. Wherein , these provisions act as a deterrent and by checking evasion provide a level playing field to all genuine taxpayers.

It may be mentioned that the options of Inspection, Search, Seizure and Arrest are exercised only in exceptional circumstances and as a last resort, to protect the Government revenue.

Chapter XIV – Inspection, Search, Seizure and Arrest [Sections 67 to 71] of the CGST Act stipulates the provisions relating to inspection, search, seizure and arrest. State GST laws also prescribe identical provisions in relation to inspection, search, seizure and arrest.

Provisions of inspection, search, seizure and arrest under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. POWER OF INSPECTION, SEARCH AND SEIZURE [SECTION 67]

The power of 'Inspection' enables officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

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As per section 67, inspection can be carried out by a proper officer only upon a written authorization given by an officer of the rank of Joint Commissioner or above.

- **Circumstances for carrying out inspection**

An inspection can be carried out only after a Joint Commissioner or an officer higher in rank gives such authorization to the proper officer. Such authorization can be given by the Joint Commissioner or an officer higher in rank, only if he has **reasons to believe** that:

(a) taxable person has done one of the following:-

i. suppressed any transaction of supply of goods or services;

ii. suppressed stock of goods in hand;

iii. claimed input tax credit in excess of his entitlement;

iv. contravened any provision of the Act to evade tax;

(b) any person engaged in transporting of goods or an owner or operator of a warehouse or a godown or any other place has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

Reason to believe means having knowledge of the facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing. As per Section 26 of the IPC, 1860, "A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise." 'Reason to believe' contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration. 'Reason to believe' is more than a mere suspicion but less than evidence in possession about the violation of law. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

Meaning of Search

Either pursuant to an inspection or otherwise, if it is felt that any goods which are liable for confiscation *(discussed below)* under the Act , or any documents or books or things are secretly stored are found or any documents/books of

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accounts are found, which may be useful for the department in the proceedings for demand of tax, the department could search and seize such goods/documents and books.

Any tax law should provide powers to the enforcing officers, to check the evasion of tax. As per the dictionary meanings and as noted in different judicial pronouncements, the term 'search', in simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc. can only be done under proper and valid authority of law.

As per Section 67, a search and seizure can be carried out by a Joint Commissioner or an officer higher in rank or by an officer authorized by such person not below the rank of a Joint Commissioner only if he has **reasons to believe** that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place.

The term 'seizure' has not been specifically defined in the GST law. In the Law Lexicon Dictionary, 'seizure' is defined as the act of taking physical custody (actual or constructive) of property by an officer under legal process. It generally implies taking custody forcibly / contrary to the wishes of the owner of the property or who has lawful possession and who was unwilling to part with the possession. Not only inputs and capital goods may be seized but all offending property (movable and immovable), books and records, computer and database and everything that aids and assists in the proceedings under the Act and in protection of Government revenue including furthering investigation may be seized.

The person from whom documents and books of accounts are seized, shall have the right to take copies of such documents and books of accounts, subject to the approval of the proper officer.

- **Confiscation of goods**

As per section 130, goods become liable to confiscation when any person does

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the following:

(i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder with an intent to evade payment of tax;

(ii) does not account for any goods on which he is liable to pay tax under this Act;

(iii) supplies any goods liable to tax under this Act without having applied for the registration;

(iv) contravenes any of the provisions of the CGST Act or rules made thereunder with an intent to evade payment of tax.

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

- **Powers of officer during search**

An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents/books/things (relevant for any proceedings under the Act) from the premises searched. However, if it is not practicable to seize any such goods then the same may be detained i.e. he may order the owner or the custodian to not remove or part with the goods except with the permission of the officer. The person from whom these are seized shall be entitled to take copies/extracts of seized records in the presence of any authorized officer at a place and time indicated by the proper officer. Taking copies / extract may be denied where in the opinion of the officer making such copies or taking such extracts may prejudicially affect the investigation. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied.

Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.

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The seized documents/books/things shall be retained only till the time the same are required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of show cause notice.

- **Manner of release of confiscated goods, documents**

❖ **Provisional basis:-**The seized goods shall be released on a provisional basis, on execution of bond and furnishing of prescribed amount of security or on payment of applicable tax, interest and penalty.

❖ **Actual return of goods:-** In case of seizure of goods, a notice has to be issued within six months, if no notice is issued within a period of six months then all such goods shall be returned. However, this period of six months can be extended by the proper officer for another six months on sufficient cause.

❖ **Disposal of goods:-**The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, notify the goods which shall be disposed by the proper officer in the prescribed manner. If, during a search, such specified goods have been seized, the proper officer shall prepare an inventory of such goods in the prescribed manner.

- **Procedure for conducting search**

To ensure that the provisions for search and seizure are implemented in a proper and transparent manner, the Act stipulates that the searches and seizures shall be carried out in accordance with the provisions of Criminal Procedure Code, 1973. Section 100 of the Code of Criminal Procedure describes the procedure for search.

- **Basic requirements to be observed during search operations**

The following principles should be observed during Search:

❖ No search of premises should be carried out without a valid search warrant issued by the proper officer.

❖ There should invariably be a lady officer accompanying the search team to a residence.

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- The officers before starting the search should disclose their identity by showing their identity cards to the person in-charge of the premises.
- 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 signatures of at least two witnesses should also be taken on the body of the search warrant.
- The search should be made in the presence of at least two independent witnesses from 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.
- Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should offer for their personal search to the person in-charge of the premises being searched. Similarly, after the completion of the 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/ documents seized/detained should invariably be signed by the witnesses, the in-charge/ owner of the premises before whom the search is conducted and also by the officer(s) duly authorized for conducting the search.
- After the search is over, the search warrant duly executed 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.

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- **Search Warrant and its contents.**

The written authority to conduct a search is generally called search warrant. The competent authority to issue search warrant is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the 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.

- **Safeguards provided for in respect of Search or Seizure**

Certain safeguards are provided in section 67 of CGST Act in respect of the power of search or seizure. These are as follows:

- Seized goods or documents should not be retained beyond the period necessary for their examination;
- Photocopies of the documents can be taken by the person from whose custody documents are seized;
- For seized goods, if a notice is not issued within six months of its seizure, goods shall be returned to the person from whose possession it was seized. This period of six months can be extended on justified grounds up to a further period of maximum six months;
- Certain specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure. For instance, newspapers and periodicals, menthol, camphor, saffron, petroleum products, red sander, cells, batteries and rechargeable batteries, Re-fills for ball-point pens, etc. An inventory of such goods, if seized, shall be made by the seizing officer.

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- The provisions of Code of Criminal Procedure 1973 relating to search and seizure shall apply. However, one important modification is in relation to sub-section (5) of section 165 of Code of Criminal Procedure – instead of sending copies of any record made in course of search to the nearest Magistrate empowered to take cognizance of the offence, it has to be sent to the Principal Commissioner/ Commissioner of CGST.

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. *The same has already been discussed in detail in Chapter-10: Accounts and Records; E-way Bill.* Inspection during transit can be carried out even without authorization of Joint Commissioner.

4. POWER TO ARREST [SECTION 69]

The term 'arrest' has not been defined in the GST law. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of a lawful warrant.

Arrests can be carried out only where the person is accused of offences specified for this purpose and the tax amount involved is more than specified limit. Further, the arrests under GST law can be made only under authorization from the Commissioner. Whenever the Commissioner has reason to believe that any person has committed any specified offence, he can authorize any other officer subordinate to him, to arrest such person.

Various offences committed in connection with evasion of tax are also punishable with imprisonment. For some offences liable to more number of

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years of imprisonment, the offender has to be prosecuted before appropriate Court. The nature of offences which are thus punishable with imprisonment are prescribed in section 132.

- **Authorization of arrest by the proper officer**

The Commissioner can authorize an officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1)(a)/(b)/(c)/(d) or under section 132(2). The detailed provisions relating to section 132 have been discussed in detail in *Chapter-21: Offences and Penalties and Ethical aspects under GST*. This essentially means that a person can be arrested only where the tax evasion is more than ₹ 2 crore. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

- **Safeguards for a person who is placed under arrest**

There are certain safeguards provided under section 69 for a person who is placed under arrest. These are:

- If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest;
- If a person is arrested for a non-cognizable and bailable offence, the Deputy/ Assistant Commissioner can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station under section 436 of the Code of Criminal Procedure, 1973;
- All arrest must be in accordance with the provisions of the Code of Criminal Procedure,1973 relating to arrest.

Section 132 of the Act also prescribes which types of offences are cognizable and non-bailable and which types of offences are non-cognizable and bailable.

- **Meaning of cognizable offence.**

Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.

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- **Meaning of non-cognizable offence.**

Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order.

- **Cognizable and non-cognizable offences under CGST Act.**

Section 132 provides that the offences relating to taxable goods and /or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds ₹ 5 crore shall be cognizable and non-bailable and in such cases the bail can be considered by a Judicial Magistrate only.

Other offences under the Act are non-cognizable and bailable and all arrested persons shall be released on bail by Deputy/ Assistant Commissioner.

- **Precaution taken during arrest**

The provisions of the Code of Criminal Procedure, 1973 relating to arrest and the procedure thereof must be adhered to in all situations amounting to arrest. It is therefore necessary that all field officers of CGST be fully familiar with the provisions of the Code of Criminal Procedure, 1973.

One important provision to be taken note of is Section 57 of Cr.P.C., 1973 which provides that a person arrested without warrant shall not be detained for a period longer than, under the circumstances of the case, is reasonable, but this shall not exceed 24 hours (excluding the journey time from place of arrest to the Magistrate's court). Within this period, as provided under section 56 of Cr.P.C., the person making the arrest shall send the person so arrested without warrant, before a Magistrate having jurisdiction in the case.

- **Guidelines for arrest**

The decision to arrest needs to be taken on case-to case basis considering various factors, such as, nature and gravity of offence, quantum of duty evaded or credit wrongfully availed, nature and quality of evidence, possibility of evidence being tampered with or witnesses being influenced, cooperation with the investigation, etc. The power to arrest has to be exercised after careful consideration of the facts of the case which may include:

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- to ensure proper investigation of the offence;
- to prevent such person from absconding;
- master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc;
- master minds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc.;
- where the intent to evade duty is evident and element of mens rea/guilty mind is palpable;
- prevention of the possibility of tampering with evidence;
- intimidating or influencing witnesses; and
- large amounts of evasion of tax.

5. POWER TO SUMMON PERSONS TO GIVE EVIDENCE AND PRODUCE DOCUMENTS [SECTION 70]

During the course of any enquiry under this Act, the proper officer may summon any person to appear before him and give evidence or produce documents. The person to whom such summons has been issued is duty bound to appear before the officer and bound to tender evidence / give statement on oath. He is also bound to produce all documents which were required to be furnished.

Asking for 'evidence' or requiring 'to produce a document' does not permit calling for entire set of books of accounts. It is important to call for specific evidence or documents. Recording a statement on oath is not the conclusion of investigation but to further the investigation that the evidence or document obtained in summons proceedings will help in supporting charges against a person. Statements made in summons proceedings are inherently unreliable for the reason that the person may be anxious due to the nature of the proceedings. Such statements are also not free from doubt due to any inimical relations between the person recording the statement and the person or entity charged with offence. It is also important to note that a person who has made a statement may modify or even withdraw the statement made. However, such modification or withdrawal cannot be done with an inordinate delay.

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Reliability of statements is discussed in section 136 where 5 circumstances are stated wherein the statements 'may be' accepted by a Court as reliable *[Section 136 has been discussed in detail in Chapter 21: Offences and Penalties and Ethical aspects under GST]*. In all other circumstances, the Court will administer oath again and record evidence. Documents not otherwise available may be summoned and collected such as contracts and other documents. Annual accounts which are anyway available on MCA website should not be called for in summons proceedings.

- **Responsibilities of the person so summoned**

All persons summoned are bound to attend, either in person or by an authorised representative, as such officer may direct, and the person so appearing shall state the truth during examination or make statements or produce such documents and other things as may be required.

- **Consequences of non-appearance to summons**

The proceeding before the official who has issued summons is deemed to be a judicial proceeding. 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 and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case 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 summons, he is liable to a penalty upto ₹ 25,000 under section 122(3)(d) of the Act.

- **Guidelines for issuance of summons**

The Central Board of Indirect taxes and Customs (CBIC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

- summons are to be issued as a last resort where assesses are not co-operating and this section should not be used for summoning the top management;
- the language of the summons should not be harsh and legally worded in such manner which causes unnecessary mental stress and embarrassment to the receiver;

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- summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;
- where for operational reasons, 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 according such permission at the earliest opportunity;
- in all cases, where summons is issued, 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;
- senior management officials such as CEO, CFO, General Managers of a large companies or a Public Sector Undertakings should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision-making process which has led to loss of revenue.

- **Precautions to be observed while issuing summons**

The following precautions should generally be observed when summoning a person: -

(i) A summons 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.

(ii) 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.

(iii) The time of appearance given in the summons should be respected and 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.

(iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding the time and place of recording statement having regard to the facts in the case.

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6. ACCESS TO BUSINESS PREMISES [SECTION 71]

An officer duly authorized by the Joint Commissioner or an officer higher in rank can have access to any business premises which may be required for the purpose of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons-in-charge of such premises to furnish the required documents within fifteen working days from the day when such demand is made. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit under section 66. The following records are covered by this provision and are to be produced, if called for.

(i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.

(ii) trial balance or its equivalent.

(iii) statements of annual financial accounts, duly audited.

(iv) cost audit report, if any.

(v) the income-tax audit report, if any.

(vi) any other relevant record.

The powers under section 71 may be contrasted with powers under section 67 to inspect premises. It may be noted that circumstances when each of these sections are applicable are not similar. Section 71 is more general in its scope and extent which predominantly gives access to the place of business of a registered person to inspect books of accounts, documents etc. for carrying out any audit, scrutiny, verification and checks, whereas section 67 is applicable in specific instances and applies to specific persons/places where the Government has reasons to believe that there is an intent to evade taxes.

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7. OFFICERS TO ASSIST PROPER OFFICERS [SECTION 72]

Under section 72, the following officers have been empowered and are required to assist CGST officers in the execution of CGST Act. The categories specified are as follows:

i. Police;

ii. Railways

iii. Customs;

iv. Officers of State/UT/ Central Government engaged in collection of GST;

v. Officers of State/UT/ Central Government engaged in collection of land revenue;

vi. All village officers;

vii. Any other class of officers as may be notified by the Central/State Government.

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LET US RECAPITULATE

Summary of provisions relating to inspection, search and seizure

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TEST YOUR KNOWLEDGE

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.*
2. *Explain the safeguards provided under section 69 to a person who is placed under arrest.*
3. *Who can order for carrying out 'inspection' and under what circumstances?*
4. *Who can order for search and seizure under the provisions of the CGST Act?*
5. *Describe the powers that can be exercised by an officer during a valid search.*
6. *Discuss the responsibilities of the person to whom summons has been issued.*
7. *Explain the meaning of 'arrest'.*
8. *State the circumstances when the proper officer can authorize 'arrest' of any person under the CGST Act.*

ANSWERS

1. The access to any place of business of a registered person is allowed to a proper officer who authorized by an officer of the rank of Joint Commissioner or higher for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents within fifteen working days from the day when such demand is made. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are covered by this provision and are to be produced, if called for.

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(i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.

(ii) trial balance or its equivalent.

(iii) statements of annual financial accounts, duly audited.

(iv) cost audit report, if any.

(v) the income-tax audit report, if any.

(vi) any other relevant record.

2. Section 69 provides following safeguards to a person who is placed under arrest:

(a) If a person is arrested for a cognizable offence, he must be informed of the grounds of arrest and be produced before a magistrate within 24 hours.

(b) If a person is arrested for a non-cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.

(c) All arrest must be in accordance with the provisions of the Code of Criminal Procedure relating to arrest in terms of section 69(3).

3. As per section 67, an inspection can be carried out by an officer of CGST/SGST only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following to evade tax:

i. suppressed any transaction of supply;

ii. suppressed stock of goods in hand;

iii. claimed excess input tax credit;

iv. contravened any provision of the CGST Act to evade tax;

v. a transporter or an owner/operator of a warehouse/godown/any other place has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

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4. An officer of the rank of Joint Commissioner or above can authorize an officer in writing to carry out search and seize goods, documents, books or things. Such authorization can be given only where the Joint Commissioner/an officer above his rank has reasons to believe that any goods liable to confiscation or any documents or books or things relevant for any proceedings are hidden in any place. The Joint Commissioner/an officer above his rank empowered to authorize any officer to carry out search and seizure can himself also carry out search and seize such goods, documents or books or things.

5. An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents, books or things (relevant for any proceedings under the CGST Act) from the premises searched. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied. Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied. In case where it is not practicable to seize any such goods, the officer can issue an order restricting the owner of the goods to not remove / part / deal with the goods except with his prior permission. The officer can also dispose of goods seized which are specified by the Government in a notification having regard to the nature of such goods.

6. A person who is issued summons is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summons upon any matter which is the subject matter of examination and to produce such documents and other things as may be required.

7. The term 'arrest' has not been defined in the CGST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of a lawful warrant.

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8. The Commissioner can authorize an officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132(1) (a), (b), (c), (d) or section 132(2) and the tax evaded / input tax credit wrongly availed or utilized or refund wrongly taken exceeds ₹ 2 crore. This essentially means that a person can be arrested only where the tax evasion is more than ₹ 2 crore and the offences are specified offences namely, making supply without any invoice; issue of invoice without any supply; amount collected as tax but not paid to the Government beyond a period of 3 months and taking input tax credit without receiving goods and services. However, the monetary limit shall not be applicable if the offences are committed again (even after being convicted earlier), i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

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CHAPTER 19

DEMANDS AND RECOVERY

The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand the provisions relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised whether by reason of fraud or wilful-misstatement or suppression of facts, or otherwise.
- explain the consequences in case where tax is collected but not paid to Government.
- describe the provisions of tax wrongfully collected and paid to the Government.
- explain the recovery proceedings.
- elaborate the facility of payment of tax and other amount in instalments.
- identify the cases where the transfer of property is void.
- explain provisions relating to provisional attachment to protect revenue.

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1. Introduction

Though it is the duty of every taxable person to self-assess and pay his GST liabilities voluntarily, tax administration occasionally comes across situations where the tax dues are not paid correctly by the taxpayers. While in most of these cases, such non-payment is due to the bonafide belief of the person that his activities do not attract any tax liability under the GST law; or he is entitled to certain exemption, etc., in some cases, such non-payment is deliberate with an intention to evade payment of such tax by way of short payment of tax, excess availment of input tax credit, etc.

As per the relevant provisions, the self-assessed tax has to be paid by the due date prescribed under the GST law and any non-compliance may affect the Input Tax Credit (ITC) eligibility of the customers and also the tax payer will not be able to file any return for further period in certain circumstances. Effectually, these provisions work as a self-policing system and take care of any mismatch in the payment of taxes.

However, despite these provisions, there may arise some instances where the tax was not paid correctly. To deal with such situations, Revenue must be empowered to demand the tax liability and recover such tax from the defaulter.

On one hand, there is a dire need to have a robust demand and recovery mechanism in place in order to empower the Revenue to exercise said powers, at the same time, care must also be taken that there should not be arbitrary exercise of such powers by the Revenue and same should be appropriately regulated.

Accordingly, the GST law contains elaborate provisions for the recovery of tax under various situations, which can be broadly classified into following two categories:

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Chapter XV of the CGST Act 2017 [Sections 73 to 84[1]] and Chapter XVIII [Rules 142 to 161] of the CGST Rules, 2017 contains various provisions relating to demands and recovery. There are parallel provisions in SGST laws of various States. The demand and recovery proceedings will be made either by Central GST Officer or State GST Officer depending on their jurisdiction over particular taxable person.

Provisions of demands and recovery under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the demands and recovery provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- **Appellate Authority:** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].
- **Appellate Tribunal:** means the Goods and Services Tax Appellate Tribunal constituted under section 109 [Section 2(9)].
- **Commissioner:** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].
- **Market value:** shall mean the full amount which a recipient of a supply is

[1] *Since sections 73 and 74 contain the provisions for determination of tax, pertaining to the period upto Financial Year 2023-24, 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 by reason of fraud or wilful-misstatement or suppression of facts, said provisions have not been discussed in detail in this Chapter and are not relevant for examination purpose. However, brief references to said sections have been retained wherever they are referred to in other sections/rules and in CBIC clarifications.*
Newly introduced section 74A containing provisions relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward has been discussed in detail and will be relevant for examination purposes.

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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 [Section 2(73)].

- **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 [Section 2(91)].

3. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILED OR UTILISED FOR ANY REASON PERTAINING TO FINANCIAL YEAR 2024-25 ONWARD [SECTION 74A READ WITH RULE 142]

- ***Section 74A stipulates the manner in which the tax liability of a person should be determined in case of short payment/ non-payment of tax/ erroneous refund/ wrong availment/ utilization of ITC. It provides a unified mechanism for both fraud and non-fraud cases, i.e. where such short payment/ non-payment of tax/ erroneous refund/ wrong availment/ utilization of ITC is by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax or by reasons other than fraud or wilful-misstatement or suppression of facts.***

- ***Limitation period:*** ***One of the core principles of law is that legal proceedings must have an element of certainty. The law of limitation is built on this principle, as any action under any law must be taken within a prescribed time frame; otherwise, disputes would remain open-ended and uncertain. The purpose of a limitation period under tax law is to fix a definite time within which the tax authorities can take action, such as raising a demand, issuing a notice or making an assessment.***

  It ensures that tax matters are not kept open indefinitely, giving

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certainty and finality both to the taxpayer and the Department. The provisions of limitation period gain all the more importance in the legislation dealing with indirect taxes, where the tax burden is to be passed on to the next level at every stage. Therefore, a tax law must have a limitation period, beyond which demands cannot be raised.

- ***Principal of natural justice:*** ***In order to adhere to the principles of natural justice, before raising any tax demand, a notice has to be issued [generally referred to as Show Cause Notice(SCN)], asking the person chargeable with tax to show cause as to why the specified amount of tax, interest and penalty should not be demanded from him.***

  The issuance of SCN grants an opportunity to such person to defend himself before adjudication. The person to whom such notice has been issued can contest the demand by filing a reply to the SCN and also by appearing before the adjudicating authority personally. After considering the reply filed by the person as well as the submissions made during the personal hearing, the adjudicating authority shall pass a speaking order, either confirming the tax demand or dropping the same.

- ***Section 74A provides standardized timelines and procedures for both types of cases, thereby bringing efficiency in handling the cases and promoting better understanding in following manner:***

  - ***Show cause notice (hereinafter referred as SCN) can be issued within 42 months (3.5 years), from the due date of furnishing the annual return or from the date of erroneous refund.***
  - ***The order must be passed within 1 year, from the date of SCN or from the date of erroneous refund.***

- ***The incidence of short payment/non-payment of tax or erroneous refund or wrong availment/utilisation of ITC may be because of an inadvertent bonafide mistake, i.e. by reasons other than fraud or wilful-misstatement or suppression of facts (hereafter referred as Non-fraud cases) or it may be a deliberate attempt to evade the tax, i.e. by reason of fraud, or any wilful-misstatement or suppression of facts (hereinafter referred as Fraud cases).***

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The provisions contained in section 74A have been discussed in detail below.

A. Issuance of SCN [Section 74A(1), (3)and (4)]

- ***SCN is issued in any of the following cases:***
  - ***Tax has not been paid,***
  - ***Tax has been short paid,***
  - ***Tax has been erroneously refunded, or***
  - ***ITC has been wrongly availed/utilised.***

- ***SCN requires the person chargeable with tax to show cause as to why he should not pay the amount specified in SCN along with interest payable thereon under section 50 (interest on delayed payment of tax)[2] and a penalty leviable under the provisions of the GST law. Thus, SCN would clearly state the amount of tax, interest and penalty that the person is liable to pay.***
- ***Needless to say, the notice should clearly state the grounds based on which such demand is raised, so that the person against whom the notice is served is made aware of the basis of the demand.***
- ***SCN is to be issued in both fraud cases and non-fraud cases.***
- ***Exception: No SCN shall be issued if the disputed amount[3] is less than ₹ 1,000 in a financial year.***
- ***Pre-SCN intimation: The proper officer may, before serving of such SCN, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty. It is important to note that issuance of pre-SCN intimation is not mandatory.***

  Where such person has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission and thereafter the

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[2] *Notification No. 13/2017 CT dated 28.06.2017 has notified the rate of interest as 18% per annum under section 50.*

[3] *Disputed amount here refers the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised*

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proper officer may issue an intimation, accepting the payment or the submissions or both, as the case may be, made by the said person.

- ***Statement in lieu of SCN for subsequent periods:*** ***Where a SCN has been issued for any period, the proper officer may serve a statement instead of SCN for the subsequent periods.***

  Such statement shall contain the details of:

  - ***Tax not paid***
  - ***Tax short paid***
  - ***Tax erroneously refunded, or***
  - ***ITC wrongly availed/utilised.***

  Statement shall be served for the periods other than those covered under the SCN earlier issued.

  The service of such statement for subsequent periods shall be deemed to be service of SCN on the person chargeable with tax. This is subject to the condition that the grounds relied upon for subsequent tax periods are the same as are mentioned in the earlier SCN.

  This provision ensures that the Department's time is saved by avoiding repetitive re-typing of demand notices.

B. Time limit for issuance of SCN [Section 74A(2)]

SCN must be issued within 42 months (3.5 years) from:

- ***the due date for furnishing of annual return[4] or***
- ***the date of erroneous refund.***

[4] *Annual return here refers to annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to.*

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C. Quantum of penalty [Section 74A(5)]

What is the penalty amount?

Fraud Case

Penalty is the tax due from the person chargeable with tax.

Non-Fraud Case

Penalty is **higher** of:
(i) 10% of tax due
or
(ii) ₹10,000**.

*** ₹ 10,000 each under CGST and SGST/UTGST or ₹ 20,000 under IGST*

D. Issuance of order [Section 74A(6) and (7)]

The person chargeable with tax may give the representation to proper officer and the proper officer shall, after considering the representation, determine the amount of tax, interest and penalty due from such person and issue an order.

Time limit for issuance of order: ***The proper officer shall issue said order within 12 months from date of issuance of the SCN.***

However, if the officer is unable to issue order within this time, the Commissioner or any officer authorised by the Commissioner who is senior in rank to the proper officer, but not below the rank of Joint Commissioner of Central Tax, may extend this period.

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Such extension can be given for a maximum of 6 months, provided reasons for the delay in issuance of order are recorded in writing, before the expiry of the original 12 months' period.

E. Payment of tax and interest and penalty[5] before issuance of SCN [Section 74A(8)(i), 74A(9)(i) & 74A(10)]

The law provides an opportunity to the person chargeable with tax to pay tax, interest and penalty before issuance of SCN. In that case, in non-fraud cases, penalty will be completely waived off and in fraud cases, penalty will be reduced to 15% of the tax.

The detailed provisions are as under:

- ***Non-fraud cases:*** ***In case of non-fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax), before the issue of SCN/statement:***
  - ***on the basis of his own ascertainment of tax, or***
  - ***the tax as ascertained by the proper officer***

  and inform the proper officer in writing of such payment in prescribed form - Form DRC-03. An acknowledgement shall be made available to such person through the common portal electronically.

  The proper officer, on receipt of such information, shall not serve any SCN/statement, as the case may be, in respect of the tax so paid or any penalty payable under the provisions of GST law.

- ***Fraud cases:*** ***In case of fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax) and a penalty equivalent to 15% of such tax, before the issue of SCN/ statement:***
  - ***on the basis of his own ascertainment of tax, or***
  - ***the tax as ascertained by the proper officer***

[5] *In case of payment of tax and interest before issuance of SCN, penalty is payable only in fraud cases.*

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and inform the proper officer in writing of such payment in prescribed form - Form DRC-03. An acknowledgement shall be made available to the person through the common portal electronically.

The proper officer, on receipt of such information, shall not serve any SCN in respect of the tax so paid or any penalty payable under the provisions of GST law.

Where amount paid falls short of amount actually payable: Where the proper officer is of the opinion that the amount paid as above in fraud/non-fraud cases falls short of the amount actually payable, he shall proceed to issue SCN in respect of such amount which falls short of the amount actually payable.

- ***The option of paying tax and interest and penalty (in case of fraud cases) before issuance of SCN so as to avoid the issuance of SCN is available in both fraud as well as non-fraud cases.***

F. Payment of tax and interest and penalty[6] within 60 days of issuance of SCN [Section 74A(8)(ii) & 74A(9)(ii)]

- ***Non-fraud cases: In case of non-fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax), within 60 days of issuance of SCN/statement,***

  and inform the proper officer of such payment in prescribed form.

  In such cases, no penalty shall be payable and all proceedings in respect of the said SCN shall be deemed to be concluded. The proper officer shall issue an intimation in prescribed form concluding the proceedings in respect of the said SCN.

- ***Fraud cases: In case of fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax) and a penalty equivalent to 25% of such***

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[6] *In case of payment of tax and interest within 60 days of issuance of SCN, penalty is payable only in fraud cases.*

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tax, within 60 days of issuance of SCN/statement,

and inform the proper officer of such payment in prescribed form.

- ***In such cases, all proceedings in respect of the said SCN shall be deemed to be concluded. The proper officer shall issue an intimation in prescribed form concluding the proceedings in respect of the said SCN.***

G. Payment of tax, interest and penalty within 60 days of communication of order [Section 74A(9)(iii)]

- ***In case of fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax) and a penalty equivalent to 50% of such tax, within 60 days of communication of order, and all proceedings in respect of the said SCN shall be deemed to be concluded.***

H. Penalty in case of non-payment of self-assessed tax or amount collected as tax, within 30 days of due date [Section 74A(11)]

In case of non-fraud cases, if the amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax, then following penalty shall be payable:

(i) 10% of tax

or

(ii) ₹ 10,000[7]

whichever is higher.

This provision is notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8) of section 74A. In other words, in such cases, imposition of penalty is mandatory with no option of waiver [as offered under section 74A(8)].

In case of non-payment of self-assessed tax and the amount collected as representing the tax, the only opportunity for paying the same without incurring any penalty is, if it is paid, with interest, within 30 days from

[7] *₹ 10,000 each under CGST and SGST/UTGST or ₹ 20,000 under IGST*

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the due date of payment. The option to pay such tax before issuance of scn or within 30 days of issuance of SCN and avoid penalty consequences is not available. Penalty under section 74A(5)(i) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

For the purposes of section 74A:

(i) 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.

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 74A, the proceedings against all the persons liable to pay penalty under sections 122 and 125[8] are deemed to be concluded. Sometimes, if a notice is issued to a company, notice 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.

(iii) For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. 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

[8] Provisions relating to sections 122 & 125 have been discussed in detail in Chapter 21 – Offences and Penalties and Ethics under GST in this Module of the Study Material.

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disclosed, that would amount to 'suppression'. It is not duty of a taxable person to disclose each material fact to the Department, if it is not asked for.

The above provisions have been summarized in the following table:

Section 74A (Applicable from FY 2024-25 onwards)	**Demand and recovery in fraud and non-fraud cases**
Power to serve show cause notice (SCN)	Proper Officer (PO) shall serve the SCN to a person chargeable with tax in case of tax not paid or short paid or erroneously refunded, or ITC wrongly availed or utilized. No SCN to be issued if the amount involved is less than ₹ 1,000.
Time limit for issuance of notice	**42 months** from the (i) due date of furnishing annual return of the FY, to which such non-payment/short payment of tax or ITC wrongly availed/utilized relates or (ii) date of erroneous refund
Issuance of statement for subsequent periods	PO may serve a statement containing details of tax not paid or short paid or erroneously refunded, or ITC wrongly availed or utilized, for subsequent periods other than covered under the original notice.
Deemed SCN if grounds for issuing statement are same as in case of SCN	Such statement shall be deemed to be the SCN but grounds for discrepancies in statement must be the same as those in original SCN
Penalty	**Non Fraud Cases**: 10% of the tax due or ₹ 10,000[9] whichever is higher **Fraud Cases**: Equivalent to the tax due

[9] *₹ 10,000 each under CGST and SGST/UTGST or ₹ 20,000 under IGST*

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	In case where	**Penalty in Non Fraud Cases**	**Penalty in Fraud Cases**
	Tax and Interest paid before SCN	NIL	15% of Tax Due
	Tax and Interest paid within 60 days of SCN	NIL	25% of Tax Due
	Tax and Interest paid within 60 days of communication of order		50% of Tax Due
Issue of order	PO shall determine the tax, interest and penalty after considering representation made by person chargeable with tax and issue an order.		
Time Limit for issuance of order	• 12 months from the date of issue of SCN • Extension upto 6 months permitted		
Penalty in case of Self Assessed Tax or amount collected as tax	If in non-fraud cases, self-assessed tax or amount collected as tax is not paid within 30 days from the due date, penalty shall be levied as follows: 10% of the tax due or ₹ 10,000[10], whichever is higher.		

4. GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX [SECTION 75]

General provisions relating to determination of tax are contained in section 75 of CGST Act. These provisions are applicable both in case of determination of tax not paid/short paid/ erroneously refunded/ITC wrongly availed/ utilised whether by reason of fraud/any wilful misstatement/suppression of facts or otherwise.

[10] *₹ 10,000 each under CGST and SGST/UTGST or ₹ 20,000 under IGST*

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These provisions have been discussed are as follows:

A. Period of stay order to be excluded in computing the limitation period [Section 75(1)]

Where the service of notice or issuance of order is stayed by an order of a Court or Appellate Tribunal, the period of such stay shall be excluded in computing the *period for issuance of notice and issuance of adjudication order***, as the case may be.

period as specified in* ***sub-sections (2) and (7) of section 74A[11].

B. In case charges of fraud/any wilful misstatement/suppression of facts are not established for a notice issued in a fraud case, penalty prescribed for non-fraud cases is payable [Section 75(2A)]

Where any Appellate Authority or Appellate Tribunal or Court concludes that the penalty prescribed for fraud cases under section 74A 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 penalty prescribed for non-fraud cases under section 74A shall be payable by such person.

C. Adjudication order issued in pursuance of Appellate Authority/ Appellate Tribunal/ Court's direction be issued with 2 years [Section 75(3)]

Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within 2 years from the date of communication of the said direction.

D. Opportunity of being heard [Section 75(4)]

An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

[11] *sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74*

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Adjournment of hearing to grant time to person chargeable with tax [Section 75(5)]

The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing.

However, such adjournment shall be granted for a **maximum of 3 times** to a person during the proceedings.

E. Adjudication order should be a speaking order [Section 75(6)]

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

F. Tax, interest and penalty demanded in order not to exceed amount specified in notice [Section 75(7)]

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

G. In case of modification of tax by the Appellate Authority/ Tribunal/ Court, penalty and interest to be modified accordingly [Section 75(8)]

Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

H. Payment of interest mandatory even if not specified in the adjudication order [Section 75(9)]

The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

I. Adjudication order to be passed mandatorily within stipulated time [Section 75(10)]

The GST law ensures timely disposal of cases by providing that if the adjudication order is not issued within the stipulated time limit of 1 year of issuance of SCN, the adjudication proceedings shall be deemed to be concluded.

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J. In case of appeal filed by Department against prejudicial decision of the Appellate Authority/ Appellate Tribunal/ High Court, period between the date of decision of the higher authority and that of the lower authority to be excluded [Section 75(11)]

An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the time limit for passing adjudication order, where proceedings are initiated by way of issue of a SCN under the sections 73 and 74 ***or section 74A***.

K. Amount of self-assessed tax or interest remaining unpaid to be recovered under section 79 [Section 75(12)]

Notwithstanding anything contained in section 73 or section 74 ***or section 74A***, 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 directly recovered under the provisions of section 79 *[discussed subsequently in this chapter]*.

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:

For instance,

- a typographical error/wrongly reported details in Form GSTR-1 or Form GSTR-3B which may be rectified in subsequent Form GSTR-1 or Form 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 Form GSTR-3B of said tax period; details may now be reported in the Form GSTR-1 of the current tax period.

Therefore, *Instruction No. 01/2022 GST dated 07/01/2022* provides that in case of mismatch between Form GSTR-1 and Form 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.

L. In case of penalty being imposed under section 73/74 or 74A, no other penalty to be imposed for the same act/omission [Section 75(13)]

Where any penalty is imposed under section 73 or section 74 ***or 74A***, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

5. TAX COLLECTED BUT NOT DEPOSITED [SECTION 76]

The provisions of this section are based on the principle that nobody should be unjustly enriched in the name of Revenue. If any amount is collected in the name of tax, the same must be deposited with the Government.

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Such situation may arise in case where tax is collected on supplies on which the tax is leviable, but such tax is not deposited with the Government or where tax is collected on supplies on which tax is not leviable at all, and thus, tax collected is not deposited with the Government.

The detailed provisions of this section have been discussed hereunder:

A. Amount representing tax collected from any person to be paid to the Central Government [Section 76(1)]

Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

B. Issue of SCN [Section 76(2)]

Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

C. Determination of amount due [Section 76(3)]

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

D. Interest payable on the amount [Section 76(4)]

- The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon.
- Interest is payable at the rate specified under section 50.
- Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

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E. Opportunity of being heard [Section 76(5)]

An opportunity of hearing shall be granted where a request is received in writing from the person to whom SCN was issued.

F. Time limit for issuance of order [Section 76(6) & (7)]

The proper officer shall issue an order within **1 year** from the date of issue of the 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**.

G. Order must be a speaking order [Section 76(8)]

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

H. Adjustment of amount payable under section 76(1) and (3) [Section 76(9), (10) & (11)]

The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).

Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Consumer Welfare Fund or refunded to the person who has borne the incidence of such amount.

The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.

6. TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT [SECTION 77]

A registered person who has paid the CGST and SGST or, as the case may be, the CGST and the UTGST on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

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A registered person who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of CGST and SGST or, as the case may be, the CGST and the UTGST tax payable.

Similar provisions are contained in section 19 of the IGST Act, 2017.

Section 19 provides that a registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of IGST so paid in such manner and subject to such conditions as may be prescribed. A registered person who has paid CGST and SGST or, as the case may be, the CGST and the UTGST, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.

Clarification in respect of refund of tax specified in section 77 of the CGST Act and section 19 of the IGST Act

It is clarified that the term "subsequently held" in said sections covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding, 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.

(1) Ram Associates, a registered person, pays IGST on a transaction treating the same as inter-State supply by mistake, though it was an intra-state supply. In this case, Ram Associates has to pay CGST and SGST/UTGST, without any interest. He can thereafter claim refund of IGST which was erroneously paid.

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7. RECOVERY PROCEEDINGS [SECTIONS 78 & 79]

The recovery proceedings are final steps towards the realisation of any tax or any other amount, which has been confirmed as payable after following the due process of adjudication by the proper officer. These recovery provisions under the CGST Act, 2017 lay down a well-defined procedure which is as follows:

A. Initiation of recovery proceedings [Section 78]

Any amount payable by a taxable person in pursuance of an order passed under this Act must be paid by such person within a period of **3 months** from the date of service of such order. If a taxable person fails to do so, recovery proceedings are initiated against him.

However, where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period **less than a period of 3 months** as may be specified by him.

B. Recovery of tax [Section 79]

If the payable amount is not paid by a person within the specified time limit of 3 months, recovery proceedings shall be initiated and various actions may be taken by the recovery officer, for realisation of Government dues. Recovery of taxes can also be made from distinct persons [referred to in section 25(4) & (5)[12]] present in different States/ UTs.

The options for recovery of Government dues include deduction of money from any amount payable to such tax payer, detaining and selling any goods, directing any other person from whom the money is due to such person, attaching any property belonging to the defaulter etc.

[12] *Concept of distinct persons has been explained in detail in Chapter 1 – Supply under GST in Module 1 of the Study Material.*

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MODES OF RECOVERY OF TAX [SECTION 79(1)]

Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by **one or more of the following modes**, namely:

(i) Recovery by deduction from any money owed [Section 79(1)(a) read with rule 143]

The proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person [referred as 'defaulter'] which may be under the control of the proper officer or such other specified officer.

> **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.

(ii) Recovery by sale of goods under the control of proper officer [Section 79(1)(b) read with rule 144]

- The proper officer may recover or may require any other specified officer to recover the amount so payable from a defaulter by detaining and selling any goods [through a process of auction, including e-auction] belonging to such person which are under the control of the proper officer or such other specified officer.
- 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.

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(iii) Garnishee proceedings - Recovery from a third person [Section 79(1)(c) read with rule 145]

- The proper officer may, by a notice in prescribed form, in writing, require any other person:
  - from whom money is due/may become due to such person or
  - who holds/may subsequently hold money for/on account of such person to pay to the Government
  - either forthwith upon the money becoming due or being held, or
  - within the time specified in the notice not being before the money becomes due or is held,

  so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.
- Every person to whom the notice is issued hereunder 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 for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.
- In case the person to whom notice is issued hereunder, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow.
- The officer issuing such notice may, at any time, amend or revoke the notice or extend the time for making any payment in pursuance of the notice.
- Any person making any payment in compliance with the notice

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issued hereunder shall be deemed to have made the payment under the authority of the person in default.

- Further, such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt.
- 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 to the 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 hereunder proves to the satisfaction of the officer issuing the notice that:
  - the money demanded/any part thereof was not due to the person in default or
  - he did not hold any money for/on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person/be held for/on account of such person,

  nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof.
- 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.

(iv) Recovery by sale of movable/immovable property [Section 79(1)(d) read with rules 147, 148, 149, 150 and 154]

- The proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping

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of the property, remains unpaid for a period of 30 days next after any such distress, may cause the said property to be sold [through auction including e-auction] and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person [Section 79(1)(d)].

- The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due.

In case of attachment/ distraint of	
an immovable property	order shall be affixed on the property till the confirmation of sale
a movable property	proper officer shall seize the property and take its custody.

- Stamp duty/any other tax/fee payable on transfer of such property shall be paid by the transferee to the Government.
- Any property in a debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in/in the custody of any Court shall be attached in the manner provided in rule 151 *[discussed subsequently in this chapter]*.
- 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/was in possession of, the property in question, proper officer shall investigate the same and postpone the sale till such time.
- If proper officer finds merit in his claims/objection upon

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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 or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under section 129(3) shall,-

  (a) first, be appropriated against the administrative cost of the recovery process;

  (b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under section 129(3), as the case may be;

  (c) next, be appropriated against any other amount due from the defaulter under the CGST Act/IGST Act/UTGST Act/any of the SGST Act and the rules made thereunder; and

  (d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the GST law, and where the said person is not required to be registered under the GST law, the said amount shall be credited to the bank account of the person concerned;
- Where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of 6 months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.
- Where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker

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and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

- 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.

(v) Recovery as arrears of land revenue [Section 79(1)(e) read with rule 155]

- The proper officer may prepare a certificate in prescribed form signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

(vi) Recovery as fine imposed by Magistrate [Section 79(1)(f) read with rule 156]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate in prescribed form to recover from the person concerned the amount specified thereunder and such Magistrate shall proceed to recover from such person amount specified thereunder as if it were a fine imposed by him.

(vii) Recovery through execution of a decree, etc. [Rule 146]

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

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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.

(viii) Recovery through surety [Rule 157]

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.

(ix) Recovery from company in liquidation [Rule 160]

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.

Other provisions governing recovery of tax [Section 79(2), (3) & (4)]

- Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section [Section 79(2)].
- Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government [Section 79(3)].
- Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government [Section 79(4)].

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Clarification on the legal position of voluntary payment of taxes during the course of inspection, search or investigation

During the course of search, inspection or investigation, sometimes the taxpayers opt for deposit of their partial/full GST liability arising out of the issue pointed out by the Department during the course of such search, inspection or investigation. Instances have been noticed where some of the taxpayers after voluntarily depositing GST liability have alleged use of force and coercion by the officers for making recovery during the course of search, inspection or investigation.

Consequently, the legal position of voluntary payment of taxes has been clarified for ensuring correct application of law and for protecting the interest of the taxpayers.

Under the CGST Act, the taxpayers have an option to make voluntary payment of tax. Such voluntary payment of tax before issuance of show cause notice is permitted under section 73(5) and section 74(5)[13]. This helps the taxpayers in discharging their admitted liability, self-ascertained or as ascertained by the tax officer, without having to bear the burden of interest under section 50 for delayed payment of tax and may also save him from higher penalty imposable on him subsequent to issuance of show cause notice under section 73 or section 74, as the case may be.

Recovery of taxes not paid or short paid, can be made under the provisions of section 79 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. Therefore, there may not arise any situation where **"recovery"** of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings.

However, the law does not bar the taxpayer from voluntarily making payment of any tax liability ascertained by him or the tax officer in respect of such issues, either before or during the course of such proceedings or subsequently. The tax officer

[13] *Sections 73 and 74 contain the provisions for determination of tax, pertaining to the period upto Financial year 2023-24, 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 .*

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should however, inform the taxpayers regarding the provisions of voluntary tax payments.

[Instruction No. 01/2022-23 [GST-Investigation] dated 25.05.2022]

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

Considering various business aspects, the provisions for payment of all such amounts, other than self-assessed tax, in instalments have also been made in the Act.

A person can avail this benefit of payment in instalments, by making an application to the Commissioner by specifying reasons for such request.

On receipt of application, the Commissioner may allow the payment of amount in instalments, subject to maximum 24 monthly instalments and on payment of applicable interest.

If there is default in payment of any one instalment then the whole outstanding balance shall become due and payable immediately.

Provisions of section 80 read alongwith rule 158 have been explained in detail as under:

- A taxable person, seeking extension of time for the payment of taxes or any amount due under the Act or for allowing payment of such taxes or amount in instalments, shall furnish an application for the same in prescribed form.
- Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- Commissioner may, upon consideration of the same, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding 24, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.
- However, where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on

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the person, be liable for recovery.

- **Facility of payment in instalments not allowed in certain cases:** The facility of payment in instalments shall not be allowed where -

  (a) the taxable person has already defaulted on the payment of any amount under the CGST Act or IGST Act or UTGST Act or any of the SGST Act, for which the recovery process is on;

  (b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the IGST Act or UTGST Act or any of the SGST Act;

  (c) the amount for which instalment facility is sought is less than ₹ 25,000.

9. TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES [SECTION 81]

- Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

- However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

10. TAX TO BE FIRST CHARGE ON PROPERTY [SECTION 82]

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge

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on the property of such taxable person or such person.

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

- Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed [Section 83(1)].
- Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1) [Section 83(2)].

The related provisions contained in CGST Rules are as follows:

(i) Provisional attachment of property [Rule 159]

- Where the Commissioner decides to attach any property, including bank account in accordance with aforesaid provisions, he shall pass an order to that effect mentioning therein, the details of property which is attached.
- The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed:

  (i) on the written instructions from the Commissioner to that effect

  or

  (ii) on expiry of a period of 1 year from the date of issuance of order of provisional attachment of property,

  whichever is earlier.

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- 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.
- Where the property attached is of perishable or hazardous nature, and if the taxable person pays:

  (i) an amount equivalent to the market price of such property

  or

  (ii) the amount that is or may become payable by the taxable person

  whichever is lower

  then such property shall be released forthwith, by an order in prescribed form, on proof of payment.
- However, where the taxable person fails to pay the amount referred above in respect of the said property of perishable/hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.
- Any person whose property is attached may at any time of the attachment, file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order.
- The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order.

(ii) Attachment of debts and shares, etc. [Rule 151]

- A debt not secured by a negotiable instrument, a share in a corporation, or other movable property not in the possession of the defaulter except for property deposited in, or in the custody of any court shall be attached by a written order in prescribed form prohibiting:

  (a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;

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(b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

- A copy of such order shall be affixed on some conspicuous part of the office of the proper officer, and another copy shall be sent, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.
- A debtor, prohibited hereunder, may pay the amount of his debt to the proper officer, and such payment shall be deemed as paid to the defaulter.

(iii) Attachment of property in custody of courts or Public Officer [Rule 152]

- Where the property to be attached is in the custody of any Court or Public Officer, the proper officer shall send the order of attachment to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

(iv) Attachment of interest in partnership [Rule 153]

- 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.
- 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.

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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 under this Act, (hereafter in this section referred to as Government dues), is served upon any taxable p erson or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then:

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal, revision or in other proceedings —–

(i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

Proceedings conducted under IBC covered under the term 'other proceedings' in section 84

The word 'other proceedings' is not defined in CGST Act. It is to be mentioned that the adjudicating authorities and appellate authorities under IBC are quasi-judicial authorities constituted to deal with civil disputes pertaining to

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insolvency and bankruptcy. For instance, under IBC, NCLT serves as an adjudicating authority for insolvency proceedings which are initiated on application from any stakeholder of the entity like the firm, creditors, debtors, employees etc. and passes an order approving the resolution plan. As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in section 84.

[Circular No. 187/19/2022 GST dated 27.12.2022]

TEST YOUR KNOWLEDGE

1. *Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76.*

2. *Discuss briefly the time limit for issue of show cause notice as contained under section 74A in case where (i) the short payment is on account of fraud, and (ii) the short payment is on account of a bonafide error.*

3. *Is there any time limit prescribed for adjudication of the cases under the CGST Act, 2017? If yes, discuss the same.*

4. *A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest and penalty before issuance of show cause notice. Is any option of reduced penalty available to such person?*

5. *Briefly discuss the modes of recovery of tax available to the proper officer.*

6. *Enlist the circumstances under which a show cause notice can be issued by the proper officer under section 74A. Specify the time limit for issuance of such show cause notice as also the time period for issuance of order by the proper officer under section 74A.*

7. *Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.*

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The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

8. *Anant & Co. self-assessed its CGST liability as ₹ 90,000 for the month of April, but failed to make the payment.*

   Subsequently, the Department initiated penal proceedings against Anant & Co. for recovery of penalty under section 74A for failure to pay GST and issued show cause notice on 10th August.

   Anant & Co. deposited the tax along with interest on 25th August and informed the Department on the same day.

   Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of ₹ 90,000) under the CGST Act.

   Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief.

9. *Arnav Enterprises, a registered supplier located in Madhya Pradesh, has duly filed its monthly GST returns for the financial year 2024–25. During the scrutiny of its returns for the said financial year in August 2025, the proper officer noticed an inadvertent short payment of CGST and SGST totaling ₹ 4,60,000 in the month of October 2024, on account of a bonafide error. Before issuance of the show cause notice by the proper officer, Arnav Enterprises paid the tax of ₹ 1,00,000 (₹ 50,000 CGST and ₹ 50,000 SGST) on the basis of its own ascertainment along with applicable interest and with penalty, if any, on 15th September 2025 and informed the proper officer in writing of such payment.*

   Based on the facts above, answer the following:

   (1) Ascertain the last date by which show cause notice can be issued by the proper officer for the amount of tax short paid by Arnav Enterprises.

   (2) Determine the amount of penalty, if any, payable on the payment of tax of ₹ 1,00,000 by Arnav Enterprises on the basis of its own ascertainment along with applicable interest on 15th September 2025.

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(3) Assuming that the proper officer decides to issue a show cause notice under section 74A on 10th October 2025, determine the maximum amount of tax for which he can issue the show cause notice. Ascertain the last date by which the proper officer should issue order under section 74A assuming that show cause notice is issued by proper officer on said date.

(4) In continuation of sub-part (3) above, if proper officer issues a show cause notice under section 74A on 10th October, 2025 for the amount of tax so allowed and Arnav Enterprises decides to pay said tax along with applicable interest, on 5th December, 2025, you are required to determine penalty, if any, payable by Arnav Enterprises.

In each of the above cases, will your answer be different if the short payment of tax is on account of fraud, other facts remain the same?

Note – Assume that the due date for furnishing annual return has not been extended and limitation period for issuance of order under section 74A has not been extended by the Commissioner. Ignore computation of interest in the above question.

ANSWERS

1. It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 from the date such

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amount was collected by him to the date such amount is paid by him to the Government.

2. The proper officer can issue a show cause notice within 42 months from the due date of furnishing the annual return for relevant financial year to which short payment relates to [Section 74A(2)]. It is important to note that section 74A stipulates the same limitation period for issuance of show cause notice whether the short payment is on account of fraud or on account of a bonafide error.

3. The proper officer shall issue said order within 12 months from date of issuance of the SCN. However, if the officer is unable to issue order within this time, the Commissioner or any officer authorised by the Commissioner who is senior in rank to the proper officer, but not below the rank of Joint Commissioner of Central Tax, may extend this period.

Such extension can be given for a maximum of 6 months, provided reasons for the delay in issuance of order are recorded in writing, before the expiry of the original 12 months' period.

4. Yes. In case of fraud cases, the person chargeable with tax may pay the alongwith interest payable under section 50 (interest on delayed payment of tax) and a penalty equivalent to 15% of such tax, before the issue of SCN/ statement, on the basis of his own ascertainment of tax, or the tax as ascertained by the proper officer, and inform the proper officer in writing of such payment in prescribed form - Form DRC-03. An acknowledgement shall be made available to the person through the common portal electronically.

The proper officer, on receipt of such information, shall not serve any SCN in respect of the tax so paid or any penalty payable under the provisions of GST law.

5. The proper officer may recover the dues in following manner:

(a) Deduction of dues from the amount owned by the tax authorities payable to such person.

(b) Recovery by way of detaining and selling any goods belonging to such person;

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(c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;

(d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.

(e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.

(f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.

(g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.

(h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].

6. As per section 74A, a show cause notice can be issued by the proper officer if it appears to him that:

- tax has not been paid; or
- tax has been short paid; or
- tax has been erroneously refunded; or
- input tax credit has been wrongly availed or utilized,

whether by reason of fraud or any wilful misstatement or suppression of facts to evade tax or for reason other than fraud or any wilful misstatement or suppression of facts to evade tax.

In either of the cases as enumerated above, the SCN should be issued within 42 months or 3.5 years from due date for furnishing of annual return for the financial year to which the tax not paid or short paid, etc. relates to, or the date of erroneous refund.

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The proper officer shall issue said order within 12 months from date of issuance of the SCN. However, if the officer is unable to issue order within this time, the Commissioner or any officer authorised by the Commissioner who is senior in rank to the proper officer, but not below the rank of Joint Commissioner of Central Tax, may extend this period.

Such extension can be given for a maximum of 6 months, provided reasons for the delay in issuance of order are recorded in writing, before the expiry of the original 12 months' period.

7. The provisions of section 76 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 stipulates that notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of the CGST Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

Where any amount is required to be paid to the Government as mentioned above, and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is

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payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

8. Due date for payment of tax for the month of April is 20th May.

As per section 74A, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, is payable. Thus, option to pay tax within 60 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Anant & Co. has not paid the self-assessed tax within 30 days of due date [i.e. 20th May], penalty equivalent to:

(i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or

(ii) ₹ 10,000,

whichever is higher, is payable by him under CGST Act. Equivalent amount of penalty is payable under SGST/UTGST Act.

Hence, the stand taken by the Department that penalty will be levied on Anant & Co. is correct, but the amount of penalty of ₹ 45,000 under the CGST Act is not correct.

9. **(1)** The proper officer can issue a show cause notice within 42 months from the due date of furnishing the annual return for relevant financial year to which short payment relates to [Section 74A(2)]. For the financial year 2024–25, the due date for furnishing the annual return is 31st December, 2025. Therefore, the last date by which show cause notice can be issued by the proper officer for the amount of tax short paid by Arnav Enterprises is 30th June 2029.

Further, section 74A stipulates the same limitation period for issuance of show cause notice whether the short payment is on account of fraud or on account of a bonafide error. Thus, answer will remain same if the short payment of tax is on account of fraud.

(2) The person chargeable with tax where any tax has been short paid, may, before service of show cause notice, pay the amount of tax along with

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interest payable under section 50 of such tax on the basis of his own ascertainment of such tax and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any show cause notice in respect of the tax so paid or any penalty payable under the provisions of the CGST Act or the rules made thereunder [Section 74A(8)(i)].

Thus, no penalty is payable by Arnav Enterprises in respect of payment of tax of ₹ 1,00,000 before issuance of show cause notice. No show cause notice will be issued by the proper officer in respect of the tax of ₹ 1,00,000 so paid.

However, in case where the short payment of tax is on account of fraud, the person chargeable with tax, may before service of show cause notice, pay the amount of tax along with interest payable under section 50 and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any show cause notice, in respect of the tax so paid or any penalty payable under the provisions of the CGST Act or the rules made thereunder [Section 74A(9)(i)].

Thus, a penalty of ₹ 15,000 [₹ 1,00,000 × 15%] is payable by Arnav Enterprises alongwith payment of tax of ₹ 1,00,000 with applicable interest, before issuance of show cause notice. No show cause notice will be served by the proper officer after payment of tax alongwith interest and penalty, in respect of the tax so paid.

(3) Since Arnav Enterprises has paid the tax of ₹ 1,00,000 alongwith interest before issuance of show cause notice, no show cause notice will be issued by the proper officer in respect of the tax so paid [Section 74A(8)(i)].

However, where the proper officer is of the opinion that the amount paid under section 74A(8)(i) falls short of the amount actually payable, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable [Section 74A(10)].

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Thus, in the given case, the proper officer will issue the notice for the remaining tax of ₹ 3,60,000 [₹ 4,60,000 - ₹ 1,00,000].

In case where the short-payment is on account of fraud, answer will be as follows:

Since Arnav Enterprises has paid the tax of ₹ 1,00,000 alongwith applicable interest and penalty before issuance of show cause notice, no show cause notice will be issued by the proper officer in respect of the tax so paid [Section 74A(9)(i)].

However, where the proper officer is of the opinion that the amount paid under section 74A(9)(i) falls short of the amount actually payable, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable [Section 74A(10)].

Thus, in the given case, the proper officer will issue the notice for the remaining tax of ₹ 3,60,000 [₹ 4,60,000 - ₹ 1,00,000].

Further, the proper officer is required to issue the order within 12 months from the date of issuance of show cause notice, in both fraud and non-fraud cases [Section 74A(7)]. Thus, in the given case, the proper officer has to issue the order on or before 10th October, 2026, whether the short payment is on account of fraud or on account of a bonafide error.

(4) Where the person chargeable with tax, where any tax has been short paid, pays the said tax along with interest payable under section 50 within 60 days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded [Section 74A(8)(ii)].

Thus, in the given case, since Arnav Enterprises has paid the tax of ₹ 3,60,000 alongwith applicable interest within 60 days of issuance of show cause notice, i.e. on or before 9th December, 2025, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

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In case where the short-payment is on account of fraud, answer will be as follows:

Where the person chargeable with tax, where any tax has been short paid, pays the said tax along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 60 days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded [Section 74A(9)(ii)].

Thus, in the given case, Arnav Enterprises has to pay penalty of ₹ 90,000 [₹ 3,60,000 ×25%]. If Arnav Enterprises has paid the tax of ₹ 3,60,000 alongwith applicable interest and penalty of ₹ 90,000 [₹ 3,60,000 ×25%] on 5th December, 2025, which is within 60 days of issuance of show cause notice, i.e. on or before 9th December, 2025, all proceedings in respect of the said notice shall be deemed to be concluded.

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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 came into force from 01.08.2019. However, the amendments made in section 2(4) of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or January 2027 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions of section 2(4) are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
Section 2(4) "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	**Section 2(4)** "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, ***National Appellate Authority for Advance Ruling,*** the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	The definition of adjudicating authority proposed to be amended to exclude the proposed National Appellate Authority for Advance Ruling from the purview of adjudicating authority.

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ANNEXURE

As discussed earlier, sections 73 and 74 prescribe the provisions for determining tax, pertaining to the period upto Financial year 2023-24, 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 by fraud or reason of wilful misstatement or suppression of facts. Several circulars have been issued in pursuance of these provisions. While these circulars seem *prima facie* relevant under the new section 74A as well, the CBIC has not yet clarified the same. Once CBIC issues guidance on the applicability of those circulars under section 74A, the applicability of these circulars for the relevant examination will be clarified by the ICAI by way of Statutory Update. These circulars are as follows:

1. Clarification on levy of penalty under section 73(11) in case of delayed filing of return

Issue: Whether penalty in accordance with section 73(11) should be levied in cases where the return in Form GSTR-3B has been filed after the due date of filing such return?

Clarification: The provisions of section 73(11) can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 are generally not invoked in case of delayed filing of the return in Form GSTR-3B because tax along with applicable interest has already been paid.

It is accordingly clarified that penalty under the provisions of section 73(11) is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act a general penalty under section 125 may be imposed after following the due process of law *[Circular No. 76/50/2018 GST dated 31.12.2018]*.

2. Monetary limits prescribed for issuance of SCNs by different level of officers

Board has assigned the officers mentioned in table below, the functions as the proper officers in relation to issue of SCNs and orders under sections 73 and 74[14], up to the prescribed monetary limits of tax (including cess) not paid/ short paid/ erroneously refunded/ ITC of CGST wrongly availed/utilized for issuance of SCNs and passing of orders under sections 73 and 74:

[14] *made applicable to matters in relation to IGST vide section 20 of the IGST Act*

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CGST Officer	Monetary limit of CGST	Monetary limit of IGST	Monetary limit of CGST and IGST
Superintendent of Central Tax	Not exceeding ₹ 10 lakh	Not exceeding ₹ 20 lakh	Not exceeding ₹ 20 lakh
Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakh and not exceeding ₹ 1 crore	Above ₹ 20 lakh and not exceeding ₹ 2 crores	Above ₹ 20 lakh and not exceeding ₹ 2 crores
Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	Above ₹ 2 crores without any limit

The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue SCNs. An SCN issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered.

In case SCNs have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such SCNs should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess) *[Circular No. 31/05/2018 GST dated 09.02.2018]*

3. Clarification on various issues relating to applicability of demand and penalty provisions under CGST Act in respect of transactions involving fake invoices

A number of cases have been noticed where the registered persons are found to be involved in issuing tax invoice (fake invoices), without actual supply of goods or services or both, in order to enable the recipients of such invoices to avail and utilize ITC fraudulently.

Circular No. 171/03/2022 GST dated 06.07.2022 clarifies the applicability of demand and penalty provisions under the CGST Act, in respect of such transactions involving fake invoices as follows:

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Sl. No.	Issues	Clarification
1.	In case where a registered person "A" has issued tax invoice to another registered person "B" **without any underlying supply** of goods or services or both, (i) whether such transaction will be covered as supply under section 7? (ii) whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74? (iii) whether any penal action can be taken against registered person 'A' in such cases?	Since there has only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7. As there is no supply by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73/section 74 in respect of the same. Besides, no penal action under the provisions of section 73/section 74 is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods or services or both.

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2.	A registered person "A" has issued tax invoice to another registered person "B" **without any underlying supply** of goods or services or both. 'B' avails ITC on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and **utilizes ITC availed** on the basis of the above mentioned invoices issued by 'A', for payment of his tax liability in respect of his said outward supplies. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73/section 74 or any other provisions of the CGST Act?	Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b), he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74, along with applicable interest under provisions of section 50. Further, as per provisions of section 75(13), if penal action for fraudulent availment or utilization of ITC is taken against 'B' under section 74, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on 'B' under any other provisions of the CGST Act, including under section 122.
3.	A registered person 'A' has issued tax invoice to another registered person 'B' **without any underlying supply** of goods or services or both. 'B' **avails ITC** on the basis of the said tax invoice and further **passes on the said ITC** to another registered person 'C' by issuing invoices **without**	In this case, the ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both. As there was no supply of goods or services or both by 'B' to 'C' in

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	underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.	respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The ITC availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16(2)(b). In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73/section 74. However, in such cases, 'B' shall be liable for penal action both under section 122(1)((ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

The fundamental principles that have been outlined in the above scenarios may be adopted to decide the nature of demand and penal action to be taken

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against a person for such unscrupulous activity. Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve a complex mixture of above scenarios or even may not be covered by any of the above scenarios.

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.

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CHAPTER 20

LIABILITY TO PAY IN CERTAIN CASES

The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- understand the liability to pay in case of transfer of business.
- determine the liability of agent and principal.
- explain the liability in case of amalgamation or merger of companies.
- describe the liability in case of company in liquidation.
- understand the liability of directors of private company.
- explain the liability of partners of firm to pay tax.
- identify the liability of guardians, trustees, etc.
- explain the liability of Court of Wards, etc.
- explain the special provisions regarding liability to pay tax, interest or penalty in certain cases

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1. INTRODUCTION

- ✓ For certain transactions like liquidation, business transfer, partition of HUF, amalgamation or merger of companies, etc., it is difficult to determine the liability to pay outstanding tax, interest, penalty and any other dues.
- ✓ Chapter XVI – Liability to pay in certain cases [Sections 85 to 94] of the CGST Act, 2017 determines person liable to pay tax under certain specified transactions (like liquidation, transfer, etc.). State GST laws also prescribe identical provisions.

Provisions relating to liability to pay in certain cases under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the aforesaid provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- ❖ **Agent:** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].
- ❖ **Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].
- ❖ **Commissioner:** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].

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❖ **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 (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets 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, as the case may be;

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

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club

(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

[Section 2(17)].

3. LIABILITY TO PAY IN CASE OF TRANSFER OF BUSINESS [SECTION 85 OF THE CGST ACT]

❑ Where a taxable person, liable to pay tax under CGST Act, transfers his business [this includes transfer or change in the ownership of business due to death of the sole proprietor[1]] in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and

[1] *Circular No. 96/15/2019 GST dated 28.03.2019*

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severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter [Section 85(1)].

- Where the transferee of a business referred to in sub-section (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer [Section 85(2)].

- Further, if he is a registered person under this Act, he shall apply within the prescribed time for amendment of his certificate of registration [Section 85(2)].
- 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].

4. LIABILITY OF AGENT AND PRINCIPAL [SECTION 86 OF THE CGST ACT]

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.

[2] *Circular No. 96/15/2019 GST dated 28.03.2019*

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5. LIABILITY TO PAY IN CASE OF AN AMALGAMATION/MERGER OF COMPANIES [SECTION 87 OF THE CGST ACT]

- When:
  - two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and
  - the order is to take effect from a date earlier to the date of the order and
  - any two or more of such 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 [Section 87(1)].
- 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 [Section 87(2)].
- The registration certificates of the said companies shall be cancelled with effect from the date of the said order [Section 87(2)].

6. LIABILITY IN CASE OF COMPANY IN LIQUIDATION [SECTION 88 OF THE CGST ACT]

- **Initiation by liquidator of a company of his appointment to Commissioner:** When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter referred to as the

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"liquidator"), shall, **within 30 days after his appointment**, give intimation of his appointment to the Commissioner [Section 88(1)].

- **Estimation of any tax, interest or penalty payable/likely to become payable by the company in liquidation by Commissioner:** The Commissioner shall,
  - after making such inquiry or calling for such information as he may deem fit,
  - notify the liquidator within 3 months from the date on which he receives intimation of the appointment of the liquidator,
  - the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company [Section 88(2)].

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

However, director shall not be so liable if he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company [Section 88(3)].

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7. LIABILITY OF DIRECTORS OF PRIVATE COMPANY [SECTION 89 OF THE CGST ACT]

- **Director of a private company to be jointly and severally liable for the payment of any tax, interest or penalty due from the company & not recovered:** 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
  - unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company [Section 89(1)].
- **Director not jointly and severally liable for the payment of any tax, interest or penalty due from a private company & not recovered, if such private company gets converted into a public company:** Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

  However, nothing contained in this sub-section shall apply to any personal penalty imposed on such director [Section 89(2)].

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8. LIABILITY OF PARTNERS OF FIRM TO PAY TAX [SECTION 90 OF THE CGST ACT]

- **Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm:** Notwithstanding any contract to the contrary and any other law for the time being in force, 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.

- **Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement:** Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

  However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

9. LIABILITY OF GUARDIANS, TRUSTEES ETC. [SECTION 91 OF THE CGST ACT]

- Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent.

- Tax, interest or penalty shall be levied and recoverable in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, 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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10. LIABILITY OF COURT OF WARDS ETC. [SECTION 92 OF THE CGST ACT]

- Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager.
- Tax, interest or penalty shall be levied and recoverable 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.

11. SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES [SECTION 93 OF THE CGST ACT]

Special provision regarding liability to pay tax, interest or penalty in certain cases have been discussed as under:

A. On death of a person liable to pay tax, interest or penalty [Section 93(1)]:

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, **where a person, liable to pay tax, interest or penalty under CGST Act, dies**, then:

- **business is continued after his death**: if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.

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- **business is discontinued after his death**: if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

  whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

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[3].

B. On partition of HUF or AOP [Section 93(2)]:

- Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,
- where a taxable person, liable to pay tax, interest or penalty under CGST Act, is a Hindu Undivided Family (HUF) or an association of persons (AOP) and
- **property of the HUF or AOP is partitioned** amongst the various members or groups of members,
- then, **each member/group of members shall, jointly and severally, be liable** to pay the tax, interest or penalty due from the taxable person under said Act.
- 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.

C. On dissolution of a firm [Section 93(3)]:

- Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,
- where a taxable person, liable to pay tax, interest or penalty under CGST Act, is a firm, and
- such firm is dissolved,

[3] *Circular No. 96/15/2019 GST dated 28.03.2019*

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- then, every person who was a **partner shall, jointly and severally, be liable** to pay the tax, interest or penalty due from the firm under said Act
- up to the time of dissolution
- whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

D. On termination of guardianship or trust [Section 93(4)]:

- Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016,
- 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
  - is 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
- **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.

12. LIABILITY IN OTHER CASES [SECTION 94 OF THE CGST ACT]

A. Discontinuation of business by a firm/AOP/HUF [Section 94(1)]:

Where a taxable person is a firm/AOP/HUF and such firm, association or family has **discontinued business** —

- the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; **and**

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- every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

B. Change in the constitution of the firm or AOP [Section 94(2)]:

- Where a change has occurred in the constitution of a firm or an association of persons, 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.

C. Dissolution of firm/AOP or partition of HUF [Section 94(3)]:

- The provisions of section 94(1) shall, so far as may be, apply where the taxable person, being a firm/AOP is dissolved or where the taxable person, being an HUF, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

Explanation — For the purposes of this Chapter, —

(i) **A Limited Liability Partnership** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 **shall also be considered as a firm.**

(ii) **Court:** means the District Court, High Court or Supreme Court.

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LET US RECAPITULATE

LIABILITY TO PAY IN CASE OF TRANSFER OF BUSINESS (SECTION 85)

Where transfer of business (wholly or partly) is made by way of sale, gift, lease, leave and license, hire or in any other manner,

↓

UPTO THE TIME OF SUCH TRANSFER

↓

Transferor and transferee are jointly and severally liable wholly or to the extent of transfer, to pay tax, interest or any penalty.

↓

Where transferee carries on such business either in his own name or in some other name.

↓

Transferee shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer.

Note: In case of death of sole proprietor, transferee shall be liable to pay any tax, interest or any penalty due from the transferor.

LIABILITY OF AGENT AND PRINCIPAL (SECTION 86)

Agent supplies/ receives taxable goods on behalf of principal. → Agent and Principal are jointly and severally liable → to pay tax payable on such goods

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LIABILITY TO PAY IN CASE OF AN AMALGAMATION/MERGER OF COMPANIES (SECTION 87)

Where two or more companies amalgamated or merged

due to order of Court/Tribunal or otherwise, AND

order is to take effect from the date earlier than date of that order.

Supply/receipt of goods and/goods between any two or more of such companies to or from each other

Date from which amalgamation/merger is effective

- Such transactions shall be included in the turnover of supply or receipt of the respective companies.
- They shall be liable to pay tax accordingly.

Date of order of court/Tribunal for amalgamation/merger of companies

- These companies shall be treated as distinct companies for the period till date of such order.
- Registration certificates of said companies shall be cancelled with effect from the date of the said order

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LIABILITY IN CASE OF COMPANY IN LIQUIDATION (SECTION 88)

Liquidator shall give the intimation of his appointment to the Commissioner within 30 days of his appointment

↓

The Commissioner may make such inquiry or call for such information as he may deem fit.

↓

Commissioner shall notify the liquidator the amount sufficient to provide for any tax, interest or penalty payable or likely to be payable by the company, within 3 months of receipt of intimation of liquidator.

↓

If such tax, interest or penalty cannot be recovered from the company, every director during the period is jointly and severely liable to pay it unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part

LIABILITY OF DIRECTORS OF PRIVATE COMPANY (SECTION 89)

Where any **tax, interest or penalty (TIP)** due from a private company in respect of any supply for any period cannot be recovered

↓

Director(s) of such private company during such period to be jointly and severally

- liable to pay such TIP → unless he proves that, non-recovery cannot be attributed to his gross neglect, misfeasance or breach of duty.
- not liable to pay such TIP → if such private company gets converted into a public company and non- recovery pertains to the period before conversion.

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LIABILITY OF PARTNERS OF FIRM TO PAY TAX (SECTION 90)

General Scenario

Firm and each of the partners of the firm shall, jointly and severally, be liable to pay TIP in case of firm.

Where any partner retires

- He/firm, shall intimate date of retirement of said partner to Commissioner by a written notice.
- Such partner shall be liable to pay TIP dues only upto:
  - ✓ date of his retirement, if above intimation given within 1 month of retirement
  - ✓ or date of intimation, if above intimation given after 1 month of retirement

LIABILITY OF GUARDIANS, TRUSTEES ETC. (SECTION 91)

Where business is carried on by any guardian, trustee or agent on behalf of and for benefit of a minor or other incapacitated person.

↓

TIP shall be levied and recoverable from such guardian, trustee or agent.

↓

Such TIP shall be determined, levied and recoverable in a like manner and to the same extent as it would be recoverable from minor or incapacitated person as if he were a major/capacitated person and as if he were conducting the business himself & all provisions of GST law shall apply accordingly.

LIABILITY OF COURT OF WARDS ETC. (SECTION 92)

Where the estate/portion of estate is under the control of: → Court of Wards (COW), Administrator General (AG), Official Trustee (OT) or any receiver or manager or any such person appointed by/under a order of court → TIP shall be levied and recoverable from such COW, AG, OT, receiver or manager.

Such T.I.P. shall be determined, levied and recoverable from above mentioned persons in same manner and to same extent if he were conducting the business himself and & all provisions of GST law shall apply accordingly.

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SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX, INTEREST OR PENALTY IN CERTAIN CASES

(i) ON DEATH OF A PERSON liable to pay TIP [SECTION 93(1)]

If business is continued after his death by legal representative (LR) or any other person :
Such LR/other person, shall be liable to pay TIP due from deceased person.

Business is discontinued after his death:
LR shall be liable to pay TIP out of the estate of deceased person to the extent to which his estate is capable of meeting TIP due.

The successor shall be liable to pay any TIP due from the transferor in cases of transfer of business **due to death of sole proprietor.**

(ii) ON PARTITION OF PROPERTY OF HUF OR AOP [SECTION 93(2)]

Where property of the HUF or AOP is partitioned amongst the various members or groups of members

Each member/group of members shall, jointly and severally, be liable to pay TIP due

up to the time of the partition

(iii) On dissolution of a firm [SECTION 93(3)]

Where a firm is dissolved

every person **partner shall, jointly and severally, be liable** to pay TIP due

up to the time of dissolution

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TEST YOUR KNOWLEDGE

1. *Avataar 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 [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.*

2. *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.*

3. *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.*

4. *In the question 3. above, would your answer be different if the business carried on by the person who has died, is discontinued after his death.*

5. *What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?*

6. *Discuss the liability to pay tax in case of an amalgamation/merger, under section 87.*

7. *Discuss the liability to pay tax, interest or penalty on death of a person liable to pay tax, interest or penalty as per the provisions of section 93(1).*

8. *With reference to the provisions of CGST Act, 2017, explain the liability of partners of firm to pay tax?*

9. *Explain the provisions relating to liability for GST in case of company in liquidation (section 88).*

10. *Discuss the liability of the retiring partner of a firm to pay any tax, interest or penalty, if any, leviable on the firm under CGST/ IGST/ SGST Act.*

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ANSWERS

1. Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Thus, in the given case, Avataar Industries and Rolex Manufacturers shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay GST, interest or any penalty [determined before sale, but still unpaid] due from Avataar Industries upto the time of such transfer.

2. As per provisions of 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.

Thus, in the given case, ABC Manufacturers Ltd. and Raghav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

3. Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

4. Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the

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charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

5. Where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General/Official Trustee/Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General/ Official Trustee/Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.

6. Section 87 stipulates that when two or more companies are amalgamated/ merged in pursuance of an order of court or Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied/ received any goods and/or services 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.

For the purposes of the CGST Act, 2017, 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.

7. As per provision of Section 93(1), save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, **where a person, liable to pay tax, interest or penalty under CGST Act, dies**, then:

- **Business is continued after his death**: if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.
- **Business is discontinued after his death**: if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased,

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to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

8. Section 90 explains the liability of partners of firm to pay tax as under:-

Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm: Notwithstanding any contract to the contrary and any other law for the time being in force, 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.

Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement: Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

9. The provisions relating to liability for GST in case of company in liquidation provided under section 88 are:-

- Where any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as a liquidator/receiver of assets of a company shall give the intimation of his appointment to the Commissioner within 30 days of his appointment.
- The Commissioner shall ascertain the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
- He shall communicate the details of amount to the liquidator within 3 months of the receipt of intimation of appointment of liquidator.

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

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

10. Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing. Such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner [Section 90].

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CHAPTER 21

OFFENCES AND PENALTIES AND ETHICAL ASPECTS UNDER GST

The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After Studying This Chapter, You Will Be Able To –

- understand and explain what will constitute the offence and the quantum of penalty for different types of offences in different circumstances.
- identify and appreciate general disciplines to be followed for imposing penalty.
- analyse and apply the circumstances in which penalty may be waived
- examine the circumstances in which detention, seizure and release of goods and conveyances in transit may be initiated.
- comprehend the circumstances in which confiscation of goods or conveyances and levy of penalty may be initiated.
- list offences for enforcing prosecution provisions.
- categorize the offences within cognizable and non-bailable and non-cognizable and bailable offences.
- understand and describe the meaning of 'culpable mental state' and its significance in enforcing prosecution provisions.
- identify the person who is liable in case of offences by companies, firm/LLP/HUF/trust and association of individuals.
- analyse and apply the offences that may be compounded and provisions relating thereto.
- discuss the ethical aspects under GST law.

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1. INTRODUCTION

What is penalty and prosecution?

Penal provisions are important aspects of any legal framework to ensure efficient enforcement of laws and to motivate the genuine taxpayers to make the required compliances. The word **"penalty"** has not been defined in the CGST Act, but judicial pronouncements and principles of jurisprudence have laid down the nature of a penalty as:

- a temporary punishment or a sum of money imposed by statute, to be paid as punishment for the commission of a certain offence;
- a punishment imposed by law or contract for doing or failing to do something that was the duty of a party to do.

'Offence' in general means a violation/breach of law that is punishable under law by way of penalties, fines, imprisonment, or other legal actions based on the severity of the violation.

Generally, the quantum of penalty to be levied depends upon the intention of person committing the offence. A person with a fraudulent intention to evade

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payment of taxes will be subjected to higher amount of penalty whereas a relatively less amount of penalty will be levied for non-fraudulent offences. It is important to note that in certain specified cases of levy of penalty, the presence of *mens rea* is a pre-requisite. The term ***"mens rea"*** is a Latin legal phrase that means "guilty mind" or culpable mental state. "Mens" means "mind," and "rea" means "guilty" or "crime". It refers to a mental state, intention, or knowledge of a person when he commits an offence. 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

'Prosecution' is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "prosecution" as the institution and carrying on of the legal proceedings against a person.

Further, to institute the prosecution, offences are classified into cognizable (serious category of offences) and non-cognizable offences (relatively less serious category of offences). Cognizable offences are non-bailable offences and non-cognizable offences are bailable offences.

Chapter XIX – Offences and Penalties [Sections 122 to 138 of the CGST Act] contains the provisions relating to offences and penalties, detention, seizure and confiscation of goods and compounding of offences. State GST laws also prescribe identical provisions in relation to offences and penalties. In this chapter, we would first discuss the offences and penalties prescribed under GST law. Thereafter, ethical aspects to be considered by a Chartered Accountant while undertaking compliance functions, advisory functions and furnishing certifications/reports, under GST law

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have been discussed in detail followed by few case studies which give the small scenarios explaining the significance of ethics under GST law.

Provisions of offences and penalties under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Further, in cases where the penalty is leviable under the CGST Act and the SGST Act/ UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.

It may be noted that the penalties payable by a registered person for the specified offences are with reference to the CGST Act only. An equal amount of penalty would be payable by such person under the respective SGST/ UTGST Act as well.

However, before proceeding to understand the provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

- **Conveyance** includes a vessel, an aircraft and a vehicle; [Section 2(34)].
- **Person** includes —
  - (a) an individual;
  - (b) a Hindu Undivided Family;
  - (c) a company;
  - (d) a firm;
  - (e) a Limited Liability Partnership;
  - (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
  - (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
  - (h) any body corporate incorporated by or under the laws of a country outside India;

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

(j) a local authority;

(k) Central Government or a State Government;

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

(m) trust; and

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

[Section 2(84)]

- **Registered Person** means a person who is registered under section 25 but does not include a person having a Unique Identity Number. [Section 2(94)]
- **Taxable person** means a person who is registered or liable to be registered under section 22 or section 24 [Section 2(107)];
- **Regulations** means the regulations made by the Board under this Act on the recommendations of the Council [Section 2(95)].
- **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 [Section 2(91)].

3. PENALTY FOR CERTAIN OFFENCES [SECTION 122 OF CGST ACT]

STATUTORY PROVISIONS		
Section 122	***Penalty for certain offences***	
Sub-section	***Particulars***	
(1)	*Where a taxable person who -*	
	(i)	*supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*

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	(ii)	*issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*
	(iii)	*collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
	(iv)	*collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
	(v)	*fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*
	(vi)	*fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*
	(vii)	*takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;*
	(viii)	*fraudulently obtains refund of tax under this Act;*
	(ix)	*takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*
	(x)	*falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*

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	(xi)	*is liable to be registered under this Act but fails to obtain registration;*
	(xii)	*furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;*
	(xiii)	*obstructs or prevents any officer in discharge of his duties under this Act;*
	(xiv)	*transports any taxable goods without the cover of documents as may be specified in this behalf;*
	(xv)	*suppresses his turnover leading to evasion of tax under this Act;*
	(xvi)	*fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;*
	(xvii)	*fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;*
	(xviii)	*supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;*
	(xix)	*issues any invoice or document by using the registration number of another registered person;*
	(xx)	*tampers with, or destroys any material evidence or document;*
	(xxi)	*disposes off or tampers with any goods that have been detained, seized, or attached under this Act,*
	he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short	

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	collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher	
(1A)	*Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.*	
(1B)	*Any electronic commerce operator who—*	
	(i)	*allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;*
	(ii)	*allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or*
	(iii)	*fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,*
	shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.	
(2)	*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, —*	
	(a)	*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 ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;*

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	(b)	*for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.*
(3)	*Any person who -*	
	(a)	*aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);*
	(b)	*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;*
	(c)	*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;*
	(d)	*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;*
	(e)	*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,*
	shall be liable to a penalty which may extend to twenty five thousand rupees.	

ANALYSIS

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Section 122 levies penalty on following persons:

Section	Penalty leviable on
Section 122(1)	Taxable Person
Section 122(1A)	Any Person
Section 122(1B)	Electronic Commerce Operator
Section 122(2)	Registered Person
Section 122(3)	Any Person

(i) Penalty under section 122(1)

Penalty under section 122(1) is leviable on a taxable person. Taxable person means a person who is registered or liable to take registration. Registered Person means the person who is registered in the GST law.

Section 122(1) illustrates **21 offences** which are punishable under law. First, we would analyse the quantum of penalty and then will analyse the offences –

(A) Quantum of Penalty

CGST/SGST/UTGST law	IGST law
(i) ₹ 10,000/-; or (ii) Amount equivalent to, any of the following (applicable as the case may be): ❑ Tax evaded; or ❑ Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or ❑ Tax not collected under section 52 or short collected or collected	(iii) ₹ 20,000/-; or (iv) Amount equivalent to, any of the following (applicable as the case may be): ❑ Tax evaded; or ❑ Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or ❑ Tax not collected under section 52 or short collected or collected

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but not paid to the Government; or ❑ Input tax credit availed of or passed on or distributed irregularly; or ❑ Refund claimed fraudulently whichever is higher.	but not paid to the Government; or ❑ Input tax credit availed of or passed on or distributed irregularly; or ❑ Refund claimed fraudulently whichever is higher.

It may be noted that the penalty payable under section 122 is with reference to only the CGST Act. An equal amount of penalty is payable under the respective SGST/UTGST Act as well.

Similarly, under IGST Act, penalty payable will be sum of penalty payable under the CGST Act and penalty payable under SGST/UTGST Act.

(B) Specified Offences

Section 122(1) gives the list of 21 different offences which can be divided in the following broad categories to have the better understanding –

(A) Offences related to invoice

(i)	*supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*
(ii)	*issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*
(xix)	*issues any invoice or document by using the registration number of another registered person;*

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(B) Offences related to tax evasion / relating to TCS / TDS

(iii)	*collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
(iv)	*collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
(v)	*fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*
(vi)	*fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*
(xv)	*suppresses his turnover leading to evasion of tax under this Act;*

(C) Offences related to ITC

(vii)	*takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;*
(ix)	*takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*

(D) Offence related to refund

(viii)	*fraudulently obtains refund of tax under this Act;*

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(E) Offences related to records, documents, books of accounts etc.

(x)	*falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*
(xvi)	*fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;*
(xvii)	*fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;*

(F) Offences related to registration

(xi)	*is liable to be registered under this Act but fails to obtain registration;*
(xii)	*furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;*

(G) Offence related to transportation and storage

(xiv)	*transports any taxable goods without the cover of documents as may be specified in this behalf;*
(xviii)	*supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;*

(H) Other offences

(xiii)	*obstructs or prevents any officer in discharge of his duties under this Act;*
(xx)	*tampers with, or destroys any material evidence or document;*
(xxi)	*disposes off or tampers with any goods that have been detained, seized, or attached under this Act,*

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(ii) Penalty under section 122(1A)

Section 122(1A) enables the levy of penalty on a taxable person as well as any other person who retains the benefit arising out of the following offences or at whose instance such offences are conducted:

- Supply of goods or services without invoice or incorrect/false invoice
- Invoice with supply of goods or services
- ITC taken or utilised without receipt of goods or services, fully or partially
- Irregular distribution of credit by ISD

Therefore, it makes the beneficiary of the above transactions to penalty, similar to penalty leviable on the taxable person who commits such offences under sub-section (1).

It is important to note that the Commissioner may provisionally attached any property, including bank account, belonging to the beneficiary of the transactions specified above in accordance with section 83. *The provisions relating to provisional attachment under section 83 are discussed in detail in Chapter 19 – Demands and Recovery in this Module of the Study Material.*

Quantum of Penalty

Penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

(iii) Penalty under section 122(1B)

This sub-section makes an E-commerce operator (ECO), ***who is liable to collect tax at source under section 52,*** liable to penalty if it permits the supply through it by an unregistered person (other than notified persons, making supply through ECO, exempted from registration), 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.

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Quantum of Penalty

CGST/SGST/UTGST law	IGST law
(i) ₹ 10,000/-; or **(ii)** Amount equivalent to, amount of tax involved had such supply been made by a registered person other than composition supplier whichever is higher.	**(i)** ₹ 20,000/-; or **(ii)** Amount equivalent to, amount of tax involved had such supply been made by a registered person other than composition supplier whichever is higher.

(iv) Penalty under section 122(2)

Section 122(2) levies penalty on a registered person person –

(i) who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or

(ii) where the input tax credit has been wrongly availed or utilised,

Quantum of Penalty

		CGST/SGST/UTGST law	IGST law
(a)	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 for an amount equal to– (a) ₹ 10,000/-; or (b) 10% of the tax due from such person **whichever is higher**	Shall be liable to a penalty for an amount equal to– (c) ₹ 20,000/-; or (d) 10% of the tax due from such person **whichever is higher**
(b)	For reason of fraud or any wilful misstatement or suppression of facts to evade tax	Shall be liable to a penalty for an amount equal to– (a) ₹ 10,000/-; or (b) Tax due from such person **whichever is higher**	Shall be liable to a penalty for an amount equal to– (c) ₹ 20,000/-; or (d) Tax due from such person **whichever is higher**

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(v) Penalty under section 122(3)

Section 122(3) levies penalty on any person who commits any of the below mentioned offences. Thus, a person is liable to penalty under this sub-section if he:

1. aids or abets any of the 21 offences specified in sub-section (1) of section 122;
2. 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;
3. 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;
4. 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;
5. 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.

Quantum of Penalty

Penalty is leviable for an amount which may extend to ₹ 25,000/- (each under CGST and SGST/UTGST) or ₹50,000 (under IGST).

4. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 123]

The provisions relating to information return and penalty for failure to furnish information return have already been discussed in Chapter 13 – Returns in Module 2 of this Study Material.

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5. FINE FOR FAILURE TO FURNISH STATISTICS [SECTION 124]

If any person required to furnish any information or return under section 151**,

- fails to furnish such information or return as may be required under that section without reasonable cause; or
- willfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ₹ 10,000.

In case of **a continuing offence**, he shall also be punishable to a further fine which may extend to:

(i) ₹ 100 for each day after the first day during which the offence continues

or

(ii) ₹ 25,000

whichever is lower.

An equal amount of fie is payable under the respective SGST/UTGST Act as well.

** Section 151 provides that the Commissioner/officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with CGST Act, in prescribed time, form, and manner.

Provision of section 124 has been tabulated as under:

Particulars	CGST/SGST/UTGST law	IGST law
	Fine may extend to	
Offence committed first time	₹ 10,000/-	₹ 20,000/-
In case of continuing offence	(i) ₹ 100 for each day after the first day during which the offence continues	(i) ₹ 200 for each day after the first day during which the offence continues

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	or (ii) ₹ 25,000 whichever is lower	or (ii) ₹ 50,000 whichever is lower

6. GENERAL PENALTY [SECTION 125]

General Penalty ₹ 25,000

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 ₹ 25,000.

Penalty amount is discretionary in nature and hence it depends upon the nature of the offence and its severity. Mere contravention of any of the provision of the law will not result into the penalty of ₹ 25,000 always; the gravity of the offences should be considered. General disciplines related to penalty as given in section 126 are to be considered by the proper officer while imposing the penalty under section 125.

7. GENERAL DISCIPLINES RELATED TO PENALTY [SECTION 126]

The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. According to which –

(1) No penalty shall be imposed by any officer under this Act for –

- Minor breaches of tax regulations, or
- procedural requirements of the law, or
- any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence,

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As per Explanation to section 126(1),

(a) a breach shall be considered a **'minor breach'** if the amount of tax involved is less than ₹ 5,000;

(b) an omission or mistake in documentation shall be considered to be **easily rectifiable** if the same is an error apparent on the face of record.

A breach shall be considered a 'minor breach' if the amount of tax involved is **less than** ₹ 5,000

(2) 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.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard i.e. issue of SCN and proper hearing in the matter, affording an opportunity to the person proceeded against is must to rebut the allegations levelled against him.

(4) The officer under this Act shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) 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. For instance, penalty under section 125 is being prescribed as upto ₹ 25,000 means neither as a fixed sum nor as a fixed percentage hence general disciplines given under section 126, should be considered while imposing any penalty.

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8. POWER TO IMPOSE PENALTY IN CERTAIN CASES [SECTION 127]

This section empowers the proper officer to impose penalty even if the penalty is not covered under any of the following proceedings-

(i) Assessment of non-filers of Returns, under section 62

(ii) Assessment of unregistered persons, under section 63

(iii) Summary Assessment in certain special cases under section 64

(iv) 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 willful misstatement or suppression of facts under section 73

(v) Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts under section 74

(vi) ***Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward under section 74A.***

(vii) Detention, seizure and release of goods and conveyances in transit under section 129

(viii) Confiscation of goods or conveyances and levy of penalty under section 130

If proper officer is of the view that such person is liable to a penalty, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

9. POWER TO WAIVE PENALTY OR FEE OR BOTH [SECTION 128]

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

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10. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT [SECTION 129]

STATUTORY PROVISIONS

Section 129	*Detention, seizure and release of goods and conveyances in transit*	
Sub-section	*Particulars*	
(1)	*Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, 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 and after detention or seizure, shall be released,—*	
	(a)	*on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;*
	(b)	*on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;*
	(c)	*upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:*

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	Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.
(3)	*The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).*
(4)	*No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*
(5)	*On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.*
(6)	*Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen 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 one lakh rupees, 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 fifteen days may be reduced by the proper officer.*

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ANALYSIS

Section 129 provides for detention, seizure and release of goods and conveyances in transit. The provision starts with a **non-obstante clause**. It provides as follows:

(i) Detention/seizure of goods, conveyance and/or documents [Section 129(1) and proviso to section 129(1)]

It provides that if any person transports any goods or stores any goods while they are in transit in contravention of the provisions of GST law, then:

- 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**.

Thus, it covers the situations where a person transports any goods or stores any such goods while in transit without the documents prescribed under GST law (i.e. invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him.

Distinction between 'Seizure' and 'Detention'

The term 'seizure' has not been specifically defined in the GST Law. In Law Lexicon Dictionary, 'seizure' is defined as the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession.

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The difference between 'Seizure' and 'Detention' is as follows:

(i) Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called **detention**. **Seizure** is taking over of actual possession of the goods by the department.

(ii) Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

Release of goods, conveyance and/or documents on payment of specified penalty [Section 129(1)]

After detention or seizure, the above goods, conveyance and/or documents shall be released on payment of specified amount of penalty. The penalty amount is given in the table below.

When owner of goods COMES FORWARD for payment of penalty [Section 129(1)(a)]:		
Taxable goods	**CGST/SGST/UTGST law**	**IGST law**
	Penalty equal to 200% of tax payable	Penalty equal to 200% of IGST payable
Exempted goods	Lower of the following: ✓ 2% of the value of goods or ✓ ₹ 25,000	Lower of the following: ✓ 4% of the value of goods or ✓ ₹ 50,000
When owner of goods DOES NOT COME FORWARD for payment of penalty [Section 129(1)(b)]:		
Taxable goods	Penalty equal to higher of the following	Penalty equal to higher of the following

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	✓ 50% of value of goods or ✓ 200% of the tax payable on such goods	✓ 100% of value of goods or ✓ 200% of the **IGST** payable on such goods
Exempted goods	Lower of ✓ 5% of the value of goods or ✓ ₹ 25,000	Lower of ✓ 10% of the value of goods or ✓ ₹ 50,000

It is important to note that the goods, conveyance and/or documents may also be released on furnishing security equivalent to amount payable in the above table.

It may be noted that the penalty payable under section 129 is with reference to only the CGST Act. An equal amount of penalty is payable under the respective SGST/UTGST Act as well.

Similarly, under IGST Act, penalty payable will be sum of penalty payable under the CGST Act and penalty payable under SGST/UTGST Act.

(ii) Issuance of notice as well as passing of order for payment of penalty [Section 129(3) & (4)]

The proper officer detaining/seizing goods or conveyance shall issue a **notice within 7 days of such detention/seizure**, specifying the penalty payable. Thereafter, the proper officer shall pass an **order within a period of 7 days from the date of service of such notice**, for payment of penalty given in above table.

Thus, time-limit of 7 days each has been prescribed for issue of notice and passing of order for payment of penalty after detention/seizure of goods/conveyances.

An opportunity of being heard must be given to the person concerned before determining the penalty payable.

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(iii) Conclusion of proceedings on payment of penalty payable [Section 129(5)]

All proceedings in respect of the notice issued shall be deemed to be concluded on payment of prescribed penalty.

(iv) Non-payment of penalty amount [Section 129(6)]

Where the person transporting any goods/ owner of such goods fails to pay the specified amount of penalty **within 15 days from the date of receipt of the copy of the order levying penalty**, the goods or conveyance so detained/seized shall be **liable to be sold or disposed of otherwise**, in the prescribed time and manner, to recover the penalty so payable[1].

However, where the detained/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.

Further, now, the **transporter can get the conveyance released** on payment of:

- ✓ penalty under sub-section (3)

  or

- ✓ ₹ 1 lakh (each under CGST and SGST/UTGST law and ₹ 2 lakh under IGST law)

whichever is **less**.

(v) Procedure for interception of conveyances for inspection of goods in movement, and detention and release of such goods and conveyances

During the movement of goods, the proper officer, empowered to intercept and inspect a conveyance, may intercept any conveyance for verification of documents and/or inspection of goods. On being intercepted, the person in charge of the conveyance shall produce the documents related to the goods and the conveyance. The proper officer shall verify such documents.

Where, prima facie, no discrepancies are found, the conveyance shall be allowed to move further.

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[1] *The manner of sale/disposal of the goods or conveyance so detained/seized for recovery of penalty has been prescribed in rule 144A.*

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Where the person in charge of the conveyance fails to produce any prescribed document or where the proper officer intends to undertake an inspection, he shall record a statement of the person in charge of the conveyance and shall issue an order for physical verification/inspection of the conveyance, goods and documents, requiring the person in charge of the conveyance to station the conveyance at the place mentioned in such order and allow the inspection of the goods.

The proper officer shall conclude the inspection proceedings, either by himself or through any authorised proper officer within a period of 3 days (or extended time) from the date of issue of the order for inspection.

On completion of the physical verification/inspection of the conveyance and the goods in movement, the proper officer shall prepare a **report of such physical verification** and upload on common portal and serve a copy of the said report to the person in charge.

Where no discrepancies are found, the proper officer shall issue forthwith a **release order** and allow the conveyance to move further. However, where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129, he shall issue an **order of detention** and serve a notice under section 129(3) on the person in charge, specifying the penalty payable.

On payment of the penalty under section 129(1) or upon furnishing of security equivalent to the said amount, the goods and conveyance shall be released forthwith by a release order. Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty

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under section 129(1) within **15 days** from the date of receipt of the copy of the order for detention, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise[2].

(vi) Cases where detention/seizure may not be initiated

In case where a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 may not be initiated, in the following situations:

a) Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;

b) Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;

c) Error in the address of the consignee to the extent that the locality and other details of the consignee are correct;

d) Error in one or two digits of the document number mentioned in the e-way bill;

e) Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;

f) Error in one or two digits/characters of the vehicle number.

In above situations, penalty to the tune of ₹ 500/- each under section 125 and the respective SGST Act should be imposed (₹1,000/- under the IGST Act)[3].

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[2] *Circular No. 41/15/2018 GST dated 13.04.2018*

[3] *Circular 64/38/2018 GST dated 14.09.2018*

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11. CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [SECTION 130]

STATUTORY PROVISIONS

Section 130	Confiscation of goods or conveyances and levy of penalty	
Sub-section	**Particulars**	
(1)	***Where*** *any person,—*	
	(i)	*supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
	(ii)	*does not account for any goods on which he is liable to pay tax under this Act; or*
	(iii)	*supplies any goods liable to tax under this Act without having applied for registration; or*
	(iv)	*contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
	(v)	*uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,*
	then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.	
(2)	*Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:*	

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	Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon: *Provided further that the aggregate of such fine and penalty leviable shall not be less than the penalty equal to hundred per cent of the tax payable on such goods:* *Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.*
(4)	*No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.*
(5)	*Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.*
(6)	*The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.*
(7)	*The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.*

ANALYSIS

Section 130 stipulates **5 scenarios** in which the goods or conveyances carrying such goods can be confiscated. However, before going through these scenarios, let us first understand what is 'confiscation'.

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Confiscation

The word **'confiscation'** has not been defined in the CGST Act. The concept is derived from Roman law wherein it meant seizing or taking into the hands of emperor and transferring to Imperial "fiscus" or Treasury.

The word **"confiscate"** has been defined in Aiyar's Law Lexicon as to "appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State."

In short, it means transfer of the title to the goods to the Government.

(i) Scenarios where goods or conveyances are liable to confiscation [Section 130(1)]

Where any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax;

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

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then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(ii) Redemption fine [Section 130(2)]

In case of confiscation of any goods or conveyance, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit. This fine shall be in addition to the tax and other charges payable in respect of 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.

(iii) Opportunity of being heard [Section 130(4)]

No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(iv) Title and possession of confiscated goods [Section 130(5) & (6)]

The title of confiscated goods or conveyance shall thereupon vest in the Government. Further, the proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

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(v) Disposal of confiscated goods [Section 130(7)]

The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

12. 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. Such other punishment can be arrest, prosecution, cancellation of registration, etc.

13. PUNISHMENTS FOR CERTAIN OFFENCES [SECTION 132]

STATUTORY PROVISIONS

Section 132	*Punishment for certain offences*	
Sub-section	*Clause/sub clause*	*Particulars*
(1)	*Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:—*	
	(a)	*supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or*

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		the rules made thereunder, with the intention to evade tax;
	(b)	*issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*
	(c)	*avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;*
	(d)	*collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
	(e)	*evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);*
	(f)	*falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;*
	(h)	*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;*
	(i)	*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;*
	(l)	*attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (f) and clauses (h) and (i) of this section,*
	shall be punishable—	

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	(i)	*in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;*
	(ii)	*in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;*
	(iii)	*in the case of an offence specified in clause (b), where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;*
	(iv)	*in cases where he commits or abets the commission of an offence specified in clause (f), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.*
(2)	*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 five years and with fine.*	
(3)	*The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.*	
(4)	*Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.*	

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(5)	*The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.*
(6)	*A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.*
Explanation	*For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.*

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Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender. Section 198 of the Criminal Procedure Code defines "prosecution" as the institution and carrying on of the legal proceedings against a person. ***'Mens rea'*** or culpable mental state is necessary for prosecution under GST law.

(i) Cases where prosecution can be initiated and punishment thereof [Section 132(1), (2), (3) & (6)]

Cases where prosecution can be initiated	Supply without invoice
	Issuance of invoice without supply
	Wrongful/fraudulent availment of ITC
	Tax collected but not paid beyond 3 months
	Tax evasion/fraudulent refund
	False information/records etc. with an intention to evade tax
	Dealing in goods liable to confiscation
	Dealing in services in contravention of GST law
	Attempts to commit or abets any offence mentioned above

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Anyone who commits or causes to commit and retain the benefits arising out of, any of the above offences can be prosecuted as under:

Offence	Amount Involved (AI) (in ₹)	Punishment	
Tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken	AI > 5 crores	with imprisonment upto 5 Years and with fine	Imprisonment shall be for a minimum period of 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court
	2 crores < AI ≤ 5 crores	with imprisonment upto 3 Years and with fine	
Issuance of invoice without supply in violation of GST law leading to wrongful availment/utilisation of ITC/refund of tax	1 crores < AI ≤ 2 crores	with imprisonment upto 1 year and with fine	
Falsification of information or records etc. with an intention to evade tax or abetting the commission of said offence		with imprisonment upto 6 months or with fine or with both	
For second and every subsequent offence under section 132	No limit	with imprisonment upto 5 Years and with fine	Imprisonment shall be for a minimum period of 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

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Thus, generally, **arrests can be made under GST law** only where the amount involved exceeds ₹ 2 crores or where a person commits any of the offences second time or subsequently thereafter. However, whoever issues, or causes to issue and retain the benefits arising out of issuance of any invoice/bill without supply of goods and/or services in violation of the provisions of GST law leading to wrongful availment or utilisation of ITC or refund of tax and amount of such tax evaded/ITC wrongly availed or utilised or refund wrongly taken exceeds ₹ 1 crore but does not exceed ₹ 2 crore, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine.

A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

(ii) Offences classified as cognizable offences and non- cognizable offences [Section 132(4) & (5)]

Let us first understand the meaning of the terms, cognizable offences and non- cognizable offences.

- **Cognizable Offences** - Cognizable offences means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a Court.
- **Non-cognizable offences** - Non cognizable offences means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a Court order, except as may be authorized under special legislation.

Let us see which offences under GST law are classified as cognizable and non-bailable and which offences are classified as non-cognizable and bailable:

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Just to reiterate, offences specified in clause (a) or (b) or (c) or (d) of section 132(1) are as follows-

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(ii) Meaning of 'Tax' for the purpose of section 132 [Explanation to section 132]

The term **"tax"** shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the SGST Act, IGST Act or the UTGST Act and cess levied under the GST (Compensation to States) Act.

14. LIABILITY OF OFFICERS AND CERTAIN OTHER PERSONS [SECTION 133]

- Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (*1*) of section 150, or if any person engaged in connection with the provision of

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service on the common portal or the agent of common portal, willfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than –

- in execution of his duties under the said sections; or
- for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force,

he shall be punishable with imprisonment for a term which may extend to **6 months** or with fine which may extend to **₹ 25,000**, or with both.

- A Person shall be prosecuted for any offence under this section –
  - **In case of Government Servant** – With the previous sanction of Government only;
  - **In case of person other than Government Servant** - With the previous sanction of Commissioner only.

15. COGNIZANCE OF OFFENCES [SECTION 134]

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

16. PRESUMPTION OF CULPABLE MENTAL STATE [SECTION 135]

- In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state. As per Explanation (i) to section 135, the expression **"culpable mental state"** includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.
- 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

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charged as an offence in that prosecution. As per explanation (ii) to section 135, 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.

17. 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 which it contains, in any prosecution for an offence under this Act,–

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

18. OFFENCES BY COMPANIES [SECTION 137]

- Where an offence under this Act has been committed by a person being a company (means a body corporate and includes a firm or other association of individuals), every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly [Sub-section (1) of section 137].

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However, where an offence that has been committed by the company and 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, any director, manager, secretary or other officer of the company,

such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly [Sub-section (2) of section 137]

- Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a 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 and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons. [Sub-section (3) of section 137].
- As per Explanation (ii) to Section 137 **"director"**, in relation to a firm means a partner in the firm.
- Nothing contained in this section shall render any such person liable to any punishment provided in this Act, 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. [Sub-section (4) of section 137].

19. COMPOUNDING OF OFFENCES [SECTION 138 READ WITH RULE 162]

STATUTORY PROVISIONS	
Section 138	***Compounding of offences***
Sub-section	***Particulars***
(1)	*Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment,*

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	by the person accused of the offence, to the Central Government or the State Government, as the case may be, of such compounding amount in such manner as may be prescribed:	
	Provided that nothing contained in this section shall apply to—	
	(a)	*a 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 sub-section (1) of section 132*
	(c)	*a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132*
	(d)	*a person who has been convicted for an offence under this Act by a court;*
	(f)	*any other class of persons or offences as may be prescribed:*
	Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law: *Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.*	
(2)	*The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than twenty-five percent of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved.*	
(3)	*On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.*	

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- As per the provisions of section 138(1), any offence may be compounded by the Commissioner, either before or after the institution of prosecution, upon payment of such compounding amount in such manner as may be prescribed, by the person accused of the offence, to the Central Government or the State Government, as the case be.
- On receipt of the application from the applicant, the commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application, which may be considered relevant for the examination of such application.
- On being satisfied that the applicant has made full and true disclosure of facts relating to the case, the Commissioner may, by order, allow the application indicating the compounding amount (discussed in subsequent paras) and grant him immunity from prosecution or reject such application within 90 days of the receipt of the application.

- The application shall not be decided without affording an opportunity of being heard to the applicant and recording the grounds of such rejection.
- 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, within a period of 30 days from the date of the receipt of the order, pay the compounding amount as ordered by the commissioner and shall furnish the proof of such payment to him.
- In case the applicant fails to pay the compounding amount within 30 days, the order of compounding shall be vitiated and be void.

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- However, the following offences shall not be compounded-

  (a) a 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 sub-section (1) of section 132 ;

  (c) a person who has been accused of committing an offence under section 132(1)(b);

  (d) a person who has been convicted for an offence under this Act by a court;

  (f) any other class of persons or offences as may be prescribed:

- Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences. Further, any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law [Proviso to Section 138(1)].

- The amount for compounding of offences under this section shall be such as may be prescribed, subject to –

  (i) The minimum limit for compounding amount is 25% of tax involved.

  (ii) The upper limit for compounding amount is 100% of tax involved [Sub-section (2) of section 138].

  The said compounding amount has been prescribed by sub-rule (3) to rule 162. The compounding amount shall be determined in the following manner:

S. No.	Offence	Compounding amount if offence is punishable under section 132(1)(i)	Compounding amount if offence is punishable under section 132(1)(ii)
1	Offence specified in section 132(1)(a)	Up to 75% of the amount of tax evaded or the amount of ITC	Up to 60% of the amount of tax evaded or the amount of ITC

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2	Offence specified in section 132(1)(c)	wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 50% of such amount of tax evaded or the amount of ITC wrongly availed/ utilised or the amount of refund wrongly taken.	wrongly availed or utilised or the amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or the amount of ITC wrongly availed/ utilised or the amount of refund wrongly taken.
3	Offence specified in section 132(1)(d)		
4	Offence specified in section 132(1)(e)		
5	Offence specified in section 132(1)(f)	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Offence specified in section 132(1)(h)		
7	Offence specified in clause (i) of section 132(1)		
8	Attempt to commit the offences or abets the commission of offences mentioned in	Amount equivalent to 25% of such amount of tax evaded or ITC wrongly availed/ utilised or refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or ITC wrongly availed/ utilised or refund wrongly taken.

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	clause (a), (c) to (f)and clauses (h) and (i) of sub-section (1) of section 132		

However, 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.

- On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated [Sub-section (3) of section 138].
- Immunity granted to a person may, at any time, be withdrawn by the commissioner, if he is satisfied that such person had, in the course of the compounding proceedings, concealed any material particulars or had given false evidence. 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 of the Act shall apply as if no such immunity had been granted.

20. ETHICS UNDER GST

(i) Meaning of Ethics

The Oxford Dictionary defines the term **"Ethics"** as the moral principle that governs a person's behavior 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.

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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 behavior may also reduce tax-related disputes and litigations.

(ii) Role of 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 and 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 (as defined in Schedules to the Chartered Accountants Act). *The same have been discussed in detail in Chapter 19 - Professional Ethics & Liabilities of Auditors in Paper 3 - Advanced Auditing, Assurance and Professional Ethics at Final level.*

A Chartered Accountant in practice would be deemed to be guilty of professional misconduct under **clause (7) of Part I of the Second Schedule** to the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. Further, as per **clause (8) of Part I of the Second Schedule** to the Chartered

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Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

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. In case of any violation of law in performing the compliance, certifications/reporting and advisory functions, he shall also be liable to applicable penalty and prosecution (in some cases) under GST law.

Chartered Accountants play a crucial role in ensuring GST compliance within their clients' organizations. This involves assisting in the process of obtaining registration, structuring the transactions and conditions stipulated in agreements for making /receiving supply, optimizing tax positions, ensuring the necessary GST compliances including e-way bill, payment of taxes, TDS/TCS compliances, compliances with anti-profiteering provisions and timely filing of periodic returns.

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.

Another major responsibility of a Chartered Accountant in the realm of GST is to act as a tax advisor to their clients. This entails a comprehensive understanding of the client's business operations and goals.

Chartered Accountants must assess the impact of GST on various aspects of the business, including supply chain, pricing strategies and financial reporting.

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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), Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

The certifications/reports required to be furnished by a Chartered Accountant under GST law have been explained in detail hereunder:

(iii) Certifications/reports to be furnished by a Chartered Accountant required under the GST law

1. 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]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/tax-paying status is available in the following manner:

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Section No.	Persons eligible to take credit	Goods entitled to ITC	
		Inputs held in stock/ capital goods	as on
(1)	(2)	(3)	(4)
Section 18(1)(a)	Person who has applied for **registration within 30 days from the date on which he becomes liable to registration** and has been granted such registration	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax
Section 18(1)(b)	Person who is not required to register, but obtains **voluntary registration**	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration
Section 18(1)(c)	Registered person **who ceases to**	**Inputs** held in stock and inputs	The day immediately preceding the date from which he becomes liable

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	pay composition tax and switches to regular scheme	contained in semi-finished or finished goods held in stock **and capital goods**	to pay tax under regular scheme
Section 18(1)(d)	Registered person whose exempt supplies become taxable supplies	**Inputs** held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply **and capital goods exclusively used for such exempt supply**	The day immediately preceding the date from which such supply becomes taxable

In all the above cases, the registered person has to make an electronic **declaration in Form ITC-01** on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within 30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration

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needs **to be certified by a practicing Chartered Accountant** or Cost Accountant.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the amounts declared in the Form GST ITC-01 have been accurately drawn from the books of accounts and other relevant documents / records of the taxpayer and is claimed as ITC.

2. **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]**

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. The registered person should furnish the details of change in constitution in Form ITC - 02 on the common portal. Further, he needs to submit **a certificate from practicing Chartered Accountant** or Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the sale, merger, demerger, amalgamation, lease or transfer or business has been done with a specific provision for the transfer of liabilities.

3. **Certification that in case of refund claim exceeding ₹ 2 lakh by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]**

A certificate in **Annexure 2 of Form GST RFD-01** is to be issued by a Chartered Accountant or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of the applicant) in a case where the amount of refund claimed exceeds ₹ 2 lakh.

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The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records supporting the refund claim thereby providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.

4. Certification of the amount of ITC to be reversed on cancellation of registration or on switching to composition levy/exit from tax-paying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]

Section 29(5) requires reversal of ITC on cancellation of registration of a registered person. Similarly, section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.

ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption/cancellation of registration. The details so furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant or Cost Accountant.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records of the taxpayer thereby providing a reasonable assurance as regards the correctness of the quantum of the amount of ITC to be reversed in case where the tax invoices related to the inputs held in stock are not available.

5. Audit report under section 66

Section 66 provides that if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that –

- the value (of goods and/or services) has not been correctly declared; or

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- the credit availed is not within the normal limits,

he may, with the prior approval of the Commissioner, issue a direction to the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner and specified in the said direction.

The Chartered Accountant or Cost Accountant shall submit a report of such audit duly signed and certified by him within the period of 90 days to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

The Assistant Commissioner may extend the said period 90 days by a further period of 90 days –

- on an application made to him in this behalf by the registered person or the Chartered Accountant or Cost Accountant; or
- for any material and sufficient reason.

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final. On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Upon the conclusion of special audit under section 66, the registered person is communicated the proposed tax, interest and other liabilities, if any, along with the audit findings and the registered person is called upon to discharge the liabilities.

In case the registered person discharges the liabilities as proposed, no further action is taken. Otherwise, the authorities may initiate proceedings against the registered person under sections 73 or 74 ***or 74A*** for determination of the tax liability of the person audited.

A Chartered Accountant must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest. This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal

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biases. He should first go through the terms of reference provided by the GST authorities to understand the scope and objectives of the special audit. This document outlines the specific areas and tax periods to be audited. He should conduct a comprehensive review of all relevant documents, including financial statements, invoices, transaction records, and any other documentation provided by the taxpayer. This ensures that the audit findings are based on accurate and reliable information. He should take steps to identify and mitigate any potential conflicts of interest that may arise during the special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence. If a conflict of interest does arise, it should be promptly disclosed to the relevant parties.

Apart from the aforesaid specific roles defined in the GST Law for Chartered Accountants, there may be specific scenarios where the attested documents, certificates issued by the Chartered Accountants are relied during the proceedings under GST Law by the tax authorities and also judicial forums, as a general practice while dealing with the GST Law related disputes.

CASE STUDIES

Case Studies have been incorporated to exemplify some of the ethical considerations that a Chartered Accountant should bear in mind when issuing various certificates/reports under relevant GST provisions as well as while giving GST related advise to the client, ensuring GST compliances at the same time. This is intended to encourage the students to act ethically while discharging any GST related function and abstain themselves from inadvertently indulging in any unethical practices. We have discussed the significant implications that would arise under the GST law in such cases. Students may also refer the relevant provisions of demands and recovery, offences, penalties and prosecution under the GST law for ascertaining the consequences of the unethical practices being followed. Further, a Chartered Accountant in practice may be deemed to be guilty of the professional misconduct in such cases, primarily under clause (7)/ clause (8) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, in such cases. All the case studies pertain to Financial Year 2024-25 onwards.

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Case Study 1

Facts of the case

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[4] 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.

[4] *Mr. A is not a Chartered Accountant.*

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- 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:

GST implications

1. **Issue of invoice by M/s L and Co. to Mr. X:** Since there has only been an issuance of tax invoice by the registered person - M/s L and Co. - to registered person 'Mr. X' without the underlying supply of steel, jelly stone and cement, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7. As there is no supply by M/s L and Co. to Mr. X in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against M/s L and Co. for the said transaction, and accordingly, no demand and recovery is required to be made against M/s L and Co. under the provisions of section 74A in respect of the same. The registered person - M/s L and Co. - shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii).

2. **Issue of invoice by Mr. X to WPL:** The registered person - Mr. X has availed and utilized fraudulent ITC on the basis of the tax invoice issued in contravention of the provisions of section 16(2)(b), without receiving the supply of steel, jelly stone and cement. Further, there was no supply of steel, jelly stone and cement and labour work related services by Mr. X to WPL. Thus, in respect of the said transactions, no tax was required to be paid. In these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by Mr. X in such case or tax liability in respect of the said outward transaction by Mr. X to WPL is required to be made from Mr. X under

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the provisions of section 74A. However, in such cases, Mr. X shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

WPL will be liable for the demand and recovery of the ITC availed and utilised by it, along with penal action applicable for fraud cases under section 74A along with applicable interest under provisions of section 50, for taking/ utilizing ITC without actual receipt of steel, jelly stone and cement and without receiving the assembly and erection services, used for underlying supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

3. **GST implications on Mr. A:** Mr. A who advised for designing the above business practice shall also be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence is also punishable with imprisonment subject to specified conditions.

Mr. P apprised Mr. X that if any Chartered Accountant advises Mr. X on above arrangement, then he will also be punishable with penalty in terms of the provisions of 122(3) for aiding/abetting the offences specified above and may also be punishable with imprisonment subject to specified conditions. Further, he may also be held guilty of professional misconduct.

Case Study 2

Facts of the case

Doodle LLC is an entity registered in Germany and is engaged in providing online services across multiple countries including India. The service offerings include certain services which are covered within the purview of online information and database access or retrieval services i.e. OIDAR services liable to GST in India. Since Doodle LLC does not have any place of business in India, it appointed one of its

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employee - Mr. X[5] as its authorized representative for all the purposes in India which includes undertaking GST compliances and also as an authorized signatory for any other regulatory compliances in India. Mr. X is a partner in XYZ & Associates LLP. Post appointment of Mr. X, following chain of events unfolded:

1. Mr. X, being an authorized representative of Doodle LLC, made an application for registration as an OIDAR service provider in India and undertook other GST compliances. Subsequently, Mr. X started filing the monthly GST returns and made payment of applicable GST in India on behalf of Doodle LLC. In lieu of such services, Mr. X was being remunerated a fixed sum on monthly basis as professional fee. The appointment of Mr. X was in his personal capacity and not a professional service contract with his partnership firm - XYZ & Associates LLP. However, for recovery of amount of fixed monthly remuneration from Doodle LLC, the invoices as 'export of services' were issued by Mr. X in the name of his partnership firm. The corresponding refund benefit was claimed by the partnership firm of Mr. X for input tax credit against such export of service invoices.
2. Doodle LLC appointed influencers in India to promote its services in India. The tax invoices of such influencers were received by Mr. X in name of XYZ & Associates LLP and input tax credit was availed by the partnership firm for such services. Said ITC was utilised for further supply of services. However, the actual service recipient in such case was Doodle LLC.
3. Subsequently, Doodle LLC was required to submit certain affidavits and accounting records before the office of the Enforcement Directorate. Being an authorized representative/ signatory of Doodle LLC, Mr. X approached Mr. P, a practicing Chartered Accountant, to prepare the affidavits and accounting records which included critical financial information and data of Doodle LLC. He elaborated the entire arrangement among Doodle LLC, Mr. X and XYZ & Associates LLP to Mr. P. He further requested Mr. P to certify and attest such records, which would be prepared and compiled by Mr. P in capacity of a practicing Chartered Accountant for submission before Enforcement Directorate.

[5] *Mr. X is not a Chartered Accountant.*

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Mr. P apprised Mr. X of the following GST implications:

GST implications

1. Incorrect issuance of invoice for export of services and claim of refund of input tax credit on the basis of such export of service related invoices

Mr. X was appointed as authorized representative and signatory of Doodle LLC in his personal capacity to undertake the compliances enumerated under the GST law in India. However, the consideration for such services was received at the behest of invoices issued in the name of his partnership firm. Further, such invoices were issued as 'export of service' invoices and corresponding refund of input tax credit was claimed by the firm of Mr. X. This act of Mr. X alongwith his firm is punishable as follows:

- Since Mr. X supplied services to Doodle LLC without any invoice, he shall also be liable for the demand and recovery of tax on said supply, along with penal action applicable for fraud cases under section 74A. Even if the contention is made that invoice was issued for such services by the firm of Mr. X, the same shall be treated as an incorrect invoice or false invoice as both, Mr. X and XYZ & Associates LLP are separate persons as per GST Law.
- Since both, Mr. X and XYZ & Associates LLP are different persons, the invoice issued by the firm shall be construed as issuance of invoice without supply of services viz. an offence punishable under section 122(1)(ii).
- Incorrect refund was claimed by XYZ & Associates LLP for input tax credit on the basis of incorrect invoice for export of services to Doodle LLC. This is an offence under section 122(1)(viii).
- All the above offences may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

2. Availment of input tax credit without actual receipt of services

XYZ & Associates LLP received invoices from the influencers who were actually providing services to Doodle LLC. Further, the input tax credit related to such invoices was availed by XYZ & Associates LLP in contravention of the

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provisions of section 16. Accordingly, the input tax credit availed and utilised by XYZ & Associates LLP for further supply of services is incorrect. Thus, XYZ & Associates LLP will be liable for the demand and recovery of the said ITC, along with penal action applicable for fraud cases under section 74A alongwith interest under section 50 as the actual service recipient was Doodle LLC and not XYZ & Associates LLP.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. GST implications on Mr. X

Mr. X was fully involved in wrongdoings in terms of the business transactions of Doodle LLC in India. Further, he was the authorized representative and signatory of Doodle LLC in India. Mr. X is liable to penalty under section 122(1A) and section 122(3) since he is involved in aiding and abetting the offences committed hereunder at his instance and has also derived monetary benefits from such practices. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant takes up the assignment offered by Mr. X and also attests/certifies the Doodle LLC's accounting records that would be prepared by him, for submission before the Enforcement Directorate in India, he may be held guilty of professional misconduct.

Case Study 3

Facts of the Case:

ABC & Associates LLP (ABC), a firm of Chartered Accountants, was empanelled with the Commissioner of GST for appointment as Special Auditor under section 66. X Ltd., a registered person under GST, was selected by the Office of the Commissioner for special audit under section 66 for a financial year on account of irregularities noticed during scrutiny of returns. ABC was nominated by the Office of the Commissioner for special audit of X Ltd. Assume that the following events unfolded in relation to the appointment and audit procedure:

1. The appointment of special auditor was based on the undertaking furnished by the firm that the partners of the firm or any of their relatives are not

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directly or indirectly related to the auditee. However, while submitting the declaration in relation to such appointment, if ABC fails to disclose the fact that spouse of one of the partners of ABC is working under full time employment as a Head of Tax Department of the auditee i.e. X Ltd., what will be its implications?

2. Material discrepancies in the valuation of stock transfer to related parties by the auditee were noticed by ABC. If ABC fails to disclose these material discrepancies in the audit report submitted to the Office of Commissioner, what will be its implications?

3. The input tax credit claim by X Ltd. i.e. the auditee, under Form GST ITC- 01, was certified by one of the associate firms of ABC in favour of X Ltd. Such certificate was based on incorrect facts and against the eligibility criteria for input tax credit as per section 18. However, if ABC fails to exercise the due diligence and the certificate is taken on record by ABC as an audit procedure and is relied upon at the time of finalization of audit report and submission of findings, what will be its implications?

4. ABC receives a consideration of ₹ 5 lakh from X Ltd. in the name of special audit conducted.

GST implications

Following implications may arise in the above cases:

1. False undertaking submitted before the Office of Commissioner GST and the audit engagement undertaken on the basis of such undertaking

The essential terms of the appointment as special auditor included that the partners or any of the relatives of the partners are not directly or indirectly linked to X Ltd. i.e. the auditee. If the spouse of one of the partners of ABC is working as Head of Tax Department of the auditee. Non-disclosure of said fact in the undertaking and other engagement documents and accepting such engagement tantamount to submission of false undertaking by a Chartered Accountant firm to the Government Authorities. Further, a question may be raised about the independence of the audit team considering the fact that spouse of one of the partners of the firm is holding a key position in X Ltd. i.e. the auditee.

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2. Non-reporting of material discrepancies noticed during the audit procedure and reliance upon incorrect certificates and information

ABC audit team did not exercise due diligence to ascertain that the input tax credit availed by X Ltd. is not in compliance with the GST provisions. Instead, ABC relied on the certificate issued by its own associate firm which justified the incorrect input tax credit claim by X Ltd. In such a scenario both ABC and the associate firm, which issued the certificate to justify the input tax credit claim, were aiding and abetting X Ltd. in wrongful availment of credit, which is an offence punishable with penalty under 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions. Further, ABC as well as its associate firm may be held guilty of professional misconduct.

3. Receiving consideration for special audit from the auditee

The consideration for special audit under section 66 is payable by the Office of Commissioner and cannot be directly recovered from the auditee. In the present case the receipt of ₹ 5 lakh from the X Ltd., i.e. the auditee by ABC is an offence under GST provisions. The same is liable to penalty under general penalty under section 125 apart from other penal provisions under the GST Law. Further, this will also have an impact on the independence of the auditor – ABC.

Case Study 4

Facts of the Case:

A Ltd. is engaged in the business of manufacturing cotton yarn, wherein cotton is the principal raw material in the manufacturing process. The price of cotton varies depending upon the market conditions and is dependent on various external factors. Mr. X[6] is tax consultant of A Ltd. Mr. X advises A Ltd. on GST compliances.

In order to meet expansion related expenditure, A Ltd. sought a term loan and working capital loan from banks. As per the bank, the turnover and profitability criteria of A Ltd. were not meeting the benchmarks of bank for sanction of any loan

[6] *Mr. X is not a Chartered Accountant.*

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facility. Accordingly, following actions were undertaken by Mr. X being the tax consultant of A Ltd.:

1. A separate entity i.e. B Ltd. was incorporated and the Directors of A Ltd. were appointed as Directors in B Ltd. This ensured that the control of B Ltd. remains with the Directors of A Ltd. Further, B Ltd. obtained GST registration as a manufacturer of yarn wherein Mr. X assisted B Ltd. in obtaining such GST registration. Mr. X obtained registration providing fake documents for registration.

2. Subsequently, A Ltd. started issuing tax invoices for supply of yarn to B Ltd. However, there was no actual movement of goods by A Ltd. to B Ltd. The tax invoices were issued and the same were reported in the GST returns by A Ltd. Further, B Ltd. availed the input tax credit of all such tax invoices reported by A Ltd. The finished goods related to such tax invoices were sold in the local market by A Ltd. in cash without charging any GST and without issuance of tax invoice.

3. B Ltd. issued tax invoices for provision of certain services to A Ltd. in form of testing of cotton, repairs and maintenance of machinery installed at A Ltd. apart from other services. However, no such services were actually provided by B Ltd. to A Ltd. The input tax credit appearing in the books of B Ltd. (which was availed on the basis of fake yarn invoices) was utilized by B Ltd. at the time of discharging GST liability in relation to the alleged tax invoices issued against provision of services to A Ltd.

4. Further, B Ltd. issued tax invoices for sale of yarn (allegedly purchased from A Ltd.) to other group entities to ensure that the stock of yarn becomes zero in the books of accounts at the year end. The tax invoices were issued at a rate lowered by 90% of the actual tax invoice received from A Ltd. contending that the quality of yarn had deteriorated during the storage.

5. Mr. X was aware of the aforesaid actions of A Ltd. and B Ltd. Further, the GST returns were filed by Mr. X for both the companies.

6. A Ltd. approached Mr. P, a practicing Chartered Accountant to issue relevant certificates to the bank certifying the turnover of A Ltd. and B Ltd. as genuine turnover to ensure that the required loan amount is sanctioned to A Ltd. A Ltd. elaborated the entire arrangement made by it with regard to B Ltd.

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Mr. P apprised A Ltd. of the following GST implications that may arise in the given case:

GST implications

1. GST registration of B Ltd. sought on the basis of fake documents

As per section 122(1)(xii), furnishing of false information with regard to registration particulars is an offence liable to penalty under GST Law. Thus, B Ltd is liable to penalty under section 122(1)(xii).

2. Issuance of tax invoice without actual supply of goods or services

Following instances happened wherein there was no actual supply of goods or services, however, tax invoice was issued:

- Fake issuance of tax invoice for supply of yarn by A Ltd. to B Ltd. (Para 2)
- Fake issuance of tax invoice for supply of services by B Ltd. to A Ltd. (Para 3)
- Fake issuance of tax invoice for supply of goods by B Ltd to group entities (Para 4)

The aforesaid actions are liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods and services. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. Fraudulent input tax credit availment

B Ltd. availed fraudulent input tax credit of the goods (yarn) which were not at all received by B Ltd. and the same was used in discharge of the tax liability related to invoices issued without any underlying supply of goods or services.

B Ltd. has availed and utilized fraudulent ITC on the basis of the said tax invoice, in contravention of the provisions of section 16(2)(b), without receiving the supply of goods and accordingly. In this case, there was no supply of by B Ltd. to A Ltd. in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by B Ltd. in such case or tax liability in respect of the said outward transaction by B Ltd. to A Ltd. is required to be made

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from B Ltd. under the provisions of section 74A. However, in such cases, B Ltd. shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

4. Incorrect information in GST returns and falsification of books of accounts

The GST returns filed by A Ltd. and B Ltd. were not backed by correct information in terms of supply of goods and services. Knowing that there was no supply of goods or services and input tax credit is not available, the returns were filed by both the companies. The books of accounts and financial records were also falsified in terms of information related to sales and inventory. This act of furnishing incorrect information in GST return and falsifying financial records is an offence under section 122(1)(x). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

5. GST implications on Mr. X

Mr. X, being a consultant of A Ltd., had adequate knowledge of the fraud and wilful misrepresentation of the facts in terms of maintaining the financial records and submission of information in GST returns. In fact, Mr. X himself was filing the GST returns and was aware of the fake invoices and ineligible input tax credit availment by the companies. Mr. X shall be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant undertakes the assignment of issuing relevant certificates to the bank thereby certifying the turnover of A Ltd. and B Ltd., he may be held guilty of professional misconduct. Further, he shall also be liable to a penalty in terms of the provisions of 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

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TEST YOUR KNOWLEDGE

1. *What is the quantum of penalty for an offence mentioned under section 122(1), 122(1A) and section 122(2)?*

2. *Mr. X, an unregistered person under GST, purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. A disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000/- is imposed by passing an order without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed. Should Mr. X proceed to pay for penalty or challenge the order passed by Department?*

4. *Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the month of December under CGST Act, 2017-*

   (i) 'X' collects ₹ 245 lakh as tax from its clients and deposits ₹ 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.

   (ii) 'Y' collects ₹ 550 lakh as tax from its clients but deposits only ₹ 30 lakh with the Central Government.

   What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

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

5. *Discuss the cognizable and non-cognizable offences under section 132?*

6. *Bindusar CEO of Ashoka Solution Ltd is issued a summon to appear before the central tax officer to produce the books of accounts of Ashoka Solution Ltd in an enquiry conducted on said company. Determine the amount of penalty if any that may be imposed on Bindusar under the CGST Act, 2017 if he fails to appear before the central tax officer.*

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ANSWERS

1. Section 122(1) provides that any taxable person who has committed any of the specified offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:

(a) ₹ 10,000/-; or

(b) An amount equivalent to, any of the following (Applicable as the case may be) **–**

(i) Tax evaded; or

(ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or

(iii) Tax not collected under section 52 or short collected or collected but not paid to the Government; or

(iv) Input tax credit availed of or passed on or distributed irregularly; or

(v) Refund claimed fraudulently

Further, section 122(1A) provides that any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of section 122(1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

Moreover, section 122(2) provides that if any registered person who supplies any goods and/or services on which any tax has not been paid or short paid or erroneously refunded or where the ITC has been wrongly availed or utilized:-

(i) for any reason other than the reason of fraud or any willful misstatement or suppression of facts to evade tax, he shall be liable to a penalty of ₹ 10,000 or 10% of the tax due from such person, whichever is higher.

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(ii) for reason of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ₹ 10,000 or the tax due from such person, whichever is higher.

2. The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126. Accordingly—

- no penalty is to be imposed without affording an opportunity of being heard to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Since the order suffers from lack of clarity about nature of breach which has taken place and about applicable law under which penalty has been imposed, such order passed by the department should be challenged.

4. **(i)** Failure to pay any amount collected as tax beyond 3 months from due date of payment is a specified offence as per clause (d) of Section 132(1).

In the present case, failure to deposit the tax ₹ 4 lakh (₹ 245 lakh – ₹ 241 lakh). As the amount of failure does not exceed ₹ 200 lakh therefore, failure to deposit ₹ 4 lakh collected as tax by 'X' will not be punishable with imprisonment as per section 132(1).

Further, falsification of financial records by 'X' is a specified offence as per section 132(1)(d) and punishable with imprisonment upto 6 months or with fine or both as per clause (iv) of section 132(1) assuming that

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falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017 and the said offence is bailable in terms of section 132(4).

(ii) Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds ₹ 500 lakh in terms of section 132(1)(d) read with clause (i) of section 132(1).

Since the amount of tax evaded by 'Y' exceeds ₹ 500 lakh (₹ 550 lakh - ₹ 30 lakh), 'Y' is punishable with an imprisonment for a term which may extend to 5 years and with fine. It has been assumed that amount of ₹ 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax.

Such offence is non-bailable in terms of section 132(5).

If 'X 'and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017.

Such imprisonment shall also be of at least 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court.

5. As per section 132(5), following offences are cognizable offences, provided amount of tax evaded or input tax credit wrongly availed/ utilised or refund wrongly taken exceeds ₹ 5 crores, namely:

(a) Supply without issuance of invoice with the intention to evade tax

(b) Issuance of any invoice/ bill without supply leading to wrongful availment/ utilisation of ITC or refund of tax

(c) Availment of ITC using invoice/ bill against which no supplies have been made or fraudulent availment of ITC without any invoice or bill.

(d) Failure to pay the amount collected as tax to the Government beyond a period of 3 months from the due date of payment.

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Further, section 132(4) provides that all offences specified under section 132 are non-cognizable offences except the cognizable offences specified as aforesaid.

6. Sec 122(3)(d) stipulates that any person who 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 enquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Bindusar under the CGST Act, 2017 in the given case.

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, **the applicability or otherwise of such amendment for May 2026, September 2026 and/or, January 2027 examinations shall be informed by the ICAI by way of an announcement.**

In the table given below, the provisions of new section 122B of the CGST Act, 2017 are given as amended by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Provisions as amended by the Finance Act, 2025	Remarks
New section 122B: Penalty for failure to comply with track and trace mechanism ***Notwithstanding anything contained in this Act, where any person referred to in clause (b) of sub-section (1) of section 148A acts in contravention of the provisions of the said section, he shall, in addition to any penalty under Chapter XV or the provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees or ten per cent of the tax payable on such goods, whichever is higher.***	New section 122B is being inserted in the CGST Act so as to provide penalty for contraventions of provisions related to the Track and Trace Mechanism provided under section 148A.

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CHAPTER 22

APPEALS AND REVISION

For the sake of brevity, the terms 'Appellate Authority', 'Revisional Authority', 'input tax credit' have been referred to as 'AA', 'RA' and 'ITC' respectively in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- identify the various kinds of appellate forums available under the CGST Act and their hierarchy
- understand various aspects relating to filing of an appeal before the Appellate Authority by the taxpayer as well as by the Department and the provisions relating to revision of orders by the Revisional Authority
- appreciate and understand the provisions relating to constitution and structure of Appellate Tribunal as also the various aspects relating to filing of an appeal before it by the taxpayer as well as by the Department
- understand and comprehend the concept of mandatory pre-deposit for filing appeals
- understand various aspects relating to filing of an appeal before the High Court and the Supreme Court
- apply the above and other provisions relating to appeals and revision in problem solving

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1. INTRODUCTION

Tax laws impose various obligations on taxpayers. Such obligations are broadly of two kinds: levy-related (e.g. scope of levy, taxable value, tax rate etc.) and procedure-related (e.g., obtaining registration, filing of returns, manner of depositing tax etc.). The taxpayer's compliance with these obligations is verified by tax authorities (by exercising various powers such as undertaking scrutiny, audit, anti-evasion proceedings, etc.). As a result of which, sometimes there are situations of actual or perceived non-compliances. If the difference in the views persists, it results into a dispute, which is then required to be resolved.

Under tax laws, on any given set of facts and legal provisions there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" passed by a tax authority. It is equally possible that the Tax Department may itself not agree with the adjudication order. It is for this reason that the tax statutes provide for an appellate mechanism to both the sides. In legal parlance, **appeal** is a timely resort for reconsideration by a higher authority, where aggrieved party request a formal change to an existing decision wholly or partially as the case may be.

Since the right to appeal is a statutory right (i.e. a right conferred by the statute), the statute also places fetters on the exercise of this right. The time limits prescribed by the statute for filing of appeals, the requirement of making pre-deposit of a certain sum before the appeal can be heard by the competent authority are the examples of such fetters on the statutory right.

India has adopted a dual GST, i.e. GST is levied by both Centre and State Governments concurrently on a transaction. Does this mean that if a taxpayer is aggrieved by any proceedings, he will have to approach both the authorities separately for exercising his right of appeal? The answer is 'no'.

GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and *vice versa*. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws. GST

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law also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/ revision/rectification against the said order will lie only with the proper officers of that Act (CGST Act). Accordingly, if any order is passed by the proper officer under, say Haryana SGST Act, any appeal/review/revision/rectification against the said order will lie only with the proper officer under the Haryana SGST Act.

Chapter XVIII [Sections 107 to 121] of the CGST Act supplemented with Chapter XIII [Rules 108 to 116] of the CGST Rules prescribe the provisions relating to appeals and revision. State GST laws also prescribe identical provisions.

Provisions of appeals and revision under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

A brief overview of the provisions covered under the aforesaid sections 107 to 121, are outlined in this chapter.

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2. RELEVANT DEFINITIONS

- **Adjudicating authority** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171 [Section 2(4)].
- **Appellate Authority** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].
- **Appellate Tribunal** means the Goods and Services Tax Appellate Tribunal constituted under section 109 [Section 2(9)].
- **Authorised representative** means the representative as referred to in section 116 [Section 2(15)].
- **Board** means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 [Section 2(16)].
- **Commissioner** means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act [Section 2(24)].
- **Revisional Authority** means an authority appointed or authorised for revision of decision or orders as referred to in section 108 [Section 2(99)].

3. APPEALS TO APPELLATE AUTHORITY [SECTION 107]

A. Appeal to Appellate Authority (AA) by aggrieved person (taxpayer)

(i) Orders appealable to AA

An appeal against any decision/order passed by any adjudicating authority under the CGST Act or SGST Act/UTGST Act lies before the AA.

It is important to note that it is only the aggrieved person who can file

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the appeal. Also, the appeal must be against a decision or order passed under the Act.

(ii) Time limit for filing appeal

A person aggrieved by any decision/order of an adjudicating authority can file an appeal to the AA within 3 months from the date of communication of such decision/order.

(1) The adjudicating authority issued the adjudication order on 23rd September and the same is communicated to the taxpayer on 28th September. The relevant date for computing the period of 3 months (for filing the appeal to AA) is 28th September (date of communication of order) and not 23rd September.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

(iii) 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 electronically. A provisional acknowledgement is issued to the appellant immediately.

However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if-

(i) the Commissioner has so notified, or

(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the Common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately.
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

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of the said decision or order within a period of 7 days from the date of filing of Form GST APL-01. The final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Further, where the said self-certified copy of the decision/order is not submitted within a period of 7 days from the date of filing of Form GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.

The appeal shall be treated as filed only when the final acknowledgement is issued.

(2) The appeal is filed and provisional acknowledgement issued on 10th September. The taxpayer submits the certified copy of the order sought to be appealed against on 15th September (within 7 days as decision/order appealed against is not uploaded on the common portal). The date of filing appeal is 10th September.

(3) The appeal is filed and provisional acknowledgement issued on 10th September. The taxpayer submits the certified copy of the order sought to be appealed against on 25th September (after seven days) as decision/order appealed against is not uploaded on the common portal. The date of filing appeal is 25th September.

(iv) Mandatory pre-deposit for filing appeal

No appeal can be filed before the AA unless a specified amount of pre-deposit is made by the appellant. *The concept of pre-deposit is discussed separately under Heading No. 7.*

B. Application before the AA by the Department

At times, the Department itself may not agree with the decision or order passed by the adjudicating authority. Section 107(2) provides that in such cases, the Department can also file an application (as if it were

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an appeal made against the decision or order of the adjudicating authority) before the AA.

(i) Orders against which the application can be filed before the AA

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision/order under the CGST Act or SGST Act/UTGST Act to satisfy himself about the legality or propriety of such decision/order [Section 107(2)].

(ii) Time limit for filing the application

The Commissioner may, by order, direct any officer subordinate to him to apply to the AA within 6 months from the date of communication of the decision/order for the determination of such points arising out of the said decision/order as may be specified by him in his order.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay.

(4) The adjudicating authority passed the order on 23rd January (communicated same day to the Commissioner). The Commissioner directs his subordinate officer to file a review application with the AA till 23rd July (within 6 months from the date of communication of order). However, the application could be filed only on 3rd August. The AA can condone the delay in filing of appeal upto 23rd August (up to 1 month) if it is satisfied that there was sufficient cause for such delay.

(iii) Form for application

An application to the AA shall be filed in Form GST APL-03, along with the relevant documents, electronically and a provisional acknowledgment shall be issued to the appellant immediately.

However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-03, along with the relevant documents, only if-

(i) the Commissioner has so notified, or

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(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the Common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

Where the decision/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 or 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-03.

The final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

Further, where the said self-certified copy of the decision or order is not submitted within a period of 7 days from the date of filing of Form GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

(iv) Application to be treated as appeal

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)].

There is no requirement of making a pre-deposit in the case of departmental appeal.

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C. Appeal process followed by AA

(i) Duties of the AA

The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds of appeal (if the omission of that ground from the grounds of appeal was not wilful and is found reasonable), etc.

(ii) Orders of the AA

- The AA can make further inquiry and pass its order (i.e. Order-in-Appeal) which may **confirm, modify or annul** the decision/order appealed against. However, the AA shall not refer the case back to the adjudicating authority that passed the said decision/order.
- The AA can also increase the "rigour" of the order appealed against by enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or ITC, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order.
- If the AA is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where ITC has been wrongly availed or utilized, no order requiring the appellant to pay such tax or ITC shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 ***or section 74A***.

- The appellant may, at any time before issuance of said show cause notice or before issuance of the order (i.e. Order-in-Appeal), whichever is earlier, in respect of any appeal filed in Form GST APL-01 or Form GST APL-03, file an application for withdrawal of the said appeal by filing an application in Form APL-01/03W.

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- However, where the final acknowledgment has been issued in Form GST APL-02, the withdrawal of the said appeal would be subject to the approval of the AA and such application for withdrawal of the appeal shall be decided by the AA within 7 days of filing of such application.
- Further, any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in (A) and (B) points above, as the case may be.
- The Order-in-appeal shall be a **"speaking order"** i.e., it shall state the points for determination, the decision thereon and the reasons for the decision.
- The law provides an advisory time limit of 1 year from date of filing of appeal for the AA to decide the appeal. The period of stay ordered by any Court or Tribunal shall be excluded in computing the period of 1 year.

(5) The adjudicating authority passed the order on 23rd January 2025 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the AA on 16th February 2025. The AA should decide the appeal by 16th February 2026 where it is possible to do so.

(6) The adjudicating authority passed the order on 23rd January 2025 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the AA on 16th February 2025. The appeal proceedings before the AA are stayed by an order of a Court for the period between 1st May 2025 and 30th June 2025. The period of 61 days during which the stay was in operation will be excluded for computing the period of 1 year within which the AA should decide the appeal. Thus, the AA, as per the advisory time limit prescribed, can pass the order by 18th April 2026.

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- On disposal of the appeal, the AA shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
- A copy of the order passed by the AA shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional SGST/UTGST Commissioner or an authority designated by him in this behalf.
- Every order passed by the AA shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

D. Appointment of Appellate Authority

Any person aggrieved by any decision/order passed under GST law or an officer directed to appeal against any decision/order passed under said law, may appeal within 3 months (6 months in case of appeal by the Department) from the date of communication of said decision/order as follows:

If the decision/order against which the appeal is to be filed, is passed by the Additional or Joint Commissioner	**Appellate Authority** →	**Commissioner (Appeals)**
If the decision/order against which the appeal is to be filed, is passed by the Deputy or Assistant Commissioner or Superintendent	**Appellate Authority** →	**Any officer not below the rank of Joint Commissioner (Appeals)**

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A summary of the provisions of section 107 is given below.

Summary of the provisions of Section 107

APPEALS TO APPELLATE AUTHORITY [SECTION 107]

The Commissioner may direct any Officer subordinate to him to apply to the AA to determine specified points relating to legality and propriety of an order of any adjudicating authority passed under the GST laws

Time limit - Within 6 months from the date of communication of the said decision/order. Delay of 1 month can be condoned by the AA

Form of Application – GST APL 03

Any person aggrieved by any decision/order passed by an adjudicating authority passed under the GST laws

Time limit - Within 3 months from the date of communication of the said decision/order to the appellant. Delay of 1 month can be condoned by the AA

Form of Appeal – GST APL 01

Payment of tax, interest, fine, fee, and penalty arising from the impugned order, as admitted by the appellant along with mandatory pre-deposit as specified

The AA will give the appellant a chance to be heard.

The AA may allow the appellant during the hearing to add any ground of appeal not specified in the grounds of appeal in specified cases and can grant up to 3 adjournments.

The AA may confirm, modify, annul the decision or order appealed against after making further inquiry, as necessary.

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4. POWERS OF REVISIONAL AUTHORITY [SECTION 108]

A. Orders which can be revised

(i) The GST laws also provide a mechanism of revision by the Revisional Authority (RA) of the orders passed by its subordinate officers.

(ii) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings. Here, 'record' includes all records relating to any proceedings under the CGST Act available at the time of examination by the RA.

(iii) On examination of the case records, if RA is of the view that the decision or order passed under the CGST Act/ SGST Act/ UTGST Act by any officer subordinate to him

- is erroneous, in so far as it is prejudicial to the interest of the revenue and is illegal or improper;
- has not taken into account material facts, whether available at the time of issuance of the said order or not;
- in consequence of an observation by the Comptroller and Auditor General of India

he may, if necessary, stay the operation of such decision or order for such period as he deems fit.

(iv) Thereafter, the RA after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order. Here, 'decision' includes intimation given by any officer lower in rank than the RA.

Along with the order, the RA shall also issue a summary of the order clearly indicating the final amount of demand confirmed.

(v) If the RA decides to pass an order which is likely to affect the person adversely, he shall serve a notice on such person and give him a reasonable opportunity of being heard.

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(vi) Every revision order shall, subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.

B. Fetters to the powers of revision

The power of revision is subject to the condition that non-appealable orders and decisions under section 121 cannot be revised *[Section 121 which provides for such orders/decisions is discussed under Heading 15 of this Chapter]*.

The RA shall not exercise the power of revision if:

(a) the order sought to be revised has been subject to an appeal before AA or Tribunal or High Court or Supreme Court*; or

(b) the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or

(c) the order has already been taken for revision at an earlier stage; or

(d) the order sought to be revised is itself a revisional order.

*The RA may still pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/High Court/Supreme Court, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

(7) A taxpayer is served with an adjudication order on 25th May 2025. The RA can revise the order during the period between 26th November 2025 (after expiry of 6 months) and 25th May 2028.

(8) ABC Pvt. Ltd. manufactures product 'P' and 'Q'. The company avails benefit of exemption notification in respect of product 'P' and pays tax on product 'Q' @ 12%. Show cause notice was issued to the company alleging that product 'P' was not eligible for exemption and product 'Q' was liable to tax @ 18%. The adjudicating authority concluded that the rate of tax in respect of product 'Q' was correct but the exemption on product 'P' was being availed wrongly. Consequently, an order confirming demand of ₹ 10 lakh was passed by the adjudicating authority on 15th January 2025.

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The company filed an appeal against the order before the AA on 16th February 2025. The AA passed the order in favour of the company in respect of product 'P' on 31st October 2025.

The RA can pass the revised order in respect of tax rate on product 'Q' before 31st October 2026 (1 year from the date of order passed by the AA) or 15th January 2028 (3 years from the date of adjudication order), whichever is later. Thus, the RA can pass the revised order by 15th January 2028.

C. Period to be excluded in computing limitation period of 3 years

(i) If the decision/order sought to be revised involves an issue on which the Appellate Tribunal or the High Court has given its decision **in some other proceedings** and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between:

- the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or
- the date of the decision of the High Court and the date of the decision of the Supreme Court

shall be excluded in computing the period of limitation of 3 years where proceedings for revision have been initiated by way of issue of a notice under section 108 [Section 108(4)].

(ii) When the issuance of a revision order is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of limitation of 3 years [Section 108(5)].

(9) The adjudicating authority passed the order on 23rd January 2025 and it was communicated to the taxpayer on the same day. The RA calls for the records of the proceedings on 1st August 2025 (after expiry of 6 months) and started examining the same. The revision order to be passed by the RA is stayed by an order of the High Court for the period between 1st September 2025 and 31st October 2025. The period of 61 days during which the stay was in operation will be excluded for computing the period of 3 years within which the RA should pass the revision order. Thus, the RA can pass the order by 25th March 2028.

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✪ ***The provisions related to revision empower the superior authorities to revise the orders or decisions passed by their sub-ordinate officers which are found to be improper.***

✪ ***Since AA also has the power to annual, enhance etc. (as discussed in Heading 3), in order to avoid any duplication of proceedings, an order which is subject to appeal cannot be revised. However, the revisional order can be passed on the points that are not raised or decided in an appeal. Accordingly, the law provides for extension of the time limit for revising the orders that are subject matter of an appeal. Extension to the prescribed limitation also applies where the revision proceedings are stayed.***

✪ ***Revision proceedings can only be taken once with respect to an order and a revision order cannot be revised.***

D. Officers authorized as Revisional Authority

The CBIC has authorized the following officers as Revisional Authority:

For decisions/orders passed by the Additional/Joint Commissioner	**Revisional Authority**	Principal Commissioner/ Commissioner
For decisions/orders passed by the Deputy Commissioner /Assistant Commissioner/ Superintendent	**Revisional Authority**	Additional/Joint Commissioner

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5. APPELLATE TRIBUNAL UNDER GST LAWS [SECTIONS 109-111]

The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by RA, by any person aggrieved by such an Order-in-Appeal/ Order-in-Revision.

A. Constitution of Appellate Tribunal and Benches thereof [Section 109]

Constitution

The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority or for conducting an examination or adjudicating the cases referred to in section 171(2), if so notified under the said section.

- The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches.
- The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State).
- On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).

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A diagrammatic representation of the composition of the Appellate Tribunal is shown below.

Jurisdiction [Section 109(5)]:

- The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority.
- However, the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.
- Further, matters referred to in section 171(2) shall be examined or adjudicated only by the Principal Bench:
- Government may, on the recommendations of the Council, notify other cases or class of cases which shall be heard only by the Principal Bench.

Transfer of cases

Subject to above jurisdiction given in section 109(5), 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.

Vice president for State Benches

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.

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Single member bench:

Appeals, where the tax or ITC involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed ₹ 50,00,000 and which does not involve any question of law may, with the approval of the President, and subject to prescribed conditions on the recommendations of the Council, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

Accordingly, the cases can be heard by a bench consisting of a single member, if following conditions are fulfilled:

- Amount of tax or ITC involved or the amount of fine, fee or penalty determined does not exceed ₹ 50,00,000
- Matter does not involve any question of law
- Prior approval of the President has been obtained
- Any other prescribed conditions.

Majority rule in case of difference of opinion

If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,—

- **where the appeal was originally heard by Members of a State Bench**, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;
- **where the appeal was originally heard by Members of the Principal Bench,** to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

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Transfer of members for administration efficiency

- 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.

The President and members of Appellate Tribunal their qualification, appointment, conditions of service, etc. shall be in the manner prescribed under section 110 of the CGST Act.

B. Procedure before Appellate Tribunal [Section 111]

(i) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908. However, it shall be guided by the principles of natural justice and shall have power to regulate its own procedure.

(ii) The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

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(f) dismissing a representation for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(h) any other matter which may be prescribed.

(iii) Order of the Appellate Tribunal may be enforced in the same manner as if it were a decree made by a court in a suit pending therein. The Appellate Tribunal can send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(iv) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code. The Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

The Indian Penal Code (IPC) has been replaced with the Bharatiya Nyaya Sanhita, the Code of Criminal Procedure with Nagarik Suraksha Sanhita and the Indian Evidence Act has been replaced with the Bharatiya Sakshya Adhiniyam from 1st July 2024, however the corresponding changes is yet to be made in the GST Law.

6. APPEAL TO APPELLATE TRIBUNAL [SECTIONS 112 & 113]

A. Appeal by the aggrieved person (taxpayer)

(i) Orders appealable to Appellate Tribunal

Any person aggrieved by an order passed against him by an AA or RA under CGST Act/SGST Act/ UTGST Act may appeal to the Appellate Tribunal.

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(ii) Time limit for filing appeal

The appeal can be filed before the Appellate Tribunal

(a) within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal or

(2) the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act,

whichever is later.

The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months if it is satisfied that there was sufficient cause for the delay.

(iii) Form for filing appeal

An appeal to the Appellate Tribunal shall be filed in FORM GST APL-05, along with the relevant documents, electronically and provisional acknowledgement shall be issued to the appellant immediately:

An appeal to the Appellate Tribunal may be filed manually in FORM GST APL-05, along with the relevant documents, only if the Registrar allows the same by issuing a special/general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(iv) Power of Tribunal to refuse to admit an appeal

The Appellate Tribunal can refuse to admit an appeal if

- the tax or ITC involved or
- the difference in tax or ITC involved or
- the amount of fine, fee or penalty determined by such order

does not exceed ₹ 50,000.

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(v) Memorandum of cross objections

The law also provides for filing of cross-objections by the respondent against such part of the order against which the respondent may initially not have chosen to file an appeal.

It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding, that he may not have appealed against such order or any part thereof, file within 45 days a memorandum of cross-objections against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified for filing the initial appeal.

The *Principal* Bench of the Tribunal has jurisdiction to entertain appeal if the dispute or one of the issues in dispute involves place of supply.

The Tribunal can condone the delay of up to 45 days beyond the specified time period of 45 days, if it is satisfied that there was sufficient cause for the delay.

(vi) Fees for filing appeal

The fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed ₹ 25,000 and a minimum of ₹ 5,000.

Fees for filing of an appeal in respect of an order not involving any demand of tax, interest, fine, fee or penalty shall be ₹ 5,000.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

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(vii) Mandatory pre-deposit for filing appeal

No appeal can be filed before the Appellate Tribunal unless a specified amount of pre-deposit is made by the appellant. *The concept of pre-deposit is discussed separately under Heading No. 7.*

B. Departmental appeal

(i) The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any order passed by the AA or RA under the CGST Act/SGST Act/ UTGST Act for the purpose of satisfying himself as to the legality or propriety of such order.

(ii) The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date on which the said order has been passed or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later, for determination of such points arising out of the said order as may be specified him.

The Tribunal can ***permit the filing of an application within three months after the expiry of the specified time period of 6 months,*** if it is satisfied that there was sufficient cause for the delay.

(iii) An application to the Appellate Tribunal shall be filed in Form GST APL-07, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately.

Such application may be filed manually in FORM GST APL-07, along with the relevant documents, only if the Registrar allows the same by issuing a special/general order to that effect, subject to such conditions and restrictions as specified in the said order, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

(iv) Such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the AA or RA.

(v) There is no requirement of making a pre-deposit in the case of departmental appeal.

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Common provisions in case of appeal by the aggrieved person (taxpayer) and Departmental appeal

(I) Memorandum of cross objections

A memorandum of cross-objections to the Appellate Tribunal, if any, shall be filed electronically in FORM GST APL-06.

However, the memorandum of cross-objections may be filed manually in FORM GST APL-06, only if the Registrar allows the same by issuing a special/general order to that effect, subject to such conditions and restrictions as specified in the said order.

(II) Date of filing appeal

(i) Where the order appealed against is uploaded on the common portal

a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal.

(ii) If the order appealed against is not uploaded on the common portal

the appellant shall submit/ upload a self-certified copy of the said order within a period of 7 days from the date of filing of FORM GST APL-05/ FORM GST APL-07 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

(iii) Where the said self-certified copy of the order is submitted/uploaded after a period of 7 days from the date of filing of FORM GST APL-05/ FORM GST APL-07

a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 on removal of defects, if any, and the date of submission/uploading of such self-certified copy shall be considered as the date of filing of appeal.

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The appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

The appeal and the memorandum of cross objections shall be signed in the prescribed manner.

'Registrar' shall mean a Registrar appointed by the Government for this purpose, and shall include Joint Registrar, Deputy Registrar and Assistant Registrar.

C. Orders of the Appellate Tribunal [Section 113]

(i) The Tribunal, after hearing both sides may

- pass such orders thereon as it thinks fit, **confirming, modifying or annulling** the decision or order appealed against or
- refer the case back to the AA or to the RA, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(ii) Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to hearing of appeal to either side for reason to be recorded in writing.

(iii) The law provides an advisory time limit of 1 year from the date of filing of appeal for the Tribunal to decide the appeal.

(iv) The Tibunal shall send a copy of its order to

- AA/RA/Original adjudicating authority
- Appellant
- Jurisdictional Commissioner or the SGST/UTGST Commissioner

(v) Every order passed by the Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

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Rectification of errors [Section 113(3)]

- The Tribunal can correct its own order for any apparent mistakes, but it has no power of review.
- The Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is noticed in the order by its own accord, or is brought to its notice by the Commissioner or SGST/UTGST Commissioner or the other party to the appeal within a period of 3 months from the date of the order.
- No amendment which has the effect of enhancing an assessment or reducing a refund or ITC or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.

D. Withdrawal of appeal or application filled before the Appellate Tribunal [Rule 113A]

The appellant may, at any time before the issuance of the order, in respect of any appeal filed in FORM GST APL-05 or any application filed in FORM GST APL-07, file an application for withdrawal of the said appeal/application, by filing an application in Form GST APL-05/07W.

Where the final acknowledgment in GST APL-02 has been issued, the withdrawal of the said appeal/application, would be subject to the approval of the Appellate Tribunal within 15 days of filing of such application.

Any fresh appeal/application, as the case may be, filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in A or B above.

7. MANDATORY PRE-DEPOSIT

The right to appeal is a statutory right which operates within the limitation placed on it by the law. One such limitation that is generally applied basis this principle in tax statutes is that an appellant must first deposit the adjudged dues before his appeal can be heard.

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However, an appellant may succeed in his appeal, and hence it would (in retrospect) be unfair to saddle him with this financial burden. To balance these factors, tax laws generally mandate "pre-deposits" so as to discourage frivolous appeals and also safeguard the interest of revenue.

Section 107(6) provides that no appeal shall be filed before the AA, unless the appellant has paid—

(a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him; **and**

(b) a sum equal to 10% of the remaining amount of **tax in dispute** arising from the impugned order in relation to which the appeal has been filed, ***subject to a maximum of ₹ 20 crore (₹ 40 crore in case of IGST*).***

** As per section 20 of the IGST Act.*

However, no appeal shall be filed before (AA) against an order under section 129(3)[1], unless a sum equal to 25% of the penalty has been paid by the appellant.

The payment of pre-deposit ensures deemed stay on the recovery proceedings for the balance amount of demand in dispute.

(10) ABC Pvt. Ltd. received a show cause notice demanding IGST of ₹ 600 crore, penalty of ₹ 100 crore and interest of ₹ 10 crore. The adjudicating authority passed the order confirming the entire demand. While ABC Pvt. Ltd. admits the tax liability, penalty and interest of ₹ 50 crore, ₹ 10 crore and ₹ 1 crore respectively, it wishes to file an appeal to litigate the balance demand amount. The amount of pre-deposit to be made by ABC Pvt. Ltd. for filing the appeal to the AA is computed as under-

(i) Full amount of tax, interest and penalty as admitted by the company, i.e. ₹ 61 crore

(ii) 10% of the tax in dispute, i.e. ₹ 55 crore (10% of ₹ 550 crore) ***subject to a maximum of ₹ 40 crore.***

Therefore, total pre-deposit to be made by the company is ₹ 61 crore (total liability admitted by the company) plus ₹ 40 crore, i.e. ₹ 101 crore. Till the time of final disposal of appeal, there shall be no recovery of demand in dispute from Appellant.

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[1] *Provisions relating to section 129(3) have been discussed in detail in Chapter 21 – Offences and Penalties and Ethical aspects under GST in this Module of the Study Material.*

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Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

(a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him, **and**

(b) ***10% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹20 crore (₹40 crore* in case of IGST), in relation to which appeal has been filed.***

** As per section 20 of the IGST Act*

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount of demand in dispute shall be deemed to be stayed till the disposal of the appeal.[2]

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[2] *It is important to note that if any person files an appeal in accordance with the requirement of section 112(8) (i.e., on payment of prescribed pre-deposit), the recovery proceedings for the balance amount is deemed to be stayed till disposal of the appeal as per section 112(9). However, as the taxpayers were not able to file appeal under section 112 in Appellate Tribunal against the orders of Appellate Authority and therefore, were not able to make the pre-deposit, the tax officers were taking a view that there is no stay against recovery as per section 112(9).*

For this purpose, it has been clarified vide Circular No. 224/18/2024 GST dated 11.07.2024 that taxpayer can make the payment of an amount equal to the amount of pre-deposit by navigating to Services >> Ledgers>> Payment towards demand, from his dashboard on GST portal. The said amount deposited by the taxpayer will be adjusted against the amount of pre-deposit required to be deposited at the time of filing appeal before the Appellate Tribunal. Consequently, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed.

The taxpayer also needs to file an undertaking/ declaration with the jurisdictional proper officer that he will file appeal against the said order of the appellate authority before the Appellate Tribunal, as and when it comes into operation, within the prescribed timelines. On providing the said undertaking and on payment of an amount equal to the amount of pre-deposit, the recovery of the remaining amount of confirmed demand as per the order of the appellate authority will stand stayed.

If any taxpayer has already paid the full amount that was intended to have been paid towards a demand, through a prescribed form. In such cases, the said person can file an application electronically on the common portal, to adjust the payment made towards the said demand. Till the time such functionality is made available on the common portal, the concerned taxpayer may intimate the proper officer about the same, and on such intimation, the proper officer may not insist on recovery.

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Authority	Pre-deposit	
	When the tax involved is CGST	**When the tax involved is IGST**
AA	Admitted CGST liability in full + 10% of the CGST in dispute, ***subject to a maximum of 20 crore rupees****	Admitted IGST liability in full + 10% of the IGST in dispute, ***subject to a maximum of 40 crore rupees***
Appellate Tribunal	Admitted CGST liability in full + ***10% of the CGST in dispute, in addition to the amount deposited before AA as pre-deposit, subject to a maximum of 20 crore rupees****	Admitted IGST liability in full + ***10% of the IGST in dispute, in addition to the amount deposited before AA as pre-deposit, subject to a maximum of 40 crore rupees***

*****Equivalent amount of SGST is also required to be deposited. Therefore, whether the appeal involves CGST+SGST or IGST, in both the cases, the aggregate amount of tax to be deposited or maximum amount (excluding the admitted liability) is the same. For example, for the appeal before AA involving intra-state supplies,* ***the maximum amount of pre-deposit (excluding the admitted liability) would be ₹ 20 crore for CGST + ₹ 20 crore for SGST (i.e. total ₹ 40 crore); whereas for the appeal involving inter-state supplies it would be ₹ 40 crore for IGST.***

(11) ABC Pvt. Ltd. received an adjudication order demanding CGST and SGST of ₹ 200 crore each. ABC Pvt. Ltd. filed an appeal to AA contesting the entire demand. The amount of pre-deposit made by the company for filing the appeal to the AA is ₹ 20 crore [10% of ₹ 200 crore (tax in dispute)]. Equivalent amount has been paid for SGST too. Thus, a total of ₹ 40 crore has been paid by the company as pre-deposit for filing the appeal to the AA. The AA heard the appeal and decided in favour of the department confirming the entire demand. The company filed an appeal to the Appellate Tribunal. ***The amount of pre-deposit made by the company for filing the appeal before the Tribunal is ₹ 20 crore [10% of ₹ 200 crore (tax in dispute)]. Equivalent amount has been paid for SGST too. Thus, a total of ₹ 40 crore (CGST plus SGST) has been paid by the company as pre-deposit for filing the appeal to the Appellate Tribunal.***

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(12) ABC Pvt. Ltd. wishes to file an appeal with the Appellate Tribunal against an order of the AA demanding IGST of ₹ 1,200 crore. The company admits the liability of ₹ 100 crore but wishes to litigate the balance demand amount and thus, files an appeal with the Appellate Tribunal. The amount of pre-deposit to be made by ABC Pvt. Ltd. for filing the appeal to the Appellate Tribunal is computed as under-

(i) Full amount of tax, interest and penalty as admitted by the company, i.e. ₹ 100 crore

(ii) ***10% of the tax in dispute, i.e. ₹ 110 crore (10% of ₹ 1,100 crore) subject to a maximum of ₹ 40 crore***

Therefore, total pre-deposit to be made by the company before filing an appeal in the Appellate Tribunal is ₹ 100 crore (total liability admitted by the company) plus ₹ 40 crore, i.e. ₹ 140 crore.

Interest on refund of pre-deposit [Section 115]

If the pre-deposit made by the appellant before the AA or the Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest as provided under section 56 shall be payable from the date of payment of the amount (and not from the date of the order of the AA or of the Tribunal) till the date of refund of such amount.

8. PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE APPELLATE AUTHORITY OR THE APPELLATE TRIBUNAL

(i) Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the 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.

(ii) Exceptions

However, the rule provides the following exceptional circumstances where the production of additional evidence before the AA or the Tribunal could be allowed:

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(a) where the adjudicating authority or, as the case may be, the AA has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the AA; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the AA any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(iii) No additional evidence shall be admitted unless the AA or the Appellate Tribunal records in writing the reasons for its admission.

(iv) The AA or the Appellate Tribunal shall not take any additional evidence unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the additional evidence produced by the appellant.

(v) The provisions of this rule shall not affect the power of the AA 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.

9. APPEARANCE BY AUTHORISED REPRESENTATIVE [SECTION 116]

Any person who is entitled or required to appear before a GST Officer or the AA or the Tribunal, in connection with any proceedings under the CGST Act, may appear through authorised representative (except when he is required under the Act to appear personally for examination on oath or affirmation)

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(i) Who can be authorized representative?

Broadly an authorised representative can be a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or a GST Practitioner. It is also provided that specified indirect tax gazetted officers having served for atleast 2 years, can appear as authorised representative after one year from the date of their retirement/resignation.

(ii) Disqualifications for authorized representative

The GST law also provides some disqualifications for an authorised representative. Section 116(3) lays down that no person,—

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceedings under the CGST Act/ SGST Act/ UTGST Act/IGST Act or under the earlier 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 and/or services; or

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

(d) who has been adjudged as an insolvent,

shall be qualified to represent any person—

(i) for all times in case of persons referred to in clauses (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(iii) Any person who has been disqualified under the provisions of the SGST Act/ UTGST Act shall be deemed to be disqualified under the CGST Act also.

10. FINANCIAL AND ADMINISTRATIVE POWERS OF PRESIDENT [SECTION 114]

The president shall exercise the prescribed financial and administrative powers over the appellate tribunal.

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11. APPEAL TO THE HIGH COURT [SECTION 117]

(i) Appealable orders

The law provides that any person (whether department or other person), aggrieved by any order passed by the State Benches of the Tribunal, may file an appeal to the High Court.

The Appellate Tribunal is the final fact finding authority.

The High Court may admit such appeal if it is satisfied that the case involves a **substantial question of law.**

✪ Substantial question generally mean question that must be answered by applying relevant legal principles to interpret the law. This is distinct from a question of fact that must be answered by evaluating the relevant facts or evidences as well as inferences arising from those facts.

✪ Unlike answer to question of facts which are dependent on particular circumstances or factual situations, answers to questions of law being based on legal principles, can be applied to many situations.

Recently, the Supreme Court, in the matter of *Nazir Mohamed v. J. Kamala And Ors. on 27 August, 2020* pronounced that to be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

For instance, the question as regards applicability of an exemption notification to a taxpayer due to two possible interpretations of the notification could be a question of law. Conversely, determination of the quantum of the exemption available to a taxpayer could be a question of fact.

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(ii) Time limit for filing appeal

Appeals to the High Court are to be filed within 180 days from the date on which the order appealed against is received by the aggrieved person. However, the High Court has the power to condone the delay on being satisfied of sufficient cause for the same.

(iii) Form of appeal

The appeal shall be filed in form GST APL 08.

(iv) Decision of the High Court

On being satisfied that a substantial question of law is involved, the High Court shall formulate that question, and the appeal shall be heard only on the question so formulated. However, the High Court has the power to hear the appeal on any other substantial question of law, if it is satisfied that the case involves such question.

The High Court shall decide the questions of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. The High Court may determine any issue which has not been determined by the Tribunal (State Benches) or has been wrongly determined by the State Benches, by reason of a decision on such question of law.

The Code of Civil Procedure relating to appeals to High Court shall apply to the appeals before the High Court under this section.

The appeal shall be heard by a bench of not less than two judges, and the points on which they differ, if any, shall, then, be heard, upon that point only by one or more judges of the High Court. The final judgment on the point shall be decided by majority of all Judges who heard the case, including those first heard it.

Deposit of all tax dues is required to be made; otherwise the inherent powers of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.

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12. APPEAL TO THE SUPREME COURT [SECTION 118]

The law provides for appeals to the Supreme Court from **any judgment or order passed by the High Court**, in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, **the High Court certifies to be a fit one**, for appeal to the Supreme Court.

A (direct) appeal shall also lie to the Supreme Court from any orders passed by the **Principal Bench of the Tribunal.**

The provision of the Code of Civil Procedure relating to appeals to the Supreme Court shall apply to appeals before the Supreme Court 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.

13. SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL ETC. [SECTION 119]

Sums due to the Government as a result of an order passed by the Principal Bench/State Benches of 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.

14. APPEAL NOT TO BE FILED IN CERTAIN CASES [SECTION 120]

In tax disputes, the tax department is always an opposite party. From a practical standpoint, many appeals at the tribunal, High Court, Supreme Court levels are instituted by the tax department.

This section contains provisions that aim at limiting the filing of appeals by the CGST officers in non-complex matters or the matters involving small tax amount. While providing for non-filing of appeal by the CGST officers in certain cases, this

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section also provides that such steps should not stop the tax department to file appeal in other similar cases.

(i) 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.

(ii) 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.

(iii) 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).

(iv) 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.

Clarification regarding monetary limits for filing appeals or applications or Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court[3]

Following monetary limits have been fixed for filing appeals/ applications/ Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court subject to specified exclusions:-

Appellate Forum	Monetary Limit (amount involved in ₹)
GSTAT	20 Lakh
High Court	1 Crore
Supreme Court	2 Crore

Amount to be considered for applying the monetary limit for filing appeal has been explained in the below table in relation to the category of disputes:-–

[3] *Circular No. 207/1/2024 GST dated 26.06. 2024.*

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S. No.	Dispute pertains to demand of	Amount to be considered for applying the monetary limit for filing appeal
1.	Tax (with or without penalty and/or interest) only	Aggregate of the amount of tax in dispute (including CGST, SGST/ UTGST, IGST and Compensation Cess)
2.	Interest only	Amount of interest
3.	penalty only	Amount of penalty
4.	late fee only	Amount of late fee
5.	Interest, penalty and/or late fee (without involving any disputed tax amount)	Aggregate of amount of interest, penalty and late fee
6.	Erroneous refund	Amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess)

Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case

In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

Exclusions - Monetary limits specified above shall not be applicable in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

i. Where any provision of GST law has been held to be ultra vires to the Constitution of India; or

ii. Where any rules/regulations made under GST law have been held to be ultra vires the parent Act; or

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iii. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the GST law or the Rules made there under; or

iv. Where the matter is related to -

   a. Valuation of goods/services; or

   b. Classification of goods/services; or

   c. Refunds; or

   d. Place of Supply; or

   e. Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/ circular/order/instruction etc.; or

v. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or

vi. Any other case or class of cases, where it is necessary to contest in the interest of justice or revenue.

Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same/similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.

15. NON APPEALABLE DECISIONS AND ORDERS [SECTION 121]

Section 121 lays down that no appeals whatsoever can be filed against the following orders:-

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the Act; or

(d) an order passed under section 80 (payment of tax in instalments).

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TEST YOUR KNOWLEDGE

1. *Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act? Explain the related provisions under the CGST Act.*

2. *Describe the provisions relating to Departmental appeal to Appellate Authority under section 107.*

3. *With reference to sections 107(6) and 112(8), specify the amount of mandatory pre-deposit which should be made along with every appeal made before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings?*

4. *With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.*

5. *The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.*

6. *In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of ₹ 280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act 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, determine the amount of pre-deposit to be made by the company for filing the said appeal.

7. *With reference to the provisions of section 121, specify the orders against which no appeals can be filed.*

8. *Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates 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 correct.*

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You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal.

9. *With reference to the provisions of section 120, list the cases in which appeal is not to be filed and also specify other relevant provisions in this respect.*

ANSWERS

1. Yes, any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act has the right to appeal to the Appellate Authority under section 107. The appeal should be filed within 3 months from the date of communication of such order or decision. However, the Appellate Authority has the power to condone the delay of up to 1 month in filing the appeal if there is sufficient cause for the delay. The appeal can be filed only when the admitted liability and 10% of the disputed tax amount, subject to a maximum of ₹ 20 crore. (₹ 40 crore in case of IGST) is paid as pre-deposit by the appellant.

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Further, no appeal can be filed against the following orders in terms of section 121:-

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the Act; or

(d) an order passed under section 80 (payment of tax in installments).

2. Section 107(2) provides that Department can file a "review application/appeal" with the Appellate Authority.

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order to satisfy himself as

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to the legality or propriety of the said decision /order. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority [Section 107(3)]. There is no requirement of making a pre-deposit in case of departmental appeal.

3. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

(a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order, subject to a maximum of ₹ 20 crore. (₹ 40 crore in case of IGST)

However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.

Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits

(a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) 10% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹ 20 crore (₹ 40 crore in case of IGST), in relation to which appeal has been filed.

The above limits are applicable for the pre-deposits to be made under the CGST Act. Equal amount of pre-deposit is payable under the respective SGST Act as well.

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Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

4. Section 2(99) defines "Revisional Authority" as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108.

Section 108 of the Act authorizes such "revisional authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, 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 of India, he may, if necessary, can revise the order after giving opportunity of being heard to the person concerned. The "revisional authority" can also stay the operation of any order passed by his subordinates pending such revision.

The "revisional authority" shall not revise any order if-

(a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or

(b) the period specified under section 107(2) has not yet expired or more than 3 years have expired after the passing of the decision or order sought to be revised.

(c) the order has already been taken up for revision under this section at any earlier stage.

(d) the order is a revisional order

5. The statement is incorrect.

Though the Appellate Tribunal does have the power to refuse to admit an appeal, it has the discretion of refusing the admission of an appeal in the following specific cases where –

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

does not exceed ₹ 50,000.

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6. Section 107(6) read with section 20 of the IGST Act provides that no appeal shall be filed with the Appellate Authority unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 40 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed ₹ 40 crore (for tax in dispute) where IGST demand is involved.

In the given case, the amount of pre-deposit for filing an appeal with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

(i) ₹ 28 crore [10% of the amount of tax in dispute, viz. ₹ 280 crore]

or

(ii) ₹ 40 crore,

whichever is less.

= ₹ 28 crore.

Further, section 112(8) provides that no appeal shall be filed with the Appellate Tribunal unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of ₹ 40 crores.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is:

(i) ₹ 28 crores [10% of the amount of tax in dispute, viz. 280 crores]

or

(ii) ₹ 40 crores,

whichever is less.

= ₹ 28 crores.

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7. As per section 121, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:—

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the CGST Act; or

(d) an order passed under section 80 (payment of tax in instalments).

8. As per section 117(1), an appeal against orders passed by the State Benches of the Tribunal would lie to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the Principal Bench of the Tribunal would lie to the Supreme Court and not High Court. As per section 109(5) of the Act, only the Principal Bench of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the Principal Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

9. (1) 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.

(2) 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.

(3) 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).

(4) 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.

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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has come into force from 01.08.2019. However, the amendments made in section 2(4) of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, applicability or otherwise of such amendment for May 2026, September 2026 and/or January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of section 2(4) are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
Section 2(4) **"adjudicating authority"** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	**Section 2(4)** **"adjudicating authority"** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, ***National Appellate Authority for Advance Ruling,*** the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171;	The definition of adjudicating authority proposed to be amended to exclude the proposed National Appellate Authority for Advance Ruling from the purview of adjudicating authority.

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or, January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the existing provisions of section 107 and 112 of the CGST Act, 2017 are compared with the provisions as amended by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2025	Remarks
107(6)	No appeal shall be filed under sub-section (1), unless the appellant has paid- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order subject to a	No appeal shall be filed under sub-section (1), unless the appellant has paid- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty crore rupees, in relation to which the appeal has been filed.	Section 107(6) is being amended to provide for 10% mandatory pre-deposit of penalty amount for appeals before Appellate Authority in cases involving only demand of penalty without any

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	maximum of twenty crore rupees, in relation to which the appeal has been filed. Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.	***Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent of the said penalty has been paid by the appellant.***	demand for tax.
112(8)	No appeal shall be filed under sub-section (1), unless the appellant has paid— (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and (b) a sum equal to ten per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order subject to a	No appeal shall be filed under sub-section (1), unless the appellant has paid— (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and (b) a sum equal to ten per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order subject to a maximum of twenty crore rupees, in relation to which the appeal has been filed.	Section 112(8) is being amended to provide for 10% mandatory pre-deposit of penalty amount for appeals before Appellate Tribunal in cases involving only demand of penalty without any demand for tax.

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	maximum of twenty crore rupees, in relation to which the appeal has been filed.	***Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten per cent of the said penalty, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.***	

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CHAPTER 23

ADVANCE RULING

For the sake of brevity, the terms "Authority for Advanced Ruling", "Appellate Authority for Advance Ruling", have been referred to as AAR and AAAR respectively in this Chapter. The section numbers referred to in the chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend and explain the terms-advance ruling, applicant, application, authority and appellate authority for the purpose of advance ruling with reference to the statutory definitions of such terms.
- understand and describe the various aspects relating to procedure to be followed for filing an application for advance ruling and apply it in practical scenario.
- list the matters on which advance ruling can be sought.
- gain knowledge regarding the applicability of advance ruling.
- identify and appreciate the powers of Authority and Appellate Authority.

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1. INTRODUCTION

An advance ruling helps the applicant in planning his activities which are liable for payment of GST, well in advance. It also brings certainty in determining the tax liability, as the ruling given by the Authority for Advance Ruling is binding on the applicant as well as concerned Officer or the Jurisdictional Officer in respect of the applicant. Further, it helps in avoiding long drawn and expensive litigation at a later date. Seeking an advance ruling is inexpensive and the procedure is simple and expeditious.

It thus provides certainty and transparency to a taxpayer with respect to an issue which may potentially cause a dispute with the tax administration. A legally constituted body called Authority for Advance Ruling (AAR) can give a binding ruling to an applicant who is a registered under GST or is desirous to be registered. The advance ruling given by the Authority can be appealed before an Appellate authority for Advance Ruling (AAAR). There are time lines prescribed for passing an order by AAR and by AAAR.

The broad objectives for setting up a mechanism of Advance Ruling are:

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

Chapter XVII – Advance Ruling [Sections 95 to 106] of the CGST Act and Chapter XII – Advance Ruling [Rules 103 to 107A], stipulate the provisions relating to advance ruling. State GST laws also prescribe identical provisions in relation to advance ruling.

Provisions of advance ruling under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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2. RELEVANT DEFINITIONS

- **Advance ruling** means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (*2*) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; [Section 95(a)].
- **Appellate Authority** means the Appellate Authority for Advance Ruling referred to in section 99. [Section 95(b)].
- **Applicant** means any person registered or desirous of obtaining registration under this Act; [Section 95(c)].
- **Application** means an application made to the Authority under sub-section (*1*) of section 97; [Section 95(d)].
- **Authority** means the Authority for Advance Ruling referred to in section 96; [Section 95(e)].

3. QUESTIONS FOR WHICH ADVANCE RULING CAN BE SOUGHT [SECTION 97]

The definition of advance ruling given under the Act is a broad one. Under GST, advance ruling can be obtained on a proposed transaction as well as a transaction already undertaken by the appellant.

Advance Ruling can be sought for the following questions:-

(a) classification of any goods or services or both

(b) applicability of a notification issued under the provisions of CGST Act

(c) determination of time and value of supply of goods or services or both

(d) admissibility of input tax credit of tax paid or deemed to have been paid

(e) determination of the liability to pay tax on any goods or services or both

(f) whether applicant is required to be registered

(g) whether any particular thing done by the applicant with respect to any goods

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or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Note: Matters which cannot be questioned before AAR are:-

- Question already pending in any proceedings in the case of an applicant under any of the provisions of the Act
- Question already decided in any proceedings in the case of an applicant under any of the provisions of the Act

4. AUTHORITY FOR ADVANCE RULING (AAR) AND APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR) [SECTION 96 AND 99]

- The Authority for advance ruling constituted under the provisions of State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory under the CGST Act, 2017 also.
- The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. [Rule 103]
- The Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory under the CGST Act, 2017 also.
- Thus, it can be seen that both the Authority for Advance Ruling (AAR) & the Appellate Authority for Advance Ruling (AAAR) is constituted under the respective State/Union Territory Act and not the Central Act. This would mean that the ruling given by the AAR & AAAR will be applicable only within the jurisdiction of the concerned state or union territory. It is also for this reason that questions on determination of place of supply cannot be raised with the AAR or AAAR.

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5. PROCEDURE FOR OBTAINING ADVANCE RULING [SECTION 98]

- The applicant desirous of obtaining advance ruling should make an application to the AAR in a prescribed form and manner (on the common Portal) and shall be accompanied by a fee of five thousand rupees (₹ 5,000 each towards CGST and SGST)
- The application, verification contained therein and all relevant documents accompanying such application needs to be signed in the prescribed manner.
- Upon receipt of an application, the AAR shall send a copy of application to the concerned officer and, if necessary, call for all relevant records from the concerned officer. The relevant records called for by AAR shall be returned to the concerned Officer, as soon as possible.
- The AAR may then examine the application along with the records called for and after hearing the applicant or his authorized representative will pass an order either admitting or rejecting the application.
- Application for advance ruling will not be admitted in the cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.
- If the application is rejected, it should be by way of a speaking order giving the reasons for rejection and the application shall not be rejected unless an opportunity of hearing has been given to the applicant.
- The copy of Order admitting or rejecting the application shall be sent to the applicant and to the concerned officer.
- On admission of the application, the AAR shall pronounce its ruling within 90 days of receipt of the application. Before giving its ruling, it shall examine the application and any further material placed before it by the applicant or obtained by the Authority.
- Before pronouncing the Ruling, the AAR provides an opportunity of being heard to the applicant or his authorized representative as well as the concerned officer or his authorized representative.

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- If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.
- A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

6. APPEALS AGAINST ORDER OF AAR TO THE APPELLATE AUTHORITY [SECTION 100 AND 101]

- If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with the AAAR.
- Any appeal must be filed within 30 days from the receipt of the Order of the Advance Ruling Authority. The Appellate Authority may allow for an additional 30 days for filing an appeal, if it is satisfied that there was a sufficient cause for delay in presenting 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 ₹ 10,000/- each under CGST and SGST Act. However, if the concerned officer or jurisdictional officer is aggrieved by the decision of AAR, then no fee is required to be paid.
- The appeal, the verification contained therein and all the relevant documents accompanying such appeal shall be signed-

  (a) in the case of the concerned officer or jurisdictional officer, by an officer authorised in writing by such officer; and

  (b) in the case of an applicant, in the specified manner.
- The Appellate Authority shall pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal.

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- The said authority can pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to by the Advance Ruling Authority in the case of the difference of opinion.
- A copy of the advance ruling pronounced by the Appellate Authority should be signed by the members, certified in the prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.

7. RECTIFICATION OF MISTAKES [SECTION 102]

- The law gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of 6 months from the date of the order.
- Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the concerned or the jurisdictional officer.
- If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.

8. APPLICABILITY OF ADVANCE RULING [SECTION 103]

- An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant. This clearly means that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.
- The law does not provide for a fixed time period for which the ruling shall apply. Instead, it has been provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have not changed.

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9. ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 104]

- Section 104 states the circumstances under which the ruling would be considered as void and hence would lose its binding value.
- If the Authorities (AAR and Appellate Authority) finds that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.
- Consequently, all the provisions of the CGST Act shall apply to the applicant as if such advance ruling had never been made.
- An order declaring advance ruling to be void can be passed only after hearing the applicant / appellant.
- The period beginning with the date of such advance ruling and ending with the date of order shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74 ***or sub-sections (2) and (7) of section 74A.***
- 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 AAR AND AAAR [SECTION 105 AND 106]

- Both 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. Both the authorities are however 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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LET US RECAPITULATE

ADVANCE RULING

Means

Decision provided by the Authority for advance ruling /Appellate Authority for advance ruling to applicant → on specified matters/ questions → related to supply of goods and/or services → undertaken or proposed to be undertaken by the applicant.

Questions for which advance ruling can be sought [Section 97]

Questions for seeking advance ruling

- Classification of any goods and/or services
- Applicability of a notification
- Determination of time & value of supply of goods and/or services.
- Admissibility of ITC of tax paid or deemed to have been paid.
- Determination of the liability to pay tax.
- Whether applicant is required to be registered.
- Whether any particular thing with respect to goods and/or services amounts to supply within the meaning of that term.

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PROCEDURE FOR OBTAINING ADVANCE RULING (AR) [SECTION 98]

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RECTIFICATION OF MISTAKES [SECTION 102]

- AAR & AAAR can amend their order within 6 months from date of order.
- Such mistake may be noticed by authority on its own or brought to notice by applicant or the concerned officer /jurisdictional officer.
- If tax liability increases or ITC reduces due to such rectification, applicant must be heard.

APPLICABILITY OF ADVANCE RULING [SECTION 103]

- Binding only on applicant and concerned officer/jurisdictional officer. Not applicable to similarly placed other taxable persons in the State.
- Binding till the period when law, facts/circumstances supporting the original advance ruling have not changed.

If obtained by fraud /suppression of material facts/ misrepresentation of facts → It will be deemed that such advance ruling had never been made. → Order to be passed only after hearing the applicant/ appellant. → Copy of order to be sent to applicant, concerned officers and the jurisdictional officer.

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TEST YOUR KNOWLEDGE

1. *Which are the questions for which advance ruling can be sought?*
2. *What is the objective of having a mechanism of Advance Ruling?*
3. *To whom will the Advance Ruling be applicable?*
4. *What is the time period for applicability of Advance Ruling?*
5. *Can an advance ruling given be nullified?*
6. *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) 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?

   (iii) 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?

   (iv) 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?

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7. *Briefly explain the procedure to be followed by the Authority for Advance Ruling on receipt of the application for Advance Ruling under section 98.*

8. *Briefly explain whether an appeal could be filed before the Appellate Authority against order of Authority for Advance Ruling (AAR), with reference to sections 100 and 101.*

ANSWERS

1. Advance Ruling can be sought for the following questions:

(a) classification of any goods or services or both;

(b) applicability of a notification issued under provisions of the GST Act(s);

(c) determination of time and value of supply of goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services under the Act;

(f) whether applicant is required to be registered under the Act;

(g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

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

(i) provide certainty in tax liability in advance in relation to an activity being undertaken or proposed to be undertaken by the applicant;

(ii) helps taxpayer in financial planning and making new investments

(iii) attract Foreign Direct Investment (FDI);

(iv) reduce litigation;

(v) pronounce ruling expeditiously in transparent and inexpensive manner.

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3. The advance rulings are given in personem and not in rem, that is, not to the whole world and therefore, rulings cannot apply to other similar cases. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who sought it in respect of any matter referred to in section 97(2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

4. The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 103(2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall continue to be in force so long as the transaction continues and so long as there is no change in law, facts or circumstances.

5. Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) shall apply to the applicant as if such advance ruling had never been made. An order declaring advance ruling to be void can be passed only after hearing the applicant.

6. (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c)]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.

(ii) Section 103(2) stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Ranjan has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.

(iii) No, the tax advisor's view is not correct. As per section 100, if the applicant is aggrieved with the finding of the AAR, he can file an appeal

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with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/ jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

Such appeal must be filed within 30 days from the date on which the ruling sought to be appealed against is communicated. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.

(iv) Section 103 provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sambhav will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.

7. The procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of the application for advance ruling under section 98 is as under:-

1. Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.

2. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.

3. Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

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4. If the application is rejected, it should be by way of a speaking order giving the reasons for rejection and only after giving an opportunity of being heard to the applicant.

5. If the application is admitted, the AAR shall pronounce its ruling on the question specified in the application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.

6. Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/ SGST.

7. If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the Appellate Authority for hearing the issue

8. The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.

9. A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

8. Yes, the concerned officer, jurisdictional officer or applicant aggrieved by any advance ruling may appeal to the Appellate Authority for Advance Ruling (AAAR) within 30 days [extendible by another 30 days] from the date on which such ruling is communicated to him in the prescribed form and manner.

The AAAR must pass an order confirming or modifying the ruling appealed against within a period of 90 days of the filing of an appeal, after hearing the parties to the appeal.

If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question under appeal. A copy of the advance ruling pronounced by the AAAR is sent to applicant, concerned officer, jurisdictional officer and to the Authority.

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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 had come into force from 01.08.2019. However, the amendments made in the advance ruling provisions of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, applicability or otherwise of such amendment for May 2026, September 2026 and/or January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the relevant existing provisions of the advance ruling are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
Section 95(a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	**Section 95(a)** "advance ruling" means a decision provided by the Authority or the Appellate Authority **or the National Appellate Authority** to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100 **or of section 101C**, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	New clause (f) is being inserted in section 95 of the CGST Act to define the "National Appellate Authority for Advance Ruling". Definition of advance ruling is being amended to provide that the decision given by the National Appellate Authority will also be an advance ruling.

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New clause (f) in section 95	
National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A.	
New section 101A: Constitution of National Appellate Authority for Advance Ruling	New sections 101A, 101B and 101C are being inserted in the CGST Act so as to provide for constitution, qualification, appointment, tenure, conditions of services of the National Appellate Authority for Advance Ruling; to provide for procedures to be followed for hearing appeals against conflicting advance rulings pronounced on the same question by the Appellate Authorities of two or more States or Union territories in case of distinct persons; and to provide that the National Appellate Authority shall pass order within a period of ninety days from the date of filing of
(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B. **(2) The National Appellate Authority shall consist of-** **(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;** **(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;** **(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.** **(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee :** **Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most**	

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Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office : **Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.** **(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.** **(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.** **(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.** **(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed :** **Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.** **(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains**	the appeal respectively.

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the age of seventy years, whichever is earlier and shall also be eligible for reappointment. **(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.** **(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office :** **Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.** **(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who -** **(a) has been adjudged an insolvent; or** **(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or** **(c) has become physically or mentally incapable of acting as such President or Member; or** **(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or** **(e) has so abused his position as to render his continuance in office prejudicial to the public interest:** **Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.**	

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(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard. **(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).** **(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.**	
<u>New section 101B: Appeal to National Appellate Authority</u>	
(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority : **Provided that the officer shall be from the States in which such advance rulings have been given.**	

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(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers : **Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer :** **Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.** ***Explanation*. - For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.** **(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.**	
<u>New section 101C: Order of National Appellate Authority</u>	
(1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.	

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(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority. **(3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.** **(4) A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.**		
Section 102 The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:	**Section 102** The Authority or the Appellate Authority **or the National Appellate Authority** may amend any order passed by it under section 98 or section 101 **or section 101C, respectively,** so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority **or the National Appellate Authority** on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant, **appellant, the Authority or**	Section 102 of the CGST Act is being amended so as to allow the National Appellate Authority to amend any order passed by it so as to rectify any error apparent on the face of the record, within a period of six months from the date of the order, except under certain specified circumstances.

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	the Appellate Authority within a period of six months from the date of the order:	
New sub-section (1A) of section 103		
(1A) The Advance Ruling pronounced by the National Appellate Authority under this Chapter shall be binding on - **(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961);** **(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.**		Section 103 of the CGST Act is being amended so as to provide that the advance ruling pronounced by the National Appellate Authority shall be binding, unless there is a change in law or facts, on the applicants, being distinct person and all registered persons having the same Permanent Account Number and on the concerned officers or the jurisdictional officers in respect of the said applicants and the registered persons having the same Permanent Account Number.
Section 103(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.	**Section 103(2)** The advance ruling referred to in sub-section (1) **and sub-section (1A)** shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.	
Section 104(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under	**Section 104(1)** Where the Authority or the Appellate Authority **or the National Appellate Authority** finds that	Section 104 of the CGST Act is being amended so as to provide that advance ruling pronounced

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sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:	advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 **or under section 101C** has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:	by the National Appellate Authority shall be void where the ruling has been obtained by fraud or suppression of material facts or misrepresentation of facts.
Section 105: Powers of Authority and Appellate Authority (1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding— (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.	**Section 105: Powers of Authority, Appellate Authority and National Appellate Authority** (1) The Authority or the Appellate Authority **or the National Appellate Authority** shall, for the purpose of exercising its powers regarding— (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) issuing commissions and compelling production of books of account and other records,	Section 105 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of exercising its powers under the Act.

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(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.	have all the powers of a civil court under the Code of Civil Procedure, 1908. (2) The Authority or the Appellate Authority **or the National Appellate Authority** shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.	
Section 106: Procedure of Authority and Appellate Authority. The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.	**Section 106: Procedure of Authority, Appellate Authority and National Appellate Authority.** The Authority or the Appellate Authority **or the National Appellate Authority** shall, subject to the provisions of this Chapter, have power to regulate its own procedure.	Section 106 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have power to regulate its own procedure.

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CHAPTER 24

MISCELLANEOUS PROVISIONS

The words 'the Act' wherever used in the Chapter refer to the CGST Act, unless otherwise specified. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. Examples/Illustrations/Questions and Answers, as the case may be, given in the Chapter are based on the position of GST law existing as on 30.04.2025.

LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- understand and explain the miscellaneous provisions relating to documents namely, presumption as to documents in certain cases, admissibility of microfilms, facsimile copies of documents and computer printouts as documents and as evidence etc.
- understand and explain the miscellaneous provisions relating to furnishing, collection and publication of information namely, bar on disclosure of information, disclosure of information by a public servant, publication of information in respect of person in certain cases etc.
- understand and explain the miscellaneous provisions relating to removal of difficulties, delegation of powers, omission repeal and saving and other provisions
- appreciate and explain the provisions relating to administration of CGST and IGST.

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1. INTRODUCTION

Chapter XXI of the CGST Act and Chapter IX of the IGST Act contain the miscellaneous provisions. State GST laws also prescribe identical miscellaneous provisions. Following provisions of said chapters have been discussed in this Chapter:

Chapter XXI of the CGST Act: Miscellaneous		
Category	**Section**	**Particulars**
Documents	144	Presumption as to documents in certain cases
	145	Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence
Furnishing, collection and publication of information	150	Obligation to furnish information return[1]
	151	Power to call for information
	152	Bar on disclosure of information
	158	Disclosure of information by a public servant
	158A	Consent based sharing of information furnished by taxable person
	159	Publication of information in respect of persons in certain cases
Removal of difficulties	153	Taking assistance from an expert
	160	Assessment proceedings, etc., not to be invalid on certain grounds
	161	Rectification of errors apparent on the face of record

[1] Section *150 is discussed in Chapter 13: Returns in Module 2 of this Study Material.*

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	170	Rounding off of tax, etc.
	172	Removal of difficulties
Delegation of powers	164	Power of Government to make rules
	165	Power to make regulations
	166	Laying of rules, regulations and notifications
	167	Delegation of powers
	168	Power to issue instructions or directions
Omission and repeal of earlier laws	173	Amendment of Act 32 of 1994
	174	Repeal and saving
Other provisions	143	Job work procedure[2]
	146	Common Portal
	147	Deemed Exports[3]
	148	Special procedure for certain processes
	149	Goods and services tax compliance rating
	154	Power to take samples
	155	Burden of proof
	156	Persons deemed to be public servants
	157	Protection of action taken under this Act
	162	Bar on jurisdiction of civil courts

[2] Section *143 is discussed in Chapter 16: Job Work in this Module of the Study Material.*

[3] *Section 147 is discussed in Chapter 14: Import and Export under GST in this Module of the Study Material.*

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	163	Levy of fee
	169	Service of notice in certain circumstances
	171	Anti-profiteering measure
Chapter VIII of the IGST Act: Apportionment of Tax and Settlement of Funds & Chapter IX of the IGST Act: Miscellaneous		
Apportionment and settlement	17	Apportionments of tax and settlement of funds
	18	Transfer of input tax credit
	19	Tax wrongfully collected and paid to Central Government or State Government
Removal of difficulties	20	Application of provisions of Central Goods and Services tax Act
	25	Removal of difficulties
Delegation of powers	22	Power to make rules
	23	Power to make regulations
	24	Laying of rules, regulations and notifications
Other provisions	21	Import of services made on or after the appointed day

Apart from the above provisions, provisions of Chapter II: Administration [Sections 3-6] of the CGST Act and the manner of determination of commencement and termination of time as per section 9 of the General Clauses Act, have also been discussed in this Chapter.

Miscellaneous provisions under Chapter XXI of the CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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Documents

2. PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES [SECTION 144]

Presumption generally means 'an act of accepting that something is true until it is proved not true'. Section 144 lays down presumptions that are taken cognizance of by the Court when certain documents (given below in the diagram) are submitted as evidence by the prosecution in a proceeding under the GST law against any person.

As per the Evidence Act, 1872, the contents of a document must be proved by evidence and signature or handwriting of a person on the document must be proved to be of the person of whom it is alleged to be. Further, 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.

Section 144 enables the court of law to make departure from the above general principles, in respect of the documents given in the diagram above, and presume:

- truth of the contents of the document

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- that the signature which purports to be in the handwriting of any particular person is in that person's handwriting
- execution or attestation in the document has been made by the person by whom it purports to have been so executed or attested

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.

Further, the Stamp Act, 1899 provides that a document which is not duly stamped shall be inadmissible in evidence. However, section 144 allows the Court to depart from such general provision by providing that a document shall be admissible in evidence even if it is not duly stamped.

3. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS AND COMPUTER PRINTOUTS AS DOCUMENTS AND AS EVIDENCE [SECTION 145]

'Document' has been defined in section 2(41) of the CGST Act to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000.

Deemed documents

As per section 145(1), the following shall be deemed as 'documents':

- **A micro film** of a document or the reproduction of the image(s) embodied in such micro film, whether enlarged or not;

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Microfilms are films containing microphotographs of a document. Such images are generally provided as negatives.

- **A facsimile copy** of a document;

  A facsimile is a copy or reproduction of a document that is as true to the original source as possible. An exact copy of a document is a facsimile.

- **A statement** contained in a document and included in a printed material **produced by a computer**;

- **Information stored electronically** in any device or media, including any hard copies made of such information.

  It refers to the information stored in digital form, which requires the use of computer hardware and software. Also, such information is normally created and altered in the digital form. This category would include the information stored in ERP systems that are employed by most businesses presently. It also includes printouts of such digital information.

Such documents shall be admissible in any proceedings under the Act, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

Certification

As per section 145(2), a certificate,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) 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.

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Furnishing, Collection and Publication of Information

4. POWER TO CALL FOR INFORMATION & BAR ON DISCLOSURE OF INFORMATION [SECTIONS 151 & 152]

Section 151 lays down as under:

- The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information.
- Information may be sought relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.

Bar on disclosure of information [Section 152]

- No information with respect to any matter given for the purposes of sections 150 or 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner as to enable any particulars to be identified as referring to a particular person without giving an opportunity of being heard to the person concerned.
- No such information shall be used for the purpose of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

Exception reporting

No restriction shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is **desirable in the public interest,** to publish such information.

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5. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT [SECTION 158]

Section 158 lays down the provisions for disclosure of information by a public servant as also maintaining the confidentiality of the same and related penal provisions in the event of contravention of the same.

(i) Information/ documents to be treated as confidential [Section 158(1)]

The following shall be treated as confidential:

(i) all particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or

(ii) all particulars contained in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or

(iii) all particulars contained in any record of any proceedings under the Act.

(ii) Exceptions to section 158(1) - Particulars that can be disclosed [Section 158(3)]

Section 158(3) lays down that notwithstanding anything contained in section 158, the following information may be disclosed:

- **For prosecution**: Any particulars in respect of any such 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 the Act, or any other law for the time being in force; or
- **For carrying out the objects of the Act**: Any particulars to the Central Government or the State Government or to any person acting in the implementation of the Act, for the purpose of carrying out the object of the Act; or
- **For service of notice or recovery of demand**: Any particulars when such disclosure is occasioned by the lawful exercise under the Act of any process for the service of any notice or the recovery of any demand; or

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- **For furnishing information to Court in a proceeding where Government is a party:** Any particulars to a Civil Court in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- **For audit of tax receipts or refunds**: Any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or
- **For inquiry into the conduct of GST officer**: Any particulars where such particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or
- **For enabling levy/realisation of any tax or duty**: Any such particulars to an officer of the Central Government/ by a public servant/ statutory authority/ State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- **By lawful exercise of powers**: 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
- **For inquiry into a charge of misconduct by any professional**: Any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the 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 profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or
- **For data entry on automated system**: 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 where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

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- **For any other law**: Any particulars to an officer of the Government as may be necessary for the purposes of any other law in force in India; and
- **In public interest**: Any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

(iii) Restriction on Courts [Section 158(2)]

Section 158(2) overrides the provisions contained in 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 to in section 158(1). However, this restriction will not apply in respect of disclosures mentioned under sub-section (3).

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.

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- 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 No.	
133	Liability of officers and certain other persons
152	Bar on disclosure of information
158	Disclosure of information by a public servant

The said provision is implemented by rule 163 which provides that where a registered person opts to share the information furnished in—

(a) application for registration in Form GST REG-01 as amended from time to time;

(b) return in Form GSTR-3B for certain tax periods;

(c) Form GSTR-1, as amended in Form GSTR-1A if any, for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time**,

with a system referred to in section 158A(1) (hereinafter referred to as "requesting system"), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods, where applicable, to the common portal.

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**The registered person shall give his consent for sharing of information furnished in Form GSTR-1 above only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.

The common portal shall communicate the information referred in this rule with the requesting system on receipt from the said system-

(a) the consent of the said registered person, and

(b) the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.

Central Government has notified following as the systems with which information may be shared by the common portal based on consent:-

(1) Account Aggregator

(2) Public Tech Platform for Frictionless Credit

"Account Aggregator" means an NBFC which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI[4] and defined as such in the NBFC-Account Aggregator (Reserve Bank) Directions, 2016.

"Public Tech Platform for Frictionless Credit" means an enterprise-grade open architecture information technology platform, conceptualised by the Reserve Bank of India as part of its "Statement on Developmental and Regulatory Policies" dated the 10th August, 2023 and developed by its wholly owned subsidiary, Reserve Bank Innovation Hub, for the operations of a large ecosystem of credit, to ensure access of information from various data sources digitally and where the financial service providers and multiple data service providers converge on the platform using standard and protocol driven architecture, open and shared Application Programming Interface (API) framework.

[4] *under section 45JA of the Reserve Bank of India (RBI) Act, 1934*

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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) Suppliers of goods and services can judge credit worthiness of recipient, before extending him credit.

(d) Bankers can use this provision while making assessment of loan applications.

7. PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES [SECTION 159]

Section 159 confers powers on the Commissioner for publishing names and other particulars of persons in certain cases.

What type of information can be published?	The name of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person.
Who can publish such information?	Commissioner, or any other officer authorised by him in this behalf
What is the manner of publication of information?	The information shall be published in such manner as the Commissioner/authorised officer thinks fit.

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When can the information be published?	Such information shall be published if Commissioner/any other officer authorised by him in this behalf is of the opinion that it is necessary/expedient in public interest to do so.
Is there any additional information which can be published?	In cases of firm, company or association of persons, names of the partners of the firm, directors, managing agents, secretaries and treasures or managers of the company, or the members of the association, as the case may be may also be published, if in the opinion of the Commissioner/authorised officer, circumstances of the case justify it.
What is the limitation on publication of information relating to penalty?	No publication under this section shall be made in relation to any penalty imposed under the Act: • until the time for presenting an appeal to the Appellate Authority under section 107 has expired (three months extendable to further one month) without an appeal having been presented; or • the appeal, if presented, has been disposed of.

8. TAKING ASSISTANCE FROM AN EXPERT [SECTION 153]

Section 153 enables an officer, not below the rank of Assistant commissioner, to take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him. It may be noted that such decision shall be taken having regard to the nature and complexity of the case and the interest of revenue.

example

(1) An IT professional's assistance may be sought where the officer is of the view that information pertaining to a taxable person stored on a computer system does not reveal correct details.

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9. ASSESSMENT PROCEEDINGS, ETC. NOT TO BE INVALID ON CERTAIN GROUNDS [SECTION 160]

Sometimes, proceedings are challenged for their validity merely for reasons of mistakes etc. This provision aims at saving the proceedings from such challenges.

Which proceedings are covered under this provision?	The following proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any provisions of the Act are covered: • Assessment • Re-assessment • Adjudication • Review • Revision • Appeal • Rectification • Notice • Summons • Other proceedings
On which grounds, will such proceedings be not held as invalid?	Such proceedings shall not be held invalid for mere reason of: • Mistake • Defect • Omission if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.
When will the service of any notice, order, or communication	The service of any

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be not called in question?	• Notice • Order • Communication shall not be called in question if: • the notice, order or communication 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 earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order.

10. RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD [SECTION 161]

Section 161 provides for rectification of mistakes/errors apparent on the face of record by any authority. It may be noted that this section overrides the entire Act, except for the provisions of section 160 (discussed above).

Which documents are covered under section 161?	• Decision • Order • Any notice • Certificate • Any other document
Who can rectify the errors apparent on the face of record?	• Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error which is apparent on the face of record in such documents.
What type of mistakes or errors can be rectified?	Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled

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	law that a decision on a debatable point of law is not a mistake apparent from the record.
When does the Authority rectify the mistakes/errors?	The authority may rectify the mistake/error: • *suo moto* • when such error or mistake is brought to its notice by a GST officer • when such error or mistake is brought to notice by the affected person within a period of 3 months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.
What is the time limit for rectification?	No rectification can be made after a period of six months from the date of issue of such decision/ order/ notice/ certificate/ any other document. However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.
What type of precautions should be taken at the time of rectification?	Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.

11. ROUNDING OFF OF TAX ETC. [SECTION 170]

Amounts covered

The principle of rounding off laid out in section 170 applies to:

- ❑ tax
- ❑ interest
- ❑ penalty
- ❑ fine

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- any other sum payable under the provisions of the Act
- refund
- any other sum due under the provisions of the Act.

It may be noted that this provision does not apply to tax invoices. Thus, it is not required to round up figures in tax invoices. Only consolidated payment to Government has to be rounded off.

Rounding off principle

Amount contains part of a rupee consisting of paise, and such part is fifty paise or more	Increase to one rupee
Amount contains part of a rupee consisting of paise, and such part is less than fifty paise	Ignore such part

Delegation of Powers

12. POWER OF GOVERNMENT TO MAKE RULES & REGULATIONS [SECTIONS 164 & 165]

Section 164 empowers the Government to make rules on the recommendations of the GST Council for carrying out the provisions of the Act.

The following are noteworthy in this regard:

- The Government may make rules for all or any of the matters which by the 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 rules may also be issued with retrospective effect but not from a date earlier than the date on which the provisions of the Act have come into force.
- The rules may provide for a penalty not exceeding ₹ 10,000 for committing breach of any rule.

Section 165 empowers the Board to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act.

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Thus, while the rule making power lies with the Government, the regulation making power has been delegated to the CBIC (Board).

The Central Government and the Board have been vested with the similar powers of making rules and regulations respectively under sections 22 & 23 of the IGST Act also.

13. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS [SECTION 166]

Section 166 provides that the following delegated legislation under the Act shall be laid before each house of the Parliament, while it is in session, for a total period of 30 days which may be comprised in one session, or in two or more successive sessions:

- every rule made by the Government
- every regulation made by the Board
- every notification issued by the Government

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.

Similar provisions relating to laying of rules, regulations and notification etc. have also been prescribed under section 24 of the IGST Act.

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14. DELEGATION OF POWERS [SECTION 167]

Section 167 prescribes that the powers conferred on any authority/officer can also be exercised by another authority/officer, if the Commissioner so directs by way of notification, subject to such conditions as may be specified in the notification.

Many notifications have been issued under this provision to delegate powers to lower officers, officers of State Government (by Central Government) and officers of Central Government (by State Government).

15. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS [SECTION 168]

Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act.

All officers and all other persons employed in the implementation of the Act observe and follow such 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.

The meaning of Commissioner for the purposes of following provisions is Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in these said sections with the approval of the Board:

Section	Particulars
Section 2(91)	Meaning of 'proper officer'
Section 5(3)	Delegation of powers by Commissioner
Section 25(9)(b)	Notification of person or class of persons for grant of Unique Identity Number
Section 35(3)	Notification of class of taxable persons required to maintain additional accounts or documents

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Section 35(4)	Notification of class of taxable persons permitted to maintain accounts in a prescribed manner where the Commissioner considers that such persons are not in a position to keep and maintain accounts in accordance with the general provisions
Section 37(1)	Details of outward supplies (extension of time limit)
Section 39(6)	Return (extension of time limit)
Section 44	Annual return
Sub-sections (4) and (5) of section 52	Statement for tax collection at source and Annual Statement by Electronic Commerce Operator (extension of time limit)
Section 143(1) except second proviso thereof	Job-work procedure (except extension of time limits of 1 year and 3 years)
Section 158(3)(l)	Exceptions to bar on disclosure of information by public servant
Section 167	Delegation of powers

16. POWER OF GOVERNMENT TO EXTEND TIME LIMIT IN SPECIAL CIRCUMSTANCES [SECTION 168A]

The Government is empowered to extend the time limits provided under the CGST Act in respect of actions which cannot be completed or complied with due to force majeure. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively.

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Omission, Repeal and Saving

17. OMISSION AND REPEAL OF EARLIER LAWS [SECTIONS 173 AND 174]

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, such provisions are no more required and hence have been omitted and are not in force.

Repeal and saving [Section 174]

The following legislations stand repealed from July 1, 2017, i.e. the date of commencement of the CGST Act:

- 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

The repeal under section 174 or amendment under section 173 shall not:

- ❑ revive anything not in force or existing at the time of such amendment or repeal - **No new effect**
- ❑ affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder - **No effect on previous position**
- ❑ affect any right, privilege, obligation, or liability acquired, accrued or incurred under the previous law - **No effect on rights or liabilities under previous law**

  Any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded

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on or after the appointed day.

- 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 previous law - **No effect on tax etc. due under previous law**
- 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 - **No effect on legal proceedings and tax, penalty etc. under previous law**
- affect any proceedings including that relating to an appeal, review or reference, instituted before, on or after the appointed day under the previous law - **No effect on any appellate proceeding under previous law.**
- The provisions of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal will apply for repeal provided under section 174.

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 hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not*

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

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Other Provisions

18. COMMON PORTAL [SECTION 146]

Section 146 enables the Government to notify the GST Common Portal on recommendation of the GST Council for facilitating the following:

- Registration
- Payment of Tax
- Furnishing of returns
- Computation and settlement of integrated tax
- Electronic way bill
- Other functions and prescribed purposes

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. Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices by the notified persons for whom e-invoicing is mandatory.

19. SPECIAL PROCEDURE FOR CERTAIN PROCESSES [SECTION 148]

Section 148 is an enabling provision for prescribing special procedures for certain processes. The following are noteworthy in this regard:

- Such procedures shall be prescribed by way of a notification issued by the Government, on recommendations of the GST Council.
- The conditions and safeguards and the classes of registered persons to whom such procedures will be applicable shall be stated in the notification itself.
- The special procedures may be prescribed with regard to the following matters:
    - Registration

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- Filing of returns
- Payment of tax
- Administration

Some notifications issued by the Government under this section are:

Notification No.	Description
Notification No. 66/2017 CT dated 15.11.2017	Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods
Notification No. 04/2018 CT dated 25.01.2018	Seeks to provide special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development rights and *vice versa*.

Note: The above list is illustrative and not exhaustive.

20. GOODS AND SERVICES TAX COMPLIANCE RATING [SECTION 149]

As per section 149, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall not be permanent and will be revised from time to time. The ratings shall be intimated to the taxable person and will also be placed in the public domain.

A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

21. POWER TO TAKE SAMPLES [SECTION 154]

Section 154 authorizes the Commissioner, or an officer authorized by him to take samples of goods from the possession of any taxable person, where he considers it necessary. Such officer shall provide a receipt for any samples so taken.

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22. BURDEN OF PROOF [SECTION 155]

'Burden of proof' normally refers to the obligation to prove one's assertion. Section 155 lays down that 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.

Thus, where a presumption is raised that a person is not eligible for input tax credit then the onus shall be on such person to rebut the same.

23. PERSONS DEEMED TO BE PUBLIC SERVANTS [SECTION 156]

Section 156 deems all persons discharging functions under the Act as public servants within the meaning of section 21 of the Indian Penal Code, 1860. This means that such persons shall qualify as public servants for the purpose of Indian Penal Code, wherever applicable.

24. PROTECTION OF ACTION TAKEN UNDER THIS ACT [SECTION 157]

Section 157 grants immunity to the following persons against legal proceedings for anything done or intended to be done in good faith:

- 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

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 wanton or reckless manner.

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25. BAR ON JURISDICTION OF CIVIL COURTS [SECTION 162]

Taxes are a civil liability. The basic rule is that every dispute which is civil in nature can be tried by the Civil Court. However, since tax laws generally provide a specific machinery for assessment, appeals and recovery etc, in terms of a special legislation, the jurisdiction of civil courts is barred in matters relating to tax laws.

Therefore, as per section 162, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under the Act. However, this bar does not apply in case of appeals to High Court and Supreme Court as provided under sections 117 and 118 respectively.

26. LEVY OF FEE [SECTION 163]

Section 163 provides that a copy of any order or document can be provided to any person on an application made by him for that purpose after paying a prescribed fee.

27. SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES [SECTION 169]

Any notice, decision, order, summons, or any other communication under the Act and the related rules are to be served on the assessee in accordance with the provisions of section 169.

Modes of service [Section 169(1)]

Sub-section (1) of section 169 provides that a notice, decision, order, summons, or any other communication can be served by any one of the following methods:

(a) **Giving/tendering directly:** By giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

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(b) **Registered post/speed post/courier:** By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) **Email:** By sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) **At common portal:** By making it available on the common portal; or

(e) **Publication in newspaper:** By publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) **Affixing at place of business etc:** 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.

Deemed date of serving [Section 169(2)]

Every decision/order/summons/notice/communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

Deemed date of receipt [Section 169(3)]

When a decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

28. ANTI-PROFITEERING MEASURE [SECTION 171]

The burden of indirect taxation ultimately falls on the consumers. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable.

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Section 171 makes it mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

Anti-profiteering Authority

The Central Government may, on recommendations of the Council, by notification, constitute an Authority*, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him:

*"Authority" includes the "Appellate Tribunal". Consequently, the Principal Bench of the Appellate Tribunal, constituted under section 109(3) has been empowered[5] to examine whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by that registered person.

Further, a sunset clause had been introduced in section 171 to empower the Government to notify the date from which the said Authority shall not accept any request for examination as to whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him[6].

The term "request for examination" mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.

Chapter XV: Anti-profiteering of CGST Rules, 2017 prescribe the provisions relating to functions of the authority, orders of the authority etc. The same are discussed hereunder.

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[5] *Vide Notification No. 18 /2024 CT dated 30.09.2024*

[6] *In this regard, Notification No. 19/2024 CT dated 30.09.2024 had notified the sunset date as 01.04.2025.*

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Functions of the Authority

The authority shall discharge the following functions, namely:-

(i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

(ii) to identify the taxpayer who has not passed on the benefit

(iii) to order

  (a) reduction in prices

  (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 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, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;

  (c) imposition of penalty

  (d) cancellation of registration

(iv) to furnish a performance report to the GST Council by the 10th day of the month succeeding each quarter.

Process followed by the Authority

Application to the Authority: All 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 within 2 months from the date of receipt of a written application (further extendable up to 1 month for reasons to be recorded in writing as may be allowed by the Authority) will forward the application with its recommendations to the Standing Committee on Anti-profiteering.

If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-Profiteering (DGAP) for a detailed investigation within 2

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months from the date of receipt of a written application (further extendable up to 1 month for reasons to be recorded in writing as may be allowed by the Authority).

Investigation: The DGAP shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter).

The evidence or information presented to 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 power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

The DGAP will complete the investigation within a period of 6 months or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as allowed by the Authority. Upon completion of the investigation, the DGAP will furnish to the Authority, a report of its findings along with the relevant records.

Order of the Authority

Where the Authority determines that a registered person has not passed on the benefit, the Authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be

(c) the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest @ 18% from the date of collection of the

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higher amount till the date of deposit of such amount in the Consumer Welfare Fund of Centre and the remaining 50% of the amount in the Consumer Welfare Fund of the concerned State*, where the eligible person does not claim return of the amount or is not identifiable

*State or Union Territory in respect of which the authority passes an order

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

If the report of the DGAP recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the DGAP to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

Where upon receipt of the report of the DGAP, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods and/or services other than those covered in the said report, it may, for reasons to be recorded in writing, within a period of six months, direct the DGAP to cause investigation or inquiry with regard to such other goods and/or services.

Such investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

The following are noteworthy in this regard:

- Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount.
- The Authority will pass order within 6 months from the date of the receipt of the report from the DGAP.
- An opportunity of being heard will be given, if the interested parties request for it in writing.
- Authority can now seek a clarification from DGAP on the Investigation report submitted by it during the process of determining as to whether the benefit has been passed on to the recipient by way of commensurate reduction in prices.

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- Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.
- If the eligible person (i.e. the buyer) does not claim the return of the amount or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.

Penalty for profiteerings

A registered person who is found to have profiteered is liable to pay a penalty of 10% of such profiteered amount if the profiteered amount is not deposited within 30 days of the date of passing of the order by the Authority.

Here, "profiteered" means the amount determined on account of not passing the benefit to the recipient by way of commensurate reduction in the price of the goods or services or both.

Note: For the purposes of this section, the expression "Authority" includes the "Appellate Tribunal".

*** Authority includes the Appellate Tribunal.**

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29. APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT [SECTION 20 OF THE IGST ACT]

The following provisions of CGST Act apply to IGST Act also-

(i) scope of supply;

(ii) composite supply and mixed supply;

(iii) time and value of supply;

(iv) input tax credit;

(v) registration;

(vi) tax invoice, credit and debit notes;

(vii) accounts and records;

(viii) returns, other than late fee;

(ix) payment of tax;

(x) tax deduction at source [TDS rate under IGST – 2%];

(xi) collection of tax at source [TCS rate under IGST – not exceeding 2%];

(xii) assessment;

(xiii) refunds;

(xiv) audit;

(xv) inspection, search, seizure and arrest;

(xvi) demands and recovery;

(xvii) liability to pay in certain cases;

(xviii) advance ruling;

(xix) appeals and revision;

(xx) presumption as to documents;

(xxi) offences and penalties;

(xxii) job work;

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(xxiii) electronic commerce;

(xxiv) transitional provisions; and

(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty

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 0.5%.

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 said 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 said Act.

30. APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS [CHAPTER VIII OF THE IGST ACT]

Since central tax (CGST) and state tax (SGST) are separate taxes levied concurrently on a transaction, the same are identifiable and can be transferred to the CGST account and SGST account of the concerned State Governments respectively. However, this is not possible in case of integrated tax (IGST). Therefore, it becomes necessary to apportion IGST into components that can be transferred to CGST account and SGST account of the State Governments concerned.

Apportionment of tax and settlement of funds [Section 17 of the IGST Act]

Section 17 of the IGST Act prescribes the provisions for such apportionment of IGST and settlement of funds between the Central Government and the State Governments.

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A. Apportionment of IGST paid on supplies where ITC cannot be availed [Section 17(1)]

Sub-section (1) of section 17 lays down that in respect of the IGST paid on the following supplies of goods and/or services, the IGST shall be apportioned:

(a) inter-State supply to an unregistered person or to a registered person paying tax under composition scheme;

(b) inter-State supply where the registered person is not eligible for input tax credit;

(c) 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;

(d) import by an unregistered person or by a registered person paying tax under composition scheme;

(e) import where the registered person is not eligible for input tax credit;

(f) 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.

Methodology of apportionment [Section 17(2)]

The IGST paid on the supplies mentioned above shall be apportioned as under:

I. The amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

II. The balance amount of IGST remaining in the integrated tax account shall be apportioned to the State where such supply takes place and to the Central Government if such supply takes place in a Union territory.

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III. If the place of such supply made by any taxable person cannot be determined separately, the balance amount shall be apportioned to each of the States/Central Government (in relation to Union territories) in proportion to the total supplies made by such taxable person to each of such States/Union territories in a financial year.

IV. If the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as SGST/UTGST by the respective State/ the Central Government during the immediately preceding financial year.

Apportionment of interest, penalty and compounding amount realised in connection with the IGST [Section 17(3)]

The interest, penalty and compounding amount realised in connection with the IGST shall also be apportioned in the similar manner.

Transfer of apportioned tax to the accounts of Central/State Governments [Section 17(4)]

The Central Government shall transfer the amount apportioned to it to the CGST account or UTGST account, as the case may be, and the amount apportioned to the State Government(s) to the SGST account of the respective States.

B. Apportionment of IGST in respect of B2B supplies wherein ITC is taken by the recipients [Section 17(2A)]

Amount of IGST in respect of B2B supplies wherein ITC is taken by the recipients [i.e. IGST not apportioned above] may, for the time being, on the recommendations of the GST Council, be apportioned at the rate of 50% to the Central Government and 50% to the State Governments/Union territories on ad hoc basis. Such amount shall be adjusted against the amount apportioned under sub-sections (2) and (3).

IGST apportioned to a State/Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State/ Central Government on account of such Union territory.

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31. ADMINISTRATION UNDER GST

The provisions regarding administrative set up under CGST and IGST laws, are contained in Chapter II – Administration [Sections 3 to 6] of the CGST Act, 2017 and Chapter II - Administration [Sections 3 and 4] of the IGST Act, 2017 respectively. State GST laws also prescribe identical provisions in relation to administration. These provisions have been discussed below:

A. Officers under CGST Act [Section 3 of the CGST Act]

The Government has appointed the following classes of officers and the officers subordinate to them for the purposes of CGST Act, namely:

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

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

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

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

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

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

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

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

(i) Commissioner of Central Tax (Audit)

(j) Commissioner of Central Tax (Appeals)

(k) Additional Commissioner of Central Tax (Appeals)

(l) Joint Commissioner of Central Tax (Appeals)

Further, the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of CGST Act.

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B. Appointment of officers under CGST Act [Section 4 of the 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 [Section 4(1)].

Without prejudice to the provisions of section 4(1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of CGST Act [Section 4(2)].

C. Powers of officers under CGST Act [Section 5 of the 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 [Section 5(1)].

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 [Section 5(2)].

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 [Section 5(3)].

Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax [Section 5(4)].

D. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 6 of the 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, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify [Section 6(1)].

Subject to the conditions specified in the notification issued under section 6(1):

(a) 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

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the SGST Act or the UTGST Act, as the case may be, under intimation to the jurisdictional officer of SGST or UTGST;

(b) 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 [Section 6(2)].

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 [Section 6(3)].

E. Appointment of officers under IGST Act [Section 3 of the IGST Act]

The Board may appoint such central tax officers as it thinks fit for exercising the powers under IGST Act.

F. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 4 of the 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.

32. SPECIAL PROCEDURE FOR CORPORATE DEBTORS UNDERGOING THE CORPORATE INSOLVENCY RESOLUTION PROCESS

As per Insolvency Bankruptcy Code (IBC), 2016, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered and 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

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definitions of the terms, corporate debtor, CIRP, IRP and RP can be referred from IBC, 2016.

The Government has prescribed special procedure under section 148 of the CGST Act for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP. *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 and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. 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, and 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.

33. MANNER OF DETERMINATION OF COMMENCEMENT AND TERMINATION OF TIME [SECTION 9 OF THE GENERAL CLAUSES ACT, 1897]

Section 9 of the General Clauses Act, 1897 lays down the provision relating to commencement and termination of time. It stipulates that in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word from, and, for the purpose of including the last in a series of days or any other period of time, to use the word to.

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In simple words, while computing time, the rule is to exclude the first day and to include the last day. Courts have held that the word "from" is akin to "after" and that the word "from" if used for the purpose of and in reference to the computation of time, as for example, from a stated date, that stated date is *prima facie* excluded from computation. Although on some occasions, Courts have a taken a view that the question as to whether the stated date should or should not be so excluded, should be decided according to the context in which the word "from" occurs.

It is worthwhile to mention here that the Supreme Court, in case of *M/s. Econ Antri Ltd v. M/s. Rom Industries Ltd. & Anr,* had also taken a similar view on this point and decided that while computing the period of limitation, the day on which the offence is committed/ date of cause of action has to be excluded.

Another point which needs a mention here is that section 3(35) of the General Clauses Act, 1897 defines the expression "month" to mean a month reckoned according to the British calendar. Further, *Allahabad High Court in case of CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.)* has held that where the legislature has stipulated the period of limitation in terms of months, such a stipulation can only mean a calendar month and not 30 days.

TEST YOUR KNOWLEDGE

1. *Briefly explain how the GST compliance rating score is determined.*
2. *When shall the particulars relating to any proceedings or prosecution be published under GST laws? Discuss the relevant provisions.*
3. *Explain the provisions relating to rectification of errors apparent on the face of record under section 161.*
4. *State the various modes of service of a notice, decision, order, summons, or any other communication under the CGST Act, on the taxable person or any other person to whom it is intended.*
5. *Section 158(1) lays down that the information obtained by a public servant from the record of any proceeding under the CGST Act is confidential and cannot be disclosed.*

   Is there any exception to this rule? Discuss in brief.

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6. *Explain the scope of circulars and instructions issued by the Board.*

7. *'The time limits provided under the CGST Act cannot be extended.'*

   Do you agree with the statement? Give your views with reference to section 168A.

ANSWERS

1. As per section 149(2), the GST compliance rating is determined on a scale of ten on the basis of prescribed parameters.

2. When the Commissioner/authorised officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)].

No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the 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 [Section 159(2)].

3. Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be made after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in

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such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

4. Section 169(1) provides that any decision, order, summons, notice or other communication under the CGST Act and the rules made thereunder can be served by any one of the following methods:

(a) Giving/tendering directly including by a courier to the addressee or authorised representative or to any adult member of family residing with the taxable person; or

(b) By Registered post/speed post/courier with acknowledgement due at the last known place of business or residence; or

(c) By Email to the e-mail address provided at the time of registration or as amended from time to time; or

(d) By making the same available at common portal; or

(e) Publication in newspaper circulating in the locality in which the addressee is last known to have resided, carried on business or personally worked for gain; or

(f) If none of the above modes is practicable then by Affixing at 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 concerned.

5. Yes, the confidential information can be disclosed by the public servant for certain specific purposes in terms of section 158(3). Such specific purposes are given in brief hereunder:

(i) For prosecution

(ii) For carrying out the objects of the CGST Act

(iii) For service of notice or recovery of demand

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(iv) For furnishing information to Court in a proceeding where Government is a party

(v) For audit of tax receipts or refunds

(vi) For inquiry into the conduct of a GST officer

(vii) For enabling levy, realisation of any tax or duty

(viii) In lawful exercise of powers

(ix) For enquiry into a charge of misconduct by any professional

(x) For data entry on automated system

(xi) For fulfilling the requirement under any other law and in public interest.

6. Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such 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.

7. The statement is not correct.

The Government has power to extend the time limits provided under the CGST Act. However, such powers are not unbridled powers. Section 168A empowers the Government to extend the time limits only when the actions cannot be completed or complied with due to *force majeure*. Here, force majeure means war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the implementations of provisions of the CGST Act. This power can also be exercised retrospectively.

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AMENDMENTS MADE VIDE THE FINANCE ACT, 2025

The Finance Act, 2025 has come into force from 29.03.2025. However, most of the amendments made under the CGST Act and the IGST Act vide the Finance Act, 2025 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2025. Therefore, the applicability or otherwise of such amendment for May 2026, September 2026 and/or, January 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the provisions of new section 2(116A) and section 148A of the CGST Act, 2017 are given as inserted by the Finance Act, 2025.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the chapter.

Provisions as amended by the Finance Act, 2025	Remarks
Section 2(116A): Unique identification marking ***unique identification marking means the unique identification marking referred to in clause (b) of sub-section (2) of section 148A and includes a digital stamp, digital mark or any other similar marking, which is unique, secure and non-removable;***	A new clause (116A) is being inserted in section 2 to provide definition of unique identification marking for implementation of track and trace mechanism.
New Section 148A: Track and trace mechanism for certain goods ***(1) The Government may, on the recommendations of the Council, by notification, specify,—*** ***(a) the goods;*** ***(b) persons or class of persons who are in possession or deal with such goods,*** ***to which the provisions of this section shall apply.***	New section 148A is being inserted to provide for an enabling mechanism for Track and Trace Mechanism for specified commodities.

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(2) The Government may, in respect of the goods referred to in clause (a) of sub-section (1),— ***(a) provide a system for enabling affixation of unique identification marking and for electronic storage and access of information contained therein, through such persons, as may be prescribed; and*** ***(b) prescribe the unique identification marking for such goods, including the information to be recorded therein.*** ***(3) The persons referred to in sub-section (1), shall,—*** ***(a) affix on the said goods or packages thereof, a unique identification marking, containing such information and in such manner;*** ***(b) furnish such information and details within such time and maintain such records or documents, in such form and manner;*** ***(c) furnish details of the machinery installed in the place of business of manufacture of such goods, including the identification, capacity, duration of operation and such other details or information, within such time and in such form and manner;*** ***(d) pay such amount in relation to the system referred to in sub-section (2),*** ***as may be prescribed.***	

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Note

The discussion on the GST law in Modules 1-3 of this Study Material incorporates the content and images made available by the CBIC on its website www.cbic.gov.in namely, FAQs on GST, e-fliers issued on various aspects of GST, sectoral FAQs as also the user manuals and FAQs available on the GST common portal www.gst.gov.in, to the extent relevant to such discussion.

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