Final Course

(Revised Scheme of Education and Training)

Study Material

(Modules 1 to 4)

Paper 8

Indirect Tax Laws

Part – I: Goods and Services Tax

Module – 1

(Relevant for May, 2020 and November, 2020 examinations)

BOARD OF STUDIES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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BEFORE WE BEGIN...

The role of a chartered accountant is evolving continually to assume newer responsibilities in a dynamic environment. There has been a notable shift towards strategic decision making and entrepreneurial roles that add value beyond traditional accounting and auditing. The causative factors for the change include globalisation leading to increase in cross border transactions and consequent business complexities, significant developments in information and technology and financial scams underlining the need for a stringent regulatory set up. These factors necessitate an increase in the competence level of chartered accountants to bridge the gap in competence acquired and competence expected from stakeholders. Towards this end, the scheme of education and training is being continuously reviewed so that it is in sync with the requisites of the dynamic global business environment; the competence requirements are being stepped up to enable aspiring chartered accountants to acquire the requisite professional competence to take on new roles.

Concurrent Practical Training along with academic education: Key to achieving the desired level of Professional Competence

Under the Revised Scheme of Education and Training, at the Final Level, you are expected to apply the professional knowledge acquired through academic education and the practical exposure gained during articleship training in addressing issues and solving practical problems. The integrated process of learning through academic education and practical training should also help you inculcate the requisite technical competence, professional skills and professional values, ethics and attitudes necessary for achieving the desired level of professional competence.

Goods and Services Tax: The game changer indirect tax

Indirect Tax Laws is one of the dynamic subjects of the chartered accountancy course. The subject of Indirect Tax Laws at the Final level is divided into two parts, namely, Part I: Goods and Services Tax for 75 marks and Part II: Customs & Foreign Trade Policy (FTP) for 25 marks.

With GST, there has been a paradigm shift in the indirect tax landscape of the country. GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus, paving the way for an

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integrated economy at the national level. By subsuming most of the 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 would mitigate the ill effects of cascading and improve 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 very interesting and challenging.

Know your Syllabus – Read the same along with Study Guidelines

The syllabus of Part I: Goods and Services Tax of Paper 8: Indirect Tax Laws covers the provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Act, 2017 and of Part II: Customs & FTP covers Customs Law as contained in the Customs Act, 1962 and the Customs Tariff Act, 1975 and Foreign Trade Policy to the extent relevant to the indirect tax laws. Further, a concept of Study Guidelines has been introduced in the Revised Scheme of Education and Training in this subject, in line with the international best practices, to specify topic-wise exclusions from the syllabus. The Study Guidelines for an examination is issued after the expiry of cut-off date for amendments relevant for that examination. The Study Guidelines for this subject are also applicable for the corresponding paper in the Old Course.

For understanding the coverage of syllabus, it is important to read the Study Material as the content therein has been developed keeping in mind the extent of coverage of various topics as envisaged in the syllabus. Therefore, the provisions which do not form part of the syllabus are not discussed or explained in the Study Material. However, while discussing the relevant applicable provisions, a reference may have been made to some of these excluded provisions at certain places either by way of a footnote or otherwise.

Further, the Study Material should also be read along with the Study Guidelines. It may be noted that the Study Material is issued prior to the issuance of Study Guidelines. Therefore, the Study Material may have discussion on certain provisions which, post issuance of Study Material, get excluded from the syllabus by way of Study Guidelines. Such provisions will, therefore, be not relevant from the examination point of view.

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It may be noted that in Part II: Customs and FTP, certain topics have been excluded from the syllabus by way of Study Guidelines. These have not been discussed in the Study Material.

Know your Study Material

The subject matter of Part I: Goods and Services Tax of this Study Material on Indirect Tax Laws is based on the provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Act, 2017 as amended upto 30.04.2019. Thus, it includes the amendments made by the CGST (Amendment) Act, 2018 and IGST (Amendment) Act, 2018 made effective from 01.02.2019, and significant notifications and circulars issued upto 30.04.2019.

Further, the Finance (No.2) Act, 2019 has come into force from 01.08.2019 after receiving the assent of the President of India. However, the amendments made in the CGST Act and IGST Act vide the Finance (No .2) Act, 2019 have not become effective till the time this Study Material is being released for printing[1]. Therefore, the applicability or otherwise of the amendments made by the Finance (No.2) Act, 2019 for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after the same become effective.

In the Study Material the existing provisions[2] are compared with the provisions as amended by the Finance (No.2) Act, 2019 at the end of each chapter, wherever relevant. Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions in place of the related provisions discussed in the Chapter.

The content discussed in Part II: Customs & FTP is based on the customs law as amended by the Finance (No.2) Act, 2019 and significant notifications and circulars issued till 30.04.2019.

The latest amendments are highlighted in ***bold and italics*** in the Study Material.

The Study Material is, therefore, relevant for May, 2020 and November, 2020 examinations. The amendments made subsequent to 30th April, 2019 and till

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[1] *"Section 103 of the Finance (No. 2) Act, 2019 amending section 54 of the CGST Act, 2017 which prescribes the provisions relating to refund of tax, has come into force on 01.09.2019. The same has been incorporated in Chapter 15: Refunds."*

[2] *Provisions existing as on the date when the Study Material was released for printing*

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the cut off date relevant for the examination[3] will be compiled and hosted on the Institute's website. The Study Material should be read along with such Statutory Update.

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 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.
5.	**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

[3] The cut off date for amendments for May 2020 and November 2020 examinations are 31st October, 2019 and 30th April, 2020 respectively.

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		concepts/provisions learnt in solving problems and addressing issues. Small case scenarios have also been given to test your analytical ability and interpretational skills.
6.	**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.
4.	**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 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 5 : 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 are solved/answered on the basis of the position of law as existing on 30th April, 2019. The reference to years/months subsequent to such date in the examples, illustrations,

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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.

Since the entire syllabus of subject of Indirect Tax Laws is same for both New and Old Course, this Study Material is also relevant for Final (Old Course) - Paper 8: Indirect Tax Laws.

Happy Reading and Best Wishes!

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SYLLABUS

PAPER – 8 : Indirect Tax Laws

(One paper – Three hours – 100 Marks)

Part-I: Goods and Services Tax (75 Marks)

Objective:

To acquire the ability to analyze and interpret the provisions of the goods and services tax law and recommend solutions to practical problems.

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) Introduction to GST in India including Constitutional aspects

(ii) Levy and collection of CGST and IGST – Application of CGST/IGST law; Concept of supply including composite and mixed supplies, inter-State supply, intra-State supply, supplies in territorial waters; Charge of tax including reverse charge; Exemption from tax; Composition levy

(iii) Place of supply

(iv) Time and Value of supply

(v) Input tax credit

(vi) Computation of GST liability

(vii) Procedures under GST including registration, tax invoice, credit and debit notes, electronic way bill, accounts and records, returns, payment of tax including tax deduction at source and tax collection at source, refund, job work

(viii) Liability to pay in certain cases

(ix) Administration of GST; Assessment and Audit

(x) Inspection, Search, Seizure and Arrest

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(xi) Demand and Recovery

(xii) Offences and Penalties

(xiii) Advance Ruling

(xiv) Appeals and Revision

(xv) Other provisions[4]

Part-II: Customs & FTP (25 Marks)

Objectives:

(a) To develop an understanding of the customs laws and acquire the ability to analyze and interpret the provisions of such laws.

(b) To develop an understanding of the basic concepts of foreign trade policy to the extent relevant to indirect tax laws, and acquire the ability to analyse such 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 and exemptions from customs duties – **All provisions** 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) Officers of Customs; Appointment of customs ports, airports etc.*

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

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[4] *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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(vii) Provisions relating to coastal goods and vessels carrying coastal goods*

(viii) Warehousing*

(ix) Drawback

(x) Demand and Recovery*; Refund

(xi) Provisions relating to prohibited goods, notified goods, specified goods, illegal importation/exportation of goods*

(xii) Searches, seizure and arrest; Offences; Penalties; Confiscation and Prosecution*

(xiii) Appeals and Revision; Advance Rulings; Settlement Commission*

(xiv) Other provisions[5]*

2. Foreign Trade Policy to the extent relevant to the indirect tax laws

(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 – 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.

** The topics marked with asterisk have been excluded from the syllabus by way of Study Guidelines and hence have not been discussed in the Study Material.*

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[5] *The entire customs law is included in the syllabus at the Final level. Any residuary provision under the Customs Act, 1962 or Customs Tariff Act, 1975, not covered under any of the above specific provisions, would be covered under "Other Provisions". Further, if any new Chapter is included in the Customs Act, 1962 or Customs Tariff Act, 1975, the syllabus will accordingly include the provisions relating thereto.*

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CONTENTS

PART – I : GOODS AND SERVICES TAX

MODULE – 1

Chapter 1: GST in India – An Introduction
Chapter 2: Supply under GST
Chapter 3: Charge of GST
Chapter 4: Exemptions from GST
Chapter 5: Place of Supply
Chapter 6: Time of Supply
Chapter 7: Value of Supply

MODULE – 2

Chapter 8: Input Tax Credit
Chapter 9: Registration
Chapter 10: Tax Invoice, Credit and Debit Notes
Chapter 11: Accounts and Records; E-way Bill
Chapter 12: Payment of Tax
Chapter 13: Returns

MODULE – 3

Chapter 14: Import and Export under GST
Chapter 15: Refunds
Chapter 16: Job Work
Chapter 17: Assessment and Audit

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Chapter 18: Inspection, Search, Seizure and Arrest
Chapter 19: Demands and Recovery
Chapter 20: Liability to Pay Tax in Certain Cases
Chapter 21: Offences and Penalties
Chapter 22: Appeals and Revision
Chapter 23: Advance Ruling
Chapter 24: Miscellaneous Provisions

PART – II: CUSTOMS & FTP

MODULE - 4

Chapter 1: Levy of and Exemptions from Customs Duty
Unit I-Introduction to Customs Law
Unit-II -Levy and Exemptions
Chapter 2: Types of Duty
Chapter 3: Classification of Imported and Export Goods
Chapter 4: Valuation under the Customs Act, 1962
Chapter 5: Importation, Exportation and Transportation of Goods
Chapter 6: Duty Drawback
Chapter 7: Refund
Chapter 8: Foreign Trade Policy
Unit I – Introduction to FTP
Unit II – Basic Concepts relating to Export Promotion Schemes under FTP

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DETAILED CONTENTS : MODULE - 1

CHAPTER 1- GST IN INDIA – AN INTRODUCTION

Learning Outcomes 1.1

Contents:

1. Genesis of GST in India 1.2
2 Concept of GST 1.4
3. Need for GST in India 1.5
4. Framework of GST as introduced in India 1.7
5. Benefits of GST 1.20
6. Constitutional provisions 1.23

Test Your Knowledge 1.36

Answers/Hints 1.36

CHAPTER 2- SUPPLY UNDER GST

Learning Outcomes 2.1

Contents:

1. Introduction 2.2
2. Relevant definitions 2.2
3. Concept of supply [Section 7 of CGST Act] 2.7
4. Composite and mixed supplies [Section 8] 2.54

Let Us Recapitulate 2.59

Test Your Knowledge 2.68

Answers/Hints 2.69

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CHAPTER 3- CHARGE OF GST

Learning Outcomes 3.1

Contents:

1. Introduction 3.2
2. Relevant definitions 3.2
3. Extent & Commencement of GST Law 3.5
4. Inter-State supply [Section 7 of the IGST Act] 3.7
5. Intra-State supply [Section 8 of the IGST Act] 3.12
6. Supplies in territorial waters [Section 9 of the IGST Act 3.17
7. Levy & collection of CGST & IGST [Section 9 of the CGST Act & Section 5 of the IGST Act] 3.18
8. Composition levy [Section 10 of the CGST Act] 3.40
9. Option to pay tax at concessional rate under *Notification No. 2/2019 CT (R) dated 07.03.2019* 3.54

Let Us Recapitulate 3.57

Test Your Knowledge 3.62

Answer/Hints 3.63

CHAPTER 4- EXEMPTION FROM GST

Learning Outcomes 4.1

Contents:

1. Introduction 4.2
2. Power to grant exemption from tax [Section 11 of the CGST Act/ section 6 of IGST ACT] 4.2
3. Goods exempt from tax 4.5

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4. List of services exempt from tax 4.6

Let Us Recapitulate 4.86

Test Your Knowledge 4.104

Answer/Hints 4.106

CHAPTER 5- PLACE OF SUPPLY

Learning Outcomes 5.1

Contents:

1. Introduction 5.2

2 Relevant definitions 5.5

3. Place of supply of goods other than supply of goods Imported into, or exported from India [Section 10] 5.11

4. Place of supply of goods imported into, or exported from India [Section 11] 5.16

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] 5.18

6. Place of supply of services where location of supplier or location of recipient is outside India [Section 13] 5.54

Let Us Recapitulate 5.70

Test Your Knowledge 5.82

Answers/Hints 5.83

CHAPTER 6- TIME OF SUPPLY

Learning Outcomes 6.1

Contents:

1. Introduction 6.2

2. Relevant definitions 6.3

3. Time of supply of goods [Section 12] 6.6

4. Time of supply of services [Section 13] 6.21

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5. Change in rate of tax in respect of supply of goods or services [Section 14] 6.34

Let Us Recapitulate 6.38

Test Your Knowledge 6.43

Answers/Hints 6.46

CHAPTER 7 VALUE OF SUPPLY

Learning Outcomes 7.1

Contents:

1. Introduction 7.2
2. Relevant definitions 7.3
3. Value of supply [Section 15] 7.8
4. Rules for valuation of supply of goods and/or services 7.25

Let Us Recapitulate 7.56

Test Your Knowledge 7.59

Answers/Hints 7.60

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CHAPTER 1

GST IN INDIA – AN INTRODUCTION



LEARNING OUTCOMES

After studying this Chapter, you will be able to:

- explain the concept of GST and the need for GST in India.
- discuss the framework of GST as introduced in India and understand the various benefits from implementation of GST.
- explain the constitutional provisions pertaining to levy of various taxes
- appreciate the need for constitutional amendment paving way for GST.
- discuss the significant amendments made by Constitution (101st Amendment) Act, 2016.

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1. GENESIS OF GST IN INDIA



- In the year 2000, the then Prime Minister mooted the concept of GST and set up a committee to design a Goods and Services Tax (GST) model for the country. In 2003, the Central Government formed a task force under Vijay Kelkar, which in 2004 strongly recommended fully integrated 'GST' on national basis.

- Subsequently, the then Union Finance Minister, Shri P. Chidambaram, while presenting the Union Budget (2006-2007), announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlines and continued to be shrouded by the clouds of uncertainty.



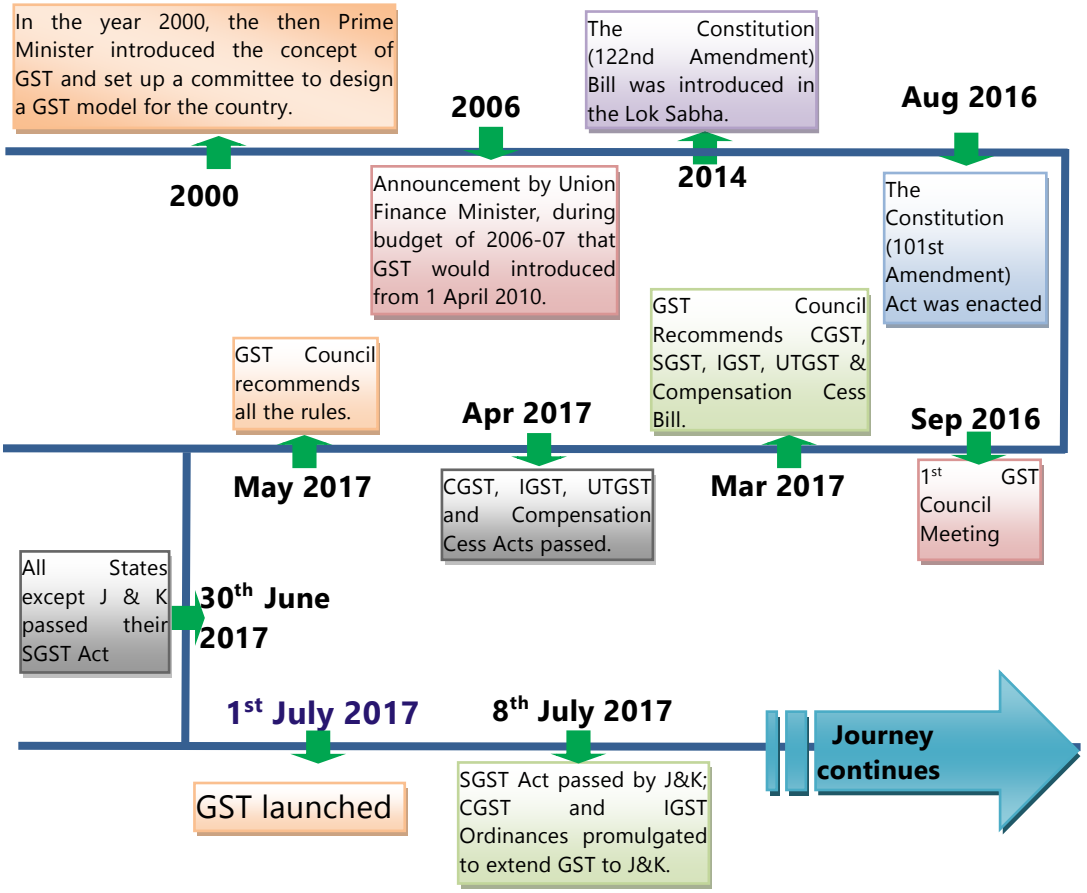
- The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification 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 **Constitution (101st Amendment) Act, 2016,** which paved the way for introduction of GST in India.



- 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. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws. By 30th June, 2017, all States and Union Territories had passed their respective SGST and UTGST Acts except Jammu

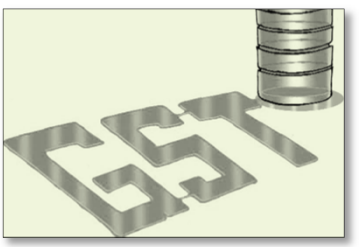
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and Kashmir. With effect from 1st July, 2017, the historic indirect tax reform - GST was introduced. GST law was extended to Jammu and Kashmir on 8th July, 2017.



- 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



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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, too, has adopted a dual GST.

2. CONCEPT OF GST



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 manufacture, sale and consumption of goods and services.

VALUE ADDED TAX

- 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.

CONTINUOUS CHAIN OF TAX CREDITS

- 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.

BURDEN BORNE BY FINAL CONSUMER

- Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.

NO CASCADING OF TAXES

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3. NEED FOR GST IN INDIA



Deficiencies in the value added taxation system

Under the earlier indirect tax regime, despite the introduction of the principle of taxation of value added in India – at the Central level in the form of CENVAT and at the State level in the form of State VAT - its application always remained piecemeal and fragmented on account of the following reasons:

- Double taxation of a transaction as both goods and services as the distinction between goods and services was often blurred, e.g. software was liable to both VAT and service tax.
- CENVAT did not include chain of value addition in the distributive trade below the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods was not removed leading to the cascading of taxes. To illustrate, when the goods were manufactured and sold, both central excise duty (CENVAT) and State-Level VAT were levied.
- Though CENVAT and State-Level VAT were essentially value added taxes, set off of one against the credit of another was not possible as CENVAT was a central levy and State-Level VAT was a State levy.
- There were several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT.
- VAT on goods was not integrated with tax on services, at the State level, to remove the cascading effect of service tax. With service sector being the fastest growing sector in the economy, the exclusion of services from the tax base of the States potentially eroded their tax- buoyancy.
- CST was another source of distortion in terms of its cascading nature since it was non-VATABLE. Being an origin based tax, CST was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place.

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Non-inclusion of several local levies in State VAT such as luxury tax, entertainment tax, etc.	Cascading of taxes on account of (i) levy of Non-VATable CST and (ii) inclusion of CENVAT in the value for imposing VAT	
No CENVAT after manufacturing stage	Non-integration of VAT & service tax	Double taxation of a transaction as both goods and services

GST – A cure for ills of existing indirect tax regime



- A comprehensive tax structure covering both goods and services viz. Goods and Services Tax (GST) addresses the above-mentioned problems. Simultaneous introduction of GST at both Centre and State levels has integrated taxes on goods and services for the purpose of set-off relief and ensures that both the cascading effects of CENVAT and service tax are removed and a continuous chain of set-off from the original producer's point/ service provider's point upto the retailer's level/ consumer's level is established.



- In the GST regime, the major indirect taxes have been subsumed in the ambit of GST. The erstwhile concepts of manufacture or sale of goods or rendering of services are no longer applicable since the tax is now levied on "Supply of Goods and/or services".

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4. FRAMEWORK OF GST AS INTRODUCED IN INDIA

I. Dual GST:

India has adopted a **Dual GST model** in view of the federal structure of the country. Consequently, Centre and States simultaneously levy GST on taxable supply of goods or services or both which, takes place within a State or Union Territory. Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services. 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 State of Jammu and Kashmir.

Dual GST





II. CGST/SGST/UTGST/IGST

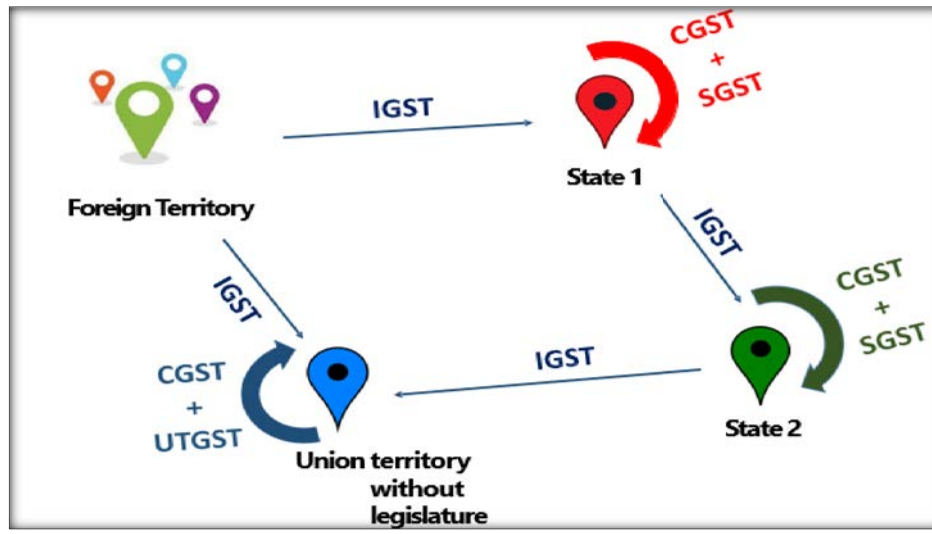
CGST/SGST/UTGST/IGST

GST is a destination based tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof. GST in India comprises of Central Goods and Services Tax (CGST) - levied and collected by Central Government, State Goods and Services Tax (SGST) - levied and collected by State Governments/Union Territories with Legislatures and Union Territory Goods and Services Tax (UTGST) -

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levied and collected by Union Territories without Legislatures, on intra-State supplies of taxable goods and/or services.

- 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 Centre on all inter-State supplies.



III. Legislative Framework

- There is single legislation – CGST Act, 2017 - for levying CGST. Similarly, Union Territories without Legislatures [Andaman and Nicobar Islands, Lakshadweep, 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 [Delhi and Puducherry] have their own GST legislation for levying SGST.

Legislative Framework

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

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IV. Classification of goods and services



- HSN (Harmonised System of Nomenclature) is used for classifying the goods under the GST. Chapters referred in the Rate Schedules for goods are the Chapters of the First Schedule to the Customs Tariff Act, 1975.
- A new **Scheme of Classification of Services** has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff).

V. Registration



- Every supplier of goods and/ or services is required to obtain registration in the State/UT from where he makes the taxable supply if his aggregate turnover exceeds the threshold limit during a FY.

States with threshold limit of ₹ 10 lakh for both goods and services	States with threshold limit of ₹ 20 lakh for both goods and services	States with threshold limit of ₹ 20 lakh for services and ₹ 40 lakh for goods**
•Manipur •Mizoram •Nagaland •Tripura	•Arunachal Pradesh •Meghalaya •Sikkim •Uttarakhand •Puducherry •Telangana	•Jammu and Kashmir •Assam •Himachal Pradesh •All other States

***persons engaged exclusively in supply of goods*

VI. Composition Scheme



- In GST regime, tax (i.e. CGST and SGST/UTGST for intra-State supplies and

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IGST for inter-State supplies) is payable by every taxable person and in this regard provisions have been prescribed in the law.

- However, for providing relief to small businesses, primarily manufacturers, suppliers of food articles, traders, etc., making intra-State supplies, a simpler method of paying taxes is prescribed, known as Composition Levy. Further, for small service providers also, a scheme prescribing concessional rate of tax has been formulated.

VII. Exemptions

- Apart from providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on essential goods and/or services.



VIII. Seamless flow of credit

- Since GST is a destination based consumption tax, revenue of SGST ordinarily accrues to the consuming States. The inter-State supplier in the exporting State is allowed to set off the available credit of IGST, CGST and SGST/UTGST (in that order) against the IGST payable on inter-State supply made by him.



- The buyer in the importing State is allowed to avail the credit of IGST paid on inter-State purchases made by him. Thus, unlike the earlier scenario where the credit chain used to break in case of inter-State sales on account of non-VATable CST, under GST regime there is a seamless credit flow in case of inter-State supplies too.
- The revenue of inter-State sale does not accrue to the exporting State and the exporting State transfers to the Centre the credit of SGST/UTGST used in payment of IGST.
- The Centre transfers to the importing State the credit of IGST used in payment of SGST/UTGST.
- The seamless flow of credit under GST, in case of intra-State and inter-State supplies, can be better understood with the help of the following illustrations:

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Intra-State Supply

ILLUSTRATION

In case of local supply of goods/ services, the supplier would charge dual GST i.e., CGST and SGST at specified rates on the supply.

1. Supply of goods/ services by A to B

	Amount (in ₹)
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by A from B for local supply of goods/ services	11,800

The CGST & SGST charged on B for supply of goods/services will be remitted by A to the appropriate account of the Central and State Government respectively.

A is the first stage supplier of goods/services and hence, does not have credit of CGST, SGST or IGST.

2. Supply of goods/services by B to C – Value addition @ 20%

B will avail credit of CGST and SGST paid by him on the purchase of goods/ services and will utilise such credit for being set off against the CGST and SGST payable on the supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 10,000 x 120%)	12,000
Add: CGST @ 9%	1080
Add: SGST @ 9%	1080
Total price charged by B from C for local supply of goods/ services	14160

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Computation of CGST, SGST payable by B to Government

	Amount (in ₹)
CGST payable	1080
Less: Credit of CGST	900
CGST payable to Central Government	180
SGST payable	1080
Less: Credit of SGST	900
SGST payable to State Government	180

Note: Rates of CGST and SGST have been assumed to be 9% each for the sake of simplicity.

Statement of revenue earned by Central and State Government

Transaction	Revenue to Central Government (₹)	Revenue to State Government (₹)
Supply of goods/services by A to B	900	900
Supply of goods/services by B to C	180	180
Total	1080	1080

Inter-State Supply

ILLUSTRATION

In case of inter-State supply of goods/ services, the supplier would charge IGST at specified rates on the supply.

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1. Supply of goods/services by X of State 1 to A of State 1

	Amount (in ₹)
Value charged for supply of goods/services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	900
Total price charged by X from A for intra-State supply of goods/services	11,800

X is the first stage supplier of goods/services and hence, does not have any credit of CGST, SGST or IGST.

2. Supply of goods/services by A of State 1 to B of State 2 – Value addition @ 20%

	Amount (in ₹)
Value charged for supply of goods/services (₹ 10,000 x 120%)	12,000
Add: IGST @ 18%	2,160
Total price charged by A from B for inter-State supply of goods/services	14,160

Computation of IGST payable to Government

	Amount (in ₹)
IGST payable	2,160
Less: Credit of CGST	900
Less: Credit of SGST	900
IGST payable to Central Government	360

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The IGST charged on B of State 2 for supply of goods/services will be remitted by A of State 1 to the appropriate account of the Central Government. State 1 (Exporting State) will transfer SGST credit of ₹ 900 utilised in the payment of IGST to the Central Government.

3. Supply of goods/services by B of State 2 to C of State 2 – Value addition @ 20%

B will avail credit of IGST paid by him on the purchase of goods/services and will utilise such credit for being set off against the CGST and SGST payable on the local supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 12,000 x 120%)	14,400
Add: CGST @ 9%	1,296
Add: SGST @ 9%	1,296
Total price charged by B from C for local supply of goods/services	16,992

Computation of CGST, SGST payable to Government

	Amount (in ₹)
CGST payable	1,296
Less: Credit of IGST	1,296
CGST payable to Central Government	Nil
SGST payable	1,296
Less: Credit of IGST (₹ 2,160 - ₹ 1,296)	864
SGST payable to State Government	432

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Central Government will transfer IGST credit of ₹ 864 utilised in the payment of SGST to State 2 (Importing State).

Note: Rates of CGST, SGST and IGST have been assumed to be 9%, 9% and 18% respectively for the sake of simplicity.

Statement of revenue earned by Central and State Governments

Transaction	Revenue to Central Government (₹)	Revenue to Government of State 1 (₹)	Revenue to Government of State 2 (₹)
Supply of goods/services by X to A	900	900	
Supply of goods/services by A to B	360		
Transfer by State 1 to Centre	900	(900)	
Supply of goods/services by B to C			432
Transfer by Centre to State 2	(864)		864
Total	1,296	Nil	1,296

IX. 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.

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- 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 company incorporated under the provisions of section 8 of the Companies Act, 2013] 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.

GST Common Portal



- 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.

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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.

X. GSPs/ASPs



GSTN has selected certain IT, ITeS and financial technology companies, to be called GST Suvidha Providers (GSPs). GSPs develop applications to be used by taxpayers for interacting with the GSTN.

They facilitate the tax payers in uploading invoices as well as filing of returns and act as a single stop shop for GST related services.

They customize products that address the needs of different segment of users. GSPs may take the help of Application Service Providers (ASPs) who act as a link between taxpayers and GSPs.

XI. Compensation Cess



A GST Compensation Cess at specified rate has been 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 on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to

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provide for compensation to the States for the loss of revenue arising on account of implementation of the GST.

XII. 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 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.**

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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

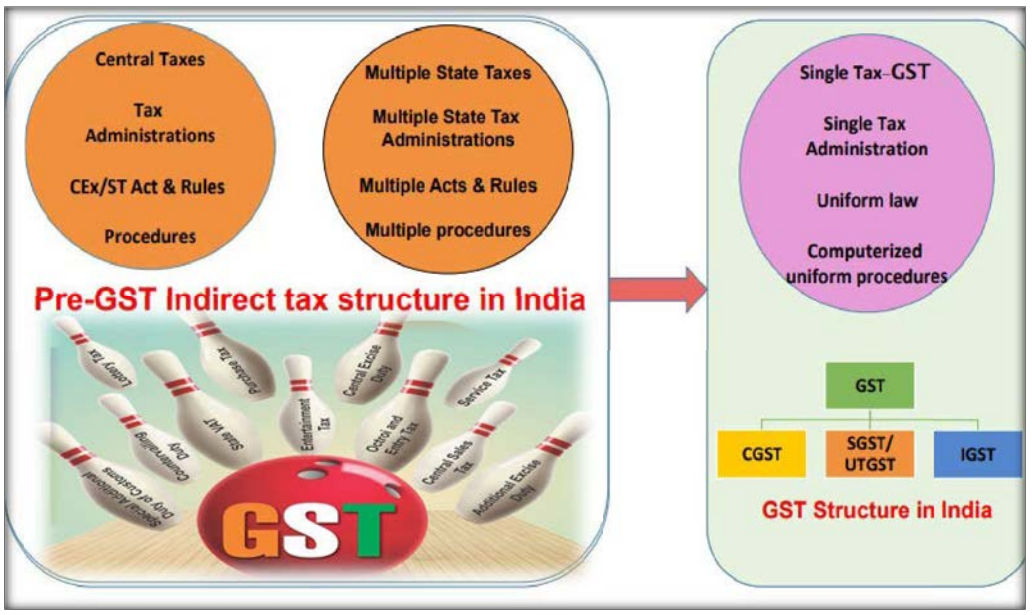
Central Taxes

- Central Excise Duty & Additional Excise Duties
- Service Tax
- Excise Duty under Medicinal & Toilet Preparation Act
- CVD & Special CVD
- Central Sales Tax
- Central surcharges & Cesses in so far as they relate to supply of goods & services

State Taxes

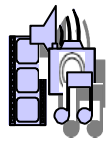
- State surcharges and cesses in so far as they relate to supply of goods & services
- Entertainment Tax (except those levied by local bodies)
- Tax on lottery, betting and gambling
- Entry Tax (All Forms) & Purchase Tax
- VAT/ Sales tax
- Luxury Tax
- Taxes on advertisements

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.

5. BENEFITS OF GST

GST is a win-win situation for the entire country. It brings benefits to all the stakeholders of industry, Government and the consumer. The significant benefits of GST are discussed hereunder:

Benefits to economy

- **Creation of unified national market:** GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus paving the way for an integrated economy at the national level.



- **Boost to 'Make in India' initiative:** GST gives a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market. This will create India as a — Manufacturing hub.



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Enhanced investment and employment: The subsuming of major Central and State taxes in GST, complete and comprehensive setoff of input tax on goods and services and phasing out of Central Sales Tax (CST) reduces the cost of locally manufactured goods and services and increases the competitiveness of Indian goods and services in the international market and thus, gives boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment is generated and GDP is increased.





Simplified tax structure

Ease of doing business: Simpler tax regime with fewer exemptions along with reduction in multiplicity of taxes under GST has led to simplification and uniformity. The uniformity in laws, procedures and tax rates across the country makes doing business easier.



Certainty in tax administration: Common system of classification of goods and services ensures certainty in tax administration across India.

Easy tax compliance

Automated procedures with greater use of IT: There are simplified and automated procedures for various processes such as registration, returns, refunds, tax payments. All interaction is through the common GSTN portal, therefore, less public interface between the taxpayer and the tax administration.



Reduction in compliance costs: The compliance cost is lesser under GST as multiple record-keeping for a variety of taxes is not needed, therefore, there is lesser investment of resources and manpower in maintaining records. The uniformity in laws, procedures and tax rates across the country goes a long way in reducing the compliance cost.

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Advantages for trade and industry

- **Benefits to agriculture and Industry:** GST has given more relief to industry, trade and agriculture through a more comprehensive and wider coverage of input tax set-off and service tax set-off, subsuming of several Central and State taxes in the GST and phasing out of CST. The transparent and complete chain of set-offs which results in widening of tax base and better tax compliance also leads to lowering of tax burden on an average dealer in industry, trade and agriculture.



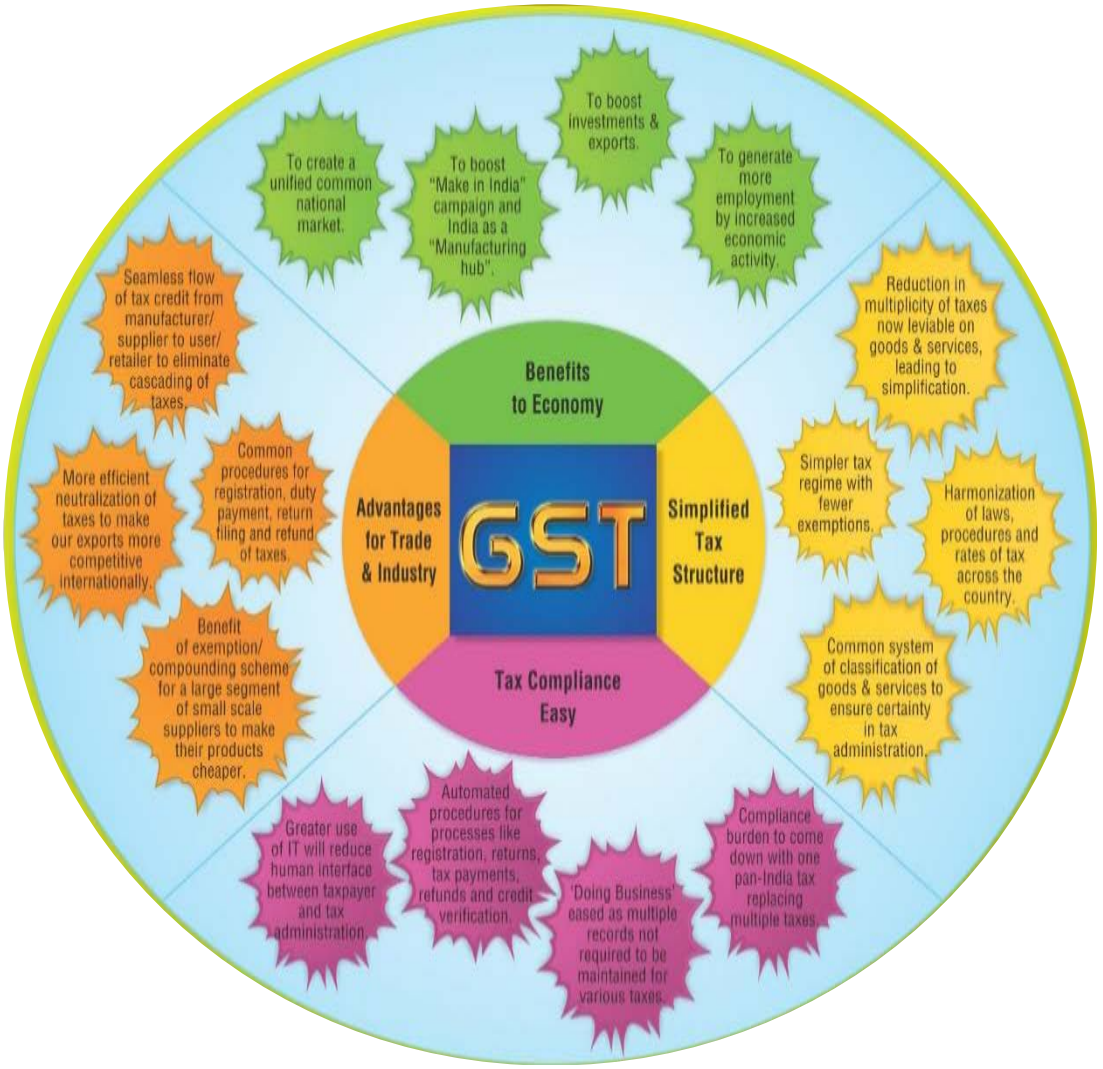


- **Mitigation of ill effects of cascading:** By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it helps in mitigating the ill effects of cascading, improving competitiveness and improving liquidity of the businesses.

- **Benefits to small traders and entrepreneurs:** GST has increased the threshold for GST registration for small businesses. Further, single registration is needed in one State. Small businesses have also been provided the additional benefit of composition scheme. With the creation of a seamless national market across the country, small enterprises have an opportunity to expand their national footprint with minimal investment.



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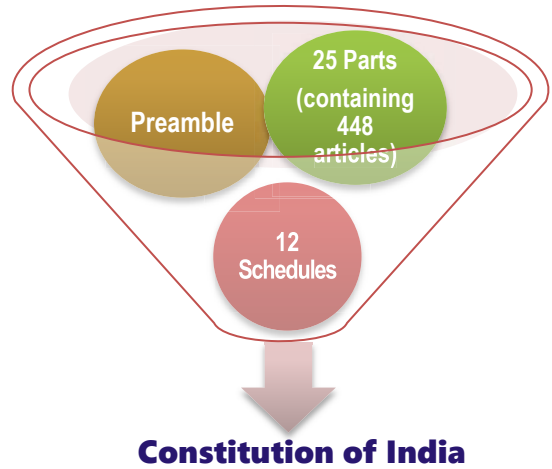


6. CONSTITUTIONAL PROVISIONS

India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government. The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution.

The Constitution of India is the supreme law of India. It consists of a Preamble, 25 parts containing 448 Articles and 12 Schedules.

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Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called *ultra vires* the Constitution and is illegal and void.

Thus, a study of the basic provisions of the Constitution is essential for understanding the genesis of the various taxes being imposed in India. The significant provisions of the Constitution relating to taxation are:

I. **Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that **"no tax shall be levied or collected except by authority of law".** The term "authority of law" means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.

II. **Article 245:** Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the Parliament and on the Legislature of a State by Article 245 of the Constitution. The said Article provides as under:

- Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.
- No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

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III. **Article 246:** It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.

IV. **Seventh Schedule to Article 246:** It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.

LIST – I	LIST – II	LIST – III
UNION LIST	**STATE LIST**	**CONCURRENT LIST**
It contains the matters in respect of which the **Parliament (Central Government)** has the exclusive right to make laws.	It contains the matters in respect of which the **State Government** has the exclusive right to make laws .	It contains the matters in respect of which **both the Central & State Governments** have power to make laws.

Entries 82 to 91 of List I enumerate the subjects where the Central Government has power to levy taxes. Entries 45 to 63 of List II enumerate the subjects where the State Governments have the power to levy taxes. Parliament has a further power to make any law for any part of India not comprised in a State even if such matter is included in the State List.

Income tax is levied by virtue of Entry 82 - Taxes on income other than agricultural income and customs duty vide Entry 83 - Duties of customs including export duties of the Union List.

Power to levy Goods and Services Tax (GST) has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016. Before discussing the significant provisions of the Constitution (101st Amendment) Act, 2016, let us first understand why there arose a need for such constitutional amendment.

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Need for constitutional amendment

The Constitutional provisions hitherto had delineated separate powers for the Centre and the States to impose various taxes. Whereas the Centre levied excise duty on all goods produced or manufactured in India, the States levied Value Added Tax once the goods entered the stream of trade upon completion of manufacture.

In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax), but the tax was collected and retained entirely by the States. Services were exclusively taxed by the Centre together with applicable cesses, if any. Besides, there were State specific levies like entry tax, Octroi, luxury tax, entertainment tax, lottery and betting tax, local taxes levied by Panchayats etc.

With respect to goods imported from outside the country into India, Centre levied basic customs duty and additional duties of customs together with applicable cesses, if any.



Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it.

Consequently, Constitution (101st Amendment Act), 2016 (hereinafter referred to as CAA) was passed. It has 20 sections. Newly inserted Article 279A empowering President to constitute GST Council was notified on 12.09.2016. Remaining provisions were notified with effect from 16.09.2016.

CAA also provides for compensation to States for loss of revenue on account of introduction of goods and services tax. Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

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

Key changes in brief

- Concurrent powers on Parliament and State Legislatures to make laws governing taxes on goods and services.
- Levy of integrated goods and services tax on inter-State transactions of goods and services to be levied and collected by the Central Government and apportioned between the Union and the States in the manner provided by Parliament by Law as per the recommendation of the GST Council.
- Principles for determining the place of supply and when a supply takes place in the course of inter-State trade or commerce shall be formulated by the Parliament, by law.
- GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- On the following products GST shall not be levied, till a date to be notified on the recommendations of the GST Council:
  - ☑ Petroleum Crude
  - ☑ High Speed Diesel
  - ☑ Motor Spirit (commonly known as Petrol)
  - ☑ Natural Gas
  - ☑ Aviation Turbine Fuel
- The Union Government shall retain the power to levy duties of excise on the aforesaid products besides tobacco and tobacco products manufactured or produced in India.
- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.
- The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members. Besides, the Union

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Minister of State in charge of Revenue or Finance is also its member. The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.

- The concept of 'declared goods of special importance' under the Constitution is done away with. Presently, certain restrictions are placed on the powers of States in regard to tax on such goods.
- Transitional provisions to take care of any inconsistency with respect to any law relating to tax on goods or services or both, in force in any State. Such tax to continue to be in force until amended or repealed or until expiration of one year from commencement of GST, whichever is earlier

Key changes in detail

Significant amendments made by Constitution Amendment Act are discussed below in detail:

V. Article 246A: Power to make laws with respect to Goods and Services Tax:

Newly inserted Article 246A

(1) Notwithstanding anything contained in Articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

- This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State.



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- Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.
- However, in respect to the following goods, the aforesaid provisions shall apply from the date recommended by the GST Council:



- The provisions of Article 246A are notwithstanding anything contained in Articles 246 and 254. Article 254 deals with the supremacy of the laws made by Parliament.

VI. Article 248 amended: Residuary powers of legislation amended

- Article 248 grants the residuary powers to Parliament to make laws with respect to any matter not enumerated in the Concurrent List or State List. Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

Article 248

- This article has been amended. Now, this power has been subjected to Article 246A, namely the power to make laws with respect to goods and service tax to be imposed by the Centre and States.

VII. Power of Parliament to legislate with respect to a matter in the State List, in the national interest/in case of emergency, extended to GST provided under Article 246A

- Article 249 grants the Parliament the power to make laws with respect to a matter in the State list in national interest in a case where the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting on any matter enumerated in the State List.

Article 249

- Similarly, Article 250 grants the Parliament the power to make laws with respect to any of the

Article 250

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matters enumerated in the State List if a proclamation of Emergency is in operation.

- Articles 249 and 250 have been amended to grant power to Parliament to make laws with respect to the Goods and Services Tax provided under Article 246A also alongwith the matters in the State list, in the national interest/in case of emergency.

VIII. Article 268: Duties levied by the Centre but collected and appropriated by the States

Article 268

- Article 268 pertains to the duties levied by the Centre but collected and appropriated by the States. It stipulates that such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected in the case where such duties are leviable within any Union territory, by the Government of India, and in other cases, by the States within which such duties are respectively leviable.
- The CAA omits "and such duties of excise on medicinal and toilet preparations" from Article 268.
- Duties of excise on medicinal and toilet preparations have been subsumed into the goods and service tax to be levied by the Centre and States.

IX. Article 268A: Article 268A empowering Union to levy service tax omitted

Article 268A

- Service tax was levied in 1994 under the residual Entry 97 of the Union list. Article 268A was inserted by the Constitution (88th) Amendment Act, 2003 to usher in service tax under a separate entry 92C in the Union List. However, it was not notified ever since. This article has been omitted by the CAA.

X. Article 269A: Levy and collection of GST on inter-State supply

Newly inserted article 269A.

Levy and collection of goods and services tax in course of inter-State trade or commerce

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(1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation — For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Article 269A stipulates that GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Article 269A

Further, import of goods or services or both into India will also be deemed to be supply of goods and/ or services in the course of Inter-State trade or Commerce. This will give power to Central Government to levy IGST on the import transactions which were earlier subject to Countervailing duties under the Customs Tariff Act, 1975.

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- Where an amount collected as IGST has been used for payment of SGST or vice versa, such amount shall not form part of the Consolidated Fund of India/State[1] respectively. This is to facilitate transfer of funds between the Centre and the States.
- Parliament is empowered to formulate the principles regarding place of supply and when supply of goods, or of services, or both occurs in inter-State trade or commerce.

XI. Article 270: Distribution of the goods and services tax (GST) between the Centre and the States



- Article 270 is amended to provide for distribution of the goods and services tax between the Centre and the States, by order of the President after considering recommendations of the Finance Commission.
- This applies for those tax amounts apportioned or payable to the Central Government for taxes levied by it under articles 246A(1) and (2) and Clause (1) of 269A.

XII. Article 271 amended



Article 271 empowers Parliament to increase any of the duties, or taxes referred to in articles 269 or 270. It further provides that such surcharge is not shareable and remains with the Centre. Now this article is amended to exclude GST from its purview.

XIII. Definitions of 'Goods and Services Tax', 'Services' and 'State' incorporated under Article 366

- The terms **Goods and Services Tax, services** and **State** have been defined under respective clauses of Article 366 as follows:

---

[1] *All revenues received and loans raised by the Government of India are credited to the Consolidated Fund of India and all expenditure of the Government are incurred from this Fund.*

All revenues received and loans raised by the Government of a State are credited to the Consolidated Fund of the State and all expenditure of that Government are incurred from this Fund.

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☞ **Goods and services tax** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Consequently, GST can be levied on supply of all goods and services except alcoholic liquor for human consumption.

Article 366(12A)

☞ **Services** means anything other than goods.

Article 366(26A)

☞ **State,** with reference to articles 246A, 268, 269, 269A and article 279A, includes a Union territory with Legislature.

Article 366(26B)

- **Definition of "goods":** The term goods has already been defined under clause (12) of Article 366 in an inclusive manner to provide that ***"goods includes all materials, commodities, and articles"***.

XIV. Article 286: Article 286 imposing restrictions as to imposition of tax on the sale or purchase of goods amended

- Article 286 which restrains the States from framing laws for imposition of any tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in course of the import of the goods into, or export of the goods out of, the territory of India.

Article 286

- This article has been amended to incorporate the changes arising out of GST by substituting the words "sale or purchase" with "supply" and words "goods" with "goods or services or both".
- Consequently, States have no right to impose GST on inter-State supply of goods or services or both. It will be levied by Union Government under Article 269A as mentioned earlier.
- Further, clause (3) of Article 286 which stipulates that any law of a State shall, in so far as it imposes, or authorises the imposition, of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subjected to such restrictions and conditions in regard to the system

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of levy, rates and other incidents of the tax, as Parliament may, by law, specify, has been omitted.

XV. GST Council: Article 279A



- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council **(GST Council)**.
- The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.
- The GST Council shall consist of the following members, namely:—
  - (a) the Union Finance Minister is the Chairperson;
  - (b) the Union Minister of State in charge of Revenue or Finance is the Member;
  - (c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government are the Members.
- The Members of the GST Council referred to clause (c) above shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.
- The GST Council shall make recommendations to the Union and the States on—
  - (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
  - (b) the goods and services that may be subjected to, or exempted from the goods and services tax;
  - (c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;
  - (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
  - (e) the rates including floor rates with bands of goods and services tax;

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(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand *[Such States are referred as **Special Category States**]*; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

- GST Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- While discharging the functions conferred by this article, the GST Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.



- One-half of the total number of Members of the GST Council shall constitute the quorum at its meetings.
- The GST Council shall determine the procedure in the performance of its functions.
- Every decision of the GST Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting**.**

- No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a Member of the Council; or

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(c) any procedural irregularity of the Council not affecting the merits of the case.

The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States, arising out of the recommendations of the Council or implementation thereof.

XVI. Article 368 amended



Article 368 has been amended to include Article 279A also within its purview. Consequently, at least two-thirds of the majority in each House of the Parliament and ratification by at least half of the States is specifically required to make any amendment in Article 279A relating to GST Council.

TEST YOUR KNOWLEDGE

1. *Write a short note on various Lists provided under Seventh Schedule to the Constitution of India.*
2. *Discuss how GST resolved the double taxation dichotomy under previous indirect tax laws.*
3. *Enumerate the deficiencies of the existing indirect taxes which led to the need for ushering into GST regime.*
4. *Discuss the dual GST model as introduced in India.*
5. *List the Central and State levies which have been subsumed in GST in India.*

ANSWERS/HINTS

1. Refer Para 6.
2. Refer Para 3.
3. Refer Para 3.
4. Refer Para 4.
5. Refer Para 4.

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CHAPTER 2

SUPPLY UNDER GST



LEARNING OUTCOMES

After studying this Chapter, you will be able to –

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

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1. INTRODUCTION



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. have been done away with in favour of just one event i.e. **Supply**.

GST Law, by levying tax on the 'supply' of goods and/or services, departs from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Law i.e. sale, manufacture and service 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 provisions 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

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attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Sec. 2(52) of CGST Act].

- **Competent authority:** means such authority as may be notified by the Government [Section 2(29) of the CGST Act].
- **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) of the CGST Act].
- **Government:** means the Central Government [Section 2(53) of the CGST Act].
- **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) of the CGST Act].

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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) of CGST Act].

❖ **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,

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

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

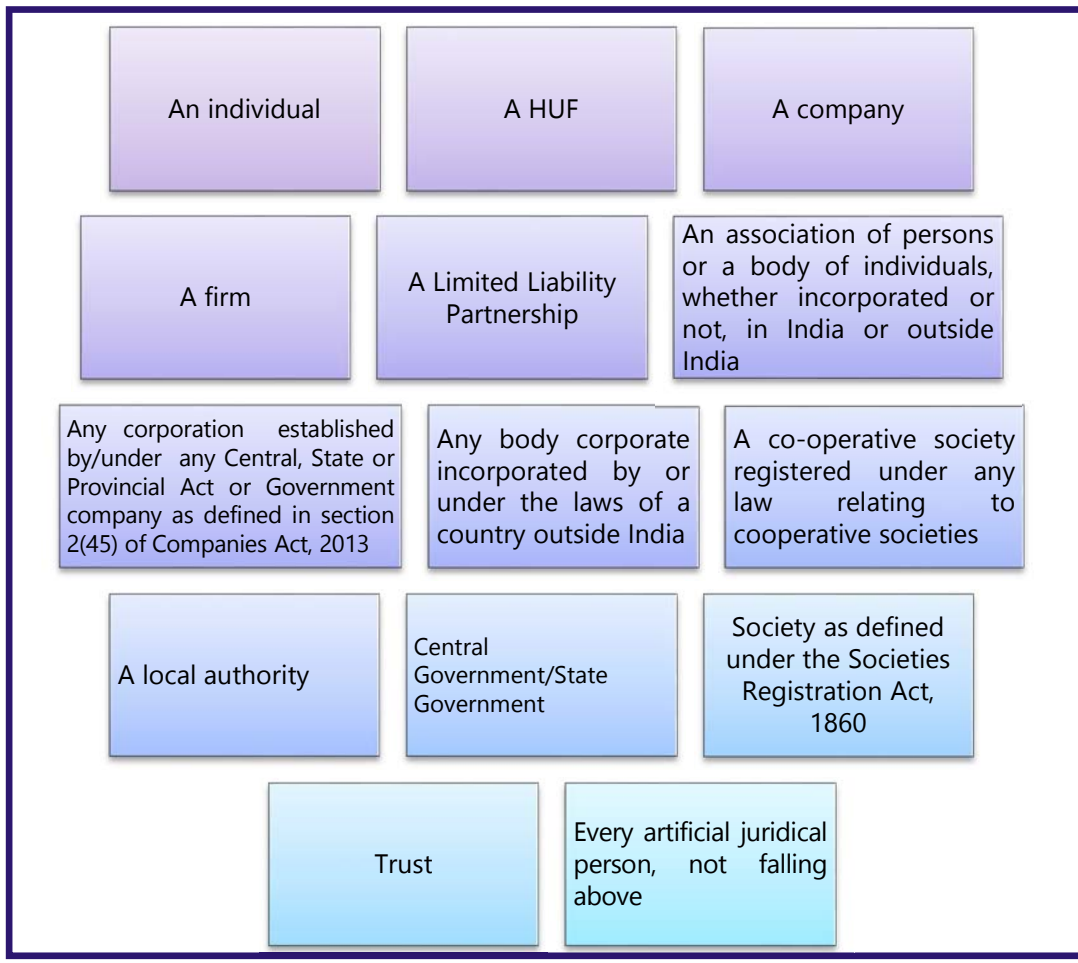
- **Actionable claim:** means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts 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) of CGST Act].
- **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) of CGST Act].
- **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].
- **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109) of CGST Act].
- **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) of 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 CGST Act].

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



❖ **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,

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(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) of CGST Act]

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.

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

The concept of 'supply' is the key stone of the GST architecture. The provisions relating to 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.

[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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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, lease or disposal made or agreed to be made for a **consideration** by **a person** in the **course or furtherance of business**
	(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 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 sub-sections (1), (1A) & (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —	
	(a)	a supply of goods and not as a supply of services; or
	(b)	a supply of services and not as a supply of goods.

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Schedule-I	***Activities to be treated as supply even if made without consideration***
S. No.	***Particulars***
1.	*Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.*
2.	*Supply of goods or services or both between related 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

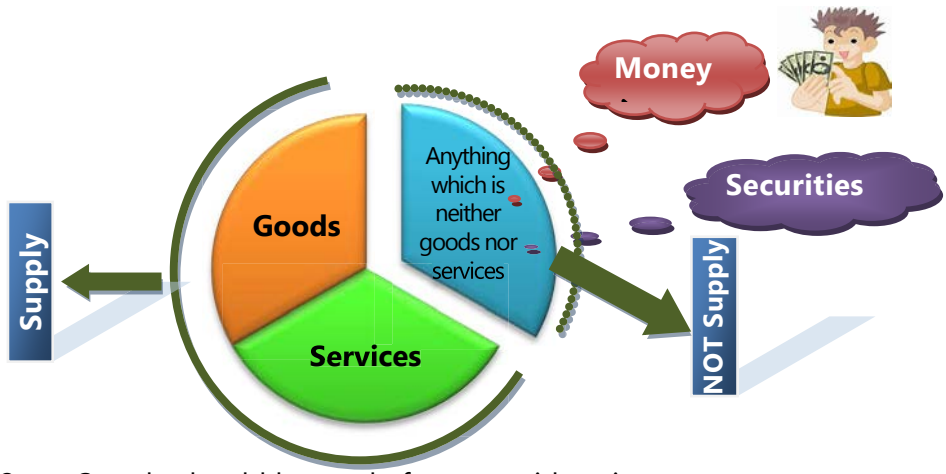
- The definition of 'supply' as contained in section 7 of the CGST Act is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. Clause (a) of sub-section (1) illustrates the forms of supply, but the list is not exhaustive. This is substantiated 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 in terms of section 7 can be understood in terms of following **parameters**:

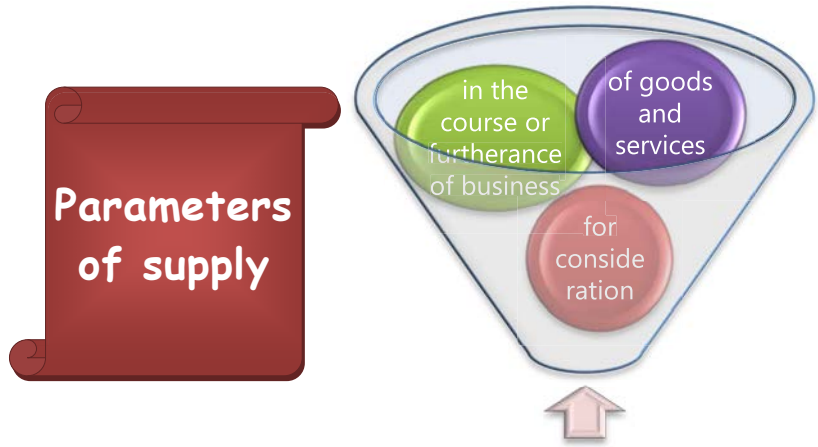
1. Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.

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2. Supply should be made for a consideration.

3. Supply should be made in the course or furtherance of business.

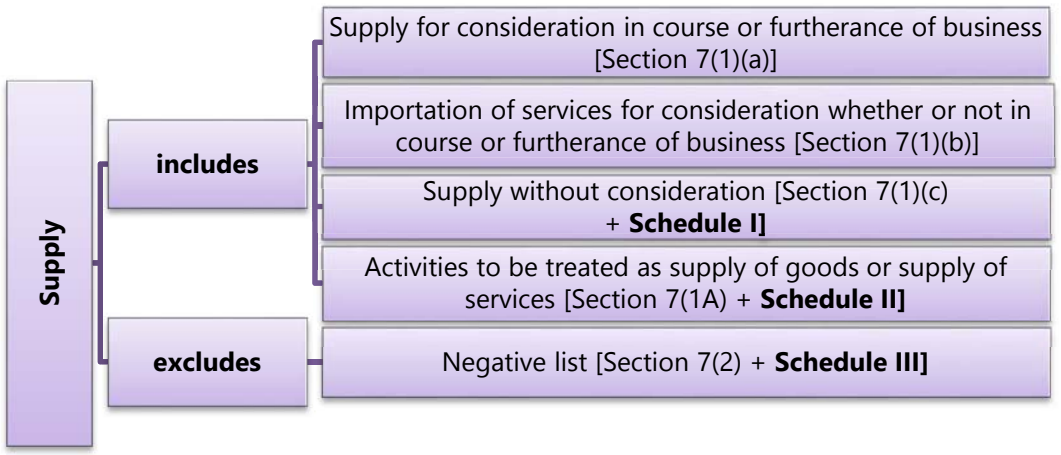


Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2nd and 3rd parameters [the requirement of supply being made for a consideration and in the course or furtherance of business] in the GST law. Few exceptions have been carved out where a transaction is deemed to be a supply even **without consideration** *[contained in Schedule I of the CGST Act – discussed later in this Chapter]*. 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]*.

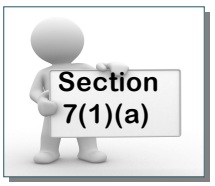
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- Further, there are also cases **where a transaction is kept out of scope of supply despite the existence of the above parameters,** i.e. there is a list of activities which are treated neither as supply of goods nor as supply of services. In other words, they are outside the scope of GST.
- GST law has classified certain activities/transactions **either as supply of goods or as supply of services**. 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:



Supply for consideration in course or furtherance of business



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 does not attract GST. The terms goods and services as defined under the Act have been analysed by way of a diagram on next page. **Anything supplied other than goods and services is outside the scope of supply.**

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**.

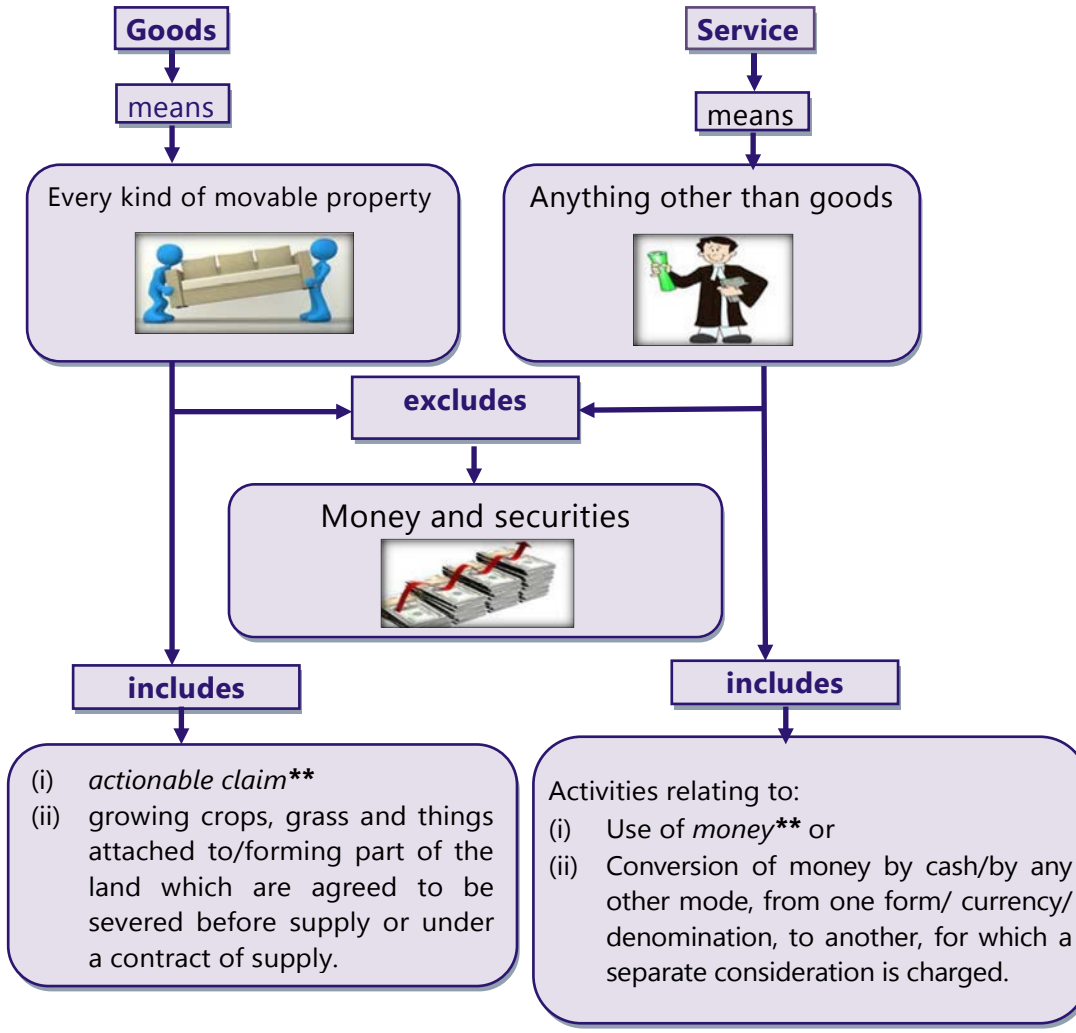
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Thus, the forms of supply as contemplated in this first part have two pre-requisites:

✓ the supply should be for a consideration; and

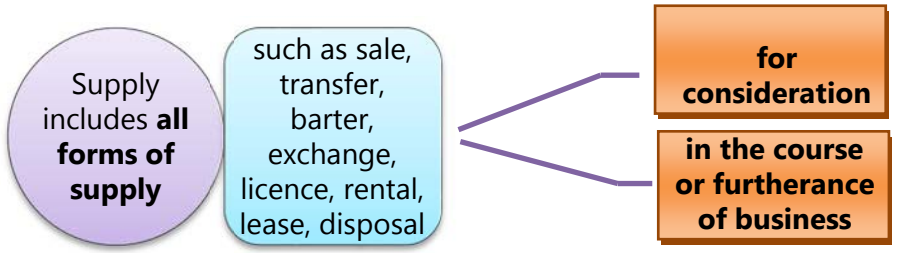
✓ the supply should be in the course or furtherance of business.



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

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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**.



Thus, the forms of supply as contemplated in this first part have two pre-requisites:

✓ the supply should be for a consideration; and

✓ the supply should be in the course or furtherance of business.

We shall now 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:

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.

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

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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.

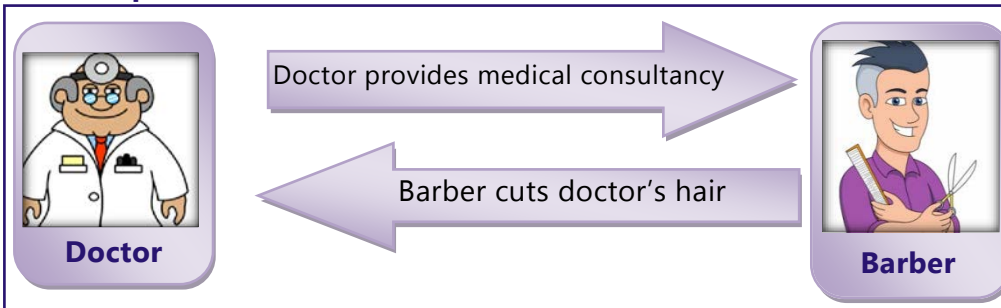
While barter deals with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are paid for partly in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.

Example of exchange



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.

Example of barter is as follows:



Here, the doctor has provided the medical consultancy services to barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, barber has provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor.

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

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[3] *www.macmillandictionary.com*

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

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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].

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:

B. CONSIDERATION

Consideration does not always mean 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) of the CGST Act *[Refer heading 'Relevant Definitions]*. The said definition has been depicted in the form of a diagram on next page:

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

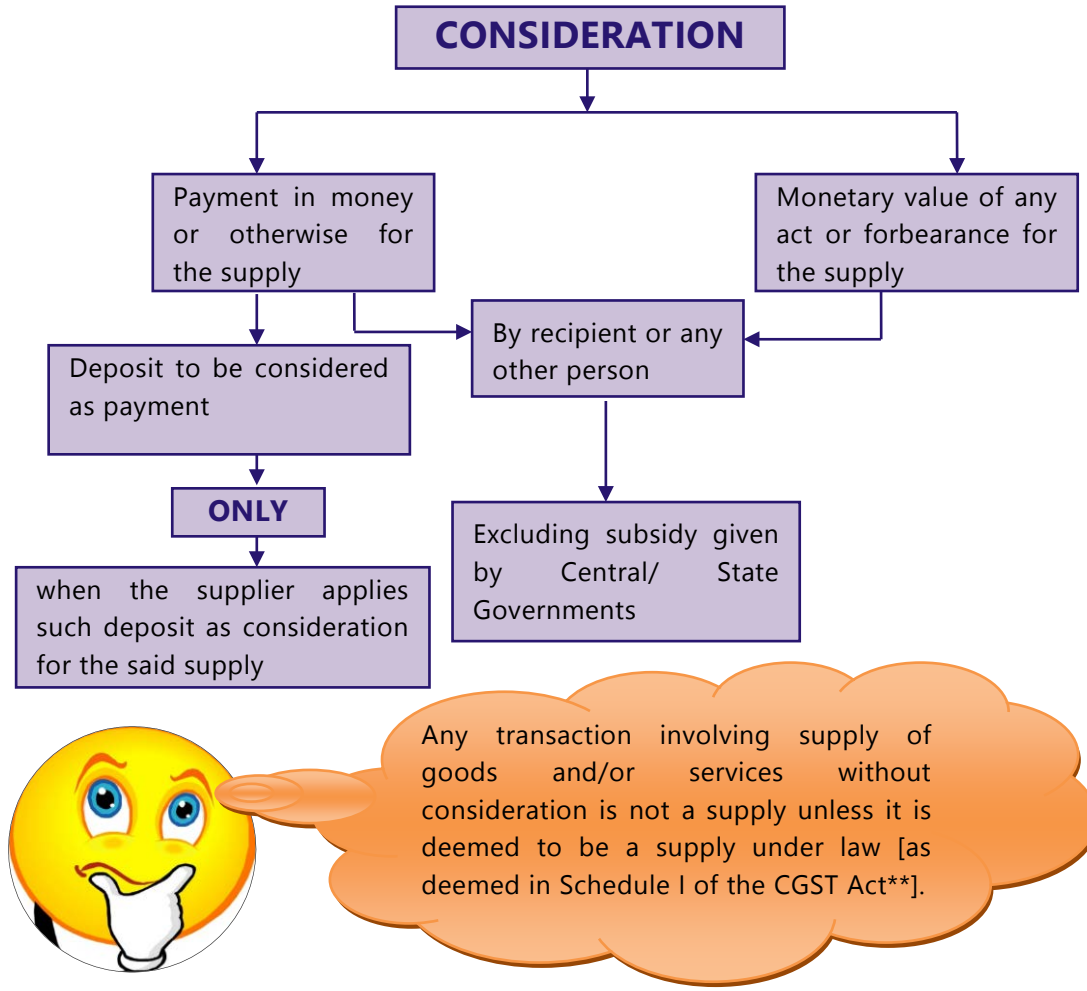


Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.

[5] *www.dictionary.cambridge.org*
[6] *www.dictionary.cambridge.org*

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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]*.



***Provisions of Schedule I of the CGST Act 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 expounded in the following paras:

C. IN 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

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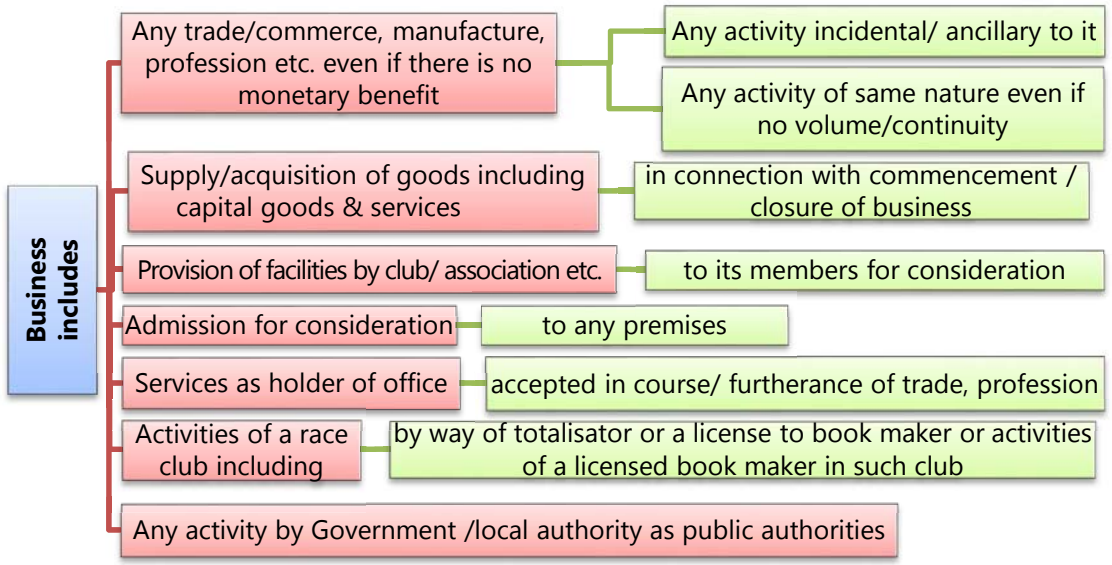
GST. Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business'.

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) of the CGST Act, *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 Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business. For any trade, commerce, or any

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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 'in the course or furtherance of business' are as follows:



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[7].



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[8].

*The view taken in above two examples is based on the view taken in the Departmental FAQs/ press release/flyer. However, as already seen, business includes trade, commerce, or any other similar activity, **whether or not there is frequency, volume, continuity or regularity** of such transaction.*

In view of this, it is also possible to take a view in the above examples that sale of car by Rishabh and sale of old gold jewellery by Manikarnika have been made in the course or furtherance of business and thus will constitute a supply.

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



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.

Services provided by the club/association to its members for consideration is a supply.



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 treated as supply as this is included in the definition of 'business'.

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

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

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



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 or activities of a licensed book maker in such club.



Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator[9]. 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.



There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration.



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.

Supply leviable to GST

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 3 – Charge of GST, a brief idea of the same is provided hereunder. For a supply to attract GST, primarily two additional conditions need to be satisfied. These are – (i) supply

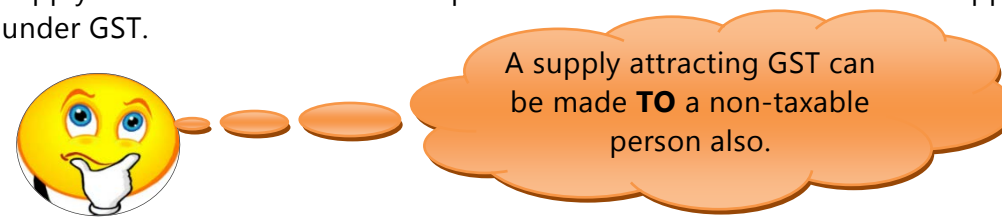
[9] *Totalisor is a computerised device that pools the wagers/bets (after deduction of charges and statutory taxes) of various persons placing the bet and also divides the total wager amount to be distributed to the winning persons.*

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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. Hence, a supply between two non-taxable persons does not constitute taxable supply under GST.



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 9 – Registration]*.

Hence, 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.

(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 *[Refer Chapter-3: Charge of GST for detailed discussion on leviability of GST]*. 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 for detailed discussion]*.

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

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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**[10].



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]*.

Financial services





Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investm ents 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 **definition of 'goods' and 'services' specifically excludes both money and securities**.

[10] *Refer Chapter 4 – Exemptions under GST for detailed discussion.*

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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.



Money would also include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD')[11] (as they are in the nature of promissory notes), issuance of drafts or letters of credit, etc.

While these transactions would be outside the ambit of supply, the related activity, for which a separate consideration is charged, would be chargeable to GST if other elements of taxability are present. Therefore, 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.

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) [12] [Section 2(101) of the CGST Act].

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[11] *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.*

[12] *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.

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Derivatives

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? 'Derivatives' are included in the definition of 'securities' under SCRA[13]. As 'derivatives' fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST.

Future contracts

Future contracts are in the nature of financial derivatives, the price of which is dependent on the value of underlying stocks or index of stocks or certain approved currencies and the settlement happens normally by way of net settlement with no actual delivery.

Since future contracts are in the nature of derivatives, these qualify as 'securities' and thus, are not subject to GST. However, where the future contracts have a delivery option and the settlement of contract 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.

Forward contracts

A forward contract is an agreement, executed, to purchase or sell a predetermined amount of a commodity or currency at a pre-determined future date at a pre-determined price. The settlement could be by way of actual delivery of underlying commodity/currency or by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date.

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.

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.

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[13] *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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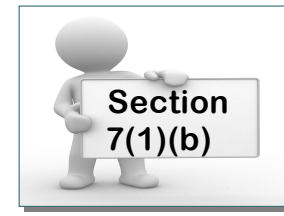
Transactions in instruments like interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference.

However, it is important to note that if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged on the derivatives/future contracts/forward contracts, the same would be a consideration for provision of service and subject to GST.

Further, 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 – *Discussed in detail in Chapter 4 – Exemptions from GST*.

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

Importation of services for consideration whether or not in course or furtherance of business

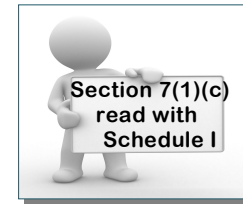


The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration **whether or not in the course or furtherance of business**. This is the only exception to the condition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

example

Ramaiyaa, a proprietor, has received the architect services for his house 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



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

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In the past regime, in every tax statute, "consideration" played the most important role for levying taxes. For instance, if any service was provided for free to a person, such service was not subject to service tax. However, under GST, the importance of consideration has been diluted in certain cases – this is an important departure from the earlier indirect tax regime.

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

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, it is important to note that this provision would 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:

- There must be a disposal or transfer of business assets**.
- Transfer/disposal must be permanent.
- 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[14].

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

***It is important to note that the term business assets has not been defined under the GST law.*



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.



A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The

[14] *List of the goods in respect of which ITC is blocked has been elaborated in Chapter 8 – Input Tax Credit.*

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transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

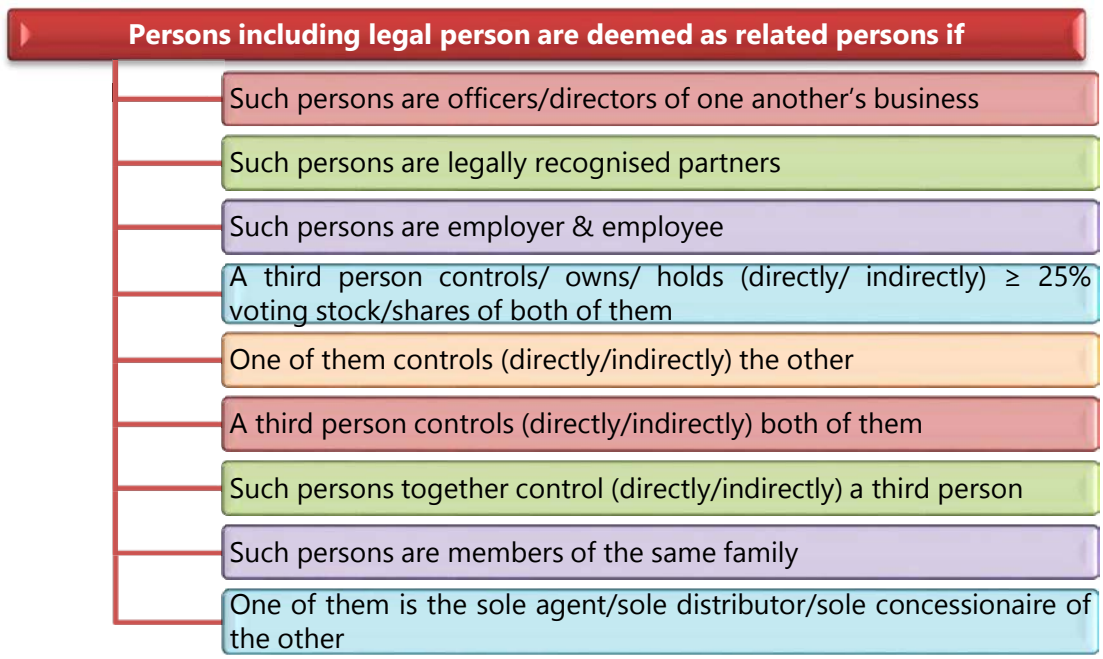
This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

II. Supply between related person 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 **provided it is made in the course or furtherance of business.**

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



Related persons: A person who is under influence of another person is called a related person like members of the same family *[See definition of family under 'Relevant Definitions']* 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:



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

(ii) 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.

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 9 – Registration*.

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 supply.

Since registration in 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 has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.

In simpler terms, the concept of distinct persons can be understood as follows:

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.**

Statutory provisions relating to 'distinct persons' are contained in sub-sections (4) and (5) of section 25. They have been discussed 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) of the CGST Act].

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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 shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.



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) of the CGST Act].

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.

Rishabh Enterprises, a registered supplier, owns an air-conditioned 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, air-conditioned restaurant in Maharashtra and liquor shop in Uttarakhand [though unregistered] shall be treated as establishments of distinct persons. Supply by Maharashtra office to Uttarakhand office, in course or furtherance of business even without consideration will qualify as supply.

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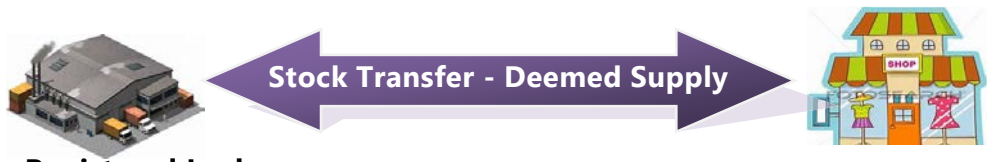
Registered restaurant in Maharashtra

Unregistered liquor shop in Uttarakhand

Stock transfers or branch transfers qualify as supply: In view of the aforesaid discussion, transactions between different locations (with separate GST registrations) of same legal entity (eg., stock transfers or branch transfers) will qualify as 'supply' under GST as these are transactions between distinct persons.



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.



Registered Lucknow factory

Registered Delhi showroom

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:

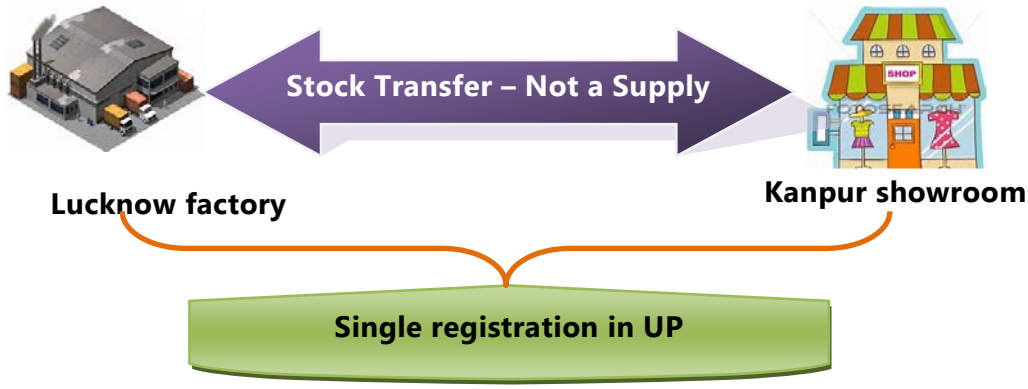


Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there.

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.



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]*.

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 not treated as supply [Schedule III of 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 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.

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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

As already mentioned that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services).

It follows therefrom that payment made 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.

If services such as membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same will not be subjected to GST.

The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (C2C)[15].

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.

[15] *As clarified in a Press Release on 10.07.2017 by Ministry of Finance*

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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.

Thus, the **supply of services** between the principal and the agent and vice versa would therefore require "consideration" to be considered as supply and thus, to be 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.
- 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]*.**

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



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.



M/s Tintin, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders.

The highest bid is accepted and the goods are sold to the highest bidder by M/s Tintin. The invoice for the supply of the goods is issued by M/s Tintin to the successful bidder.

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



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

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the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3. of Schedule I.



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.



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.

In cases where the invoice is issued by Kavi to the buyer, the former is an agent covered under Para 3. of Schedule I[16]. 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)



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.

[16] *It is important to note that services provided by the commission agent for sale or purchase of agricultural produce are exempt from GST.*

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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:

Sl. No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	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 of the CGST Act 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	In such a scenario, following activities are taking place:

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	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 of the CGST Act?	***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 of the CGST Act, the temporary short-term transaction based loan being 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[17].*** ***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 of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for***	***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.***

[17] *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 vide Entry 27 of Notification No. 12/2017 CT(R) dated 28.06.2017 [Discussed in detail in Chapter 4 – Exemptions under GST].*

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	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?	***It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, 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 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) of the CGST Act[18].***

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".



Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such 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.



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.

[18] *Section 15 of the CGST Act, 2017 has been discussed in detail in Chapter 7 – Value of Supply.*

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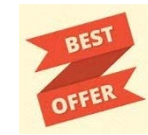
Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.

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' - buy one soap and get one soap free or get one tooth brush free along with the purchase of tooth paste.



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[19], except where the activity falls within the ambit of Schedule I of the CGST Act.***



Buy one get one free offer: ***It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case***



[19] *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 - Discussed in detail Chapter 8 – Input Tax Credit.*

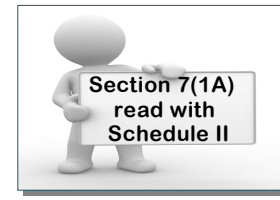
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of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

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]

Activities/transactions to be treated as Supply of goods or Supply of services



Section 7(1A) of the CGST Act classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II to 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.



Under earlier laws, the restaurants used to charge both service tax and VAT on the value of food served. This 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 food and service is naturally bundled in ordinary course of business. Further, Entry 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.

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These are as follows:-

S.No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods. Shivaji sells ready-made garments to its customers.	Supply of Goods
		Any transfer of right in goods/ undivided share in goods without transfer of title in goods. 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 shall pass at a future date upon payment of full consideration as agreed. (i) Dhruva Capitals supplied goods on hire purchase basis to customers. (ii) 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[20]. Lease agreement for land.	Supply of Services

[20] *Refer Circular No.44/18/2018 CGST dated 02.05.2018 discussed subsequently.*

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		Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.  A shop let out in a busy market area.	Supply of Services
3.	Treatment or Process	Any treatment or process which is applied to another person's goods  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 off by/under directions of person carrying on the business so as no longer to form part of those assets, whether or not for consideration.	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, whether or not for consideration.  Arunodhya, a sole proprietor, owns a laptop used for making office presentations. He transfers said laptop to his son for making school projects.	Supply of Services
		Goods forming part of assets of any business carried on by a	Supply of Goods

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		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.  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[21].	
		✎ Business is carried on by a personal representative who is deemed to be a taxable person.	
5.	**(a)** Renting of immovable property  (i) Renting of a commercial complex. (ii) Renting of precincts of a religious place. (iii) Renting of property to an educational institution. (iv) Permitting use of immoveable property for placing vending/dispensing machines.		Supply of Services
	(b) Construction of complex, building, civil structure, etc. Construction of a complex, building, civil structure or a part thereof, including a		

[21] *Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt from GST [Discussed in detail in Chapter 4 – Exemptions from GST.*

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	complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.  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 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
	(c) Temporary transfer or permitting use or enjoyment of any intellectual property right  Temporary transfer of patent.	

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	(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software  Suvidha Solutions develops an accounting software for a business.	Supply of Services
	(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.  (i) 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. (ii) Late delivery charges recovered from supplier for non-fulfilment of contract within stipulated time. (iii) Notice pay recovered from employee for leaving the job before agreed period of notice for leaving a job.	
	(f) Transfer of right to use any goods for any purpose  Machinery given on hire.	
6.	Following composite supplies :- Works contract services. ***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*	Supply of Services

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	such contract [Section 2(119) of CGST Act]. 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.	
7.	Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.	Supply of Goods

1. Taxability of 'tenancy rights' under GST



Pagadi system, i.e. transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

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

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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. Further, 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 *[Circular No.44/18/2018 CGST dated 02.05.2018]*.

It is important to note that grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt from tax *[Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017 – Discussed in Chapter 4 – Exemptions from GST]*.

2. Joint Venture (JV)

JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of *inter se* agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV.

Thus, whether a cash call is merely a transaction in money and hence not 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

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as per the approved work programme and budget. Let us understand the taxability of cash calls with the help of following examples:



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.



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

3. Priority Sector Lending Certificates (PSLCs)[22]

RBI's FAQ on PSLCs have construed PSLCs are in the nature of goods. 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 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]*.

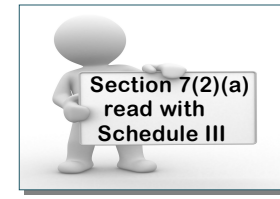
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[22] *Lending by a commercial bank for specified sectors which have been identified as **"priority sector"** by RBI is called as Priority Sector Lending. Priority Sector Lending Certificates (PSLCs) are a mechanism to enable banks to achieve the priority 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.*

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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]

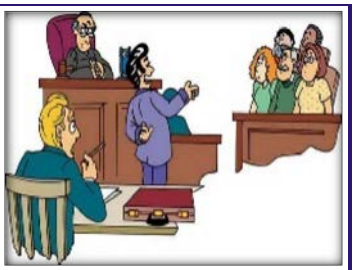
Negative list under GST



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

S.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.  (i) Amounts received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. (ii) 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. (iii) 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  

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	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.** For example, 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[23]. 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.
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

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

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	directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal[24]. 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. 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, Comptroller and Auditor General of India, Chairman of Union Public Service Commission, Attorney General of India, in that capacity.

[24] *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 quasijudicial 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.

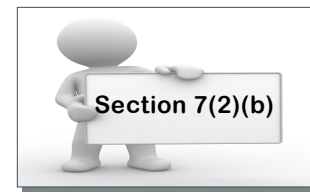
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	(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	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 lottery, betting and gambling. **'Actionable claims'** are specifically included in the definition of goods under section 2(52) of the CGST Act *[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 lottery, betting and gambling from the ambit of definition of supply. Co-joint reading of said provisions implies that **only lottery, betting and gambling are treated as supply. All other actionable claims are outside the ambit of definition of supply.** **Some of the other examples of actionable claims** are: Right to recover insurance money, claim for 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.
7.	***'Out and out supplies' (i.e. 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.***  ***Vivekanand purchased goods from China and sold it to George in Canada without bringing the goods in India. This transaction is neither supply of goods nor supply of services.***

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8.	***(a) Supply of warehoused goods to any person before clearance for home consumption.***  ***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) 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.  ***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.***

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



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 have been notified[25] for the said purpose.

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

[25] *vide Notification No. 14/2017 CT (R) dated 28.06.2017/ Notification No. 11/2017 IT (R) dated 28.06.2017*

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(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] was discussed in GST Council's meeting held on 11th June, 2017 and the Council recommended that such inter-State movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

Thus, above activity may not be treated as supply and consequently IGST will not be payable on such supply. 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]*.

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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.***



ANALYSIS

GST is payable on individual goods or services or both at the notified rates. 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 such simple and clearly identifiable supplies. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.

In such a case, 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.

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In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.

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.
- 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) of the CGST Act].

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'.



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) of CGST Act]

How to determine the tax liability on composite supplies?: 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.**

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.

When a consumer buys a television set and he also gets 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.

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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.

Works contract and restaurant services are classic examples of composite supplies. However, the GST law identifies both as supply of services and such services are chargeable to specific rate of tax mentioned against such services (works contract and restaurants).

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

  For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- 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.

  For example, 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:

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- 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 the principal supply so as to determine the right classification and rate of tax of such composite supply.



For instance, 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**, CBIC has clarified that the goods and services would be liable to tax at the rates as applicable to such goods and services separately *[Circular No. 47/21/2018 GST dated 08.06.2018]*.

Further, given below is the illustrative list determining what constitutes the principal supply in the **given composite supplies:**

Activity/ transaction	Principal supply
Supply of printed books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address	In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service
	In case of supply of printed envelopes, letter cards, printed

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or other contents supplied by the recipient of such printed goods	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. [Circular No. 11/11/2017 GST dated 20.10.2017]
Activity of bus body building	The principal supply may be determined on the basis of facts and circumstances of each case [Circular No. 34/8/2018-GST dated 01.03.2018].
Retreading of tyres	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, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods *[Circular No. 34/8/2018-GST dated 01.03.2018].*

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) of the CGST Act].

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



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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 it would be a mixed supply.

Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

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



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.



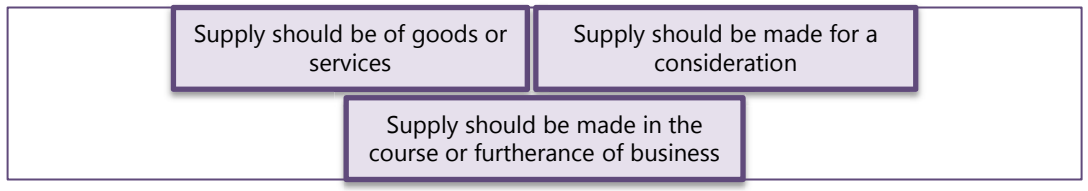
A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.



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.

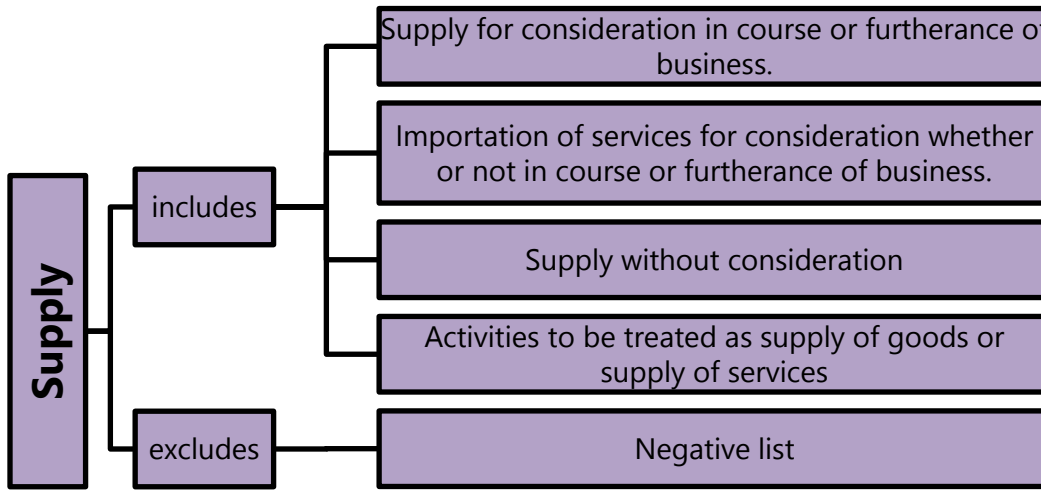
LET US RECAPITULATE

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



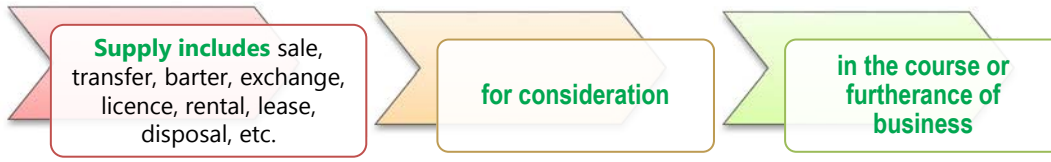
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- While these parameters describe the concept of supply, under certain circumstances, transactions have been deemed as supply even when the supply is made without consideration or not in the course or furtherance of business. Activities specified in 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:

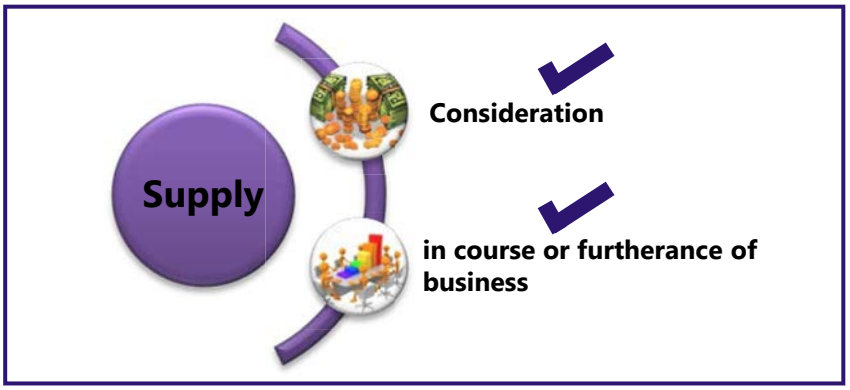


Sub-sections of section 7 alongwith related Schedules has been summarised as follows:

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

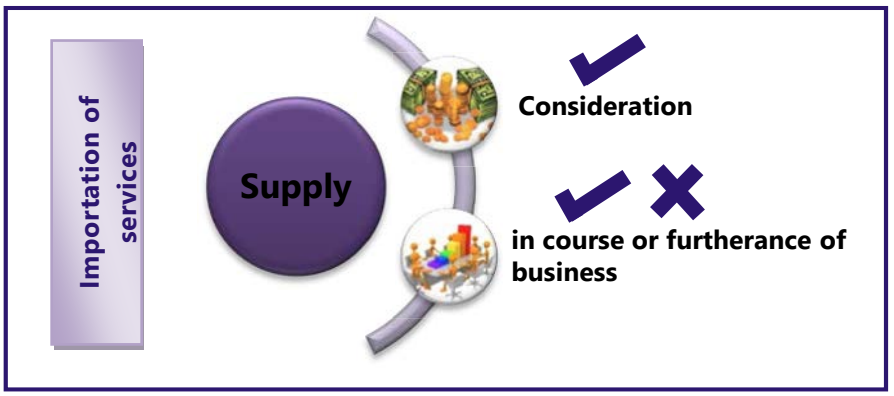


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2. Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]

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 imported not in course/furtherance of business.



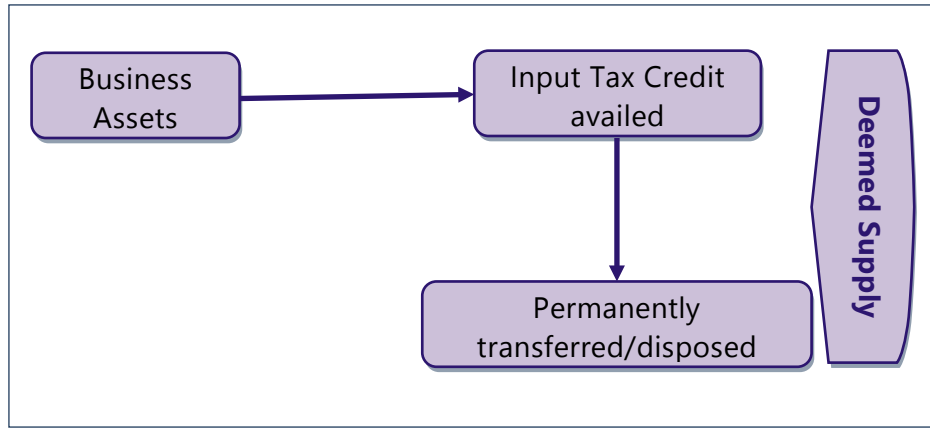
3. Supply without consideration - Deemed Supply [Section 7(1)(c) read with Schedule I]

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.

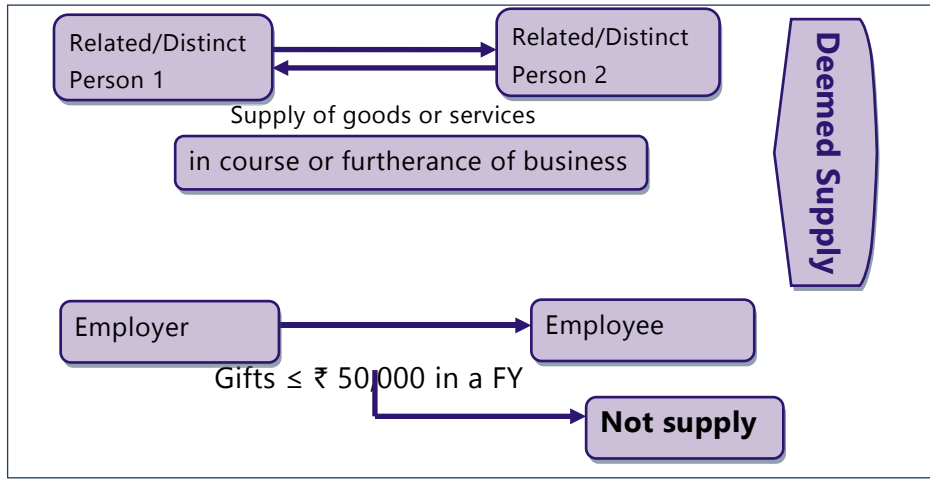
As per Schedule I, in the following four cases, **supplies made without consideration** will be treated as supply under section 7 of the CGST Act:

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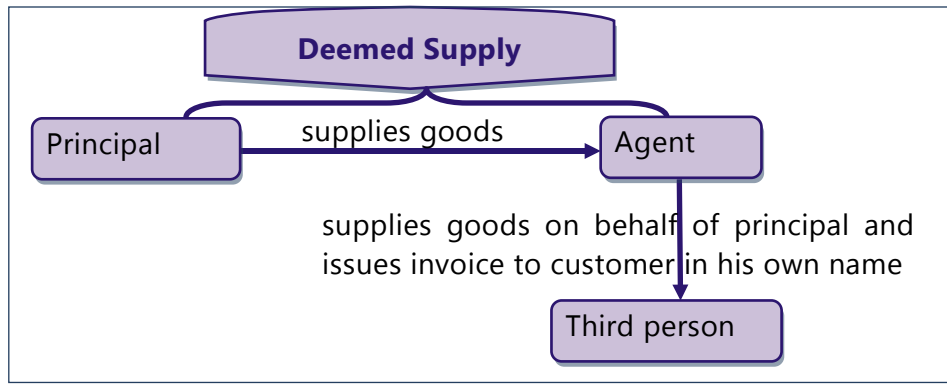
I. Permanent Transfer/Disposal of Business Assets



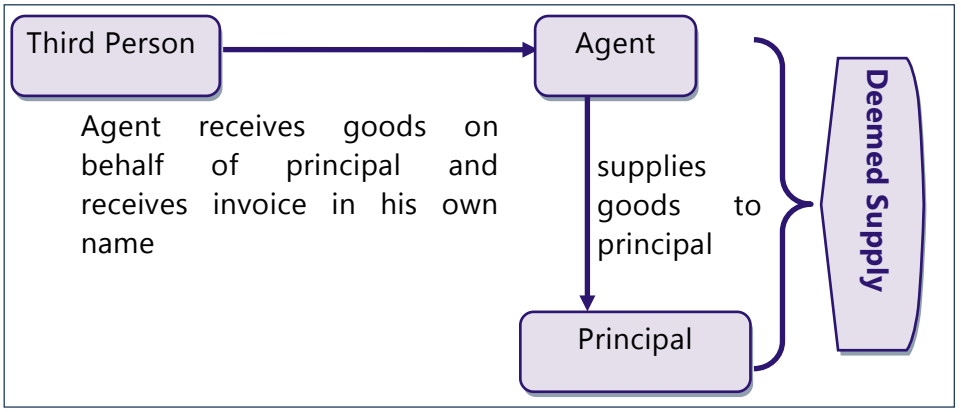
II. Supply between related persons or distinct persons



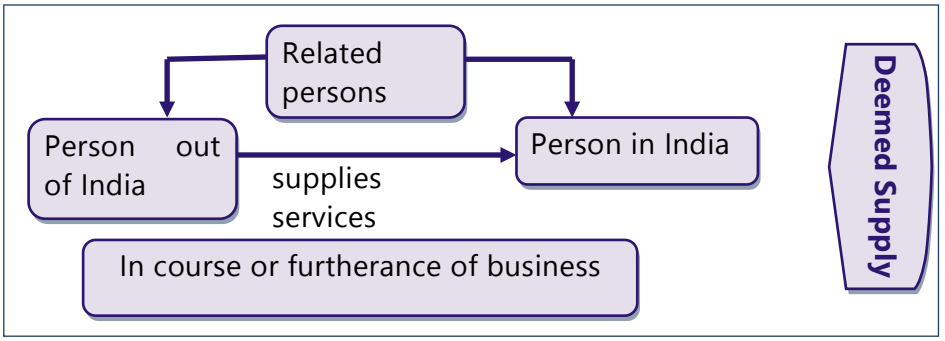
III. Supply between principal and agent



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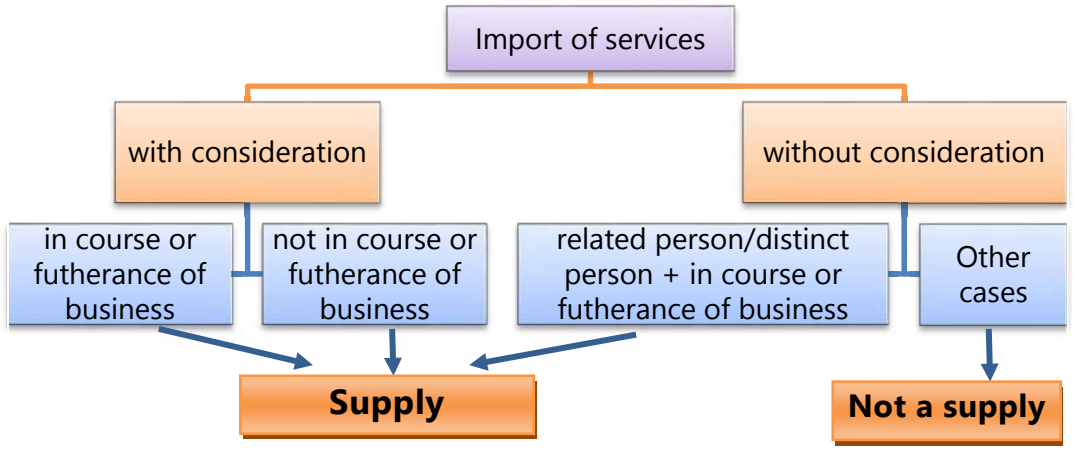


IV. Importation of services



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



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

S.No.	Activity/ Transaction	Type	Supply of goods/ services
1.	Transfer	(i) Title in goods (ii) Title in goods under an agreement that property shall pass at a future date.	Goods
		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 off by/under directions of person carrying on business so as no longer to form part of those assets, whether or not for consideration	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, whether or not for consideration	Services
		Goods forming part of assets of any business carried on by a person who	Goods

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		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:** ✎ 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.		
	Temporary transfer or permitting use or enjoyment of any intellectual property right		
	Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software		
	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 services. Supply of goods, being food or any other article for human consumption or any drink.		Services
7.	Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.		Goods

5. Negative list under GST [Section 7(2)(a) read with Schedule III]

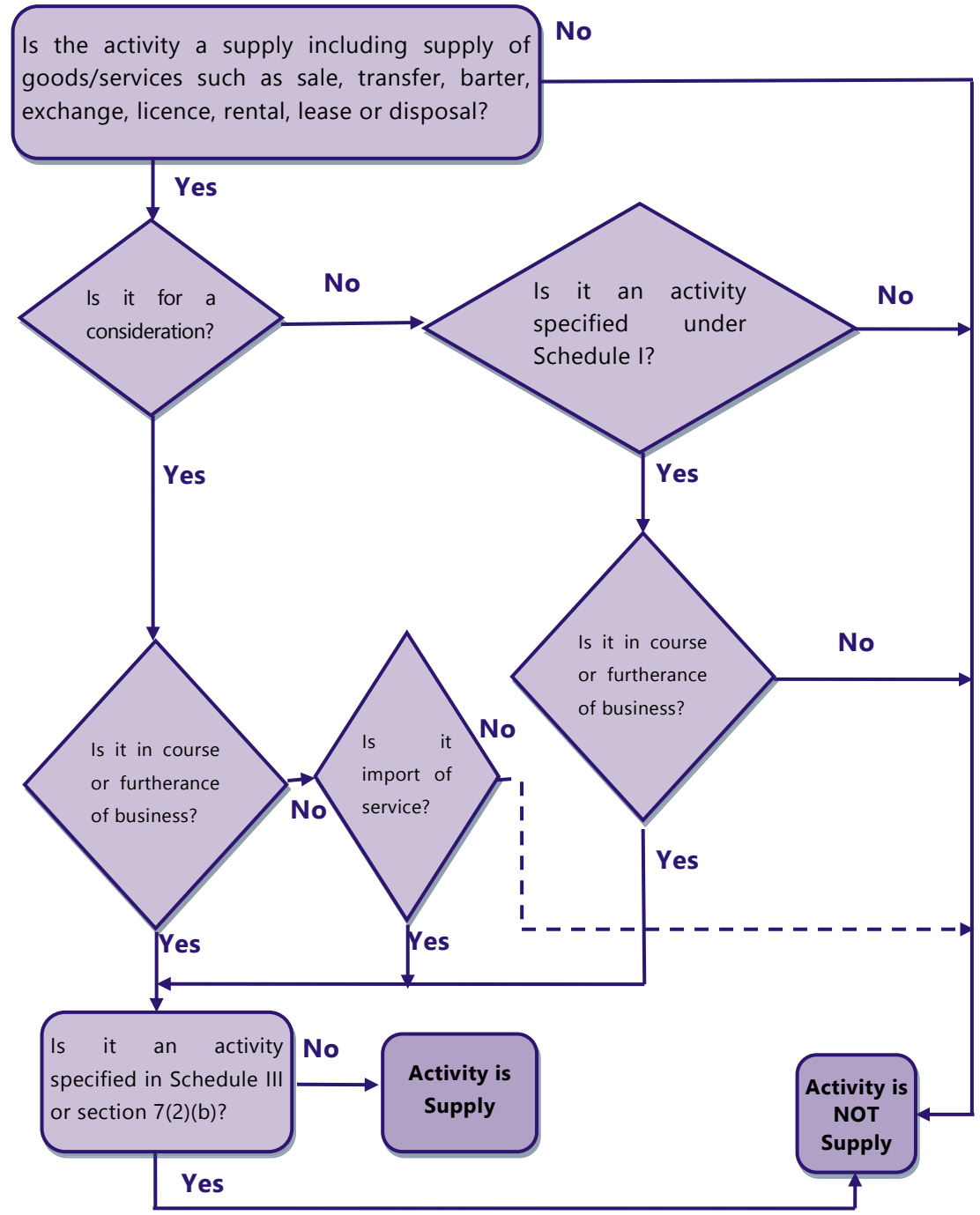
S. No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.

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2.	Services by any court or Tribunal established under any law for the time being in force.
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; 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 lottery, betting and gambling.
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.***

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The following diagram 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. *What is the taxable event under GST?*
2. *What is the tax treatment of composite supply and mixed supply under GST?*
3. *Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?*
4. *Examine whether the following activities would amount to supply under section 7 read with Schedule I of the CGST Act:*

   (a) Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished

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goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold

(b) Raman is an architectin Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.

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

5. State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:

(a) Renting of immovable property

(b) Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business, whether or not for consideration.

(c) Transfer of right in goods without transfer of title in goods.

(d) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.

6. Determine whether the following supplies amount to composite supplies:

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

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

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

ANSWERS/HINTS

1. Taxable event under GST is **supply of goods or services or both**. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.

2. Composite supply shall be treated as supply of the principal supply. Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.

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3. Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II(1)(b) of the CGST Act. In some cases, possession may be transferred immediately but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.

4. (a) Schedule I of CGST Act, *inter alia*, stipulates that supply of goods or services or both between related persons or between distinct persons as specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, where a person who has obtained or is required to obtain registration in a State in respect of an establishment, has an establishment in another State, then such establishments shall be treated as establishments of distinct persons [Section 25 of the CGST Act]. In view of the same, factory and depot of Sulekha Manufacturers are establishments of two distinct persons. Therefore, supply of goods from Delhi factory of Sulekha Manufacturers to Mumbai Depot without consideration, but in course/furtherance of business, is supply under section 7 of the CGST Act.

(b) Schedule I of CGST Act, *inter alia*, stipulates that import of services by a taxable person from a **related person** located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, *inter alia,* provides that persons shall be deemed to be **"related persons"** if they are **members of the same family**. Further, as per section 2(49) of the CGST Act, 2017, 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**.

In the given case, Raman has received free of cost legal services from his brother. However, in view of section 2(49)(ii) above, Raman and his brother cannot be considered to be related as Raman's brother is a well-known lawyer and is not wholly/mainly dependent on Raman. Further, Raman has taken legal advice from him in personal matter

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and not in course or furtherance of business. Consequently, services provided by Raman's brother to him would not be treated as supply under section 7 of the CGST Act read with Schedule I.

(c) In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman's brother to him would still not be treated as supply under section 7 of the CGST Act read with Schedule I as although the same are provided in course or furtherance of business, such services have not been received from a related person.

5. (a) Supply of services

(b) Supply of goods

(c) Supply of services

(d) Supply of goods

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

(a) since, supply of breakfast and dinner with the accommodation in the hotel are naturally bundled, said supplies qualify as 'composite supply'.

(b) since supply of toothbrush alongwith the toothpaste are not naturally bundled, said supplies do not qualify as 'composite supply'.

7. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.

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CHAPTER 3

CHARGE OF GST



LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- explain the extent and commencement of GST law.
- describe the intra-State supply, inter-State supply and supply in the territorial waters
- 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.
- understand and analyse the composition levy- eligibility for the same and conditions to be fulfilled.
- explain and analyse the option to pay tax at concessional rate under *Notification No. 2/2019 CT (R) dated 07.03.2019*

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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 was passed. By virtue of this Act, central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax were subsumed into a comprehensive GST *[Discussed in detail in Chapter-1: GST in India – An Introduction]*.

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**. **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.

Intra-State supply

Generally, 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.

Inter-State supply

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.

2. RELEVANT DEFINITIONS



- **Central tax:** means the central goods and services tax levied under section 9 [Section 2(21) of the CGST Act].

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- **Integrated tax:** means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act [Section 2(58) of the CGST Act].
- **State tax:** means the tax levied under any State Goods and Services Tax Act [Section 2(104) of the CGST Act].
- **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. [Sec. 2(52) of CGST Act].
- **E-Commerce operator**: means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. [Section 2(45) of CGST Act]



- **Aggregate turnover:** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess [Section 2(6) of CGST Act].
- **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 Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval (OIDAR) services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

  Explanation - For the purposes of this clause, the expression **"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,

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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 [Section 2(16) of the IGST Act].

- **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) of CGST Act].

- **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) of CGST Act].

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. [Section 2(105) of CGST Act]

- **Taxable supply:** means a supply of goods and/or services which is chargeable to tax under CGST Act. [Section 2(108) of CGST Act]

- **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) of CGST Act].

- **Taxable person:** means a person who is registered or liable to be registered under section 22 or section 24. [Section 2(107) of CGST Act]

- **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

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(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) of CGST Act

3. EXTENT & COMMENCEMENT OF GST LAW

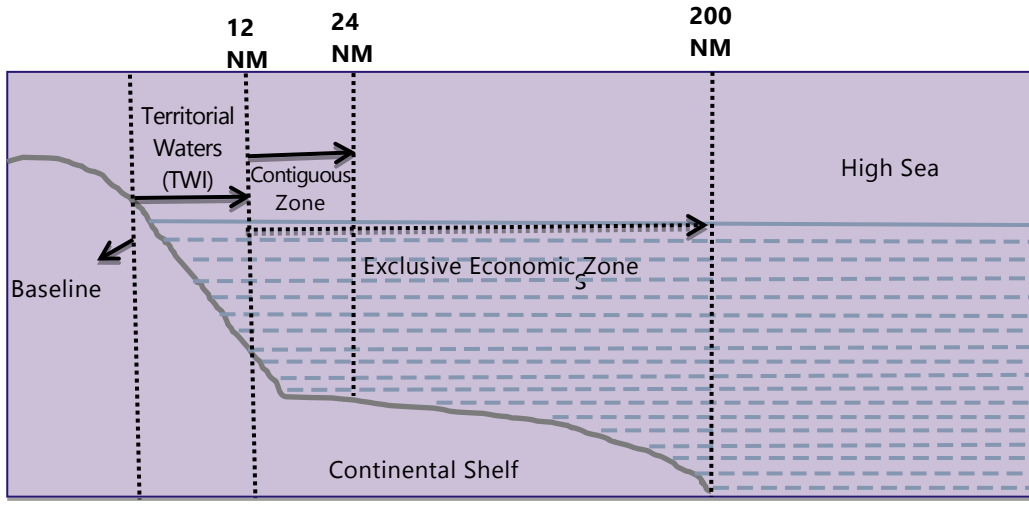
(i) **Central Goods and Services Tax Act, 2017** extends to the whole of India including Jammu and Kashmir [Section 1 of the CGST Act].



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 and Puducherry]** extends to whole of that State/Union Territory.

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 including Jammu and Kashmir [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, Daman and Diu, Chandigarh and other territory, i.e. the Union Territories without Legislature [Section 1 of the UTGST Act].

***Union territory**: means the territory of—

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli;

(d) Daman and Diu;

(e) Chandigarh; and

(f) other territory.

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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) of CGST Act].

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.

Before we go into niceties of leviability of CGST and IGST under respective statutes, let us first understand the terms - inter-State supply, intra-State Supply and supplies in territorial waters.

4. 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.*

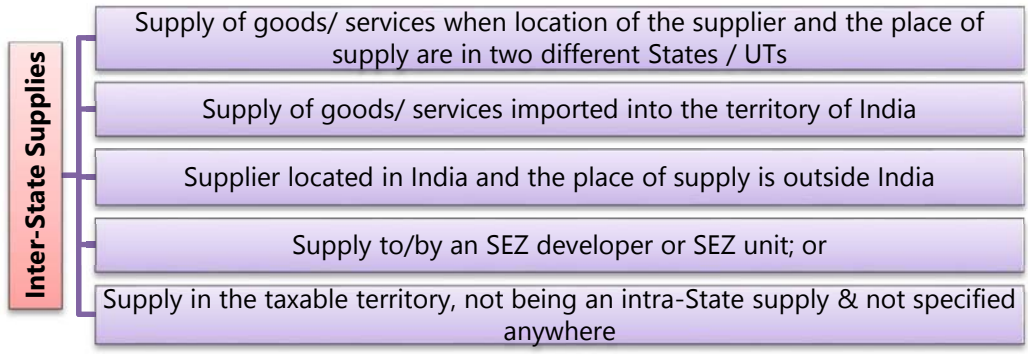
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(4)	*Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*
(5)	*Supply of goods or services or both,––* *(a) when the supplier is located in India and the 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) of the IGST Act]

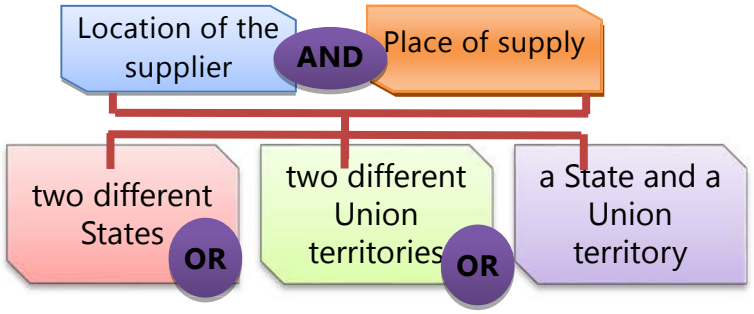


It primarily covers two kinds of supplies – Supply of goods within India and supply of goods imported into India. The two categories of supplies are discussed hereunder:

(i) Supplies within India

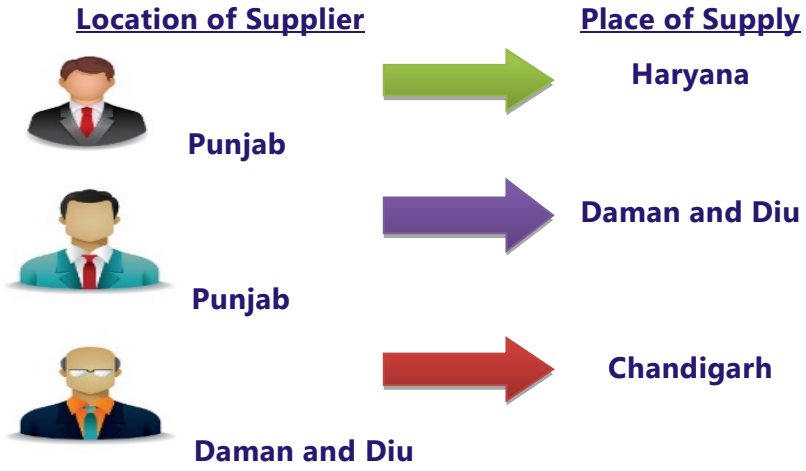
Supply of goods shall be considered as supply of goods in course of inter-State trade or commerce in the following cases:

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**The terms 'location of the supplier' and 'place of supply' have been explained in Chapter 5 – Place of Supply.*

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.

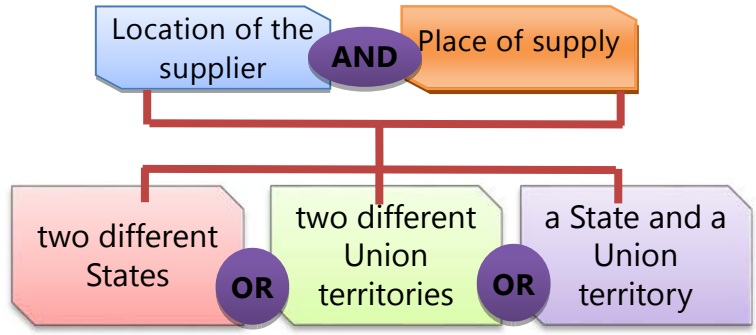
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B. 'SUPPLY OF SERVICES' in the course of inter-State trade/commerce [Section 7(3) and 7(4) of the IGST Act]

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[1] shall be treated as inter-State supplies and would be subject to IGST.

C. SUPPLY OF GOODS OR SERVICES OR BOTH in the course of inter-State trade or commerce [Section 7(5) of the IGST Act]

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:

[1] *Provisions relating to import of goods/services have been discussed in detail in Chapter 14 – Import and Export under GST.*

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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[2].

II. Supply of goods or services or both to or by a Special Economic Zone developer/ Special Economic Zone unit

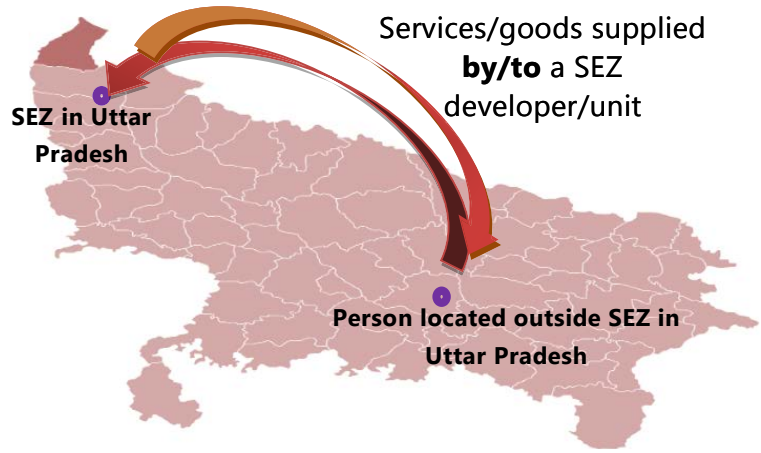
SEZ is a geographically bound zone within India where the economic laws relating to export and import are more liberal as compared to other parts of the country. For all tax purposes, SEZ is considered to be a place outside India. Any supplies made to SEZ unit/developer or vice versa are inter-State 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*.

[2] *Provisions relating to export of goods/services have been discussed in detail in Chapter 14 – Import and Export under GST.*

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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.

5. 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:* *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*

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	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

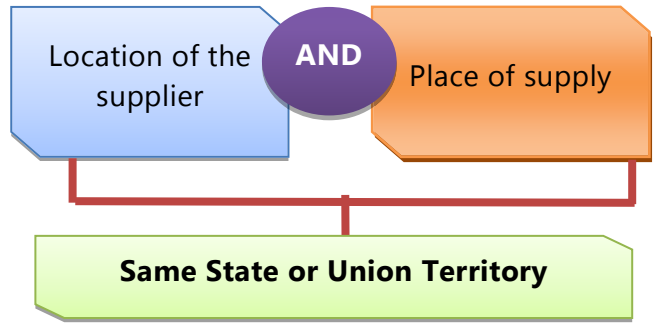
This section provides as to when the supplies of goods and/or services shall be treated as **intra-State supply**.

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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:

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.





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

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

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**.

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

As discussed earlier, 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 5 – Place of Supply 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]*.

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6. 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 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.

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After understanding the terms – inter-State supply, intra-State supply and supplies in territorial waters, we shall discuss hereunder the chargeability of CGST and IGST and related provisions.

7. 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 supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
(2)	*The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*
(3)	*The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall*

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	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.***
(5)	*The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.* *Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:* *Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.*

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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, 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 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 integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient 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.*
(5)	*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.*



ANALYSIS

Central Goods and Services Tax (CGST) shall be levied on all intra-State supplies of goods or services or both.

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.

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Value for levy: Transaction value under section 15 of the CGST Act– *Discussed in detail in Chapter 7 – Value of supply*.

Rates of CGST: Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council. [Rates presently notified are 0%, 0.125%, 1.5%, 2.5%, 6%, 9% and 14%]. Maximum rate of CGST can be 20%.

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. Since 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%.

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 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.

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.

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

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services notified under this case have been elaborated 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. the goods where tax is payable by the recipient: Goods like cashewnuts [not shelled/peeled], bidi wrapper leaves, tobacco leaves, supply of lottery, silk yarn, used vehicles, seized and confiscated goods, old and used goods, waste and scrap, raw cotton, etc. are taxable under reverse charge[3].

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 CGST shall be paid on reverse charge basis by the recipient of services:

S. No.	Category of supply of service	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 the Societies Registration Act, 1860 or under any other law for	Goods Transport Agency (GTA) who has not paid CGST @ 6% [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; or (c) any co-

[3] *Examples of goods on which tax is payable by the recipient under reverse charge have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.*

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	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.		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

(c) Governmental agencies,

which has taken registration under the CGST Act only for the purpose

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of deducting tax under section 51 and not for making a taxable supply of goods or services[4].			
2	***Services supplied 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	Services provided by way of **sponsorship** to any body corporate or partnership firm.	Any person	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, -	Central Government, State Government, Union territory or local	Any business entity located in the taxable territory.

[4] *These services have been simultaneously exempted from payment of tax. Thus, there will be no tax liability in this case. [Refer Chapter 4: Exemptions from GST].*

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	(1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	authority	
5A	Services supplied by Central Government, 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].
5B	***Services supplied by any person by way of transfer of development rights (TDR) or Floor***	***Any person***	***Promoter***

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	Space Index (FSI) (including additional FSI) for construction of a project by a promoter.		
5C	***Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter[5]***	***Any person***	***Promoter***
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	The 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.

[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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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 an author, music composer, photographer, artist** or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works **to a publisher, music company, producer** or the like.	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory.
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI)	Members of Overseeing Committee constituted by RBI	RBI
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

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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 (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	Any person other than a body corporate	A registered person, located in the taxable territory.

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	making a taxable supply of goods or services; or ***(ii) a registered person paying tax under composition scheme.***		

🔔 ***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 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]*.
2.	Services **supplied by a person located in non-taxable territory by way of transportation of goods by a vessel** from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, located in the taxable territory. **Importer,** in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer [Section 2(26) of the Customs Act, 1962].

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For purpose of these notifications,-

(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**: 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 [Section 2(11) of the Companies Act, 2013].

(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 this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax 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, licensing or other similar arrangements in respect of immovable property.

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(h) the provisions of this notification, in so far as they apply to the Central Government, State Government, shall also apply to the Parliament and State Legislature.

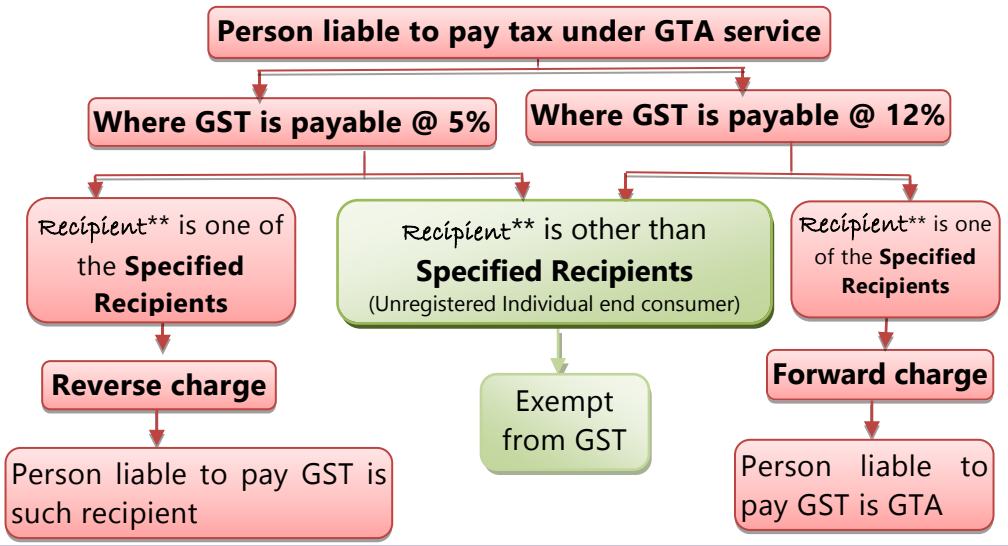
Person liable to pay GST on GTA service

GTA services are taxable at the following two rates:

(i) @ 5% (2.5% CGST+2.5% SGST/UTGST or 5% IGST) provided GTA has not taken the Input Tax Credit (ITC) on goods and services used in supplying GTA service or

(ii) @ 12% (6% CGST+6% SGST/UTGST or 12% IGST) where GTA opts to pay GST at said rate on all the services of GTA supplied by it. In this case, there is no restriction on availing ITC on goods and 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:



** 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.*

Tax payable by the ECO on notified services

Electronic Commerce Operator (ECO) is any person who owns/operates/manages an electronic platform for supply of goods/services/both.



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Sometimes, ECO itself supplies the goods or services through its electronic portal. However, many a times, the products/services displayed on the electronic portal are actually supplied by some other person to the consumer. When a consumer places an order for a particular product/ service on this electronic portal, the actual supplier supplies the selected product/ service to the consumer. The price/ consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.



The Government may notify specific categories of services the tax on supplies of which shall be paid by the **electronic commerce operator (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 and motor cycle;



(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 such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act.



(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 sub-section 22(1) of the CGST Act.

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).

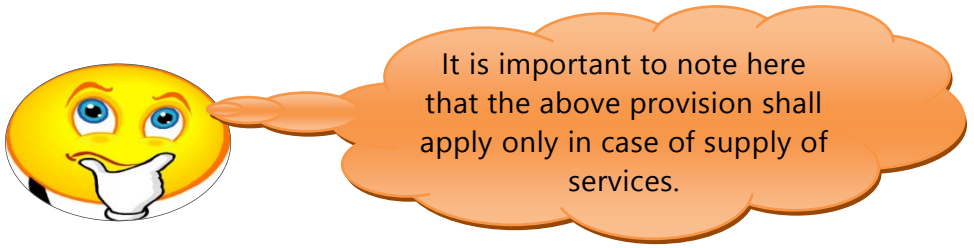
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(ii) **Maxi cab:** means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.

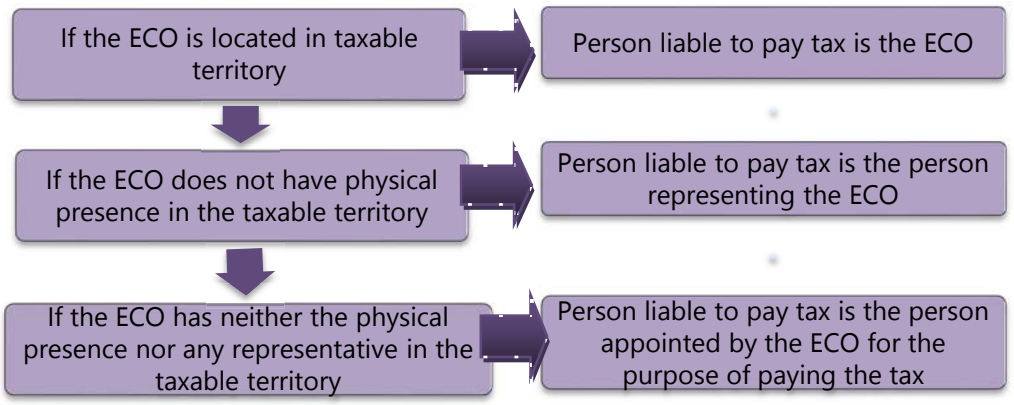
Motor cab: means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.

Motor car: means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.

- 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 above services.



Person liable to pay GST for above specified services when supplied through ECO



GST Rates prescribed for various goods

Broadly, six rates of CGST have been notified in six Schedules of rate notification for goods, viz., 0.125%, 1.5%, 2.5%, 6%, 9% and 14%. SGST/ UTGST at the equivalent rate is also leviable. With regard to IGST, broadly

GST rates for goods

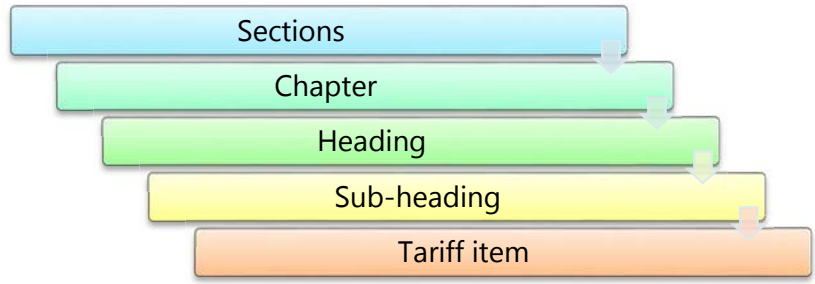
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six rates have been notified in six Schedules of rate notification for goods, viz., 0.25%, 3%, 5%, 12%, 18% and 28%[6]. **For certain specified goods, nil rate of tax has been notified.**

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.

Classification of goods under GST

Classification of goods means identification of the tariff item, sub-heading, heading and chapter in which a particular product will be classified.



Tariff item, sub-heading, heading and chapters referred in the Schedules of rate notification for goods under GST are the Tariff item, sub-heading, heading and chapters 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 digit 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 developed an 8-digit code of HSN.

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

[6] *Students may refer the CBIC website for the complete Schedule of GST Rates for goods for knowledge purposes.*

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nomenclature in the schedule is to be interpreted. These Rules for Interpretation including section and chapter notes and the General Explanatory Notes of the First Schedule[7] 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.

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 under GST

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

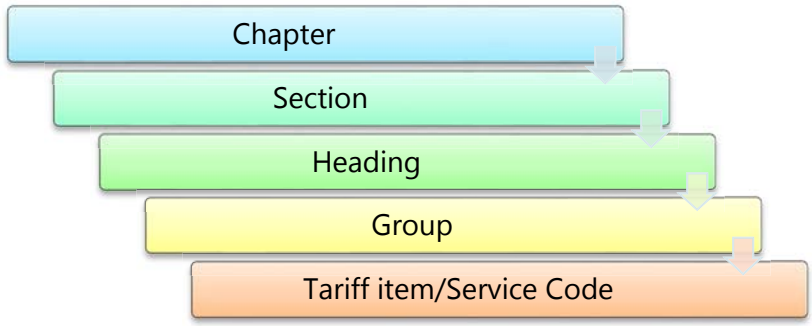
Section 9 Community, social and personal services and other miscellaneous services

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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[7] ***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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Rate of tax is determined in accordance with the Service Code in which the service is classified.

GST Rates prescribed for various services

Broadly, four rates of CGST have been notified for services, viz., 2.5%, 6%, 9% and 14%[8]. Equivalent rate of SGST/ UTGST will also be levied. For IGST, four rates have been notified for services, viz., 5%, 12%, 18% and 28%[9][10]. **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, any sporting event such as IPL and the like, services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet, attract the highest rate of 28% (CGST @ 14% and SGST @ 14% or IGST @ 28%).

A number of services are subject to the lowest 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 restaurant service 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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[8] *notified vide Notification No. 11/2017 CT (R) dated 28.06.2017*

[9] *notified vide Notification No. 8/2017 IT (R) dated 28.06.2017.*

[10] *Students may refer the CBIC website for the complete Schedule of GST Rates for services for knowledge purposes.*

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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[11].

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) of the CGST Act [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)

Further, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on reverse charge

[11] *Discussion in above paras highlighted in purple is solely for the purpose of knowledge of the students and is not meant for examination purposes.*

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basis, under section 9(4) of the CGST Act, 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) of the CGST Act at the applicable rates [Notification No. 07/2019 CT (R) dated 29.03.2019/ Notification No. 07/2019 IT (R) dated 29.03.2019].

8. 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 per cent. 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*

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	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 exceeding ***one crore and fifty lakh rupees****, 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.	
(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 goods which are not leviable to tax under this Act*
	(c)	*he is not engaged in making any inter-State outward supplies of goods*
	(d)	*he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and*
	(e)	*he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council*
	Provided that where more than one registered persons 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 sub-section (1) unless all such registered persons opt to pay tax under that sub-section.	

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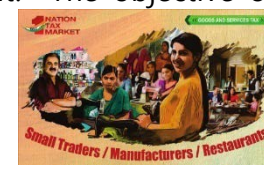
(3)	*The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).*
(4)	*A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.*
(5)	*If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.*



ANALYSIS

Overview of the Scheme

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to prescribed limit. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Primarily, the composition scheme is available to the suppliers of goods and restaurant service, but composition suppliers are permitted to supply services upto a specified marginal value in the year of opting for composition. Small taxpayers with an aggregate turnover in a preceding financial year up to ***₹ 1.5 crore*** shall be eligible for composition levy.



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[12] wherein no tax will be charged from the recipient.

[12] *Discussed in detail in Chapter-10: Tax Invoice, Credit and Debit Notes.*

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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 a prescribed percentage of his turnover every quarter. 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.

Persons making inter-State supplies of goods or persons making supplies of goods through e-commerce operators who are required to collect tax at source shall not be eligible for composition scheme.

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.

Turnover limit for Composition Levy [Section 10(1)]



Section 10 of the CGST Act provides the turnover limit of ₹ 50 lakh for becoming eligible for composition levy. 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 Council.

In view of said power of the Government to increase the turnover limit for Composition Levy as granted by first proviso to section 10(1), 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***.

However, the said notification further stipulates that the turnover limit for composition levy shall be ***₹ 75 lakh in respect of 8 of the Special Category States namely***:

Special Category States	
Arunachal Pradesh	Mizoram
Uttarakhand	Nagaland
Manipur	Sikkim
Meghalaya	Tripura

****In case of Assam, Himachal Pradesh and Jammu and Kashmir, the turnover limit will be ₹ 1.5 crore.***

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In other words, 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.



A dealer 'Prithviraj' has offices in Maharshtra 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, turnover of both the offices would be taken into account and if the same does not exceed ₹ 1.5 crore, Prithviraj can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for both the offices.

While computing the threshold limit of *₹ 1.5 crore*, inclusions in and exclusions from 'aggregate turnover' are as follows

Includes	**Excludes**
Value of all outward supplies --Taxable supplies --Exempt supplies --Exports --Inter-State supplies **of persons having the same PAN be computed on all India basis.**	--CGST/ SGST/ UTGST/ IGST/ Cess --Value of inward supplies on which tax is payable under reverse charge.



A dealer 'X' has two offices in Delhi. In order to determine whether 'X' is eligible to avail benefit of the composition scheme, turnover of both the offices would be taken into account and if the same does not exceed ***₹ 1.5 crore***, X can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions).

Rates of tax under the composition levy scheme [Section 10(1) read with rule 7]

A registered person, whose aggregate turnover in the preceding FY does not exceed ***₹ 1.5 crore***, **may opt to pay tax calculated at the prescribed**

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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 such goods as may be notified by the Government, i.e. ice cream, pan masala and tobacco.	½ %[13] of the turnover in the State/Union territory**
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II **[hereinafter referred to as Restaurant service]**	2½ %[14] 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 %[15] of the turnover of taxable supplies of goods ***and services*** in the State or Union territory**

***Turnover in State/ turnover in Union territory** means the aggregate value of all taxable supplies (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) of the CGST Act, 2017].*

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 give an option to pay tax under composition levy **in Part B of the registration form,**



[13] Effective rate 1% (CGST+ SGST/UTGST)
[14] Effective rate 5% (CGST+ SGST/UTGST)
[15] Effective rate 1% (CGST+ SGST/UTGST)

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viz., FORM GST REG-01. The same shall be considered as an intimation to pay tax under composition levy. Such intimation shall be considered only after the grant of registration to the applicant and his **option to pay tax under composition levy shall be effective from the date from which registration is effective.**

(ii) Intimation by a registered person: A registered person who opts to pay tax under composition levy scheme shall **electronically file an intimation** in prescribed form on the GST Common Portal [www.gst.gov.in], **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) of CGST Rules, 2017 *[Discussed in detail in Chapter 8 – Input Tax Credit]* **within 60 days** from the commencement of the relevant FY.

Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

The option to pay tax under composition levy shall be effective from the beginning of the FY.

Thus, a person applying for registration can opt for composition at any time of the financial year and composition levy shall be effective 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.

Conditions and restrictions for composition levy [Rule 5]

Person opting for composition levy has to comply with the following conditions:

- he is neither a casual taxable person nor a non-resident taxable person *[Concept of casual taxable person and non-resident taxable person has been discussed in detail in Chapter 9: Registration]*.

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- the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under reverse charge under section 9(4)[16]
- he shall pay tax under section 9(3)/9(4)[17] (reverse charge) on inward supply of goods or services or both.
- he was not 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***:

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

** as specified in the First Schedule to the Customs Tariff Act, 1975*

- 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

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[16] *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.

[17] *wherever applicable*

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- he shall mention the words **"composition taxable person"** on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

Who are not eligible to opt for composition scheme? [Section 10(2)]

- Supplier of services, save as provided in section 10(1)
- Supplier of goods which are **not leviable to tax**
- Supplier of inter-State outward supplies **of goods**
- Person supplying goods through an electronic commerce operator who is required to collect tax at source under section 52
- Manufacturer of icecream, panmasala and tobacco



There is no restriction on composition supplier to receive inter-State inward supplies of goods as also to make inter-State inward and outward supply of services.

example

ABC Industries, a manufacturer in Mumbai, is engaged in supply of goods in Mumbai as well as Chennai (i.e. inter-State supply of goods). Here, ABC Industries cannot enter into the composition scheme as it is effecting inter-State supply of goods i.e. Chennai.

A person engaged in marginal supply of services other than restaurant service along with the supply of goods or restaurant services [Second proviso to section 10(1) read with section 10(2)(a)]

Fundamentally, the composition scheme can 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

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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, second proviso to section 10(1) permits marginal supply of services [other than restaurant services] 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/Union territory 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 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 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.



Ramsewak is engaged in supply of goods. His aggregate 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 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,

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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 and has to opt out of the composition scheme.

Interest income to be excluded while computing aggregate turnover for determining eligibility for composition scheme

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[18] – a service other than restaurant service. And where the income from such services cause the value of services[19] supplied to exceed the value referred in second proviso to section 10(1) [10% of the turnover in the preceding FY in a State/Union territory or ₹ 5 lakh, whichever is higher], said business becomes ineligible for the composition scheme and one has to opt out of the composition scheme. This can cause a lot of hardship to small businesses.

In view of the above, Order No. 01/2019 CT dated 01.02.2019 has been issued to clarify that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account -

i. ***for determining the eligibility for composition scheme under second proviso to section 10(1). Under this proviso, 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 second proviso to section 10(1), interest on loans/deposit/advances will not be taken into account.

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[18] 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.

[19] other than restaurant services

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ii. in computing aggregate turnover in order to determine eligibility for composition scheme.

Validity of composition levy [Section 10(3) read with rule 6]

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) 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[20].***

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[21].***

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[20] *Circular No. 77/51/2018 GST dated 31.12.2018*

[21] *Circular No. 77/51/2018 GST dated 31.12.2018*

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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, he shall pass an order either accepting the reply, or denying the option to pay tax under composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.

- ***In case of denial of option to pay tax under composition levy by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules[22].***

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.



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.

Composition scheme to be adopted uniformly by all the registered persons having the same PAN [Proviso to section 10(2)]

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.

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[22] *Circular No. 77/51/2018 GST dated 31.12.2018*

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A dealer 'Champaklal' has two offices in Delhi and is eligible for composition levy. If 'Champaklal' opts for the composition scheme, both the offices would pay taxes under composition scheme and abide by all the conditions as may be prescribed for the composition scheme.

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.

Composition scheme supplier cannot enter into credit chain [Section 10(4)]

Taxable person opting for the composition scheme is not entitled to any credit of input tax.

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 of the CGST Act shall be applicable for determination of tax and penalty.

ILLUSTRATION

Taxpayer 'Tolaram' is a manufacturer having one unit – A1 in UP and another unit – A2 in MP. Total turnover of two units in last FY was ₹ 115 lakh (₹ 85 lakh + ₹ 30 lakh). Turnover of Unit A1 and A2 in the first quarter of this financial year was ₹ 5 lakh and ₹ 10 lakh respectively. Compute the amount payable under composition levy by Taxpayer 'Tolaram'.

ANSWER

Unit	Location	Turnover in previous FY	Turnover in 1st quarter of this FY	Total tax (@1%)
A1	U.P.	₹ 85 lakh	₹ 5 lakh	₹ 5,000
A2	M.P.	₹ 30 lakh	₹ 10 lakh	₹ 10,000
Aggregate turnover		₹ 115 lakh	₹ 15 lakh	

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9. OPTION TO PAY TAX AT CONCESSIONAL RATE UNDER NOTIFICATION NO. 2/2019 CT (R) DATED 07.03.2019

Overview of the Scheme





As we have already seen that primarily, the composition scheme is available in respect of goods and only one service namely, restaurant service. Further, marginal supply of other services is permitted along with the supply of goods and/or restaurant service. However, a person engaged exclusively in supply of services other than restaurant service is not eligible for the composition scheme.



In order to provide benefit to such suppliers, a scheme to pay tax at the concessional rate has been formulated primarily for small service providers like salon sylist, tailors etc. who are not otherwise eligible for composition scheme. This scheme is contained in Notification No. 2/2019 CT (R) dated 07.03.2019 as amended.

This notification provides an option to a registered person whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 3% [Effective rate 6% (CGST+ SGST/ UTGST)] on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on/after 1st April in any financial year, subject to specified conditions.





The scheme has been elucidated as under:

Who are the persons not eligible for composition scheme, but eligible for Notification No. 2/2019 CT (R)?





A registered person whose aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh and who is exclusively engaged in supplying services other than restaurant services.

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Conditions to be fulfilled

The conditions for availing the concessional rate of tax under Notification No. 2/2019 CT (R) are primarily same as the conditions for availing the composition scheme with few exceptions. The same have been elaborated as under:

1. ***Supplies are made by a registered person who is:***
   - ***not engaged in making any supply which is not leviable to tax under the said Act. Under composition scheme, restriction is only on supply of goods not leviable to tax.***
   - ***not engaged in making any inter-State outward supply – neither of goods nor of services. This condition is a divergence from the composition scheme where the restriction is only on making inter-State outward supply of goods and not on inter-State outward supply of services.***
   - ***neither a casual taxable person nor a non-resident taxable person.***
   - ***not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52.***
   - ***not engaged in making supplies of notified goods, namely, ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes. Under composition scheme, condition is that the supplier should not be engaged in manufacture of notified goods.***
2. ***The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.***
3. ***The registered person shall issue a bill of supply** instead of tax invoice. Such bill of supply will have the following words at its top - 'taxable person paying tax in terms of Notification No. 2/2019 CT (R) dated 07.03.2019, not eligible to collect tax on supplies'.***

*****Order No. 3/2019 CT dated 08.03.2019 has clarified that provisions of section 31(3)(c) of the CGST Act, 2017 [containing***

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provisions relating to Bill of Supply] shall also apply to a person paying tax under this notification[23].

Other significant points

1. ***Where more than one registered persons are having the same PAN, tax on supplies by all such registered persons is paid at concessional rate under this notification.***

2. ***The registered person opting to pay tax at concessional rate under this notification shall be liable to pay:***

   - ***(CGST @ 3% + SGST/UTGST @ 3%) on all outward supplies - first supplies of goods or services or both upto an aggregate turnover of ₹50 lakh made on or after 1st April in any FY – regardless of any exemption from tax available to such supplies or any notification issued under section 9(1).***
   - ***Tax on inward supplies on which he is liable to pay tax under section 9(3)/9(4) (reverse charge) at the applicable rates.***

3. ***In computing aggregate turnover in order to determine eligibility of a registered person to pay tax at concessional rate under this notification, 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.***

4. ***Where any registered person who has availed of ITC opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger.***

   Said amount shall be equivalent to the ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the CGST Act and the rules made thereunder.

   After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse. Section

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[23] *Since section 31(3)(c) is applicable only to a composition supplier. This section has been discussed in detail in Chapter 10 – Tax Invoice; Credit and Debit Notes.*

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18(4) and related rules have been discussed in detail in Chapter 8 – Input Tax Credit.

5. ***The CGST Rules, 2017, as applicable to a person paying tax under composition scheme shall, mutatis mutandis, apply to a person paying tax under this notification.***

First supplies of goods or services or both shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from 1st April of a FY to the date from which he becomes liable for registration under the said Act

but for the purpose of determination of tax payable under this notification, shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

LET US RECAPITULATE

1. Extent & Commencement of CGST Act/ SGST Act/ UTGST Act/ IGST Act

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
States of India	✔	✔		✔
Union Territories with Legislature	✔	✔		✔
Union Territories without Legislature	✔		✔	✔

2. 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	

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Value for levy	Transaction value under section 15 of the CGST Act	
Rates	Rates as notified by Government. **Maximum rate of CGST can be 20%.**	IGST rate= CGST rate + SGST rate (more or less) **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.	

3. Composition levy [Section 10]

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 rate 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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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 opting for the scheme

For Special Category States except Assam, Himachal Pradesh and J&K	• ***₹75 lakh***
For remaining States	• ***₹1.5 crore***

Rates of tax

Category of registered persons	Rate
Manufacturer	1 % (½% CGST +½% SGST/UTGST)
Suppliers of food	5 %
Others	1 %

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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

was not engaged in the manufacture of notified goods

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

Who are not eligible to opt for composition scheme?

Supplier of services other than restaurant services**

Supplier of goods not leviable to tax

Supplier of inter-State outward supplies of goods

Person supplying goods through an electronic commerce operator who is required to collect tax at source under section 52

Manufacturer of icecream, panmasala and tobacco

**A registered person opting for composition scheme 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[24] in the preceding financial year in a State/Union territory or ₹ 5 lakh, whichever is higher.

[24] *While computing value of services, interest on loans/deposit/advances will not be taken into account.*

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Other points

- Bill of supply shall be issued instead of tax invoice.
- Tax shall not be not 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

4. Option to pay tax at the concessional rate under *Notification No. 2/2019 CT (R) dated 07.03.2019*

Option to pay concessional tax at concessional rate

- An option for small service providers with aggregate turnover upto ₹ 50 lakh in preceding FY who are not eligible for composition scheme
- to pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)]
- on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on/after 1st April in any FY, subject to specified conditions

Who are the persons not eligible for composition scheme, but eligible for Notification No. 2/2019 CT (R)?

A registered person
- whose aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh and:
- who is exclusively engaged in supplying services other than restaurant services

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Ineligible suppliers

Supplier is neither a casual taxable person nor a non-resident taxable person

Supplier making **supplies** not leviable to tax

Supplier of inter-State outward supplies neither **of goods nor of services**

Person supplying goods through an electronic commerce operator who is required to collect tax at source under section 52

Supplier of icecream, panmasala and tobacco

Other points

Bill of supply shall be issued instead of tax invoice.

Tax shall not be not collected from recipient of supply

Input tax credit shall not be availed

All registered persons having same PAN shall pay tax at the concessional rate under this notification

Tax on inward supplies under section 9(3)/9(4) shall be paid at the applicable rates, by the registered person opting for concessional rate

In computing aggregate turnover in order for determining eligibility for this scheme, interest on loans/deposit/advances will not be taken into account.

TEST YOUR KNOWLEDGE

1. *State person liable to pay GST in the following independent cases provided recipient is located in the taxable territory:*

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

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

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

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2. *A person availing composition scheme in Haryana during a financial year crosses the turnover of ₹ 1.5 crore during the course of the year i.e. he crosses the turnover of ₹ 1.5 crore in December? Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March?*

3. *Determine whether the supplier in the following cases are eligible for composition levy provided their turnover in preceding year does not exceed ₹ 1.5 crore:*

   (i) Mohan Enterprises is engaged in trading of pan masala in Rajasthan and is registered in the same State.

   (ii) Sugam Manufacturers has registered offices in Punjab and Haryana and supplies goods in neighbouring States.

4. *Subramanian Enterprises has two registered places of business in Delhi. Its aggregate turnover for the preceding year for both the places of business was ₹ 120 lakh. It wishes to pay tax under composition levy for one of the place of business in the current year while under normal levy for other. You are required to advice Subramanian Enterpises whether he can do so?*

ANSWERS/HINTS

1. (a) Since GST on services provided or agreed to be provided by an arbitral tribunal to any business entity located in the taxable territory is payable under reverse charge, in the given case, GST is payable by the recipient - business entity.

   (b) GST on sponsorship services provided by any person to any body corporate or partnership firm located in the taxable territory is payable under reverse charge. Since in the given case, services have been provided to an individual, reverse charge provisions will not be attracted. GST is payable under forward charge by the supplier – company.

   (c) GST on services supplied by Central Government, State Government, Union territory/ local authority by way of renting of immovable property to a person registered under CGST Act, 2017 is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient – registered business entity.

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2. No. The option to pay tax under composition scheme lapses from the day on which the aggregate turnover of the person availing composition scheme during the financial year exceeds the specified limit (₹ 1.5 crore). Once he crosses the threshold, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.

   Every person who has furnished such an intimation, may electronically furnish at the common portal, 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, within a period of 30 days from the date from which the option is withdrawn.

3. (i) A supplier engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY is not eligible for composition scheme. Ice cream and other edible ice, whether or not containing cocoa, Pan masala and Tobacco and manufactured tobacco substitutes are hereby notified. However, in the given case, since Mohan Enterprises is engaged in trading of pan masala and not manufacture and his turnover does not exceed ₹ 1.5 crore, he is eligible for composition scheme subject to fulfilment of specified conditions.

   (ii) Since supplier of inter-State outward supplies of goods is not eligible for composition levy, Sugam Manufacturers is not eligible for composition levy.

4. A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy in Delhi. Since the aggregate turnover of Subramanian Enterprises does not exceed ₹ 1.5 crore, it is eligible for composition levy in the current year. However, 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. Thus, Subramanian Enterprises either have to opt for composition levy for both the places of business or under normal levy for both the places of business.

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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST 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 time this Study Material is being released for printing[25]. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 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[26] relating to section 10 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 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
Sub-section (1) "Notwithstanding anything to the contrary..... five lakh rupees, whichever is higher."	**Sub-section (1) - Explanation inserted after second proviso** "Notwithstanding anything to the contrary..... 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**	Under the existing provisions, this point is clarified vide *Order No. 01/2019 CT dated 01.02.2019*. It is now being incorporated in the CGST Act vide the explanation proposed by the Finance (No. 2) Act, 2019 to section 10(1).

[25] *Section 103 of the Finance (No. 2) Act, 2019 amending section 95 of the CGST Act, 2017 prescribing definitions relating to advance ruling, has come into force on 01.09.2019. The same has been incorporated in Chapter 23: Advance Ruling.*

[26] *Provisions existing as on the date when the Study Material was released for printing*

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	into account for determining the value of turnover in a State or Union territory.	
Sub-section (2) The registered person shall be..... recommendations of the Council.	Sub-section (2) – New clause (f) inserted The registered person shall be..... recommendations of the Council. (f) he is neither a casual taxable person nor a non-resident taxable person.	Presently, this condition that a person opting for composition levy must not be a casual taxable person nor a non-resident taxable person, is contained in rule 5 of the CGST Rules, 2017. This is sought to be incorporated in the CGST Act by the Finance (No. 2) Act, 2019 as clause (f) in section 10(2).
	New sub-section (2A) inserted to section 10 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	Presently, the option available to the small service providers to pay tax at concessional rate is provided vide *Notification No. 2/2019 CT (R) dated 07.03.2019*. This option is being incorporated in the CGST Act by the Finance (No. 2) Act, 2019 by

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	section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not— (a) engaged in making any supply of goods or services which are not leviable to tax under this Act; (b) engaged in making any inter-State outward supplies of goods or services; (c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and (e) a casual taxable person or a non-resident taxable person: Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.	inserting new sub-section (2A) in section 10. It is important to note that one of the conditions to opt for benefit under *Notification No. 2/2019 CT* is that the registered person must not be a supplier of notified goods while under sub-section (2A), the condition for opting for the concessional rate under said sub-section is that the registered person must neither be a manufacturer of notified goods nor be a supplier of notified services.

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Sub-section (3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).	**Sub-section (3)** The option availed of by a registered person under sub-section (1) **or sub-section (2A)** shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).	Sub-sections (3), (4) and (5) are being amended to make them applicable to the registered person opting for concessional rate of tax under sub-section (2A) also.
Sub-section (4) A taxable person to whom the provisions of sub-section (1) 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.	**Sub-section (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.	
Sub-section (5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under	**Sub-section (5)** If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) **or sub-section (2A)** despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall,	

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any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.	mutatis mutandis, apply for determination of tax and penalty.	
	Explanations inserted after sub-section (5) "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:—	Under the existing provisions, these points are clarified vide *Order No. 01/2019 CT dated 01.02.2019* and *Notification No. 2/2019 CT (R) dated 07.03.2019*. These are now being incorporated in the CGST Act vide the explanations proposed by the Finance (No. 2) Act, 2019 to section 10.

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	(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."	

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CHAPTER 4

Exemptions from GST



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) of the CGST Act, 2017]. **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) of the CGST Act, 2017]. Thus, under GST, a supply not leviable to tax is also included within the purview of 'exempt supply'.

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 unbranded atta/maida/besan, 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.

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 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*

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	*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.*
(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 the tax or part of the tax. It should be granted in public interest.

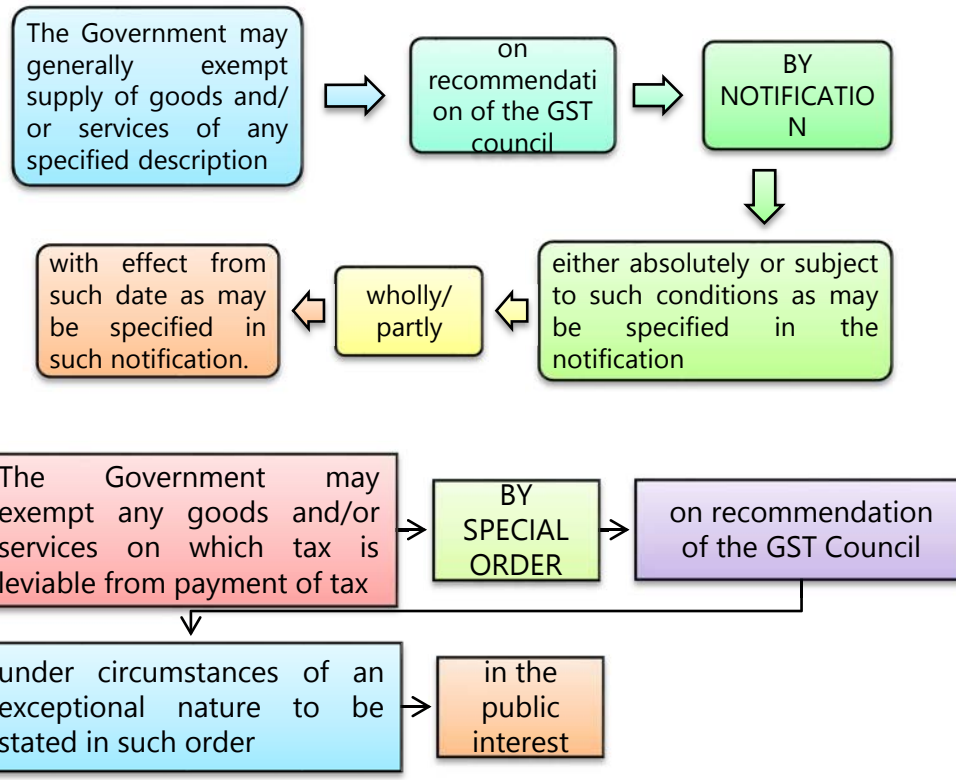
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Exemption can be granted to goods or services or both of any specified description, by way of issuance of notification generally, absolutely [i.e. unconditional exemption; exemption is not subject to any conditions] or conditionally [i.e. exemption is subject to specified conditions]. Exemption may be granted by a special order in case of the circumstances of an exceptional nature.

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.

Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.

3. GOODS EXEMPT FROM TAX

A list of items have 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[1]:


Live fish (0301)


Fresh Milk (0401)


Potatoes (0701)

[1] *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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 Grapes (0806)	 Indian National Flag (63)	 Plastic Bangles (3926)

4. LIST OF SERVICES EXEMPT FROM TAX

I. SPECIFIC SERVICES EXEMPT FROM CGST/IGST

Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017[2] **(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.[3]	Description of services
1	Services by an entity registered under section 12AA 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 of the Income-tax Act, 1961 or a trust or an institution registered under section 10(23C)(v) of the

[2] *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 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.*

[3] *Entry Nos. mentioned herein correspond to entries in Notification No. 12/2017 CT (R) dated 28.06.2017. However, these entry no.s have been given only for reference purposes and are not relevant for examination purpose.*

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	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; (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 recreational activities relating to- (a) arts or culture, or (b) sports by **charitable entities** registered under section 12AA of the Income-tax Act.



ANALYSIS

A. SERVICES PROVIDED BY CHARITABLE/RELIGIOUS TRUST

Entry 1 of the Notification exempts services provided by an entity registered under section 12AA 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 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

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

(II) persons afflicted with HIV or AIDS;

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

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

(ii) **ADVANCEMENT OF RELIGION**, spirituality or yoga;

(iii) **ADVANCEMENT OF EDUCATIONAL PROGRAMMES / SKILL DEVELOPMENT** relating to,-

(A) abandoned, orphaned or homeless children;

(B) physically or mentally abused and traumatized persons;

(C) prisoners; or

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

(iv) **PRESERVATION OF ENVIRONMENT** including watershed, forests & wildlife.

Thus, only those services provided by a charitable and religious trusts [registered under section 12AA 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 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 provided by the entities registered under section 12AA 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.

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- 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 area committee; or any area that may be notified as an urban area by the Central Government or a State Government.
- 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 of the Notification. However, such activities may be exempt under Entry 66 of the Notification *[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.
- However, accommodation service in hostels including such services provided by trusts having declared tariff[4] below ₹ 1,000 per day is exempt under Entry 14 of the Notification [discussed later in this chapter] *[Circular No. 32/06/2018-GST dated 12.02.2018]*.

Religious yatras or pilgrimage

- Religious Yatras/pilgrimage organised by any charitable or religious trust are not exempt. Further, services of transportation of passengers for a pilgrimage by the charitable trust are not exempt from GST.
- 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'.

[4] *The words "declared tariff" have been substituted with words "value of supply" in said entry.*

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- Hence, as per **Entry 60**, the services provided **by the Haj Committee and KMVN** in relation to a **religious pilgrimage facilitated by GoI** are not liable to GST.

Arranging yoga and meditation camp by charitable trusts

- As discussed above, services provided by entity registered under section 12AA 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].



Bhavyajyoti Foundation, a charitable trust registered under section 12AA 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 12AA of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt.

Hospitals managed by charitable trusts

Exemption available to health care services under Entry 74 of the Notification *[discussed later in this chapter]* is also applicable to the services provided by a **clinical establishment, an authorised medical practitioner or paramedics of a religious or charitable trust** also.

[5] *Circular No. 66/40/2018 GST dated 26.09.2018*

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Training or coaching in recreational activities

Services by way of **training or coaching in recreational activities** relating to-

(a) arts or culture, or

(b) sports by **charitable entities** registered under section 12AA of the Income-tax Act

are exempt from GST.

The exemption with regard to services provided by way of training or coaching in recreational activities relating to sports has a restricted scope. Said exemption is available only when said services are provided by a charitable entity registered under section 12AA of Income-tax Act are also exempt under **Entry 80**[6].

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, culture and sports. Hence, the training or coaching in **recreational activities in the areas other than arts, culture or sports** is outside the purview of this entry.

Further, training or coaching relating to **all forms of arts, culture or sports** is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre, sports etc. of any school, tradition or language or any of the sports.

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) of the Notification, 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

[6] *As per CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts, services provided by way of training or coaching in recreational activities relating to arts or culture or sports such as dance, music, painting, literary activities, drama etc. of any school, tradition or language or any of the sports, by a charitable entity are exempt from CST*

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person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.



Raamanand Joshi, a priest, charges ₹ 12,000 for conducting a religious ceremony on the birthday of Mr. 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) of the Notification** 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' and 'general public' 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 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, if donation is

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received without such instructions or without a *quid pro quo* in the form of supply of any goods or services by the receiver to the donor, it shall not be subject to GST[7].

example Durgadevi Trust, a religious trust registered under section 12AA 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 the consideration is not less than ₹ 10,000.

example Sarvshiksha Foundation, an educational institution registered under section 10(23C)(v) 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.

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.
53A	Services by way of fumigation in a warehouse of agricultural produce. 
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— 

[7] *Discussion is primarily based on CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts and other clarifications.*

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	(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. (h) services by way of fumigation in a warehouse of agricultural produce.
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.



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- 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.







Let us see 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 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.

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- 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.

example Moolchand has leased out to a farmer – Tulsidas - a vacant land for agriculture. The land has a green house and a storage shed which are incidental to its use for agriculture. Leasing of vacant land with a green house or 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.

  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.

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- 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.

Warehousing of agriculture produce

- Item (e) of the entry 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 output of the same. Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption 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 the exemption from GST is not

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available to their loading, packing, warehousing etc. *[Circular No. 16/16/2017 GST dated 15.11.2017]*.

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.



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 *[Circular No. 19/19/2017 GST dated 20.11.2017]*.

3. Education 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;

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	(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, 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.



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.



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 received by educational institutions are exempt and other services are sought to be taxed.

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Exemption from GST granted vide Entry 66 stated above can be discussed under two broad categories – education related output services and education related input services. 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.

- **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:





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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.

❑ **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**[8] affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) **offering courses in designated trades notified under the Apprentices Act, 1961** or



- a **Modular Employable Skill Course**, approved by the NCVT, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. The Modular Employable Skills is the minimum skill set which is sufficient for gainful employment or self-employment in the world of work. This Scheme provides certification on vocational training from NCVT that is nationally and internationally recognized in world of work in the Government (Centre & State) as well as private sector. It provides employable skills to early school drop-outs, existing workers seeking skill upgradation, workers seeking certification of their skills acquired informally, ITI graduates, etc. to improve their employability and provides certification after completion of the course.

[8] *Industrial Training Institute/ Industrial Training Centre*

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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.





It implies that services provided by a private ITI only in respect of designated trades notified under Apprenticeship Act, 1961[9] are exempt** from GST under Entry 66. Services in other than designated trades are liable to GST**.



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 *[Circular No. 55/29/2018 GST dated 09.08.2018]*.

***As regards the services **provided TO** private ITIs, only services relating to admission to or conduct of examination by a private ITI in respect of such designated trades are exempt. All other services provided to such institutions is liable to GST.*

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.

Unrecognized educational institutions

- Private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational

[9] *Some of the designated trades notified under Apprenticeship 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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institutions under GST and thus cannot avail exemptions available to an educational institution.

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 most of the important input services. However, some of the input services like canteen, 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.



- **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 of the CGST Act, 2017.

  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.

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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 course of business, it shall be treated as a mixed supply as per provisions contained in section 2(74) read with section 8 of the CGST Act, 2017. 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[10].

IIMs

- ***With effect from 31.01.2018, Indian Institutes of Management Act, 2018 came into force. This Act has empowered 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)***



[10] *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) of the CGST Act, composite supply consists of two or more* ***taxable supplies****.*

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specify the academic content of programmes. Resultantly, all the IIMs are now "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[11].

- ***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. Therefore, it is clarified that services provided by Indian Institutes of Managements to their students- in all such long duration programs (one year or more) are exempt from levy of GST.***
- ***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. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%) [Circular No. 82/01/2019 GST dated 01.01.2019].***

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 of the Notification].

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[11] Earlier, IIMs were not covered by the definition of 'educational institutions' and were not entitled to exemption under Entry 66. However, there was a separate entry 67 granting exemption to three specified programs of IIMs. With effect from 31.01.2018, all IIMs have become eligible for exemption benefit under Entry 66. Therefore, Entry 67, which became redundant, was deleted.

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- **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 **

****Note:** It may be noted that 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.

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

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.









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- 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[12].

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	(i) services relating to admission to, or conduct of examination by, such institution (ii) supply of online educational journals or periodical	Services relating to admission to, or conduct of examination by, such institution.

[12] *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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	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.		

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;  (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.
73	Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.



ANALYSIS



Entry 74 - Health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST [Entry 74(a) of the Notification]. The term 'health care services' is defined as follows:



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Health care services

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

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 systems of medicines are the recognized systems of medicines in India[13]:-

- Allopathy
- Yoga
- Naturopathy
- Ayurveda
- Homeopathy
- Siddha
- Unani
- Any other system of medicine that may be recognized by Central Government

Recognized systems of medicines

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



[13] Section 2(h) of the Clinical Establishments Act, 2010

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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.



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 rooms provided to in-patients in hospitals is exempt [*Circular No. 27/01/2018 GST dated 04.01.2018]*.

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

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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]*.

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]* [14].

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).

[14] *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[15], 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

[15] *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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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']*.

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[16].

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 243 W 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** by way of speed post, express parcel post, life insurance, and agency services **provided to a person other than the Central Government, State Government, Union territory**; (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**

[16] *As clarified by the CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts*

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	aggregate turnover of up to ₹ 20 lakh (₹ 10 lakh in case of a Special Category States) in the preceding FY. 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) of the CGST Act, 2017*
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.
9D	Services by: an old age home run by: ✓ Central Government, State Government or 

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	✓ an entity registered under section 12AA of the 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.
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.
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.

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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 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 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 of the Income-tax Act, 1961.*** 

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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.
- **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 by way of speed post,

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express parcel post, life insurance, and agency services provided to a person other than Government;

(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 ₹20 lakh (₹ 10 lakh in case of Special Category States[17]) in the preceding FY].

Let us first understand what does 'Government' and 'local authority' mean?

Meaning of Government



- As per section 2(53) of the CGST Act, 2017, '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) of the CGST Act, 2017 and means the following:
  - ✓ a **"Panchayat"** as defined in clause (d) of article 243 of the Constitution;

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[17] Notification No. 12/2017 CT (R) dated 28.06.2017 defines 'Special Category States' as States specified in Article 279A(4)(g) of the Constitution. As per Article 279A(4)(g) 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.

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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:

Services provided to a business entity

- ❑ Entry 7 provides that services provided to a business entity located in a Special Category State with a turnover up to ₹ 10 lakh in preceding FY are exempt. In case the services are provided to a business entity located in a State other than Special Category State, such services are exempt if the aggregate turnover of the business entity in preceding FY is upto ₹ 20 lakh.
- ❑ 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 supplied by the Central Government, State Government, Union territory or local authority to a business entity [whose turnover in

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preceding FY exceeds ₹ 20 lakh (₹ 10 lakh in case business entity is located in a Special Category State)] 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 to 'specified services' provided to such business entity *[See the reverse charge provisions as discussed in Chapter – 3: Charge of GST]*.



A small business entity is carrying on a business relating to consulting engineer services in Delhi. The aggregate turnover of the entity in the preceding financial year does not exceed the limit of ₹ 20 lakh in a financial year. Thus, no tax is payable on the services received by it from Government or a local authority.

Services provided by the Department of Posts



- Entry 6 stipulates that the services by way of speed post, express parcel post, and life insurance, provided by the Department of Posts to a person other than the Government or Union territory are not exempt. The Department of Posts also 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 generally called **agency services**. On agency services, the **Department of Posts is liable to pay tax** without the application of reverse charge.



- However, the following services provided by the **Department of Posts are not liable to tax**:

  (a) **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.

  (b) Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

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.

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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[18] 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[19] are exempt vide Entry 4 and Entry 5 respectively.

Services provided by Police/security agencies of Government to PSUs/corporate entities/sports events held by private entities

- Services provided by Police or 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 – 3: Charge of GST]*.





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

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[18] *The functions entrusted to municipality under the Twelfth 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.*

[19] *The functions entrusted to Panchayat under the Eleventh Schedule to Article 243G of the constitution include Agriculture, including agricultural extension, Animal husbandry, 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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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

- Non-performance of a contract or breach of contract is one of the conditions normally stipulated in the Government contracts for supply of goods or services. The agreement entered into between the parties stipulates that both the service provider and service recipient abide by the terms and conditions of the contract.
- In case any of the parties breach the contract for any reason including non-performance of the contract, then such person is liable to pay damages in the form of fines or penalty to the other party. **Tolerating non-performance of a contract is an activity or transaction which is treated as a supply of service** *[as per Schedule II of CGST Act – as explained in Chapter 2 – Supply under GST]* **and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount**.
- However, **in case of supplies 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 of the Notification**. Thus, any consideration received by the Government from any person or supplier for non-performance of contract is exempted from tax.



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 10.07.20XX, it was agreed by both the parties that M/s. ABC shall complete the construction work and handover the project on or before 31.12.20XX.

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 31.12.20XX. 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

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contract. Amount paid by M/s. ABC to Department is exempt from payment of tax.

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[20] 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]*.

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**.

[20] *Entry 40 has been discussed subsequently in this chapter under heading 'Services provided to the Government'*

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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[21].***



ANALYSIS

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.

[21] *These entries have been stated in simplified form.*

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- 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 of the Notification 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;
- erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.

Entry 11 of the Notification 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 or without accompanied belongings, by – 

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	(a) air, 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**.
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. 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).



ANALYSIS

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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 said services are 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.

As regards transportation of passengers by vessels in item (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 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.



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 Rose Island (inter island) is covered in item (d) of Entry 17 since such transportation is between two places located in India.

Relevant definitions of these entries are as follows:

❖ **Contract carriage:** means a motor vehicle which carries a passenger or 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

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(ii) a motor cab notwithstanding that separate fares are charged for its passengers [Section 2(7) of Motor Vehicles Act, 1988].

❖ **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).

❖ **Radio taxi:** means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service;

❖ **Stage carriage:** means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey [Section 2(40) of the Motor Vehicles Act, 1988].

❖ **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].

❖ **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.



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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.
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; (d) **railway equipments** or materials; (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; (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹1,500; (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750; (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure;

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	(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 (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 CGST Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.***



ANALYSIS

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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[22]] are exempt from GST by virtue of **Entry 21A**.
- Further, GTA services provided to registered casual taxable person and following persons, 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 are exempt from GST.
- Thus, GTA services provided to:
  - ✓ person registered under GST law & registered casual taxable person, and
  - ✓ 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. Further, it is important to note that in such cases, if GTA opts to pay tax @ 5%, the tax liability falls on said recipients under the reverse charge mechanism. Before proceeding further, we shall now understand the meaning of GTA:

[22] *The concept of 'casual taxable person' has been discussed in detail in Chapter 9 - Registration*

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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, who assumes agency functions, that has been brought into the GST net.
- ❑ **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 of Notification, which are exempt from GST.



Hari Prasad owns a 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 of the Notification.



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 [truck in the given case] of goods to a GTA [Sindhu and Bansal Transport Agency], are exempt from tax vide Entry 22 of the Notification *(discussed later in this chapter)* and not vide Entry 18.

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- **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 [1].

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, transhipment and temporary warehousing, which are provided in the course of transport of goods by road. 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.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies[2].

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[1] *Meaning of GTA and consignment note elaborated in foregoing paras is primarily based on CBIC GST flyer - Chapter 38 – Goods Transport Agency in GST.*

[2] *As clarified in answer to question no. 6 of CBIC FAQs on Transport & Logistics*

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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.

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 is exempt	Transportation of the following goods by a GTA in a goods carriage is exempt
Railway equipments or materials	(i) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹1,500;
	(ii) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750.

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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 (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.



9. Banking and financial services

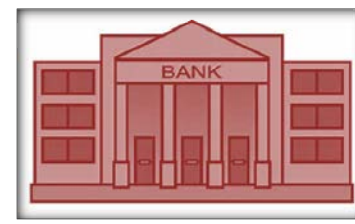
Entry No.	Description of services
26	Services by the Reserve Bank of India.
27	Services by way of— (a) **extending deposits, loans or advances** in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se **sale or 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 (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).***

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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.



ANALYSIS



Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money.

All services **provided by** the Reserve Bank of India are covered under Entry 26 and are thus, exempt from GST. However, services **provided to** the Reserve Bank of India are not covered under said entry and would be taxable unless otherwise covered in any other entry of the Notification.

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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 or advances are represented by way of interest.
  - ✓ 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.

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- **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.

- **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[3].

- **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.

- **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.

  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[4] are financial instruments of short term call money market that are normally used by banks to borrow from or lend money to RBI. The

[3] *As clarified vide FAQs on Banking, Insurance and Stock Brokers Sector.*

[4] *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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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.

- **Income from Commercial Paper (CP) or Certificates of Deposit (CD):** As seen in *Chapter 2 – Supply under GST*, 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.

  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.

- **Assignment or sale of secured or unsecured debts:** As seen in *Chapter 2 – Supply under GST*, 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.

  However, in a financial lease the ownership of the asset is with the

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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 liable 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 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 chargeable to GST.

(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 and purchase of foreign exchange **between banks and authorized dealers of foreign exchange or between banks and such dealers**.

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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.
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 BimaYojana; (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].

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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.
32	Services provided by the **IRDAI** (Insurance Regulatory and Development Authority of India) to **insurers** under IRDAI Act, 1999.
33	Services provided by the **SEBI** (Securities and Exchange Board of India) set up under the SEBI Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.

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[5];

[5] *earlier known as Integrated Rural Development Programme*

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	(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 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.
36A	Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36.

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.

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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.



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[6].

As per RBI guidelines, banks may pay reasonable commission/fee to the BC in respect of the services provided by BC to the customers. However, BC are specifically prohibited from directly charging any fee to the customers for

[6] *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. In addition to these, BCs 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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services rendered by them on behalf of the bank. Instead, the 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, in the BF model/BC model, the banking company is the service provider to the ultimate customer and 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 [Circular No. 86/05/2019 GST dated 01.01.2019].

Further, 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 also exempt from GST **[Entry 39]**. 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.

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.

In case of taxable services provided by BC to banking company, GST is payable by the BC in respect of commission/fees charged for such services provided. However, in respect of the taxable services provided by BF to a banking company the banking company is the person liable to pay GST under reverse charge. Similarly, GST on taxable services provided by an agent of BF to BF is payable said agent. However, GST on taxable services provided by an agent of BC to BC is payable under reverse charge by the BC[7].

Some relevant definitions under this entry are as follows:

- **Insurance company:** means a company carrying on life insurance business or general insurance business.

[7] *Reverse charge provisions have been discussed in detail in Chapter 3 – Charge of tax*

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- **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.

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 or a Governmental authority or a Government Entity ❑ 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 or a Governmental authority or a Government Entity

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	❑ 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.
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 total expenditure is borne by the Central Government, State Government, Union territory administration.
51	Services provided **by the GSTN** (Goods and Services Tax Network) to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.



ANALYSIS

Entry 3 exempts the **supply of 'pure services'** to Government. Supply of **'pure services'** means supply of services without involving any supply of goods.

Further, **'composite supply of goods and services'*** to Government is exempted vide **Entry 3A**.

**in which value of supply of goods constitutes not more than 25% of value of such composite supply.*

For example, supply of man power 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.

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On the other hand, let us take the example of a governmental authority awarding 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[8].

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 50% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area. Explanation - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 % or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory. ***Aforesaid exemption is admissible irrespective of whether such upfront amount is payable/paid in one/more instalments, provided the amount is determined upfront[9].***
43	Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.

17. Legal services

Entry 45: Services provided by-

(a) an arbitral tribunal to –

[8] *As clarified vide question 25 of CBIC FAQs on Government Services*

[9] *As clarified vide Circular No. 101/20/2019-GST, dated 30.04.2019*

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(i) any person other than a business entity; or

(ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in the case of Special Category States) in the preceding financial year;

(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 ₹ 20 lakh (₹ 10 lakh in the case of Special Category States) in the preceding financial year;

(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 ₹ 20 lakh (₹ 10 lakh in the case of Special Category States) in the preceding financial year.

(iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.



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

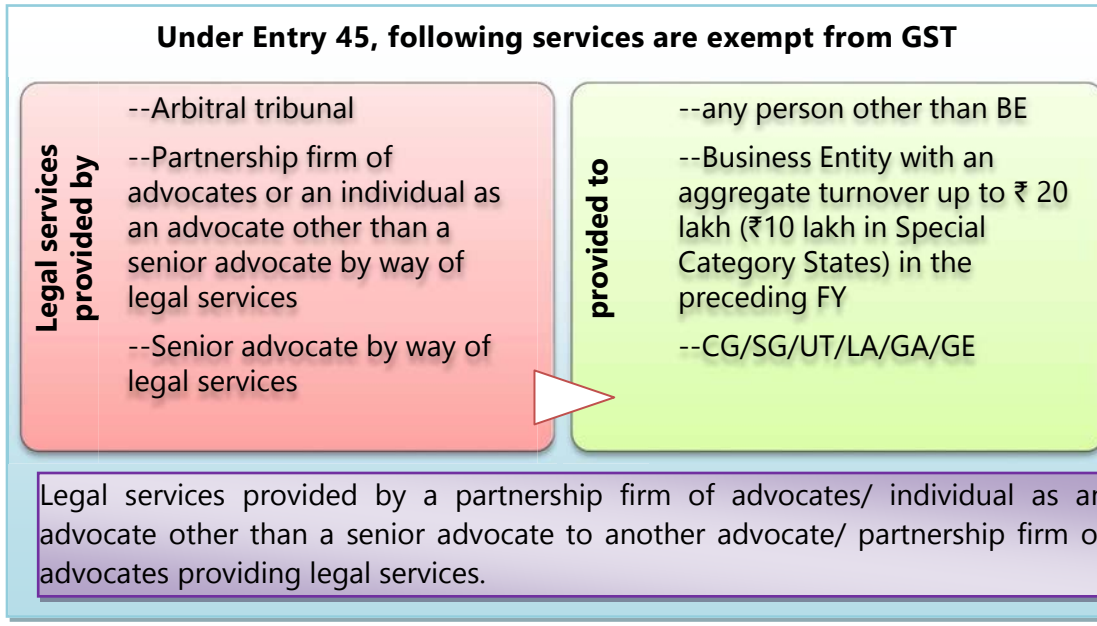
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under the provisions of the Advocates Act, 1961 [Section 2(1)(a) of the Advocates Act, 1961].

- **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.





Thus, legal services provided to a business entity with an aggregate turnover exceeding ₹ 20 lakh (₹10 lakh in Special Category States) in the preceding FY are liable to GST. Further, tax is payable by the business entity on such services under reverse charge.

18. Sponsorship of sports events

Entry 53: Services by way of sponsorship of sporting events organised -

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(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.

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) a Sector Skill Council approved by the National Skill Development Corporation; (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, in relation to- (i) the National Skill Development Programme 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 other Scheme implemented by the National Skill Development Corporation.

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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.
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 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 but does not include a circus and 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. These are 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 to its members is treated as service provided by one person to another. The activities of the housing society would attract the levy of GST and the housing society would be required to register and comply with the GST Law.

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GST on services provided by a Co-operative Housing Society

If the turnover of housing society is above the applicable threshold limit for registration, it needs to take registration under GST in terms of section 22 of the CGST Act, 2017 *[Refer Chapter-9: Registration 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 exemption notification, then it is not required to charge GST on the said services.

For instance, in view of entry 77(c) above, a society may be registered under GST, but if the monthly contribution received from the members is less than ₹ 7,500/- (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members), no GST is to be charged by the housing society on the monthly bill raised by the society. However, if the monthly contribution exceeds ₹ 7,500/-, entire contribution is taxable.

For example, if the maintenance charges are ₹9000 per month per member, GST @18% shall be payable on the entire amount of ₹ 9000 and not on [₹ 9000 - ₹7500] = ₹1500[10].

Further, if the turnover of the society is less than the applicable threshold limit for registration or even if the turnover is beyond the said threshold limit, but the monthly contribution of all the individual members towards maintenance is less than ₹ 7,500/- (such services being exempt) and the society is providing no other taxable service to its members or outsiders, then the society (essentially exclusively providing wholly exempt services) need not take registration under GST.

Monthly limit of ₹ 7,500 referred in Entry 77

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:

[10] *This view has been clarified by Circular No. 109/28/2019 GST dated 22.07.2019.*

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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 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[11].

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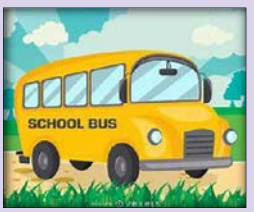
[11] *Discussion under this heading is primarily based on the CBIC GST Flyer 'GST on Co-Operative Housing Societies' and CBIC FAQs on levy of GST on Supply of Services to Co-operative Society, unless otherwise mentioned. The flyer and FAQs were based on the monthly limit of ₹ 5,000 which was subsequently increased to ₹ 7,500. Therefore, increased monthly limit has been considered in the above discussion.*

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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.  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.
9B	Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
12	Services by way of **renting of residential dwelling** for use as residence.
14	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having ***Value of Supply*** of a unit of accommodation below ₹ 1,000 per day or equivalent. 
19	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.
19A	Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India. This exemption is available till **30.09.2019.**

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19B	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India. This exemption is available till **30.09.2019.**
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 (b) to a goods transport agency, 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. **Exemption under item (a) of the above entry is applicable to services provided to **State Transport Undertaking** and not to other departments of Government or local authority.  Generally, such State Transport Undertakings/ Corporations are 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[12].
23	Service by way of access to a road or a bridge on payment of toll charges. 

[12] *As clarified vide question 26 of CBIC FAQs on Government Services*

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23A	Service by way of access to a road or a bridge on payment of annuity.
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 *[Circular No. 34/8/2018 GST dated 01.03.2018]*.
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.
47A	Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.
48	Taxable services, provided or to be provided, by a TBI/STEP recognised by NSTEDB or bio- incubators recognised by the

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	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.
56	Services by way of **slaughtering of animals.**
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.
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.
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

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	franchisee which is not a recognized sports body is also taxable. *The term **'recognised sports body'** has been defined earlier in this chapter.*
75	Services provided by **operators of the common bio-medical waste treatment facility** to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.
76	Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

Note: 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.

Above services have been exempted from both CGST and IGST[13]. 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 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

[13] *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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	(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 – (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.
2	Services received by the RBI, from outside India in relation to management of foreign exchange reserves.
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].
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

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	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.

II. 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), 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

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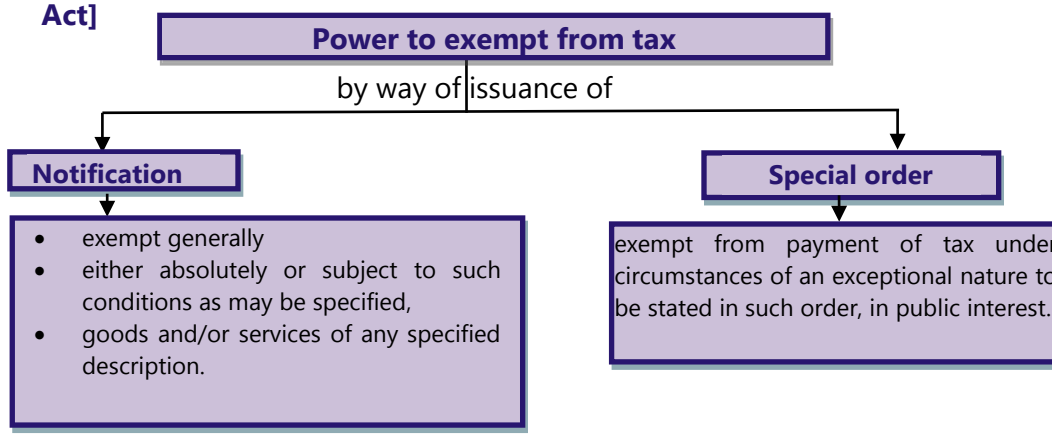
	Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 ***[Notification No. 18/2017 IT (R) dated 05.07.2017]***.
3	**Central Government's share of profit petroleum 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*.
5	**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, 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]*.

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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.

LET US RECAPITULATE

1. Power to exempt from tax [Section 11 of the CGST Act/ section 6 of IGST Act]



2. List of services exempt from GST

	Exempt Services
Services related to charitable and religious activities	**Charitable activities** BY an **entity registered under section 12AA** 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/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;

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	(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 recreational activities relating to (a) arts/culture, or (b) sports by **charitable entities** registered under section 12AA of the Income-tax Act.
Agriculture related services	Loading, unloading, packing, storage or warehousing of rice.
	Warehousing of minor forest produce.
	Fumigation in a warehouse of agricultural produce.
	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

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	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. (h) services by way of fumigation in a warehouse 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	
	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 or cleaning or house-keeping 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.	

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Health care services	• **Health care services** BY a clinical establishment/ authorized medical practitioner/ para-medics • **Transportation of a patient in an ambulance** BY any person other than specified above.
	Stem cells preservation BY Cord Blood Banks or any other service in relation to such preservation
	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** by way of speed post, express parcel post, life insurance, & agency services **provided to a person other than CG, SG, UT**; (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 provided by CG/SG/UT/LA **to a business entity (BE) with an aggregate turnover of up to ₹ 20 lakh** [₹ 10 lakh in case of a Special Category States (SCS)] in preceding FY. 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**

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	such services does not exceed ₹ 5,000. This exemption is not applicable to **specified services.** **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 CGS/SG/an entity registered under section 12AA 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 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.
	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

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	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 of the Income-tax Act, 1961.
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.

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	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,** embarking from or terminating in an airport located in North Eastern States of India or at Bagdogra 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**.
	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

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<table>
<tr><td></td><td colspan="3">purpose, in a vessel between places located in India; and
(e) metered cabs or auto rickshaws (including e-rickshaws).</td></tr>
<tr><td rowspan="5">Goods transportation services</td><td colspan="3">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.</td></tr>
<tr><td rowspan="2">Railway equipments/ materials exempt when transported by rail/vessel</td><td colspan="2">Transportation of goods exempt when transported by goods carriage</td></tr>
<tr><td>where consideration charged for the transportation of goods on a consignment transported in a single carriage ≤ ₹1,500</td><td>where consideration charged for transportation of all such goods for a single consignee ≤ ₹ 750</td></tr>
<tr><td>Exempt transportation of goods by rail/ vessel/ by GTA in a goods carriage</td><td>• Agricultural produce
• milk, salt and food grain including flours, pulses and rice
organic manure
• newspaper or magazines registered with the Registrar of Newspapers</td><td>• Defence/ military equipments
• relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap</td></tr>
<tr><td colspan="3">Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, except following recipients, namely: -</td></tr>
</table>

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	(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.***
Banking and financial	Services by RBI
	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)

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	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.
	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 – **(B)** (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna[14]; (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women;

[14] *earlier known as Integrated Rural Development Programme*

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	(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 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.
	Services by way of reinsurance of the insurance schemes specified in (A) and (B) above.
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.
	Services by **NPS Trust** to its members against consideration in the form of administrative fee.
	Services provided by the **IRDAI** to **insurers** under IRDAI Act, 1999.

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	Services provided by the **SEBI** by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
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.
	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.
	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 total expenditure is borne by CG/SG/UT administration.

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<table>
<tr><td></td><td>Services provided by GSTN to CG/SG/UT for implementation of GST.</td></tr>
<tr><td>Leasing services</td><td>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 50% or more ownership of CGS/SG/UT to the industrial units/developers in any industrial/financial business area.

Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.</td></tr>
<tr><td>Legal services</td><td><table><tr><th>Service provided by</th><th>To</th></tr><tr><td rowspan="3">• 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</td><td>any person other than BE</td></tr><tr><td>BE with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in SCS) in the preceding FY</td></tr><tr><td>CG/SG/UT/LA/GA/GE</td></tr></table>
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</td></tr>
<tr><td>Sponsorship of sports events</td><td>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</td></tr>
</table>

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	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	Services provided by, _ (a) National Skill Development Corporation (NSDC) set up by GoI; (b) Sector Skill Council (SSC) approved by NSDC; (c) assessment agency approved by SSC/NSDC (d) a training partner approved by SSC/NSDC in relation to- (i) the National Skill Development Programme implemented by NSDC; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any other Scheme implemented by NSDC.
	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 Ministry of Rural Development, GoI by way of offering skill or vocational training courses certified by the National Council for Vocational Training (NCVT).
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.

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<table>
<tr><td>Right to admission to various events</td><td>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.</td></tr>
<tr><td rowspan="4">Services by an unincorporated body or a non- profit entity registered under any law for the time being in force</td><td>Services by unincorporated body/ non- profit entity to its own members as reimbursement/share of contribution:</td></tr>
<tr><td>(i) As a trade union</td><td>(ii) for providing exempt activity</td></tr>
<tr><td colspan="2">(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</td></tr>
<tr><td colspan="2">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.</td></tr>
</table>

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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.
	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below ₹ 1,000 per day or equivalent.
	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 transportation of goods by an aircraft from customs station of clearance in India to a place outside India. This exemption is available till 30.09.2019.
	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India. This exemption is available till 30.09.2019.
	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 (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/annuity.

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	Transmission/distribution of electricity by an electricity transmission/ distribution utility.
	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 (b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubate.
	Services by way of licensing, registration and analysis or testing of food samples supplied by the FSSAI to Food Business Operators.
	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, Press Trust of India 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.
	Services by way of **slaughtering of animals.**
	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 **National Centre for Cold Chain Development** under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of **cold chain knowledge dissemination**.

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	Services by a **foreign diplomatic mission** located in India.
	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 provided by **operators of the common bio-medical waste treatment facility** to a clinical establishment by way of treatment/disposal of bio-medical waste/ incidental processes.
	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:	
	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 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.

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	However, the exemption shall not apply to – (i) OIDAR services received by persons specified in entry (a) or entry (b); or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.
	Services received by the RBI, from outside India in relation to management of foreign exchange reserves.
	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.
	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.

TEST YOUR KNOWLEDGE

1. *An individual acts as a referee in a football match organized by Sports Authority of India. He has also acted as a referee in another charity football match organized by a local sports club, in lieu of a lump sum payment. Discuss whether he is required to pay any GST?*
2. *RXL Pvt. Ltd. manufactures beauty soap with the brand name 'Forever Young'. RXL Pvt. Ltd. has organized a concert to promote its brand. Ms. Ahana Kapoor, its brand ambassador, who is a leading film actress, has given a classical dance performance in the said concert. The proceeds of the concert worth ₹ 1,20,000 will be donated to a charitable organization.*

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Whether Ms. Ahana Kapoor will be required to pay any GST?

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

Particulars	Gross amount charged (₹)
Fees charged for yoga camp conducted by a charitable trust registered under section 12AA of the Income-tax Act, 1961	50,000
Amount charged by business correspondent from banking company for the services provided to the rural branch of a bank with respect to Savings Bank Accounts	1,00,000
Amount charged by cord blood bank for preservation of stem cells	5,00,000
Amount charged for service provided by commentator to a recognized sports body	5,20,000

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

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

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

5. *Discuss whether GST is payable in respect of transportation services provided by Raghav Goods Transport Agency in each of the following independent cases:*

Customer	Nature of services provided	Amount charged
A	Transportation of milk	₹ 20,000
B	Transportation of books on a consignment transported in a single goods carriage	₹ 3,000
C	Transportation of chairs for a single consignee in the goods carriage	₹ 600

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ANSWERS/HINTS

1. Services provided to a recognized sports body by an individual *inter alia* as a referee in a sporting event organized by a recognized sports body is exempt from GST.

   Since in the first case, the football match is organized by Sports Authority of India, which is a recognized sports body, services provided by the individual as a referee in such football match will be exempt.

   However, when he acts as a referee in a charity football match organized by a local sports club, he would not be entitled to afore-mentioned exemption as a local sports club is not a recognized sports body and thus, GST will be payable in this case.

2. Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre are exempt from GST, if the consideration charged for such performance is not more than ₹ 1,50,000. However, such exemption is not available in respect of service provided by such artist as a brand ambassador.

   Since Ms. Ahana Kapoor is the brand ambassador of 'Forever Young' soap manufactured by RXL Pvt. Ltd., the services rendered by her by way of a classical dance performance in the concert organized by RXL Pvt. Ltd. to promote its brand will not be eligible for the above-mentioned exemption and thus, be liable to GST. The fact that the proceeds of the concert will be donated to a charitable organization will not have any bearing on the eligibility or otherwise to the above-mentioned exemption.

3. **Computation of value of taxable supply**

Particulars	(₹)
Fees charged for yoga camp conducted by a charitable trust registered under section 12AA of the Income-tax Act, 1961 [Note-1]	Nil
Amount charged by business correspondent for the services provided to the rural branch of a bank with respect to Savings Bank Accounts [Note-2]	Nil
Amount charged by cord blood bank for preservation of stem cells [Note-3]	Nil
Service provided by commentator to a recognized sports body [Note-4]	**5,20,000**

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Notes:

1. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. The activities relating to advancement of yoga are included in the definition of charitable activities. So, such activities are exempt from GST.
2. Services by business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch have been exempted from GST.
3. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from GST.
4. Services provided to a recognized sports body only by an individual 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. Thus, services provided by commentators are liable to GST.

4. (i) Yes. Services provided TO an educational institution by way of transportation of students are exempted from GST.

(ii) No. Services provided by way of vehicle parking to general public are not exempted from GST. Therefore, GST is payable on the same.

5.

Customer	Nature of services provided	Amount charged	Taxability
A	Transportation of milk	₹ 20,000	Exempt. Transportation of milk by goods transport agency is exempt.
B	Transportation of books on a consignment transported in a single goods carriage	₹ 3,000	GST is payable. Exemption is available for transportation of goods only where the consideration for transportation of goods on a consignment transported in a single goods carriage does not exceed ₹ 1,500.
C	Transportation of chairs for a single consignee in the goods carriage	₹ 600	Exempt. Transportation of goods where consideration for transportation of all goods for a single consignee does not exceed ₹ 750 is exempt.

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CHAPTER 5

PLACE OF SUPPLY



The section numbers referred to in the Chapter pertain to IGST Act, unless otherwise specified.

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

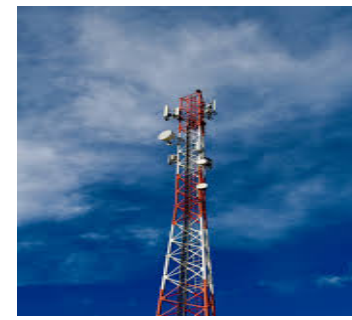


The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may at the point of consumption. The place of supply provisions determine the place i.e., taxable jurisdiction where the tax should reach. The place of supply and the location of the supplier are the two determinants 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

Chapter V of the IGST Act [Sections 10 to 13] prescribes the provisions relating to place of supply of goods and services in cross border transactions as well as domestic transactions.

Different provisions for determining place of supply of goods and services



Goods being tangible do not pose any significant problems for determination of their place of consumption. Services being intangible pose problems w.r.t determination of place of supply mainly due to following factors:

- The manner of delivery of service could be altered easily.

  For example, telecom service could change from

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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.
- 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 leafs 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.

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- 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.

Proxies to determine place of supply of services

The various elements involved in a service transaction can be used as proxies to determine the place of supply. An assumption or proxy which gives more appropriate result than others for determining the place of supply, can be used for determining the place of supply. The same are discussed below:

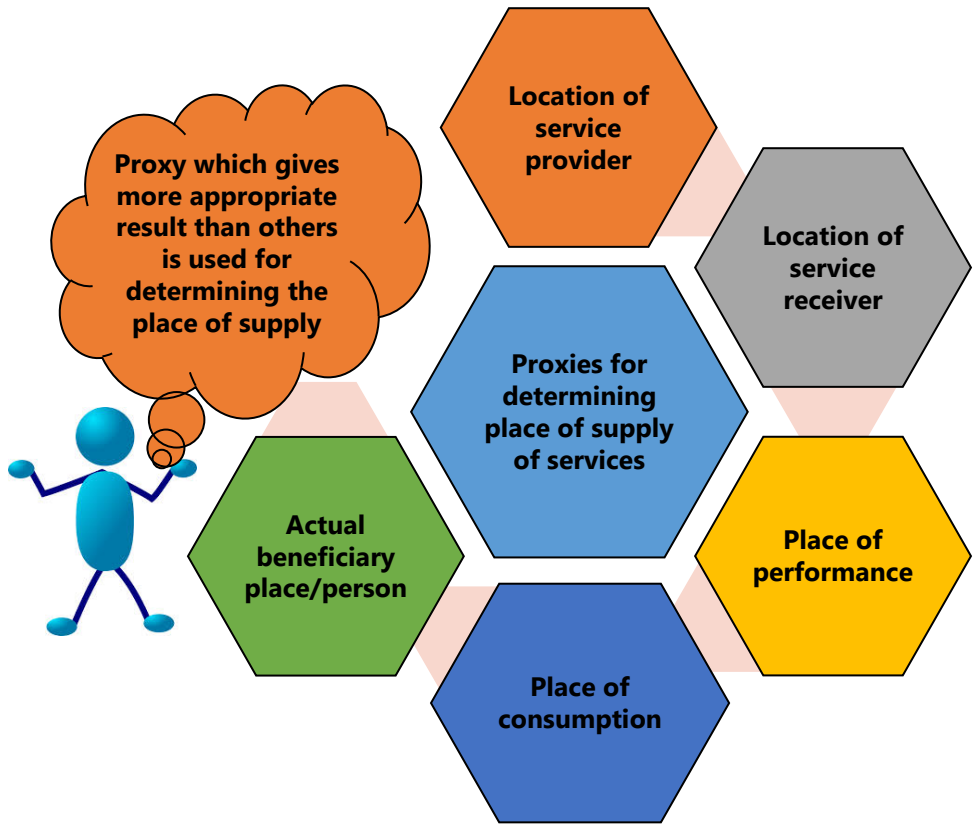
(a) location of service provider;

(b) location of service receiver;

(c) place where the activity takes place/ place of performance;

(d) place where the service is consumed; and

(e) place/person to which/whom actual benefit flows



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Separate rules for place of supply in respect of B2B and B2C transactions

In respect of B2B (business to business) transactions, the supply is made by a registered person to another registered person and the taxes paid are taken as credit by the recipient so 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.

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.

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.

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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;
  - 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 being a business vertical 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)].

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- **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;

  (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;

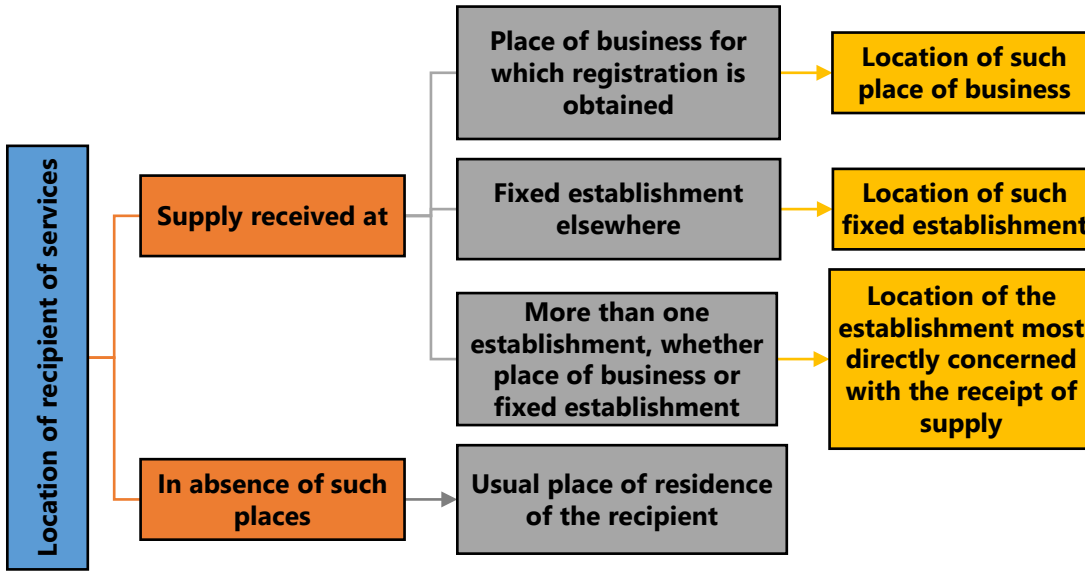
  (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

  (d) in absence of such places, the location of the usual place of residence of the recipient [Section 2(17)].

  The definition of 'fixed establishment' for this purpose has been discussed above. The definition of 'place of business' is discussed later.

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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;

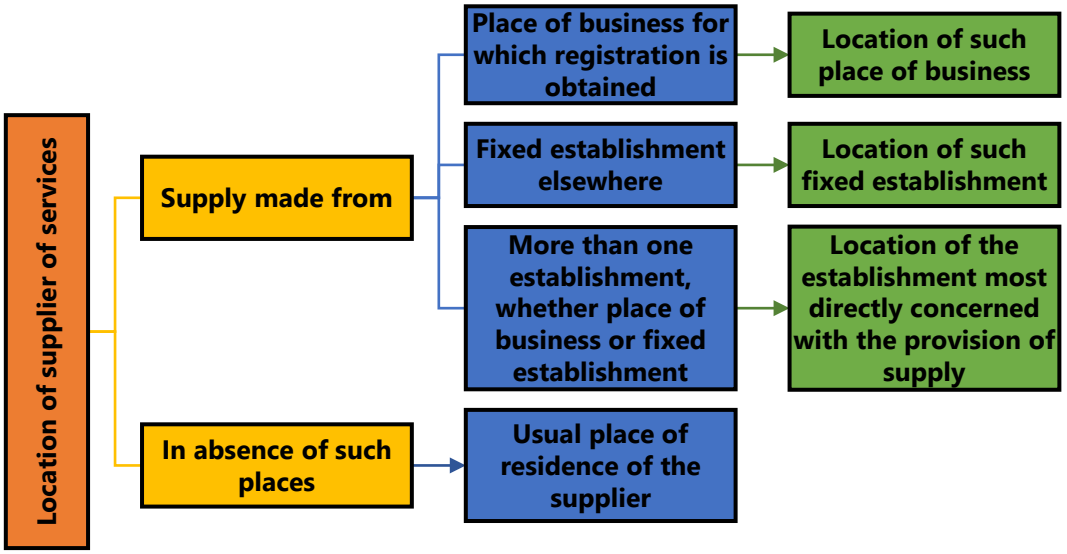
(b) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(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(18)]

The above definition relates only to services. The term 'location of supplier of goods' has not been defined in the Act.

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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 essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,––



(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

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

(vi) digital data storage; and

(vii) online gaming [Section 2(17)].

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- **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;



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)].
- **Words and expressions** used and not defined in this Act but defined in the 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)].
- **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) 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].

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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;
	(d)	where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;

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	(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.

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 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 after having disclosed the destination of the movement of goods.

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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.



(i) Mr. A of Nasik, Maharashtra sells 10 refrigerators to Mr. B of Pune, Maharashtra for delivery at Mr. B's place of business in Pune. The place of supply is Pune in Maharashtra.

(ii) Mr. A of Nasik, Maharashtra sells 20 refrigerators to Mr. C of Ahmedabad, Gujarat for delivery at Mr. C's place of business in Ahmedabad. The place of supply is Ahmedabad.

(ii) Supply involving movement of goods delivered to recipient on the instruction of third person – Bill to Ship to Sale [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),

If the goods are delivered to a recipient or any other person by the supplier

↓

on the instructions of the buyer (third person), who may be acting as an agent or on his own account

↓

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

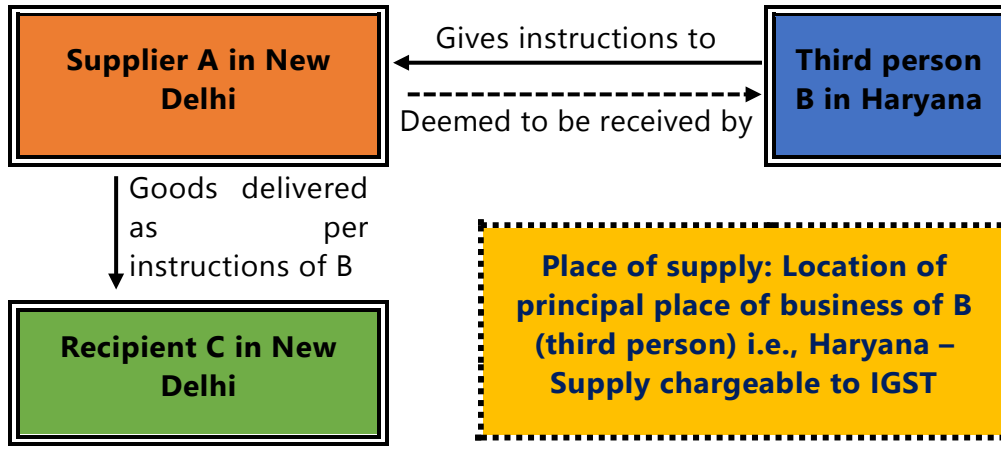
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it is deemed that the third person has received the goods and the **place of supply is the principal place of business of such third person**

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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– by supplier to third person and by third person to recipient. This provision deals only with the first limb of supply i.e., 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.



Mr. X (a supplier registered in Uttar Pradesh having principal place of business at Noida) asks Mr. Y of Ahmedabad, Gujarat to deliver 50 washing machines to his buyer Mr. Z at Jaipur, Rajasthan. In this case, two supplies are involved, one between Mr. X and Mr. Z and other between Mr. Y and Mr. X.

While the former supply is covered under clause (a) of section 10(1), the latter one i.e., between Mr. Y and Mr. X 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 Mr. X 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.

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(i) Mr. A (New Delhi) has leased his machine (cost ₹ 8,00,000) to Mr. B (Noida, Uttar Pradesh) for production of goods on a monthly rent of ₹ 40,000. After 14 months Mr. B requested Mr. A to sell the machine to him for ₹ 4,00,000, which is agreed to by Mr. A. 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.

(ii) 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, 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.

(iv) 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.

(i) Mr. A (New Delhi) purchases a machine from Mr. B (New Delhi) for being installed in his factory at Noida, Uttar Pradesh. The place of supply is the site at which the machine is installed i.e., Noida.





(ii) Pure Refineries (Mumbai, Maharashtra) gives a contract to PQ Ltd. (Ranchi, Jharkhand) to assemble a power plant in its Kutch, Gujarat refinery. The place of supply is the site of assembly of power plant i.e., Kutch even though Pure refineries is located in Maharashtra.

(v) Goods supplied on board a conveyance [section 10(1)(e)]

When goods are sold during a journey on board a conveyance, it becomes

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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.



Examples of goods sold on board a conveyance can be books and miscellaneous items sold by the hawkers in train 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.**

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.

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.*

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ANALYSIS

Section 11 deals with the determination of place of supply in cases involving import and export of goods[1].

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.

Ms. M imports electric kettles from China for her Kitchen Store in Noida, Uttar Pradesh. Ms. M 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 or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

[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.*

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The place of supply in case of export of goods is the place where they have been exported i.e., the destination outside India.



Ms. Reshmi (New Delhi) exports spices from New Delhi to London, UK. The place of supply is London.

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,—*	

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	(a)	*directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or*
	(b)	*by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or*
	(c)	*by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or*
	(d)	*any services ancillary to the services referred to in clauses (a), (b) and (c),*
	shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:	
	Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.	
	Explanation.—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.	
(4)	*The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.*	

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(5)	*The place of supply of services in relation to training and performance appraisal to*	
	(a)	*a registered person, shall be the location of such person;*
	(b)	*a person other than a registered person, shall be the location where the services are actually performed.*
(6)	*The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.*	
(7)	*The place of supply of services provided by way of ,—*	
	(a)	*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	

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	agreement, on such other basis as may be prescribed.	
(8)	*The place of supply of services by way of transportation of goods, including by mail or courier to,—*	
	(a)	*a registered person, shall be the location of such person;*
	(b)	*a person other than a registered person, shall be the location at which such goods are handed over for their transportation.*
	Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.	
(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,—*	

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	(a)	*in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;*
	(b)	*in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;*
	(c)	*in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—*
		(i) *through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or*
		(ii) *by any person to the final subscriber, be the location where such 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.	

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	Explanation.––Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.	
(12)	*The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:*	
	Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.	
(13)	*The place of supply of insurance services shall,––*	
	(a)	*to a registered person, be the location of such person;*
	(b)	*to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.*
(14)	*The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*	

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ANALYSIS

Section 12 contains the provisions for determining the place of supply of services where both the location of supplier and the location of recipient 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 general rule to determine the place of supply of services as well as few other rules to determine place of supply of certain specific services. Thus, place of supply is determined as per general rule in respect of services other than the ones covered by the specific rules.

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) General Rule [Section 12(2)]

The rule is applicable only if the supply of service does not fall in any of the specific cases provided under section 12.

The rule 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	Location of	a) If the address of the

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other than the ones specified in sub-sections (3) to (14) of section 12	recipient	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 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.**



(i) Mr. A (a Chartered Accountant registered in New Delhi) makes a supply of service to his client Mr. B 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.

(ii) 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/boat/vessel [Section 12(3)]

Section 12(3) covers supplies of services which are in relation to an immovable property or a boat or a vessel. Such services are classified in following major categories:

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(a) Services provided directly in relation to an immovable property including those by

- architect,
- interior decorator,
- surveyor,
- engineer and other related experts,
- estate agent

If the immovable property/boat/vessel is located outside India, the location of recipient of the services is the place of supply.

(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
- 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

In all above cases, **location of the immovable property or the boat or the vessel is the place of supply.**

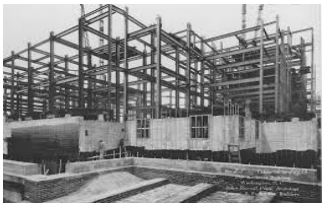
If the services have been supplied for an immovable property which is yet

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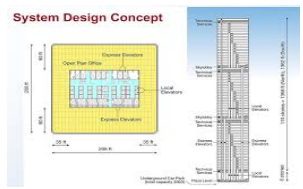
to be constructed/developed (e.g. architect's services for drawing the plan of a building), the place where such immovable property is intended to be located is the place of supply.



(i) 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.



(ii) 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.



(iii) 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.

(iv) 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).

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/boat/vessel including accommodation therein	**In India**	Location of such immovable property/ boat/ vessel
	Outside India	Location of the recipient

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Immovable property/Boat/Vessel located in more than one State/Union territory

Sometimes the 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 single property located in 2 or more contiguous States/ Union territories or both)*	*Number of nights stayed in such property* *Refer Example 1*

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(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 2*
(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 3*

Example 1 - 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



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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 2 - 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 3 - 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 is situated 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). 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 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.

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(i) Mr. A, a business man 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.

(ii) 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.**

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.**

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(i) DEO Consultants (Kolkata) impart GST training to accounts and finance personnel of Sun Cements Ltd. (Guwahati, Assam) at the company's Kolkata office. Since the recipient is registered, the place of supply is the location of the registered person i.e., Guwahati.

(ii) 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:

Cultural



Educational

Scientific



Sporting



Artistic



Entertainment



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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.**

(i) 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.

(ii) 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:

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

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Organisation of events outside India		Location of recipient



(i) 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.

(ii) Mega Events, an event management company at New Delhi, organizes an award function for Shah Diamond Merchants of Ahmedabad (registered in Gujarat), at Mauritius. Since the recipient is a registered person, the place of supply is the location of the recipient, i.e., Ahmedabad.

(iii) 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.

(iv) Grand Wedding Planners (Chennai) is hired by Mr. Ramesh (unregistered person based in Hyderabad) to plan and organise his wedding at 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.

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 IGST Rules by the application of generally accepted accounting principles.

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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 mails [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.**

If the goods are transported outside India, the destination of such goods is the place of supply.







(i) 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.

(ii) Mr. Y, an unregistered person, of New Delhi sends a courier to his

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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.

(iii) PR Pvt. Ltd., a Goods Transportation Agency based in Kanpur, Uttar Pradesh, is hired by Hajela Enterprises (registered supplier 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.

(iv) ST Pvt. Ltd., a Goods Transportation Agency based in Noida, Uttar Pradesh, is hired by Chhaya Trade Links (registered supplier 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.

(v) 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.

(vi) 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 goods being transported outside India, the place of supply is the location of destination of such goods i.e., London, (UK).

(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]*

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Issue of right to passage for future use-point of boarding not known at the time of issue of right		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.



(i) 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.

(ii) Mr. C (unregistered person in Chennai) has come to Delhi on a vacation. He buys pre-paid Delhi Metro Card from Delhi Metro (New Delhi) for hassle free commute in the National Capital Region. Recipient being unregistered person, the place of supply is the address of Mr. C i.e., Chennai. If address of Mr. C is not available with the Delhi Metro, the place of supply will be the location of the supplier of services i.e., New Delhi.

(iii) 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.

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Examples of issue of right to passage for future use-point of boarding not known at the time of issue of right

(i) An airline may issue seasonal tickets, containing say 10 leafs which could be used for travel between any two locations in the country.

(ii) 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 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.



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.

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(x) Telecommunication service [Section 12(11)]

Telecommunication services include the services of telephone, data transfer (internet), 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:

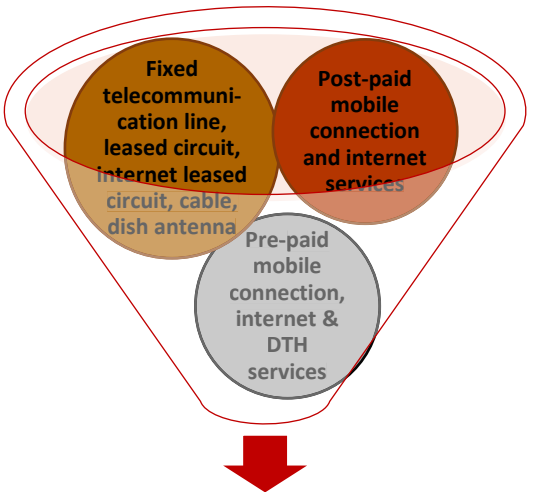




- Services provided using a fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna
- Post-paid mobile connection and post-paid internet services
- Pre-paid mobile connection and pre-paid internet and DTH services







Telecommunication Services

The place of supply of the various types of telecommunication services is tabulated as under:

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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	
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	

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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	



(i) 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.

(ii) 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.

(iii) Mr. D (Mumbai) takes a post-paid mobile connection in Mumbai from Skybel Ltd. The place of supply is the location of billing address of the recipient i.e., Mumbai.

(iv) Mr. E (New Delhi) gets his post-paid bill paid online from Goa. The place of supply is the location of the billing address of the recipient i.e., New Delhi.

(v) 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.

(vi) Mr. F (Puducherry) gets a pre-paid 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

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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 1

(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 1 & 2



Example 1 – 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 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 2 – 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 3 – Intermediate point or place in the circuit

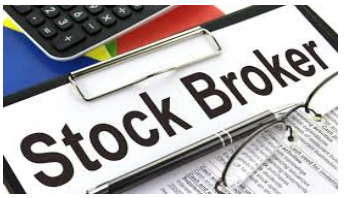
A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this

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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.**

example

(i) 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.

(ii) 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.

(iii) 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.**

example

(i) 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,

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Chennai (registered in Tamil Nadu). The place of supply is the location of the registered recipient i.e., Mumbai.

(ii) 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.

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 1*

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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 2*
3.	Advertisements in hoardings (other than those on trains)	Amount payable for the hoardings located in each State/ Union territory *Refer Example 3*
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 4*
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 5*
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 6*
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 can be ascertained from the channel viewership figures published by the Broadcast Audience Research Council.

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		Figures for the last week of a given quarter is used for calculating viewership for the succeeding quarter. Where the channel viewership figures relate to a region comprising of more than one State/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. *Refer Example 7*
9.	Advertisements in cinema halls	Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory. *Refer Example 8*
10.	Advertisements on internet ***It is deemed that such service is provided all over India.***	Amount attributable to each State/Union territory calculated on the basis of the internet subscribers in each of such State/ Union territory. Internet subscribers can be ascertained from the internet subscriber figures published by the Telecom Regulatory Authority of India (TRAI). Figures for the last quarter of a given financial year will be used for calculating the number of internet subscribers for the succeeding financial year. Where the internet subscriber figures relate to a region comprising of more than one State/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. *Refer Example 9*
11.	Advertisements through SMS	Amount attributable to each State/Union territory calculated on the basis of the

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		telecom subscribers in each of such State/ Union territory. Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. Figures for a given quarter will be used for calculating the subscribers for the succeeding quarter. Where such figures relate to a telecom circle comprising of more than one State/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 10-13*

Example 1 - 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. 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

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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 2 - 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.

Example 3 - 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.

साक्षर भारत
SAAKSHAR BHARAT

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

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territory-wise by IJ to ABC indicating the value pertaining to that State or Union territory.

Example 4 - 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 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 5 - 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.

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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.

Example 6 - 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 place 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 7 - 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.



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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 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.

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Example 8 - 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 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 9 - 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

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by WX to ABC indicating the value pertaining to that State or Union territory.

Example 10 - Advertisements through SMS

(i) 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.



(ii) 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.

(iii) 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.

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(iv) 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.

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:

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		Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.
	(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*	

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	proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.		
(8)	*The place of supply of the following services shall be the location of the supplier of services, namely:—*		
	(a)	*services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;*	
	(b)	*intermediary services;*	
	(c)	*services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.*	
	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 may, with*

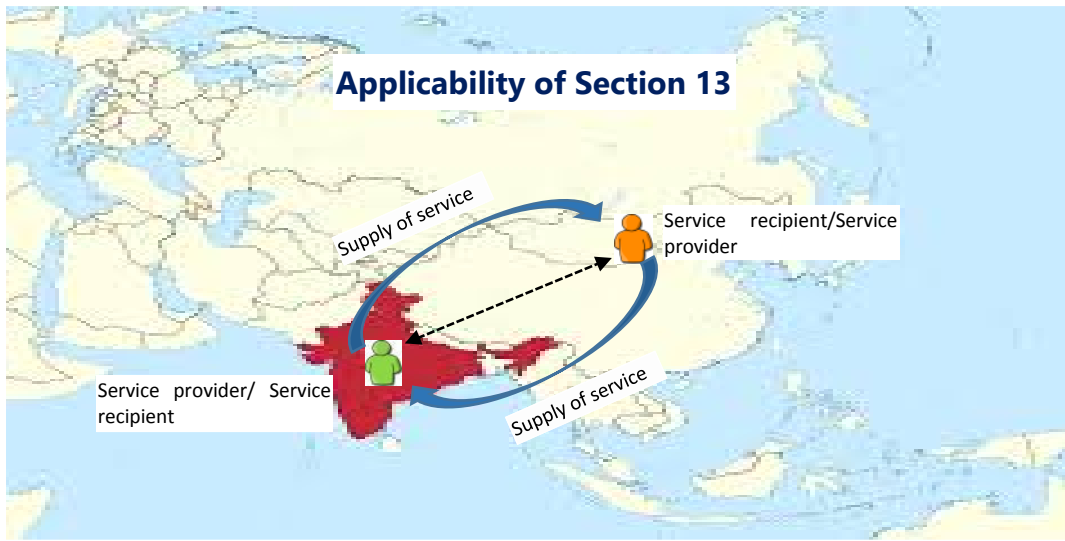
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			the previous approval of the Central Government and by notification in the Official Gazette, specify.
(9)	*The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.*		
(10)	*The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.*		
(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*	

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		by the recipient of services is of taxable territory;
	(g)	*the location of the fixed land line through which the service is received by the recipient is in the taxable territory.*
(13)	*In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.*	

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 general rule to determine the place of supply of services as well as few other rules to determine place of supply of certain specific services. Thus, place of supply is determined as per general rule in respect of services other than the ones covered by the specific rules.

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

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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) General Rule [Section 13(2)]

The rule is applicable only if the supply of service does not fall in any of the specific cases provided in section 13.

The rule provides that the place of supply of services is **the location of the person receiving the 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 general rule 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.
- ❑ 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

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- Transportation of goods, other than by way of mail or courier
- 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)]

<table>
<tr><th colspan="2">Nature of Supply</th><th>Place of Supply</th></tr>
<tr><td rowspan="3">(i)</td><td>Services requiring physical presence of goods
Exceptions:
  </td><td>Location where the service is actually performed</td></tr>
<tr><td>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</td><td>❑ Location of the recipient
❑ Location of the supplier, if location of recipient is not available</td></tr>
<tr><td>Services supplied in respect of goods, that are provided from a remote location by electronic means
  </td><td>Location where goods are situated at the time of supply of services</td></tr>
<tr><td>(ii)</td><td>Services supplied to an individual, which require the physical presence of the recipient</td><td>Location where the service is actually performed</td></tr>
</table>

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(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

(i) Mr. X (New Delhi) imports a machine from Germany for being installed in his factory at New Delhi. To install such machine, Mr. X 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.

(ii) A software company located in United States of America (USA) takes services of a software company located in Bangalore to service its software 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 are situated at the time of supply of service i.e., USA.

(iii) 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. The place of supply of repair service is the location of the recipient i.e., Indonesia.

(iv) ***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 job work undertaken by QR Pvt. Ltd. is the location of the recipient i.e., Belgium.***

(v) Mr. X, a hair stylist registered in New Delhi, travels to Singapore to provide

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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.

(v) PQR Consultants, New Delhi, bags a contract for doing a 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 - 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 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 1*
(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*

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		of the service performed in each State/Union territory *Refer Example 2*
(iii)	*Services supplied to individuals*	*Applying generally accepted accounting principles.* *Refer Example 3*



Example 1 - 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.



Example 2 – 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 3 – 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.

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(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
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

(i) 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.

(ii) 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

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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.

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 - 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) [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.

(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 	Place where the event is actually held

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❑ Celebration, conference, fair, exhibition ❑ Similar events	
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



(i) 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.



(ii) 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. 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.

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 - 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.

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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.

(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 	

(i) Mr. C, a foreign tourist, on a visit to Varanasi (Uttar Pradesh) uses his international debit card to withdraw money from an ATM of a local Bank registered in Uttar Pradesh. The place of supply is the location of the supplier of services i.e., Varanasi.

(ii) A travel agent registered in New Delhi books a tour of famous Indian cities for a Dubai resident. The place of supply is the location of the supplier of services i.e., New Delhi.

(iii) 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.

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(vi) Transportation services [Sub-sections (9) (10) and (11) of section 13]

Nature of Supply	Place of Supply
Transportation of goods, other than by way of mail or courier	Destination of such goods
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



(i) A shipping line, Mumbai, Maharashtra transports a shipment of flowers from Mumbai to Paris, for an event management company based in Paris. The place of supply is the location of destination of goods transported i.e., Paris.

(ii) Mr. A, a foreign tourist, has booked a ticket for New Delhi-Sri Lanka flight from an airline registered in New Delhi for a continuous journey without any stopover. The place of supply is the place where the passenger embarks on the conveyance for a continuous journey i.e., New Delhi.

Taxability of satellite launch services

Circular No. 2/1/2017 IGST dated 27.09.2017 has clarified that place of supply of satellite launch services supplied by ANTRIX Corporation Limited, a wholly owned Government of India Company, to international customers would be outside India in terms of section 13(9) and such supply which meets the requirements of section 2(6), will constitute export of service and shall be zero rated in accordance with section 16.[1]

Where satellite launch service is provided to a person located in India, the

[1] *Concepts of export of service under section 2(6) and zero rated supply under section 16 have been discussed in Chapter 13: Import and Export under GST of Module 3 of this Study Material.*

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place of supply of satellite launch service would be governed by section 12(8)[2] and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.

(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.

[2] *Refer page nos. 5.32-5.33 for discussion relating to section 12(8).*

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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 goods are assembled or installed at site	Place where the goods are assembled or installed
5.	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
6.	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

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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.

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

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		India: Location of the recipient
	If the event is held in more than one State	Each such State in proportion to the value of services provided in 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 ❑ If the goods are transported outside India: Location of the destination of goods
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 the supplier ❑ Location of the supplier of services if the location of the 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

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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*
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

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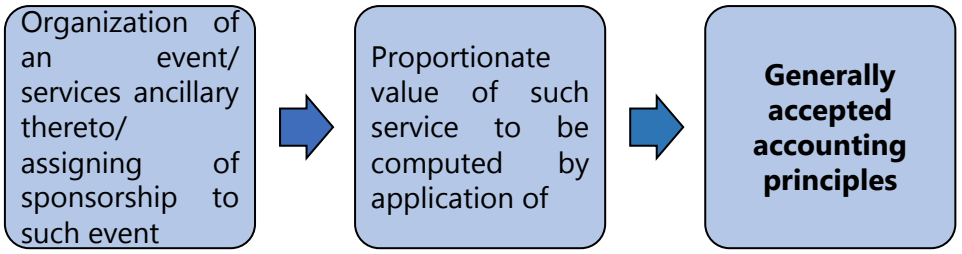
		available, location of supplier
	If the leased circuit is installed in more than one State	Each such State in proportion to the value of services provided in each State – *Refer point (v) below*

(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***

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(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



(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

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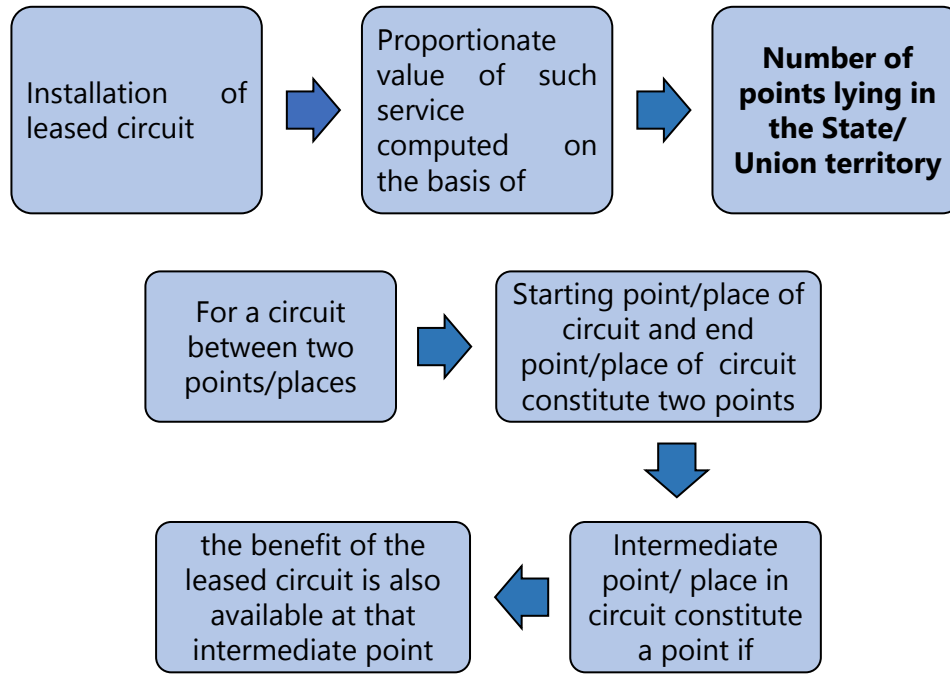
4.	Advertisements on trains	Amount attributable to each State/Union territory calculated in the ratio of length of the railway track in each of such State/Union territory, for that train
5.	Advertisements on the back of utility bills of oil and gas companies, etc.	Amount payable to each State/Union territory 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.

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10.	Advertisements on internet ***It is deemed that such service is provided all over India.***	Amount attributable to each State/Union territory calculated on the basis of the internet subscribers in each of such State/ Union territory. 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

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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 rule 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.

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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
	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

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		services provided in each State – *Refer point (ii) below*
5.	Services supplied by a banking company, or a financial institution, or a NBFC to account holders	Location of the supplier 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.	Transportation of goods, other than by way of mail or courier	Place of destination of such goods
7.	Passenger transportation	Place where the passenger embarks on the conveyance for a continuous journey
8.	Services provided on-board a conveyance	First scheduled point of departure of that conveyance for the journey
9.	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

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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
	(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)

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(iii) For the rest of the services other than those specified above, a default provision has been prescribed as under:

Default rule 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

TEST YOUR KNOWLEDGE

1. *In case of a domestic supply, what is the place of supply where goods are removed?*
2. *What will be the place of supply if the goods are delivered by the supplier to a person on the direction of a third person?*
3. *What is the place of supply where the goods or services are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle?*
4. *The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states.*

   What will be the place of supply of construction services?
5. *What would be the place of supply of services provided by an event management company for organizing a sporting event for a Sports Federation which is held in multiple States?*
6. *What is the place of supply of services by way of transportation of goods, including mail or courier when the both the supplier and the recipient of the services are located in India?*
7. *What will be the place of supply of passenger transportation service, if a person travels from Mumbai to Delhi and back to Mumbai?*
8. *What is the place of supply for mobile connection? Can it be the location of supplier?*

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9. *A person from Mumbai goes to Kullu-Manali and takes some services from ICICI Bank in Manali.*

   What is the place of supply?

10. *An unregistered person from Gurugram travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai.*

    What is the place of supply of insurance services?

ANSWERS/HINTS

1. As per section 10(1)(a), the place of supply of goods is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

2. As per section 10(1)(b), it would be deemed that the third person has received the goods and the place of supply of such goods will be the principal place of business of such person.

3. As per section 10(1)(e), in respect of goods, the place of supply is the location at which such goods are taken on board.

   However, in respect of services, the place of supply is the location of the first scheduled point of departure of that conveyance for the journey in terms of sections 12(10) and 13(11).

4. Where the immovable property is located in more than one State, the supply of service is treated as made in each of the States 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 reasonable basis as may be prescribed in this behalf [Explanation to section 12(3) for domestic supplies].

   In the absence of a contract or agreement between the supplier and recipient of services in this regard, the proportionate value of services supplied in different States/Union territories (where the immovable property is located) is computed on the basis of the area of the immovable property lying in each State/ Union territories [Rule 4 of the IGST Rules].

5. In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event is the location of such person. However, if the recipient is not registered, the place of supply is the place where event is held.

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Since the event is being held in multiple states and a consolidated amount is charged for such services, the place of supply will be deemed to be in each State in proportion to the value for services determined in terms of the contract or agreement entered into in this regard [Explanation to section 12(7)].

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in each State (where the event is held) will be computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.

6. If the recipient is registered, the location of such person is the place of supply. However, if the recipient is not registered, the place of supply is the place where the goods are handed over for transportation. Further, if the goods are transported outside India, the destination of such goods is the place of supply [Section 12(8)].

7. If the person is registered, the place of supply will be the location of recipient. If the person is not registered, the place of supply for the forward journey from Mumbai to Delhi will be Mumbai, the place where he embarks [Section 12(9)].

However, for the return journey, the place of supply will be Delhi as the return journey has to be treated as separate journey [Explanation to section 12(9)].

8. **For domestic supplies**

The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In case of postpaid connections, the place of supply is the location of billing address of the recipient of service.

In case of pre-paid connections, the place of supply is the place where payment for such connection is received or such pre-paid vouchers are sold. However, if the recharge is done through internet/e-payment, the location of recipient of service on record will be taken as the place of supply.

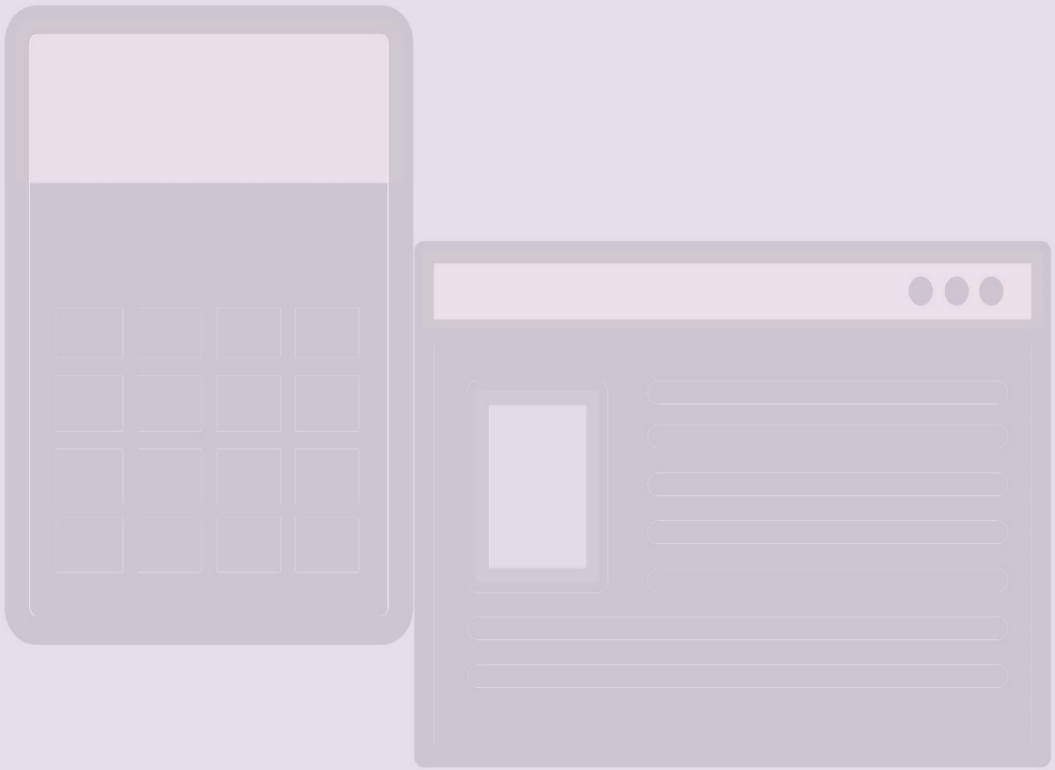
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For international supplies

The place of supply of telecom services is the location of the recipient of service.

9. If the service is not linked to the account of person, place of supply will be Kullu i.e., the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply will be Mumbai, the location of recipient on the records of the supplier.

10. When insurance service is provided to an unregistered person, the location of the recipient of services on the records of the supplier of insurance services is the place of supply. So Gurugram is the place of supply [Section 12(13)].



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CHAPTER 6

TIME OF SUPPLY



The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

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 by way 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.

Point in time when the liability to pay tax arises

So, at which of these points of time does GST become 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? Provisions relating to 'time of supply' provide answer to all such and other questions that arise on the timing of the liability to pay CGST and SGST/UTGST (intra-State supply) and IGST (inter-State supply) as time of supply fixes the point in time when the liability to pay tax arises.

The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13 of CGST Act. Section 14 provides for the method 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 make use of the provisions of section 31 relating to issue of tax invoice as a reference point, hence it will be advantageous to refer to *Chapter 10: Tax Invoice, Credit and Debit Notes* in conjunction with this chapter.

Events like issuing of invoices, receipt of payment, provision of service, receipt of services 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, date of making payment etc. need to be analysed to determine the time of supply. The provisions relating to time of supply essentially push the tax collection event to the earliest possible time.

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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





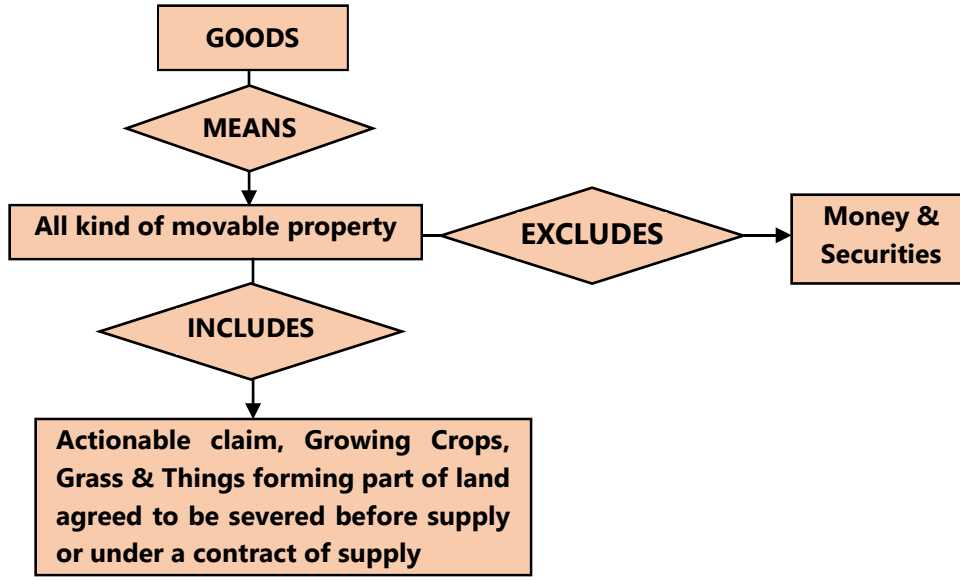
- **Associated enterprises** shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961 [Section 2(12)].

  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.

- **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)].

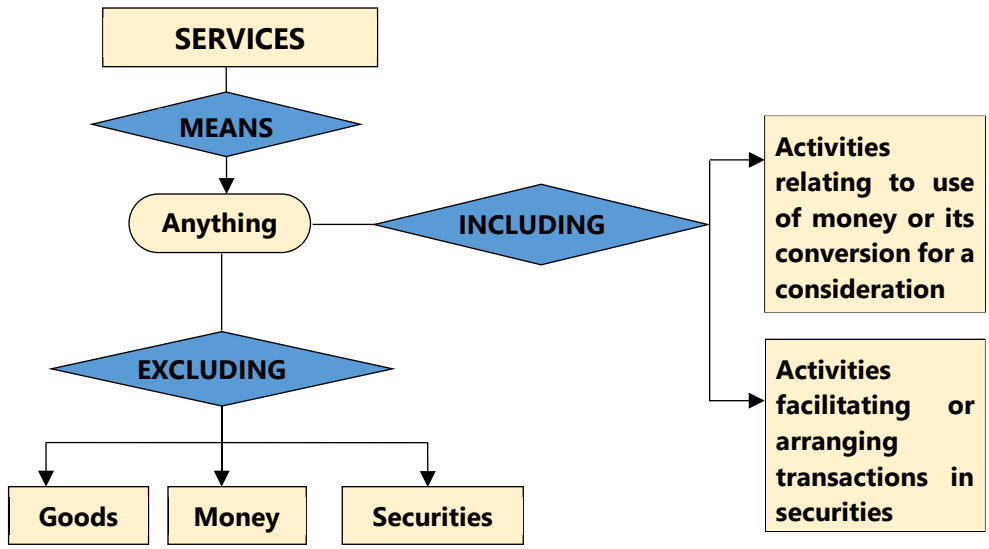
- **Goods** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].

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❖ **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)].



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❖ **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].

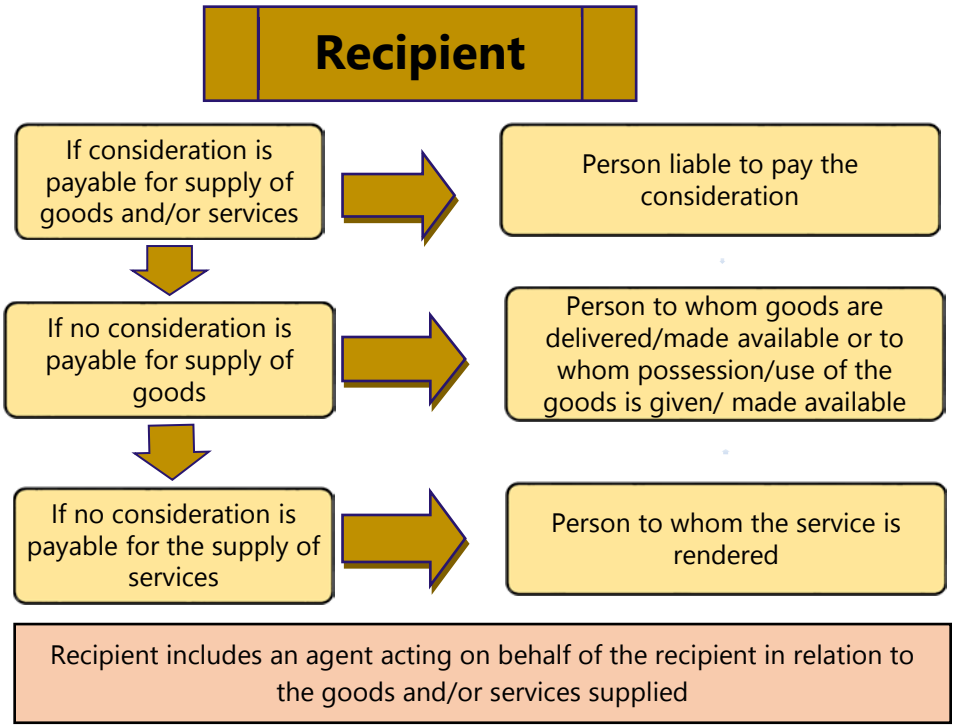
❖ **Recipient** of supply of goods or services or both, means—

(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)].

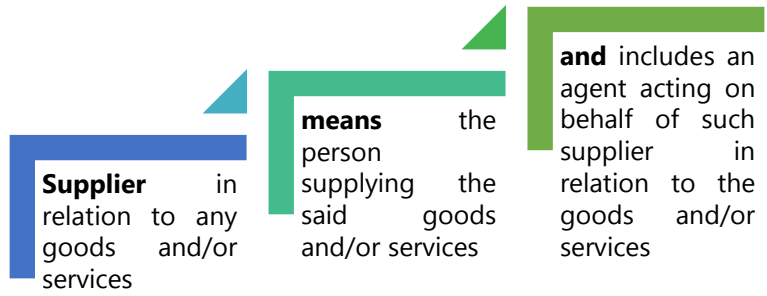


❖ **Reverse charge** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both

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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 [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. 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.*
		The time of supply of goods shall be the earlier of the following

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(2)	*dates, namely:-*	
	(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:*
	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:*
	Provided that where it is not possible to determine the time of	

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	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.*
(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	***Tax invoice (to the extent relevant to time of supply)***	
(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	

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	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 where supplier is liable to pay tax;
- ➔ Supply of goods that are taxable 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.

We consider below how the time of supply is determined in each of these situations.

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(i) Supply of goods where supplier is liable to pay tax (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.

Exemption from payment of tax on advances received for supply of goods – Special procedure for payment of tax in case of supply of goods

Time of supply is linked with payment of tax. Liability to pay tax arises at the time of supply and the same can be paid by the prescribed due date.

In exercise of the powers conferred by section 148[1], the Central Government, on the recommendation of the GST Council, has issued *Notification No. 66/2017 CT dated 15.11.2017* to specify that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), 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 (except composition suppliers) are exempted from paying GST at the time of receipt of advance in relation to supply of goods. The entire GST shall be payable only when the invoice for the supply of such goods is issued or ought to have been issued.

A composition supplier has to pay, in lieu of tax payable by him, an amount calculated at the prescribed rate applied on his 'turnover in the State/Union Territory' for a quarter. Therefore, the composition supplier is not required

[1] *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: Miscellaneous Provisions of Module 3 of this Study Mterial.*

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to pay any tax on advance received as the same does not form part of taxable supplies and, in turn, also does not form part of the 'turnover in a State/Union Territory' at the end of the quarter.[2]

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, the time of supply will not cover the full supply. The supply is deemed to have been made to the extent it is covered by the invoice or the part advance payment.



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 also be applicable to supply of 80 kg of raw material and not for entire 100 kg of raw material.

However, it may be noted that in case of goods (except for composition supplier), tax is payable only on the issuance of invoice/last date of issuance of invoice even if any advance or part payment has been received before the issuance of invoice/last date of issuance of invoice.

Time limit for issuance of invoice for supply of goods

- 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).

[2] *Based on CBIC GST Flyer Chapter 6 - GST on Advances Received for Future Supplies*

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- In case of continuous supply of goods, the invoice should be issued **before** or **at the time** of issuance of periodical statement/receipt of periodical payment [Section 31(4)].
- In case of goods sent or taken on approval for sale or return, invoice should be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier [Section 31(7)].

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 next page.

ILLUSTRATION 1

A machine has to be supplied at site. It is done by sourcing various components from vendors and assembling the machine at site. The details of the various events are:

17th September	*Purchase order with advance of ₹ 50,000 is received for machine worth ₹ 12 lakh and entry duly made in the seller's books of account*
20th October	*The machine is assembled, tested at site, and accepted by buyer*
23rd October	*Invoice raised*
4th November	*Balance payment of ₹ 11,50,000 received*

Determine the time of supply(ies) in the above scenario for the purpose of payment of tax.

ANSWER

As per *Notification No. 66/2017 CT dated 15.11.2017,* a registered person (excluding composition supplier) 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.

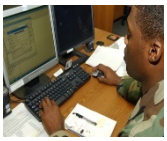
Therefore, the time of supply for the purpose of payment of tax for the entire amount of ₹ 12,00,000 is 20th October which is the date on which the goods were made available to the recipient as per section 31(1)(b), and the invoice should have been issued on this date [Section 12(2)(a)].

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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



Date on which the payment is credited to the supplier's bank account

Whichever is earlier

SPECIAL PROCEDURE UNDER SECTION 148 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 will be payable on advances received for supply of goods.

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ILLUSTRATION 2

Gas is supplied by a pipeline. Monthly payments are made by the recipient as per contract. Every quarter, invoice is issued by the supplier supported by a statement of the goods dispatched and payments made, and the recipient has to pay the differential amount, if any. The details of the various events are:

August 5, September 5, October 6	*Payments of ₹ 2 lakh made in each month*
October 3	*Statement of accounts issued by supplier, with invoice for the quarter July – September*
October 17	*Differential payment of ₹ 56,000 received by supplier for the quarter July – September as per statement of accounts*

Determine the time of supply for the purpose of payment of tax.

ANSWER

As per *Notification No. 66/2017 CT dated 15.11.2017,* a registered person (excluding composition supplier) 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(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, invoice should be issued on August 5, September 5 and October 6 when monthly payments of ₹ 2 lakh are received.

Thus, the time of supply for the purpose of payment of tax will be August 5, September 5 and October 6 respectively for goods valued at ₹ 2 lakh each. For goods valued at ₹ 56,000, the time of supply for the purpose of payment of tax will be October 3, the date of issuance of invoice.

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

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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, w.e.f. 15.11.2017, GST on supply of goods is payable only on the basis of issuance of invoice, 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)].

(ii) Supply of goods that are taxable 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 next page.

ILLUSTRATION 3

Determine the time of supply from the given information.

May 4	*Supplier invoices goods taxable on reverse charge basis to Bridge & Co. (30 days from the date of issuance of invoice elapse on June 3)*
May 12	*Bridge & Co receives the goods*
May 30	*Bridge & Co makes the payment*

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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 from 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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ANSWER

Here, May 12 will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)]. (Here, date of invoice is relevant only for calculating thirty days from that date.)

ILLUSTRATION 4

Determine the time of supply from the given information.

May 4	*Supplier invoices goods taxable on reverse charge basis to Pillar & Co. (30 days from the date of issuance of invoice elapse on June 3)*
June 12	*Pillar & Co receives the goods, which were held up in transit*
July 3	*Payment made for the goods*

ANSWER

Here, June 4, 31st day from the date of supplier's invoice, will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)].

(iii) Vouchers [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, they are instruments, that certain persons (potential suppliers) are obliged to accept as consideration, part or full, for goods and/or services. The instrument or its related documentation sets out the terms and conditions of use, the goods and/or services covered, and the identity of the potential suppliers of such goods and/or services.

As per section 12(4), the time of supply of vouchers exchangeable for goods is-

- Date of issue of the voucher, if the supply that it covers is identifiable at that point, or
- Date of redemption of the voucher in other cases.

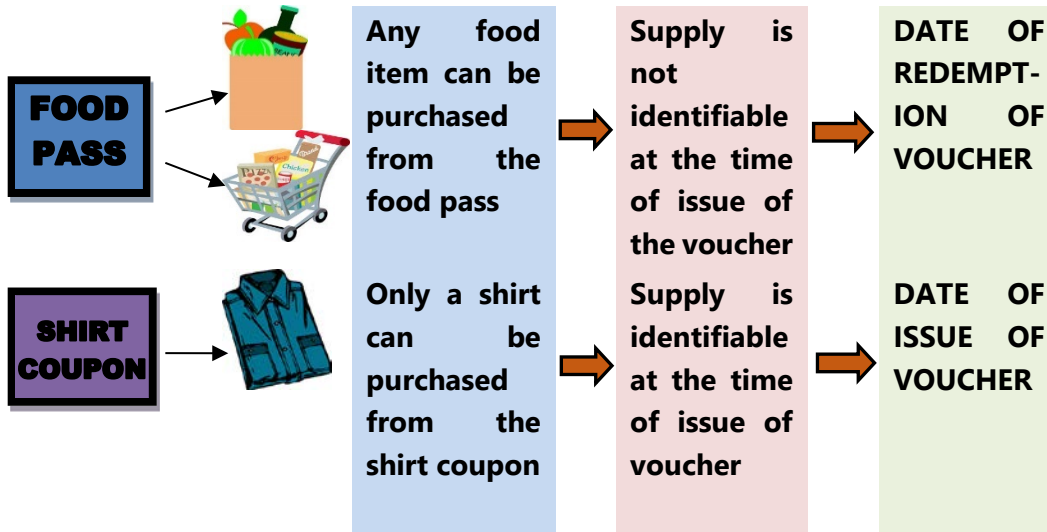
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example Acmesales Limited sells food coupons to a company. The company gives these coupons to its employees as part of the agreed perquisites. The coupons can be redeemed for purchase of any item of food /provisions in the outlets that are part of 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.

example 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.

TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS



(iv) Residual case [Section 12(5)]

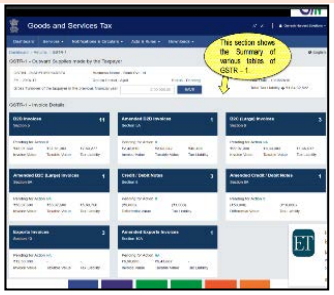
If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 12, in the following manner:

- Due date for filing of the periodical return, or
- In any other case, date on which GST is paid.

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TIME OF SUPPLY OF GOODS UNDER RESIDUAL CASE

Where a periodical return is to be filed



→ **DATE ON WHICH RETURN IS REQUIRED TO BE FILED**

OTHER CASES

→ **DATE ON WHICH GST IS PAID**

(v) Enhancement in value on account of interest/late fee etc. for delayed payment of consideration [Section 12(6)]

Commercially, all the contract of supplies stipulate payment of interest/late fee/penalty etc. in case of payment of consideration beyond the agreed time period. Such interest/late fee/penalty etc. is includible in value of taxable supply *[This concept has been discussed in detail in Chapter 7: Value of Supply]*. 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 by way of interest/ late fee/penalty for delayed payment of consideration for goods is the date on which the supplier receives such addition in value.

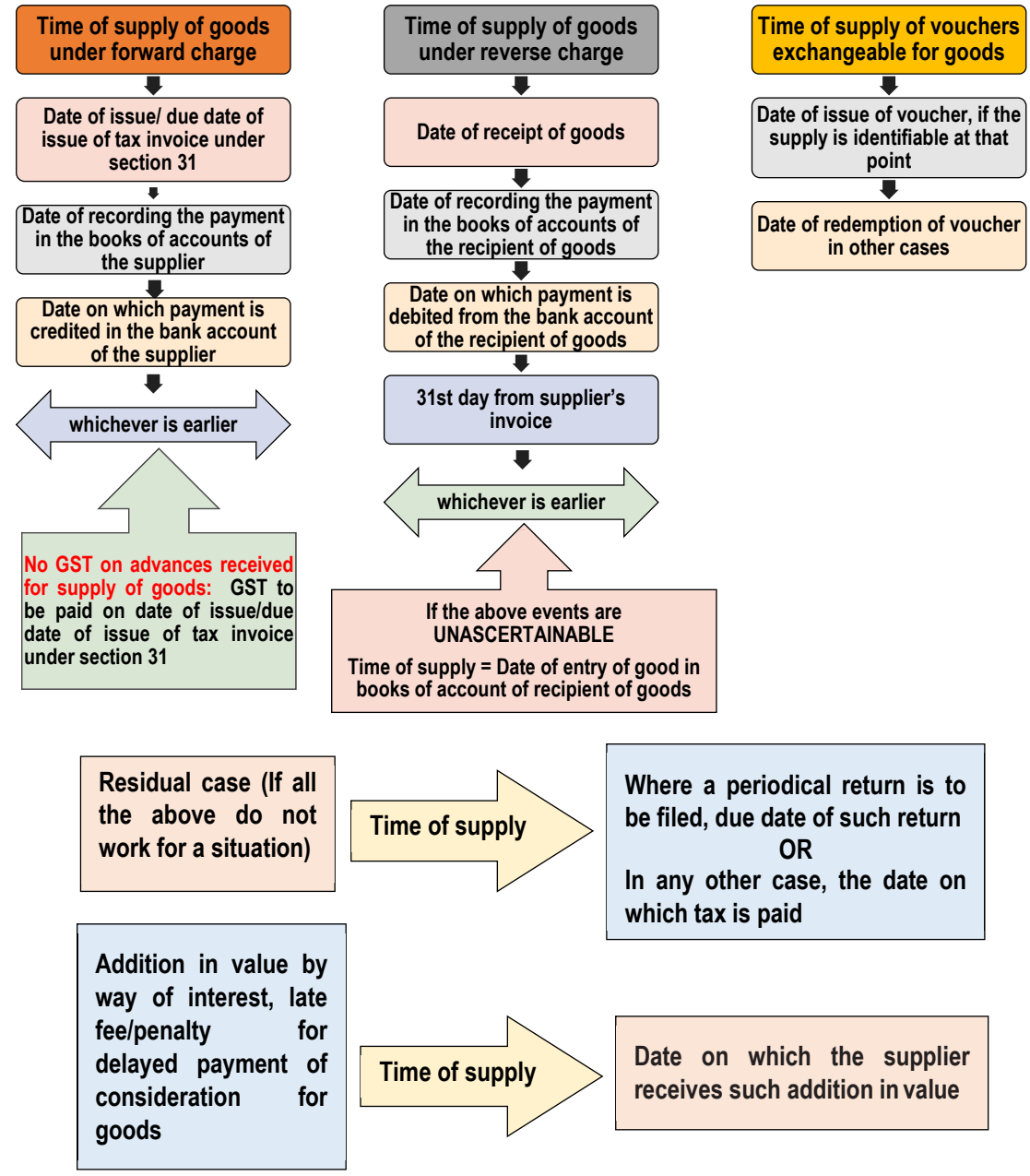


Radha Traders sold goods to Shyam Sales on 6th June with a condition that interest @ 2% per month will be charged if Shyam Sales failed to make payment within 15 days of the delivery of the goods. Goods were delivered as also the invoice was issued on 6th June. Shyam Sales paid the consideration for 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 Radha Traders i.e., 6th July.

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The provisions relating to time of supply of goods as contained in section 12 are summarised in the diagram given below



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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:*
	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;*
(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.*

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(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)***	
(2)	*A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:*	
	Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which–	
	(a)	*any other document issued in relation to the supply shall be deemed to be a tax invoice; or*
	(b)	*tax invoice may not be issued.*
(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.*	

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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:
	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.



Section 13 must be read with section 31 and rule 47 of CGST Rules, which prescribe in detail the date on which tax invoice for a supply of service must be issued in various situations.



ANALYSIS

Section 13 provides for the determination of the time of supply in the following situations:

- ➔ Supply of service on which the supplier is liable to pay tax,
- ➔ Supply of service that is taxable under reverse charge basis,
- ➔ Supply of vouchers that can be used to pay for services,
- ➔ Residual cases,

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➔ Addition to value of supply of services by way of interest or late fee or penalty for delayed payment.

Below we shall consider these in detail.

(i) Supply of service where supplier is liable to pay tax (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 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 entity (supplier of service) 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 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.

The provisions relating to time of supply of services in case of forward charge can be depicted by way of a diagram given at page No. 6.28.

Time limit for issuance of invoice for supply of services

➢ As per section 31(2) read with rule 47 of CGST Rules, the tax invoice needs to be issued either before the provision of service or within 30

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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[3], invoice may be issued before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made [Second proviso to rule 47].
- In case of continuous supply of services, the invoice should be issued either (i) on/ before the due date of payment or (ii) before/ at the time when the supplier of service receives the payment, if the due date of payment is not known (iii) on/ before the date of completion of the milestone event when the payment is linked to completion of an event [Section 31(5)].
- In case of cessation of supply of services before completion of supply, the invoice (to the extent of the supply made before such cessation) should be issued at the time when the supply ceases [Section 31(6)].

ILLUSTRATION 5

Determine the time of supply from the following particulars:

6th May	*Booking of convention hall, sum agreed ₹ 15000, advance of ₹ 3000 received*
15th September	*Function held in convention hall*
27th October	*Invoice issued for ₹ 15000, indicating balance of ₹ 12000 payable*
3rd November	*Balance payment of ₹ 12000 received*

ANSWER

As per section 31(2) read with rule 47 of CGST Rules, the tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit. As per section 13(2)(b), in a case where

[3] *Concept of distinct persons has been discussed in Chapter 9: Registration*

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the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Therefore, the time of supply of service to the extent of ₹ 3,000 is 6th May as the date of payment of ₹ 3000 is earlier than the date of provision of service. The time of supply of service to the extent of the balance ₹ 12,000 is 15th September which is the date of provision of service.

ILLUSTRATION 6

Investigation shows that ABC & Co carried out service of cleaning and repairs of tanks in an apartment complex, for which the Apartment Owners' Association showed a payment in cash on 4th April to them against work of this description. The dates of the work are not clear from the records of ABC & Co. ABC & Co have not issued invoice or entered the payment in their books of account.

ANSWER

The time of supply cannot be determined vide the provisions of clauses (a) and (b) of section 13(2) as neither the invoice has been issued nor the date of provision of service is available as also the date of receipt of payment in the books of the supplier is also not available. Therefore, the time of supply will be determined vide clause (c) of section 13(2) i.e., the date on which the recipient of service shows receipt of the service in his books of account.

Thus, time of supply will be 4th April, the date on which the Apartment Owners' Association records the receipt of service in its books of account.

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.

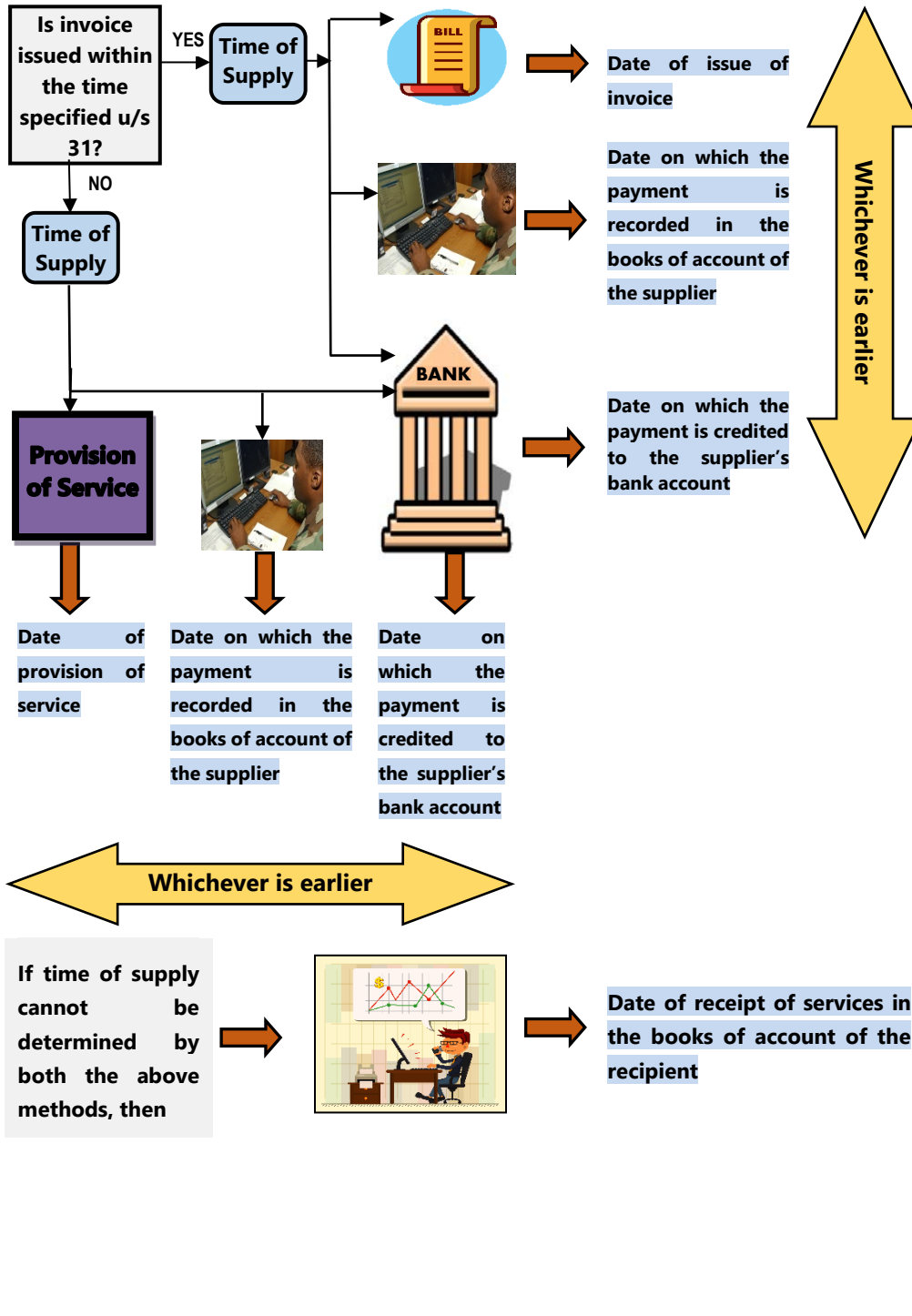
This provision facilitates the supplier to defer payment of tax on small amounts typically received by him in excess of the invoice amount.



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.

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TIME OF SUPPLY OF SERVICES UNDER FORWARD CHARGE



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(ii) Receipt of services that are 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 India) under sub-sections (3) and (4) of section 9 is determined in terms of section 13(3)(a) and (b) 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 since issue of invoice (or any other document 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 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 entity that receives the service (recipient of service), or the date on which the payment is debited from the entity's bank account, whichever is earlier.

Import of services between associated enterprises

In the case of service received from an associated enterprise located outside India, the time of supply will be 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 at the next page.

ILLUSTRATION 7

Determine the time of supply from the given information. (Assume that service being supplied is taxable under reverse charge)

May 4	*The supplier of service issues invoice for service provided. There is a dispute about amount payable, and payment is delayed.*
August 21	*Payment made to the supplier of service*

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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 of services



Date on which the payment is debited from the bank account of the recipient of services





st DAY

61st day from issue of invoice by the supplier

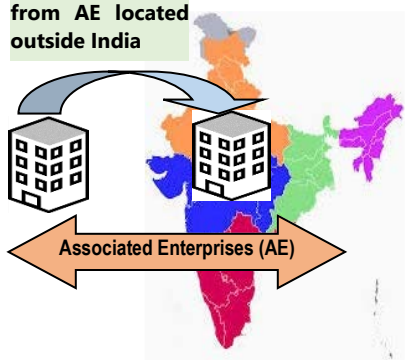
Whichever is earlier

If it is not possible to determine the time of supply through above parameters, THEN
TIME OF SUPPLY WILL BE



Date of entry of service in the books of account of the recipient of supply

Supply of services from AE located outside India







Date of payment for the service



Date of entry of the service in the books of account of the recipient

Whichever is earlier

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ANSWER

Here, July 4 will be the time of supply, being the earliest of the two stipulated dates namely, date of payment and date immediately following 60 days since issue of invoice.

ILLUSTRATION 8

Determine the time of supply from the given information.

May 4	*A German company issues email informing its associated company ABC Ltd. of the cost of technical services provided to it.*
July 2	*ABC Ltd transfers the amount to the account of the German company*

ANSWER

As there is no prior entry of the amount in the books of account of ABC Ltd., July 2 will be the time of supply, being the date of payment in terms of second proviso to section 13(3).

(iii) Vouchers [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.



Best Hospitality Services enters into agreement with Drive Marketing Ltd by which Drive Marketing Ltd. markets Best Hospitality Services' 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.

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(iv) Residual case [Section 13(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 13, in the following manner:

- Date on which periodical return for the period is required to be filed, or
- In any other case, date on which GST is paid.

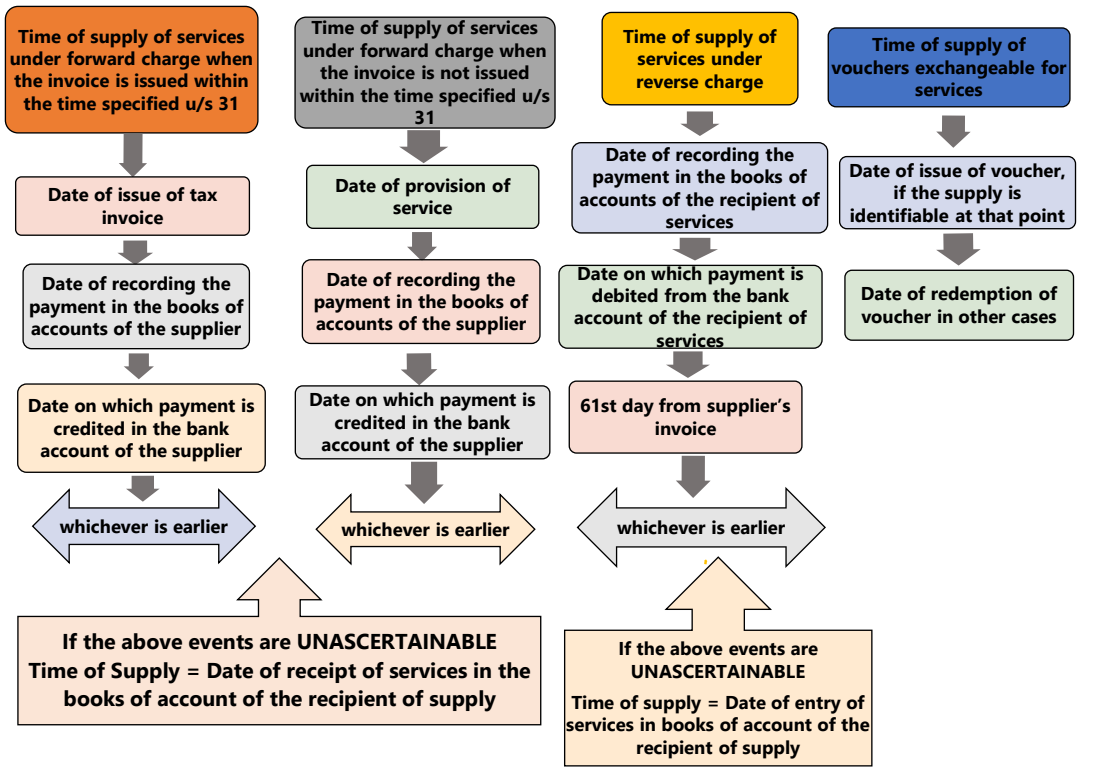
(v) Enhancement of value on account of interest/late fee etc. for delayed payment of consideration [Section 13(6)]

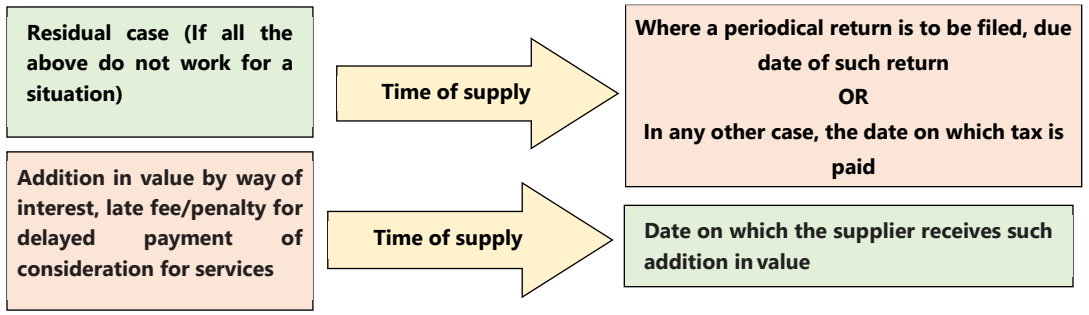
The provisions for time of supply in case of addition in value by way of interest, late fee/penalty for delayed payment of consideration are the same for goods and services.

Section 13(6) prescribes that time of supply in case of addition in value by way of interest/ late fee/penalty for delayed payment of consideration for a service is the date on which the supplier receives such addition in value.

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The provisions relating to time of supply of services as contained in section 13 are summarised in the diagram given below





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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, and a transaction of supply of goods or services is not yet completed in all its documentary and financial aspects, the law makes specific provisions for fixing the time of supply of the goods or service for the purpose of payment of tax.

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The three markers for identifying time of supply are actual supply, invoice and payment. These can occur in differing sequences. Their distribution before and after the change of effective rate of tax determines the time of supply of the service.

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 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.

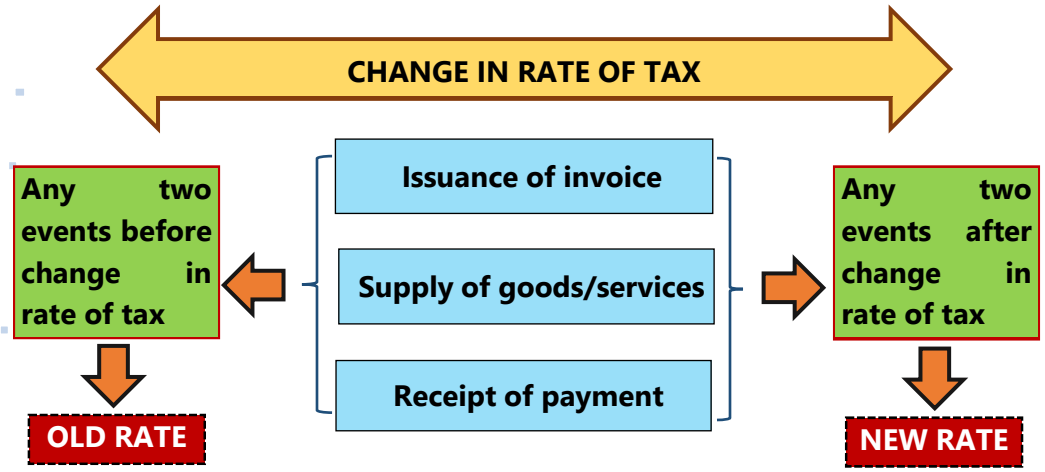
Further, it may be noted that for supply of goods by a registered person (excluding composition supplier), GST is to be paid on the outward supply of goods on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 - *Notification No. 66/2017 CT 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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example 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.

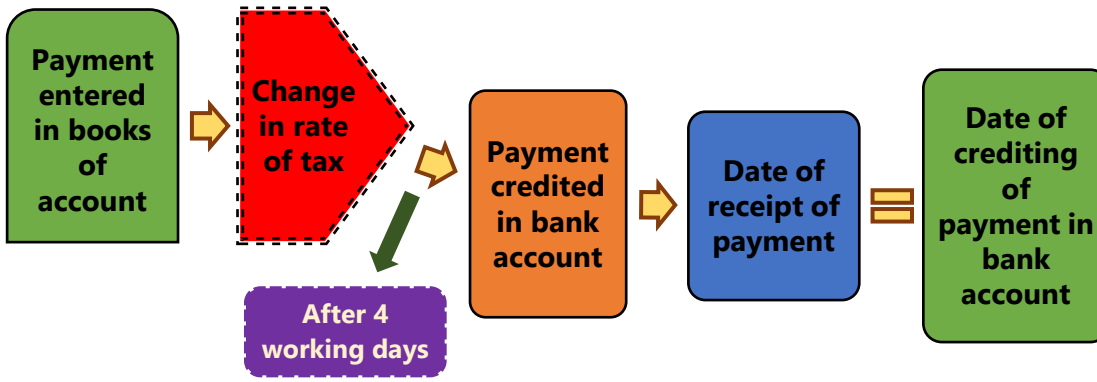


example Vulcan Tools Pvt Ltd makes custom-made precision tools for which it takes full advance with the purchase order. One such order is received on 13th April and full amount is paid with the order. The tools are manufactured and delivered on 22nd May. Invoice is also issued on the same day. In the 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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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:** → Date of issue of invoice by the supplier

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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

No GST on advances received for supply of goods: In case of supply of goods by a registered person (excluding composition supplier), 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 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

GENERAL 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**
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)]
(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

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), 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:

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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



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, 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.

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TEST YOUR KNOWLEDGE

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

S. No.	Date of receipt of goods	Date of payment by the recipient of goods	Date of issue of invoice by the supplier of goods
	(1)	(2)	(3)
(i)	July 1	August 10	June 29
(ii)	July 1	June 25	June 29
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29
(vi)	August 1	August 10	June 29

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

S. No.	Date of payment by the recipient for supply of services	Date of issue of invoice by the supplier of services
	(1)	(2)
(i)	August 10	June 29

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(ii)	*August 10*	*June 1*
(iii)	*Part payment made on June 30 and balance amount paid on September 1*	*June 29*
(iv)	*Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30*	*June 1*
(v)	*Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26*	*June 29*

3. *Determine the time of supply in the following cases assuming that rate of GST changes from 18% to 20% w.e.f. June 1:*

S. No.	***Date of supply of services***	***Date of issue of invoice***	***Date of receipt of payment***
(i)	*May 28*	*June 9*	*July 25*
(ii)		*May 28*	*July 25*
(iii)		*June 9*	*May 26*
(iv)	*June 10*	*May 28*	*June 25*
(v)		*May 28*	*May 16*
(vi)		*June 9*	*May 28*

4. *Kabira Industries Ltd engaged the services of a transporter for road transport of a consignment on 17th June and made advance payment for the transport on the same date, i.e. 17th June. However, the consignment could not be sent immediately on account of a strike in the factory, and instead was sent on 20th July. Invoice was received from the transporter on 22nd July.*

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What is the time of supply of the transporter's service?

Note: Transporter's service is taxed on reverse charge basis.

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

   When is the time of supply of service?

6. *Investigation shows that 150 cartons of ceramic capacitors were dispatched on 2nd August but no invoice was raised and the transaction (dispatch of cartons) was not entered in the accounts. There was no evidence of receipt of payment.*

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

7. *An order is placed on Ram & Co. on 18th August for supply of a consignment of customized shoes. Ram & Co. gets the consignment ready and informs the customer and issues the invoice on 2nd December. The customer collects the consignment from the premises of Ram & Co. on 7th December and electronically transfers the payment on the same date, which is entered in the accounts on the next day, 8th December.*

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

8. *Meal coupons are sold to a company on 9th August for being distributed to the employees of the said company. The coupons are valid for six months and can be used against purchase of food items. The employees use them in various stores for purchases of various edible items on different dates throughout the six months.*

   What is the date of supply of the coupons?

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

   Identify the time of supply of the legal services.

   Note: Legal services are taxable on reverse charge basis.

10. *Modern Security Co. provides service of testing of electronic devices. In one case, it tested a batch of devices on 4th and 5th September but could not raise*

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invoice till 19th November because of some dispute about the condition of the devices on return. The payment was made in December.

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

11. *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?

12. *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 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 2017.*

What is the time of supply of the service of database access by Best Info?

ANSWERS/HINTS

1.

S. No.	Date of receipt of goods	Date of payment by the recipient of goods	Date of issue of invoice by the supplier of goods	Date immediately following 30 days from the date of invoice	Time of supply of goods [Earlier of (1), (2) & (4)]
	(1)	(2)	(3)	(4)	(5)
(i)	July 1	August 10	June 29	July 30	**July 1**
(ii)	July 1	June 25	June 29	July 30	**June 25**

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(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29	July 30	**June 30 for part payment made and July 1 for balance amount**
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	July 2	**June 28 (i.e., when payment is entered in the books of account of the recipient)**
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	July 30	**June 26 (i.e., when payment is debited in the recipient's bank account)**
(vi)	August 1	August 10	June 29	July 30	**July 30 (i.e., 31st day from issuance of invoice)**

2.

S. No.	**Date of payment by the recipient for supply of services**	**Date of issue of invoice by the supplier of services**	**Date immediately following 60 days from the date of invoice**	**Time of supply of goods [Earlier of (1) & (3)]**
	(1)	**(2)**	**(3)**	
(i)	August 10	June 29	August 29	**August 10**
(ii)	August 10	June 1	August 1	**August 1**

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(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29	August 29	**June 30 for part payment and August 29 for balance amount**
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	August 1	**June 28 (i.e. when payment is entered in the books of account of the recipient)**
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	August 29	**June 26 (i.e. when payment is debited in the recipient's bank account)**

3..

S. No.	Date of supply of services	Date of issue of invoice	Date of receipt of payment	Time of supply	Applicable rate
(i)	May 28	June 9	July 25	**June 9**	20%
(ii)		May 28	July 25	**May 28**	18%
(iii)		June 9	May 26	**May 26**	18%

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(iv)	June 10	May 28	June 25	**June 25**	20%
(v)		May 28	May 16	**May 16**	18%
(vi)		June 9	May 28	**June 9**	20%

4. Time of supply of service taxable under reverse charge is the earlier of the following two dates in terms of section 13(3):

   - Date of payment
   - 61st day from the date of issue of invoice

   In this case, the date of payment precedes 61st day from the date of issue of invoice by the supplier of service. Hence, the date of payment, i.e. 17th June, will be treated as the time of supply of service [Section 13(3)(a)].

5. Since the invoice has not been issued within the prescribed time period, time of supply of service will be the earlier of the following two dates in terms of section 13(2)(b):

   - Date of provision of service
   - Date of receipt of payment

   The payment was received on 5th January and the service was provided on 23rd April. Therefore, the date of payment, i.e. 5th January is the time of supply of the service in this case.

6. As per *Notification No. 66/2017 CT dated 15.11.2017,* a registered person (excluding composition supplier) 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.

   In this case since the invoice has not been issued, the time of supply for the purpose of payment of tax will be the last date on which the invoice is required to be issued.

   The invoice for supply of goods must be issued on or before the dispatch of goods, i.e. on 2nd August. Therefore, the time of supply for the purpose of payment of tax for the goods will be 2nd August, the date when the invoice should have been issued.

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7. As per *Notification No. 66/2017 CT dated 15.11.2017,* a registered person (excluding composition supplier) 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.

   In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31(1). Therefore, the time of supply for the purpose of payment of tax is the date of issue of invoice, which is 2nd December.

8. As the coupons can be used for a variety of food items, which are taxed at different rates, the supply cannot be identified at the time of purchase of the coupons. Therefore, the time of supply of the coupons is the date of their redemption in terms of section 12(4).

9. Time of supply of services that are taxable under reverse charge is earliest of the following two dates in terms of section 13(3):

   - Date of payment [3rd November]
   - 61st day from the date of issue of invoice [19th April]

   The date of payment comes subsequent to the 61st day from the issue of invoice by the supplier of service. Therefore, the 61st day from the date of supplier's invoice has to be taken as the time of supply. This fixes 19th April as the time of supply.

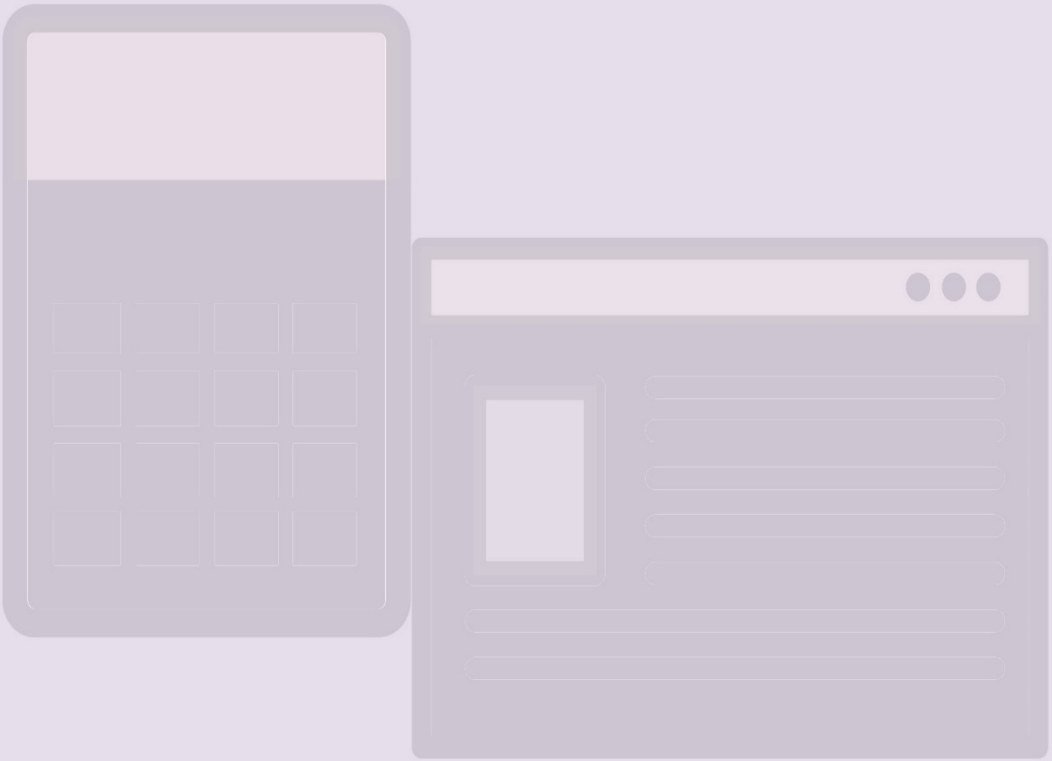
10. The time of supply of services, if the invoice is not issued in time, is the date of payment or the date of provision of service, whichever is earlier [Section 13(2)(b)]. In this case, the service is provided on 5th September but not invoiced within the prescribed time limit. Therefore, 5th September, the date of provision of service, being earlier than the date of payment, will be the time of supply.

11. 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

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of which are before the change in rate of tax, and thus, the old rate of tax remains applicable.

12. 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)].



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CHAPTER 7

VALUE OF SUPPLY



The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. For the sake of brevity, the term input tax credit has been referred to as ITC in this Chapter.

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 Chapter IV: Determination of Value of Supply of CGST Rules 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. It provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration for the supply.

In most of the cases of regular normal trade, the invoice value is the taxable value. However, when value cannot be determined under section 15 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.

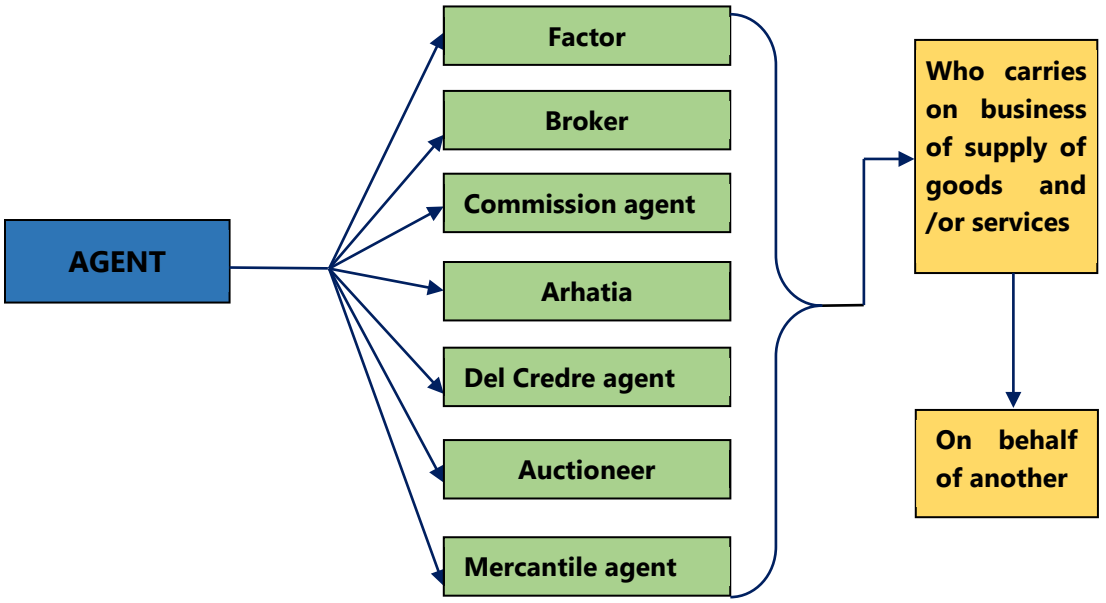
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2. RELEVANT DEFINITIONS





❖ **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 –

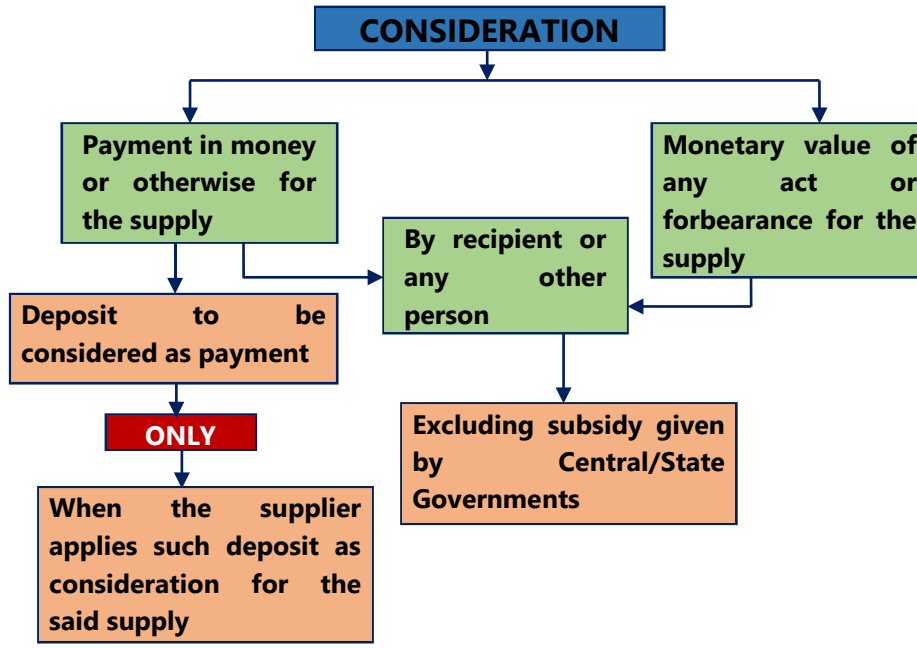
(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(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,

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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)].



❖ **Family** means,—

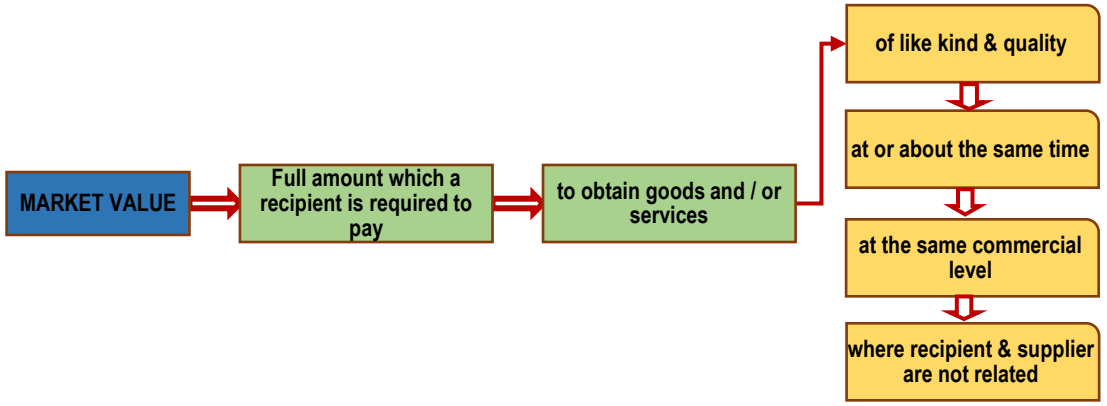
(i) the spouse and children of the person, and

(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;

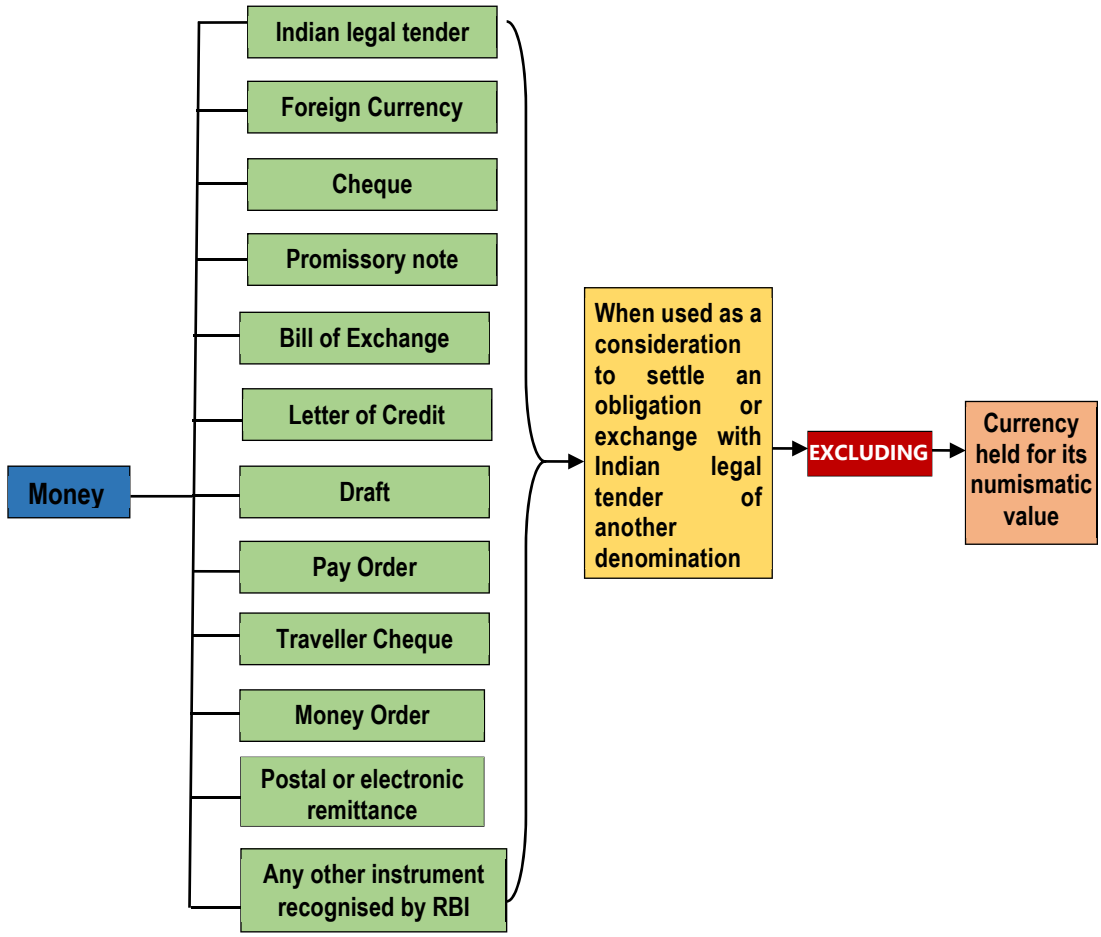
(l) society as defined under the Societies Registration Act, 1860;

(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)].



❖ **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)].

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❖ **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 [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)].

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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 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*

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	(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*		
	(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––*		

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	(i)	*such persons are officers or directors of one another's businesses;*
	(ii)	*such persons are legally recognised partners in business;*
	(iii)	*such persons are employer and employee;*
	(iv)	*any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;*
	(v)	*one of them directly or indirectly controls the other;*
	(vi)	*both of them are directly or indirectly controlled by a third person;*
	(vii)	*together they directly or indirectly control a third person; or*
	(viii)	*they are members of the same family;*
(b)	*the term "person" also includes legal persons;*	
(c)	*persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related*	



ANALYSIS

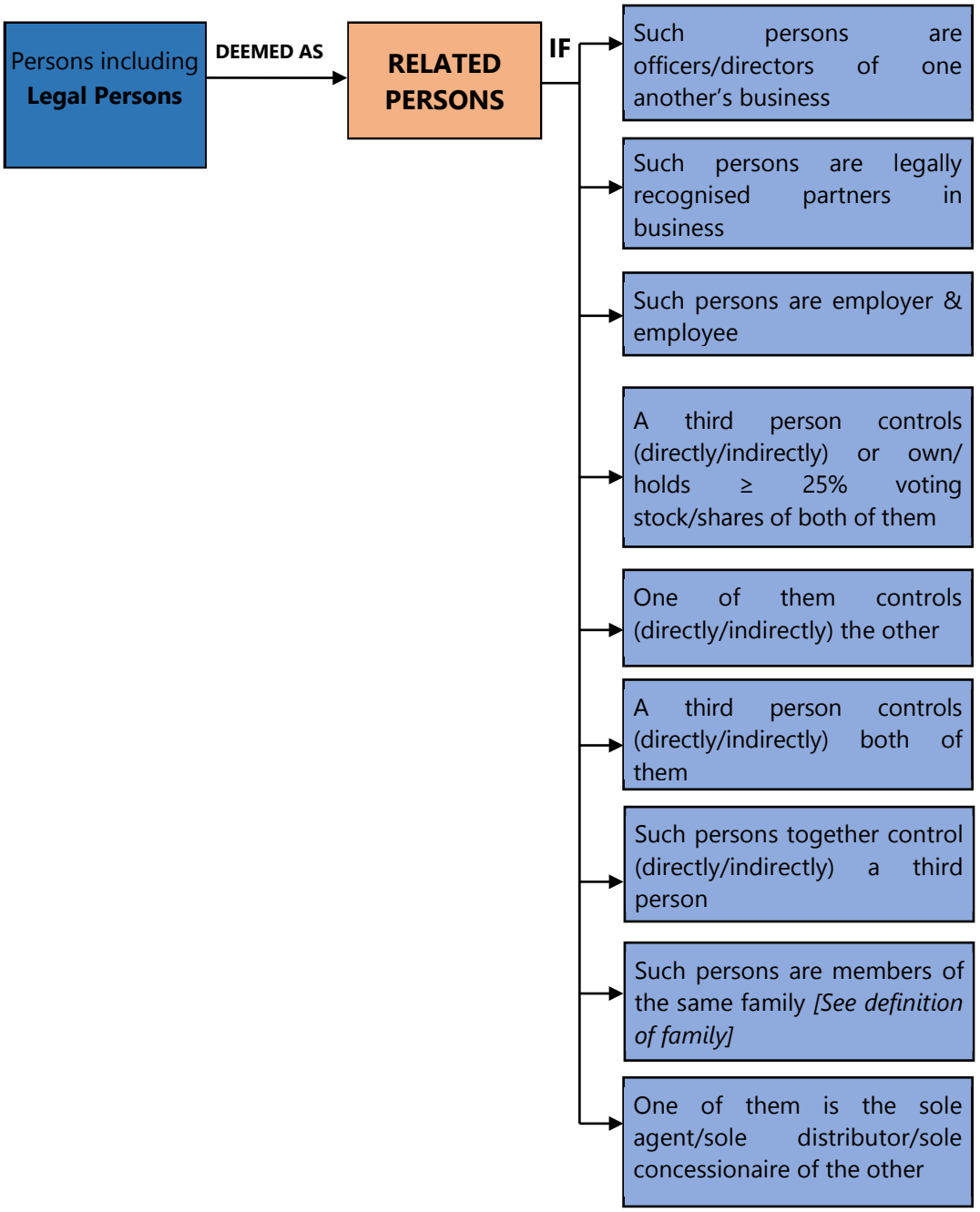
The CGST law has different provisions for determining the value of a supply of goods / services in the following situations:

➔ Supplies made solely for a price in money (monetary consideration), to unrelated persons → Sub-section (1) of section 15;

➔ Supplies made solely for non-monetary consideration, or for part monetary consideration and part non-monetary consideration, or involving additional consideration, or to related persons, or for specific classes of supply → Sub-sections (4) and (5) of section 15 read with the Chapter IV: Determination of Value of Supply of CGST Rules.

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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 the following diagram:



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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"**.



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.



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.

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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.

(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 State or Central Governments

The above ingredients 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 sale liable to IGST, the value of supply will include taxes other than IGST and the GST Compensation Cess in terms of third proviso to section 20 of IGST Act. In effect, all the taxes,

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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 a municipal tax in relation to the goods being supplied, such tax will form part of the value of supply.

TCS under Income-Tax Act, 1961 not includible in the taxable value for the purpose of GST: ***The 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.***

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 value 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.



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 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 service provided by Grand Biz to ABC Co. for payment of GST.

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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

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[1].

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.



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.

Packing, if charged by the supplier to the recipient, is similarly part of the value of the supply.

Inspection or certification charges is another element that may be added to the value, if billed to the recipient of supply.

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.

Weighment charges, loading & designing charges incurred before supply

[1] *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 8: Input Tax Credit.*

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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 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.



A supply priced at ₹ 2,000 is made, with a credit period of 1 month for payment. Thereafter interest of 12% is chargeable. The payment is received after the lapse of two months from the date of supply. The amount of 12% p.a. (i.e. 1% per month) on ₹ 2,000 for one month after the free credit period 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 [Section 15(2)(e)]

Subsidy is a sum of money given to keep the price of a service or commodity low. If the subsidy is given by the State or Central Government; the lower price, after adjusting the subsidy, is the value. If the subsidy is given by a person or entity other than the State or Central Government, it does not lower the value. 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 price.

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The selling price of a notebook is ₹ 50. For notebooks sold to students in Government schools, a company uses its CSR funds to pay the seller ₹ 30, 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 paid 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 invoice** – Example for such discount can be discounts that are allowed for making the payment at the time of supply itself. Such discounts are thus, recoded in the invoice and thus, GST is charged on the gross value less discount recorded in the invoice.

(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

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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 allowed after supply is made are allowed as a deduction from the value of supply if the following two conditions are satisfied:

- Discount is in terms of an agreement that existed at the time of supply and can be worked out invoice-wise; and
- Proportionate input tax credit is reversed by the recipient - The buyer would have paid GST on the gross value specified in the invoice. Thus, when a credit note[2] 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.

If the 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[3] 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.

Allowability of certain specific types of discounts offered by the suppliers as clarified vide Circular No. 92/11/2019 GST dated 07.03.2019

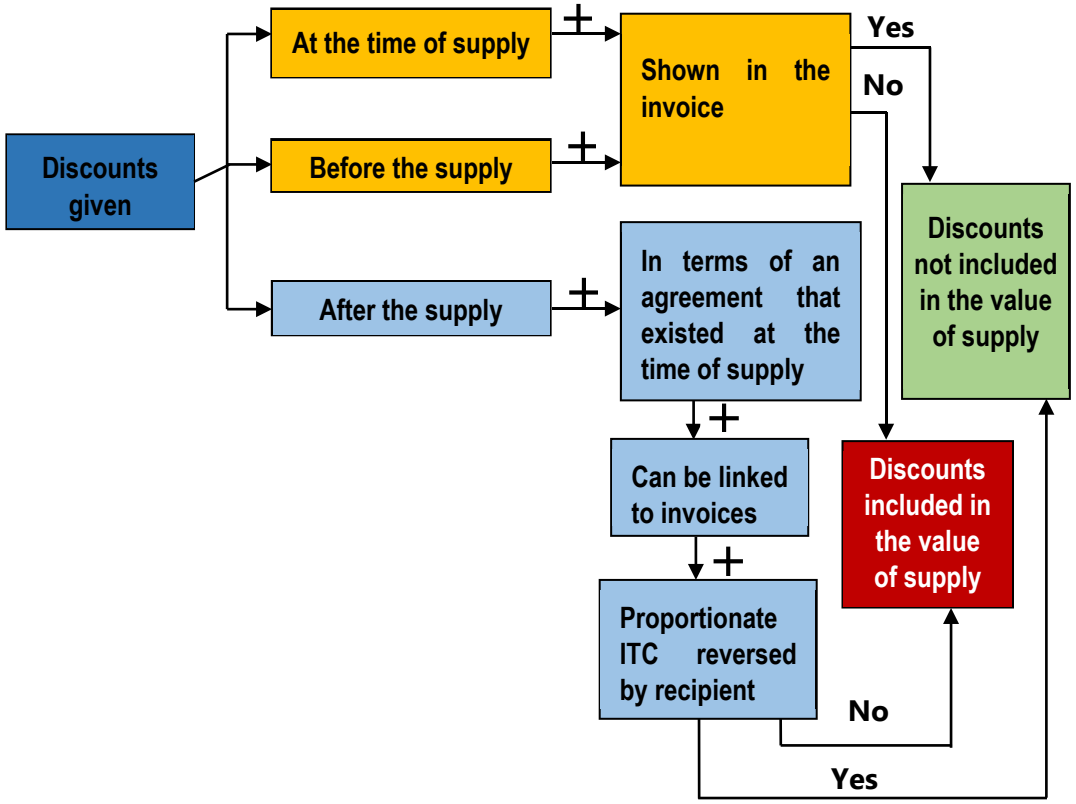
(i) Staggered discounts ('Buy more, Save more' offers): In case of staggered discounts, rate of discount increases with increase in purchase volume. For example - Get 10 % discount for purchases

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[2] Credit notes governed under GST law are issued under section 34. Provisions of section 34 are discussed in Chapter 10: Tax Invoice; Credit & Debit Notes

[3] 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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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 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*

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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 sub-section (3) of section 15 of the CGST Act, 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) <u>Secondary discounts:</u> 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 clause (b) of sub-section (3) of section 15 of the CGST Act 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 clause (b) of sub-section (3) of section 15 of the CGST Act are not satisfied.



Examples of discount deductible from value of supply

(i) Royal Biscuit Co. gives a discount of 30% on the list price to its distributors. Thus, for a carton of Spicebisk, in the 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.

Post supply discounts

(ii) The agreement of Raju Electrical Appliances with its dealers is that purchase of rice cookers over 1000 pieces in the Diwali month will 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 5% of the value of goods along with GST and claim adjustment of excess tax paid. The dealer must

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reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax.

(iii) 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 supply

(i) 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.

(ii) 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.

ILLUSTRATION 1

Black and White Pvt. Ltd. has provided the following particulars relating to goods sold by it to Colourful Pvt. Ltd.

Particulars	***₹***
List price of the goods (exclusive of taxes and discounts)	*50,000*

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Tax levied by Municipal Authority on the sale of such goods	*5,000*
Packing charges (not included in price above)	*1,000*

Black and White Pvt. Ltd. received ₹ 2000 as a subsidy from a NGO on sale of such goods. The price of ₹ 50,000 of the goods is after considering such subsidy. Black and White Ltd. offers 2% discount on the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supply made by Black and White Pvt. Ltd.

ANSWER

Computation of value of taxable supply

Particulars	**₹**
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods [Includible in the value as per section 15(2)(a)]	5,000
Packing charges [Includible in the value as per section 15(2)(c)]	1,000
Subsidy received from a non-Government body [Since subsidy is received from a non-Government body, the same is included in the value in terms of section 15(2)(e)]	2,000
Total	58,000
Less: Discount @ 2% on ₹ 50,000 [Since discount is known at the time of supply and recorded in the supply, it is deductible from the value in terms of section 15(3)(a)]	1,000
Value of taxable supply	**57,000**

ILLUSTRATION 2

Samriddhi Advertisers conceptualised and designed the advertising campaign for a new product launched by New Moon Pvt Ltd. for a consideration of ₹ 5,00,000. Samriddhi Advertisers owed ₹ 20,000 to one of its vendors in relation to the advertising service

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provided by it to New Moon Pvt Ltd. Such liability of Samriddhi Advertisers was discharged by New Moon Pvt Ltd. New Moon Pvt Ltd. delayed the payment of consideration and thus, paid ₹ 15,000 as interest. Assume the rate of GST to be 18%.

Determine the value of taxable supply made by Samriddhi Advertisers.

ANSWER

Computation of value of taxable supply

Particulars	₹
Service charges	5,00,000
Payment made by New Moon Pvt. Ltd to vendor of Samriddhi Advertisers [Liability of the supplier being discharged by the recipient, is includible in the value in terms of section 15(2)(b)]	20,000
Interest for delay in payment of consideration [Includible in the value in terms of section 15(2)(d) – Refer note below] (rounded off)	12,712
Value of taxable supply	**5,32,712**

Note: The interest for delay in payment of consideration will be includible in the value of supply but the time of supply of such interest will be the date when such interest is received in terms of section 13(6). Such interest has been assumed to be inclusive of GST and thus, the value has been computed by making back calculations $\left[\frac{\text{Interest}}{100+\text{tax rate}}\times 100\right]$.

B. Supplies where value cannot be determined u/s 15(1) and notified supplies [Sub-sections (4) and (5) of section 15]

Section 15(4) lays down that where sub-section (1) is not applicable, that is, if the transaction is with a related party, and/or price is not the sole consideration for the supply of goods / services, then the value will be determined in the manner as 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.

Further, section 15(5) lays down that in respect of certain notified supplies also, the value will be determined in the manner as stipulated in the rules for valuation. Thus, the methodology of transaction value will not apply for such notified categories of

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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

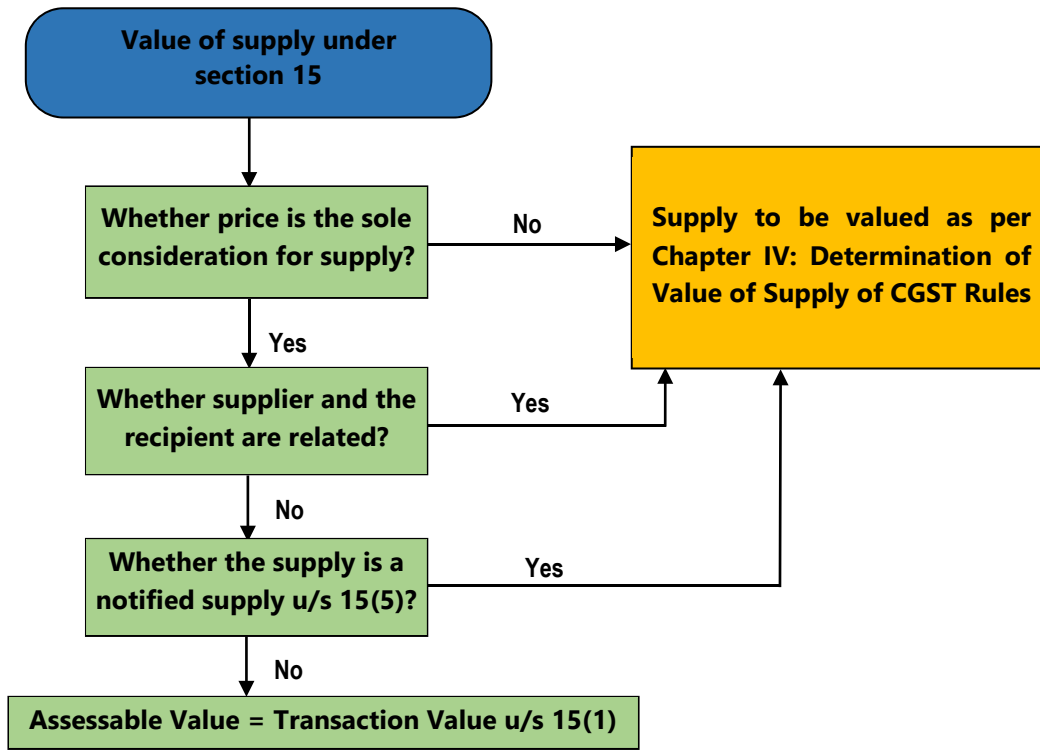
(iv) buying and selling of second hand goods,

(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 laws that are different units of the same legal entity.

(vii) supply in case of lottery, betting, gambling and horse racing

The scheme of valuation as provided under section 15 is depicted by way of a diagram given below:



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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,-	
	(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	

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	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.-***	
	The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-	
	(a)	*be the open market value of such supply;*
	(b)	*if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
	(c)	*if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*
	Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:	
	Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.	
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 ninety per cent. 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 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.
	(b)	*where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.*
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)	*(a)*	*The value of supply of lottery run by State Governments shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.*
	(b)	*The value of supply of lottery authorised by State Governments 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 expressions -	
	(a)	*"lottery run by State Governments" means a lottery not allowed to be sold in any State other than the organizing State;*
	(b)	*"lottery authorised by State Governments" means a lottery which is authorised to be sold in State(s) other than the organising State also; and*
	(c)	*"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 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*

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		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 per cent. 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 per cent. 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 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 per cent. 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 per cent. 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 per cent. 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 per cent. of the basic fare in the*		

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	case of domestic bookings, and at the rate of ten per cent. 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;*
	(b)	*in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or*
	(c)	*in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. 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.	

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(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.*	
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;*

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	(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 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,-	

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	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;*
(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

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 not solely in terms of money, the supply is valued by any of the following methods: **[The methods are to be used in order of sequence; the one coming later in the sequence is applicable only if the previous method(s) are not applicable.]**

(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;

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(d) Finally, if the other methods are not applicable, 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 regarding cost-based valuation has been discussed in subsequent pages of this Chapter]* or by other reasonable means [Best Judgement Method], in that sequence *[Rule 31 regarding reasonable means has been discussed in subsequent pages of this Chapter]).*



Open market value means the full value of money excluding taxes under GST laws, payable by a person to obtain such supply at the time when supply being valued is made, provided such supply is between unrelated persons and price is the sole consideration for such supply.



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.



(i) 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) is its taxable value.

(ii) Laptop is manufactured and supplied for ₹ 40,000. Part value is received in barter in the form of a printer valued at ₹ 4000. Market value of the laptop is not known. Its taxable value will be ₹ 44,000.

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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 *[Refer Chapter 9: Registration for a detailed discussion on the concept of*

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'distinct persons']. **This rule, however, does not provide the value of the supply made through an agent.**

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 at page no. 7.11.



✪ **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)].**



(i) Mr. A and Mr. B are 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.

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

(iii) 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.

(iv) 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.

(v) Brita Ltd. and Grita Ltd. together control Margarita Ltd. Brita Ltd. and Grita Ltd. are related persons.

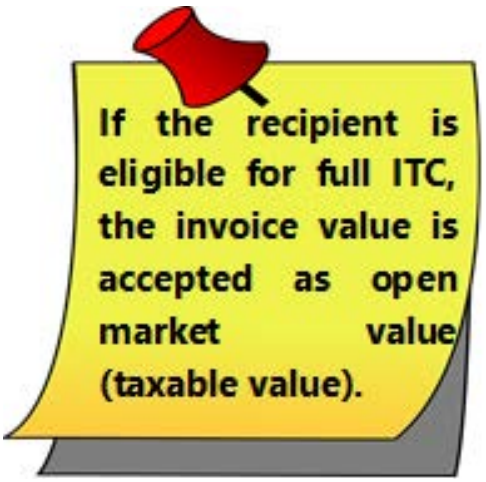
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The methods of valuation of transactions between related persons and between distinct persons, **in the sequence in which they are to be applied, are as follows:**

(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 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.

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 given at page no. 7.37.

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Rule 29 – Value of supply of goods or received through an agent

Supply of goods between principal and agent[4] *[Refer definitions of principal and agent under Heading 2: Relevant Definitions]* is valued by the following methods, **applied in sequence:**



(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]

(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)



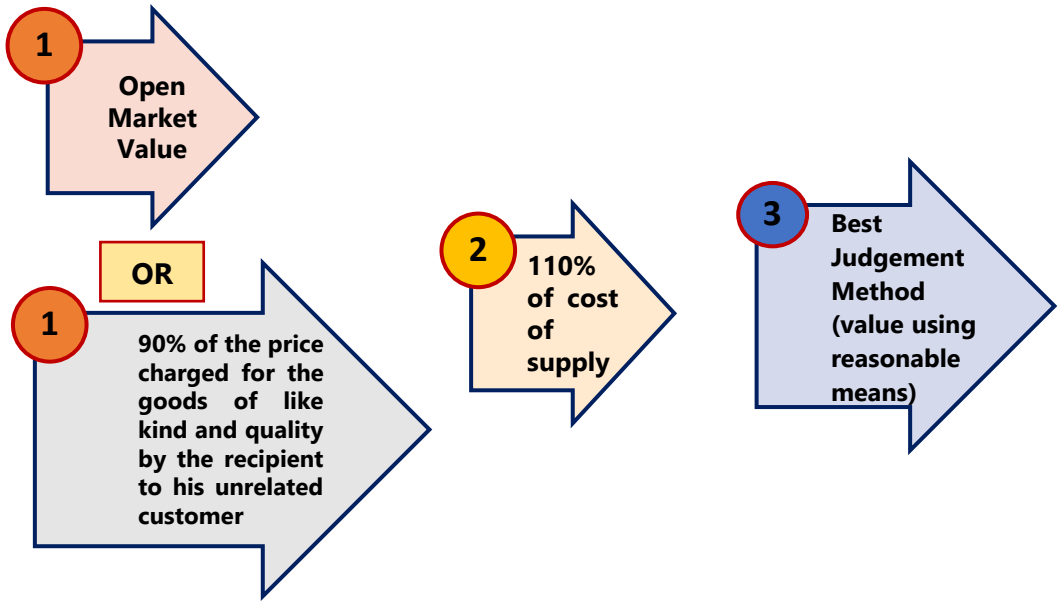
Example of clause (a)

Mr. A supplies goods to his 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.

Mr. A 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 Mr. A to agent shall be ₹ 950 per unit or where he exercises the option, the value shall be 90% of ₹ 1,000 i.e., ₹ 900 per unit.

[4] *The relationship between principal agent has been discussed in detail in Chapter 2: Supply under GST.*

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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.

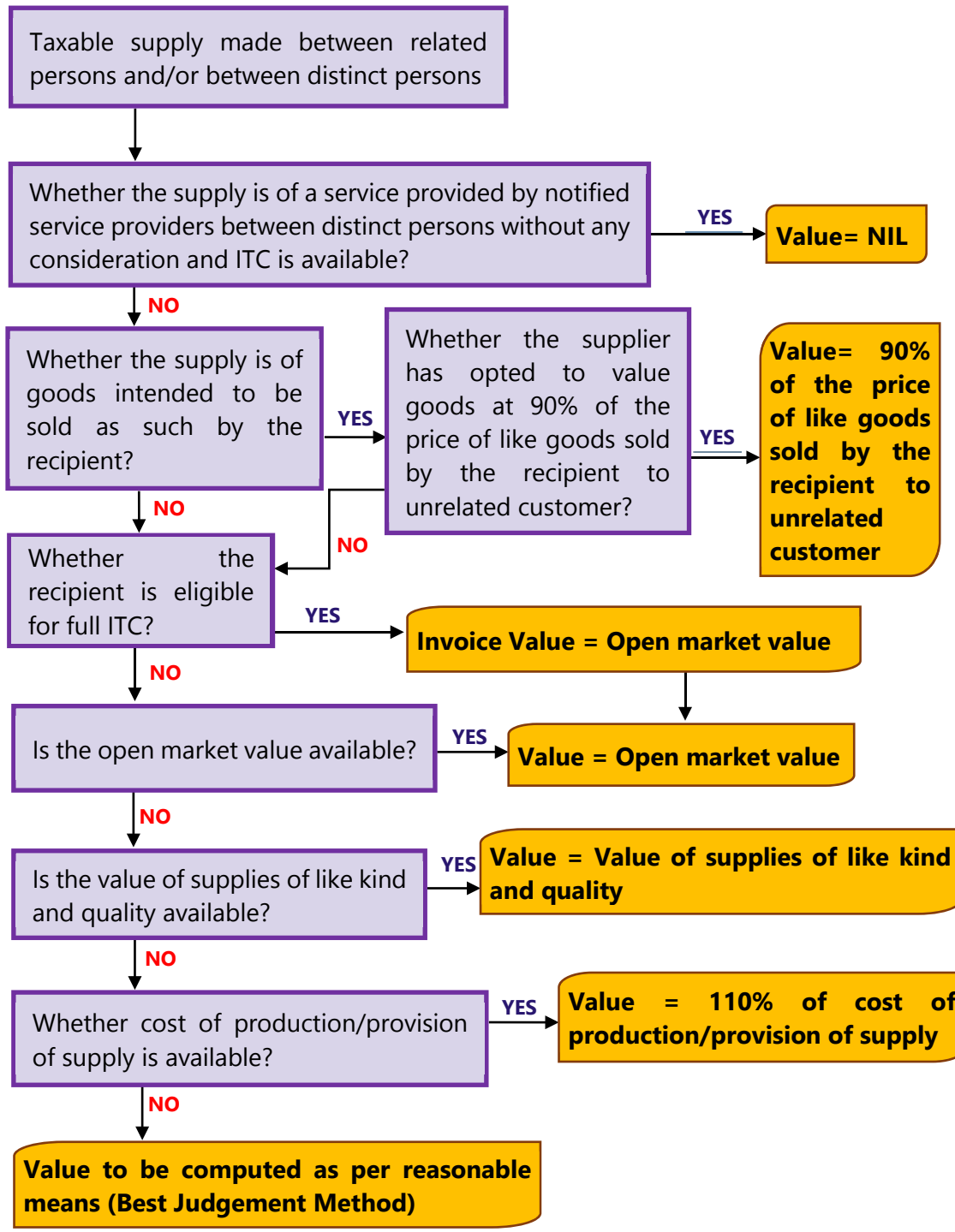
Service providers have the option to directly move to rule 31 by-passing rule 30.

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.

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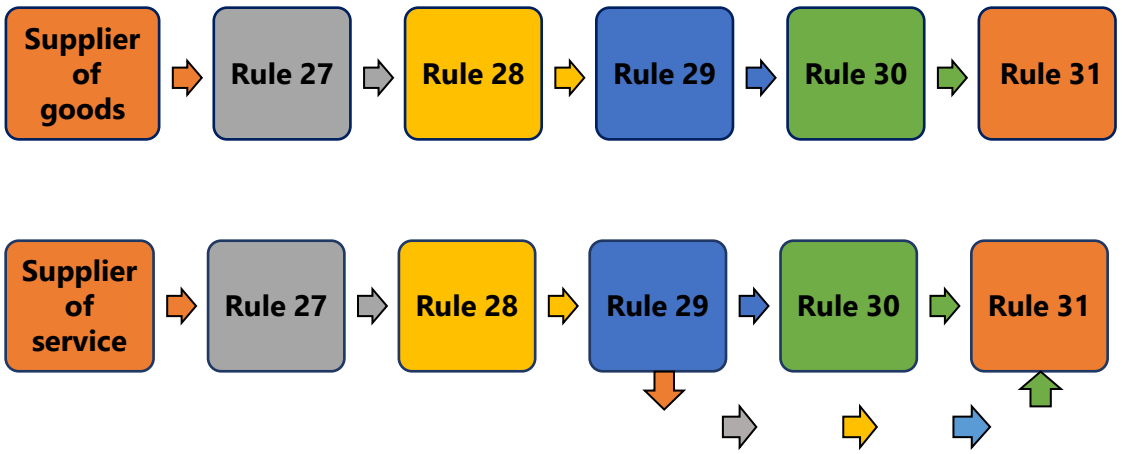
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example

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.



Rule 31 A – 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 run by State Governments (Refer the meaning of the	Higher of the two amounts to be deemed as the value

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term "lottery run by State Governments" in Statutory Provisions)	100/112 of the face value of ticket OR 100/112 of the price as notified in the Official Gazette by the organising State (Refer the meaning of the term "organising State" in Statutory Provisions)
Supply of lottery authorised by State Governments (Refer the meaning of the term "lottery authorised by State Governments" in Statutory Provisions)	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

Rule 32 – Determination of value in respect of certain supplies



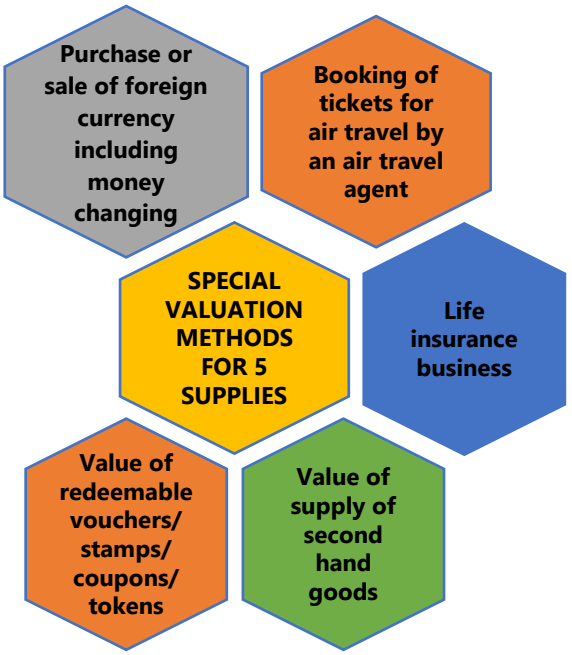
✪ **This rule provides the valuation methods for five specific supplies.**

✪ **This rule 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 this rule 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.**

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The special provisions related to determination of value of such specific supplies are discussed below:



(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.

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On 10th May, Mr. Doshi converted USD $ 100 into ₹ 6,400 @ ₹ 64 per USD through Eastern Money Changers. RBI reference rate on 10th May for US $ is ₹ 65 per US $. The value of supply in this case is (₹ 65 – ₹ 64)* $ 100 = ₹ 100 and GST will be levied on this amount.
If the RBI reference rate is not available, then 1% of ₹ 6,400 i.e., ₹ 64 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.



US $ 9,000 are converted into UK £ 4,500. RBI reference rate at that time for US $ is ₹ 63 per US dollar and for UK £ is ₹ 82 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 × ₹ 63 = ₹ 5,67,000

(b) UK pound converted into Indian rupees = £ 4,500 × ₹ 82 = ₹ 3,69,000

Value of taxable service = 1% of ₹ 3,69,000 = ₹ 3,690

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)

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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

Mr. X, a money changer, has exchanged US $ 10,000 to Indian rupees @ ₹ 64 per US $. Mr. X wants to value the supply in accordance with rule 32(2)(b) of CGST Rules.

Determine the value of supply made by Mr. X.

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.

Therefore, the value of supply, made by Mr. X, under rule 32(2)(b) of CGST Rules is computed as under:

Particulars	**₹**	**₹**
Value of currency exchanged in Indian rupees [₹ 64 x US $ 10,000]	6,40,000	
Upto ₹ 1,00,000	1,000	
For ₹ 5,40,000 [0.50% x ₹ 5,40,000]	2,700	
Value of supply		**3,700**

(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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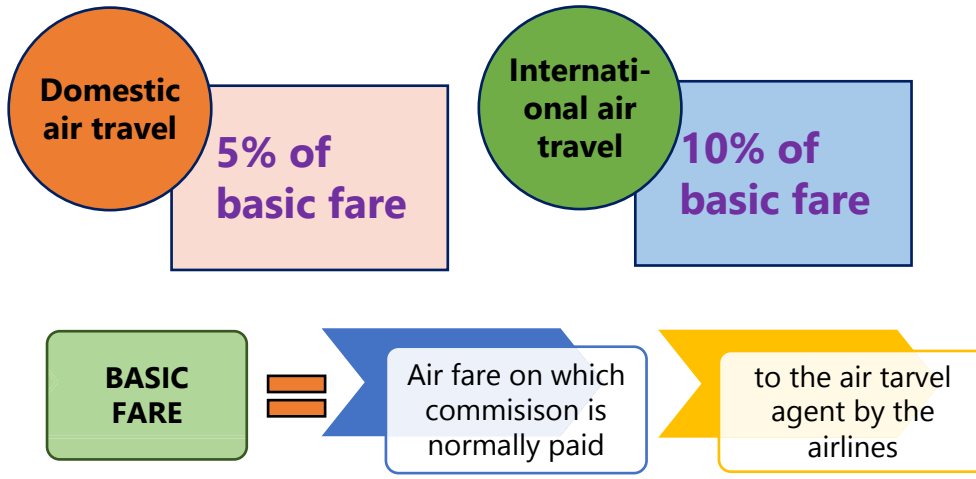


ILLUSTRATION 4

Mr. U is an air travel agent. Compute the value of supply of service made by him during a month with the help of following particulars furnished by him:

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 Mr. U 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	

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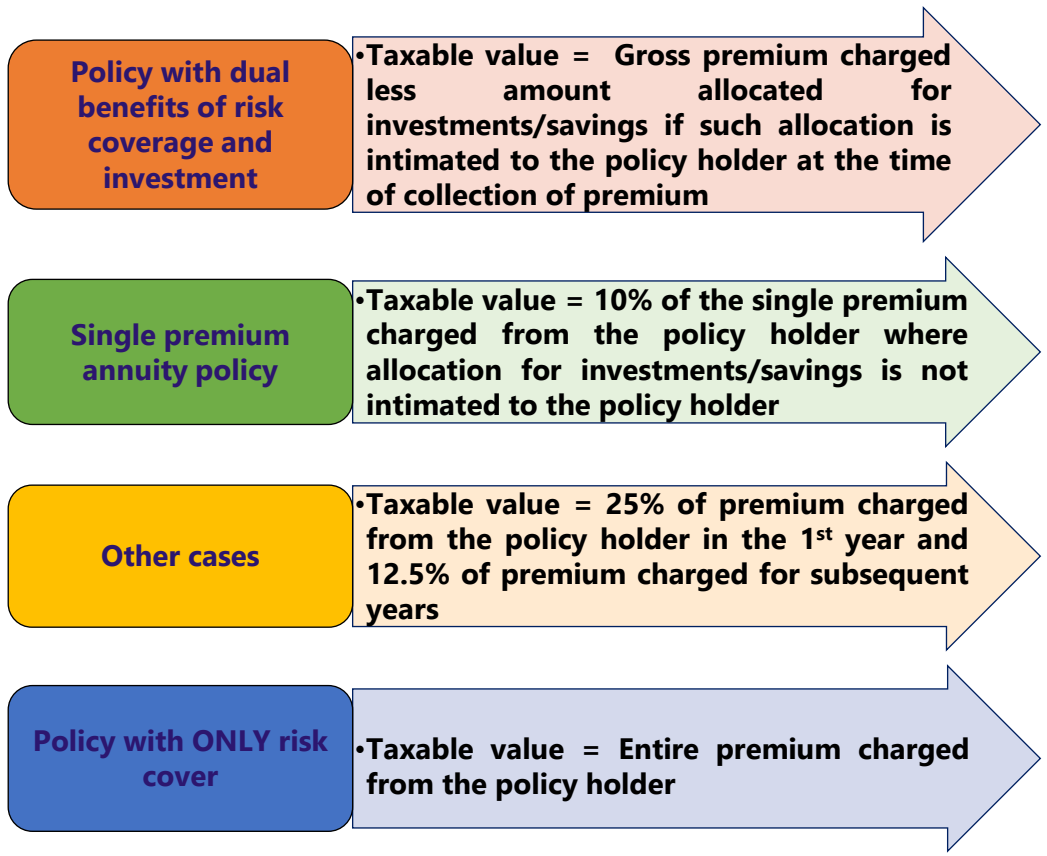
Value of supply @ 10% **[B]** Refer Note below		31,688
Value of supply [A] + [B] (rounded off)		**36,733**

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.

(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:



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ILLUSTRATION 4

Arihant Life Insurance Company Ltd. (ALICL) has charged gross premium of ₹ 180 lakh from policy holders with respect to life insurance policies in the 2017-18; out of which ₹ 100 lakh have been allocated for investment on behalf of the policy holders.

Compute the value of supply of life insurance services provided by ALICL:

(i) if the amount allocated for investment has been intimated by ALICL to policy holders at the time of supply of service.

(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 year 2017-18. Thus, the entire gross premium of ₹ 180 lakh is the premium for the first year of all the policies. ALICL has not issued any single premium annuity policy.

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 2017-18 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

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(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

(iv) Special provision relating to determination of value 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 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.



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.

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Intra-State supplies of second hand goods by an unregistered supplier to registered second hand goods dealer exempt from CGST



It may be noted that w.e.f. July 1, 2017, the CGST leviable on intra-State supplies of second hand goods received by a registered second hand goods dealer [who pays CGST on the value of outward supply of such second hand goods under margin scheme] from any unregistered supplier, has been exempted vide *Notification No. 10/2017 CT (Rate) dated 28.06.2017*. Similar exemptions are also there in respective SGST Acts.

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



A company X Ltd, which deals in buying and selling of second hand cars, purchases a second hand Maruti Alto Car of March, 2014 make (Original price ₹ 5 lakh) for ₹ 3 lakh from an unregistered person and sells the same after minor furbishing for ₹ 3,50,000. The supply of the car to the company for ₹ 3 lakh shall be exempted, and the supply of the same by the company to its customer for ₹ 3.5 lakhs shall be taxed.

The value for GST purpose shall be ₹ 50000/ i.e., the difference between the selling and the purchase price of the company. In case any other value is added by way of repair, refurbishing, reconditioning etc., the same shall also be added

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to the value of goods and be part of the margin.

If margin scheme is opted for a transaction of second hand goods, the person selling the car to the company shall not issue any taxable invoice and the company purchasing the car shall not claim any ITC.

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 rules (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.



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.

(vi) Special provisions relating to determination of value of services provided by notified service providers between distinct persons [Sub rules (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.**

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Rule 33 – Value of supply of services in case of pure agent



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.



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.

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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.

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 services 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';
- ➔ does not use for his own interest such goods or services so procured; and

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➔ 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:



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:

1. Port fees, port charges, custom duty, dock dues, transport charges etc. paid by customs broker on behalf of the owner of goods.

2. Expenses incurred by C&F agent and reimbursed by principal such as freight, godown charges.



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/-
2	Traveling expenses; Hotel expenses	₹ 15,000/-
3	Customs duty	₹ 55,000/-
4	Docks dues	₹ 5000/

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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.

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.

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 CBEC 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 %)

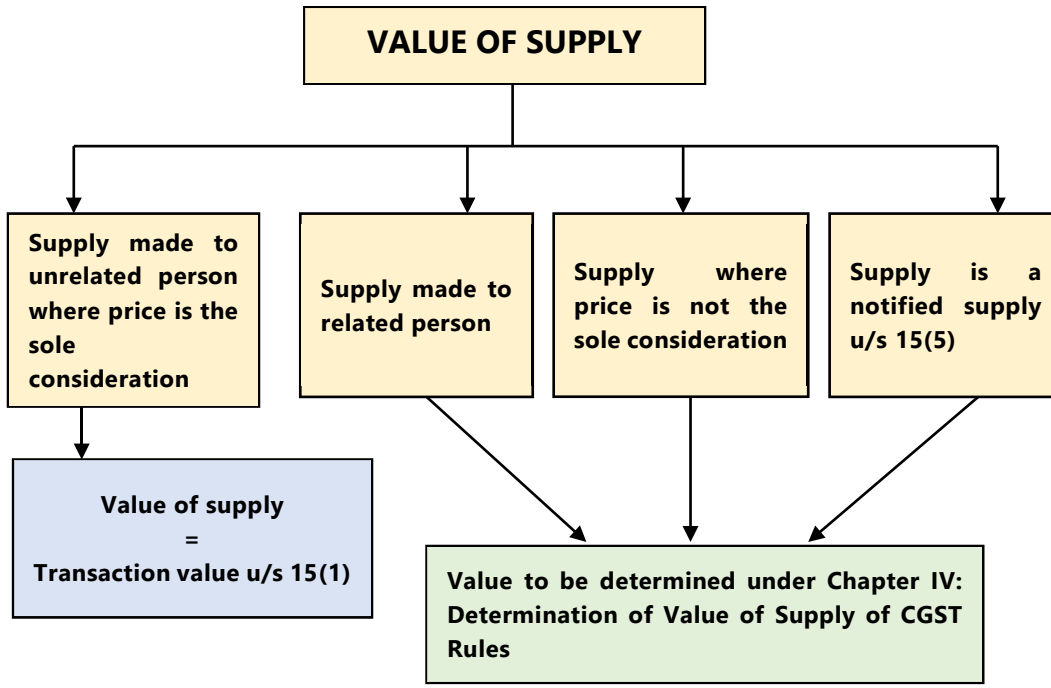


If the value inclusive of tax is ₹ 100/- and applicable GST rate is 18% [IGST or CGST, SGST/UTGST] then,

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 31A: Value of supply of lottery, chance to win in betting/ gambling/ horse racing in race club

Lottery run by State Govts. - 100/112 of the face value of ticket OR 100/112 of the price as notified in the Official Gazette by the organising State, whichever is higher.

Lottery authorised by State Govts. - 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

Lottery run by State Governments - Lottery not allowed to be sold in any State other than the organizing State;

Lottery authorised by State Governments - Lottery authorised to be sold in State(s) other than the organising State also

RULE 30: Value based on cost

Value shall be 110% of cost of production/acquisition/ provision of goods or services

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.

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VALUATION RULES

RULE 32: Value of 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 ₹1,0001 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 CBEC 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. *AKJ Foods Pvt. Ltd. gets an order for supply of processed food from a customer. The customer wants the consignment tested for gluten or specified chemical residues. AKJ Foods Pvt. Ltd. does the testing and charges a testing fee for the same from the customer. AKJ Foods Pvt. Ltd. argues that such testing fess should not form part of the consideration for the sale as it is a separate activity.*

   Is his argument correct in the light of section 15?

2. *A philanthropic association makes a substantial donation each year to a reputed private management institution to subsidise the education of low income group students who have gained admission there. The fee for these individuals is reduced thereby coming to ₹ 3 lakh a year compared to ₹ 5 lakh a year for other students.*

   What would be the taxable value of the service of coaching and instruction provided by the institution?

3. *Mezda Banners, an advertising firm, gives an interest-free credit period of 30 days for payment by the customer. Its customer ABC paid for the supply 32 days after the supply of service. Mezda Banners waived the interest payable for delay of two days.*

   The Department wants to add interest for two days as per contract. Should notional interest be added to the taxable value?

4. *Crunch Bakery Products Ltd sells biscuits and cakes through its dealers, to whom it charges the list price minus standard discount and pays GST accordingly. When goods remain unsold with the dealers, it offered additional discounts on the stock as an incentive to push the sales.*

   Can this additional discount be reduced from the price at which the goods were sold and concomitant tax adjustments made?

5. *Rajesh & Co. provides financial and management consultancy to a group of companies for an annual retainership fee of ₹ 15 lakh. It is given a room in the head office of the group for its exclusive use. Rajesh & Co. pays GST on the amount of ₹ 15 lakh.*

   Is the value for the service provided by Rajesh & Co., correct under GST laws? If not, please elaborate.

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6. *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 this supply of 'y' by Gupta and Co. be valued for paying tax?

7. *Easy Coupons Ltd. sells coupons that are redeemable against specified luxury food products at retail outlets. Each coupon has a face value of ₹ 900 but is redeemable for supplies worth ₹ 1000.*

   What is the value of supply of such coupon under GST laws?

8. *A pharmaceutical company supplies a drug intermediate to its own unit in another State for conversion into formulations. The product 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.*

   How will the value of the supply of this drug intermediate be determined under GST laws?

ANSWERS/HINTS

1. Section 15(2) mandates the addition of certain elements to transaction value to arrive at taxable value. Clause (c) of section 15(2) specifies that amount charged for anything done by the supplier in respect of the supply at the time of or before delivery of goods or supply of services shall be included in taxable value.

   Since AKJ Foods Pvt. Ltd. does the testing before the delivery of goods, the charges therefor will be included in the taxable value. Therefore, AKJ Foods Pvt. Ltd.'s argument is not correct. The testing fee should be added to the price to arrive at taxable value of the consignment.

2. As per section 15(2)(e), the value of a supply includes subsidies directly linked to the price, excluding State Government and Central Government subsidies. In this case, the subsidy is not from the Government but is from a philanthropic association. Therefore, the subsidy is to be added back to the price to arrive at the taxable value, which comes to ₹ 5 lakh a year.

3. This is a supply that is valued as per transaction value under section 15(1) as the price is the sole consideration for the supply and the supply is made to unrelated person. The concept of transaction value has been expanded to include certain elements like interest which are actually payable. Once

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waived, the interest is not payable and is therefore, not to be added to transaction value.

4. The discounts were not known or agreed for at the time of supply of goods to the dealers. Therefore, in terms of section 15(3), such discounts cannot be reduced from the price on which tax had been paid.

5. Rajesh & Co. gets an office room free of cost, which is an additional non-monetary consideration for its services. The market value of the rent of the room must be added to the retainer fee (₹ 15 lakh) in order to arrive at the value of the taxable service provided by Rajesh & Co, as per rule 27 of the CGST Rules relating to valuation.

6. 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 of CGST Rules 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.

7. In terms of rule 32(6) of the CGST Rules relating to valuation, the value of a coupon is the money value of the goods redeemable against it. Therefore, though the coupon is sold for ₹ 900, its value is ₹ 1000.

8. Since the supply is made to a distinct person, the same will be valued in accordance with rule 28 of CGST Rules 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 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 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.

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Final Course

(Revised Scheme of Education and Training)

Study Material

(Modules 1 to 4)

Paper 8

Indirect Tax Laws

Part – I: Goods and Services Tax

Module – 2

(Relevant for May, 2020 and November, 2020 examinations)



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CONTENTS

PART – I : GOODS AND SERVICES TAX

MODULE – 1

Chapter 1: GST in India – An Introduction

Chapter 2: Supply under GST

Chapter 3: Charge of GST

Chapter 4: Exemptions from GST

Chapter 5: Place of Supply

Chapter 6: Time of Supply

Chapter 7: Value of Supply

MODULE – 2

Chapter 8: Input Tax Credit

Chapter 9: Registration

Chapter 10: Tax Invoice, Credit and Debit Notes

Chapter 11: Accounts and Records; E-way Bill

Chapter 12: Payment of Tax

Chapter 13: Returns

MODULE – 3

Chapter 14: Import and Export under GST

Chapter 15: Refunds

Chapter 16: Job Work

Chapter 17: Assessment and Audit

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Chapter 18: Inspection, Search, Seizure and Arrest

Chapter 19: Demands and Recovery

Chapter 20: Liability to Pay Tax in Certain Cases

Chapter 21: Offences and Penalties

Chapter 22: Appeals and Revision

Chapter 23: Advance Ruling

Chapter 24: Miscellaneous Provisions

PART – II: CUSTOMS & FTP

MODULE - 4

Chapter 1: Levy of and Exemptions from Customs Duty

Unit I-Introduction to Customs Law

Unit-II -Levy and Exemptions

Chapter 2: Types of Duty

Chapter 3: Classification of Imported and Export Goods

Chapter 4: Valuation under the Customs Act, 1962

Chapter 5: Importation, Exportation and Transportation of Goods

Chapter 6: Duty Drawback

Chapter 7: Refund

Chapter 8: Foreign Trade Policy

Unit I – Introduction to FTP

Unit II – Basic Concepts relating to Export Promotion Schemes under FTP

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DETAILED CONTENTS: MODULE - 2

CHAPTER 8 – INPUT TAX CREDIT

Learning Outcomes 8.1

1. Introduction 8.2
2. Relevant definitions 8.3
3. Eligibility and conditions for taking input tax credit [Section16] 8.7
4. Apportionment of credit & blocked credits [Section 17] 8.18
5. Credit in special circumstances [Section 18] 8.54
6. Distribution of credit by Input Service Distributor [Sections 20 & 21] 8.68
7. How ITC is utilised 8.82

Let Us Recapitulate 8.92

Test Your Knowledge 8.108

Answers/Hints 8.109

CHAPTER 9 – REGISTRATION

Learning Outcomes 9.1

1. Introduction 9.2
2. Relevant definitions 9.3
3. Concept of taxable person [Section 2(107)] 9.5
4. Persons liable for registration [Section 22] 9.6
5. Compulsory registration in certain cases [Section 24] 9.16
6. Persons not liable for registration [Section 23] 9.18
7. Procedure for registration [Sections 25, 26 & 27] 9.25
8. Amendment of registration [Section 28] 9.42

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9. Cancellation or suspension of registration and revocation of cancellation [Sections 29 & 30] 9.46

Let Us Recapitulate 9.58

Test Your Knowledge 9.67

Answers/Hints 9.68

CHAPTER 10- TAX INVOICE, CREDIT AND DEBIT NOTES

Learning Outcomes 10.1

1 Introduction 10.2

2. Relevant definitions 10.3

3. Tax invoice [Section 31] 10.4

4. Credit and Debit notes [Section 34] 10.30

5. Prohibition of unauthorized collection of tax [Section 32] 10.37

6. Amount of tax to be indicated in tax invoice and other documents [Section 33] 10.38

Let Us Recapitulate 10.38

Test Your Knowledge 10.43

Answers/Hints 10.44

CHAPTER 11- ACCOUNTS AND RECORDS; E-WAY BILL

Learning Outcomes 11.1

1. Introduction 11.2

2. Relevant definitions 11.3

3. Accounts and other records [Section 35] 11.5

4. Period of retention of accounts [Section 36] 11.16

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5. Electronic way bill [Section 68 read with rules 138, 138A, 138B, 138C and 138D] 11.16

Test Your Knowledge 11.33

Answers/Hints 11.33

CHAPTER 12-PAYMENT OF TAX

UNIT 1:- PAYMENT OF TAX, INTEREST AND OTHER AMOUNTS

Learning Outcomes 12.1

1. Introduction 12.2
2. Relevant definitions 12.3
3. Payment of tax, interest, penalty and other amounts [Section 49] 12.7
4. Interest on delayed payment of tax [Section 50] 12.23
5. Transfer of input tax credit [Section 53 of CGST Act & section 18 of IGST Act] 12.25

Let Us Recapitulate 12.26

Test Your Knowledge 12.34

Answers/Hints 12.34

UNIT 2: TAX DEDUCTION AT SOURCE AND COLLECTION OF TAX AT SOURCE

Learning Outcomes 12.39

1. Introduction 12.40
2. Relevant definitions 12.41
3. Tax deduction at source [Section 51 of CGST Act] 12.41
4. Collection of tax at source [Section 52 of CGST Act] 12.48

Let Us Recapitulate 12.53

Test Your Knowledge 12.57

Answers/Hints 12.57

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CHAPTER 13: RETURNS

Learning Outcomes 13.1

1. Introduction 13.2
2. Relevant definitions 13.5
3. Furnishing details of outward supplies [Section 37 read with Rule 59 of CGST Rules] 13.9
4. Furnishing of returns under Section 39 ..... 13.17
5. Other Returns 13.29
6. Default/delay in furnishing return [Sections 46 & 47] 13.33
7. Goods and Services Tax Practitioners [Section 48] 13.34
8. Information Return [Sections 150 & 123] 13.38

Let Us Recapitulate 13.41

Test Your Knowledge 13.45

Answers/Hints 13.45

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CHAPTER 8

INPUT TAX CREDIT



For the sake of brevity, input tax credit has been referred to as ITC in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

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, time-lines, restrictions and processes for taking ITC on goods and services in general and 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, payable in cash.

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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 utilization of 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 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] prescribe the provisions relating to ITC. Further, section 49 and rule 88A prescribe the provisions relating to the manner of utilization of ITC. 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].

[1] *The provisions of section 19 relating to taking input tax credit 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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Provisions of ITC under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the statutory provisions relating to ITC, 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)].

- **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;

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(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)].
- **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;

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(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)].

- **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 twenty-five 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)].

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❖ **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
- 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)].

❖ **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)].

❖ **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

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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 [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 to a Special Economic Zone (SEZ) developer or a Special Economic Zone unit [Section 16(1) of the IGST Act].

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,–*

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	(a)	*he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
	(b)	*he has received the goods or services or both.*
		Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services–
		(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
		(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.
	(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 added to his output tax liability, along with	

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	interest thereon, in such manner as may be prescribed:	
	Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.	
(3)	*Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.*	
(4)	*A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.*	
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*

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		assessment of integrated tax on imports;
	(e)	*an input service distributor invoice or input service distributor credit note or any document issued by an input service distributor in accordance with the provisions of sub-rule (1) of rule 54.*
(2)	*Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in* ***FORM GSTR-2***[2] *by such person.*	
	Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.	
(3)	*No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.*	
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, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in* ***FORM GSTR-2*** *for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice.*	

[2] *Filing of GSTR-2 has been deferred till March 2020.*

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	Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.
	Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.
(2)	*The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.*
(3)	*The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.*
(4)	*The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re- availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.*



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 12: Payment of Tax.]*

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(b) Goods/services to be used for business purposes

ITC of GST will be available on goods and/or services which are used in the course or furtherance of the business *[See definition of business]*. The "intention to use" the goods and/or services in the course or furtherance of business would also suffice for availing ITC on such goods and/or services. Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit. ITC will be credited in electronic credit ledger. *[Provisions relating to electronic credit ledger have been discussed in detail in Chapter 12: Payment of Tax.]*

ITC on moulds and dies provided by the original equipment manufacturer (OEM) to component manufacturer on FOC basis

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 input tax credit 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 of the former's business *[Circular No. 47/21/2018 GST dated 08.06.2018[3]]*.

(ii) Conditions for taking ITC [Section 16(2)]

The registered person will be entitled to ITC on a supply only if **ALL** the following four conditions are fulfilled:

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[3] 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 7: Value of Supply in Module 1 of this Study Material.

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(a) Possession of tax paying document [Section 16(2)(a) read with rule 36 of the CGST Rules]

ITC can be availed on the basis of any of the following documents:

i) Invoice issued by the supplier of goods and/or services

ii) Invoice issued by the recipient receiving goods and/or services from unregistered supplier along with proof of payment of tax, in case of reverse charge

iii) Debit note issued by the supplier

iv) Bill of entry or similar document prescribed under the Customs Act, 1962

v) Revised invoice

vi) Document issued by the input service distributor

The documents basis which ITC is being taken should contain at least the following details:

- Amount of tax charged
- Description of goods or services
- Total value of supply of goods and/or services
- GSTIN of the supplier and recipient
- Place of supply in case of inter-State supply

The documents basis which ITC is being taken should have all the relevant particulars as prescribed in rule 46 of the CGST Rules. *[Rule 46 relating to tax invoice has been discussed in detail in Chapter 10: Tax Invoice, Credit and Debit Notes.]*

No ITC of tax paid towards demands involving fraud [Rule 36(3)]: Tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC.

(b) 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 - 'Ç' 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 'Ç' on direction of 'B'. In

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effect, two supplies take place in this scenario viz., from 'A' to 'B' and from 'B' to 'Ç'. Thus, under this model, the customer (registered person) who purchases such goods does not 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 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.



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 to C, and in turn he 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.



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.

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(c) Tax leviable on supply actually paid to Government [Section 16(2)(c)]

Subject to section 41, tax should actually have been paid, by cash or through utilization of ITC, on the goods and / or services for which ITC is being taken.

Section 41 allows taking ITC in electronic credit ledger on self-assessment basis.

(d) Filing of return [Section 16(2)(d)]

The registered person taking the ITC must have filed his return under section 39.

(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.



XYZ enters in to a contract with ABC for supply of 10 MT of a chemical for ₹ 1,18,000 (inclusive of GST of ₹ 18,000) in August, 20XX. 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 last instalment 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 of CGST Rules]

The registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the corresponding credits availed by the registered person would be added to his output tax liability, with interest. Interest will be paid @ 18% from the date of availing credit till the date when the amount added to the output tax liability is paid.

However, once the recipient makes the payment of value of goods and/or services along with tax, he will be entitled to avail the credit again without

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any time limit *[See discussion on time limit for availing credit under point (vi)]*. In case part-payment has been made, proportionate credit would be allowed.

Exceptions

This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

(a) Supplies on which tax is payable under reverse charge

(b) Deemed supplies without consideration

(c) Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply

Under situations given in points (b) & (c), the value of supply is deemed to have been paid.



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 got added to the output tax liability of PZP and thus, it had to pay back the credit.

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 laws 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 laws.

(vi) Time limit for availing ITC: Due date of filing of return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier [Section 16(4)]

ITC on invoices pertaining to a financial year or debit notes relating to invoices pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial

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year or the date of filing of the relevant annual return, whichever is earlier.

It may be noted that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

So, the upper time limit for taking ITC is 20th October of the next financial year or the date of filing of annual return, whichever is earlier. The underlying reasoning for this restriction is that no change in return is permitted after September of next financial year. If annual return is filed before the month of September, then no change can be made after filing of annual return.

Exception

The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.



Hercules Machinery delivered a machine to XYZ in January 20XX under Invoice no. 49 dated 28th January, 20XX 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 April 20XX for ₹ 50,000 plus GST. XYZ did not file its annual return till October, 20XX.

Though the debit note was received in the next financial year, it relates to an invoice received in the financial year ending March 20XX. Therefore, the time limit for taking ITC available on ₹ 50,000 as well as on ₹ 4,15,000 is 20th October, 20XX; earlier of the date of filing the annual return for the financial year ending March 20XX or the return for September 20XX.

(vii) 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 part of the supply (ii) for business purposes. This is elaborated in heading (4) below.

(viii) 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.

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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 input tax as is attributable to the said taxable supplies including zero-rated supplies.*
(3)		*The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*
		Explanation.— For the purposes of this sub-section, the expression ''value of exempt supply'' shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.
(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*

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	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:—*			
	(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;***

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		(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;
		(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

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			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 the same to its employees under any law for the time being in force.
	(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;*
	(g)		*goods or services or both used for personal consumption;*

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	(h)	*goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and*
	(i)	*any tax paid in accordance with the provisions of sections 74, 129 and 130.*
(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, in **FORM GSTR-2;***
	(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 shall be furnished in **FORM GSTR-2;***
	(d)		*the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.*
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 the invoice level in* ***FORM GSTR-2*** ***and 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 available, previous to the month during which the said value of 'E/F' is to be calculated;

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		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 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*	

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	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 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*

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		*purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in **FORM GSTR-2 and 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-2 and 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, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;
		Explanation: An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18 if it is subsequently covered under this clause.
	(d)	*the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'T_c', shall be the common credit in respect of capital goods for a tax period:*
		Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'Tc';

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	(e)	*the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as:-* ***$T_m = T_c \div 60$***
	(f)	*the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods.*
	(g)	*the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as:* ***$T_e = (E \div F) \times T_r$*** *where,* *'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover* ***in the State*** *of the registered person during the tax period:*
		Provided further 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.*

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	(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:-For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:-		
(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*	
(c)	*the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.*	
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.

A. Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of CGST Rules]

The situations requiring apportionment are as follows:

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(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

(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 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.



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.



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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(i) Methodology of apportionment of credit on inputs and input services and reversal thereof [Rule 42 of the CGST Rules]

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)**
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 invoice level in GSTR 2 ***and 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

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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 footwear. 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

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:

$$\mathbf{D_1 = (E/F) \times C_2}$$

Where

E = Aggregate value of exempt supplies during the tax period

F = Total turnover in the State during the tax period

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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. Thus, ITC attributable to such supplies will need to be reversed.

(iii) Here, exempt supplies exclude-

(a) transactions/activities specified in Schedule III except sale of land and sale of building as specified in point (ii) above.

(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.

(c) transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

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

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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.

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 $D_1 + D_2$.

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- ❖ 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.
- ❖ 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 of the CGST Rules]

Rule 43 of the CGST Rules 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 2 ***and 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 as well as exempt supplies & business & non-business purposes] and denote the same as 'A'. Such amount 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 clause

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(iii), compute 'A' by reducing ITC @ 5% per quarter or part thereof. Such reduced amount will be credited to ECrL.

(v) Add together the amounts of 'A' credited to ECrL to arrive at common credit 'Tc'.

(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 clause (iii), compute 'A' by reducing ITC @ 5% per quarter or part thereof and add such value to Tc.

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 - Determine common credit at the beginning of a tax period for all capital goods whose useful life remains during the tax period as under:

$$T_r = T_m \text{ for such capital goods}$$

Step 4 - 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) 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,

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whichever is earlier. Thus, ITC attributable to such supplies will need to be reversed.

(iii) Here, exempt supplies exclude-

(a) transactions/activities specified in Schedule III except sale of land and sale of building as specified in point (ii) above.

(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.

(c) transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

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) Amount of Te has to be computed separately for CGST, SGST/UTGST and IGST **and declared in GSTR 3B**.*

(vi) 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.

Step 5: 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.

(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 remaining ITC shall lapse.

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- ❑ 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.

B. Blocked credits [Section 17(5)]

ITC of tax paid on almost every inputs and input services used for supply of taxable goods and/or services is allowed under GST except a small list of items provided u/s 17(5). Thus, ITC on such items is not allowed even though the same may qualify as inputs, input services or capital goods and are used in the course or furtherance of business.

The negative list 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.

The various goods and/or services on which credit is blocked are discussed hereunder:

(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

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blocked on certain services relating to motor vehicles, vessels and aircrafts namely, 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 ≤ 13 persons (including the driver) – Referred to as ineligible motor vehicle in this table***	***Ineligible motor vehicles when used for any of the following eligible purposes -*** • ***making further taxable supply of such motor vehicles;*** • ***making taxable supply of transportation of passengers;*** • ***making taxable supply of imparting training on driving such motor vehicles.***	• ***ITC on ineligible motor vehicles used for any purpose other 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***

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			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;*** • ***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.***	***ITC on vessels and aircrafts used for any purpose other than the eligible purposes***
(iii)	***General insurance,***	• ***Such services relating to***	• ***ITC is not allowed on services of***

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	servicing, repair and maintenance relating to: • *Ineligible motor vehicles* • *Vessels* • *Aircraft*	*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 or aircraft insured by him*	*general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is not allowed.* • *ITC is allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.*
(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*	• *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.*

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		composite or mixed supply • *Such services when provided by an employer to its employees under a statutory obligation*	*when such services are used by the taxpayer who is in the same line of business.*



(1) ITC on cars purchased by a manufacturing company for official use of its employees is blocked.

(2) ITC on cars purchased by a car dealer for sale to customers is allowed.

(3) ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed.

(4) ITC on cars purchased by a car driving school is allowed.

(5) 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.

(6) ITC on trucks purchased by a company for transportation of its finished goods is allowed.

(7) ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.

(8) ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed.

(9) ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.

(10) ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.

(11) 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*

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			without any statutory 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.***



(1) A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked.

(2) 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., is allowed.

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(3) ITC on outdoor catering services availed by a garment exporter for a marketing event organised for its prospective customers, is blocked.

(4) Outdoor catering service is availed by a company to run a free canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.

(5) 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.

(6) 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)]

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 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.

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(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 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.

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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.

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 towers, 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 plant and machinery. In this case, ITC is allowed to all recipients irrespective of their line of business.

(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.



(1) ITC on works contracts services availed by a software company for construction of its office, is blocked.

(2) 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.

(3) 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.

(4) ITC on works contract services availed by a manufacturing company for construction of pipelines to be laid outside its factory, is blocked.

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(5) 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.

(6) 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 and 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 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' and 'plant and machinery' 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 plant and machinery

(ii) When the value of goods and/or services is not capitalized

(iii) When the construction is not on own account

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(1) 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.

(2) 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.

(3) 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.

(4) ITC on goods and/or services used 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.

(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.

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.

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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.

(vii) 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 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.



Mr. X owns a grocery store. He procures rice, wheat and biscuits for being sold in its store. Out of the inventory so purchased, he gives 10 kgs each of rice and wheat to his wife for household use. Being used for personal consumption, ITC on 10 kg of rice and 10 kg of wheat is blocked.

(viii) Free samples, gifts, goods lost/stolen etc. [Clause (h) of section 17(5)]

Meaning of 'gift'

The terms 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.

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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.

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 28.03.2019 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 2: Supply Under GST and Unit II : Value of Supply of Chapter 5 : Time and Value of Supply]:

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A. <u>Samples and free gifts</u>

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.

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. <u>Buy one get one free offer</u>

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. <u>Discounts including 'Buy more, save more' offers</u>

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 sub-section (3) of section 15, 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[4].

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 fulfilment of the conditions specified in section 16.

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.

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[4] The procedure for return of time expired drugs or medicines by issuing credit note is covered in Chapter 10: 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 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.



If a manufacturer has availed ITC of Rs. 10/- at the time of manufacture of medicines valued at Rs. 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 Rs. 15/-. So, when the time expired goods are destroyed by the manufacturer, he would be required to reverse ITC of Rs. 15/- and not of Rs. 10/.

(ix) 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.

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.*

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(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 th 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:*

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	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.	
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*

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		contained in semi-finished or finished goods held in stock, or as the case may be, capital goods–	
		(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** 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**

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(1)	***A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the 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*

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		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.*
(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****.*	

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ANALYSIS

Section 18 provides for

(1) entitlement of ITC on inputs in stock and contained in finished goods or work-in-progress and capital goods (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 status on account of exempt supply becoming taxable supply

(2) reversal of ITC on inputs in stock and 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

(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 of CGST Rules]

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	**Inputs** held in stock and	The day immediately	➔ ITC to be availed within 1 year from the

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	for **registration within 30 days from the date on which he becomes liable to registration** and has been granted such registration	inputs contained in semi-finished or finished goods held in stock	preceding the date from which he becomes liable to pay tax	date of the issue of the tax invoice by the supplier.
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 immediatel y 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	**Inputs** held in stock and inputs contained in	The day immediatel y preceding the date	

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	supplies become taxable supplies	semi-finished or finished goods held in stock relatable to such exempt supply **and capital goods exclusively used for such exempt supply**	from which such supply becomes taxable	

In all the above cases, the registered person has to make an electronic declaration in the prescribed form 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.



Mr. Z becomes liable to pay tax on 1st August and has obtained registration on 15th August. Mr. 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. Mr. Z cannot take ITC on capital goods.



Mr. A applies for voluntary registration on 5th June and obtains registration on 22th June. Mr. 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. Mr. A cannot take ITC on capital goods.



Mr. B, a registered taxable person, was paying tax under composition scheme upto 30th July. However, w.e.f. 31st July, Mr. B becomes liable to pay tax under regular scheme. Mr. 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 from the date of the invoice.

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(ii) Reversal of ITC on switching to composition levy or exit from tax-paying status [Section 18(4) read with rule 44 of CGST Rules]

- 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. 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.



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

- 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 12: Payment of Tax.]*
- 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 then compared with the output tax payable on such goods, and the higher of the two amounts is finally paid by the registered person.

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- 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) of CGST Rules]

- 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
- ITC pertaining to remaining useful life of the capital goods should be computed separately for ITC of CGST, SGST/UTGST and IGST.
- Where the amount so determined exceeds the tax payable on the transaction value of the capital goods, such amount need to be paid and thus, should be added to the output tax liability.
- If refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value.

***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.

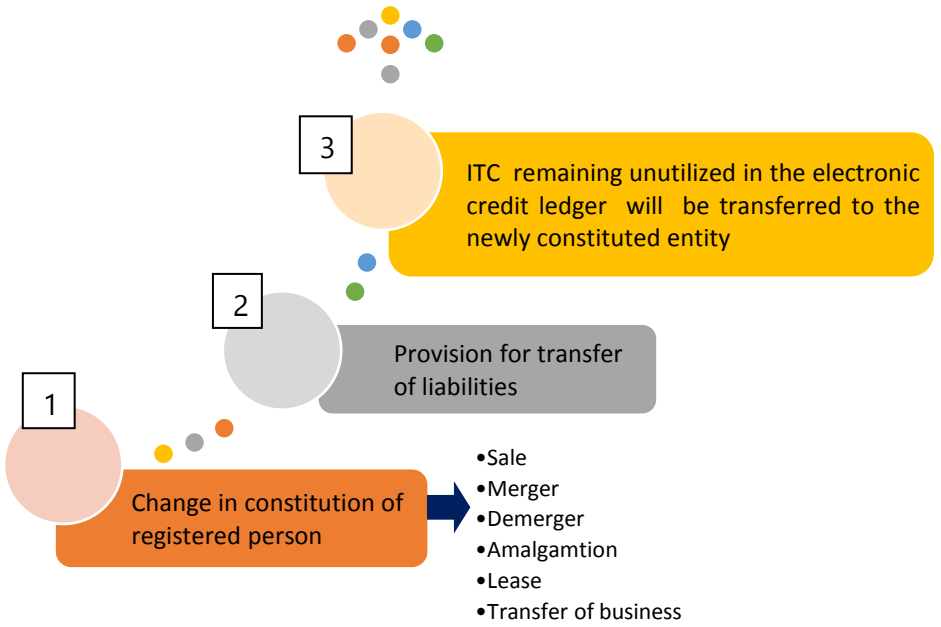
(iv) Transfer of ITC on account of change in constitution of registered person [Section 18(3) read with rule 41 of CGST Rules]

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. ***Circular No. 96/15/2019 GST dated 28.03.2019 has clarified that transfer or change in the ownership of business includes***

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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:



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. ***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 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.

(v) Transfer of ITC on obtaining separate registrations for multiple places of business within a State/ Union Territory [Rule 41A of CGST Rules]

Section 25 enables a taxpayer to obtain separate registrations for multiple places of business in a State/ Union territory [Provisions of

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section 25 are discussed under Chapter 9: Registration]. 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.

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)	*The inputs service distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.*	
(2)	*The Input Service Distributor may distribute the credit subject to the following conditions, namely:–*	
	(a)	*the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;*
	(b)	*the amount of the credit distributed shall not exceed the amount of credit available for distribution;*

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	(c)	*the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;*
	(d)	*the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;*
	(e)	*the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.*
Explanation.—For the purposes of this section,—		
(a)	*the "relevant period" shall be—*	
	(i)	*if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or*
	(ii)	*if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;*

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(b)	*the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;*	
(c)	*the term 'turnover', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 **and 92A** of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.*	
Section 21	**Manner of recovery of credit distributed in excess**	
	Where the input service distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.	
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 input service distributor shall, in accordance with the provisions of clause (d), 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;*

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	(c)		*the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);*
	(d)		*the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C_1", to be calculated by applying the following formula -* $C_1 = (t_1 \div T) \times C$ *where,* *"C" is the amount of credit to be distributed,* *"t_1" is the turnover, as referred to in section 20, of person R_1 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 section 20;*
	(e)		*the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;*
	(f)		*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*

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			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 in accordance with clause (d);
	(g)		*the input service distributor shall issue an input service distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;*
	(h)		*the input service distributor shall issue an input service distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;*
	(i)		*any additional amount of input tax credit on account of issuance of a debit note to an input service distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in **FORM GSTR-6;***
	(j)		*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 (d), 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*

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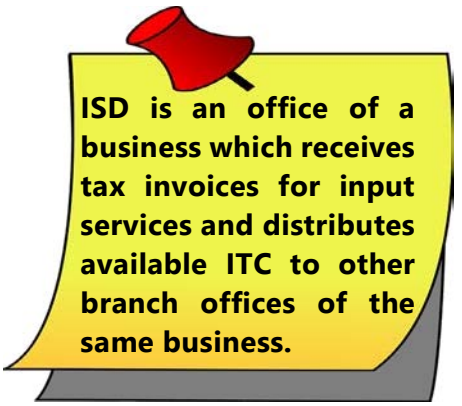
			distribution being less than the amount to be adjusted.
(2)	*if the amount of input tax credit distributed by an input service distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the input service distributor, the process specified in clause (j) 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 (h) 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.*		



ANALYSIS

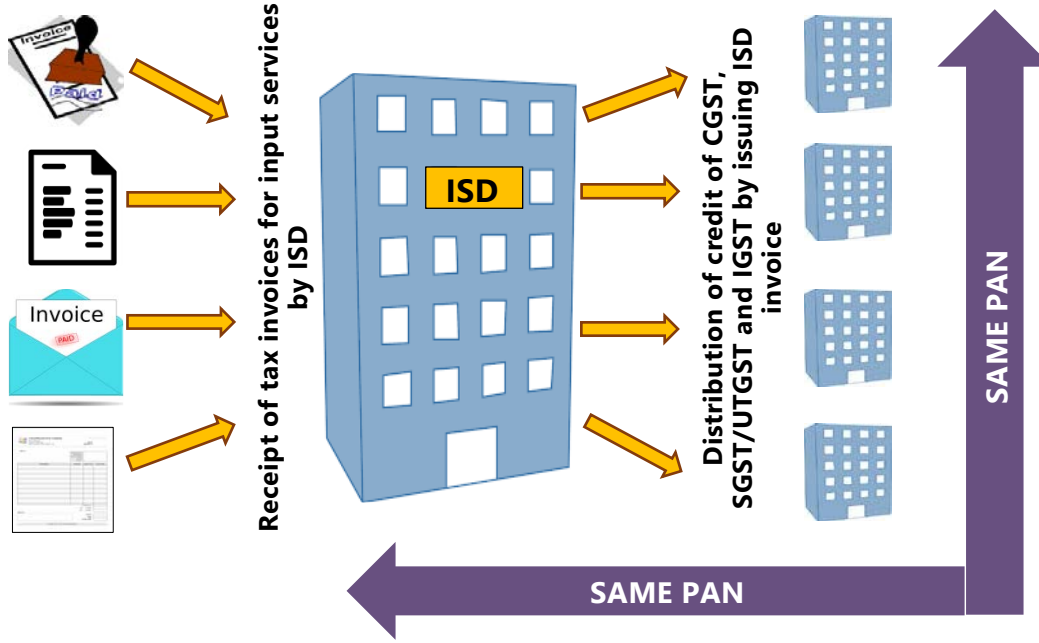
(i) Role of an input service distributor (ISD)

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 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 all units, it is but natural that the credit of input services in respect of such common invoices should be apportioned between all the consuming units. ISD mechanism enables proportionate distribution of credit of input services amongst all 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.

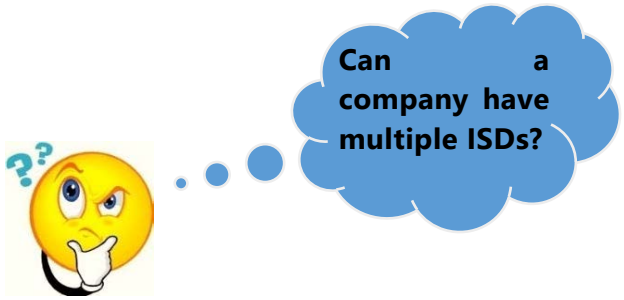
It is important to note that the ISD mechanism is meant only for distributing the credit on common invoices pertaining to INPUT SERVICES and not goods (inputs or capital goods).

(ii) Separate registration for an ISD

Compulsory separate registration for ISD

An ISD 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.

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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 [Section 20 read with rule 39 of CGST Rules]

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:

ITC of input services is distributed ONLY amongst those registered persons who have used the input services in the course or furtherance of business.

(a) The credit connected to an input service must be distributed only to the particular recipient to whom that input service is attributable.

(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.

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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 for more details*.)
- The credit attributable to a recipient is distributed even if such recipient is unregistered or is making exempt supplies.
- 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**

$$C1 = (t1 \div T) \times C$$

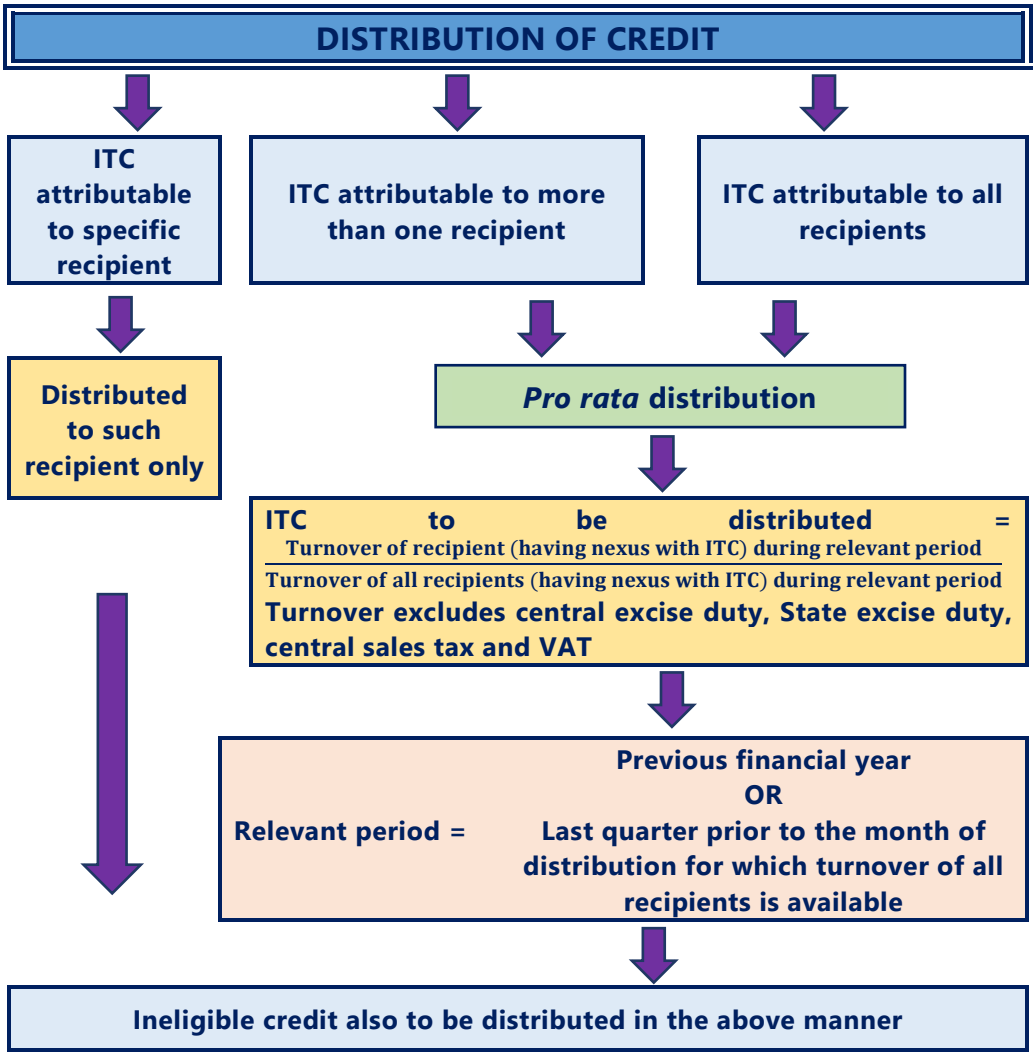
where,

"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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example

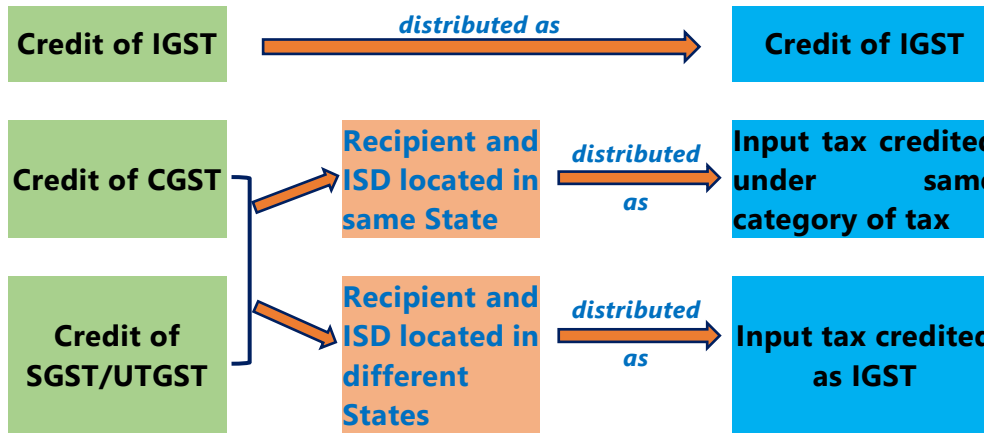
ABC Ltd, a confectionary manufacturer, has paid bills of an advertising company amounting to ₹ 24 lakh for advertising campaigns for two varieties of cakes, which are manufactured at separate locations in Pune and Bangalore. The company had a total turnover of ₹ 112 crores in the previous financial year. 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.

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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.*



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.

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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 20XX:

(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.

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**

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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

(iii) Procedural aspects of distribution of credit [Rule 39 of CGST Rules]

- 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.
- 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 for detailed discussion on GSTR-6]*.
- An ISD cannot accept any invoices on which tax is to be discharged under reverse charge mechanism. This is because the ISD mechanism is only to

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facilitate distribution of credit of taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to Government account. If ISD wants to take reverse charge supplies, then in that case ISD has to separately register as normal taxpayer.

(iv) Issue of debit note and credit note on ISD [Rule 39 of CGST Rules]

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.

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) Recovery of excess credit distributed to a recipient [Section 21]



Excess credit distributed can be recovered along with interest only from the recipient and not from ISD.

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 *[Refer Chapter 17 : Demands and Recovery for detailed discussion on sections 73 and 74]*. 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).

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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;*
	(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;*

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		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 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 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	

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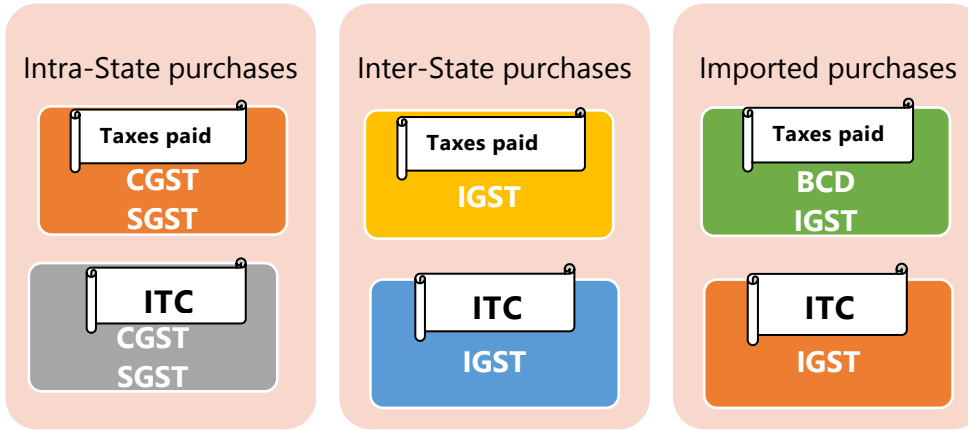
	central tax and State tax or Union territory tax, as the case may be, in any order.
	Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.



ANALYSIS

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 intra-State, inter-State and imported purchases is eligible for ITC as under:



The person may use the ITC to pay his output tax liability. Since the GST law comprises of multiple taxes viz, CGST, SGST/UTGST and IGST, one many wonder if ITC of one tax can be used to pay any kind of output tax, i.e. if ITC of CGST can be used to pay IGST liability and *vice versa* or ITC of CGST can be used to pay SGST liability and *vice versa*. ***One needs to read the provisions of section 49(5), section 49A, section 49B, rule 88A and Circular No. 98/17/2019 GST dated 23.04.2019, to find the answer to such questions.***

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A combined reading of the above 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 in above table can be further explained in the following manner:

(I) ***IGST credit should first be 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.***

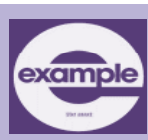
(III) ***Entire ITC of IGST should be fully utilized before utilizing the ITC of CGST or SGST/UTGST.***

(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.

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Hence cross-utilization of credit is available only between CGST - IGST and SGST/UTGST - IGST. The main restriction is that the CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment of CGST. Further, ITC of IGST need to be exhausted fully before proceeding to utilize the ITC of CGST and SGST in that order.



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				
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				

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CGST	***0***	***200***	***-***	***0***
SGST/UTGST	***0***	***-***	***100***	***100***
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, two options for utilizing ITC of IGST against CGST and SGST liabilities are shown.

ILLUSTRATION 2

ABC Co. Ltd., registered under GST, is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

S. No.	Items	GST paid (₹)
(i)	*Electrical transformers to be used in the manufacturing process*	*5,20,000*
(ii)	*Trucks used for the transport of raw material*	*1,00,000*
(iii)	*Raw material*	*2,00,000*
(iv)	*Confectionery items. These items were supplied free of cost to the customers in a customer meet organized by the company*	*25,000*

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items. Assume all the conditions necessary for availing the ITC have been fulfilled.

ANSWER

Computation of ITC available with ABC Co. Ltd. for the month of July

S. No.	Items	ITC (₹)
(i)	Electrical transformers [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	5,20,000

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(ii)	Trucks used for the transport of raw material [ITC on motor vehicles used for transportation of goods is not blocked under section 17(5)(a)]	1,00,000
(iii)	Raw material [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	2,00,000
(iv)	Confectionery items for consumption of customers at customers meet [ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply-Section 17(5)(b)(i)]	Nil
	Total ITC	**8,20,000**

ILLUSTRATION 3

XYZ Ltd., registered under GST, is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 20XX from the following particulars:-

S. No.	*Inward supplies*	*GST (₹)*	*Remarks*
(i)	*Inputs 'A'*	*1,00,000*	*One invoice on which GST payable was ₹ 10,000, is missing*
(ii)	*Inputs 'B'*	*50,000*	*Inputs are to be received in two instalments. First instalment has been received in October, 20XX.*
(iii)	*Capital goods*	*1,20,000*	*XYZ Ltd. has capitalised the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.*
(iv)	*Input services*	*2,25,000*	*One invoice dated 20.01.20XX on which GST payable was ₹ 50,000 has been received in October, 20XX.*

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Note:

(i) All the conditions necessary for availing the ITC have been fulfilled.

(ii) The annual return for the financial year ending 31st March 20XX was filed on 15th September, 20XX.

ANSWER

Computation of ITC available with XYZ Ltd. for the month of October, 20XX

S. No.	Inward supplies	ITC (₹)
(i)	Inputs 'A' [ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC-Section 16(2)(a)]	90,000
(ii)	Inputs 'B' [When inputs are received in instalments, ITC can be availed only on receipt of last instalment-First proviso to section 16(2)]	Nil
(iii)	Capital goods [Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component – Section 16(3)]	Nil
(iv)	Input services [As per section 16(4), ITC on an invoice cannot be availed after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains or the date of filing annual return, whichever is earlier. Since the annual return for the FY ending 31st March, 20XX has been filed on 15th September, 20XX (prior to due date of filing the return for September, 20XX i.e., 20th October, 20XX), ITC on the invoice pertaining to FY ending 31st March, 20XX cannot be availed after 15th September, 20XX.	1,75,000
	Total	**2,65,000**

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ILLUSTRATION 4

Mr. X, a supplier of goods, pays GST under regular scheme. He has made the following outward taxable supplies in a tax period:

Particulars	(₹)
Intra-State supply of goods	8,00,000
Inter-State supply of goods	3,00,000

He has also furnished the following information in respect of purchases made by him in that tax period:

Particulars	(₹)
Intra-State purchases of goods	2,00,000
Inter-State purchases of goods	50,000

Mr. X has following ITCs with him at the beginning of the tax period:

Particulars	(₹)
CGST	57,000
SGST	Nil
IGST	70,000

Note:

(i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.

(ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.

(iii) All the conditions necessary for availing the ITC have been fulfilled.

Compute the minimum GST, payable in cash, by Mr. X during the tax period. Make suitable assumptions as required.

ANSWER

Computation of minimum GST payable in cash by Mr. X on outward supplies

S.No.	Particulars	(₹)	GST (₹)
(i)	Intra-State supply of goods		

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	CGST @ 9% on ₹ 8,00,000	72,000	
	SGST @ 9% on ₹ 8,00,000	72,000	1,44,000
(ii)	Inter-State supply of goods		
	IGST @ 18% on ₹ 3,00,000		54,000
	Total GST payable		**1,98,000**

Computation of total ITC

Particulars	**CGST @ 9% (₹)**	**SGST @ 9% (₹)**	**IGST @ 18%(₹)**
Opening ITC	57,000	Nil	70,000
Add: ITC on Intra-State purchases of goods valuing ₹ 2,00,000	18,000	18,000	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 50,000	Nil	Nil	9,000
Total ITC	**75,000**	**18,000**	**79,000**

Computation of minimum GST payable in cash

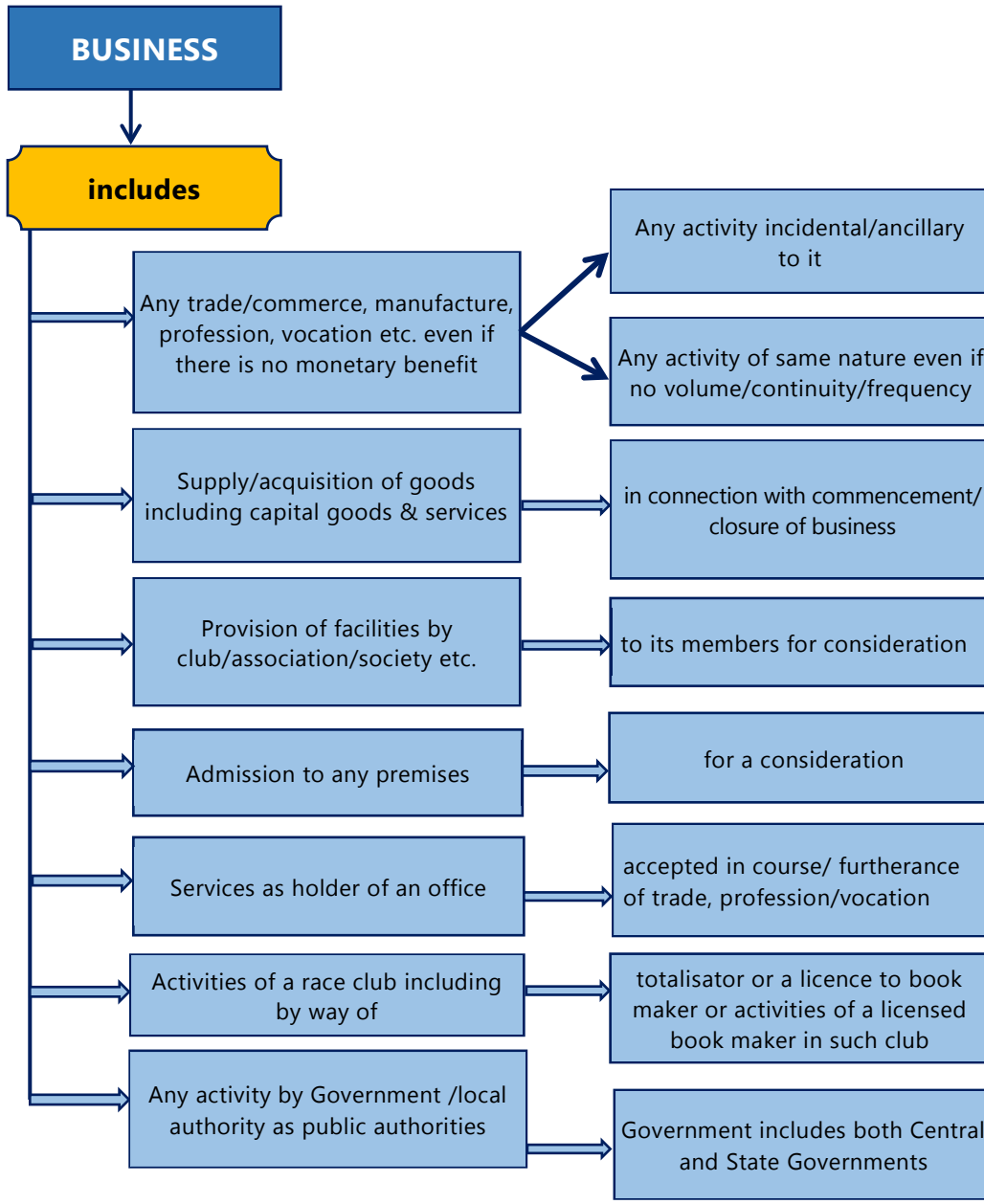
Particulars	**CGST @ 9% (₹)**	**SGST @ 9% (₹)**	**IGST @ 18% (₹)**
GST payable	72,000	72,000	54,000
Less: ITC	(Nil)-IGST	(25,000)-IGST	(54,000)-IGST
	(72,000)-CGST	(18,000) – SGST	
Minimum GST payable in cash	**Nil**	**29,000**	**Nil**

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) to minimize cash outflow.

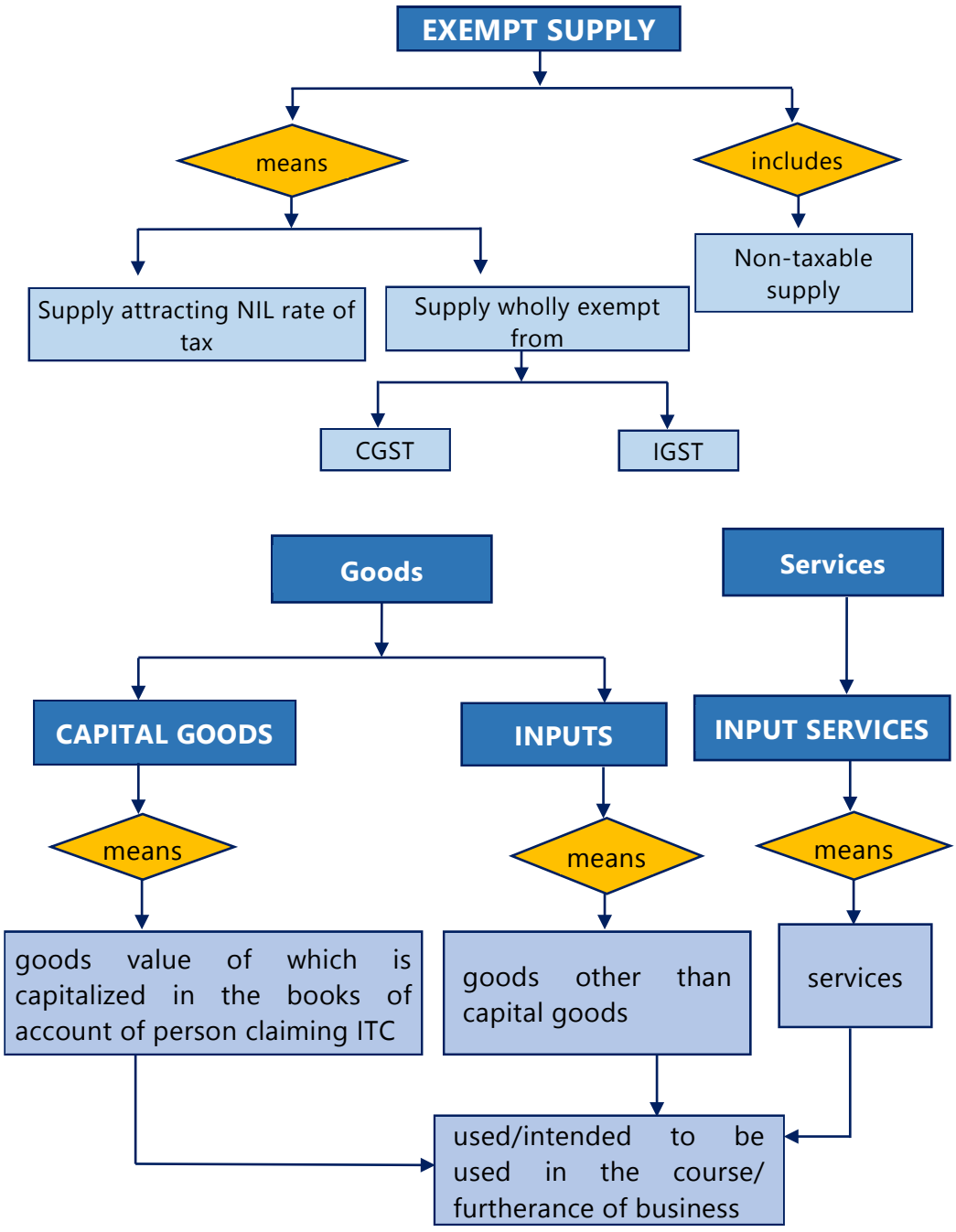
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LET US RECAPITULATE

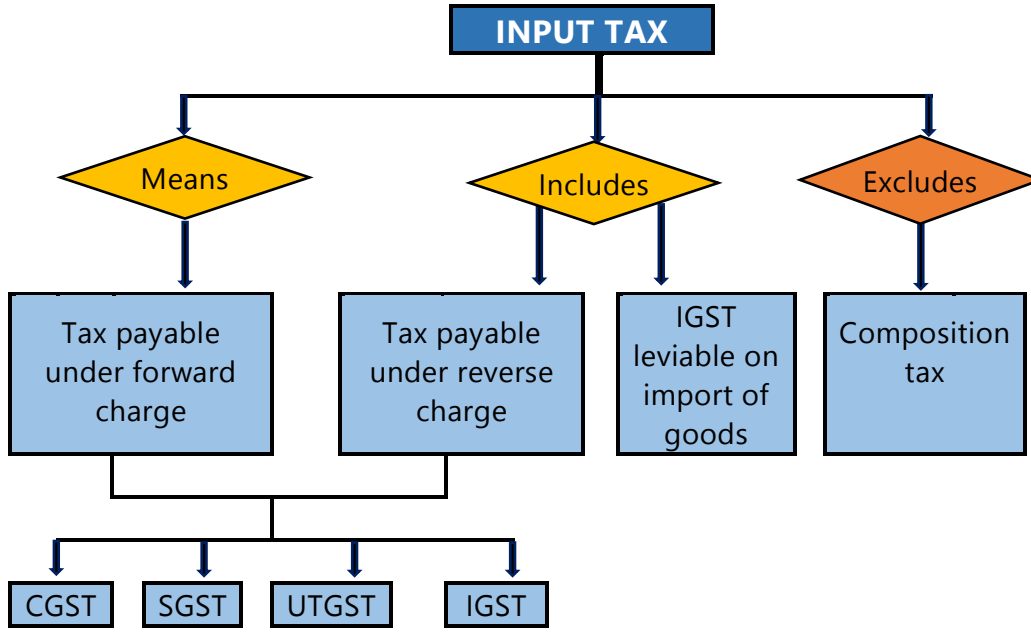
I. Definitions of certain key terms are summarized by way of diagrams as under:

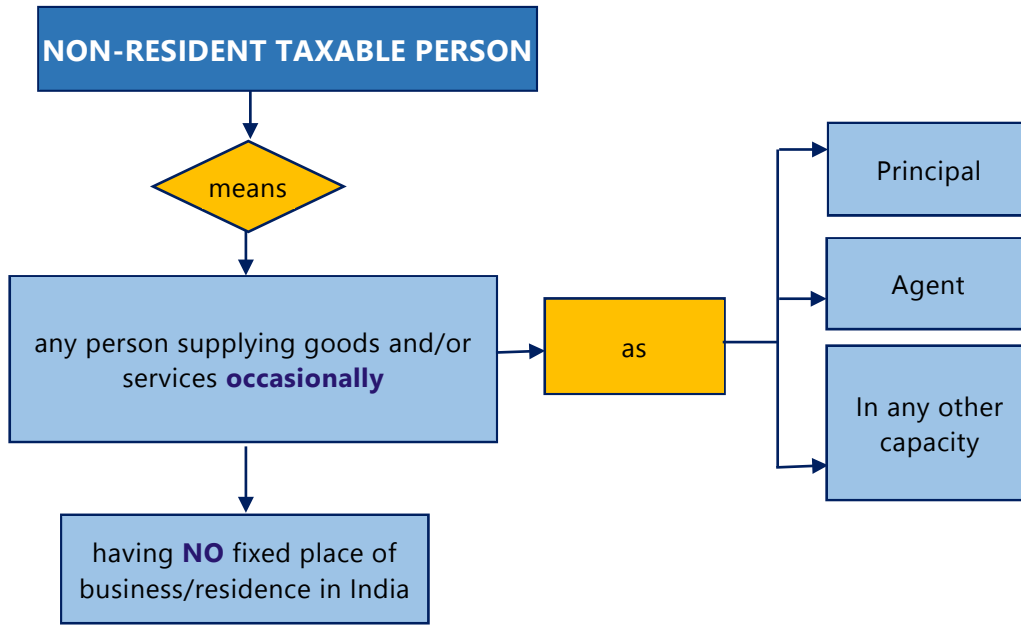


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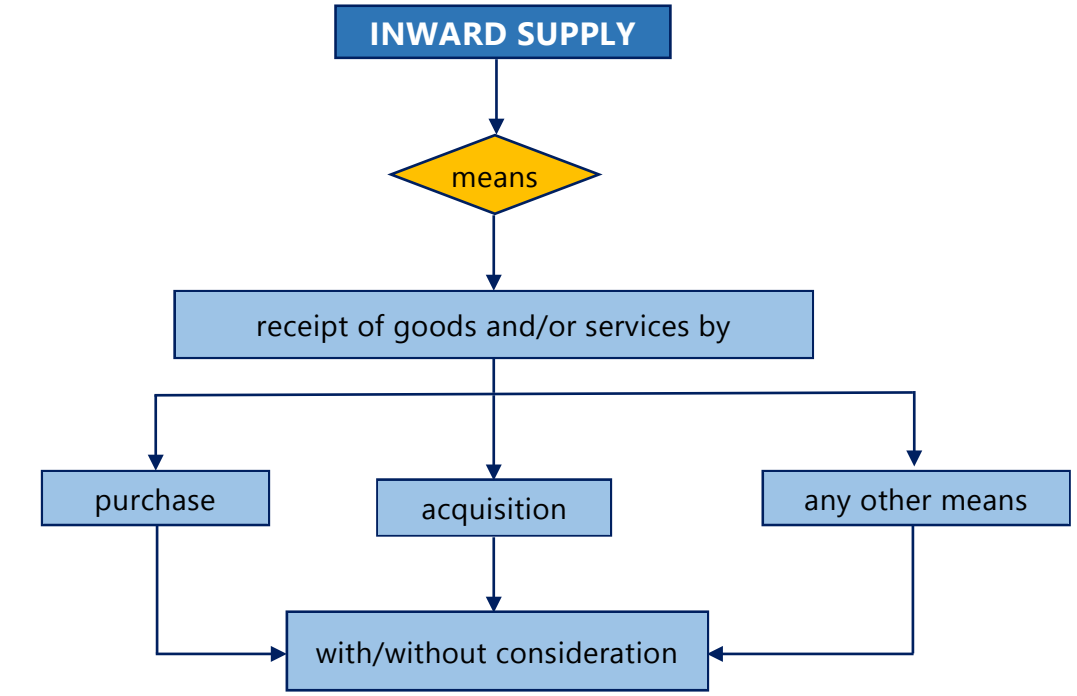


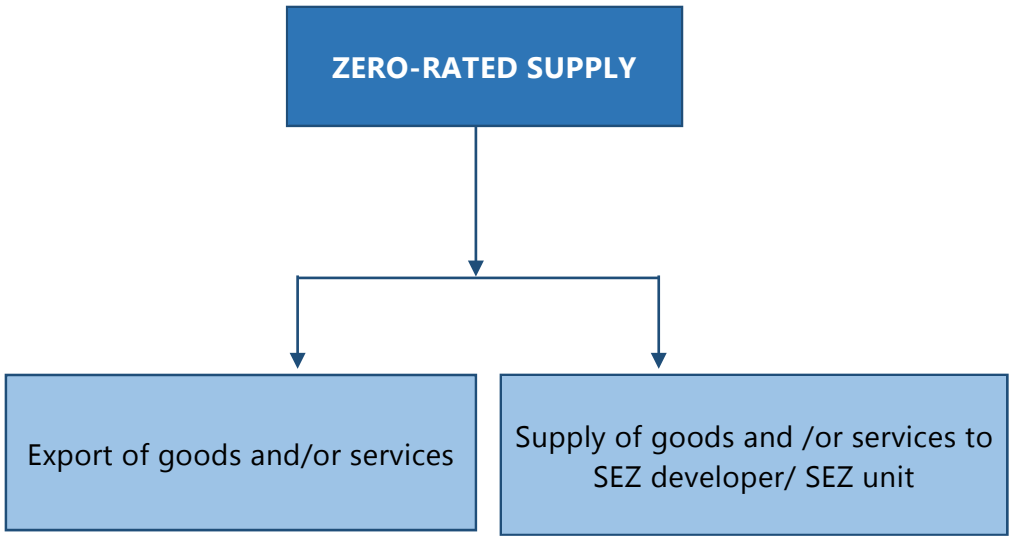
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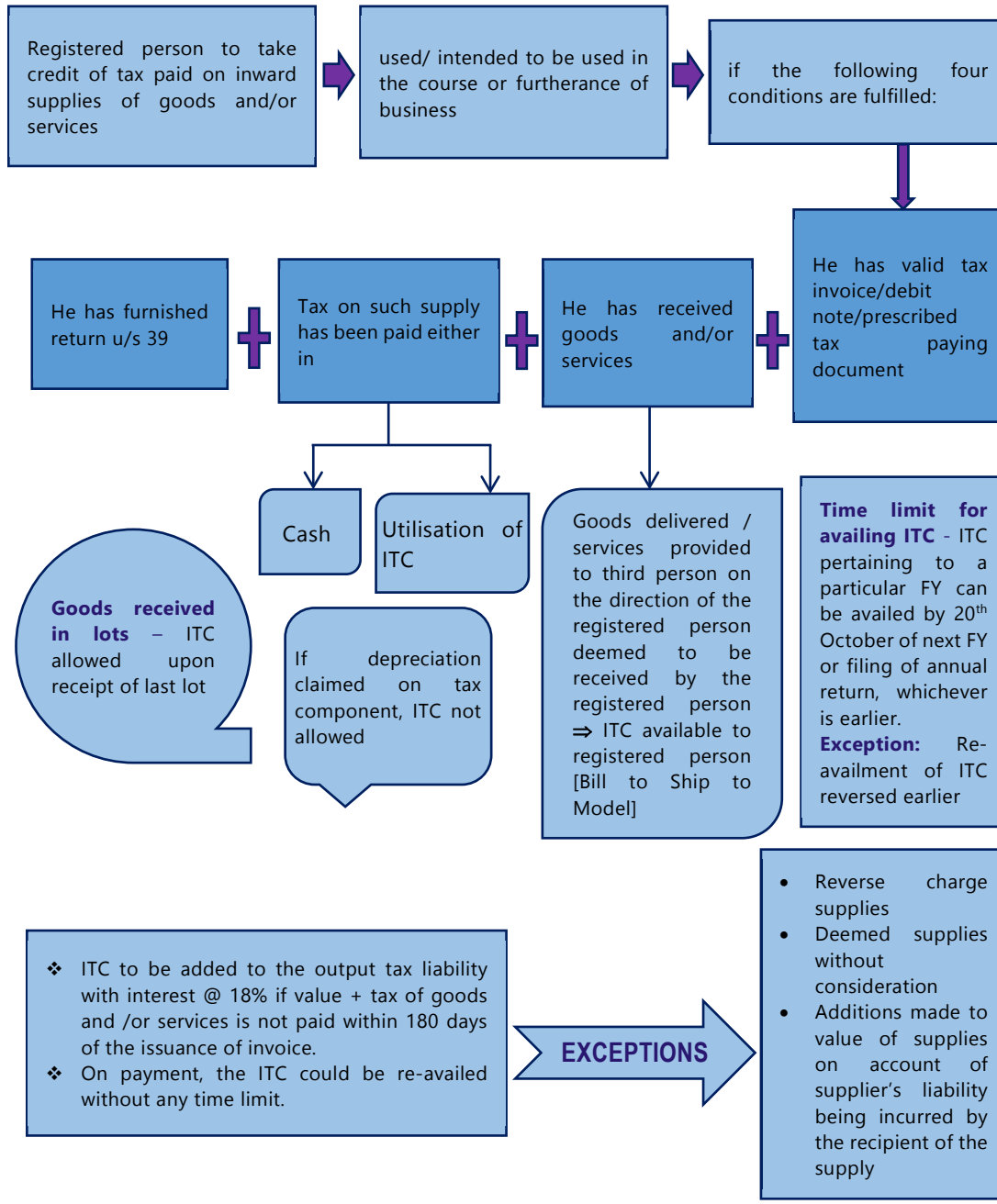
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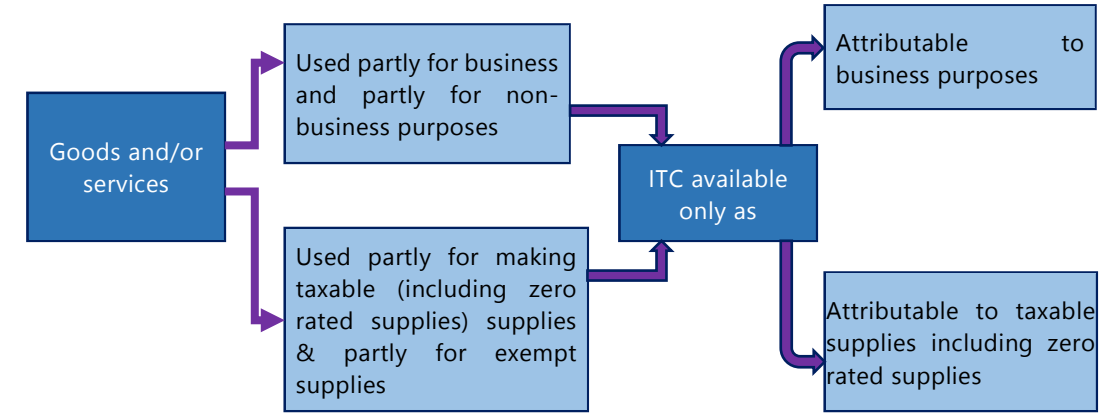
II. Provisions of section 16 relating to eligibility and conditions for taking ITC read with relevant rules are summarized below:



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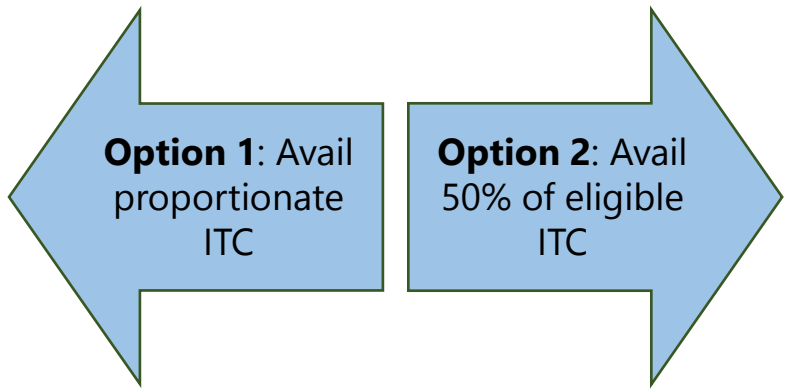
III. Provisions of section 17 relating to apportionment of credit and blocked credits read with relevant rules are summarized as under:

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.

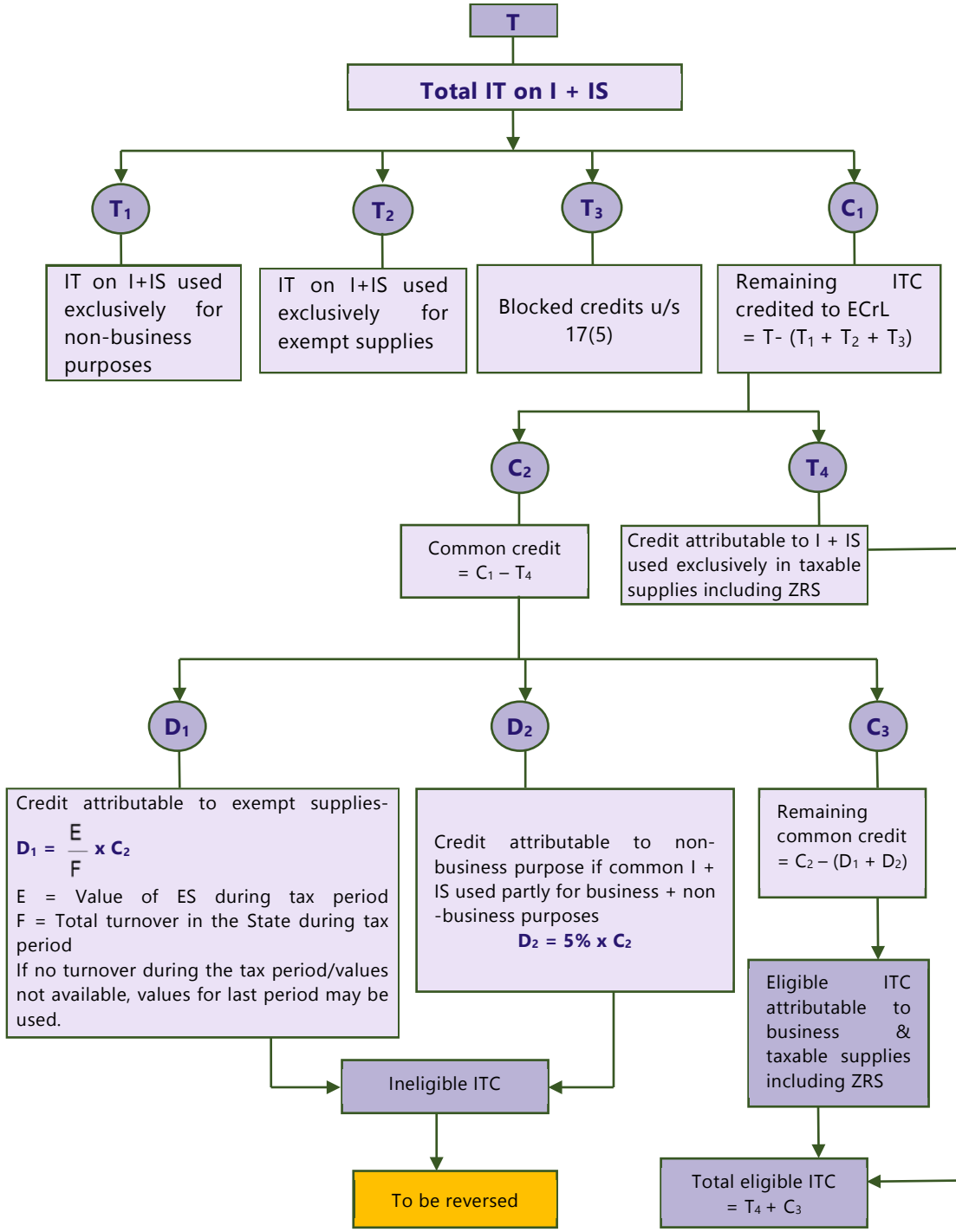
B. Special provisions for banking companies and NBFCs



- Remaining 50% ITC will lapse.
- 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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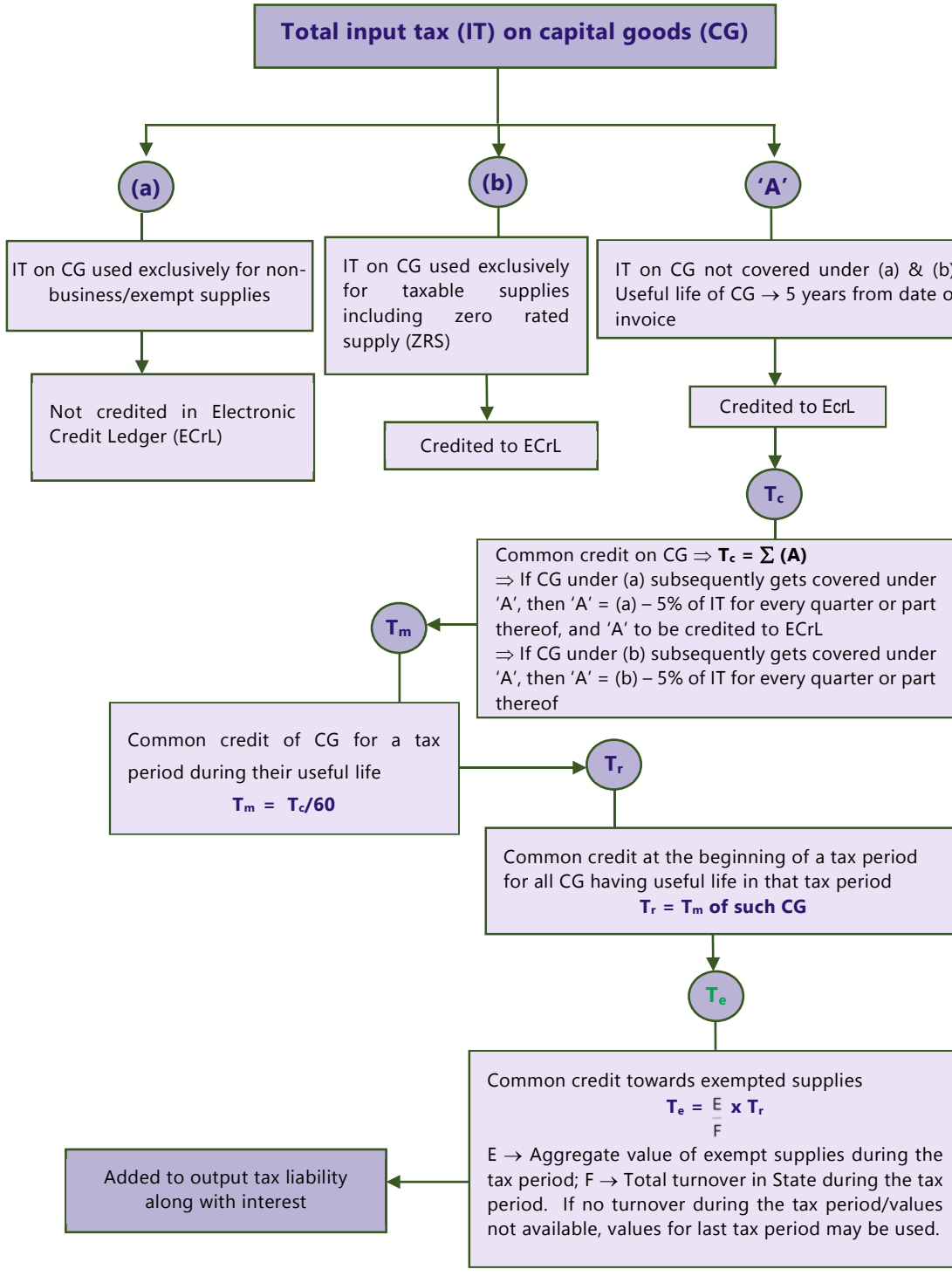
- C_3 will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- $\sum (D_1 + D_2)$ will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already reversed every month, the differential 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, (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) outbound (overseas) transportation of goods by a vessel.
- 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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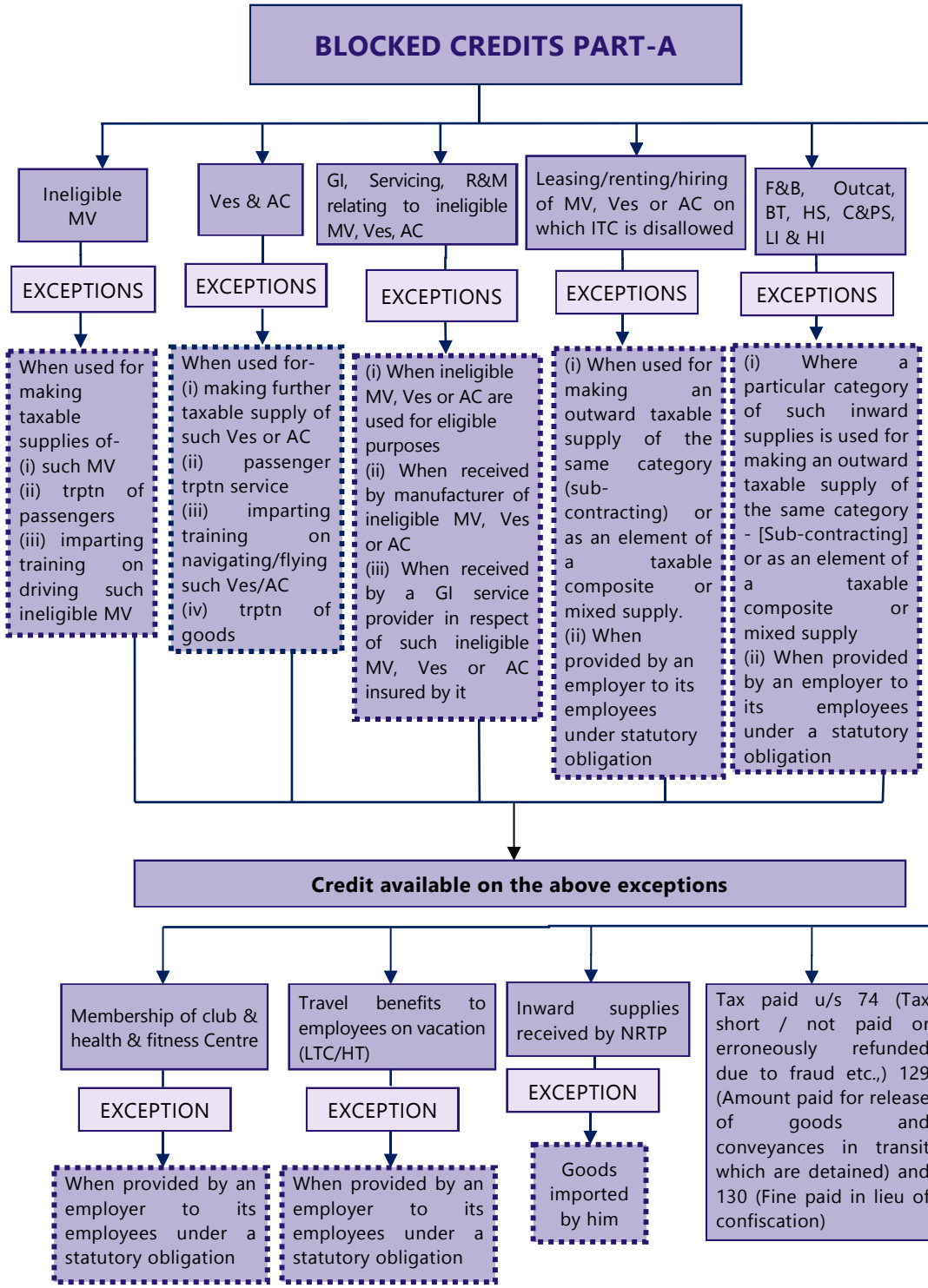
D. Apportionment of common credit on capital goods



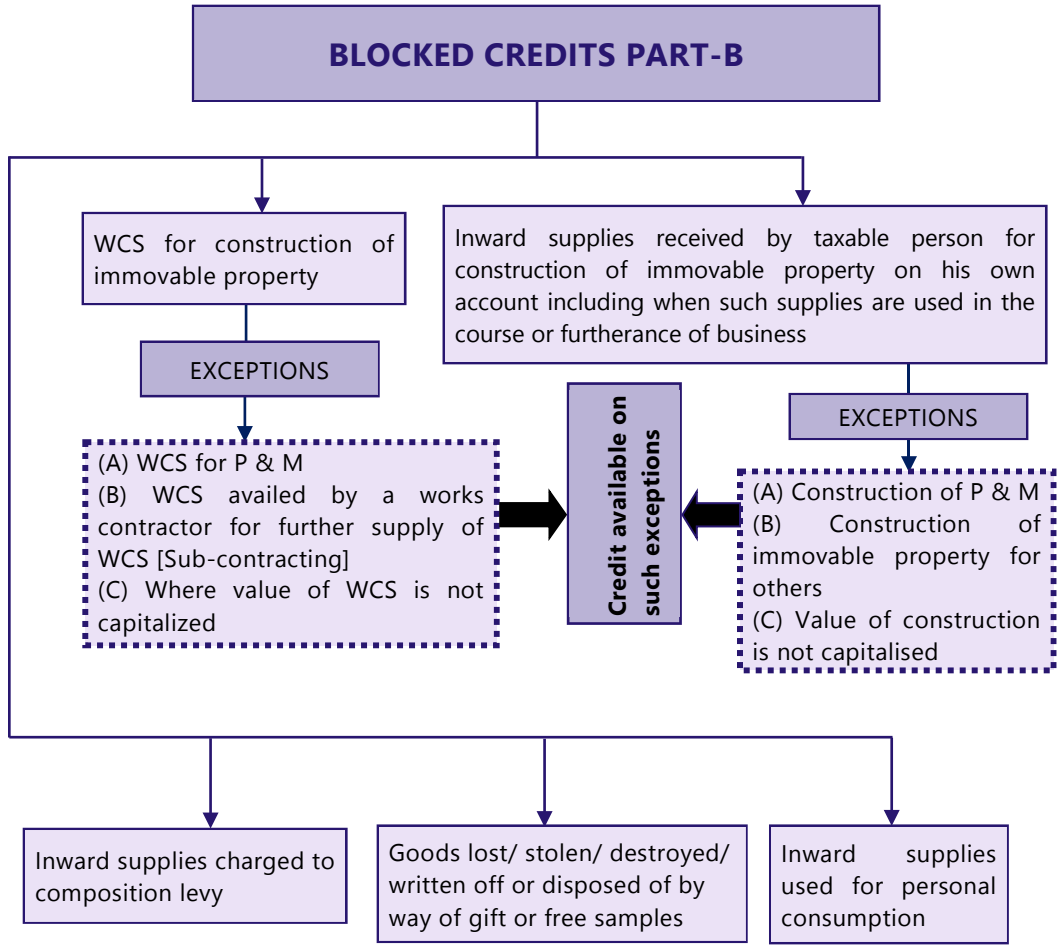
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- Te will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, (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) outbound (overseas) transportation of goods by a vessel.
- 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

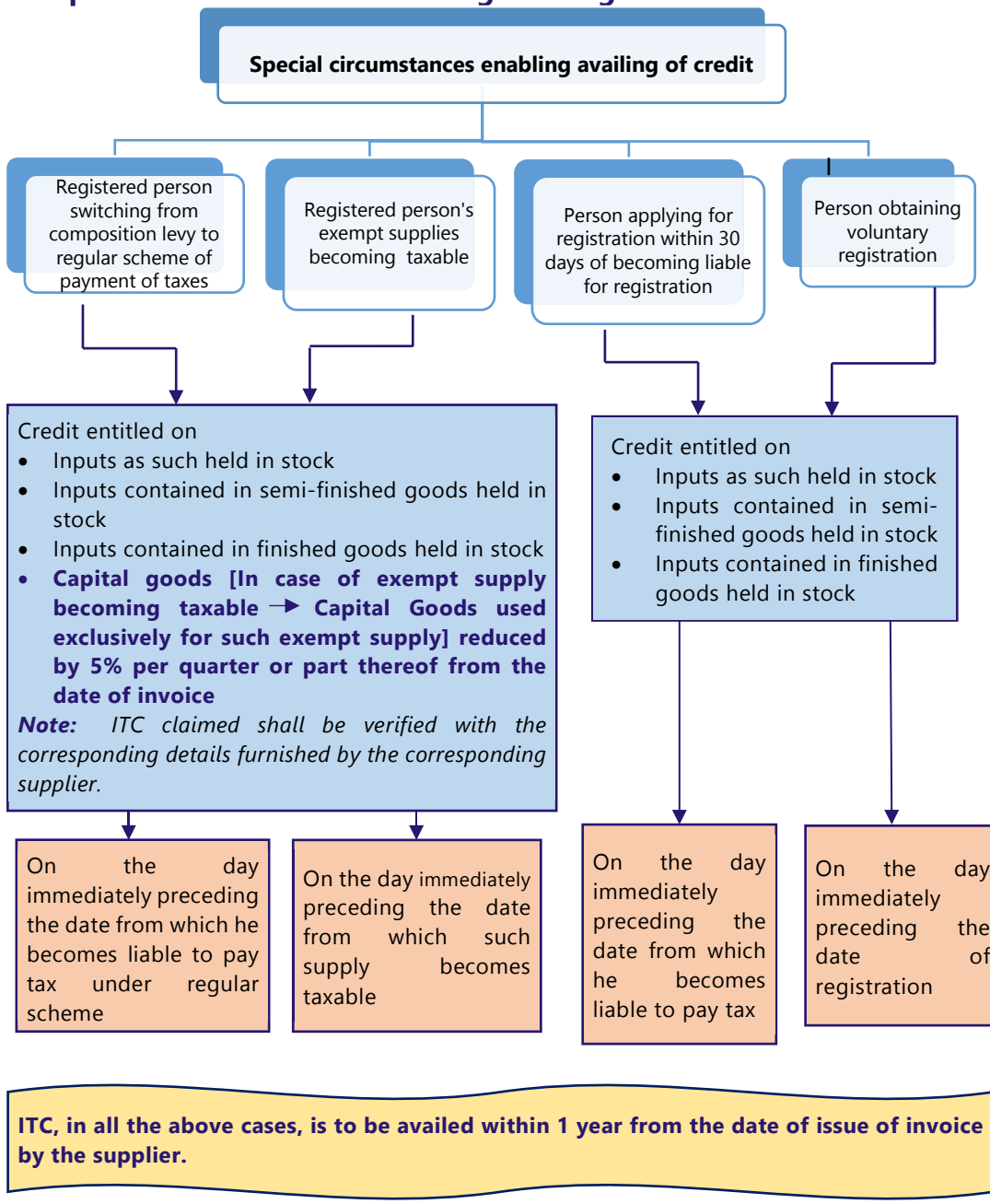
(A) Construction includes re-construction/ renovation/ addition/ alterations/ repairs to the extent of capitalisation to said immovable property.

(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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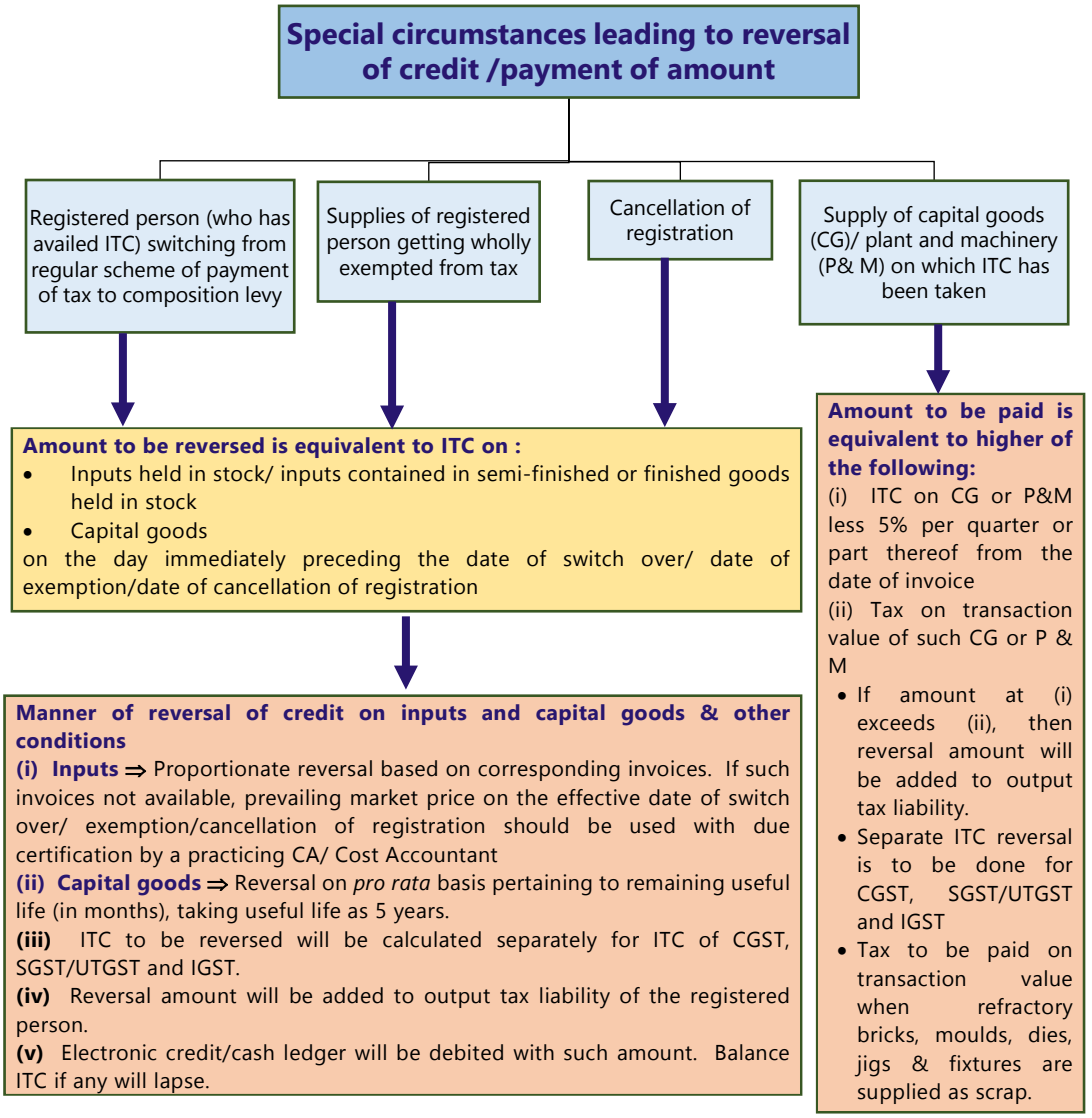
Conditions for availing above credit:

(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



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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 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.

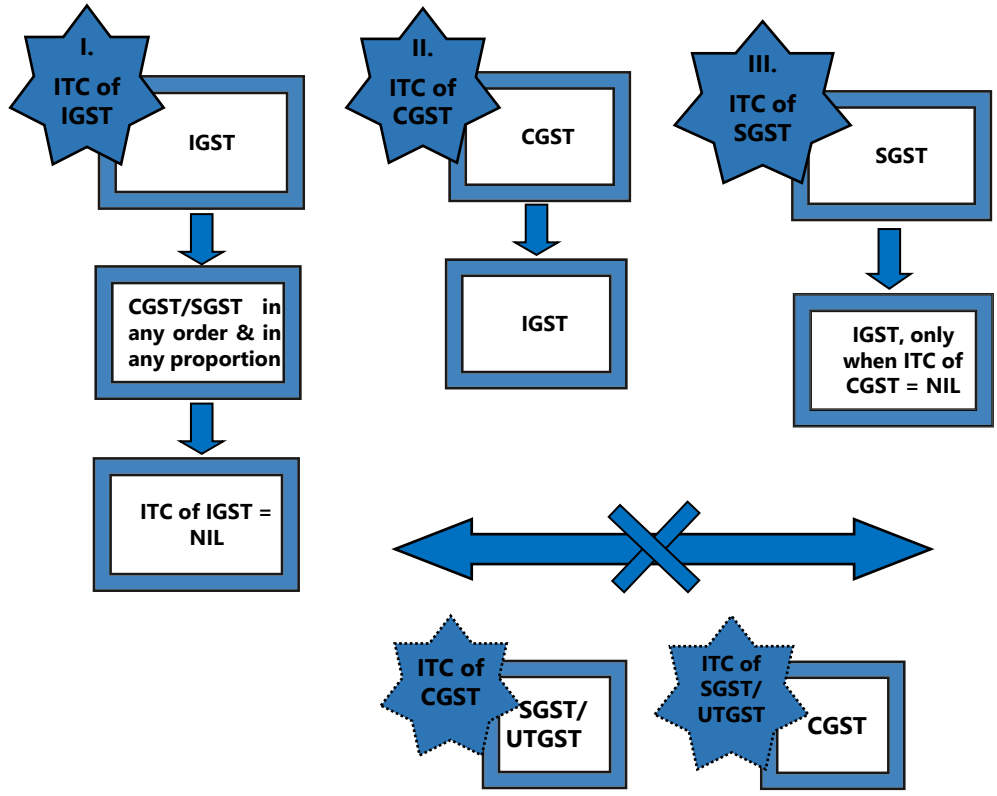
- ISD should issue an ISD invoice for distributing ITC. It should be clearly indicated in such invoice that it is issued only for distribution of ITC.
- The ISD needs to issue a ISD credit note, for reduction in credit if the distributed credit gets reduced for any reason.
- ITC available for distribution 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.

- 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.

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. *What is input tax?*
2. *What are the conditions necessary for obtaining ITC?*
3. *Can a person take ITC without payment of consideration for the supply along with tax to the supplier?*
4. *What is the time limit for taking ITC and reasons therefor?*
5. *What is the ITC entitlement of a newly registered person?*
6. *What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?*

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7. *A taxable person is in the business of information technology. He buys a car (maximum seating capacity – 5 persons) for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such car?*

8. *A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of BMT Ltd. want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.*

9. *A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a special notification. The fabric is separately procured for the supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory.*

   The turnover 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 eligible ITC on thread and lining material.

10. *Mr. A, a registered person was paying tax under Composition Scheme up to 30th July. However, w.e.f. 31st July, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for any ITC?*

11. *Ceramity Ltd. has following units:*

    ***A:** Factory in Tumkur, Karnataka; turnover of ₹ 27 crores in 2017-18;*

    ***B:** Service centre in Hyderabad, Telangana; turnover of ₹ 1 crore in 2017-18;*

    ***C:** Service centre in Chennai, Tamil Nadu; turnover of 2 crores in 2017-18;*

    Ceramity Ltd.'s corporate office functions as ISD. It has to distribute ITC of ₹ 9 lakh for December, 2018. Of this, an invoice involving tax of ₹ 3 lakh pertains to technical consultancy for Tumkur unit.

    What should be the distribution of the credit?

ANSWERS/HINTS

1. Input tax means the central tax (CGST), State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to a registered person. It also includes tax paid on reverse charge basis

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and integrated goods and services tax charged on import of goods. It does not include tax paid under composition levy.

2. Following four conditions are to be satisfied by the registered taxable person for obtaining ITC:

   (a) he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;

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

   (c) subject to section 41, the supplier has actually paid the tax charged in respect of the supply to the Government; and

   (d) he has furnished the return under section 39.

3. Yes, the recipient can take ITC. However, he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis. Further, in case of deemed supplies without consideration and 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, consideration is deemed to have been paid.

4. Refer point (vi) *"Time limit for availing ITC: Due date of filing return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier"* under Heading No. 3 *"Eligibility and Conditions for Taking Input Tax Credit [Section 16]"*.

5. A person applying for registration can take input tax credit 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. If the person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then ITC of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken.

   In case of voluntary registration, ITC of such goods held in stock on the day immediately preceding the date of registration can be taken.

6. In case of supply of capital goods or plant and machinery on which ITC has been taken, the registered person shall pay an amount equal to the ITC taken on the said capital goods or plant and machinery reduced by 5% per quarter

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or part thereof from the date of invoice or the tax on the transaction value of such capital goods, whichever is higher.

However, in case of refractory bricks, moulds and dies, jigs and fixtures when these are supplied as scrap, the person can pay tax on the transaction value.

7. No. As per section 17(5)(a), ITC on motor vehicles for transportation of persons with seating capacity of up to 13 persons (including driver), can be availed only if the taxable person is in the business of transport of passengers or is providing the services of imparting training on driving such motor vehicles or is in the business of supply of such motor vehicles.

8. Under section 16(2) of the IGST Act, credit of input tax is allowed to be taken for inward supplies used to make zero rated supplies. Under section 17 of the CGST Act also, ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of section 16(1) of IGST Act. Thus, full ITC is allowed on inward supplies of BMT Ltd. used for effecting supplies to the unit in the SEZ.

9. 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 of the CGST Rules.

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.

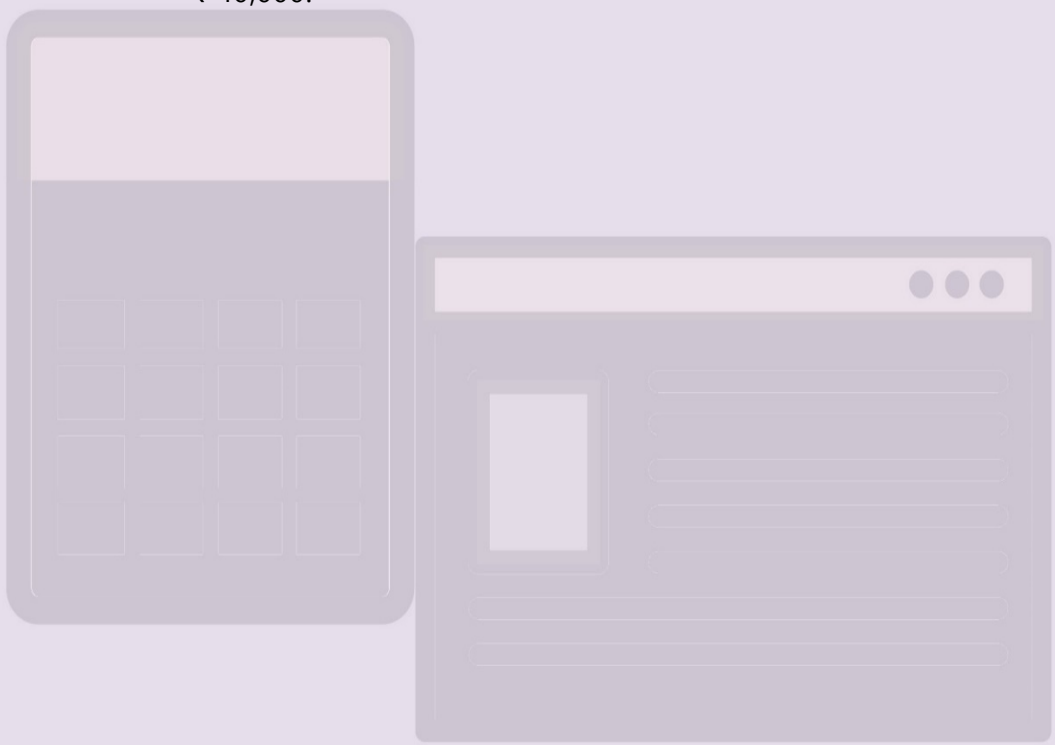
Ineligible credit of ₹ 4,000 will be reversed. Credit of ₹ 16,000 will be eligible credit for the month of July.

10. Mr. A is eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice [Section 18(1)(c)].

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11. As per rule 39(d) of CGST Rules 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 2017-18.
    - o Tumkur unit will get (27 crore / 30 crore) x 6 lakh = ₹ 5.4 lakh;
    - o Hyderabad service centre will get (1 crore /30 crore) x 6 lakh = ₹ 20,000; and
    - o Chennai service centre will get (2 crore /30 crore) x 6 Lakh = ₹ 40,000.



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CHAPTER 9

REGISTRATION



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.
- 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 identification of tax payers ensuring tax compliance in the economy. It is the first step towards becoming GST complaint. Under indirect tax regime, without registration, a person can neither collect tax from his customers nor claim any credit of tax paid by him. Registration legally recognizes a person as 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 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. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable supply.



Since registration in 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 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 the option either to get a single registration for said State/UT [wherein it can declare one place as principal place of business (PPoB) and other branches as additional place(s) of business (APoB)] or to get separate registrations for each place of business in such State/UT.

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 and Chapter III – Registration [Rules 8 to 26] of the CGST Rules 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 few relevant definitions.

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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)].
- **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.
- **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)].
- **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)].

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- **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)].
- **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/services, is to be paid by a taxable person. So, let us understand the concept of taxable person. As per section 2(107) of the CGST Act, 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 does a person becomes liable to get registered, what is the procedure for getting registered under GST and how to get the registration application amended, when can registration be cancelled and when the cancellation of the registration by the Department 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.
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 surrender*** of registration
Section 30	Revocation of cancellation of registration

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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.***
(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.*

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(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.*	
(5)	*Explanation—For the purposes of this section, ––*	
	(i)	*the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals*
	(ii)	*the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker*
	(iii)	*the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution except the State of Jammu 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

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- 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, eligibility for composition scheme as well as for option to pay tax at concessional rate under *Notification No. 2/2019 CT (R) dated 07.03.2019 [Discussed in Chapter 3 – Charge of GST]*.

'Turnover' in common parlance is the total volume of business. The term 'aggregate turnover' as defined under section 2(6) of the CGST Act has been presented in the diagrammatic form as follows:

The term aggregate turnover as defined under section 2(6) of the CGST Act has been analysed follows:

Aggregate turnover

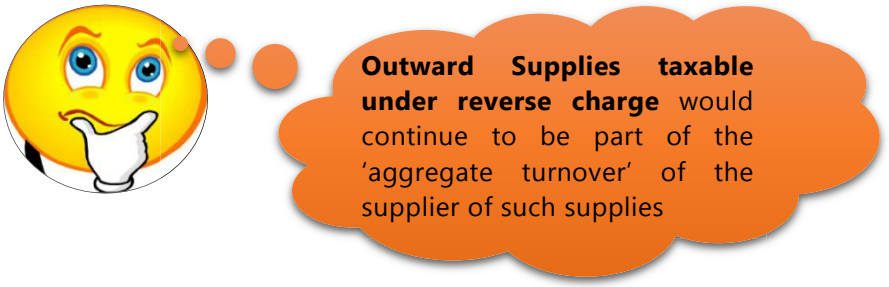
Value of all outward supplies --Taxable supplies --Exempt supplies --Exports --Inter-State supplies of persons having same PAN be computed on all India basis	--CGST --SGST --UTGST --IGST --Compensation cess --Value of inward supplies on which tax is payable under reverse charge

Section 2(6) [definition of 'aggregate turnover' as given above] read with explanation (i) 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

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Charge Mechanism (RCM) do not form part of the 'aggregate turnover'. The law stipulates certain supplies like, Goods Transport Agency services, legal services, to name a few, where the recipient of service is made to pay the tax – *Discussed in detail in Chapter 3 – Charge of tax*. The value of such supplies would not form part of the 'aggregate turnover' of recipient of such supplies.



Raghubir Private Ltd. pays GST on sitting fees paid to its directors for the services rendered by them, under reverse charge. Value of services provided by the directors to Raghubir Private Ltd. will form part of the aggregate turnover of the directors and not of Raghubir Private Ltd.

(B) Aggregate turnover excludes the element of CGST, SGST, UTGST, and IGST and compensation cess.

(C) Aggregate turnover to include total turnover of all branches under same PAN

Aggregate turnover is calculated by taking together the value in respect of the activities carried out on all-India basis.

A dealer 'X' has two offices – one in Delhi and another in Haryana. In order to determine whether 'X' is liable for registration, turnover of both the offices would be taken into account and only if the same exceeds the applicable threshold limit, X is liable for registration.

(D) Value of exported goods/services, exempted goods/services, inter-State supplies between distinct persons having same PAN, to be included in aggregate turnover.

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 whether Madhur Oils is

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liable for registration, turnover of both non-taxable as well as taxable supplies would be taken into account and if the same exceeds the applicable threshold limit, Madhur Oils is liable for registration.

(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.



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.

All the supplies of goods made by M/s Bestfords & Associates as 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 aggregate turnover is different from turnover in a State. The former is used for determining the threshold limit for registration and eligibility for composition scheme as well as for option to pay tax at concessional rate under *Notification No. 2/2019 CT (R) dated 07.03.2019 [Discussed in Chapter 3 – Charge of GST]*. However, once a person is eligible for composition levy, the amount payable under composition levy would be calculated on the basis 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 its aggregate turnover



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 belongs is called **'principal'**. Schedule II of the CGST Act stipulates that job work is a service.

Principal can supply the goods directly from the premises of the job worker without bringing it back to his own premises.

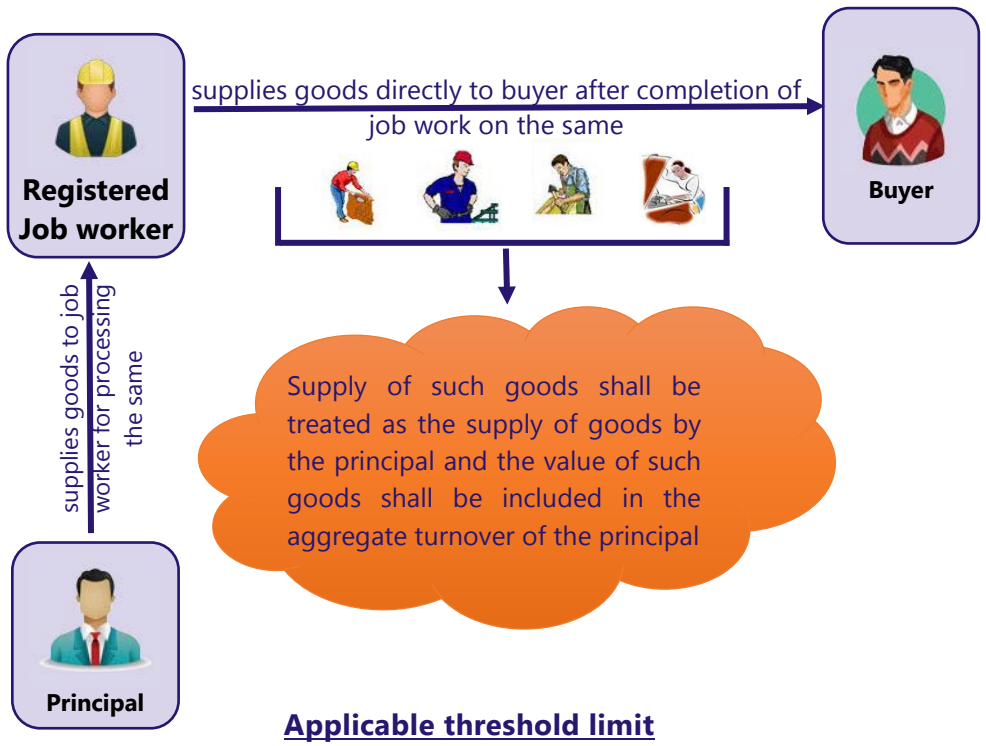
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In case the job worker is unregistered, principal should declare job worker's premises as his additional place of business and remove goods from the same.

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.***



If a person with places of business in different States across India has one branch in a Special Category State, the threshold limit for GST registration will be reduced to ₹ 10 lakh.

Further, Notification No. 10/2019 CT dated 07.03.2019 exempts any person who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 lakh, from registration requirement.

Exceptions to this exemption are as follows:

(a) persons required to take compulsory registration under section 24 of the CGST Act.

(b) persons engaged in making supplies of ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes.

(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 and are already covered in exception (a) above.

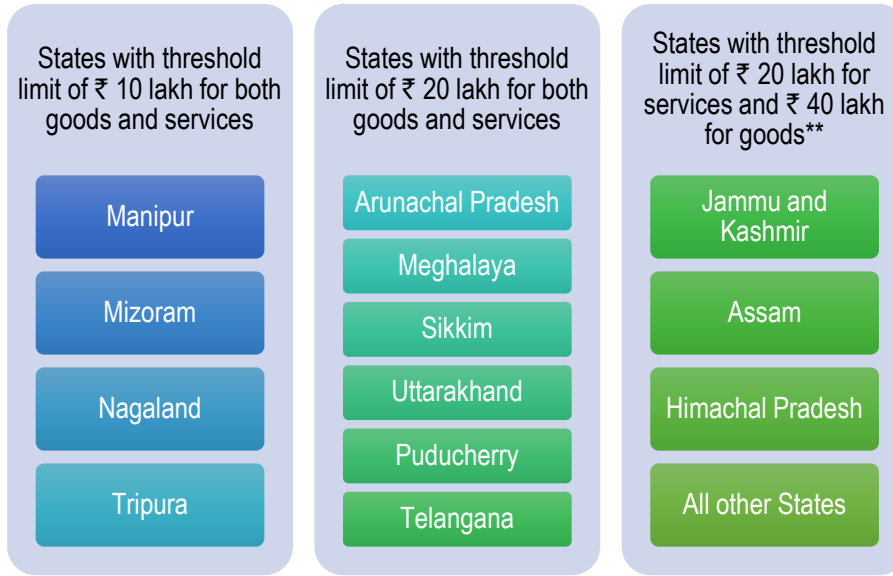
(d) Person who has opted for voluntary registration or such registered persons who intend to continue with their registration under the CGST Act.

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In view the above discussion, the registration requirements under GST can be summarised as follows:

			Threshold limit for persons engaged	
			exclusively in supply of goods	***in supply of services/ both goods & services***
States other than Special Category States		*Puducherry*	*₹ 20 lakh*	*₹ 20 Lakh*
		Telangana	*₹ 20 lakh*	*₹ 20 Lakh*
		Others	*₹ 40 lakh*	*₹ 20 Lakh*
Special Category States 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*
	Others	*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*

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persons engaged exclusively in supply of goods



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 above example, all other things remaining the same, Prithiviraj is exclusively engaged in 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 be ₹ 20 lakh. Thus, Prithiviraj will be liable to get registered under GST.



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

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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 above example, all other things remaining the same, Shivaji is exclusively engaged i n supply of taxable services instead of toys, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Shivaji will be liable to get registered under GST.

Further, if Shivaji is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ₹ 20 lakh only. Thus, Shivaji will be liable to get registered under GST.



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.

If in above example, all other things remaining the same, Ashoka is exclusively engaged in supply of taxable services instead of toys, 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.



Raghav of Assam is exclusively engaged in intra-State supply of readymade garments. Its turnover in the current FY from Assam showroom is ₹ 28 lakh. It 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, 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 required only for a place of business from where taxable supply takes place

A person is required to obtain registration with respect to his each place of business in India from where a taxable supply has taken place. However, a

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supplier is not liable to obtain registration in a State/UT from where he makes an exempt/non-taxable supply.



Uday Enterprises is engaged in supply of taxable goods in Maharashtra. It also supplies alcoholic liquor for human consumption from Nagaland. Its turnover in the current financial year is ₹ 34 lakh in Maharashtra and ₹ 8 lakh in Nagaland.

Since Uday Enterprises is exclusively engaged in making taxable supplies of goods from Maharashtra, the applicable threshold limit for obtaining registration is ₹ 40 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) are non-taxable supplies[1].

In the given case, since the aggregate turnover of Uday Enterprises exceeds the applicable threshold limit of ₹ 40 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 said State.

(iii) Person liable for registration in case of transfer of business



Where a business is transferred, whether on account of succession/ any other reason ***[including transfer/change in the ownership of business due to death of the sole proprietor[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

[1] *in terms of section 9(1) of CGST Act, 2017*

[2] *clarified vide Circular No. 96/15/2019 GST dated 28.03.2019*

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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 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 for a holistic discussion. The same 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:

(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.

(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 availing the benefit of exemption from registration as mentioned in point (i) above.

(3) **Persons who are required to pay tax under reverse charge.** However, persons engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis are exempt from registration.

(4) **Non-resident taxable persons (NRTP) making taxable supply.**

(5) **E-commerce: (i)** Every ECO (Electronic Commerce Operator) ***who is required to collect tax at source under section 52***, **(ii)** persons who supply goods and/or services, other than supplies specified under section 9(5), through such ECO who is required to collect tax at source under section 52, but 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.

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(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) Input Service Distributor, whether or not separately registered under this Act.

(9) every person supplying online information and data base access or retrieval (OIDAR) services from a place outside India to a person in India, other than a registered person; and

(10) persons who are required to pay tax under reverse charge under section 9(5) and

(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]

(i) Persons not liable to registration

Section 23 lists the persons who are not liable to registration. 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: As section 23, 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 CGST Act/ IGST Act shall not be liable to registration. This provision can be understood with the help of following examples:



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 wholly exempt from tax.

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example Bhavyajyoti Foundation, a charitable trust registered under section 12AA 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 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. Thus, Bhavyajyoti Foundation is not liable for registration as it is engaged exclusively 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) of the CGST Act as an individual/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 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.

example Deshbandhu is an agriculturist engaged in cultivation of wheat in his field in the State of Punjab. He was exclusively engaged in 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 decides to start trading in 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 rice.

Since he is engaged in trading of 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.

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(ii) Specified category of persons notified by the Government exempted from obtaining registration

Following category of persons have been notified as being exempted from obtaining registration under GST law:

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 ***[Notification No. 5/2017 CT dated 19.06.2017]***.



Manikaran Transporters is a Goods Transport Agency (GTA) engaged exclusively in supplying GTA services liable to tax under reverse charge [since tax is payable on GTA services @ 5% in the given case]. 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 said service to Diwakar Manufacturing Pvt. Ltd. whose aggregate turnover does not exceed the applicable threshold limit. Since Diwakar Manufacturing Pvt. Ltd. has to pay tax on GTA services [@ 5%] under reverse charge, it is required to obtain registration mandatorily irrespective of its aggregate turnover.

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, to be 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].***



Dhola & Co., located in Delhi, is engaged in supply of taxable goods[3] 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

[3] *other than notified handicraft goods*

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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 up to ₹ 20,00,000*

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:

(a) Persons making inter-State taxable supplies of notified[4] handicraft goods*.

(b) Persons making inter-State taxable supplies of notified products[5], when made by craftsmen predominantly by hand even though some machinery may also be used in the process.

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[4] 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.

[5] 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.

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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 [Notification No. 3/2018 IT dated 22.10.2018].***



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 in the month of April 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 aggregate turnover does not exceed ₹ 20 lakh as it has availed the exemption from registration under *Notification No. 03/2018 IT*[6].

D. Casual Taxable Persons making inter-State taxable supplies of notified handicraft 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***

[6] *Subject to fulfilment of other conditions prescribed under said notification.*

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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) of the CGST Act) 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 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 except Jammu & Kashmir).

Liability to register in respect of services provided by the commission agent for sale/ purchase of agricultural produce

Circular No. 57/31/2018 GST dated 04.09.2018, inter alia, clarifies as follows:

Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State[7]. 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 cases where the invoice is issued by Mr. B to the buyer, Mr. B is an agent as covered under Para 3. of Schedule I. Hence, 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 2 – Supply under GST.





[7] *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 clarified as follows:

(i) Since the services provided by the commission agent for sale or purchase of agricultural produce are exempt from GST vide *Notification No. 12/2017 CT (R) dated 28.06.2017 [Discussed in Chapter 4 – Exemptions from GST],* such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered in accordance with provisions of section 23(1)(a) [as discussed above].

(ii) As we have already seen, 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

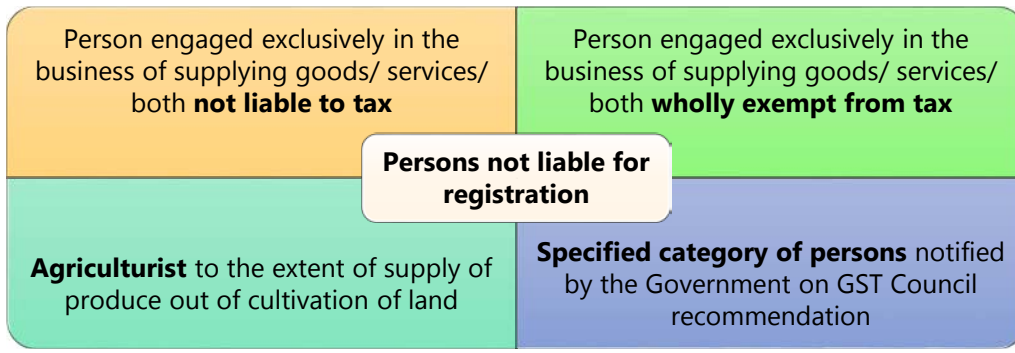
(b) the supplies made by the commission agent should be taxable.

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 [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.

(iii) However, where a commission agent is liable to pay tax under reverse charge, 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).

The provisions of section 23 can be summarized in the following diagram:



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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.***
(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*

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(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.*
(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*

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(11)	*A certificate of registration shall be issued in such form and with effect from such date as may be prescribed*
(12)	*A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period*
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-*

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	section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.
(3)	*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

Procedure for registration is governed by section 25 of the CGST Act read with 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 through Electronic Verification Code (EVC) [Aadhar OTP].

Around 30 forms/formats have been prescribed in the CGST Rules, 2017. 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 standard formats. 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
A casual taxable person or a non-resident taxable		at least 5 days prior to the commencement of

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person		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

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 are no centralized registrations under GST. A business entity having its branches in multiple States will have to take separate State-wise registration for the branches in different States.
- Further, within a State, an entity with different branches shall be granted single registration wherein it can declare one place as principal place of business (PPoB) and other branches as additional place of business (APoB).

(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 separate registration for each such place of business in the State, he has an option to obtain independent registrations with respect to each such separate place of business.***
- ***However, separate registration for each place of business shall be granted provided all separately registered places of business of such person 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. Separate registration application needs to be filed for each place of business.***

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- ***A registered person opting to obtain separate registration for a place of business shall submit a separate application in Form GST REG 01 in respect of such place of business.***
- ***The 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.***



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 (let's say Mumbai) and other two branches (Pune and Mahabaleshwar) 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 [subject 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 shall not 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 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

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voluntarily. In case of voluntary registration, all provisions of this Act, as are applicable to a registered person, shall apply to voluntarily registered person.

- However, once a person obtains voluntary registration, he has to pay tax even though his aggregate turnover does not exceed ₹ 20 lakh/ ₹ 10 lakh. Voluntary registration is usually obtained by the business 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 2– Supply under GST.*

(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]*.

(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. UIN granted is a centralized UIN i.e.

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it shall be applicable to the territory of India. A person having UIN is not 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 registration certificate within **3 working days** from the date of submission of application.

(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 Tribunal.

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 of the CGST Rules, 2017 respectively. The same have to be read in conjunction with section 25 provisions. However, procedure so laid down will not apply to:

- Non-resident taxable person
- A person required to deduct tax at source under section 51

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- A person required to collect tax at source under section 52
- A person supplying OIDAR (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 IGST Act who is liable to be registered under section 25(1)

Thus, procedure for registration prescribed under rules 8, 9 and 10 are 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.

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.

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. 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.***

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.



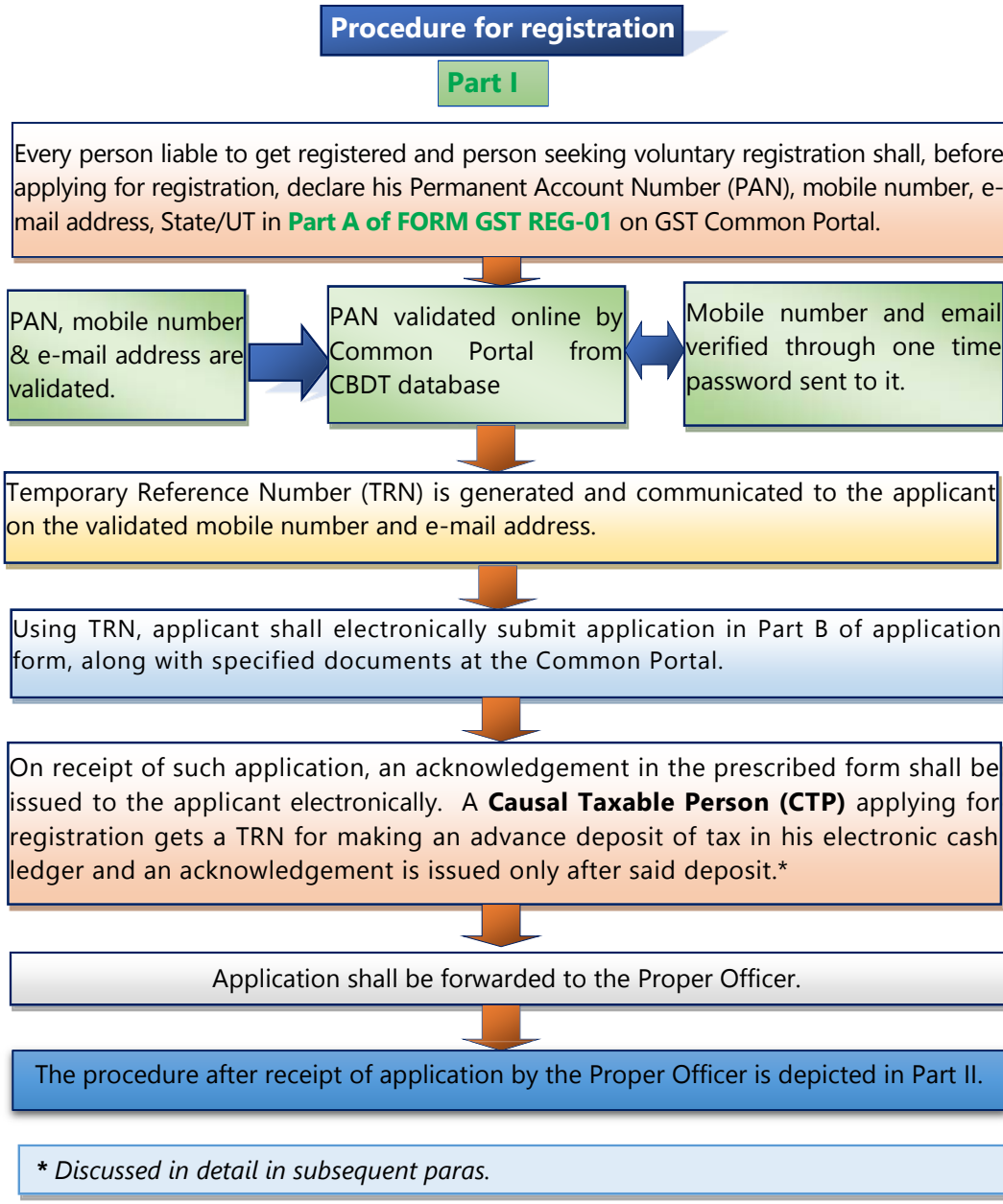
Suvarna Industries is engaged in manufacturing activities in Uttar Pradesh. It has two manufacturing units in UP - one in SEZ and another outside SEZ. Under GST, one registration per State is required. However, since in this case, one of the two units of Suvarna Industries is located in SEZ, it will have to compulsorily make a separate application for registration as a place of business distinct from unit located outside SEZ.

Application for registration by Input Service Distributor [Second proviso to rule 8(1) of the CGST Rules, 2017]: Every person being an Input Service Distributor shall make a separate application for registration

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as such Input Service Distributor. There is no threshold limit for registration for an ISD. An ISD is required to obtain a separate registration even though it may be otherwise registered, though the application shall be made in Form GST REG 01 only. Different offices like marketing division, security division etc. may apply for separate ISD registration.

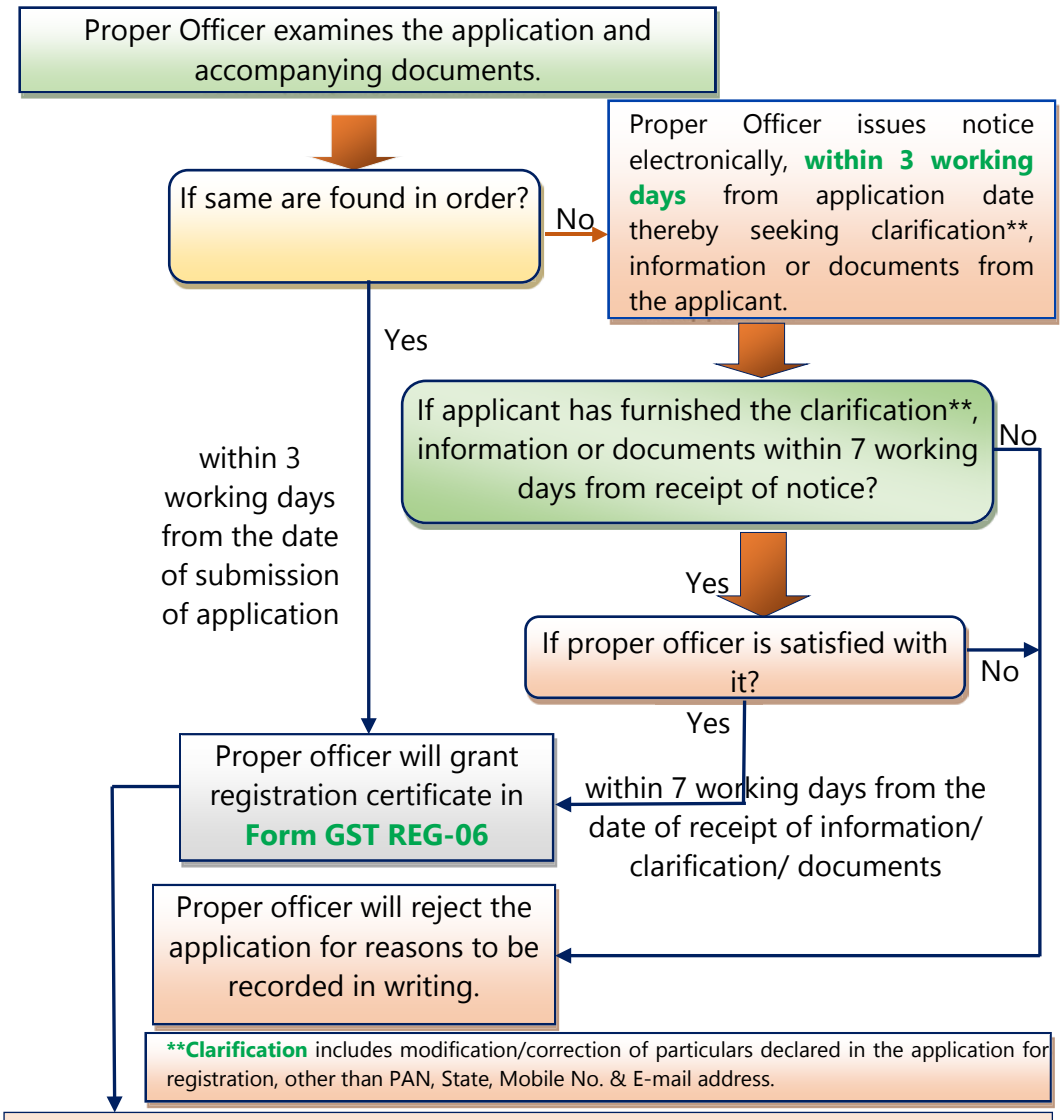
Procedure for registration has been depicted by way of a diagram on next page:



***** *Discussed in detail in subsequent paras.*

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Part II



**Clarification includes modification/correction of particulars declared in the application for registration, other than PAN, State, Mobile No. & E-mail address.

Deemed Approval of Application

If the proper officer fails to take any action -

- within **3 working days** from the date of submission of application, or
- within **7 working days** from the date of receipt of clarification, information or documents furnished by the applicant,

the application for grant of registration shall be deemed to have been approved.

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Physical verification of business premises in certain cases after grant of registration [Rule 25]

Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after grant of registration, he may get such verification done and the verification report along with other documents, including photographs, shall be uploaded in the prescribed form on the GST Common Portal, within 15 working days following the date of such verification.

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 principal place of business (PPoB) and additional place(s) of business (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

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 he becomes liable to registration**	the date on which he becomes liable to registration
after **30 days from the date he becomes liable to registration**	date of grant of registration

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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 liable to get registered by 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.

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:

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 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)]. He cannot exercise the option to pay tax under composition levy.

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Krishnadev & Co., engaged in supplying taxable goods, is registered in Rajasthan. It wishes to participate in a 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 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

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estimated tax liability. The **special registration procedure** pertaining to CTP and NRTP are as follows:

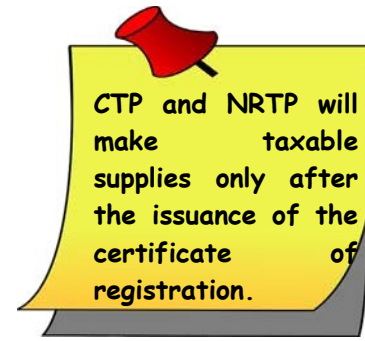
(A) Both CTP[8] and NRTP have to compulsorily get registered under GST irrespective of the threshold limit, at least 5 days prior to commencement of business.

(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.

He has to submit a self-attested copy of his **valid passport** along with the application signed by his authorized signatory who is an Indian Resident having valid PAN. However, in case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its PAN, if available.

Application will be submitted by NRTP in a different prescribed form whereas CTP will submit the application for registration in the normal form for application for registration i.e. Form GST REG 01 and his registration of CTP will be a PAN based registration.

(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.

[8] *Subject to exemption from registration under Notification No. 56/2018 CT dated 23.10.2018*

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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**** in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

Such person will get a TRN for making an advance deposit of tax which shall be credited to his electronic cash ledger. An acknowledgement of receipt of application for registration is issued only after said deposit.

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 as referred to in Point (C)(ii) above, such registered taxable person will deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.*

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]*.

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(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 cesses.

Grant of registration/UIN under any SGST Act/ UTGST Act is deemed to be registration/UIN granted under CGST Act provided application for registration has not been rejected under CGST Act.

Further, rejection of application for registration/UIN under SGST Act/UTGST Act is deemed to be rejection of application for registration under CGST Act.

(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]

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 in a State/UT where he does not have a physical presence, he shall mention name of said State/UT in Part A of prescribed application form for registration.

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

Registration will be cancelled if proper officer is satisfied that such person is no longer liable to deduct tax at source or 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.

(xiii) Special provisions for grant of registration in case of person supplying online information and data base access or retrieval services (OIDAR services) from a place outside India to a non-taxable online recipient [Rule 14]

Application for registration has to be submitted by such persons in a different prescribed form. They would be granted registration subject to

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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.gst.gov.in. for knowledge purposes.

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.*

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ANALYSIS

A registered person 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, principal place of business (other than change in State) or additional place of business (other than change in State). All 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 of CGST Rules, 2017.

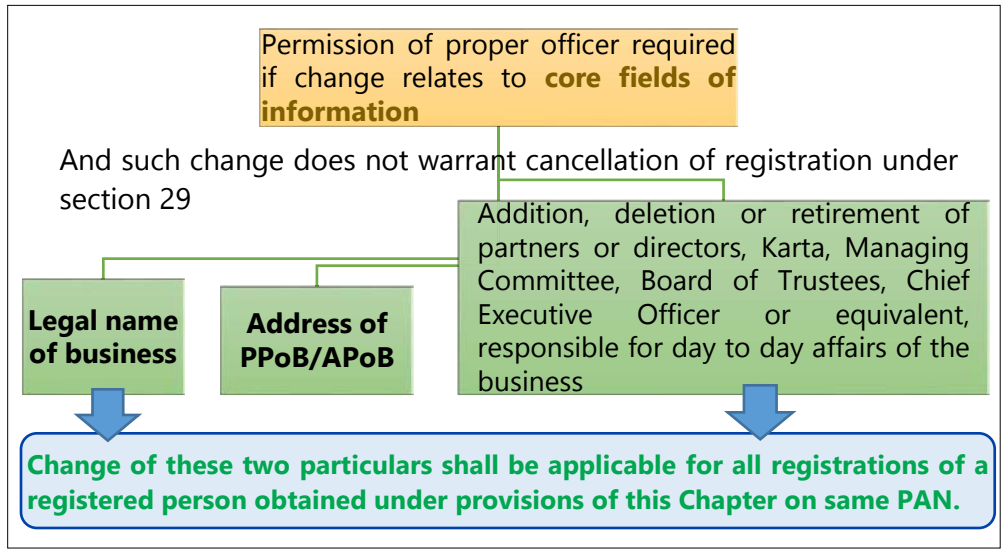
The significant aspects of the same are discussed hereunder:

- 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.

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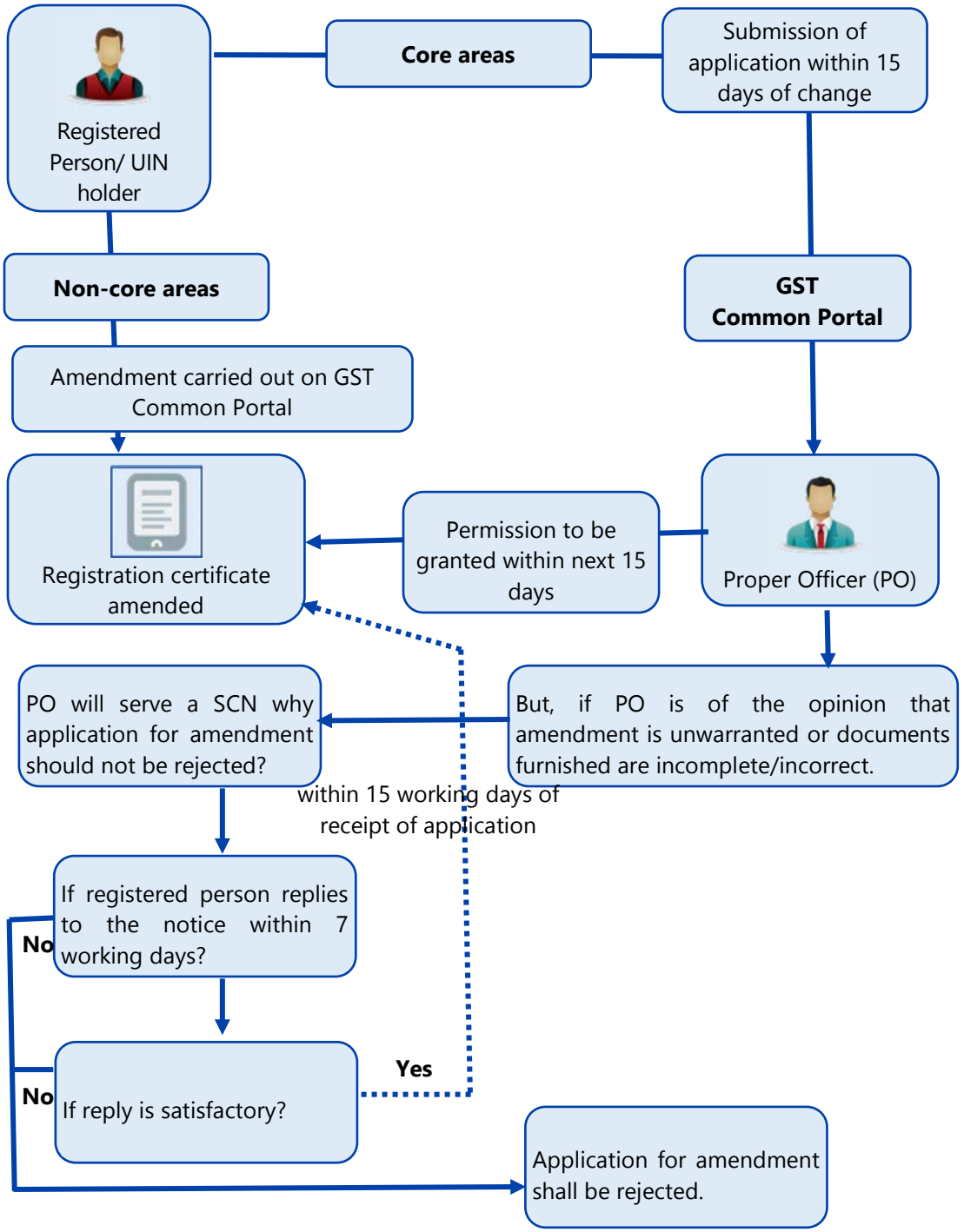
- Any rejection or approval of amendments under the SGST/UTGST Act shall be deemed to be a rejection or approval under this Act.
- Any particular of the application for registration shall not stand amended with effect from a date earlier than date of submission of application for amendment on common portal except with order of Commissioner for reasons to be recorded in writing and subject to conditions specified by Commissioner in the said order.
- 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



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.

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 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, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24*
	Provided that during pendency of the proceedings relating to	

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	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 returns for three consecutive tax periods*
	(c)	*any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months*
	(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 State Goods & Services Tax Act or Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.*	

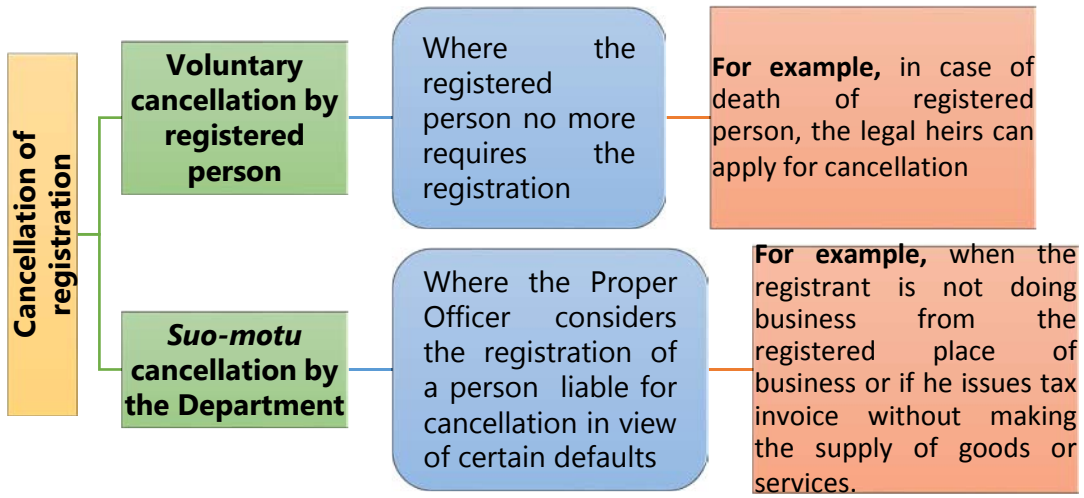
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(5)	*Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained 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.* *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 the prescribed manner within thirty days from the date of service of the cancellation order.*
(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.*
(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 of the CGST Rules, 2017. 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)]

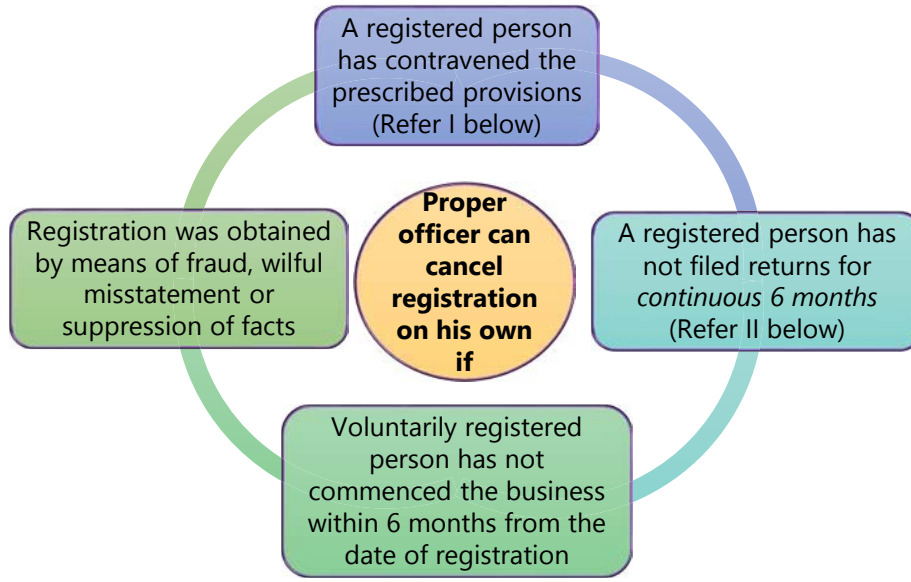
A. Circumstances when the registration can be cancelled either suo motu by proper officer or on an application of the registered person or his legal heirs (in case death of such person)

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 (other than voluntarily registered person) who is no longer liable to be registered under section 22 or section 24.

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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:



(I) Prescribed contraventions which make a registred 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 of the CGST Act. *Section 171 of the CGST Act, 2017 contains provisions relating to anti-profeetering measure*[9].

(II) 3 consecutive tax periods in case of a person who opted for composition levy.

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

[9] *Anti-profeetering measure shall be discussed in Chapter 24 – Miscellaneous Provisions.*

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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 filed. In this way, a taxpayer is freed from the routine compliances, including filing returns, under GST law during the pendency of the proceedings related to cancellation of registration.



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, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration.***

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.***

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.***

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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[10] 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 returns for a continuous period of 6 months (3 months in case of composition scheme supplier)[11] 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.

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[10] *under section 29(1)*

[11] *viz. contravention of the provisions contained in section 29(2)(b)/(c) of the CGST Act.*

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(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. He will direct the taxable person 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

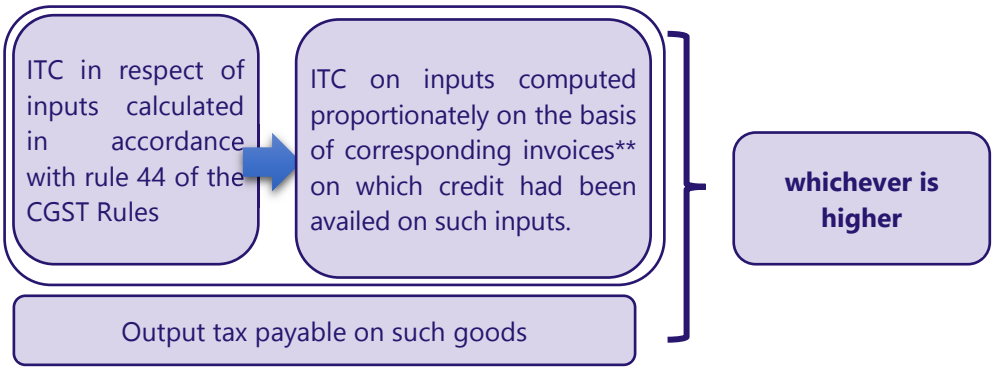
(ii) the output tax payable on such goods

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 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 of the CGST Rules, 2017. 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:

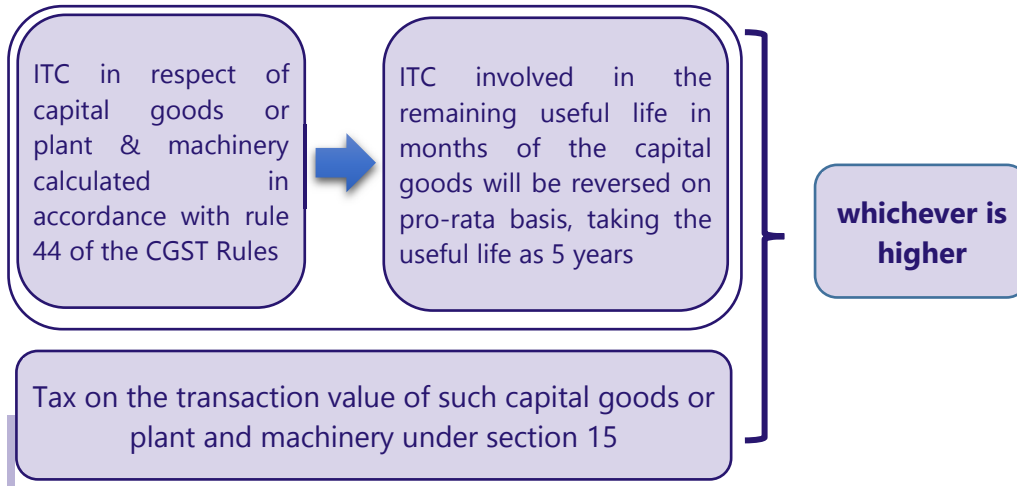


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** Discussed in detail in Chapter-8: Input Tax Credit*

***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:





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[12].

(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]

[12] *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.*

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- 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[13] [Section 29(3)]
- 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 registration will be issued and intimated to the primary authorized signatory by email and sms.
- Taxpayer would not be allowed to file return for the period after date of cancellation mentioned in the cancellation order. However, he can submit returns of the earlier period (i.e. for the period before date of cancellation mentioned in the cancellation order for which registration was active).

(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 may apply for revocation of the cancellation to such proper officer, **within 30 days** from the date of service of the order of cancellation of registration.
- If the proper officer is satisfied that there are sufficient grounds for revokation 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 of service of SCN. The proper officer shall dipose the application (accept/reject the same) within 30 days of receipt of clarification.

[13] *whether or not such tax and other dues are determined before or after the date of cancellation.*

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(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. 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.

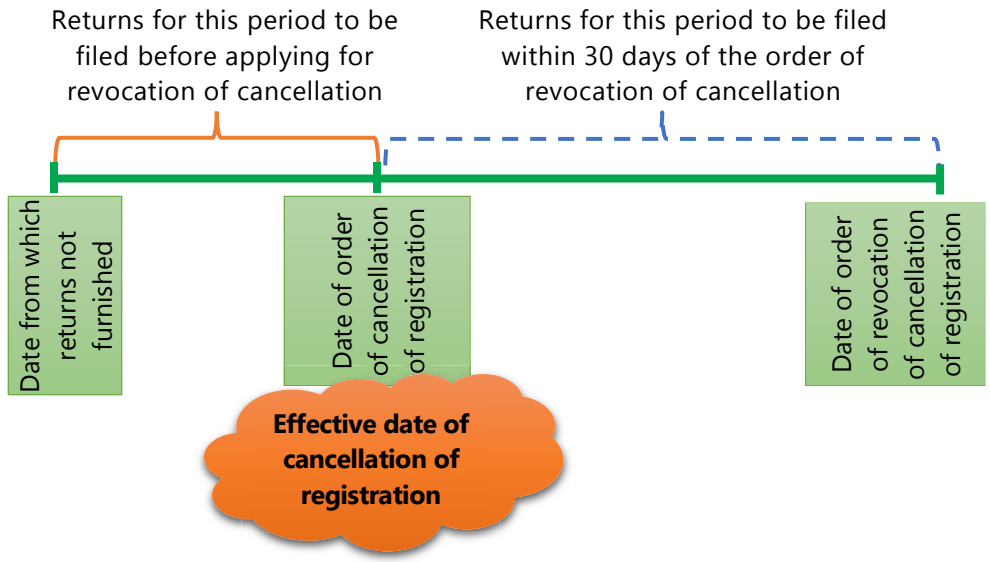
(1) Where the registration has been cancelled with effect from the date of order of cancellation of registration

As we have already seen that the common portal does not allow furnishing of returns 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.

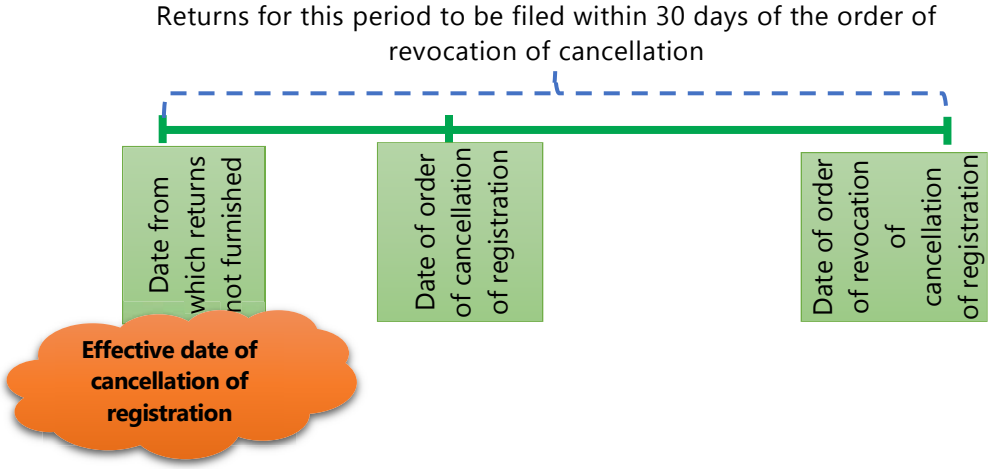
However, since the portal does not allow to furnish returns after the date of cancellation of registration, all returns due for the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished *within a period of 30 days from the date of the order of revocation*.

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(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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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

LET US RECAPITULATE

1. 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.

2. 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.

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Aggregate Turnover will be computed on All-India basis for same PAN

Applicable threshold limit

States with threshold limit of ₹ 10 lakh for both goods and services	•Manipur, Mizoram, Nagaland and Tripura
States with threshold limit of ₹ 20 lakh for both goods and services	•Arunachal Pradesh, Meghalaya, Sikkim, Uttarakhand, Puducherry and Telangana
States with threshold limit of ₹ 20 lakh for services and ₹ 40 lakh for goods (exclusive)	•Jammu and Kashmir, Assam, Himachal Pradesh, All other States

3. 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 tax at source
- Every person supplying online information and database access or retrieval services from a place outside India to a person in India other than a registered person
- Input Service Distributor, whether or not separately registered under this Act
- Person/ class of persons notified by the Central/ State Government

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4. 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
- Persons making inter-State supplies of taxable services up to ₹ 20 lakh**
- Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20 lakh**
- Casual Taxable Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20 lakh**
- Persons making supplies of services through an ECO (other than supplies specified under section 9(5) of the CGST Act) with aggregate turnover up to ₹ 20 lakh**

₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland

5. Where and by when to apply for registration?

Person who is liable to be registered under section 22 or section 24	A casual taxable person or a non-resident taxable person	A person who makes a supply from the territorial waters of India
•in every such State/UT in which he is so liable •within 30 days from the date on which he becomes liable to registration	•in every such State/UT in which he is so liable •at least 5 days prior to the commencement of business	•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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6. 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.

7. 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

8. 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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9. 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), mobile number, e-mail address, State/UT in **Part A of FORM GST REG-01** on GST Common Portal.

PAN, mobile number & e-mail address are validated.

PAN validated online by Common Portal from CBDT database

Mobile number and email verified through one time password sent to it.

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.

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A **Causal 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

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Part II

Proper Officer examines the application and accompanying documents.

If same are found in order?

No → Proper Officer issues notice electronically, **within 3 working days** from application date thereby seeking clarification**, information or documents from the applicant.

Yes

within 3 working days from the date of submission of application

If applicant has furnished the clarification**, information or documents within 7 working days from receipt of notice?

No

Yes

If proper officer is satisfied with it?

No

Yes

within 7 working days from the date of receipt of information/ clarification/ documents

Proper officer will grant registration certificate in **Form GST REG-06**

Proper officer will reject the application for reasons to be recorded in writing.

****Clarification** includes modification/correction of particulars declared in the application for registration, other than PAN, State, Mobile No. & E-mail address.

Deemed Approval of Application

If the proper officer fails to take any action -

- within **3 working days** from the date of submission of application, or
- within **7 working days** from the date of receipt of clarification, information or documents furnished by the applicant,

the application for grant of registration shall be deemed to have been approved.

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10. Special procedure for registration of CTD and NRTD

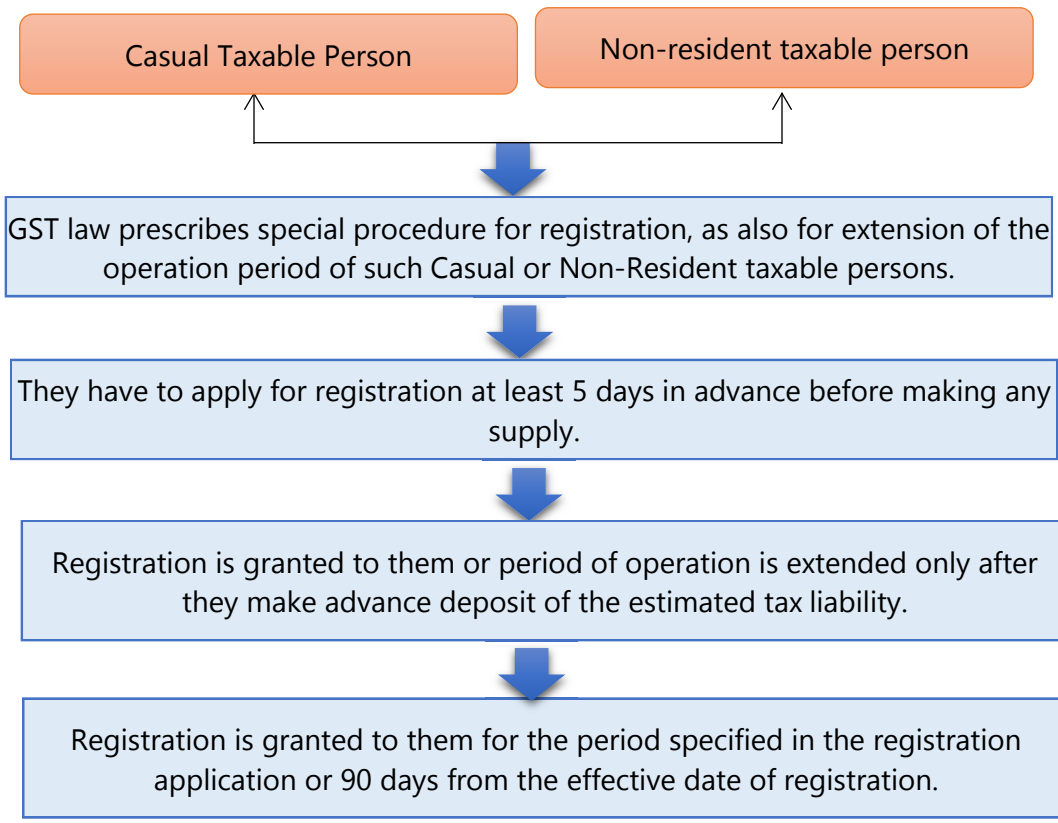
Casual Taxable Person

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.



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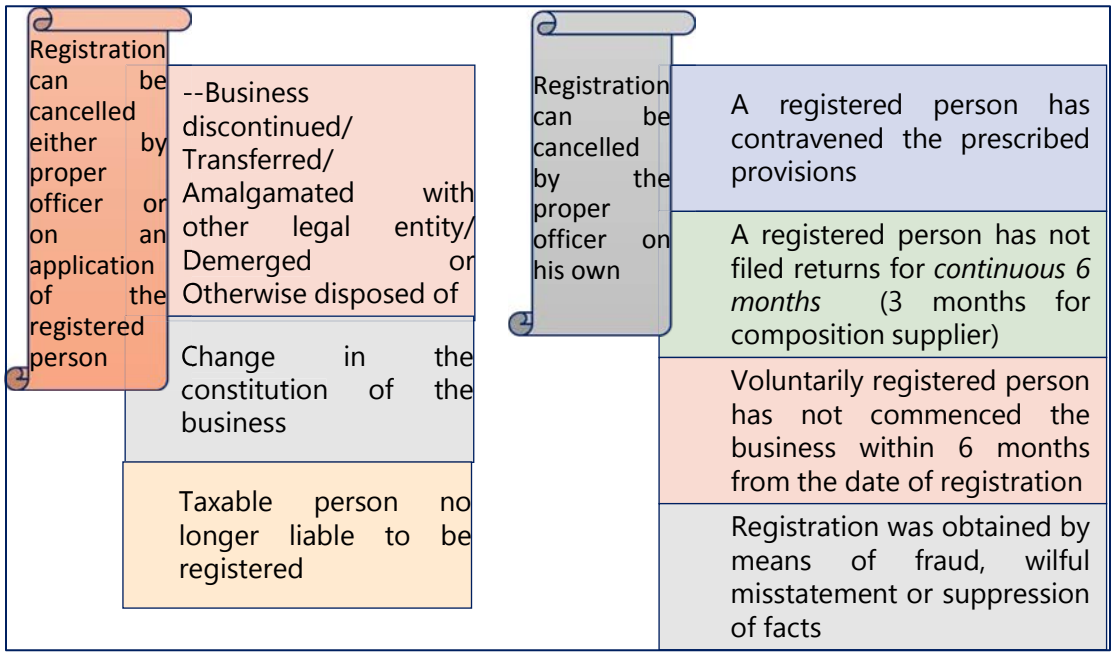
11. Amendment of Registration

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.

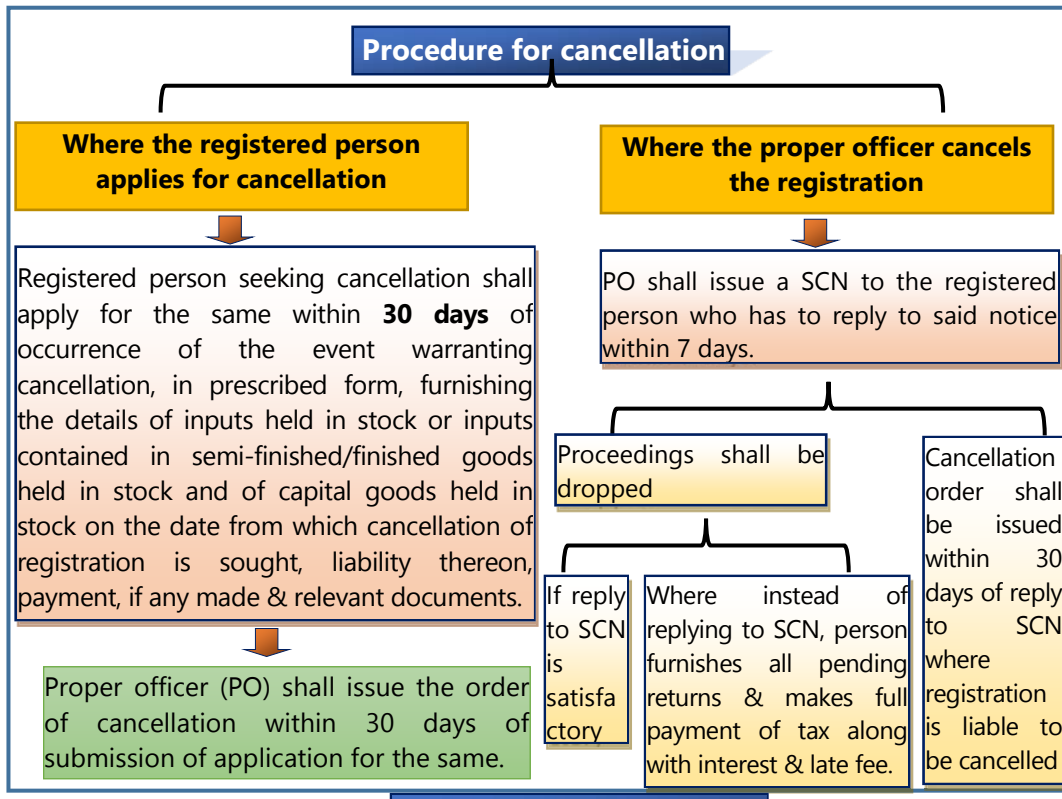
For changes in non-core fields, no approval of the Proper Officer is required, and the amendment can be affected by the taxable person on his own on the common portal.

12. Cancellation or suspension of registration and revocation of cancellation of registration



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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.



Revocation of cancellation

In case where registration is cancelled *suo-motu* by the proper officer, the taxable person can apply within 30 days 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.

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TEST YOUR KNOWLEDGE

1. *Determine the effective date of registration in following cases:*

   (a) *The aggregate turnover of Dhampur Footwear Industries of Delhi has exceeded the applicable threshold limit of ₹40 lakh on 1st September. It submits the application for registration on 20th September. Registration certificate is granted to it on 25th September.*

   (b) *Mehta Teleservices is an architect in Lucknow. Its aggregate turnover exceeds ₹ 20 lakh on 25th October. It submits the application for registration on 27th November. Registration certificate is granted to it on 5th December.*

2. *In order to be eligible for grant of registration, a person must have a Permanent Account Number issued under the Income- tax Act, 1961. State one exception to it.*

3. *State which of the following suppliers are liable to be registered:*

   (a) *Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed the applicable threshold limit during the financial year.*

   (b) *An agriculturist who is only engaged in supply of produce out of cultivation of land and its aggregate turnover does not exceed the applicable threshold limit during the financial year.*

4. *What are the advantage of taking registration in GST?*

5. *Can a person without GST registration collect GST and claim ITC?*

6. *If a person is making taxable supplies from different States, with the same PAN number, can he operate with a single registration?*

7. *Can a person having places of business in a State obtain separate registrations for each place of business?*

8. *Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?*

9. *Can the Department, through the proper officer, suo-moto proceed to register a person under GST?*

10. *Whether the registration granted to any person is permanent?*

11. *Is it necessary for the UN bodies to get registration under GST?*

12. *What is the responsibility of the taxable person making supplies to UN bodies?*

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13. *What is the validity period of the registration certificate issued to a casual taxable person and non- resident taxable person?*

14. *What happens when the registration is obtained by means of willful mis-statement, fraud or suppression of facts?*

15. *Is there an option to take centralized registration for services under GST Law?*

16. *What could be the liabilities (in so far as registration is concerned) on transfer of a business?*

17. *At the time of registration, will the assessee have to declare all his places of business?*

18. *Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?*

ANSWERS/HINTS

1. (a) Every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit [₹ 40 lakh in this case] in a finacial year [Section 22 read with *Notification No. 10/2019 CT dated 07.03.2019*]. Since in the given case, the turnover of Dhampur Industries exceeded ₹ 40 lakh on 1st September, it becomes liable to registration on said date

   Further, since the application for registration has been submitted within 30 days from such date, the registration shall be effective from the date on which the person becomes liable to registration [Section 25 read with rule 10 of the CGST Rules, 2017]. Therefore, the effective date of registration is 1st September.

   (b) Since in the given case, the turnover of Mehta Teleservices exceeds the applicable threshold limit [₹ 20 lakh] on 25th October, it becomes liable to registration on said date.

   Further, since the application for registration has been submitted after 30 days from the date such person becomes liable to registration, the registration shall be effective from the date of grant of registration. Therefore, the effective date of registration is 5th December.

2. A Permanent Account Number is mandatory to be eligible for grant of registration. One exception to this is a non-resident taxable person. A non-resident taxable person may be granted registration on the basis of other prescribed documents instead of PAN. He has to submit a self-attested copy

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of his valid passport along with the application signed by his authorized signatory who is an Indian Resident having valid PAN and application will be submitted in a different prescribed form [Section 25(6) & (7)].

3. (a) Section 22 stipulates that every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit in a financial year. However, as per section 24, a person supplying goods/services or both on behalf of other taxable persons whether as an agent or not is liable to be compulsorily registered even if its aggregate turnover does not exceed the applicable threshold limit during the financial year.

   (b) As per section 23, an agriculturist who is only engaged in supply of produce out of cultivation of land is not required to obtain registration.

4. Registration will confer following advantages to the business:

   - Legally recognized as supplier of goods or services.
   - Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
   - Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.
   - Become eligible to avail various other benefits and privileges rendered under the GST laws.

5. No, a person without GST registration can neither collect GST from his customers nor can claim any input tax credit of GST paid by him.

6. No. Every person who is liable to take a registration will have to get registered separately for each of the States where he has a business operation (and making taxable supplies) provided his aggregate turnover exceeds applicable threshold limit.

7. Yes. In terms of the proviso to sub-section (2) of section 25, a person having multiple places of buiness in a State may obtain a separate registration for each place of business, subject to such conditions as may be prescribed.

8. Yes. In terms of sub-section (3) of section 25, a person, though not liable to be registered under sections 22 or 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

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9. Yes. In terms of sub-section (8) of section 25, where a person who is liable to be registered under GST law fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under CGST Act, or under any other law for the time being in force, proceed to register such person in the manner as is prescribed in the CGST Rules, 2017.

10. Yes, the registration certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.

11. Yes. In terms of section 25(9) of the CGST Act, all notified UN bodies, Consulate or Embassy of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal.

    The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid on notified supplies of goods and services received by them, and for any other purpose as may be notified.

12. The taxable supplier making supplies to UN bodies is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B).

13. In terms of section 27(1) read with proviso thereto, the certificate of registration issued to a "casual taxable person" or a "non-resident taxable person" shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.

14. In such cases, the registration may be cancelled with retrospective effect by the proper officer [Section 29(2)(e)].

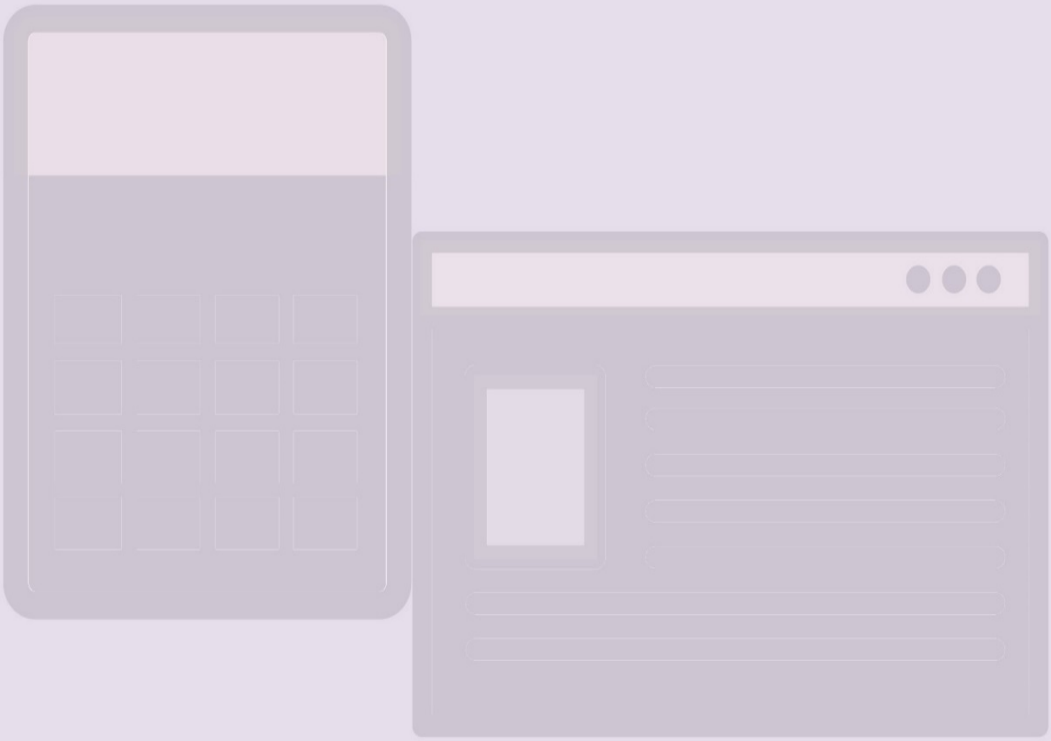
15. No, the tax paper has to take separate registration in every State from where he makes taxable supply of services.

16. The transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from the date of such transfer or succession [Section 22(3)].

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17. Yes. The principal place of business and place of business have been separately defined under section 2(89) & 2(85) of the CGST Act respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.

18. Yes, as per section 29(5) of the CGST Act, every registered taxable person whose registration is cancelled shall pay an amount, by way of debit in the 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.



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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST 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 time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 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[14] relating to registration 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 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
Sub-section (1) of section 22 "Every supplier shall be liable ..... and limitations, as may be so notified."	**Sub-section (1) of section 22- Second proviso and explanation inserted** "Every supplier shall be liable ..... 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**	Second proviso is being inserted to section 22(1) empowering Government to enhance the threshold limit for registration from ₹ 20 lakh to ₹ 40 lakh at the request of a State & on the recommendations of the GST Council, in case of a supplier who is engaged exclusively in the supply of goods, subject to specified conditions. Presently, the enhanced threshold limit has been made effective for some

[14] *Provisions existing as on the date when the Study Material was released for printing*

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	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.**	States by way of exemption *Notification No. 10/2019 CT dated 07.03.2019*. One major relaxation proposed to be extended is that a person shall be considered to be engaged exclusively in the supply of goods even if he 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. Presently, this relaxation is not available under *Notification No. 10/2019 CT*.
	<u>New sub-sections (6A) o (6D) inserted in section 25</u> **<u>Sub-section (6A)</u>** 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,	New sub-sections are being inserted in section 25 of the CGST Act to make Aadhaar authentication mandatory for specified class of new taxpayers and to prescribe the manner in which certain class of registered taxpayers are required to undergo Aadhaar authentication.

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	prescribe. Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration. **Sub-section (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. **Sub-section (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	

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	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. **Sub-section (6D)** The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification. Explanation—For the purposes of this section, the expression "Aadhaar number" shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.	

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CHAPTER 10

TAX INVOICE, CREDIT AND DEBIT NOTES



LEARNING OUTCOMES

This Chapter will equip you to –

- describe and analyse 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
- explain the provisions relating to revised tax invoice, bill of supply, receipt voucher, refund voucher, payment voucher, etc.
- identify the cases where no tax invoice is required to be issued and identify the suppliers of taxable service who are permitted to issue any document other than tax invoice
- 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. 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, debit and credit 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.

Before proceeding to understand the provisions of Tax Invoice, Credit and Debit Notes, let us first go through few relevant definitions.

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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)].

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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 [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.*
(2)	*A registered person supplying taxable services shall, before or after*

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	the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed: *Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which––* *(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or* *(b) tax invoice may not be issued.*
(3)	*Notwithstanding anything contained in sub-sections (1) and (2)–* *(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;* *(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than 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 a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;*

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	(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 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.*
(4)	*In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.*
(5)	*Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—* *(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;* *(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;* *(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.*
(6)	*In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.*

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(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.



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.



There is no format prescribed for the Tax Invoice. Only certain fields have been prescribed as mandatory fields. Further, invoices may be issued manually or electronically. Issuance of electronic invoices is not mandatory.

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 services.

A registered person supplying taxable goods shall issue a tax invoice, before

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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 thereof to the recipient.

The Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

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.

<table>
<tr><th>In case of taxable supply of goods</th><th>In case of taxable supply of services</th></tr>
<tr><td>Invoice shall be issued before or at the time of,—</td><td>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.</td></tr>
<tr><td>(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or</td><td>*45 days in case of an insurer or banking company or financial institution, including a non- banking financial company (NBFC)</td></tr>
<tr><td>(b) delivery of goods or making available thereof to the recipient, in any other case.</td><td>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</td></tr>
</table>

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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**.

example 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.

example 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:

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(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 invoice book with him so that he can issue the invoice in accordance within the time stipulated above, once the supply is fructified.

(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**
₹ 50,000 or more	Name and address of the recipient and the address of delivery, along with the name of State and its code

[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 11 – Accounts and Records; E-way Bill.*

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less than ₹ 50,000	unregistered recipient may still request the aforesaid details to be recorded in the tax invoice
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. ***However, the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000.***	

(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 HSN code for goods or services, that a class of registered persons

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shall be required to mention, for such period as may be specified in the said notification.

(ii) the class of registered persons that would not be required to mention the HSN code for goods or services, for such period as may be specified in the said notification.

This provision is also applicable to Bill of Supply *[The concept of Bill of Supply is discussed in subsequent paras]*.

In this regard, ***Notification No. 12/2017 CT dated 28.06.2017*** has notified the following:

S.No.	Annual Turnover (AT) in the preceding FY	Number of Digits of HSN Code
1.	AT ≤₹ 1.5 crores	Nil
2.	₹ 5 crores ≥AT >₹ 1.5 crores	2
3.	AT >₹ 5 crores	4

(vi) Manner of issuing the invoice [Sections 31(1) & (2) read with rule 48]

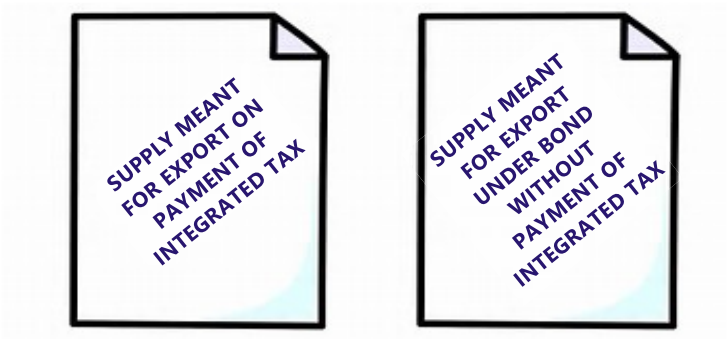
In case of taxable supply of goods	In case of taxable supply of services
Invoice shall be prepared in TRIPLICATE	Invoice shall be prepared in **DUPLICATE**
	
Original copy → ORIGINAL FOR RECIPIENT Duplicate copy → DUPLICATE FOR TRANSPORTER Triplicate copy → TRIPLICATE FOR SUPPLIER	Original copy → ORIGINAL FOR RECIPIENT Duplicate copy → DUPLICATE FOR SUPPLIER

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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].

(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 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.



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:

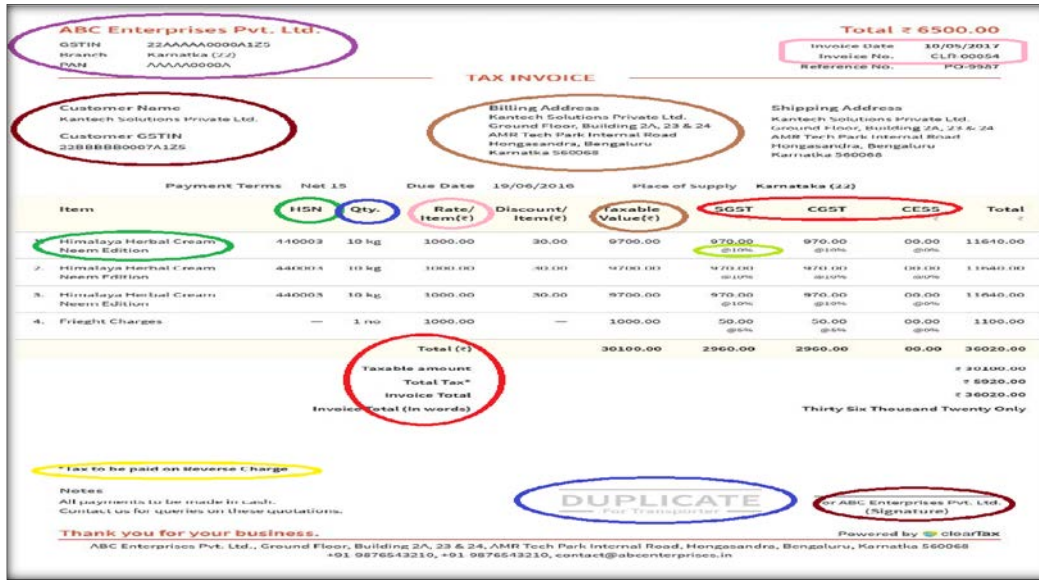
1. All GST taxpayers are free to design their own Tax Invoice Format.
2. The law requires that only certain fields as mandatory fields in the Tax Invoice. The same have been listed under heading (iv) above. The mandatory fields have also been circled in the following Sample Tax Invoice.

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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.

4. In order to keep the compliance burden low for the small tax payers, taxpayers with annual turnover of ₹1.5 crores need not mention the HSN code of the goods in the invoices.

Sample Tax Invoice



B. SPECIAL CASES

(i) Revised Tax Invoice [Section 31(3)(a) read with rule 53]

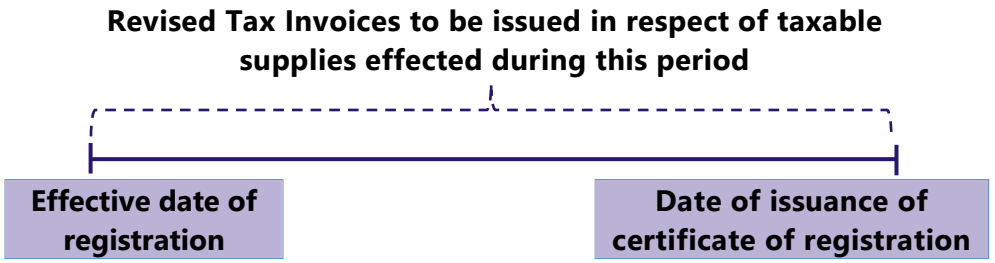
When issued?

- 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. Such invoices shall be issued against the invoices already issued during said period.
- 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.

*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].*

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- 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.



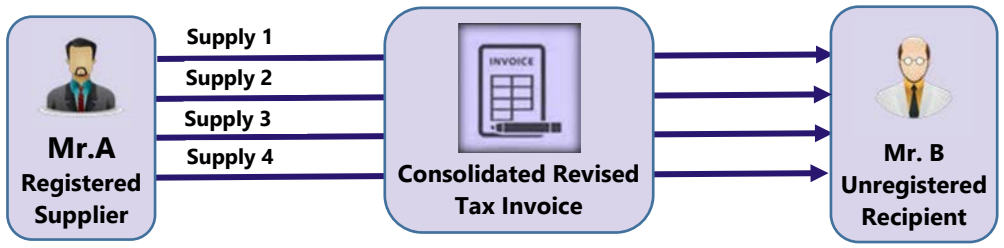
example

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 30 days of becoming liable to registration, registration granted is effective from 3rd September.

Sarabhai Private Ltd. may issue Revised Tax Invoices 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**.



Supplies between date of grant of certificate of registration & effective date of registration

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However, **in case of inter-State supplies**, a consolidated Revised Tax Invoice cannot be issued in respect of all unregistered recipients if the value of a supply exceeds ₹ 2,50,000.

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;
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*

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

Section 130 - *Confiscation of goods or conveyances and levy of penalty*

(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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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.

Above provision is also applicable to Bill of Supply.

ILLUSTRATION

Jain & Sons is a trader dealing in stationery items. It is registered under GST and has undertaken following sales during the day:

S. No.	Recipient of supply	Amount (₹)
1.	Raghav Traders - a registered retail dealer	190
2.	Dhruv Enterprises – an unregistered trader	358
3.	Gaurav – a Painter [unregistered]	500
4.	Oberoi Orphanage – an unregistered entity	188
5.	Aaradhya – a Student [unregistered]	158

None of the recipients require a tax invoice [Raghav Traders being a composition dealer].

Determine in respect of which of the above supplies, Jain & Sons may issue a Consolidated Tax Invoice instead of Tax Invoice at the end of the day?

SOLUTION

In the given illustration, Jain & Sons can issue a Consolidated Tax Invoice only with respect to supplies made to Oberoi Orphanage [worth ₹ 188] and Aaradhya [worth ₹ 158] as the value of goods supplied to these recipients is less than ₹ 200 as also these recipients are unregistered and don't require a tax invoice.

As regards the supply made to Raghav Traders, although the value of goods

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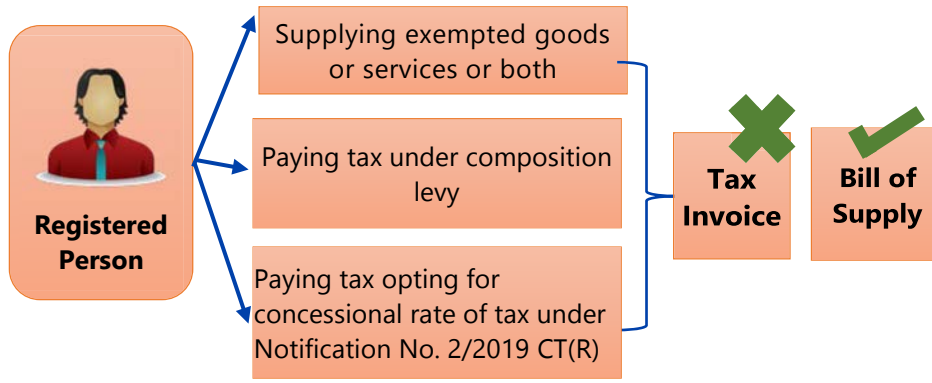
supplied to it is less than ₹ 200, Raghav Traders is registered under GST. So, Consolidated Tax Invoice cannot be issued.

Consolidated Tax Invoice can also not be issued for supplies of goods made to Dhruv Enterprises and Gaurav although both of them are unregistered. The reason for the same is that the value of goods supplied is not less than ₹ 200.

(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. ***These provisions have also been made applicable[2] to a person paying tax at concessional rate under Notification No. 2/2019 CT (R) dated 07.03.2019.***

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. ***Similarly, a person opting for paying tax at concessional rate under Notification No. 2/2019 CT (R) will have the following words at its top - 'taxable person paying tax in terms of Notification No. 2/2019 CT (R) dated 07.03.2019, not eligible to collect tax on supplies'.***



Particulars of Bill of Supply



A registered person opting for the composition levy as also ***person paying tax at concessional rate under Notification No. 2/2019*** do not collect tax from the recipient on outward supplies made by him. Similarly, in

[2] vide ***Order No. 3/2019 CT dated 08.03.2019***

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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, ***person paying tax at concessional rate under Notification No. 2/2019*** and a registered person supplying exempted goods and/or services, Bill of Supply issued by such persons does not contain the details pertaining to rate of tax and amount of tax. Further, value to be mentioned in the Bill of Supply is not also taxable value.

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/ digital signature of supplier/his authorized representative. ***However, signature or digital signature of the supplier or his authorized representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology 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.



Patel & Sons is a manufacturer of goods who has opted for composition levy under section 10. It will issue a Bill of Supply to the buyers of goods and not the tax invoice.

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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.

(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);
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

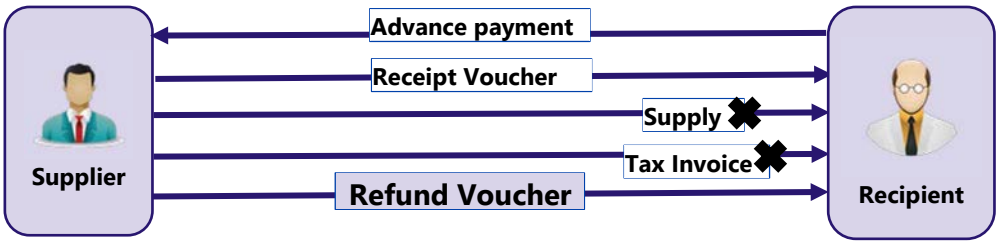
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Where at the time of receipt of advance, rate of tax and/or nature of supply is not determinable

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.



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

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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 second proviso to rule 46 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. Such supplies can be received from a registered or an unregistered supplier [Section 9(3)].

Further, a builder/promoter is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:

(i) A builder/promoter must purchase 80% of inputs and input services used in supplying the service from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

(ii) Where cement is received from an unregistered person, promoter/builder has to pay tax on supply of such cement on reverse charge basis and

(iii) GST on capital goods 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 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. Thus, a recipient liable

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to pay tax by virtue of section 9(3) has to issue invoice only when supplies have been received from an unregistered supplier.

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);
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

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(vii) Delivery challan [Rule 55]

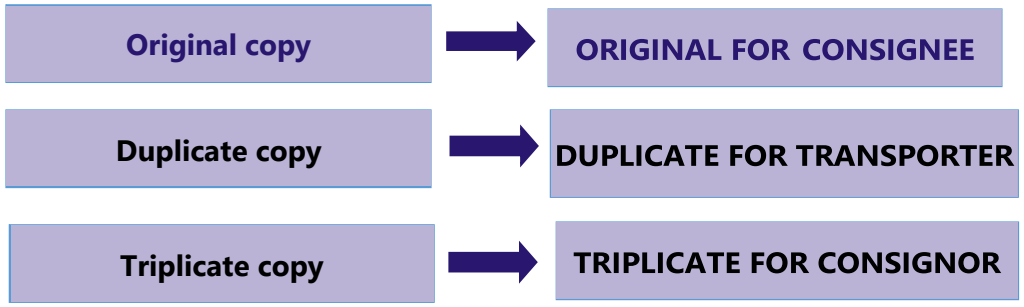
A. Rule 55 specifies the cases where at the time of removal of goods, goods may be removed on delivery challan. These are provided in the following table:

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) 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

B. Delivery challan in Triplicate

The delivery challan shall be prepared **in TRIPLICATE**, in case of supply of goods, in the following manner:

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C. 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[3].

D. 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 goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

E. 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.

[3] *The provisions of E-way Bill have been discussed in Chapter-11: Accounts and Records; E-way Bill*

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F. Delivery challan to be issued for goods moved for supply on approval basis and art works sent by artists to galleries for exhibition



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 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––

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(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 institution, including NBFC	• Serial number (It is not mandatory for a bank/ insurance company to serially number the invoices/ document). • Address of the recipient of taxable service.	Other information (other than serial no. and address of recipient) as prescribed for a Tax Invoice, under rule 46. 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***

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		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
		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.***

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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*

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	any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient ***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 September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:* *Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.*
(3)	*Where* ***one or more tax invoices have*** *been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient* ***one or more debit notes for supplies made in a financial year*** *containing such particulars as may be prescribed.*
(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, there can be situations like:

- The supplier has erroneously declared a value which is more than the actual value of the goods or services provided.
- The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
- The quantity received by the recipient is less than what has been declared in the tax invoice.
- The quality of the goods or services or both supplied is not to the satisfaction of the recipient thereby necessitating a partial or total reimbursement on the invoice value
- Any other similar reasons.

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.

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 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.

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It is important to note that credit note(s) are not permitted to be issued in case secondary discounts[4] 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].

Secondary discounts

(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 kind of the goods or services or both supplied.
- The quantity received by the recipient is more than what has been declared in the tax invoice.
- Any other similar reasons.

In order to regularize these kinds of 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 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

[4] *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) of the CGST Act are not satisfied. Refer Chapter 7 - Value of Supply for detailed discussion on the same.*

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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.

(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) September 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.

Procedure in case of return of time expired medicines/drugs[5]

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

[5] *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.*

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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 treatment in such case has already been discussed in Chapter 8: 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,

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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].*

Illustration

Date of Supply*	Date of return**	Treatment in terms of tax liability & credit
01.07.2018	20.09.2019	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.
01.07.2018	20.10.2019	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.

* 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

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been issued. The tax liability shall be adjusted in such manner as may be prescribed.

(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

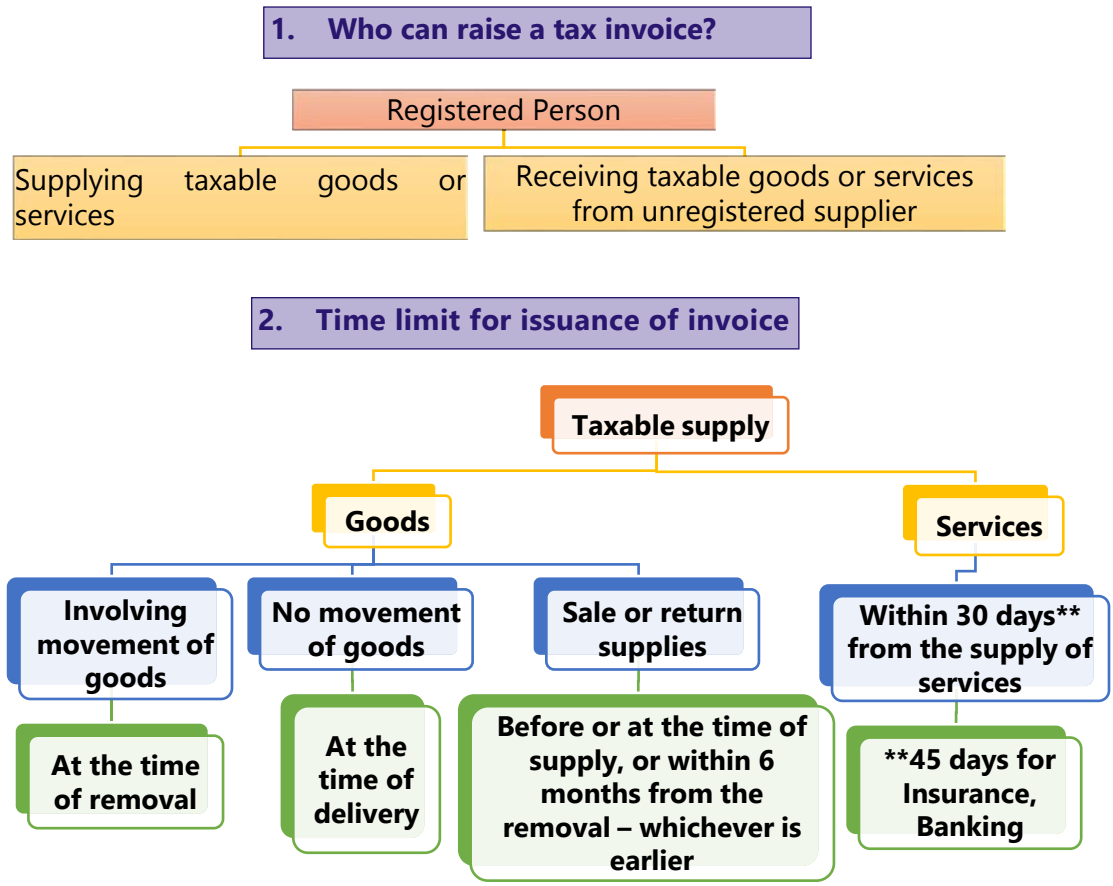
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of goods or services or both any amount by way of tax under this Act. No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

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



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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

3. Important contents of tax invoice

GSTIN of supplier	Consecutive Serial Number & date of issue	GSTIN of recipient, if registered	Name & address of recipient, 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 authorised signatory

4. 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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5. 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 (CTRI) may be issued in respect of taxable supplies made to an **unregistered recipient** during this period

In case of inter-State supplies, **CTRI** cannot be issued in respect of all unregistered recipients if the value of a supply exceeds ₹ 2,50,000 during this period.

6. 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

7. Bill of Supply

Registered Person

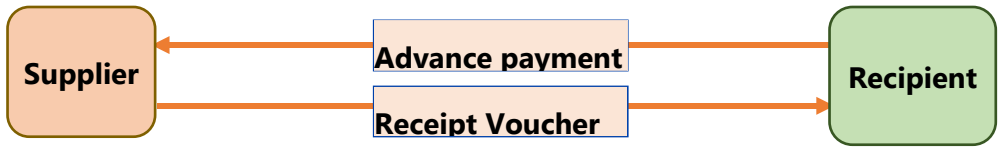
- Supplying exempted goods or services or both
- Paying tax under composition levy
- Paying tax at concessional rate under Notification No. 2/2019 CT(R)

✗ **Tax Invoice**

✓ **Bill of Supply**

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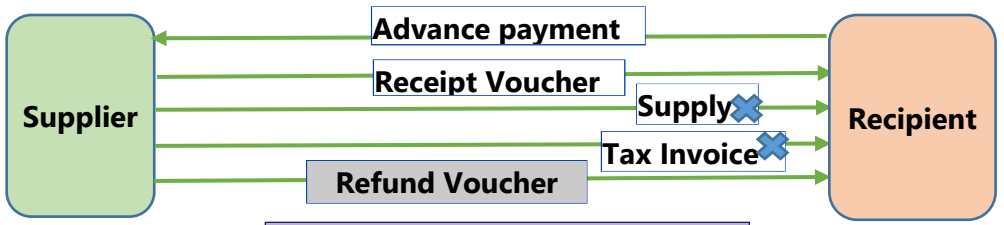
8. Receipt Voucher



Where at the time of receipt of advance, rate of tax/ nature of supply is not determinable

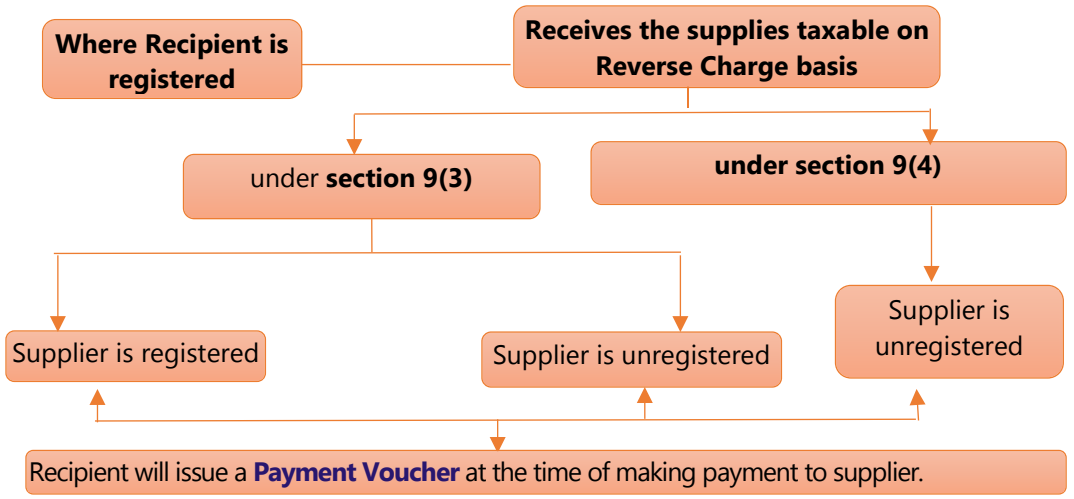
Where at the time of receipt of advance	
(i) rate of tax is not determinable	tax shall be paid at the rate of **18%**
(ii) nature of supply is not determinable	same shall be treated as **inter-State supply**

9. Refund Voucher

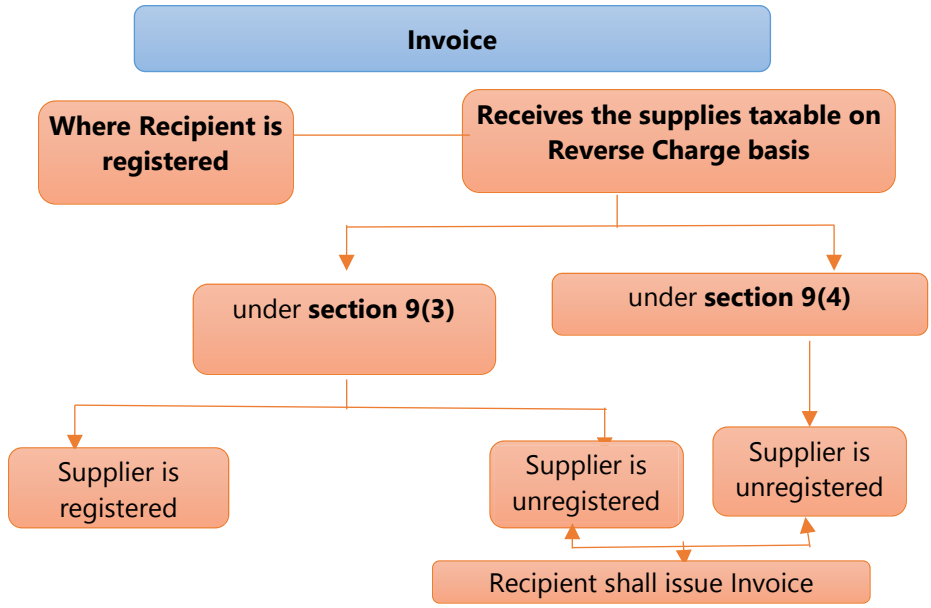


10. Invoice and Payment Vouchers

Payment Voucher



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11. Credit Notes

Where ***one or more tax invoices have*** 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

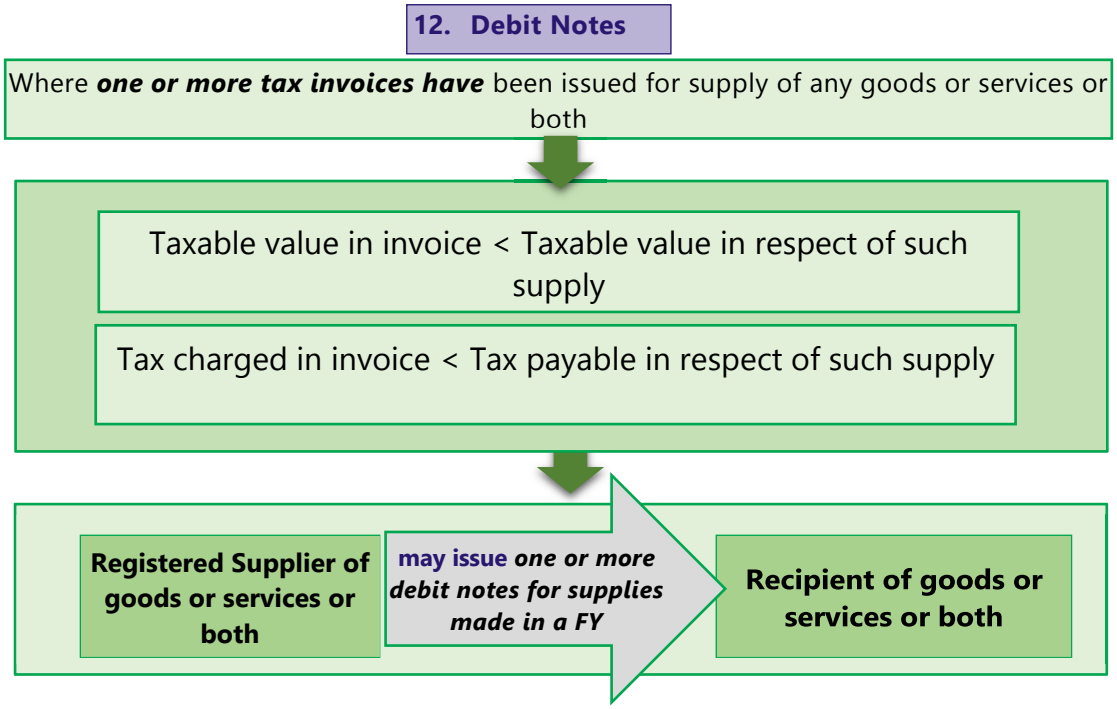
where goods or services or both supplied are found to be deficient

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

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TEST YOUR KNOWLEDGE

1. *Sultan Industries Ltd., Delhi, entered into a contract with Prakash Entrepreneurs, Delhi, for supply of spare parts of a machine on 7th September. The spare parts were to be delivered on 30th September. Sultan Industries Ltd. removed the finished spare parts from its factory on 29th September. Determine the date by which invoice must be issued by Sultan Industries Ltd. under GST law.*

2. *MBM Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances. On April 1, it has entered into an annual maintenance contract with P for its Air Conditioner and Washing Machine. As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered. During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract. When should MBM Caretakers issue the invoice for the services rendered?*

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3. *The aggregate turnover of Sangri Services Ltd., Delhi exceeded ₹ 20 lakh on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September. You are required to advice Sangri Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.*

4. *Shyam Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise him regarding same.*

5. *Discuss the provisions relating to issuance of refund voucher under CGST Act and rules thereunder.*

6. *Is a registered person liable to pay tax under reverse charge under section 9(3) of the CGST Act required to issue an invoice? Discuss the relevant provisions under CGST Act and rules thereunder.*

7. *Discuss the provisions relating to issuance of credit and debit notes under CGST Act and rules thereunder.*

8. *What is the time period within which invoice has to be issued for supply of services?*

9. *What is the time period within which invoice has to be issued in a case involving continuous supply of goods?*

10. *What is the time period within which invoice has to be issued in a case involving continuous supply of services?*

11. *What is the time period within which invoice has to be issued where the goods being sent or taken on approval for sale?*

ANSWERS/HINTS

1. As per the provisions of section 31, invoice shall be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. Accordingly, in the given case, the invoice must be issued on or before 29th September.

2. Continuous supply of service means, *inter alia,* supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the periodic payment obligations.

   Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by MBM Caretakers on

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a quarterly basis, under a contract, for a period of one year with the obligation for quarterly payment.

In terms of section 31, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment.

Therefore, in the given case, MBM Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

3. As per section 25 read with CGST Rules, 2017, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Sangri Services Ltd.'s turnover exceeded ₹ 20 lakh on 12th August, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, i.e. 12th August.

   As per section 31 read with CGST Rules, 2017, 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. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

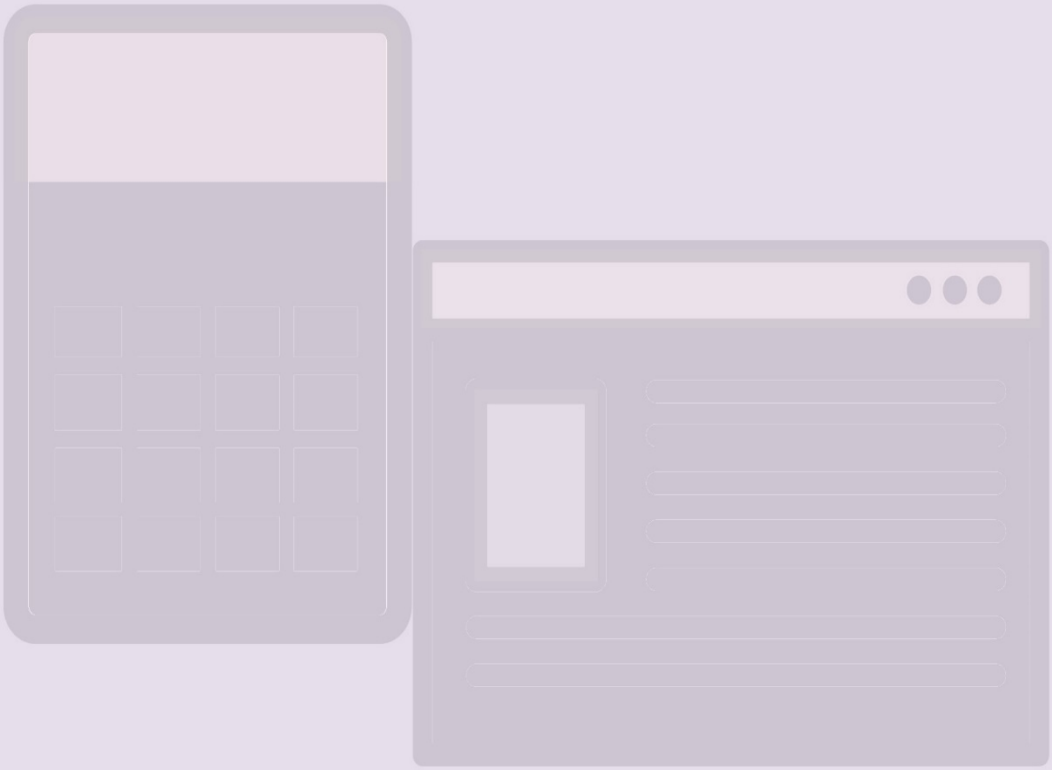
   Therefore, in the given case, Sangri Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (12th August) till the date of issuance of certificate of registration (6th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6th October.

4. A registered person paying tax under the provisions of section 10 [composition levy] shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed [Section 31(3)(c) read with CGST Rules, 2017].

   Therefore, in the given case, Shyam Fabrics cannot issue tax invoice. Instead, it shall issue a Bill of Supply.

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5. *Refer Para 3.*
6. *Refer Para 3.*
7. *Refer Para 4.*
8. *Refer Para 3.*
9. *Refer Para 3.*
10. *Refer Para 3.*
11. *Refer Para 3.*



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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST 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 time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the new provisions relating to Tax invoice as proposed 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 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
	New section 31A inserted 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	A new section 31A is being inserted in the CGST Act so that specified suppliers shall have to mandatorily give the option of specified modes of electronic payment to their recipients.

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CHAPTER 11

ACCOUNTS AND RECORDS; E-WAY BILL



LEARNING OUTCOMES

After reading this chapter, you shall be equipped to:

- enumerate the accounts and other records required to be maintained under GST.
- identify the cases where audit by a Chartered Accountant/ Cost Accountant is required and related provisions.
- 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, audit 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.
- ✓ 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 the 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. Further, every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a Chartered Accountant or a Cost Accountant.



- ✓ 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.



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✓ Chapter VIII – Accounts and Records [Sections 35 and 36] of the CGST Act 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 and 138D [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





❖ **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)].

❖ **Common portal:** means the common goods and services tax electronic portal referred to in section 146 [Section 2(26)].

❖ **Appellate Authority:** means an authority appointed or authorised to hear appeals as referred to in section 107 [Section 2(8)].

❖ **Revisional Authority:** means an authority appointed or authorised for revision of decision or orders as referred to in section 108 [Section 2(99)].

❖ **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)].
- **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 (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 [Section 2(35)].
- **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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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.*
(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.*

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(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.*
(5)	*Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.* ***Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.***
(6)	*Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.*



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.

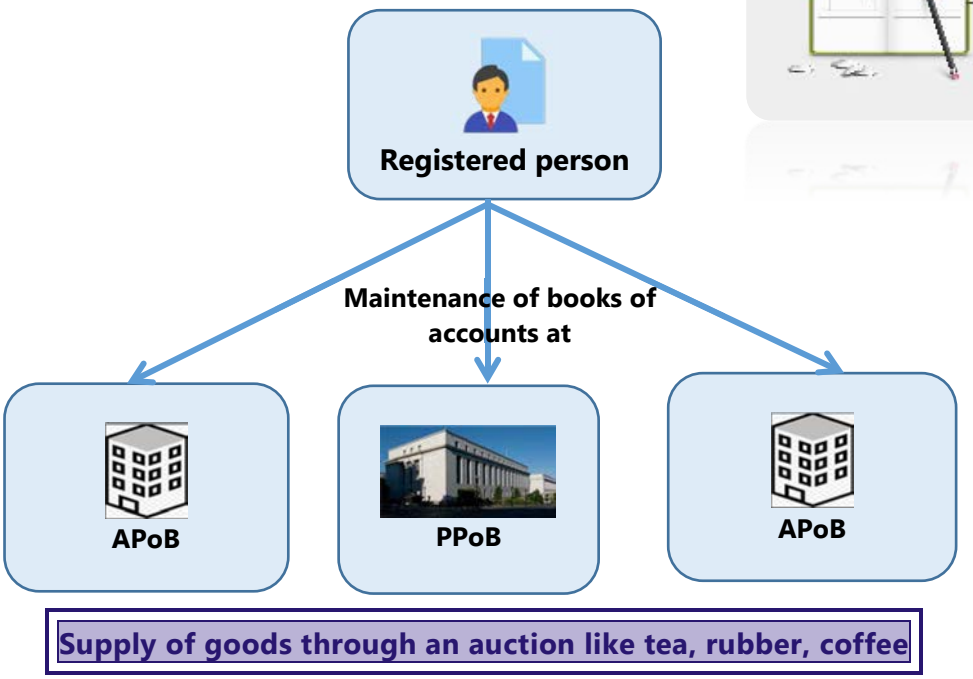
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(i) Who is required to maintain his books of accounts and at which place? [Section 35(1) read with rule 56(7) and 56(10)]

Every registered person shall keep and maintain, his 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 are supplied through an auction like tea, rubber, coffee, the difficulties were being faced by the principal and auctioneer in maintaining books of accounts at each and every APoB.

Consequently, it has been clarified that in such cases, the principal and the auctioneer may declare the warehouses, where such goods are stored, as

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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 may maintain the books of accounts relating to APoB at their PPoB instead of such APoB. Such principal or auctioneer shall intimate their jurisdictional proper officer in writing about the maintenance of books of accounts relating to APoB at their PPoB.

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[1] *[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) Accounts and records 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 [Section 35(1)].

[1] *Refer Chapter 8 – Input Tax Credit for detailed provisions relating to ITC (Input Tax Credit).*

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A. Records prescribed by rules [Rule 56(1), (3), (5) and (6)]

In addition to the particulars mentioned in section 35(1), the rules also provide that the registered person 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 vouchers
- separate **account of advances** received, paid and adjustments made thereto.



- particulars of:
  - (a) names and complete addresses of suppliers **from whom he has received** the goods or services chargeable to tax under the Act;
  - (b) names and complete addresses of the persons **to whom he has supplied** goods or services, where required under the provisions of this Chapter.
- 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.

B. Records which are to be maintained only by a supplier other than a supplier opting for composition levy [Rule 56(2) and (4)]

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.

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(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.

C. Records to be maintained by agent [Rule 56(11)]

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

(e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

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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D. Records to be maintained by a manufacturer [Rule 56(12)]



Apart from other records, every registered person manufacturing goods has to maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

E. Records to be maintained by a service provider [Rule 56(13)]

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.

F. Records to be maintained by a person executing works contract [Rule 56(14)]

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 or services utilized in the execution of works contract;
- the details of payment received in respect of each works contract; and
- the names and addresses of suppliers from whom he received goods or services.

G. Records to be maintained by owner or operator of godown or warehouse and transporters [Section 35(2) read with rule 58]

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

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consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

Enrolment, if not already registered in GST: If such persons are not already registered, they shall obtain a unique enrollment number by applying electronically 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.

- **Records to be maintained by the transporter:** 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.

  A transporter having registration in more than one State/UT 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.

- **Records to be maintained by an owner/operator of a warehouse/ godown**

  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.

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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.

H. Records to be maintained by a custodian/clearing and forwarding agent [Rule 56(17)]

Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.

I. The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein [Section 35(3)].

J. 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 [Section 35(4)].

(iii) How the accounts and records will be maintained? [Second proviso to section 35(1) read with rule 56(7), (8), (9), (15), (16) and (18) and rule 57]

Records may be 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.

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- The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.
- 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.
- Each volume of books of account maintained manually by the registered person shall be serially numbered.
- 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) Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80]



Sub-section (5) of section 35 read alongwith section 44(2) and rule 80 of the CGST Rules, 2017 stipulates as follows:

A. Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a FY exceeds ₹ 2 crores.

However, the books of accounts of the Central/ State Government or local authority would not be subject to audit by a Chartered Accountant/ Cost Accountant if the same are subject to audit by CAG of India or any statutory auditor appointed for auditing the accounts of local authorities. Consequently, they are not required to submit the copy of the audited annual accounts and the reconciliation statement.

B. Such registered person is required to furnish electronically through the common portal alongwith Annual Return a copy of:

- ❑ Audited annual accounts
- ❑ A **Reconciliation Statement**, duly certified, in prescribed form

Reconciliation Statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.



Value of supplies declared in Annual return | **Value of supplies declared in audited Annual Financial Statement**

(v) Failure to maintain the accounts [Section 35(6)]

Where the registered person fails to account for the goods or services or both 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 or section 74, as

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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.

5. ELECTRONIC WAY BILL [SECTION 68 READ WITH RULE 138, 138A, 138B, 138C AND 138D]



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.

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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 of the CGST Act stipulates that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

Rule 138 of CGST Rules, 2017 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 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 benefits are expected from 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). The facility of generation, cancellation, updation and assignment of e-way bill is available to the supplier, recipient and the transporter, as the case may be. E-way Bill can be generated through various modes like Web (Online), Android App, SMS, using Bulk Upload Tool and API (Application Program Interface) based site to site integration etc.

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The pre-requisite for generation of e-way bill is that the person who generates e-way bill should be a registered person on GST portal and he should register on the e-way bill portal. If the transporter is not registered person under GST law, it is mandatory for him to get enrolled on e-waybill portal (https://ewaybillgst.gov.in) before generation of the e-way bill.

E-way Bill provisions [as contained in rules 138, 138A, 138B, 138C and 138D – 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

(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 known recipient, movement shall said to be caused by such recipient.

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

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- ✓ shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

In case of movement of goods for reasons other than supply, the movement is occasioned by means of a delivery challan which has to necessarily contain the value of goods. The value given in the delivery challan should be adopted in the e-way bill[2].

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 9 – Registration]*.

One E-way Bill to be issued 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:

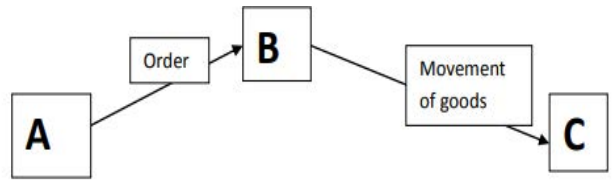
'A' is the person who has ordered 'B' to send goods directly to 'C'.

'B' is the person who is sending goods directly to 'C' on behalf of 'A'.

[2] *As clarified by CBIC FAQs on E-way Bill.*

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'C' is the recipient of goods.



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, 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 dispatch & 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)].

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(3) Who is mandatorily required to generate e-way bill?

- **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 vessel**, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, information in part B [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)].

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- **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)].

(4) When is it not mandatory to furnish the details of conveyance in Part-B?

Explanation 2 to rule 138(3) stipulates that e-way bill is valid for movement of goods by road only when the information in Part-B is furnished. However, details of conveyance may not be furnished in Part-B of the e-way bill where the goods are transported **for a distance of 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 [Third proviso to rule 138(3)] or
- from the place of business of the transporter finally to the place of business of the consignee [Proviso to rule 138(5)].

(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)].

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 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)].

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A consignor is required to move goods from City X to City Z. He appoints Transporter A for movement of his goods. Transporter A moves the goods from City X to City Y. For completing the movement of goods i.e., from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B.

In such a scenario, only one e-way bill would be required. Part A can be filled by the consignor and then the e-way bill will be assigned by the consignor to Transporter A. Transporter A will fill the vehicle details, etc. in Part B and will move the goods from City X to City Y.

On reaching City Y, Transporter A will assign the said e-way bill to the Transporter B. Thereafter, Transporter B will be able to update the details of Part B. Transporter B will fill the details of his vehicle and move the goods from City Y to City Z *[Press Release No. 144/2018 dated 31.03.2018]*.

(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

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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)]. **Provisions of rule 138(7) have not yet been made effective.**

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)].

(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)]

Sl. No.	Distance within country	Validity period from relevant date*
1.	Upto 100 km	One day in cases other than Over Dimensional Cargo**
2.	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo

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3.	Upto 20 km	One day in case of Over Dimensional Cargo
4.	For every 20 km or part thereof thereafter	One additional day in case of Over Dimensional Cargo

***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.

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[3].



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 [Press Release No. 144/2018 dated 31.03.2018].

****Over dimensional cargo** means a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the

[3] *As clarified by FAQs on E-way Bill web portal.*

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Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988.

Extension of validity period

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: Where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B, if required. Transporter can extend the validity of the e-way bill, if the consignment is not being reached the destination within the validity period due to exceptional circumstance like natural calamity, law and order issues, trans-shipment delay, accident of conveyance, etc. He needs to explain this reason in details while extending the validity period. This option is available for extension of e-way bill before 8 hours and after 8 hours of expiry of the validity[4] [Rule 138(12)].

(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

[4] *As clarified by FAQs on E-way Bill web portal.*

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or

(ii) the time of delivery of goods,

whichever is earlier.

(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)].

Points to remember

1. E-way bill is not valid for movement of goods without vehicle number on it.
2. Once E-way bill is generated, it cannot be edited for any mistake. However, it can be cancelled within 24 hours of generation.
3. E- Way Bill may be updated with vehicle number any number of times.
4. The latest vehicle number should be available on e-way bill and should match with the vehicle carrying it in case checked by the department.

(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)
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 vide Notification No. 2/2017 CT(R) dated 28.06.2017

(f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel

(g) where the supply of goods being transported is treated as no supply under Schedule III of the Act

(h) where the goods are being transported -

(i) under customs bond from an inland container depot or a container freight station to 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

(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

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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

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 [Rule 138A(1)].

**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 date & no. of bill of entry in Part A of Form GST EWB 01.

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Invoice Reference Number in lieu of tax invoice

A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in the prescribed form and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of 30 days from the date of uploading [Rule 138A(2)].

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 [Rule 138A(3)].

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 [Rule 138A(5)].

(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.

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(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, three days shall be counted from the midnight of the date on which the vehicle was intercepted.

Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State/Union territory or in any other State/Union territory, no further physical verification of the said conveyance shall be carried out again in the State/Union territory, unless a specific information relating to evasion of tax is made available subsequently.

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.



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[5].

[5] *As clarified vide Circular No. 49/23/2018 GST dated 21.06.2018*

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(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) 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.

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.

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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]*.

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]*.

TEST YOUR KNOWLEDGE

1. *Sindhu Enterprises is a supplier of goods. Its turnover has exceeded ₹ 2 crore in current financial year. Discuss whether Sindhu Enterprises is required to get its accounts audited by the Chartered Accountant or Cost Accountant under GST law.*

2. *Mala Services Ltd. is a supplier of management consultancy services. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained?*

3. *Essel Groups has started making taxable supplies. You are required to advice it about the accounts and records required to be maintained by it as required under section 35(1) of the CGST Act, 2017.*

4. *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 as enumerated in rule 56 of the CGST Rules, 2017.*

5. *ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Enumerate the accounts required to maintained by Raghav & Sons as per rule 56(11) of the CGST Rules, 2017.*

ANSWERS/HINTS

1. Section 35(5) of the CGST Act read with rule 80 of the CGST Rules, 2017 provides that every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during

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a FY exceeds ₹ 2 crores. Since the turnover of Sindhu Enterprises has exceeded ₹ 2 crore in current financial year, it has to get its accounts audited by a Chartered Accountant/ Cost Accountant.

2. Section 36 of the CGST Act 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.

3. Section 35(1) of the CGST Act, 2017 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.

4. Following records are not required to be maintained by a supplier who has opted for composition scheme as per rule 56(2) and (4) of the CGST Rules, 2017:

(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.

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5. Rule 56(11) of the CGST Rules, 2017 provides that every agent shall maintain accounts depicting the-

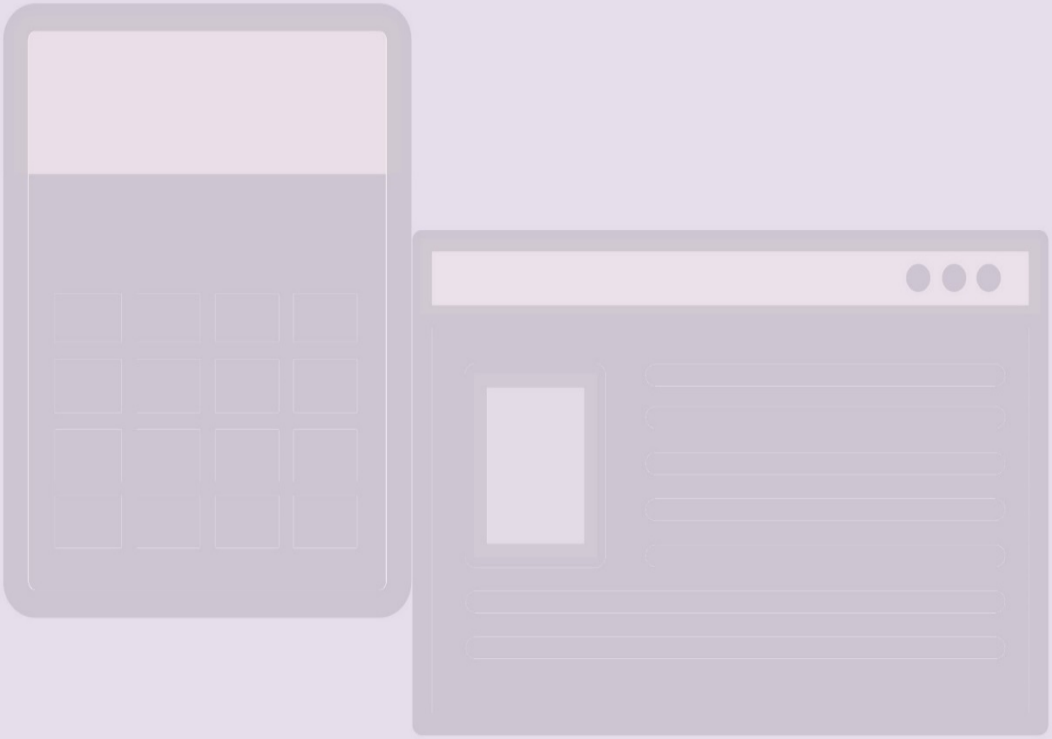
(a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;

(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

(e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.



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CHAPTER 12

PAYMENT OF TAX



UNIT I: PAYMENT OF TAX, INTEREST AND OTHER AMOUNTS

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- describe three kinds of ledgers/registers to be maintained by the taxable person- electronic cash ledger, electronic credit ledger and electronic liability register.
- analyse and apply the methodology of cross utilization of credit.
- comprehend and apply the chronological order in which the liability of a taxable person has to be discharged.
- identify and analyse the circumstances in which penal interest is levied.
- procedure for transfer of input tax credit between Central and State Government

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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. 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 account Tax Deducted at Source (TDS) and Tax Collected at Source (TCS). In addition, wherever applicable, interest, penalty, fees and any other payment will also be required to be made.



The introduction of E-ledgers is a unique feature under the GST regime. 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 tax liability register. Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Cash & Input Tax Credit ledger) and an electronic tax liability register will be automatically opened and displayed on his dash board at all times.

Chapter X of the CGST Act prescribes the provisions relating to payment of tax containing sections 49 to 53. While section 49 discusses the three ledgers namely the electronic cash ledger, electronic credit ledger and electronic liability register, 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.

Chapter IX of CGST Rules deals with provisions relating to payment of tax.

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

Before proceeding to understand the provisions of section 49, 50, 53 & the relevant rules, let us first go through few relevant definitions.

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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)].
- **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)].
- **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 totalizator or a license to book maker or activities of a licensed book maker in such club; and;***

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(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)].

- **Central Tax** means the central goods and services tax levied under Section 9 [Section 2(21)].
- **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)].
- **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;

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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 District Council constituted under the Sixth Schedule to the Constitution;
- a Development Board constituted under article 371 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;

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(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act,1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above [Section 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 [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)].

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❖ **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.*
(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*

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	and subject to such conditions and 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 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.*

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(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;*	
(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.*		
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,—*	
		(i)	*"tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and*

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		(ii)	*"other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made there under.*

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;*
	(c)	*the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or*
	(d)	*any amount of interest that may accrue from time to time.*
(3)	*Subject to the provisions of section 49, ,* ***section 49A and section 49B****, 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, or the amount payable under section 10, any amount payable*	

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	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**.*
(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 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.
	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 do so through the Board"s payment system namely,

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	Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board.	
(3)	*The deposit under sub-rule (2) shall be made through any of the following modes, namely:-*	
	(i)	*Internet Banking through authorised banks;*
	(ii)	*Credit card or Debit card through the authorised bank;*
	(iii)	*National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or*
	(iv)	*Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:*
	Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by –	
	(a)	*Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;*
	(b)	*Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;*
	(c)	*Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:*
	Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank	

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	Financial Telecommunication payment network, from the date to be notified by the Board.
Explanation	*For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.*
(4)	*Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.*
(5)	*Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:*
	Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.
(6)	*On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.*
(7)	*On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.*
(8)	*Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in **FORM GST PMT-07** through the common portal to the bank or electronic gateway through which the deposit was initiated.*

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(9)	*Any amount deducted under section 51 or collected under section 52 and claimed in **FORM GSTR-02** by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87.*
(10)	*Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.*
(11)	*If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in **FORM GST PMT-03.***
(12)	*A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in **FORM GST PMT-04**.*
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.*

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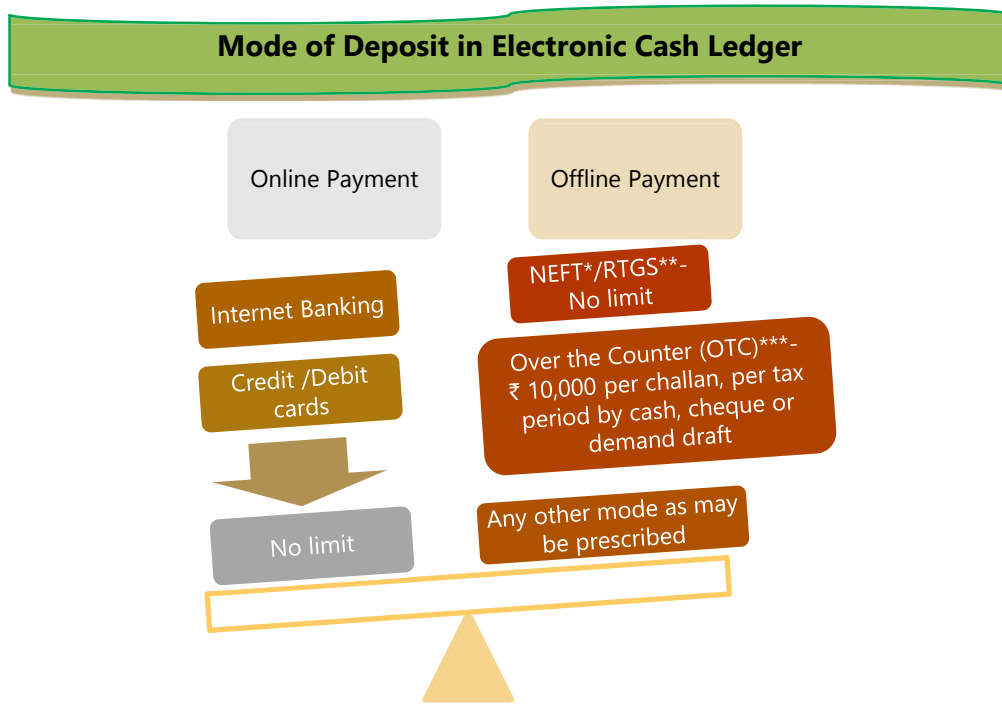
(3)	*A unique identification number shall be generated at the common portal for each credit in the electronic liability register for reasons other than those covered under sub-rule (2).*



ANALYSIS

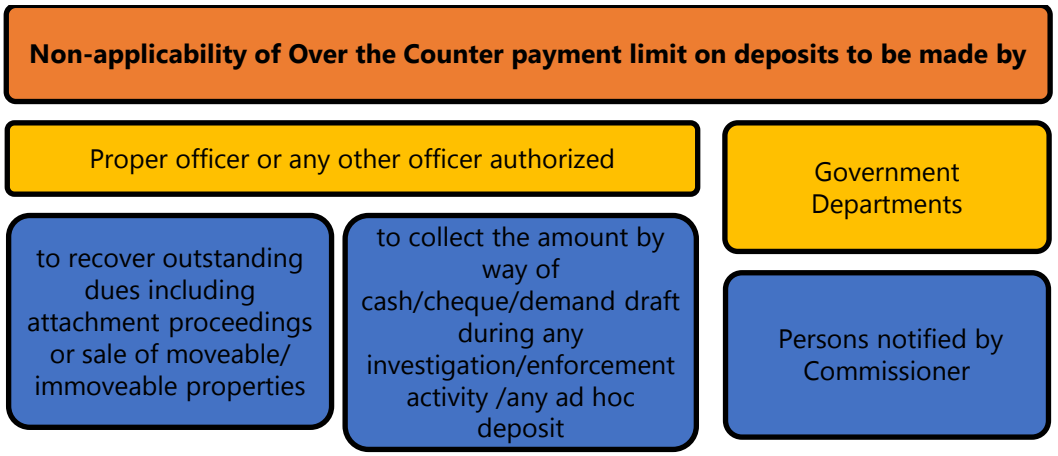
A. ELECTRONIC CASH LEDGER [SECTION 49(1) & (3) READ WITH RULE 87 OF CGST RULES]

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.



*NEFT stands for National Electronic Fund Transfer.
**RTGS stands for Real Time Gross Settlement.
*** any amount as per FAQs on "offline payments: over the counter" web-hosted on https://www.gst.gov.in.

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Payment by Challan

What are 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

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credited to the appropriate account held by such E-FPB. For NEFT/RTGS Transactions, RBI will act as E-FPB.

Are manual Challans applicable as allowed earlier under the VAT regimes?

Manual or physical Challans are not allowed under the GST regime. It is mandatory to generate Challans online on the GST Portal.

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

- E- challan validity is for 15 days. The commission for making payment through e-challan has to be borne by the person making the payment.
- Any unregistered person has to make payment on the basis of temporary identification number generated through common portal.

Validity of challan-15 days

- The mandate form obtained after making NEFT/RTGS payment has to be submitted in the Bank. The validity of the mandate form is 15 days.
- On 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.
- The 'deposit' made by one of the modes and in the prescribed manner will be credited to the Electronic Cash Ledger of the taxable person.
- 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 reflected in the common portal, the person making the deposit or the person on whose behalf the deposit has been

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made, can make a representation in prescribed form through the common portal or e-gateway through which the payment has been made.

- Date of credit into the treasury of the State Government/Central Government is deemed to be the date of deposit and not the actual date of debit to the amount of the taxable person.
- 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.

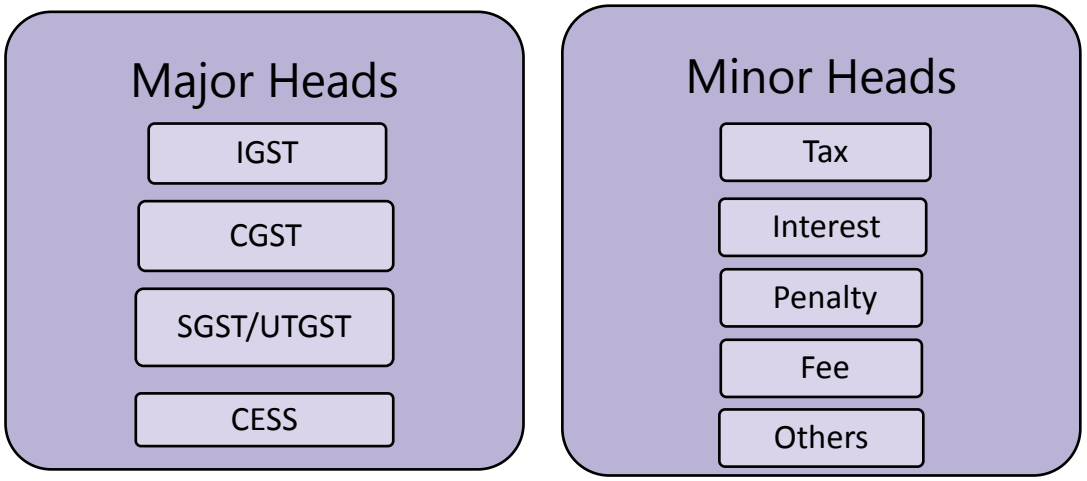
Manner of utilization of amount reflected in Electronic Cash Ledger

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 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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B. ELECTRONIC CREDIT LEDGER [SECTION 49(2), (4) &(5), SECTION 49A, SECTION 49B READ WITH RULE 86 AND RULE 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 its 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 or IGST. It is pertinent to note that "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods and/or services made by him or by his agent but excludes tax payable by him on reverse charge basis. Thus, ITC cannot be utilised for tax payable under reverse charge mechanism.

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]*[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.***
- ***Entire ITC of IGST is to be fully utilised first before the ITC of CGST or SGST/UTGST can be utilized.***
- 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
- 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***

[1] *The detailed provisions have been discussed in Chapter-8: "Input tax credit".*

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CGST credit cannot be utilized for payment of SGST/UTGST.

Similarly, SGST/UTGST credit cannot be utilized for payment of CGST.

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

C. ELECTRONIC LIABILITY REGISTER [SECTION 49(7), (8) & (9) READ WITH RULE 85 OF CGST RULES]

Sub-section (7) of section 49 speaks about the third kind of ledger to be maintained by a taxable person 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 maintained in a separate register.

Electronic Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.

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 for the **previous tax periods** have to be discharged first.
- the self -assessed tax and other dues for the **current period** have to be discharged next.
- Once these two steps are exhausted, thereafter any other amount payable including **demand determined under section 73 or section 74** to be discharged. In other words, the liability if any, arising out of

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demand notice and adjudication proceedings comes last. This sequence has to be mandatorily followed.

The expression "other dues" referred above mean interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.

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, 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.

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 an Assessing authority or as ascertained by the taxable person;
- the amount of tax and interest payable.
- any interest amount 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.	Payment of all the liabilities of a registered person as per his return subject to section 49.
	Payment of TDS deducted under section 51, TCS deducted by e-

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	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 new 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.

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*

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	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.
(2)	*The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*
(3)	*A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.*



ANALYSIS

When interest is payable ?

Interest is payable in following 3 circumstances:-

- Delay in payment of tax, in full or in part within the prescribed period
- Undue or excess claim of input tax credit under section 42(10)
- Undue or excess reduction in output tax liability under section 43(10)

⟹ *section 42 (10) of CGST Act deals with contravention of provisions for matching of claims for input tax credit by a recipient and*

⟹ *section 43 (10) of CGST Act deals with contravention of provisions for matching of claims for reduction in output tax liability by a supplier*

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-

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(a) 18% in case of belated payment of tax i.e. on failure to pay tax (or part of tax) to the Government's account. *Notification No. 13/2017 CT dated 28.06.2017* has notified the rate of interest as 18% per annum.

(b) 24% on undue or excess claim of ITC or on such undue or excess reduction in output tax liability. *Notification No. 13/2017 CT dated 28.06.2017* has notified the rate of interest as 24% per annum.

Computation of period for calculation of interest

The period of interest will be from the date following the due date of payment to the actual date of payment of tax.

Other relevant points relating to interest

- The term "tax" here means the tax payable under the Act or Rules made thereunder.
- The payment of interest in case of belated payment of tax should be made voluntarily i.e. even without a demand.
- 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.**

5. 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

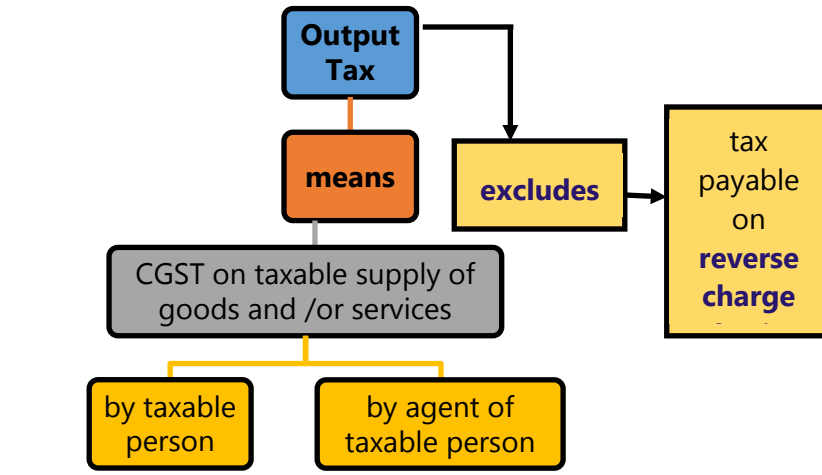
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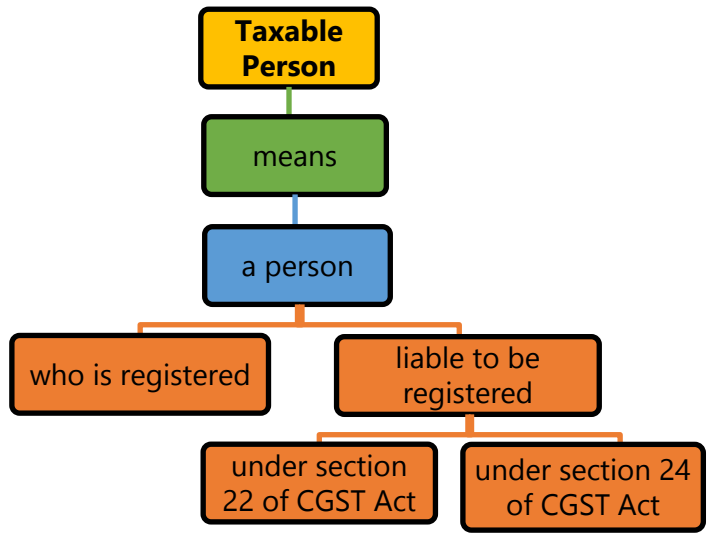
the credit so utilized, and will be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the respective State Government.

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:-

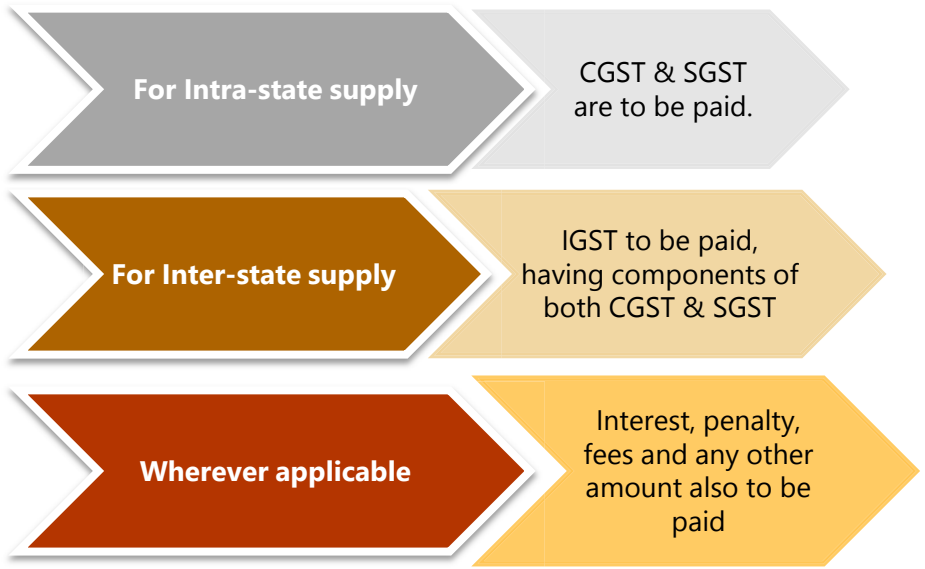
DEFINITIONS OF CERTAIN KEY TERMS





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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.

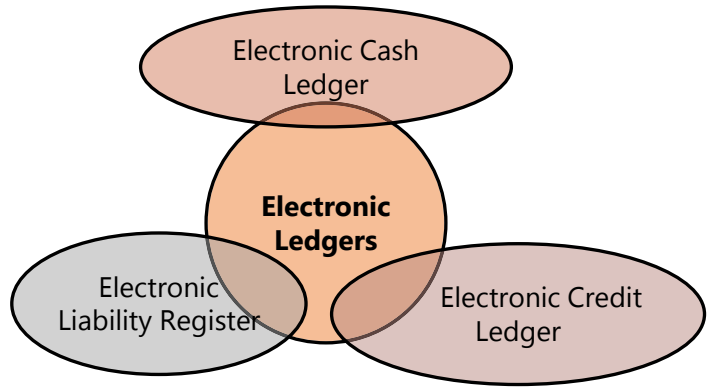
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What are E-Ledgers/Registers?



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 tax liability register.

Types of Electronic ledgers/Registers



A. Electronic Cash Ledger

Electronic Cash Ledger is an account where records of deposits or receipts and its utilization towards liabilities are maintained.



IGST CGST SGST / UTGST CESS

Cash receipts using Online modes or OTC Deposits (CIN)

- Tax Deducted at Source (TDS)
- Tax Collected at Source (TCS)

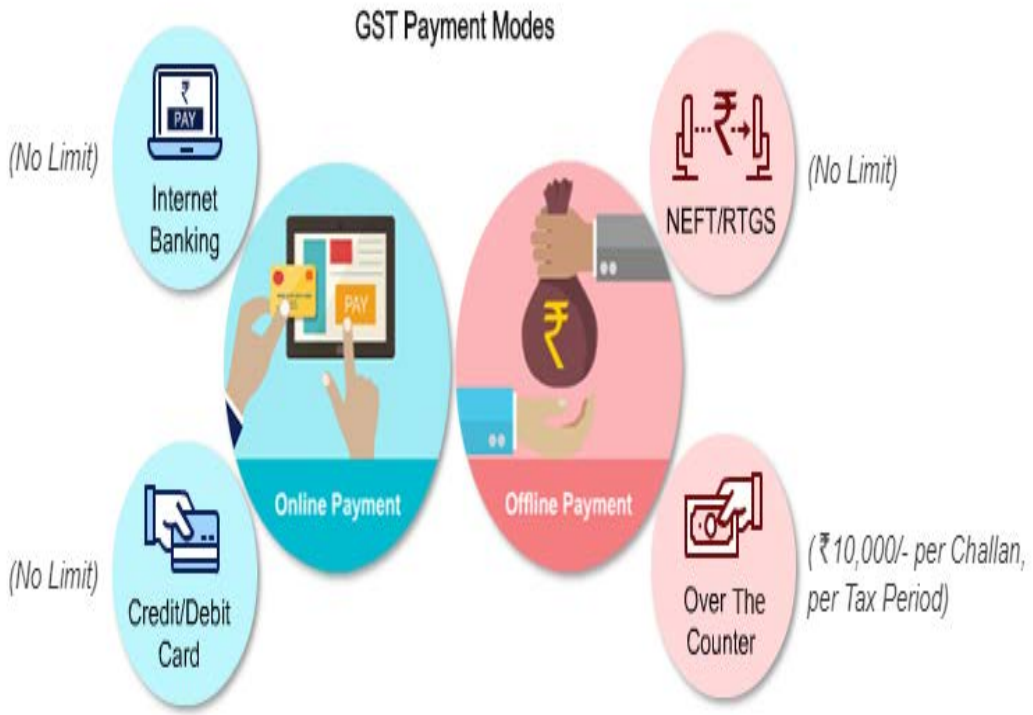
IGST CGST SGST / UTGST CESS

Payment of

- Tax
- Interest
- Penalty
- Fee
- Other Amount

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Modes of Deposit in Electronic Cash Ledger



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	√

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 proportion*
ITC of IGST to be completely exhausted mandatorily		
CGST	*CGST*	*IGST*
ITC of CGST has been utilized fully		
SGST/UTGST	*SGST/UTGST*	*IGST*



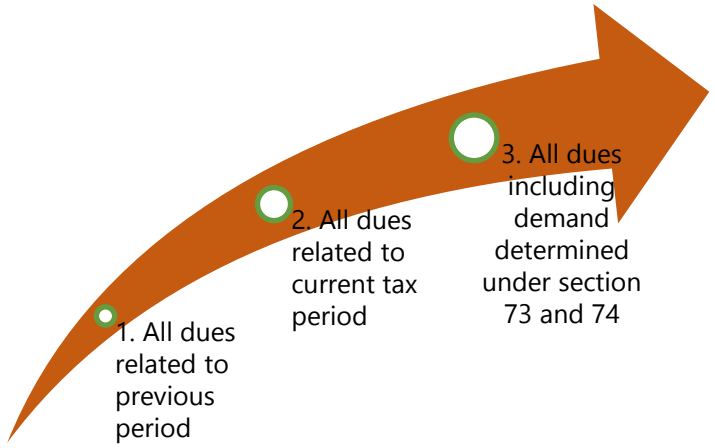
The CGST credit cannot be utilized for payment of SGST/UTGST.

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. will be refunded to taxable person.	• Any deposit made towards tax, interest, penalty, late fee etc. via internet banking, RTGS, fund transfer etc. • TDS/TCS claimed

B. Electronic Credit ledger

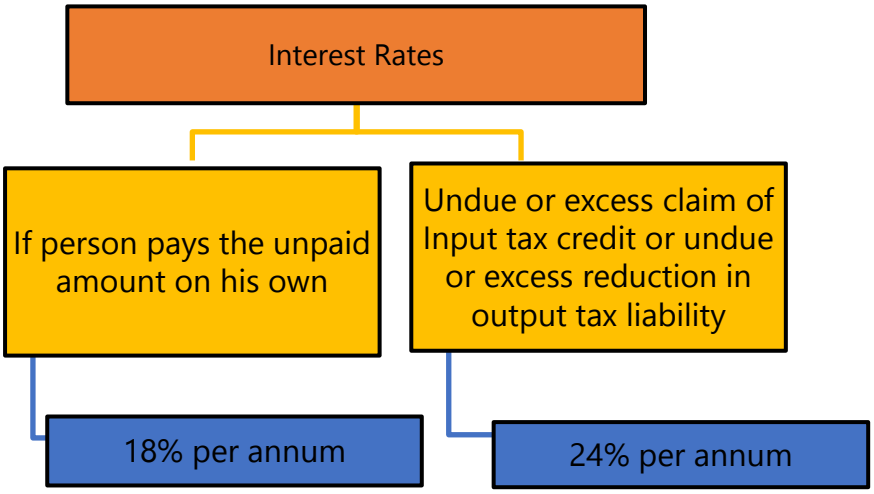
Debit Amount (DR)	Credit Amount (CR)
• Credit amount of this ledger may be used for payment of output tax viz IGST, CGST, SGST, UTGST in the prescribed order.	• Input Tax credit as self-assessed in the return in the form of IGST, CGST, SGST, UTGST

C. Electronic Liability Register

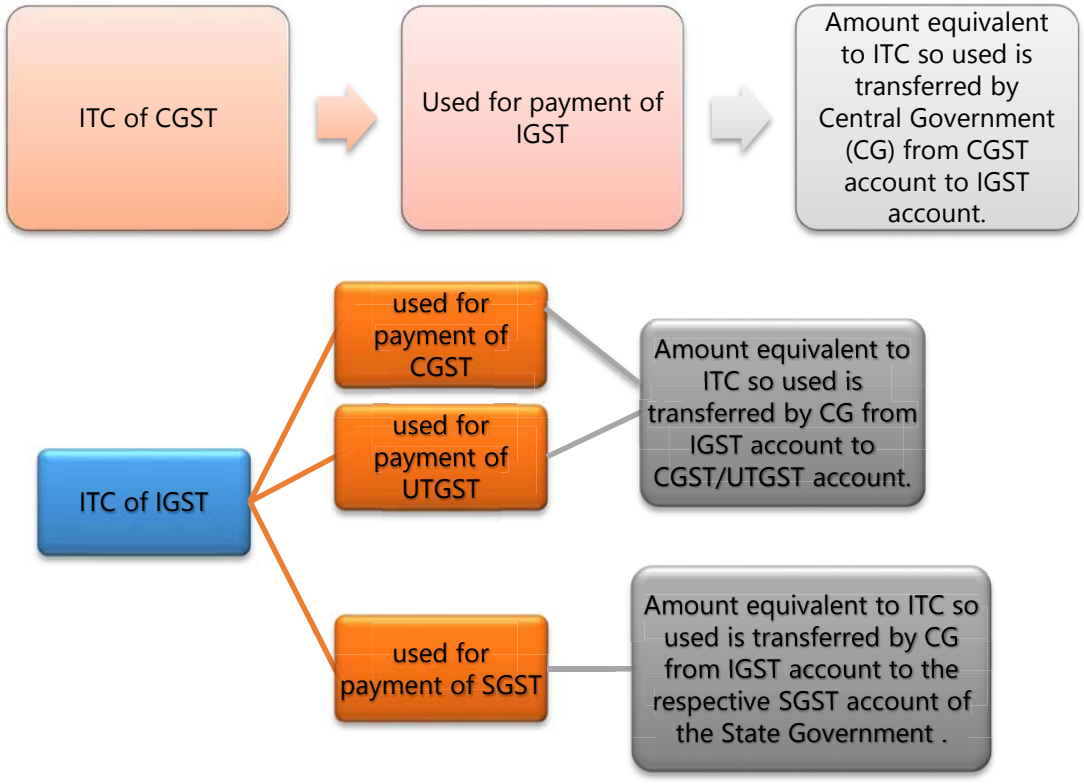
Debit Amount (DR)	Credit Amount (CR)
• Amount payable towards tax, interest, fees etc. • Tax or interest payable due to mismatch • Any other dues	• Electronic cash ledger
• Amount payable towards output tax	• Electronic credit ledger

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Interest on delayed payment of tax [Section 50]



Transfer of input tax credit [Section 53 of CGST Act & section 18 of IGST Act]



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TEST YOUR KNOWLEDGE

1. *How many types of electronic ledger are there?*
2. *What are the main features of GST payment process?*
3. *Explain the following terms in brief:*
   (a) *E-FPB*
   (b) *CPIN*
   (c) *CIN*
4. *Are principles of unjust enrichment applicable for payment made under GST?*
5. *State the name of output tax under GST, where any of the input tax credit under GST can be availed?*
6. *Can one use input tax credit for payment of interest, penalty, and payment under reverse charge?*
7. *ABC limited filed the return for GST under section 39(1) for the month of November on 20th, December showing self assessed tax of ₹2,50,000 which was not paid.*

   Explain what are the implications for ABC limited as per relevant provisions?

ANSWERS/HINTS

1. (a) Electronic cash ledger
   (b) Electronic credit ledger
   (c) Electronic liability register
2. Refer para-Electronic Liability Register
3. Refer para-Electronic Cash Ledger
4. Yes, as per Section 49 (9) of the CGST Act, 2017 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.
5. IGST. IGST, CGST, SGST, UTGST i.e. all input tax credit can be availed against output tax liability known as IGST.

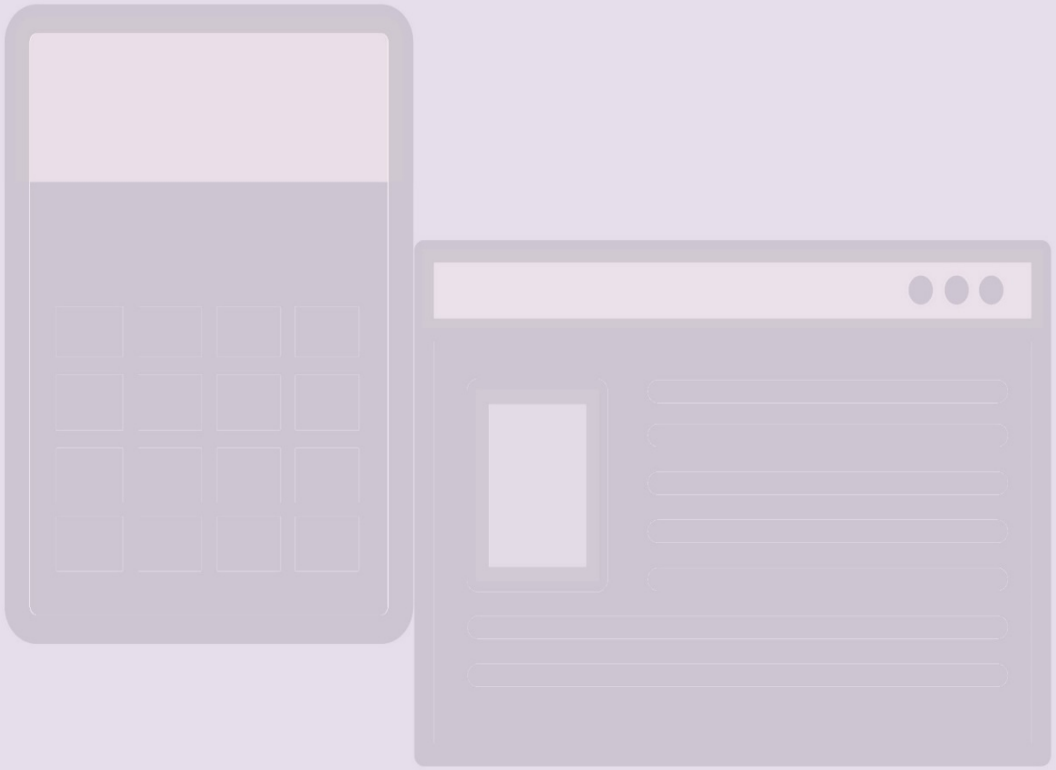
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6. No, as per Section 49 (4) of the CGST Act, 2017 the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'.

   As per Section 2 (82) of the CGST Act, 2017, 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, and payment under reverse charge.

7. As per section 2(117) of CGST Act, "valid return" means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full.

   Hence, in such a case, the return is not considered as a valid return and also input tax credit will not be allowed to the recipient of supplies.



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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST 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 time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 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[2] relating to payment of tax 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 provisions given hereunder in place of the related provisions discussed in the Chapter.

Section No.	Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
49		**After sub-section (9) of section 49 the following sub- section (10) and (11) shall be inserted:** "(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 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	New sub-sections are being inserted in section 49 of the CGST Act to provide a facility to the registered person to transfer an amount from one (major/minor) head to another (major/minor) head in the electronic cash ledger.

[2] *Provisions existing as on the date when the Study Material was released for printing*

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		prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act. (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).".	
50	**Sub-section (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 18%, as may be notified by the Government on the	**Sub-section (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 18%, 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**	New proviso is being inserted in section 50(1) of the CGST Act so as to provide for charging interest only on the net cash tax liability, except in those cases where returns are filed subsequent to initiation of any proceedings under section 73 or 74 of the CGST Act.

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	recommendations of the Council.	**date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.".**	
53A		**<u>New Section 53A: "Transfer of certain Amounts" inserted after section 53</u>** **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."**	A new section 53A is being inserted in the CGST Act so as to provide for transfer of amount between Centre and States consequential to amendment in section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.

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UNIT II: TAX DEDUCTION AT SOURCE AND COLLECTION OF TAX AT SOURCE

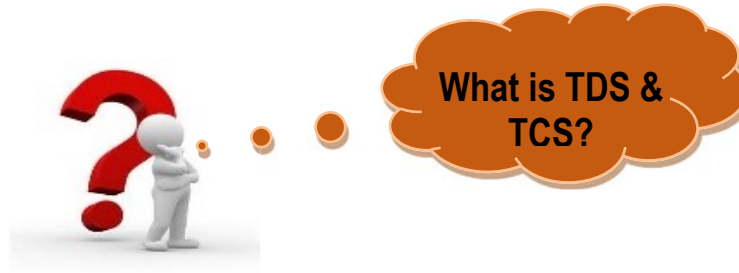
LEARNING OUTCOMES

After studying this Unit, you will be able to –

- 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.
- describe and analyse the TCS i.e. tax collection at source provisions relating to collection, payment and reporting of tax by electronic commerce operator.

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1. INTRODUCTION



TDS stands for Tax Deduction at Source (TDS). Tax Deduction at Source (TDS) is a system, initially introduced by the Income Tax Department. 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. It is similar to "pay as you earn" scheme also known as withholding tax, in many other countries. It facilitates sharing of responsibility of tax collection between the deductor and the tax administration. It also ensures regular inflow of cash resources to the Government. It acts as a powerful instrument to prevent tax evasion and expands the tax net, as it provides for the creation of an audit trail.

TDS

Section 51[1] of CGST Act provides for deduction of tax at source in certain circumstances. This Section specifically lists out the deductors 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.

TCS

On the other hand, Tax Collection at Source (TCS) has similarities with TDS, as well as a few distinctive features. TDS refers to the tax which is deducted when the recipient of goods or services makes some payments under a contract etc., while TCS refers to the tax which is collected by the electronic commerce operator when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the electronic commerce operator.

Section 52[2] provides for collection of tax at source in certain circumstances. The Section specifically lists out the tax collecting persons who are mandated by the Central Government to collect tax at source, the rate of tax collection and the procedure for remittance of the tax collected.

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[1] Students may refer "Standard Operating Procedure on TDS" issued by CBIC from CBIC website.
[2]Students may refer "Frequently Asked Questions on TCS" issued by CBIC from CBIC website.

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The amount of tax deducted/collected is reflected in the Electronic Cash Ledger of the deductee/supplier respectively.

Provisions of TDS and TCS under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. RELEVANT DEFINITIONS





- **Cess** shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act [Section 2(22)].
- **Electronic Commerce** means the supply of goods or services or both, including digital products over digital or electronic network [Section 2(44)].
- **Electronic Commerce Operator** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce [Section 2(45)].
- **Taxable supply** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].

3. 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)	*The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.*	
(4)	*If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the*	

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	day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.
(5)	*The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.*
(6)	*If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.*
(7)	*The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.*
(8)	*The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54 :*
	Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.



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)]

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With respect to deductors under section 51(1)(a), provisions of TDS are applicable only on the certain prescribed authorities of Ministry of Defence, remaining authorities under the Ministry of Defence are exempt.

The following persons have been notified under clause (d) of sub-section (1) of section 51 of the CGST Act by the Central Government:

(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:



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

[Notification No. 61/2018 CT dated 05.11.2018]

(ii) When supply of goods and/or services takes place between one person to another person specified in clauses (a), (b), (c) and (d) of section 51(1) of the CGST Act.

[Notification No. 73/2018 CT dated 31.12.2018]

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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

The tax would be deducted @ 1% 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 supply under a contract is more than ₹ 2,50,000/-, TDS will have to be deducted.

TDS-1% on net value of taxable supplies

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.



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.

(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.

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(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.

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.

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.

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).

TDS Certificate

Includes

- contract value
- rate of deduction
- amount deducted
- amount paid to the appropriate Government
- any other particulars as may be prescribed

TDS certificate to be furnished

within **5 days** of remittance to Government

example

The Municipal Corporation of Chennai deducts CGST at source @1% from the payment to be made to a notified supplier on 4th July. This TDS amount has to be remitted into the Treasury on or before 10th August.

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The TDS certificate with the above mentioned details has to be issued on before 15th of August.

Certificate not furnished by the deductor

If the deductor does not furnish the certificate of deduction-cum- remittance within 5 days of the remittance, the deductor has to pay a late fee of ₹ 100/day from the expiry of the 5th day until the day he furnishes the certificate. This late fee would not be more than ₹ 5000/-.

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 penal 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.

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.

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.



Suppose a supplier makes a supply worth ₹ 1000/- to a recipient and the GST at the rate of 18% is required to be paid. The recipient, while making the payment of ₹1000/- to the supplier, shall deduct 1% viz ₹ 10/- as TDS.

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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. The purpose of TDS is just to enable the Government to have a trail of transactions and to monitor and verify the compliances

4. COLLECTION OF TAX AT SOURCE [SECTION 52 OF CGST ACT]



STATUTORY PROVISIONS

Section 52	**Collection of tax at source**	
Sub-Section	**Clause**	**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 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.*

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(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.*
(12)	*Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to —*
	(a) supplies of goods or services or both effected through such operator during any period; or
	(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers,
	as may be specified in the notice.
(13)	*Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.*
(14)	*Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.*
Explanation	*For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.*

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ANALYSIS

Overview of TCS

TCS refers to the tax which is collected by the electronic commerce operator when a supplier supplies some goods or services through its portal and the payment for that supply is collected by the electronic commerce operator. The nature of working of electronic commerce operator can be better understood with the following example.



There are many e-Commerce operators [hereinafter referred to as an Operator], like Amazon, Flipkart, Jabong, etc. operating in India. These operators display on their portal products as well as services which are actually supplied by some other person to the consumer.

The goods or services belonging to other suppliers are displayed on the portals of the operators and consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to the consumer.

The price/consideration for the product/ service is collected by the Operator from the consumer and passed on to the actual supplier after the deduction of commission by the Operator.

Let us now have a look at the statutory provisions relating to TCS.

Who is liable to collect TCS ?

Every Electronic Commerce Operator (ECO), not being an agent, has been mandated to collect tax at source (TCS) from the net value of taxable supplies made through it by other suppliers, whenever the ECO collects the consideration on behalf of the supplier.

Rate of TCS

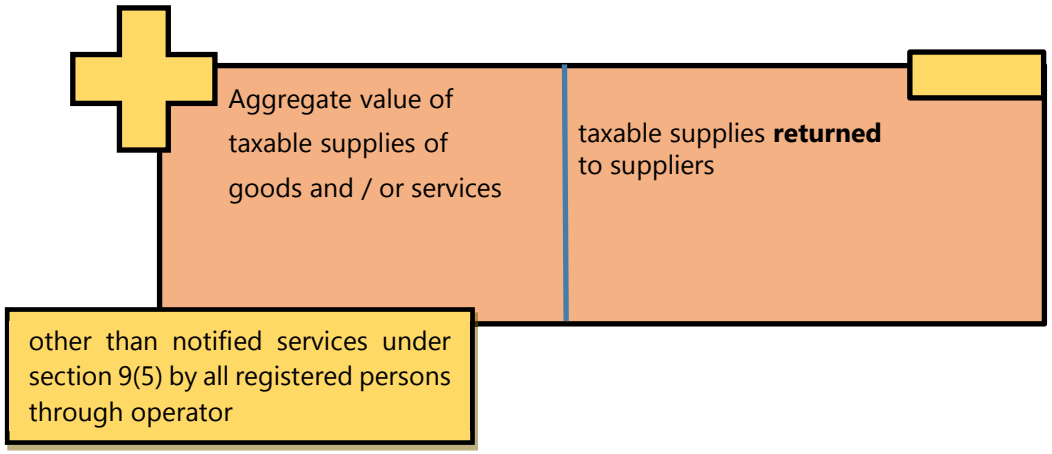
Half percent of the net value of intra-State taxable supplies. 1% of the net value of inter-State taxable supplies.



Suppose a certain product is sold at ₹ 1000/- through an Operator by a supplier. The operator would collect tax @ 1% of the net value of ₹ 1,000/- i.e. ₹ 10/- in case of inter-State supplies.

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Net Value of Taxable Supplies



It may be noted that Section 20 of IGST Act provides that in case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:
The rate has been notified as 1% for tax collection at source under IGST.

Further, the power conferred on the e-commerce operator to collect tax at source, is without prejudice to other modes of recovery from operator. The powers of e-commerce operator is restricted only to the extent of tax collection at source under circumstances specified therein and nothing more.

Deposit of TCS by ECO to Government

The TCS amount collected by the ECO has to be remitted to the Government Treasury within 10 days after the end of the month in which the collection was made.

example

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.

Mr. X is a supplier selling his own products through a web site hosted by him. Does he fall under the definition of an "electronic commerce operator"? Whether he is required to collect TCS on such supplies?

As per the definitions in Section 2(44) and 2(45) of the CGST Act, 2017, Mr. X will come under the definition of an "electronic commerce operator".

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However, according to Section 52 of the Act ibid, 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 tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

If we purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such supplies?

- No. According to Section 52 of the CGST Act, 2017, 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 this case, there are two transactions - where we purchase the goods from the vendors, and where we sell it through our website. For the first transaction, GST is leviable, and will need to be paid to our vendor, on which credit is available for us. The second transaction is a supply on our own account, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

Filing of Monthly & Annual Statements by ECO[3]

- An **electronic statement** has to be filed by the ECO containing details of the outward supplies of goods and/ or services effected through it, including the supplies returned through it and the amount collected by it as TCS during the month within 10 days after the end of the each month in which supplies are made.
- Additionally, the ECO is also mandated to file an **Annual Statement** on or before 31st day of December following the end of the financial year.

Notice to the Operator

- An officer not below the rank of Deputy Commissioner can issue notice to an operator, asking him to furnish details relating to volume of the goods/services supplied, stock of goods lying in warehouses/godowns etc.
- The operator is required to furnish such details within 15 working days.

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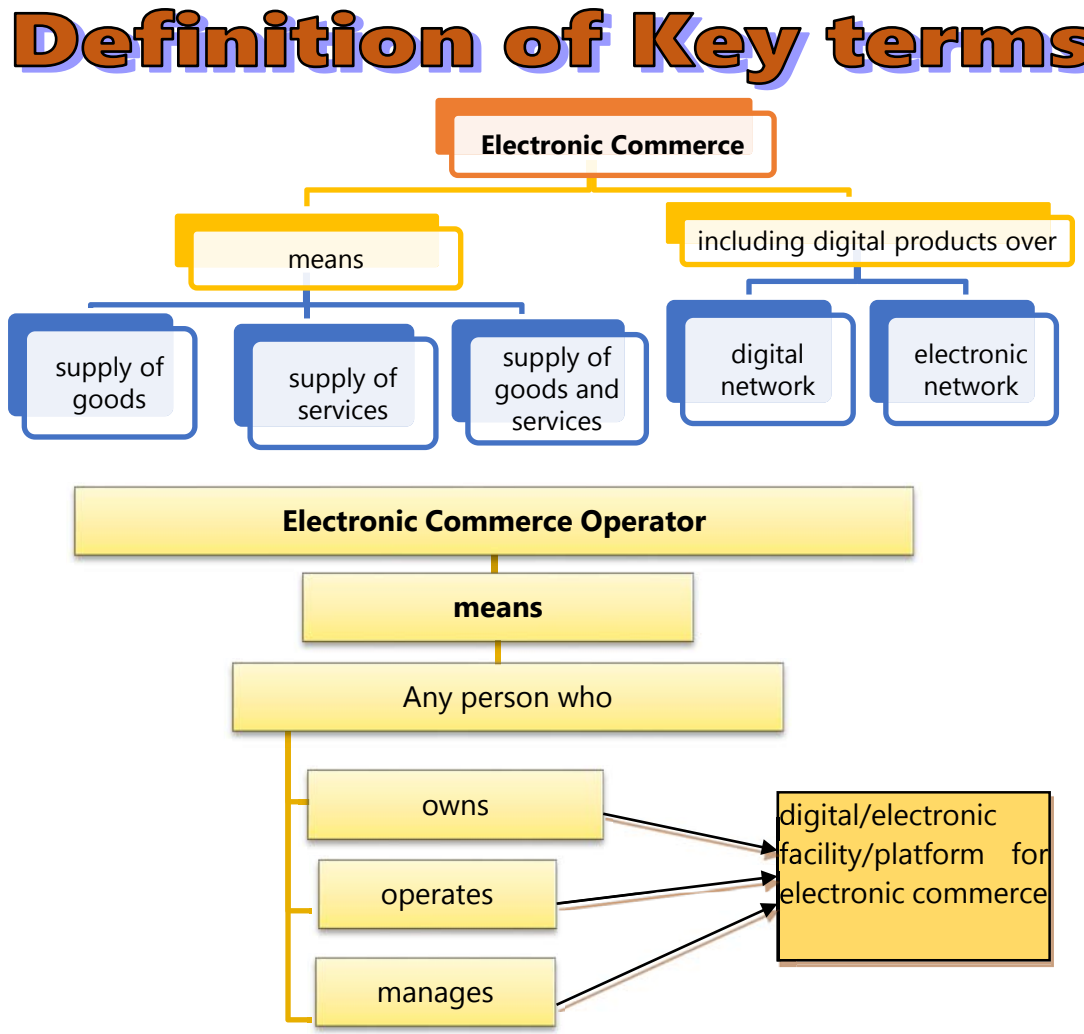
[3] The detailed provisions of monthly and annual statements have been discussed in Chapter :13 Returns.

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In case an operator fails to furnish the information, besides being liable for penal action under section 122, it shall also be liable for penalty up to ₹ 25,000.

LET US RECAPITULATE

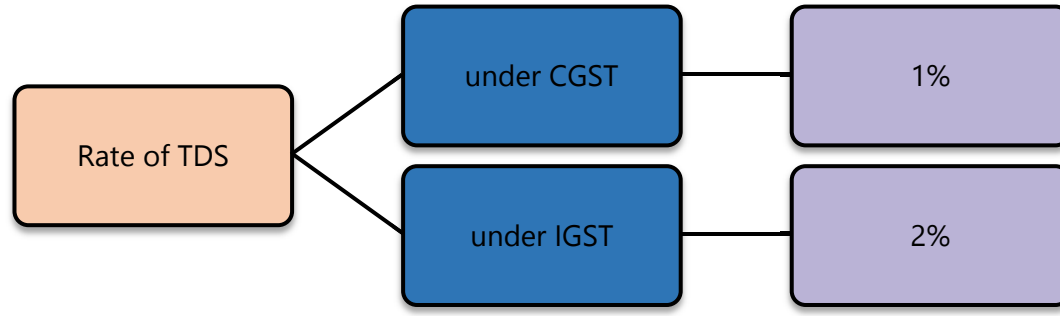
The provisions relating to TDS & TCS have been summarised by way of table and diagrams to help students remember and retain the provisions in a better and effective manner:-

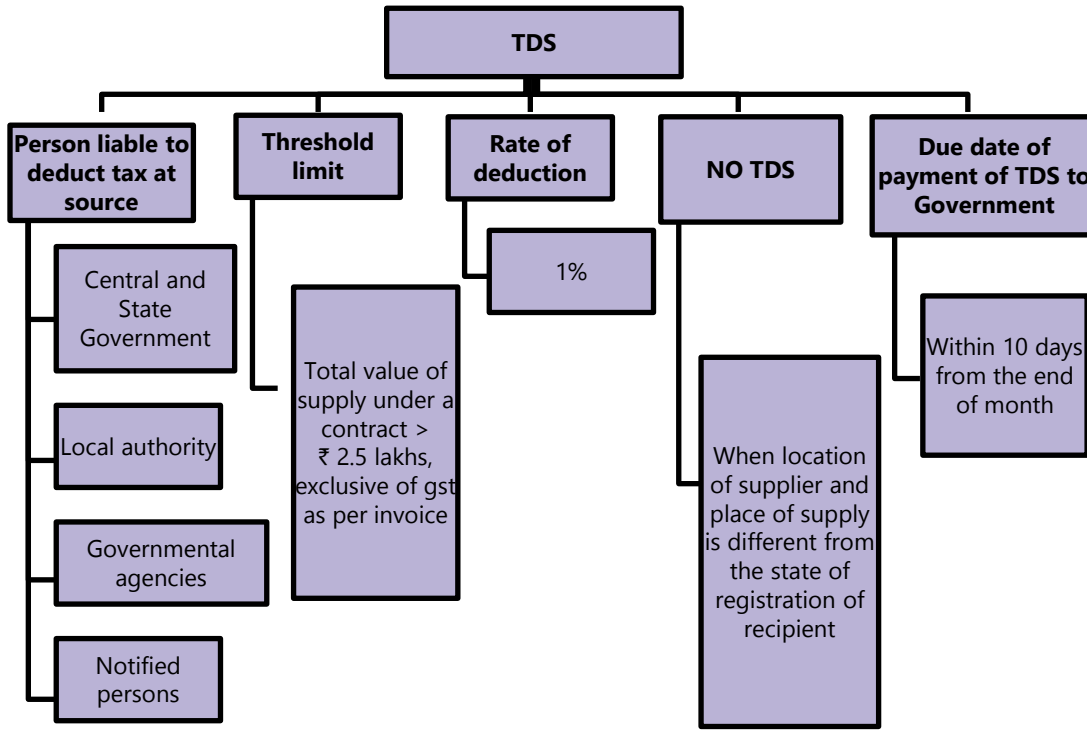


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TDS

RATE OF TDS





MANNER OF ACCOUNT OF TDS BY TDS DEDUCTOR

1.	Such deductors 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.

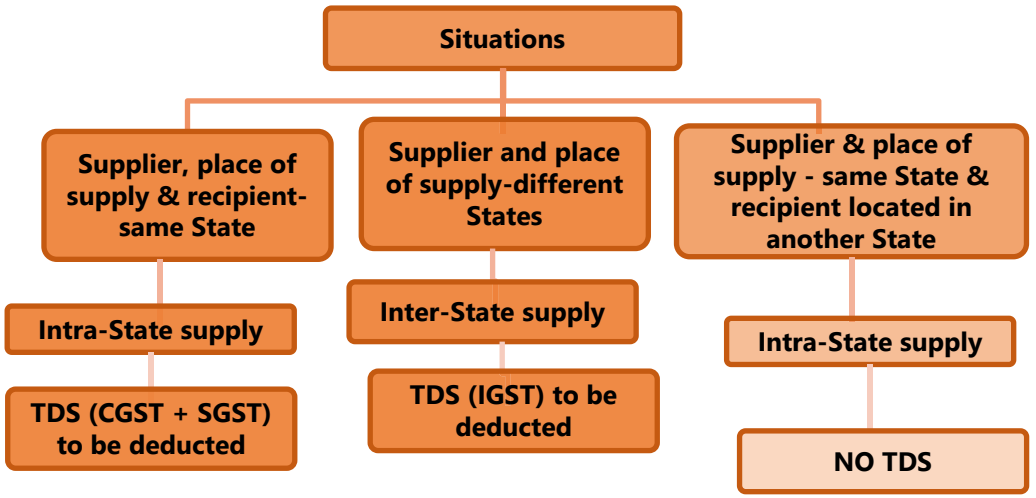
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3.	The amount deposited as TDS will be reflected in the electronic cash ledger of the supplier.
4.	They need to issue certificate of such TDS to the deductee within 5 days of deducting TDS failing which fees of ₹ 100 per day subject to maximum of ₹ 5,000/- will be payable by such deductor.

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



CONSEQUENCES OF NOT COMPLYING WITH TDS PROVISIONS

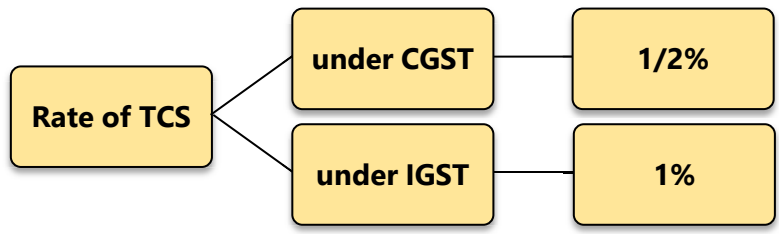
S. No.	Event	Consequence
1.	TDS not deducted	Interest to be paid along with the TDS amount; else the amount shall be

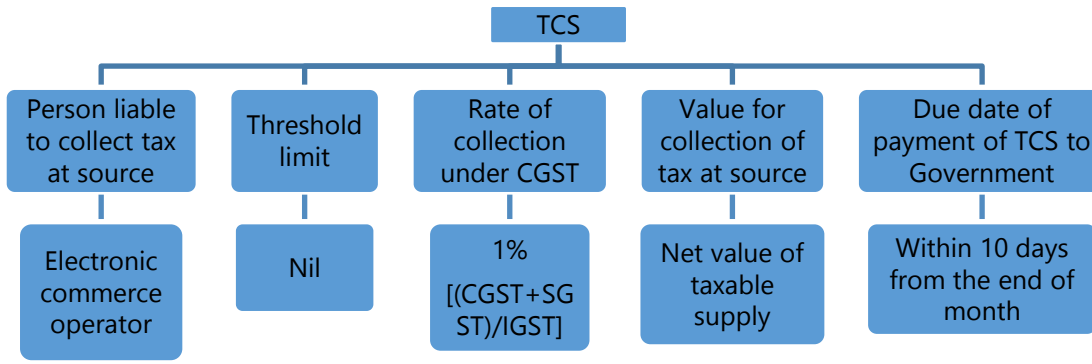
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		determined and recovered as per the law
2.	TDS certificate not issued or delayed beyond the prescribed period of five days	Late fee of ₹ 100/- per day subject to a maximum amount of ₹ 5000/-
3.	TDS deducted but not paid to the Government or paid 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
4.	Late filing of TDS returns	Late fee of ₹ 100/- for every day during which such failure continues, subject to a maximum amount of ₹ 5,000.

TCS

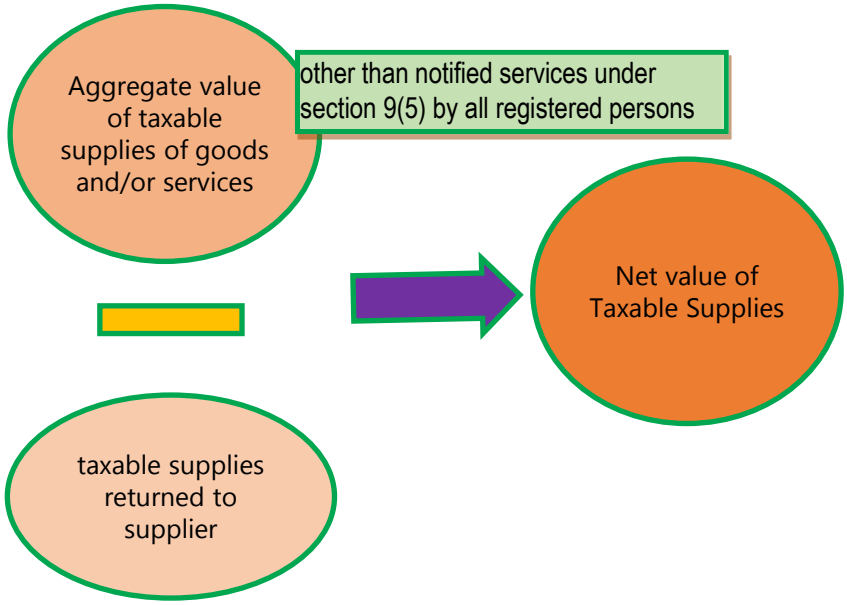
RATE OF TCS





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NET VALUE OF TAXABLE SUPPLIES



TEST YOUR KNOWLEDGE

1. *Who is liable to pay GST? Explain in the context of general and special circumstances.*
2. *What will happen if the deductor fails to issue TDS Certificate within the time prescribed?*
3. *Whether the rate of tax of 1% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?*
4. *Is every e-commerce operator required to collect tax on behalf of actual supplier?*
5. *State whether the provisions pertaining to tax collected at source under section 52 of CGST Act, will be applicable in below mentioned scenarios -*
   - *(a) Titane sells watch on his own through its own website?*
   - *(b) ABC limited who is dealer of Titane brand sells watches through flipkarte, an electronic commerce operator ?*

ANSWERS /HINTS

1. General rule - Supplier of goods or services is liable to pay GST.

   Specific circumstances –

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- Import supplies – Recipient of goods or services has to pay tax under reverse charge
- 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
- TDS – If total value of supply under contract > ₹ 2.5 lakhs, then Central and State Government, Local authority, Government agencies is liable to deduct TDS and pay the same to the government
- TCS - E-commerce operators are required to collect tax (TCS) on the aggregate value of supply reduced by returns in a month

2. As per section 51(4) of the CGST Act, 2017, if any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.

3. The rate of TCS as notified under CGST Act, 2017 is payable under CGST and the equal rate of TCS is expected under the SGST Act also, in effect aggregating to 1%.

4. Yes, every e-commerce operator is required to collect tax where consideration with respect to the supply is being collected by the e-commerce operator.

5. Answers for both the scenarios is as follows:

As per Section 52 of CGST Act, 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.

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 Titane brand sells watches through Flipkarte, then the provision of TCS will be applicable to flipkarte.

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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST 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 time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 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[4] relating to payment of tax 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 provisions given hereunder in place of the related provisions discussed in the Chapter.

Section No.	Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
52	**Sub-section (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	**Sub-section (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	New provisos are being inserted in sub-sections (4) and (5) of section 52 of the CGST Act so as to empower the Commissioner to extend the due date for furnishing of monthly and annual statement by the person collecting tax at source.

[4] *Provisions existing as on the date when the Study Material was released for printing*

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	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.	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.";***	
52	**Sub-section (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	**Sub-section (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	

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	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.	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.".***	

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CHAPTER 13

RETURNS



For the sake of brevity, the term input tax credit has been referred to as ITC in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

This Chapter will equip you to –

- comprehend and analyse the provisions relating to filing of various types of statements and returns by registered persons,
- appreciate and analyse the provisions relating to filing of information return by various authorities
- determine the late fee for delayed filing of return
- explain the provisions relating to GST practitioner
- apply the above concepts in problem solving

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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

Filing of GST returns helps in determination of tax liability of the return filer and at the same time it also has a huge bearing on determination of tax liability of other persons with whom the former has entered into taxable activities.

The taxpayer is 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.

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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 taxable activities.

Chapter IX of the CGST Act [Sections 37 to 48] 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
Section 40	First return
Section 41	Claim of input tax credit and provisional acceptance thereof
Section 42	Matching, reversal and re-claim of input tax credit
Section 43	Matching, reversal and re-claim of reduction in output tax liability
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

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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]. 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.

However, the return filing process is under review and is yet not finalized. A simplified monthly return in Form GSTR 3B was introduced in July, 2017 to help businesses to file returns easily in the initial months of GST roll out. This was to be followed with filing of returns - GSTR - 1, 2 and 3. Further, to ease the compliance requirements for small tax payers, the GST Council allowed taxpayers with annual aggregate turnover up to ₹ 1.5 Crore to file details of outward supplies in Form GSTR-1 on a quarterly basis and on monthly basis by taxpayers with annual aggregate turnover greater than ₹ 1.5 Crore. The GST Council also recommended to postpone the date of filing of Forms GSTR-2 (details of inward supplies) and GSTR-3 (monthly return) for all normal tax payers, irrespective of turnover, till further announcements were made in this regard.

The return process has still not been streamlined and the GST Council has extended GSTR-3B filing requirement till end of March, 2020. Therefore, in the subsequent pages of this Chapter, provisions of only those sections which are practically effective, have been discussed.

The GST Council has decided to introduce a new return filing system from April 2020 [decisions taken at it 31st, 35th and 37th meeting read together]. In the new GST Return System, there will be three main components to the new return – one main return (FORM GST RET-1) and two annexures (FORM GST ANX-1 and FORM GST ANX-2).

However, since this new return process will be effective from a future date, in this chapter only those provisions which are currently effective, have been discussed. The amendments which will be made in the law to give effect to the new process will be given in the Statutory Update, after the new process becomes operational.

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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 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)].

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- **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)].
- **Electronic commerce** means the supply of goods or services or both, including digital products over digital or electronic network [Section 2(44)].
- **Electronic commerce operator** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce [Section 2(45)].
- **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,

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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)].
- **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

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as such on behalf of such supplier in relation to the goods or services or both supplied [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 essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—
  - (i) advertising on the internet;
  - (ii) providing cloud services;
  - (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
  - (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
  - (v) online supplies of digital content (movies, television shows, music and the like);
  - (vi) digital data storage; and
  - (vii) online gaming [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 to a Special Economic Zone developer or a Special Economic Zone unit [Section 16 of the IGST Act].

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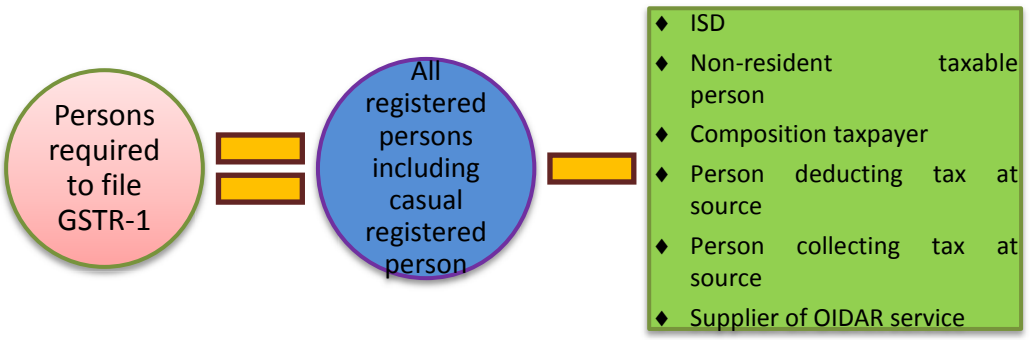
3. FURNISHING DETAILS OF OUTWARD SUPPLIES [SECTION 37 READ WITH RULE 59 OF THE CGST RULES]

(i) Who is required to furnish the details of outward supplies? [Section 37(1) read with rule 59(1) of the CGST Rules]



The details of outward supplies (see definition) 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
- a supplier of online information and database access or retrieval services (OIDAR)



(ii) What is the form for submission of details of outward supplies? [Section 37(1) read with rule 59(1) of the CGST Rules]

The details of outward supplies are required to be furnished, electronically, in **Form GSTR-1**. Such details can be furnished through the common portal, either directly or from a notified Facilitation Centre.

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(iii) What is the due date of submission of GSTR-1? [Section 37(1)]

GSTR-1 for a particular month is filed **on or before the 10th day of the immediately succeeding month.** In other words, GSTR-1 of a month can be filed any time between 1st and 10th day of the succeeding month. It may be noted that GSTR-1 cannot be filed during the period from 11th day to 15th day of month succeeding the tax period.



The details of outward supplies pertaining to the month of October will be required to be furnished on or before 10th November and GSTR-1 for October cannot be filed between 11th November to 15th November.

As a measure of easing the compliance requirement for small tax payers, GSTR-1 has been allowed to be filed quarterly by small tax payers with aggregate annual turnover up to ₹ 1.5 crore in the preceding financial year or the current financial year. As of now this facility has been given till the quarter January - March 2020. Tax payers with annual aggregate turnover above ₹ 1.5 crore will however continue to file GSTR- 1 on a monthly basis. *[Notification Nos. 57 & 58/2017 CT dated 15.11.2017, 71 & 72 /2017 CT dated 29.12.2017, 17 & 18/2018 CT dated 28.03.2018, 32 & 33/2018 CT dated 10.08.2018, 11 & 12 2019 CT dated 07.03.2019, 27 & 28/2019 CT dated 28.06.2019, 45 & 46 2019 CT dated 09.10.2019]*.

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.

A taxpayer cannot file GSTR-1 before the end of the current tax period.

However, following are the exceptions to this rule:

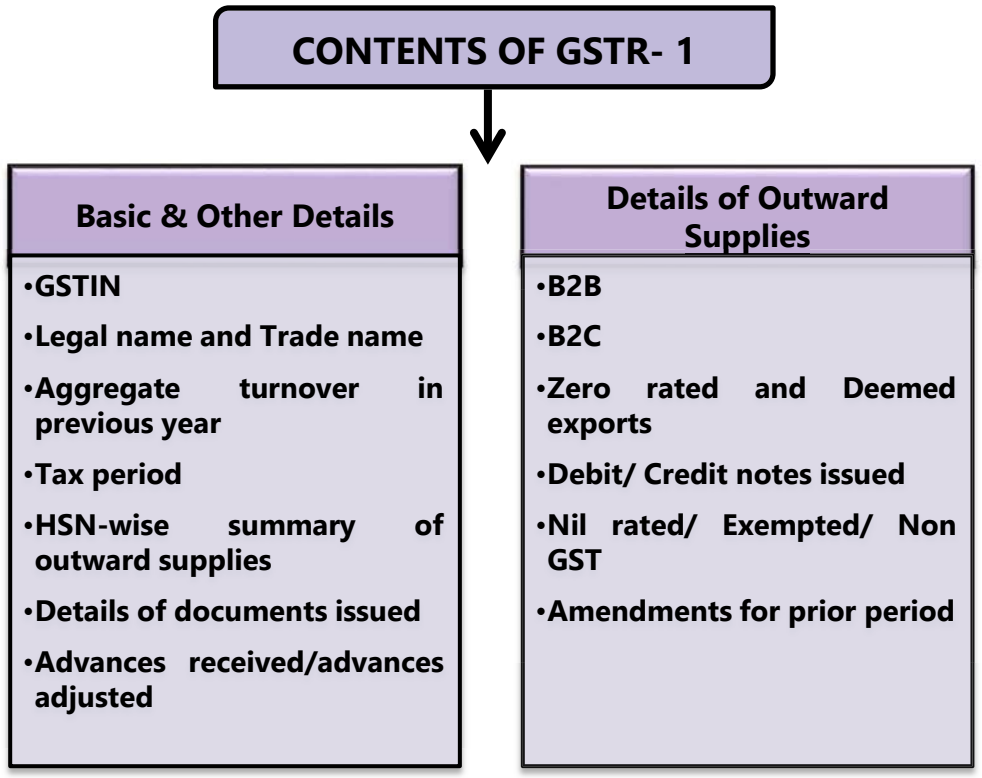
a. Casual taxpayers, after the closure of their business

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.

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(iv) What are the contents of GSTR-1?



GST is a destination based consumption tax, hence the tax revenue is transferred to the State which is the place of supply of the particular transaction. Since, the place of supply is crucial for determining the share of every State in the tax revenue, GSTR-1 also captures information relating to place of supply.

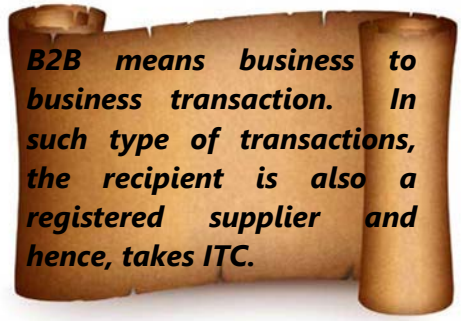
(v) What kind of details of outward supplies are required to be furnished in GSTR-1? [Explanation to section 37 read with rule 59(2) of the CGST Rules]

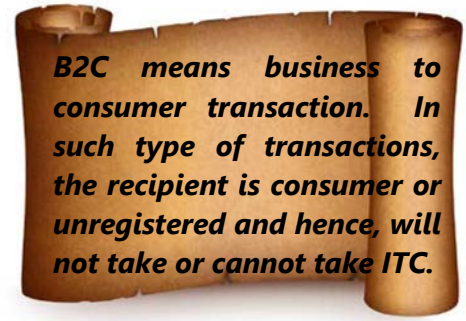
The registered person is required to furnish details of invoices and revised invoices issued in relation to supplies made by him to registered and unregistered persons during a month and debit notes and credit notes in GSTR-1 in the following manner:

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

It can be seen from the above table that uploading of invoices depends on whether the supply is B2B or B2C plus whether the supply is intra-State or inter-State.



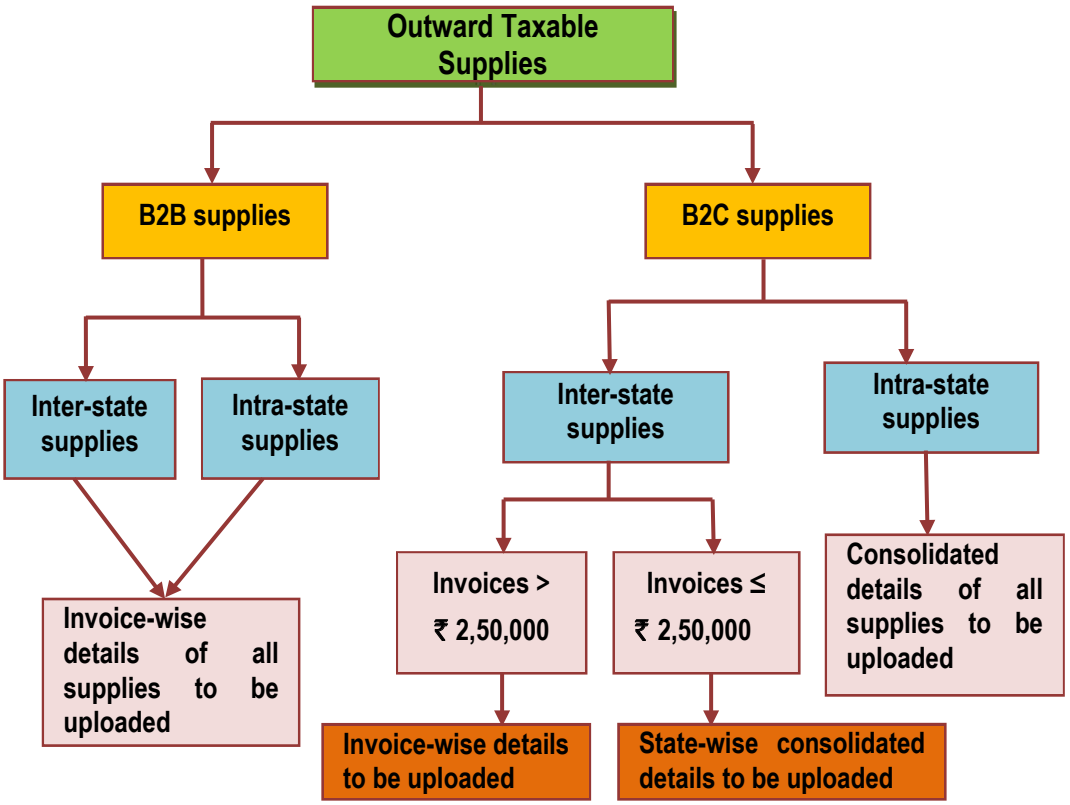


For B2B supplies, all invoices need to be uploaded irrespective of whether they are intra-State or inter- State supplies. This is so because the recipient will take ITC basis such invoices.

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 ₹ 2.5 lakh in inter-State B2C supplies need to be uploaded. For inter-State invoices below ₹ 2.5 lakh, State wise summary is sufficient and for all intra-State invoices, only consolidated details need to be given.

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The provisions relating to uploading of invoices are explained by way of a diagram given below:



Invoices can be uploaded at any time during the tax period and not just at the time of filing of GSTR-1.

example For the month of October, the taxpayer can upload invoices from 1st October to 10th November. In case of late filing of GSTR-1, invoices can be uploaded after 15th November.

Invoices can be modified/deleted any number of times till the submission of GSTR-1 of a tax period. The uploaded invoice details are in a draft version till the GSTR-1 is submitted 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 uploaded e.g., invoice no., date, value, taxable value, rate of tax, amount of tax etc. In case there is no consideration, but the activity is a supply

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by virtue of Schedule I of CGST Act, the taxable value will have to be worked out as prescribed and uploaded.

Description of each item in the invoice need not be uploaded. Only HSN code in respect of supply of goods and accounting code in respect of supply of services need to be fed.

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. *Notification No. 12/2017 CT 28.06.2017,* which has been issued in this regard, provides as under:

Annual turnover in the preceding financial year	Number of Digits of HSN Code
Upto ₹ 1.5 core	Nil
More than ₹ 1.5 crore and upto ₹ 5 crore	2
More than ₹ 5 crore	4

(vi) Communication of details of GSTR-1 to the recipient of supply [Section 37(2) read with sub-rules (3) and (4) of rule 59 of the CGST Rules]

The details of outward supplies for a month furnished by the supplier are communicated and made available electronically (auto populated) to the respective recipient(s) in Part A of Form GSTR- 2A/ Form GSTR-4A (in case of registered person opting for composition levy/***Notification No. 2/2019 CT (R) dated 07.032019***) through the common portal after the 10th day of the succeeding month (due date of filing of GSTR-1).

(vii) How are the details of outward supply furnished in prior periods amended? [Section 37(3)]

(a) Scope of amendment/ correction entries

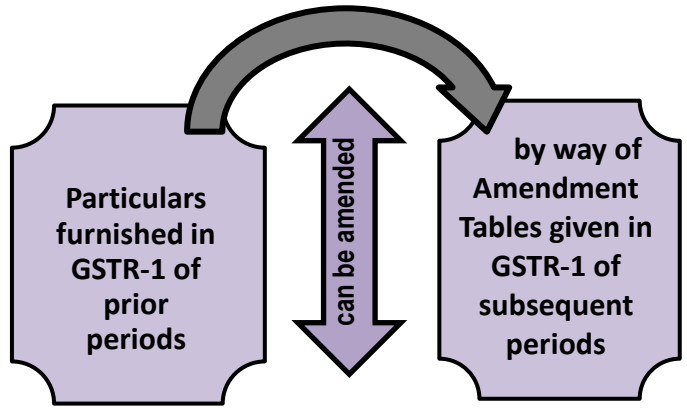
Tables 9, 10 and 11(II) of GSTR-1 provide for amendments in details of taxable outward supplies furnished in earlier periods (hereinafter referred to as "Amendment Table"). The details of original debit notes/

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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 suppler 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. However, it may happen that, a supplier altogether forgets to include the entire original invoice while furnishing the GSTR-1 for a particular month.

In such cases also, he would be required to show the details of the said missing invoice which was issued in earlier month in the Amendment Table only, as such type of errors would also be regarded as data entry error.



(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.

example 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.

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(c) Time limit for rectification

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:

- Date of filing of monthly return u/s 39 for the month of September following the end of the financial year to which such details pertain or
- Date of filing of the relevant annual return



An entity has furnished the annual return for a financial year (X-Y) on August 15 of the succeeding financial year (Y-Z). An error is discovered in respect of a transaction pertaining to November month of year X-Y. The entity has filed the returns for the month of September of year Y-Z on October 20 of year Y-Z. In this case, the rectification of the error pertaining to the transaction in the November month of year X-Y cannot be rectified beyond August 15 of year Y-Z.

It may be noted that, the expression 'due date' is missing in time limits prescribed for making amendments u/s 37(3) [GSTR-1]. Therefore, such date apparently means actual date of filing and not the due date.



✪ **GSTR 1 needs to be filed even if there is no business activity (Nil Return) in the tax period.**

✪ **Taxpayer opting for voluntary cancellation of GSTIN has to file GSTR-1 for active period.**

✪ **In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer, GSTR-1 will be available for filing only for the period during which the taxpayer was registered as normal taxpayer. The GSTR-1 for the said period, even if filed with delay would accept invoices for the period prior to conversion.**

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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 by 10th of next month. 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 invoices. Till the statement is actually submitted, the system also allows the taxpayer to modify the uploaded invoices. 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.



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. 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.



4. FURNISHING OF RETURNS UNDER SECTION 39

(i) GSTR-3B [Rule 61(5) of the CGST Rules]

Section 39(1) prescribes a monthly return in Form GSTR-3 for every registered person, other than an input service distributor, a non-resident taxable person, a composition tax payer, person deducting tax at source, person collecting tax at source, i.e. an electronic commerce operator and supplier of OIDAR services. GSTR-3 is to be filed by 20th day of the month

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succeeding the relevant calendar month or part thereof. *However, filing of GSTR-3 has been deferred by the GST Council.*



Currently, return in **Form GSTR-3B** is being notified as the monthly return to be filed by the registered persons who are required to file GSTR-3. Presently, the due date of submission for GSTR-3B is being notified as 20th day of the month succeeding the relevant month.

GSTR-3B can be submitted electronically through the common portal, either directly or through a notified Facilitation Centre

GSTR-3B is a simple return containing summary of outward supplies, inward supplies liable to reverse charge, eligible ITC, payment of tax etc. Thus, GSTR-3B does not require invoice-wise data of outward supplies.

The broad content of GSTR-3B are given below:

CONTENTS OF GSTR- 3B

Basic Details	Other details relating to supplies
•GSTIN •Legal name of the registered person •Tax period	•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 ITC •Values of exempt, nil-rated and non-GST inward supplies •Payment of tax •TDS/TCS credit

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(ii) GSTR-4 – Return for composition supplier and person paying tax under *Notification No. 2/2019 CT (R) dated 07.03.2019* [Section 39(2) read with *Notification No. 21/2019 CT dated 23.04.2019* issued under section 148, and rule 62 of the CGST Rules]

(a) Person eligible to file return, periodicity and form of return



The following persons are required to file an ***annual*** return in **Form GSTR-4:**

- Every registered person paying tax under section 10, i.e. composition supplier; or
- ***Every registered person paying tax by availing the benefit of Notification No. 2/2019 CT (R) dated 07.03.2019.***[1]

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 notified Facilitation Centre.

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



While a composition supplier and the person paying tax under *Notification No. 2/2019 CT (R)* are required to file the return GSTR-4 annually, they are required to pay the tax quarterly.

(b) Due date for filing GSTR-4 and Statement for payment of self-assessed tax

GSTR-4 for a financial year should be furnished by 30th April of the succeeding financial year.

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[1] *A concessional rate of tax @ 6% is payable under Notification No. 2/2019 CT (R) dated 07.03.2019. The provisions relating to this notification are discussed in detail in Chapter 3: Charge of GST in Module 1 of this Study Material.*

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Due date of filing annual GSTR-4 for a financial year	→	By 30th day of April following the end of such financial year

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) Contents of GSTR-4

The broad contents of GSTR-4 are given below:

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 t0 amendment tables 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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☑ **Consolidated details of outward supplies**

Composition taxpayers ***and persons paying tax under Notification No. 2/2019 CT (R)*** are neither entitled for any ITC nor entitled to pass on any input tax credit to its customers. Therefore, composition taxpayers ***and persons paying tax under Notification No. 2/2019 CT (R)*** 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).

☑ **Tax liability**

Since composition suppliers ***and persons paying tax under Notification No. 2/2019 CT (R) in GSTR-4*** are not eligible to take ITC, they discharge their tax liability only by debiting electronic cash ledger.

(d) Auto-population of inward supplies

The inward supplies of a composition supplier/***person paying tax under Notification 2/2019 CT (R)*** received from registered persons filing GSTR-1 will be auto populated in **FORM GSTR-4A** for viewing.

(e) Statements/return for the period prior to opting for composition scheme

If a registered person opts to pay tax under composition scheme/***Notification No. 2/2019 CT (R)*** 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/***Notification No. 2/2019 CT (R)*** 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.

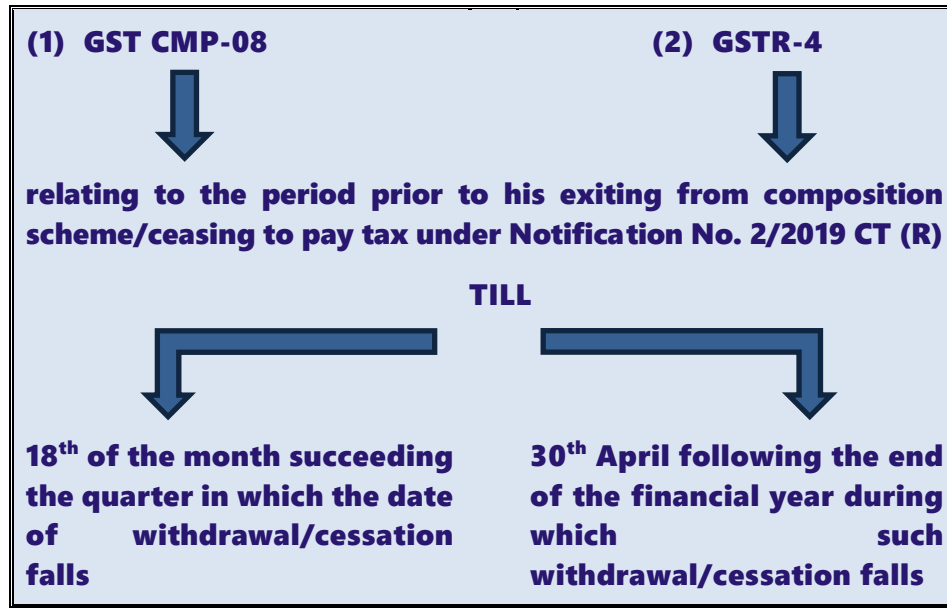
The composition supplier and the ***person paying tax under Notification No. 2/2019 CT (R)*** will not be eligible to avail ITC on

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receipt of invoices or debit notes from the supplier for the period prior to their opting to pay tax under composition scheme***/Notification No. 2/2019 CT (R)***.

(f) 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 ***and a registered person who ceases to pay tax under Notification No. 2/2019 CT (R)*** will, where required, furnish-



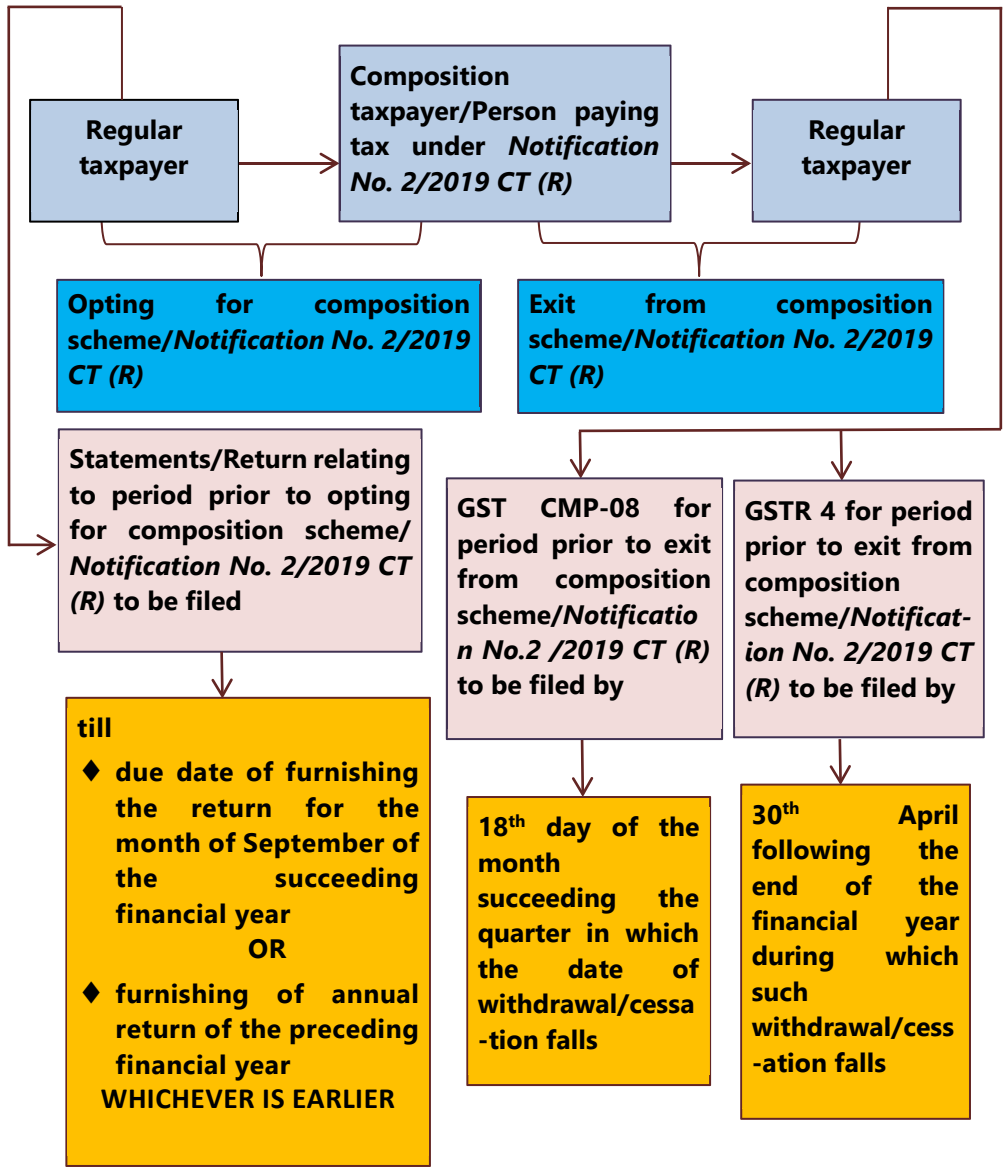
The provisions explained in points (e) and (f) above have been explained by way of a diagram given at next page:

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 for 3 consecutive tax periods

(b) any other taxable person has not furnished returns for consecutive period of 6 months.

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✪ GSTR-3B and GSTR-4 need to be filed even if there is no business activity (nil return) in the tax period.

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(iii) GSTR-5 - Return for Non-Resident Taxable Persons [Section 39(5) read with rule 63 of the CGST Rules]

Non-Resident Taxable Persons (NRTPs) are those suppliers who do not have a business establishment in India and have come for a short period to make supplies in India. 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 9 – Registration*.

(a) Monthly return



A registered NRTP is not required to file the Statement of Outward Supplies and return applicable for a normal tax payer.

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 a NRTP are incorporated in GSTR-5.

(b) Last date of filing return

GSTR-5 should be furnished **within 20 days after the end of the calendar month or within 7 days after the last day of validity period of the registration, whichever is earlier**.

(c) Payment of interest, penalty, fees or any other amount payable

A 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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(iv) GSTR-6 – Return for Input Service Distributor [Section 39(4) read with rule 60(5) and rule 65 of the CGST Rules]

An ISD is required to distribute both eligible as well as ineligible credit as per rule 39 of the CGST Rules.

(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** electronically through the common portal. **Form GSTR-6** contains the details of input tax credit received for distribution, total ITC/ eligible/ ineligible ITC to be distributed for the tax period, distribution of ITC, details of debit/ credit notes, etc.

(b) Last date of filing return

The details in GSTR-6 should be furnished **on/before 13th of the month succeeding the calendar month**. GSTR-6 can only be filed after 10th of the month and before 13th of the month succeeding the tax period.

Due date of filing monthly GSTR-6 → **By 13th day of the month suceeding the calender month**

(c) Auto-population of input tax credit received for distribution

The details of input tax credit received for distribution by an ISD will be auto populated in **Form GSTR-6A**. Such details are auto-populated in Form GSTR-6A when the registered suppliers file their GSTR-1. ISD can view the auto-populated details of ITC received for distribution in GSTR-6A.

(v) GSTR-7 - Return for tax deducted at source [Section 39(3) read with rule 60(6) and rule 66 of the CGST Rules]

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.

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(a) Monthly return



Deductor shall furnish a monthly return in **Form GSTR-7** electronically through the common portal.

(b) Last date of filing return

The details in GSTR-7 should be furnished **on/before 10th of the month succeeding the calendar month** in which tax has been deducted at source.

(c) TDS details made available in GSTR-2A/4A

The details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the suppliers in Part C of Form GSTR-2A/ Form GSTR- 4A (in case of registered person opting for composition levy) on the common portal after the due date of filing of Form GSTR-7. The supplier can take this amount as credit in his Electronic Cash Register and use the same for payment of tax or any other liability.

(d) Tax Deduction at Source (TDS) Certificate

A TDS certificate is required to be issued by deductor (the person who is deducting tax) in Form GSTR-7A to the deductee (the supplier from whose payment, TDS is deducted), within 5 days of crediting the amount to the Government. It contains the details pertaining to value on which tax has been deducted, rate of deduction, amount of tax deducted at source and amount paid to the Government.

(vi) Due date for payment of tax

Due dates for payment of tax in respect of the persons required to file 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, in case of registered persons paying tax under composition scheme or Notification No. 2/2019 CT (R) dated 07.03.2019, 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 April of the following year, tax for a quarter is to be paid by 18th of the month succeeding such quarter.

Also, NRTPs or casual taxable persons are required to make advance deposit of an amount equivalent to their estimated tax liability for the period for

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which registration is sought or extension of registration is sought in terms of section 27(2).

(vii) Rectification of errors/omissions [Section 39(9)]

If a return has been filed, how can it be revised if some changes are required to be made?



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- 1 in the tables specifically provided therein for the purposes of amending previously declared details.

Omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the tax period during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest.

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, assessee 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.

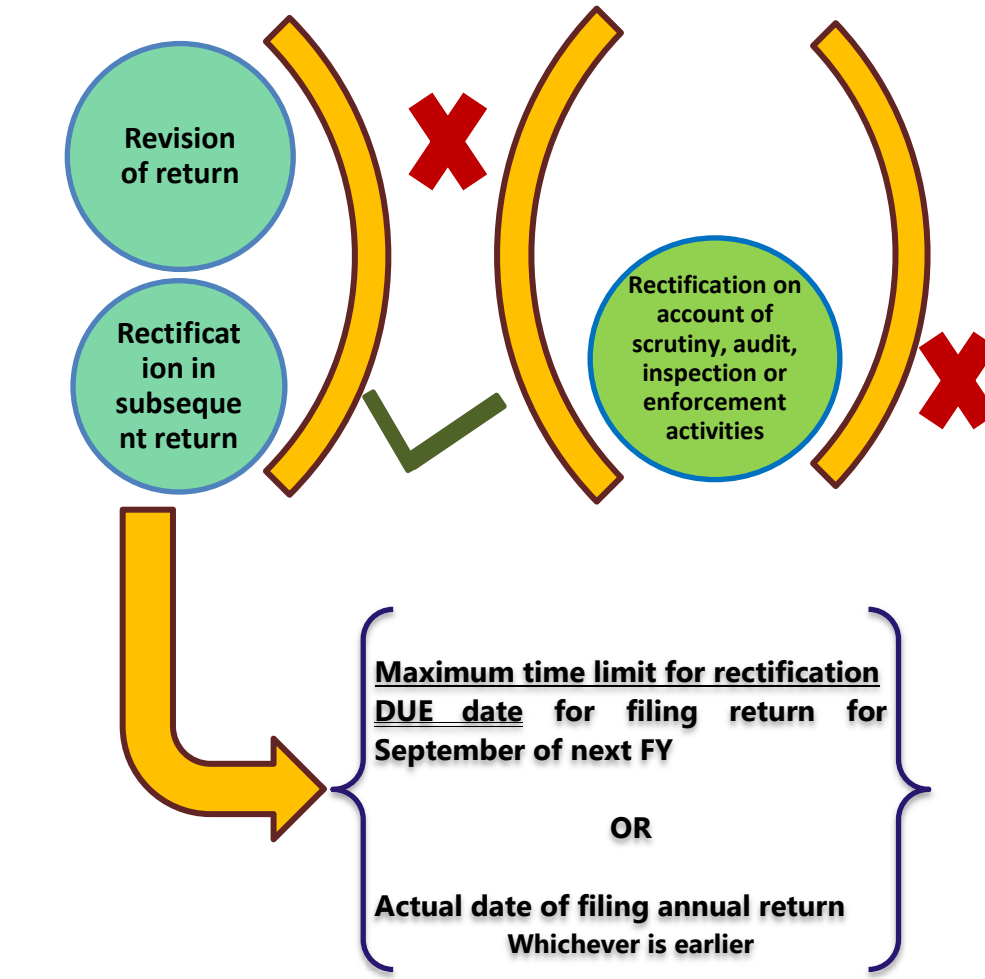
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Time limit for making rectification

The maximum time limit within which the rectification of errors/omissions is permissible is earlier of the following dates:

- Due date of filing of return for the month of September following the end of the financial year [i.e., 20th October of next financial year] or
- Actual date of filing of the relevant annual return

The last date of filing of annual return for a financial year is 31st December of next financial year. Hence, if annual return for the financial year ending March, 20XX is filed before 20th October 20XX, then no rectification of errors/omissions in returns pertaining to financial year ending March, 20XX would be permitted thereafter.



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- **A return furnished under section 39(1) on which self-assessed tax has been paid in full is considered as a valid return.**
- **Filling of returns for current month is possible only when returns of the previous month have been filled.**
- **A taxpayer needs to electronically sign the submitted returns otherwise it will be considered not-filed.**
- **Taxpayers can electronically sign their returns using a DSC (mandatory for all types of companies and LLPs), E-sign (Aadhaar-based OTP verification), or EVC (Electronic Verification Code sent to the registered mobile number of the authorized signatory).**

5. OTHER RETURNS

(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.

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 of CGST Rules – *Discussed in detail in Chapter-10: Tax Invoice, Credit and Debit Notes*]. 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.

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(ii) GSTR – 8 - Statement for tax collection at source [Section 52(4) read with rule 60(7) and rule 67 of the CGST Rules]

(a) Monthly return



An ECO liable to collect tax at source shall furnish a monthly return in **Form GSTR-8** electronically through the common portal. Form GSTR-8 contains the details of supplies of goods or services or both effected through ECO, including the supplies of goods or services or both returned through it and the amount of tax collected at source.

(b) Last date of filing return

The details in GSTR-8 should be furnished **on/before 10th of the month succeeding the calendar month in which tax has been collected at source.** Further, the amount of tax collected by ECO (TCS amount) is required to be deposited by the 10th of the month succeeding the calendar month in which tax has been collected at source.

(c) TCS details made available in GSTR-2A

The details of TCS furnished by the ECO in Form GSTR-8 shall be made available electronically to each of the suppliers in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8.

(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.

The rectification is not allowed after the due date of filing of GSTR-8 for the month of September following the end of the financial year [i.e., 10th October of next financial year] or the actual date of filing of the relevant annual statement [GSTR-9B], whichever is earlier.

(f) Claiming of TCS by supplier [Section 52(7)]

The supplier who has supplied the goods and/or services through the ECO claims credit, in his electronic cash ledger of the TCS reported by the ECO in the GSTR-8 filed by it.

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(iii) GSTR – 9/9A and GSTR-9B - Annual Return & Annual Statement [Sections 44, 52 read with rule 80 of the CGST Rules]

(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 and

(iv) Persons authorized to deduct/collect tax at source under section 51/52.

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.**

ECO required to collect tax at source: An ECO required to collect tax at source is required to file an **annual statement** referred to in section 52(5) in **Form GST-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 reconciliation statement? [Section 44(2) read with section 35(5) and rule 80(3) of the CGST Rules]

Section 35 contains the provisions relating to accounts and records. Sub-section (5) of section 35 read along with section 44(2) and rule 80 of the CGST Rules stipulates as follows:

(i) Every registered person must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a financial year exceeds ₹ 2 crores.

(ii) Such registered person should furnish, electronically, the annual return along with a copy of -

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- Audited annual accounts
- A **reconciliation statement**, duly certified, in **Form 9C**

However, 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 getting its accounts audited and furnishing the copy of audited annual accounts and a duly certified reconciliation Statement.

Reconciliation Statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed



Value of supplies declared in Annual return

Value of supplies declared in audited Annual Financial Statement

(iv) GSTR - 10 - Final Return [Section 45 read with rule 81 of the CGST Rules]

(a) Who are required to furnish final return?



Every registered person who is required to furnish return u/s 39(1) and whose registration has been surrendered or cancelled is required to file a **final return** 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**.

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(v) GSTR – 11 - Details of inward supplies of persons having UIN [Rule 82 of the CGST Rules]

(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.**



(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 [Rule 64 of the CGST Rules]

Every registered person providing OIDAR services from a place outside India to a person in India other than a registered person shall file return in **FORM GSTR-5A** by **20th day of the month succeeding the calendar month or part thereof.**

Claim of input tax credit and provisional acceptance thereof [Section 41]– Every registered person is entitled to take the credit of eligible input tax, as self-assessed, in this return, subject to prescribed condition and restrictions. Such amount is credited on a provisional basis to his electronic credit ledger and can be utilized only for payment of self-assessed output tax as per the return.

6. DEFAULT/DELAY IN FURNISHING RETURN [SECTIONS 46 & 47]

(i) Notice to return defaulters [Section 46 read with rule 68 of the CGST Rules]

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.

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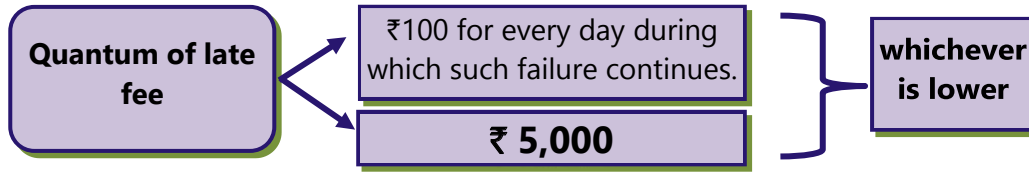
(ii) Late fees for delay in filing return [Section 47]

Delay in filing any of the following by their respective due dates, attracts late fee:

(A) Statement of Outward Supplies [Section 37]

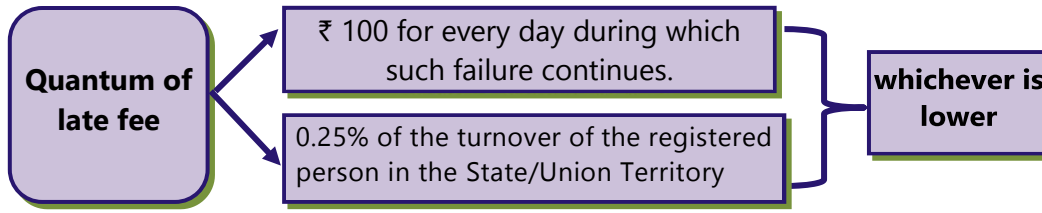
(B) Returns [Section 39]

(C) Final Return [Section 45]



Late fees for delay in filing annual return under section 44

A registered person who fails to furnish the annual return under section 44 by the due date is required to pay a late fee as under:





It may be noted that the late fee payable by a registered person for delayed filing of a return and/or annual return, as mentioned above, is with reference to only the CGST Act. An equal amount of late fee would be payable by such person under the respective SGST/UTGST Act as well.

7. 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 of the CGST Rules.

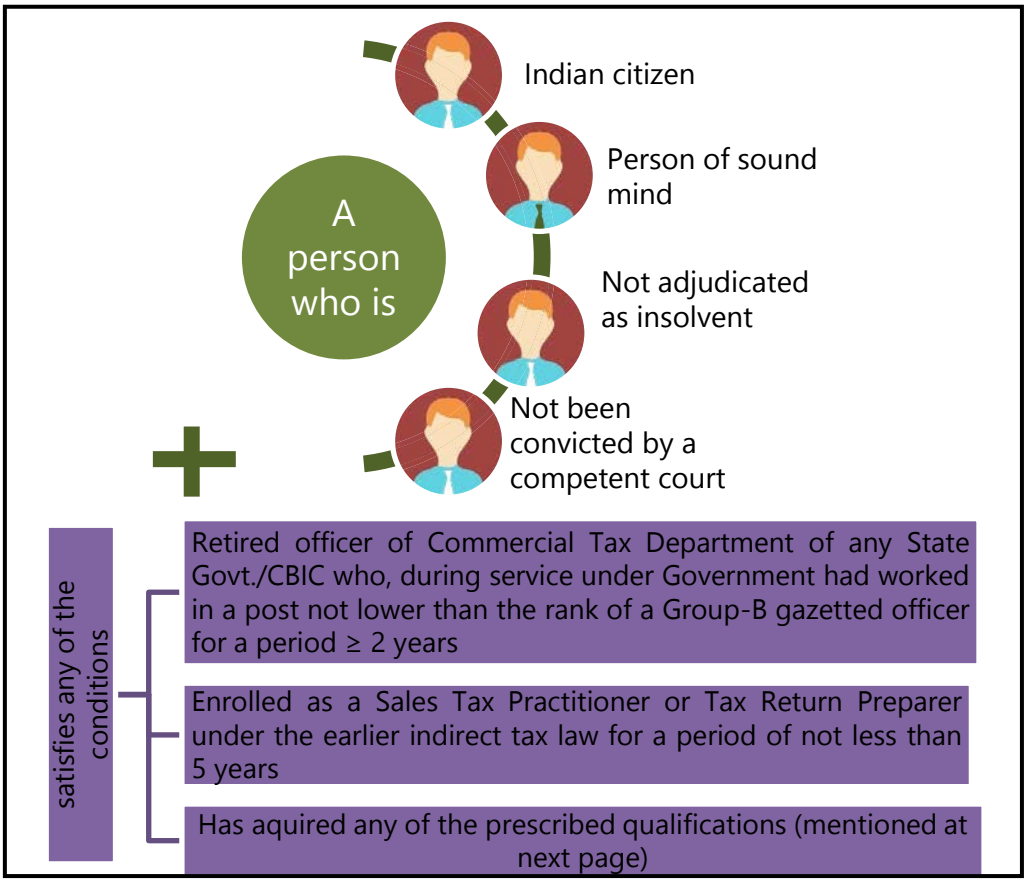
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GSTN provides separate user ID and Password to GSTP to enable him to work on behalf of his clients without asking for their user ID and passwords. They can do all the work on behalf of taxpayers as allowed under GST Law. A taxpayer may choose a different GSTP by simply unselecting the previous one and then choosing a new GSTP on the GST portal.

Standardised 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 a diagrams given below:



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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:

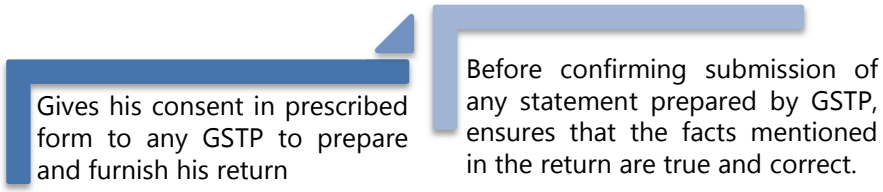
- Furnish details of outward and inward supplies
- Furnish monthly, annual or final return
- Make deposit for credit into electronic cash ledger
- ***Furnish information for generation of e-way bill***
- ***Furnish details of challan in the prescribed form***
- ***File an application for amendment or 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 registration amendment/ cancellation

Also allowed to appear as authorised 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.

Confirmation from the registered person shall be sought

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Furnishing returns through GSTP: When a registered person opts to furnish his return through GSTP, such registered person:



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

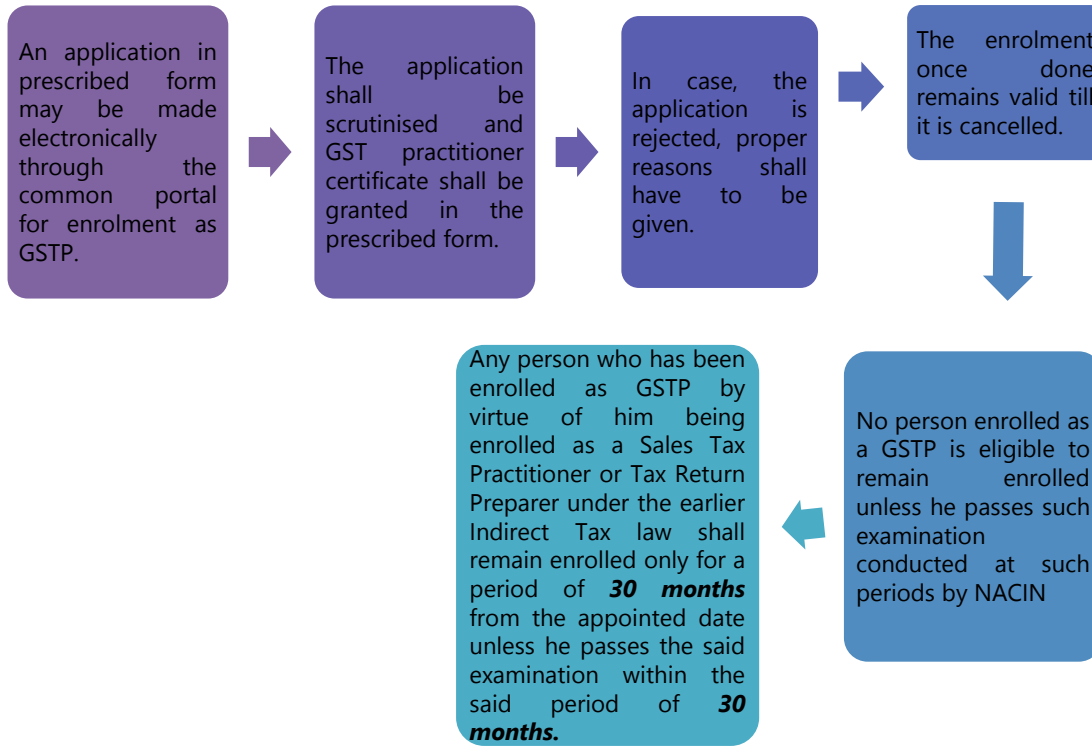
- A registered person gives his consent and authorises a GSTP in the prescribed form by listing the authorised activities in which he intends to authorise the GSTP. The GSTP accepts the authorisation in Part B of the same form.
- The GSTP can undertake only such tasks as indicated in the prescribed form. 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.

(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:

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ENROLMENT OF GSTP



8. 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 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 at next page by way of a diagram.

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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
Local authority /other public body/association
Registrar/Sub-Registrar appointed under section 6 of the Registration Act, 1908
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 [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.

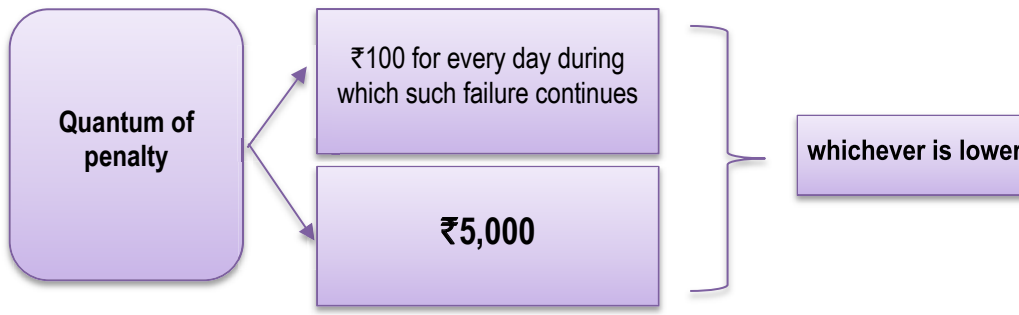
(iii) Issuance of notice for failure to furnish the information return within stipulated time [Section 150(3)]

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

(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.



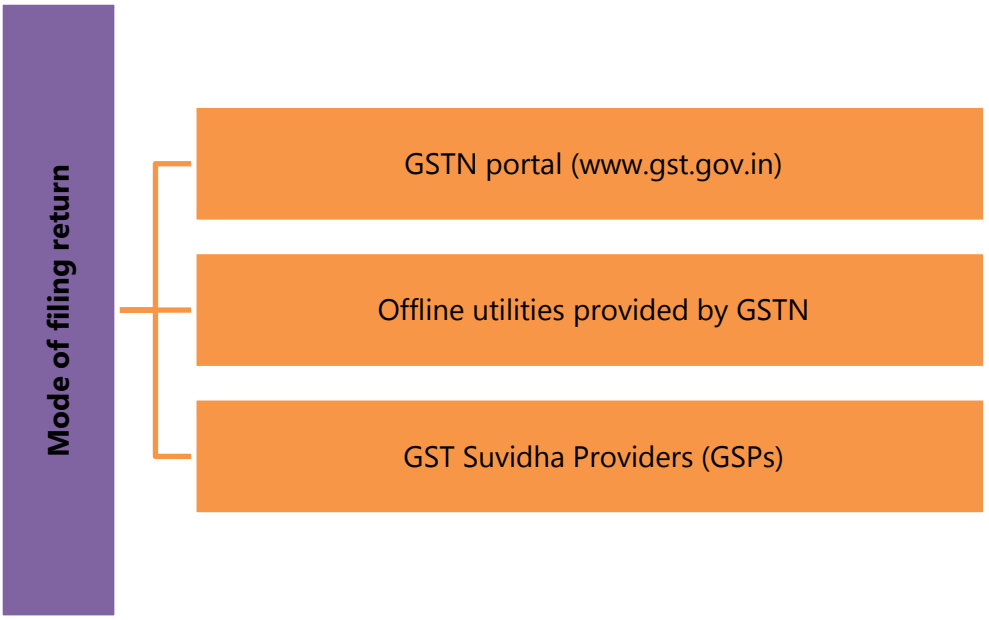
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LET US RECAPITULATE

The provisions relating to returns have been summarised by way of tables and diagrams to help students remember and retain the provisions in a better and effective manner:

1. Modes of filing returns

All the returns are to be filed online



2. List of statements/returns under GST

Return / Statement	Periodicity/ Description	Who Files?	Date for filing
GSTR-1	Monthly statement of outward supplies of goods and/or services	Person registered under regular scheme with annual aggregate turnover greater than ₹ 1.5 crore (including a casual taxable person)	10th of the next month

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	Quarterly statement of outward supplies of goods and/or services	Person registered under regular scheme with annual aggregate turnover up to ₹ 1.5 crore (including a casual taxable person)	10th of the month succeeding the quarter
GSTR-3B	Monthly return	Person registered under regular scheme including casual taxable person	20th of the next month
GSTR-4	Return for a financial year	Registered person paying tax under composition scheme/*Notification No. 2/2019 CT (R) dated 07.03.2019*	30th April of the next financial year
GST CMP-08	Quarterly statement for payment of tax		18th of the month succeeding the quarter
GSTR-5	Monthly return	Registered non-resident taxpayer	20th of the next month or within 7 days after expiry of registration, whichever is earlier
GSTR-5A	Monthly return	Registered person providing OIDAR services from a place outside India to a non-taxable online recipient	20th of the next month
GSTR-6	Monthly return	Input service distributor (ISD)	13th of the next month
GSTR-7	Monthly return	Registered person required to deduct tax at source	10th of the next month

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GSTR-8	Monthly statement	E-commerce operator required to collect tax at source	10th of the next month
GSTR-9	Annual return	Registered person other than an ISD, tax deductor/tax collector, casual taxable person and a non-resident taxpayer	31st December of the next financial year
GSTR-9A	Annual return	Registered person paying tax under composition scheme	31st December of the next financial year
GSTR-9B	Annual statement	E-commerce operator required to collect tax at source	31st December of the next financial year
GSTR-9C	Reconciliation statement	Registered person whose aggregate turnover during a financial year exceeds ₹ 2 crore.	To be submitted along with the annual return [GSTR-9/9A]
GSTR-10	Final return	Taxable person whose registration has been surrendered or cancelled	Within three months of the date of cancellation or date of order of cancellation, whichever is later.
GSTR-11	Details of inward supplies	Persons who have been issued a Unique Identity Number (UIN)	-

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3. Due date of payment

Due date of payment of tax

- Payment should be made on or before 20th of every month
- For registered persons paying tax under composition scheme/*Notification No.2/2019 CT (R) dated 07.03.2019,* payment for a quarter should be made on or before 18th of the month succeeding the quarter

4. Annual return [GSTR-9/9A]

Annual Return

The annual return for a financial year needs to be filed by 31st December of the next financial year.

In this return, the taxpayer needs to furnish details of expenditure and income for the entire financial year.

5. Revision of returns

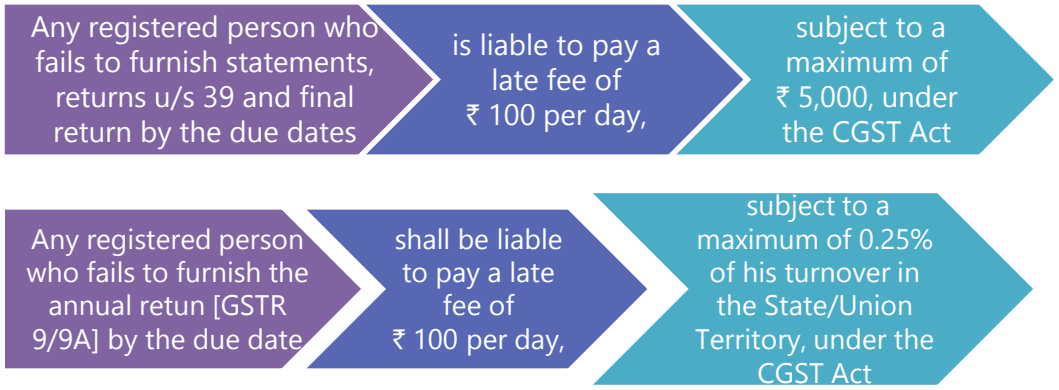
There is no mechanism of filing revised returns for any correction of errors/omissions.

The rectification of errors/omissions is allowed in the subsequent returns.

However, no rectification is allowed after the due date for furnishing the return for the month of September following the end of the financial year or furnishing of the relevant annual return, whichever is earlier.

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6. Penal provisions relating to returns



TEST YOUR KNOWLEDGE

1. *Mr. X, a regular tax payer, did not make any taxable supply during the month of July. Is he required to file any goods and service tax return?*
2. *If a return has been filed, how can it be revised if some changes are required to be made?*
3. *Which type of taxpayers need to file annual return under section 44?*
4. *Is an annual return under section 44 and a final return one and the same?*
5. *Do input service distributors (ISDs) need to file separate statement of outward supplies with their return?*
6. *Is it compulsory for a taxpayer to file return by himself?*

ANSWERS/HINTS

1. A regular tax payer is required to furnish a return u/s 39 for every month even if no supplies have been effected during such period. In other words, filing of Nil return is also mandatory.

   Therefore, Mr. X is required to file monthly return even if he did not make any taxable supply during the month of July.

2. 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

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of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided for the purposes of amending previously declared details.

As per section 39(9), omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest. The rectification of errors/omissions is carried out by entering appropriate particulars in "Amendment Tables" contained in GSTR-1.

3. 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. Casual tax payers, non-resident taxpayers, ISDs and persons authorized to deduct/collect tax at source are not required to file annual return.

4. 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 who have applied for cancellation of registration. The final return has to be filed within three months of the date of cancellation or the date of cancellation order, whichever is later.

5. 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.

6. No. A registered taxpayer can also get his return filed through a Goods and Services Tax Practitioner.

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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and the IGST 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 time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 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[2] relating to returns 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.

Section No.	Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
39	**Sub-section (1)** Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and	**Sub-section (1)** Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of	Under the existing provisions, composition taxpayers as well as registered persons paying tax under *Notification No. 2/2019 CT (R) dated 07.03.2019* are required to file annual return and make quarterly payment of taxes in

[2] *Provisions existing as on the date when the Study Material was released for printing*

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	manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.	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, **and within such time, as may be prescribed:** **Provided that 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 such conditions and restrictions as may be specified therein.**	terms of *Notification No. 21/2019 CT dated 23.04.2019* issued under section 148 read with rule 62 of CGST Rules. Such provisions are now being incorporated in the CGST Act vide the amendment being proposed by the Finance (No. 2) Act, 2019 in section 39. Section 39 of the CGST Act is being amended so as to allow the composition taxpayers (which includes tax payers paying tax under *Notification No. 2/2019 CT (R) dated 07.03.2019* by virtue of amendment being made in section 10 of the CGST Act vide the Finance (No. 2) Act, 2019) to furnish return for the financial year along with quarterly payment of taxes.
	Sub-section (2) A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or	**Sub-section (2)** A registered person paying tax under the 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 or services or both, tax payable, tax paid **and**	

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	services or both, tax payable and tax paid within eighteen days after the end of such quarter.	**such other particulars in such form and manner, and within such time, as may be prescribed.**	Further, other specified taxpayers may be given the option for quarterly or monthly furnishing of returns and payment of taxes under the proposed new return system.
	Sub-section (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:	**Sub-section (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: **Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a**	

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		month, in such form and manner, and within such time, as may be prescribed: **Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.**	
44	**Sub-section (1)** Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year	**Sub-section (1)** Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as	This amendment seeks to empower the Commissioner to extend the due date for furnishing annual return (GSTR-9/9A).

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	electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.	may be prescribed on or 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 return for such class of registered persons as may be specified therein:** **Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.**	
52	**Sub-section (4)** Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically,	**Sub-section (4)** Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically,	This amendment seeks to empower the Commissioner to extend the due date for furnishing monthly statement by an ECO liable to

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	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.	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.**	collect tax at source (GSTR-8).

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	Sub-section (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.	**Sub-section (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**	This amendment seeks to empower the Commissioner to extend the due date for furnishing annual statement by an ECO liable to collect tax at source (GSTR-9B).

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		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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Final Course

(Revised Scheme of Education and Training)

Study Material

(Modules 1 to 4)

Paper 8

Indirect Tax Laws

Part – I: Goods and Services Tax

Module – 3

(Relevant for May, 2020 and November, 2020 examinations)



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CONTENTS

PART – I : GOODS AND SERVICES TAX

MODULE – 1

Chapter 1: GST in India – An Introduction

Chapter 2: Supply under GST

Chapter 3: Charge of GST

Chapter 4: Exemptions from GST

Chapter 5: Place of Supply

Chapter 6: Time of Supply

Chapter 7: Value of Supply

MODULE – 2

Chapter 8: Input Tax Credit

Chapter 9: Registration

Chapter 10: Tax Invoice, Credit and Debit Notes

Chapter 11: Accounts and Records; E-way Bill

Chapter 12: Payment of Tax

Chapter 13: Returns

MODULE – 3

Chapter 14: Import and Export under GST

Chapter 15: Refunds

Chapter 16: Job Work

Chapter 17: Assessment and Audit

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Chapter 18: Inspection, Search, Seizure and Arrest

Chapter 19: Demands and Recovery

Chapter 20: Liability to Pay Tax in Certain Cases

Chapter 21: Offences and Penalties

Chapter 22: Appeals and Revision

Chapter 23: Advance Ruling

Chapter 24: Miscellaneous Provisions

PART – II: CUSTOMS & FTP

MODULE - 4

Chapter 1: Levy of and Exemptions from Customs Duty

Unit I-Introduction to Customs Law

Unit-II -Levy and Exemptions

Chapter 2: Types of Duty

Chapter 3: Classification of Imported and Export Goods

Chapter 4: Valuation under the Customs Act, 1962

Chapter 5: Importation, Exportation and Transportation of Goods

Chapter 6: Duty Drawback

Chapter 7: Refund

Chapter 8: Foreign Trade Policy

Unit I – Introduction to FTP

Unit II – Basic Concepts relating to Export Promotion Schemes under FTP

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DETAILED CONTENTS : MODULE - 3

CHAPTER 14– IMPORT AND EXPORT UNDER GST

Learning Outcomes 14.1

1. Introduction 14.2
2. Relevant definitions 14.2
3. Imports under GST 14.7
4. Exports 14.30

Test Your Knowledge 14.48

Answers/Hints 14.49

CHAPTER 15–REFUNDS

Learning Outcomes 15.1

1. Introduction 15.2
2. Relevant definitions 15.4
3. Refund of tax [Section 54 of the CGST Act] 15.5
4. Refund to UN bodies, embassies, etc. [Section 55 read with section 54(2) of CGST Act] 15.34
5. Interest on delayed refunds [Section 56 of CGST Act] 15.36
6. Consumer Welfare Fund [Sections 57 & 58 of CGST Act] 15.38
7. Refund of integrated tax paid on supply of goods to tourist leaving India [Section 15 of IGST Act] 15.39

Test Your Knowledge 15.40

Answers/Hints 15.40

CHAPTER 16–JOB WORK

Learning Outcomes 16.1

1. Introduction 16.2

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2. Relevant definitions....16.4
3. Job work procedure [Section 143]....16.5
4. Taking input tax credit in respect of inputs and capital goods sent for job work [Section 19]....16.10
5. Registration Requirements....16.17
Test Your Knowledge....16.18
Answers/Hints....16.19

CHAPTER 17- ASSESSMENT AND AUDIT

Learning Outcomes....17.1
1. Introduction....17.2
2. Relevant definitions....17.3
3. Self-assessment [Section 59]....17.3
4. Provisional assessment [Section 60]....17.4
5. Scrutiny of returns [Section 61]....17.6
6. Assessment of non-filers of returns [Section 62]....17.7
7. Assessment of unregistered persons [Section 63]....17.8
8. Summary assessment in certain special cases [Section 64]....17.10
9. Audit by tax authorities [Section 65]....17.11
10. Special audit [Section 66]....17.12
11. Audit of accounts [Section 35(5) read alongwith section 44(2) and rule 80....17.14
Let Us Recapitulate....17.14
Test Your Knowledge....17.18
Answers/Hints....17.18

CHAPTER 18- INSPECTION, SEARCH, SEIZURE AND ARREST

Learning Outcomes....18.1
1. Introduction....18.2

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2. Power of inspection, search and seizure [Section 67] 18.3
3. Inspection of goods in movement [Section 68] 18.8
4. Power to arrest [Section 69] 18.8
5. Power to summon persons to give evidence and produce documents [Section 70] 18.11
6. Access to business premises [Section 71] 18.13
7. Officers to assist proper officers [Section 72] 18.14

Let Us Recapitulate 18.14

Test Your Knowledge 18.16

Answers/Hints 18.16

CHAPTER 19- DEMANDS AND RECOVERY

Learning Outcomes 19.1

1. Introduction 19.2
2. Relevant definitions 19.3
3. Determination of tax not paid/short paid/ erroneously refunded/ ITC wrongly availed/utilised [Section 73 & Section 74] 19.4
4. General provisions relating to determination of tax [Section 75] 19.16
5. Tax collected but not deposited [Section 76] 19.19
6. Tax wrongfully collected and paid to Central Government or State Government [Section 77] 19.21
7. Recovery proceedings [Sections 78 & 79] 19.22
8. Payment of tax and other amount in instalments [Section 80] 19.29
9. Transfer of property to be void in certain cases [Section 81] 19.30
10. Tax to be first charge on property [Section 82] 19.31
11. Provisional attachment to protect revenue in certain cases [Section 83] 19.31
12. Continuation and validation of certain recovery proceedings [Section 84] 19.34

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Test Your Knowledge 19.34

Answers/Hints 19.35

CHAPTER 20- LIABILITY TO PAY IN CERTAIN CASES

Learning Outcomes 20.1

1. Introduction 20.2
2. Relevant definitions 20.2
3. Liability to pay in case of transfer of business [Section 85 of the CGST Act] 20.4
4. Liability of agent and principal [Section 86 of the CGST Act] 20.5
5. Liability to pay in case of an amalgamation/merger [Section 87 of the CGST Act] 20.5
6. Liability in case of company in liquidation [Section 88 of the CGST Act] 20.6
7. Liability of directors of private company [Section 89 of the CGST Act] 20.8
8. Liability of partners of firm to pay tax [Section 90 of the CGST Act] 20.8
9. Liability of guardians, trustees etc. [Section 91 of the CGST Act] 20.9
10. Liability of Court of Wards etc. [Section 92 of the CGST Act] 20.9
11. Special provisions regarding liability to pay tax, interest or penalty in certain cases [Section 93 of the CGST Act] 20.10
12. Liability in other cases [Section 94 of the CGST Act] 20.12

Test Your Knowledge 20.13

Answers/Hints 20.14

CHAPTER 21- OFFENCES AND PENALTIES

Learning Outcomes 21.1

1. Introduction 21.2
2. Relevant definitions 21.3

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3. Penalty for certain offences [Section 122] 21.4
4. Penalty for failure to furnish information return [Section 123] 21.7
5. Fine for failure to furnish statistics [Section 124] 21.8
6. General penalty [Section 125] 21.8
7. General disciplines related to penalty [Section 126] 21.8
8. Power to impose penalty in certain cases [Section 127] 21.9
9. Power to waive penalty or fee or both [Section 128] 21.10
10. Detention, seizure and release of goods and conveyances in transit [Section 129] 21.10
11. Confiscation of goods or conveyances and levy of penalty [Section 130] 21.12
12. Confiscation or penalty not to interfere with other punishments [Section 31] 21.14
13. Punishments for certain offences [Section 132] 21.14
14. Liability of officers and certain other persons [Section 133] 21.18
15. Cognizance of offences [Section 134] 21.18
16. Presumption of culpable metal state [Section 135] 21.19
17. Relevancy of statements under certain circumstances [Section 136] 21.19
18. Offences by companies [Section 137] 21.20
19. Compounding of offences [Section 138] 21.21

Let Us Recapitulate 21.22

Test Your Knowledge 21.25

Answers/Hints 21.25

CHAPTER 22- APPEALS AND REVISIONS

Learning Outcomes 22.1

1. Introduction 22.2
2. Relevant definitions 22.4

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3. Appeals to Appellate Authority [Section 107] 22.4
4. Powers of Revisional Authority [Section 108] 22.8
5. Appellate Tribunal under GST laws [Sections 109-111] 22.10
6. Appeal to Appellate Tribunal [Sections 112 & 113] 22.13
7. Mandatory pre-deposit 22.16
8. Production of additional evidence before the Appellate Authority or the Appellate Tribunal 22.17
9. Appearance by authorised representative [Section 116] 22.19
10. Appeal to the High Court [Section 117] 22.20
11. Appeal to the Supreme Court [Section 118-119] 22.21
12. Sums due to be paid notwithstanding appeal etc. [Section 119] 22.22
13. Appeal not to be filed in certain cases [Section 120] 22.22
14. Non appealable decisions and orders [Section 121] 22.22

Test Your Knowledge 22.23

Answers/Hints 22.23

CHAPTER 23- ADVANCE RULING

Learning Outcomes 23.1

1. Introduction 23.2
2. Relevant definitions 23.3
3. Questions for which Advance Ruling can be sought [Section 97] 23.3
4. Authority for Advance Ruling (AAR) and Appellate Authority for Advance Ruling (AAAR) [Section 96 and 99] 23.4
5. Procedure for obtaining Advance Ruling [Section 98] 23.5
6. Appeals against order of AAR to the appellate authority [Section 100 and 101] 23.6
7. Rectification of mistakes [Section 102] 23.6
8. Applicability of Advance Ruling [Section 103] 23.7
9. Advance ruling to be void in certain circumstances [Section 104] 23.7

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10. Powers and procedure of AAR and AAAR [Section 105 and 106] 23.8

Test Your Knowledge 23.8

Answers/Hints 23.8

CHAPTER 24- MISCELLANEOUS PROVISIONS

Learning Outcomes 24.1

1. Introduction 24.2
2. Presumption as to documents in certain cases [Section 144] 24.5
3. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence [Section 145] 24.6
4. Power to collect statistics & bar on disclosure of information [Sections 151 & 152] 24.7
5. Disclosure of information by a public servant [Section 158] 24.8
6. Publication of information in respect of persons in certain cases [Section 159] 24.11
7. Taking assistance from an expert [Section 153] 24.12
8. Assessment proceedings, etc. not to be invalid on certain grounds [Section 160] 24.12
9. Rectification of errors apparent on the face of record [Section 161] 24.13
10. Rounding off of tax etc. [Section 170] 24.14
11. Removal of difficulties [Section 172] 24.15
12. Power of Government to make rules & regulations [Sections 164 & 165] 24.16
13. Laying of rules, regulations and notifications [Section 166] 24.17
14. Delegation of powers [Section 167] 24.17
15. Power to issue instructions or directions [Section 168] 24.18
16. Omission and repeal of earlier laws [Sections 173 and 174] 24.19
17. Common portal [Section 146] 24.21

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18. Special Procedure for certain processes [Section 148] 24.21
19. Goods and Services Tax compliance rating [Section 149] 24.22
20. Power to take samples [Section 154] 24.23
21. Burden of proof [Section 155] 24.23
22. Persons deemed to be public servants [Section 156] 24.23
23. Protection of action taken under this Act [Section 157] 24.23
24. Bar on jurisdiction of Civil Courts [Section 162] 24.24
25. Levy of fee [Section 163] 24.24
26. Service of notice in certain circumstances [Section 169] 24.24
27. Anti-profiteering measure [Section 171] 24.25
28. Application of provisions of Central Goods and Services Tax Act [Section 20 of the IGST ACT] 24.29
29. Apportionment of tax and settlement of funds [Chapter VIII of the IGST Act] 24.31
30. Administration under GST 24.34
31. Manner of determination of commencement and termination of time [Section 9 of the General Clauses Act, 1897] 24.36

Test Your Knowledge 24.37

Answers/Hints 24.37

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CHAPTER 14

IMPORT AND EXPORT UNDER GST



For the sake of brevity, input tax credit has been referred to as ITC in this Chapter. The section numbers referred to in the Chapter pertain to IGST Act, unless otherwise specified.

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.



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

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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)].
- **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

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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)].

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

Explanation.—For the purposes of this clause, the expression "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

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with ninety percent or more participation by way of equity or control, to carry out any function entrusted ***to a Panchayat under article 243G or*** to a municipality under article 243W of the Constitution [Section 2(16)][1].

❖ **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)].

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

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[1] *This definition be read in place of the definition of 'non-taxable online recipient' given at page nos. 3.3 – 3.4 in Chapter-3: Charge of GST in Module-1 of this Study Material.*

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(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;
- 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

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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 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): As per *DGFT's Trade Notice No. 09 dated 12.06.2017*, the 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.

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*

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	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 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.*
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 5: Place of Supply in Module 1 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)	*Any article which is imported into India shall, in addition, be*

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of the Customs Tariff Act, 1975	*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.*
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*

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	clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b): *Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).* *Explanation.- For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.*
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.*



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. 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.

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

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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:

Bill of Entry For Home Consumption *[Refer Bill of Entry Regulations 1976]* Licence No.

Port Code	S = Sea A= Air L = Land	Prior Entry Stamp	Import Dept. S. No. and Date	Customs House Agent Code	Importer Code(IEC/ GSTIN/PAN etc as applicable)	Importer's Name and Address

Vessel's Name	Rotation No. Date	Line Number	Port of Shipment	Country of Origin and Code	Country of Consignment (if different) and Code	Bill of Lading Date

PACKAGES GOODS					QUANTITY		CUSTOMS DUTY				ADDITIONAL DUTY				IGST							
No. and Description	Marks and Numbers	Serial No.	Unit Code	Weight/ Volume /Number etc.	Description ---------- - R.I.T.C. No (Give details of each class separately)	Customs Tariff heading ---------- - Exemption Notification No. and year	Nature of duty code	Assessable Value under Section 14 Customs Act, 1962 (Rs.)	RATE Basic --------- Auxiliary (Rs.)	AMOUNT Basic ---- Auxiliary (Rs.)	C.E.T. Heading ---- Exemption Notification No. and year	Value under Section 3 Customs Tariff Act, 1975 (Rs.)	Rate	SAD	Total Additional Duty	GST Code	IGST Rate	Exemption Notification for claiming exemption from IGST	IGST amount (Rs.)	GST Compensation Cess Rate	Exemption Notification for claiming exemption from GST Compensation Cess	GST Compensation Cess Amount	TOTAL UTY
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)

Gross Weight TOTAL NUMER OF PACKAGES (IN WORDS).....
..... Import Clerk

TOTAL AMOUNT OF DUTY (IN WORDS)
RUPEES..... TOTAL.....
(By pin-point typewriter)

(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

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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]*.

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.

However, supply of warehoused goods to any person before clearance for home consumption is neither a supply of goods nor a

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.

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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 in-bond 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].

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.

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

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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.

(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

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service charges/commission paid etc. to establish a link between the first contracted price of the goods and the last transaction.

(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 China 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 'Ç' in China on 'A' in India. The point to be noted here is that goods do not touch Indian shores; they are shipped by 'Ç' from China 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 by ***Notification No. 09/2019 Cus dated 25.03.2019***. 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 available only till ***31.03.2020.***

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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.

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.*

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.*

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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.*
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.*

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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 5: 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:––* *(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;*

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	(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.*



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.

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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 a 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:

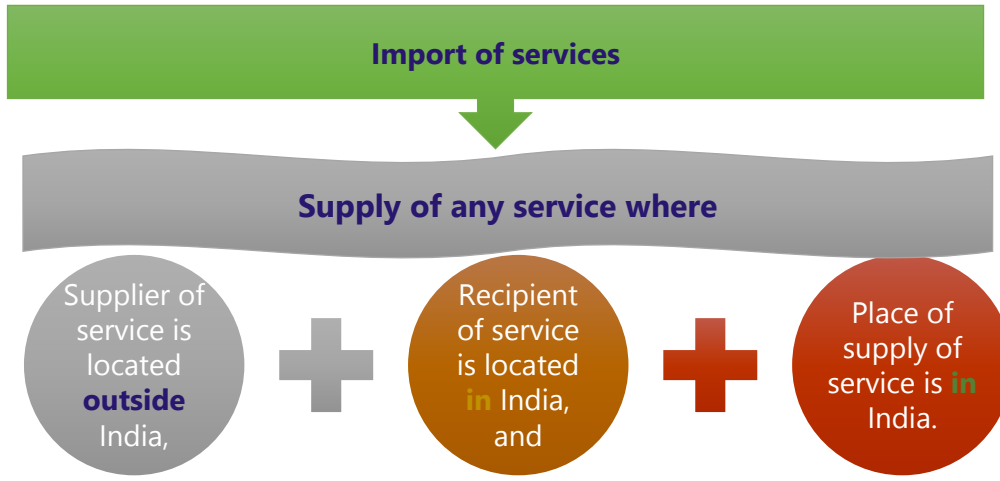
Nature of Service	Consideration	Business Test
Import of services	Necessarily Required	Not required
Import of services by a taxable person from a related person or from his establishment outside India	Not required	Necessarily Required

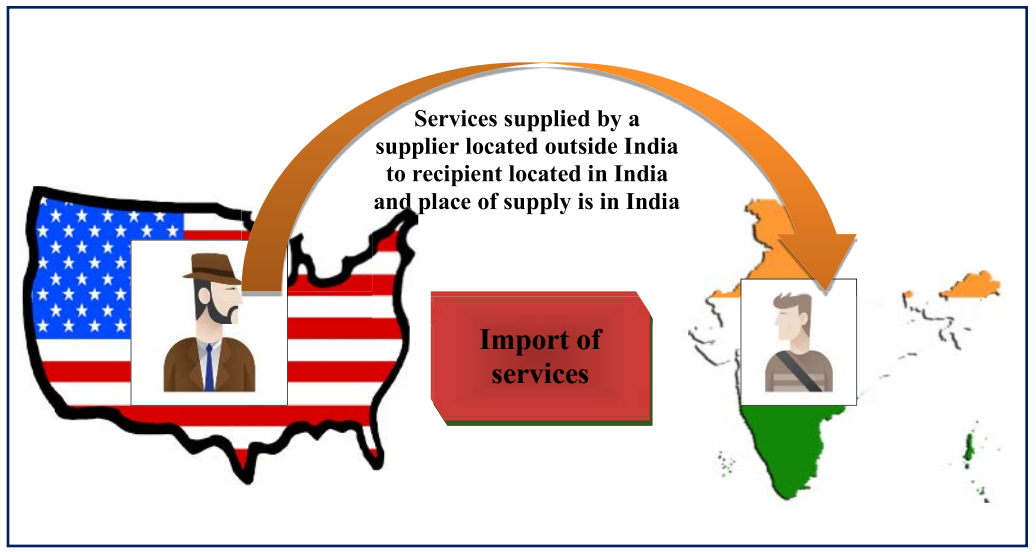
Import of service into the territory of India is treated as inter-State supply in terms of section 7(4) and thus, is liable to IGST under section 5.

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(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.





The concept discussed above has been explained by way of following examples:

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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 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].

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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[2].

(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 serial number (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 the importer *[Section 5(3) of the IGST Act read with serial number (10) of Notification No. 10/2017 IGST (R) dated 28.06.2017]*.
- 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]*.

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[2] *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 5 – Place of Supply in Module 1 of this Study Material.*

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- 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 [Page nos. 4.82 – 4.84] in Module 1 of this Study Material. The relevant exemptions may be referred 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 without having any physical interface with the supplier of such services *[See definition]*.



Download of an e-book online for a payment would amount to receipt of OIDAR services by the consumer.

❑ 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 place of supply rules 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[3] 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.

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[3] *Provisions relating to place of supply for OIDAR services have been discussed in detail in Chapter 5: Place of Supply in Module 1 of this Study Material.*

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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 for purposes unrelated to business or profession, or to a Government, Governmental authority or local authority [i.e. 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 to be notified by the Government.

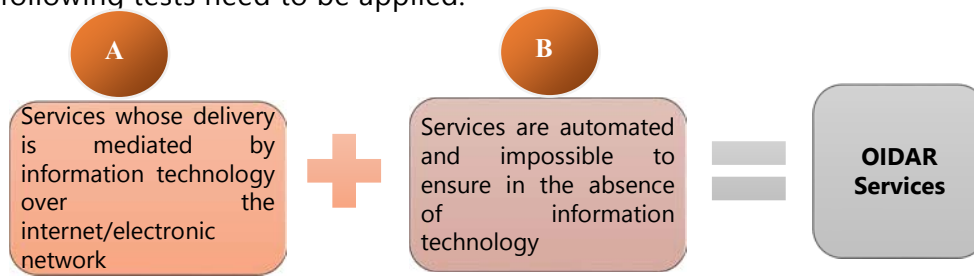
If the overseas supplier has a representative in India for any purpose, such person (representative in India) shall get registered and pay IGST on behalf of the supplier.

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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.

Service	Whether condition 'A' is fulfilled?	Whether condition 'B' is fulfilled?	Whether it is OIDAR service or not?
PDF document manually emailed by provider	YES	NO	NO
PDF document automatically emailed by provider' s system	YES	YES	YES
PDF document automatically downloaded from site	YES	YES	YES
Stock photographs available	YES	YES	YES

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for automatic download			
Online course consisting of pre-recorded videos and downloadable PDFs	YES	YES	YES
Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor	YES	NO	NO
Individually commissioned content sent in digital form e.g., photographs, reports, medical results.	YES	NO	NO

Indicative List of OIDAR Services

Website supply, web-hosting, distance maintenance of programmes and equipment

- Website hosting and webpage hosting
- Automated, online and distance maintenance of programmes
- Remote systems administration
- Online data warehousing where specific data is stored and retrieved electronically
- Online supply of on-demand disc space

Supply of software and updating thereof

- Accessing or downloading software (including procurement/ accountancy programmes and anti-virus software) plus updates
- Software to block banner adverts, otherwise known as Banner blockers
- Download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
- Online automated installation of filters on websites
- Online automated installation of firewalls

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Supply of images, text and information and making available of databases

- Accessing or downloading desktop themes
- Accessing or downloading photographic or pictorial images or screensavers
- The digitised content of books and other electronic publications
- Subscription to online newspapers and journals
- Weblogs and website statistics
- Online news, traffic information and weather reports
- Online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular, data such as continually updated stock market data, in real time)
- The provision of advertising space including banner ads on a website/web page
- Use of search engines and Internet directories

Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events

- Accessing or downloading of music on to computers and mobile phones
- Accessing or downloading of jingles, excerpts, ringtones, or other sounds
- Accessing or downloading of films
- Downloading of games on to computers and mobile phones
- Accessing automated online games which are dependent on the Internet or other similar electronic networks, where players are geographically remote from one another

(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

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through its portal[4].

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. However, all importers are required 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]*.

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.

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[4] *Provisions relating to Electronic Commerce Operator are discussed in detail in Chapter 3: Charge of Tax in Module 1 of this Study Material.*

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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.

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.

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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,-* *when the supplier is located in India and the place of supply is outside India;* *to or by a Special Economic Zone developer or a Special Economic Zone unit; or* *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,––* *an establishment in India and any other establishment outside India;* *an establishment in a State or Union territory and any other establishment outside that State or Union territory; or* *an establishment in a State or Union territory and any other establishment registered within that State or Union territory,* *then such establishments shall be treated as establishments of distinct persons.*
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.*

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Place of supply	
Section 11 of the IGST Act	*Place of supply of goods imported into, or exported from India* *[Refer Chapter 5: 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 5: 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 to a Special Economic Zone developer or a Special Economic Zone unit.* *(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.* *(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely :-* *(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or* *(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,* *in accordance with the provisions of section 54 of the*

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	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. 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 loacted 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, there is no bar on taking/availing credit of

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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 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, 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 taxes paid on the outward supplies which are zero rated are refunded;

b) The credit of inputs/ input services used in supplying the zero rated supply is allowed;

c) Wherever the supplies (which are zero rated) are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services, i.e. the unutilised ITC is refunded. Thus, even if a zero rated supply is exempt, the credit of input tax may be availed.

A registered person making zero rated supply can claim refund under either of the following options, namely: ––

a) he may supply goods and/or services under bond or Letter of

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Undertaking (LUT) without payment of IGST and claim refund of unutilised ITC; or

b) he may supply goods and/or services on payment of IGST and claim refund of such tax paid on goods and/or services supplied.

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, or (ii) GST Compensation Cess will not be charged on goods exported under bond or LUT and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.

Refer Chapter 15: Refund in this Module for detailed discussion on provisions relating to refunds associated with zero rated supplies.

(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 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
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.

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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 wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making zero rated supplies may have to register as refunds of unutilised 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.

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 will have an option to either pay IGST on the outward supply and claim refund of such IGST paid or export under Bond/LUT without payment of IGST and claim refund of ITC. 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.

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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 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.

It may be noted that in case of export of goods there is no condition of receiving the payment in convertible foreign exchange.

(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 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)

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(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 2015-20 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 2015-20 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, 2015-20.

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: Refund 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% 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. 37/11/2018 GST dated 15.03.2018 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05%

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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[5]. 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 2015 – 20].

The merchant exporter can avail the benefit of 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;

(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

[5] *Provisions relating to refund of unutilized ITC on account of inverted duty structure have been discussed in detail in Chapter 15: Refund in this Module of the Study Material.*

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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 Deport, 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 Deport, 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

(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]*.

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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* Branch and Head Office 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 page 4.83 of Chapter 4: Exemptions in Module 1 of this Study Material.*)

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

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explanation to section 8 of IGST Act. Since all the requisite conditions have been satisfied, such services qualify as export of services.

Subcontracting 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 vide Circular No. 78/52/2018 GST dated 31.12.2018 as under:

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

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b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.



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 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.

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. *Circular No. 48/22/2018 GST dated 14.06.2018* has clarified that 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 authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone. Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services,

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hotel, accommodation services, consumables etc. are received by a SEZ unit/developer for authorized operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.

(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".

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 service
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 such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange ***or in Indian rupees, wherever permitted by the Reserve Bank of India***

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.

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(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.

(b) Form for bond/LUT: The registered person (exporters) 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.

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(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 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

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Exchange Management Act, 1999. Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), 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.

(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 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. 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: Earlier, one of the conditions for a service to qualify as "export of services" was that the payment for such service must be received by the supplier in convertible foreign exchange [Section 2(6)]. Since in the

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case of exports to Nepal and Bhutan the payment is received in Indian rupees as per RBI regulations, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees was exempted from payment of tax vide *Notification No. 9/2017 IT (R) dated 28.06.2017*. Further, such services, though exempted, were also not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Clause (a) of explanation to rules 42 & 43 of CGST Rules]. Therefore, ITC attributable to such exempt supply of services was not required to be reversed.

However, with effect from 01.02.2019, section 2(6) has been amended to provide that in case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees will be allowed.

As stated earlier, the RBI regulations allow 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 can now be considered as export of services subject to fulfillment of other conditions. Thus, exemption available to such services vide the said notification has been withdrawn and clause (a) of explanation to rules 42 and 43 has also been omitted as the exclusion of such services from value of exempt supplies is no more required.***

Under the amended position, exports of both goods and services to Nepal and Bhutan are treated as 'normal exports', i.e. goods and services can now be exported to Nepal and Bhutan under LUT.

TEST YOUR KNOWLEDGE

1. *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)? Explain.*
2. *How are exports treated under the GST Law?*
3. *How are imports taxed under GST?*

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4. *How are exports taxed under GST?*

5. *Is it necessary to execute a bond for effecting zero rated supplies?*

ANSWERS/HINTS

1. *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 shall be treated to be 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.

   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.

2. Under the GST Law, export of goods or services has been treated as:

   - Inter-State supply and covered under the IGST Act.
   - 'Zero rated supply', i.e. the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

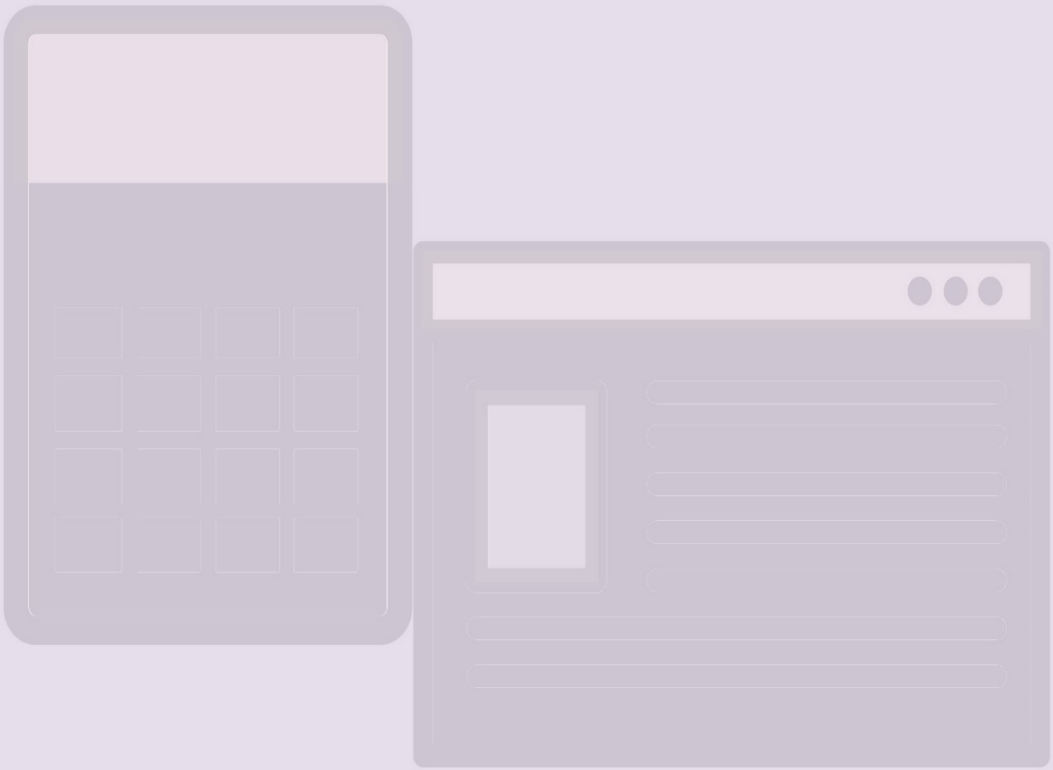
3. All imports are deemed as inter-State supplies for the purposes of levy of GST (IGST). The incidence of tax follows the destination principle and the tax revenue in case of SGST accrues to the State where the imported goods and services are consumed. IGST paid on import of goods and services is available as ITC for set off against the output tax liability. IGST on import of goods is

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levied under the IGST Act but the machinery of the customs law is used to levy and collect the same.

4. Exports of goods and services are zero rated. The exporter has the option either to export under bond/LUT without payment of IGST and claim refund of ITC or pay IGST at the time of export and claim refund thereof.

5. 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*.



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CHAPTER 15

REFUNDS



For the sake of brevity, any reference to a section unless otherwise specified shall be construed as reference to CGST Act. Likewise, any reference to a rule unless otherwise specified shall be construed as reference to CGST Rules.

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.
- 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 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 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.

Following provisions have been discussed in this Chapter:

Chapter XI of CGST Act: Refunds	
Section	**Section**
54	Refund of tax

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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 taxpaid 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
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
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.

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2. RELEVANT DEFINITIONS





- **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 of the CGST Act].

- **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 of the IGST Act].

- **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

  (b) supply of goods or services or both 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) of CGST Act].

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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 goods and/or services are exported or, goods and/or services are supplied 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(3)(b) of IGST Act].

(ii) Refund of unutilized ITC – In case of export/supply to SEZ developer/unit **without payment of IGST** or inverted duty structure, refund of unutilized ITC is available.

(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.

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(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)].

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

Refund in general cases

❖ 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 [Rule 89(1)].

Refund of tax paid on export of goods

❖ However, in case of **refund of IGST paid on goods exported out of India,** there is no need for filing a separate refund claim in refund application Form GST RFD 01 since the **shipping bill filed by the exporter is itself treated as a refund claim**.

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.*

Refund of balance in electronic cash ledger

❖ Further, **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 through the **return furnished** for the relevant tax period under section 39 in **Form GSTR-3/Form GSTR-4/Form GSTR-7**,** as the case may be. Such return furnished shall be deemed to be a

[1] *except the persons covered by notification issued under section 55 like UN Bodies, Embassies etc.*

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refund claim filed under section 54 [Proviso to section 54(1) read with first proviso to rule 89(1)].

***Presently, the application for refund of balance in the Electronic Cash Ledger is also being filed in Form GST RFD-01A. While filing refund application, the applicant needs to select the reason of refund as 'Refund on account of excess balance in cash ledger'. Thereafter, the balance amount available in Electronic Cash Ledger is auto-populated in said refund application. The applicant enters the amount of refund to be claimed and Electronic Cash Ledger is debited for the amount claimed as refund.*

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 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 [Third proviso to rule 89(1)].

Either supplier or recipient allowed to file refund application in case of deemed exports.

- **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.

  (b) Supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of SEZ [Second proviso to rule 89(1)].

- **Supplies by Casual taxable person (CTP) /Non-resident taxable person (NRTP)**: The amount of advance tax deposited by a casual taxable person or a non-resident taxable person 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.

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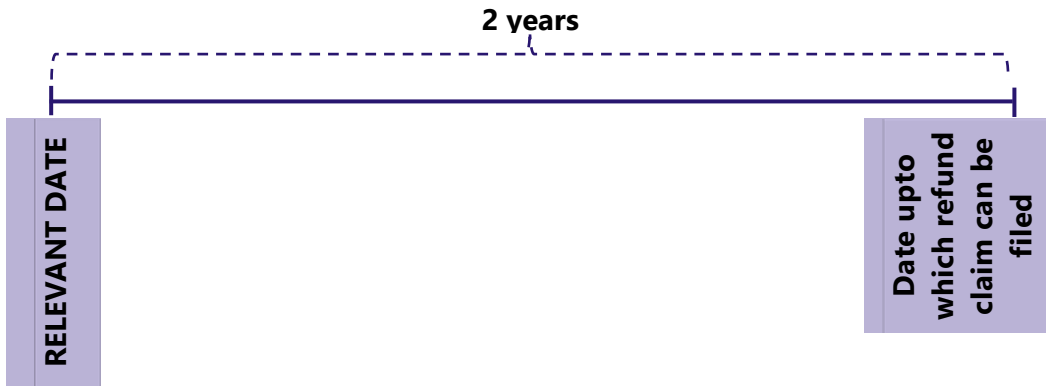
Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].



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)].



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** 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	

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	(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
2	**In case of services exported out of India** where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, and	
	(i) the supply of services had been completed prior to the receipt of such payment	Date of receipt of payment in convertible foreign exchange ***or in 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
3	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
4	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

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5	In case of refund of **unutilised ITC** in case of zero rated supplies without payment of tax or 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***
6	In the case where tax is paid provisionally under this Act/rules made thereunder	Date of adjustment of tax after the final assessment thereof
7	In the case of a person, other than the supplier	Date of receipt of goods or services or both by such person
8	Any other case	Date of payment of tax

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 ITSELF) 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) of the CGST Act 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



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paid by, him and the incidence of such tax and interest had not been passed on to any other person).

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
A judgment, decree, order/direction of Appellate Authority, Appellate Tribunal/any Court	Copy of the order passed by the proper officer or an Appellate Authority or Appellate Tribunal or Court resulting in such refund or reference number of the payment of the amount specified in section 107(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	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

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	consideration is 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[2].	
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 (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.	

[2] *Circular No. 37/11/2018-GST dated 15.03.2018*

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	(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[3].
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

Note - Documentary evidence pertaining to passing of incidence of tax

Further, a declaration needs to be furnished to establish that there is no unjust enrichment in the case of the applicant[4], in a case **where the amount of refund claimed does not exceed ₹2 lakh**.

Declaration *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 by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant.

Certificate *where refund claim > ₹2 lakh*

[3] *Notification No. 49/2017 CT dated 18.10.2017*

[4] *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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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:

No Certificate No declaration required

(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;

(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*[5].

(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.



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:

An acknowledgment in prescribed form shall be made available to the applicant[6], clearly indicating the date of filing of the claim for refund [Rule 90(1)].

Acknowledgement of refund

[5] *Provisions relating to 'invoice' have been discussed in detail in Chapter 10 – Tax Invoice; Credit and Debit Notes*

[6] *through the Common Portal electronically*

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(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. Refund order is required to be issued within 60 days from the date of filing claim for refund as mentioned in said acknowledgment.

II. Deficiencies in refund claim – Issuance of Deficiency Memo:

- Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Deficiency memo[7], requiring him **to file a fresh refund application after rectification of such deficiencies** [Rule 90(3)].

Deficiency Memo

- 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)].

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

90% of the total refund claim is paid within 7 days where refund arises on account of zero rated supplies

[7] *through the Common Portal electronically*

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granted to such supplier who was, during any period of 5 years immediately preceding the refund period, was prosecuted.

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**, excluding the amount of ITC provisionally accepted
- 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 of the CGST Rules, 2017. 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 advice for the amount sanctioned. The same shall be electronically credited to any of the

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bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

However, the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

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[8] and (iii) the balance **amount refundable**.

Amount of refund completely adjusted against any outstanding demand: In cases where the amount of refund is completely adjusted against any outstanding demand, an order giving details of the adjustment shall be issued [Proviso to rule 92(1)].

- **Where the proper officer is satisfied that the amount refundable under rule 92(1)/(2)[9] is payable to the applicant[10]** instead of being credited to Consumer Welfare Fund**,** he shall make an **order** in

[8] *under the Act or under any existing law*
[9] *Rule 92(2)- withholding of refund - has been discussed subsequently*
[10] *under section 54(8)*

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prescribed form and issue a **payment advice** 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.

Refund credited to applicant's bank account

The order issued in prescribed form shall not be required to be revalidated by the proper officer.

However, the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued [Rule 92(4)].

- **Where the proper officer is satisfied that the amount refundable under rule 92(1)/(2) is not payable to the applicant[11],** he shall make a refund order and issue an advice 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 claim for refund as mentioned in the acknowledgment received for refund claim [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:

[11] *under section 54(8)*

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- 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.



- 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 passes an order informing the applicant the reasons for withholding of such refund.

- **Section 54(10)** stipulates that where any refund of unutilized ITC is due in case of zero rated supplies made without payment of tax or inverted duty structure, to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate

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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)].
- 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].

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D. Principal 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[12].

- 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 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.



[12] *Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs 2005 (181) ELT 328 S.C*

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- 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 inapplicable

- 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.;

(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.

The Government may disburse the refund of the State tax in such manner as may be prescribed [Section 54(8A)[13]].

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in

[13] *Inserted by the Finance (No. 2) Act, 2019 with effect from 01.09.2019.*

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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 inputs is more than the output tax liability. Such accumulation will have to be carried over to the next FY till such time as it can be utilised 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)].

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**[14], in the following cases:

(a) Zero rated supplies without payment of tax: Supply of goods and/ or services to an SEZ developer/unit or export of goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST, subject to such conditions, safeguards and procedure as may be prescribed, are zero rated supplies without payment of tax. 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 the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

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[14] *A tax period is the period for which return is required to be furnished [Section 2(106) of CGST Act].*

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(b) Inverted duty structure: The term **'Inverted duty structure'** 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). As a result, the higher tax paid on inputs gets accumulated in the Electronic Credit Ledger of the taxpayer.

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]*, 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 an external source of electricity or by electric accumulators[15].

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 in such cases is required to be filed within 2 years from the ***due date for furnishing of return under section 39 for the period in which such claim for refund arises***.

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[15] *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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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:



$$\text{Refund Amount} = \frac{\text{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

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 below)*** and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both;

C. **"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, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

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

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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,

excluding:

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period

F. **"Relevant period"** means the period for which the claim has been filed.

(ii) **Rule 89(4A)** stipulates that in the case of supplies received on which the supplier has availed the benefit of deemed exports[16], refund of ITC, availed in respect of other inputs/input services used in making zero-rated supply of goods or services or both, shall be granted.

(iii) **Rule 89(4B)** stipulates that where the person claiming refund of unutilised ITC on account of zero rated supplies without payment of tax has –

(a) received supplies on which the manufacturer supplier has availed the benefit of supply of goods to merchant exporters at the concessional rate of 0.1%[17], or

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[16] under *Notification No. 48/2017 CT dated 18.10.2017 [discussed in detail in Chapter 14 – Import and Export under GST]*

[17] *Notification Nos. 41/2017 IT(R) or 40/2017 CT(R) both dated 23.10.2017. These export benefits have been explained in detail in Chapter 14 – Import and Export under GST.*

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(b) availed the benefit of exemption from IGST and Compensation Cess, for the goods imported by EOU[18] or for the goods imported under Advance Authorisation (AA)/ EPCG[19],

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

(iv) **Rule 89(5) of the CGST Rules, 2017** stipulates that in the case of refund on account of **inverted duty structure**, refund of ITC shall be granted as per the following formula -



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

where,-

A. **"Net ITC"** means ITC availed on **inputs** during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both ***(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 here in 'Net ITC', ITC availed on only inputs is covered. Since the definition of inputs[20] 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

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[18] *under Notification No. 78/2017 Cus dated 13.10.2017. This exemption has been extended upto 31.03.2020.*

[19] *under Notification No. 79/2017 Cus dated 13.10.2017. This exemption has been extended upto 31.03.2020.*

[20] *under section 2(59) of the CGST Act*

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input services and capital goods as part of refund of ITC accumulated on account of inverted duty structure[21].



Note - 2: ***If there are multiple inputs attracting different rates of tax, 'Net ITC' 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).

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, 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 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, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹ 385/-.

(vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹ 360/-, we get the

[21] *Circular No. 79/ 53/ 2018 GST dated 31.12.2018*

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maximum refund amount, as per rule 89(5) of the CGST Rules which is ₹ 25/-[22].

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) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value 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[23].

8. 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**.

[22] *Circular No. 79/ 53/ 2018 GST dated 31.12.2018*

[23] *Circular No. 79/ 53/ 2018 GST dated 31.12.2018*

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(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, if a supplier claims refund of accumulated ITC in case of zero rated supplies without payment of tax, he can avail drawback of only basic customs duty and cannot claim drawback of any of the taxes under GST (Central Tax, Integrated Tax, State/Union Territory Tax).

In other words, a supplier availing drawback of only basic customs duty shall be eligible for refund of unutilized ITC of central tax/ State tax/ Union territory tax/ integrated tax/ compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier has availed of drawback in respect of central tax *[Circular No.24/24/2017 GST dated 21.12.2017 and Circular No. 37/11/2018 GST dated 15.03.2018].*

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[24].

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.



[24] *Circular No. 59/ 33/ 2018 GST dated 04.09.2018*

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The provisions relating to refund in each of the said cases have been elaborated below:

(I) Refund on account of export of goods or services [with payment of tax] [Rule 96]

In case where the exporter of goods or services or both **opts to pay IGST at the time of export and claim refund of the IGST** thereof, 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 tax payer is not required to file separate refund application in this case.

Shipping Bill is refund application

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***[25]; **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-3/ Form GSTR-3B.



GST portal shares the details of the relevant export invoices in respect of export of goods contained in Form GSTR-1 with the system designated by the Customs viz. ICEGATE. The said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

[25] *Governed by Sea Cargo Manifest and Transhipment Regulations 2018 which has come into force on 01.08.2019 vide Notification No. 38/2018-Cus. (N.T.) dated 11-5-2018 as amended by Notification No. 17/2019-Cus. (N.T.) dated 27-2-2019*

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However, where the date for furnishing the details of outward supplies in Form GSTR-1 for a tax period has been extended, the supplier shall furnish the information relating to exports as specified in Table 6A of Form GSTR-1 after the return in Form GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs. Further, such information furnished in Table 6A shall be auto-drafted in Form GSTR-1 for the said tax period.

(2) Processing of refund claim: Upon the receipt of the information regarding the furnishing of a valid return, ICEGATE system designated by the Customs/ 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.

(3) Withholding of refund of IGST: The claim for refund shall be withheld where:

(a) a request has been received from the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of 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.

In above case, the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

Upon transmission of said intimation, the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in prescribed form.

Where the applicant becomes entitled to refund of the amount withheld, the concerned jurisdictional officer of central tax, State tax

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or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order.

(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.

Export of services

Refund application: 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]*.

Person claiming refund of IGST paid on export of goods/ services should not have:

*(i) received supplies on which the benefit of **deemed exports**[26] has been availed or benefit of **supply of goods to merchant exporters at the concessional rate** of 0.1%[27] has been availed, or*

*(ii) availed the **benefit of exemption from IGST and Compensation Cess**, for goods imported by EOU[28] or for goods imported under Advance Authorisation (AA)/ EPCG[29].*

(II) Refund of ITC paid on export of goods or services under bond or Letter of Undertaking (LUT) [Rule 96A]

Another 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*

[26] under *Notification No. 48/2017 CT dated 18.10.2017 [discussed in detail in Chapter 14 – Import and Export under GST]*

[27] *Notification Nos. 41/2017 IT(R) or 40/2017 CT(R) both dated 23.10.2017. These export benefits have been explained in detail in Chapter 14 – Import and Export under GST.*

[28] *under Notification No. 78/2017 Cus dated 13.10.2017. This exemption has been extended upto 31.03.2020.*

[29] *under Notification No. 79/2017 Cus dated 13.10.2017. This exemption has been extended upto 31.03.2020.*

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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]*.

4. 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 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of 6 months *[increased to '18 months'[30] In exercise of power granted under section 148]* 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.

[30] *Notification No. 20/2018 CT dated 28.03.2018*

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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[31].

**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.

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[32].

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 a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, once in every quarter, but before the expiry of 6 months *[increased to '18 months']* 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:

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[31] *Notification No. 16/2017 CT (R) dated 28.06.2017/ Notification No. 13/2017 IT (R) dated 28.06.2017*

[32] *Notification No. 6/2017 CT (R) dated 28.06.2017/ Notification No. 6/2017 IT (R) dated 28.06.2017*

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- in a **different prescribed form**[33], 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]*.

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.

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.

5. INTEREST ON DELAYED REFUNDS [SECTION 56 OF 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.
- Interest is **payable on such refund @ 6% p.a.***.

[33] *electronically or otherwise on the common portal*

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- Interest is payable to the applicant from the date immediately after the expiry of 60 days from the date of receipt of application under the section 54(1) till the date of refund of such tax [Section 56 of CGST Act].

**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 of CGST Act].

**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 advice 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.
- 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.

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6. CONSUMER WELFARE FUND [SECTIONS 57 & 58 OF 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 of the CGST Act 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 of the CGST Rules, 2017.

B. Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97 of the CGST Rules, 2017]

- 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)].
- 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

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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 of the CGST Act, 2017 read with rule 97 of the CGST Rules, 2017]

- All sums credited to the Consumer Welfare Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed [Section 58(1) of the CGST Act].



- 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)].

7. REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA [SECTION 15 OF IGST ACT]

- The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.



- The term **"tourist"** means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

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].

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TEST YOUR KNOWLEDGE

1. *Is there any time limit for sanctioning of refund under section 54 of the CGST Act, 2017?*
2. *Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017.*
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.*

ANSWERS/ HINTS

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 of the CGST/SGST Act.

   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 of the CGST/SGST Act, 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.

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4. Rule 90(3) of the CGST Rules 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.

5. The principle of unjust enrichment is applicable in all cases of refund except in the following cases:-

   i. Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.

   ii. 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.

   iii. refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued.

   iv. 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.

   v. if the incidence of tax or interest paid has not been passed on to any other person.

   vi. such other class of persons who has borne the incidence of tax as the Government may notify.

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CHAPTER 16

JOB WORK



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 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 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.

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 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 who are unable to comply with the discrete provisions of the law.



The GST law makes special provisions with regard to removal of goods for job-work and receiving back the goods after processing from the job-worker without the payment of GST. The benefit of these provisions shall be available both to the principal and the job worker.

Section 2(68) of the CGST Act, 2017 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 one 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



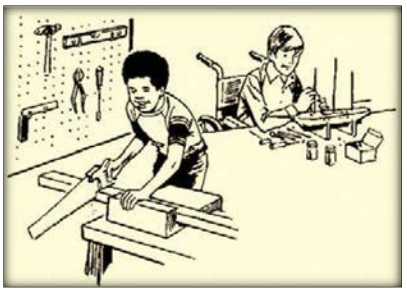
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circumstances of each case[1]. The ownership of the goods does not transfer to the job worker, but it rests with the principal.



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 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



The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act.

The value of services would be determined in terms of section 15 of the CGST Act 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.



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) of the CGST Act *[Discussed in detail in Chapter 7 – Value of Supply]* 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 that the value of such moulds and dies, jigs and fixtures or tools may

[1] *Circular No. 38/12/2018 GST dated 26.03.2018*

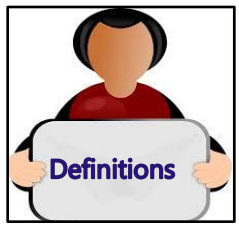
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not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

Provisions relating to job work are, *inter alia*, covered in sections 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. 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)].

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❖ **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, 2017. 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 registered person.

However, the principal is not obligated to follow the said provisions. It is his choice whether or not to avail or not to avail of the benefit of these special provisions. 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. Such goods need to be removed **under intimation** and subject to certain conditions.

Goods sent without payment of tax from principal's premises to job worker's premises.

Principal is not required to reverse the ITC availed on inputs or capital goods dispatched to job-worker.



Principal's premises — **NO TAX** — **Job-worker's premises**

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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Premises of the supplier from whom goods have been purchased by the principal

NO TAX



Job-worker's premises

- 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 defence 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 the goods to-
  - another job-worker for further processing, or
  - dispatch the goods to any of the place of business of the principal without payment of tax.

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, directly from job-worker's premises, on payment of tax within India or without payment of tax for export outside India on fulfilment of conditions.

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The facility of supply of goods by principal to 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 on **declaring premise of the job-worker as his additional place of business in registration**. However, such declaration is not required by principal where:

- job worker is registered under section 25; or
- principal is engaged in supply of notified goods.

In such cases, 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 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]*[2].

example

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 will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply.

Procedure for sending goods to job worker

Before supply of goods to the job-worker, the principal would be required to send intimation the Jurisdictional 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 challan issued by the principal. The challan shall be issued even for

[2] *Circular No. 38/12/2018 GST dated 26.03.2018*

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the inputs or capital goods sent directly to the job worker. The challan shall contain the specified details[3].

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.
- 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 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.

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[3] *The documents and intimation required for movement of goods from principal to job worker have been discussed in detail subsequently in this chapter.*

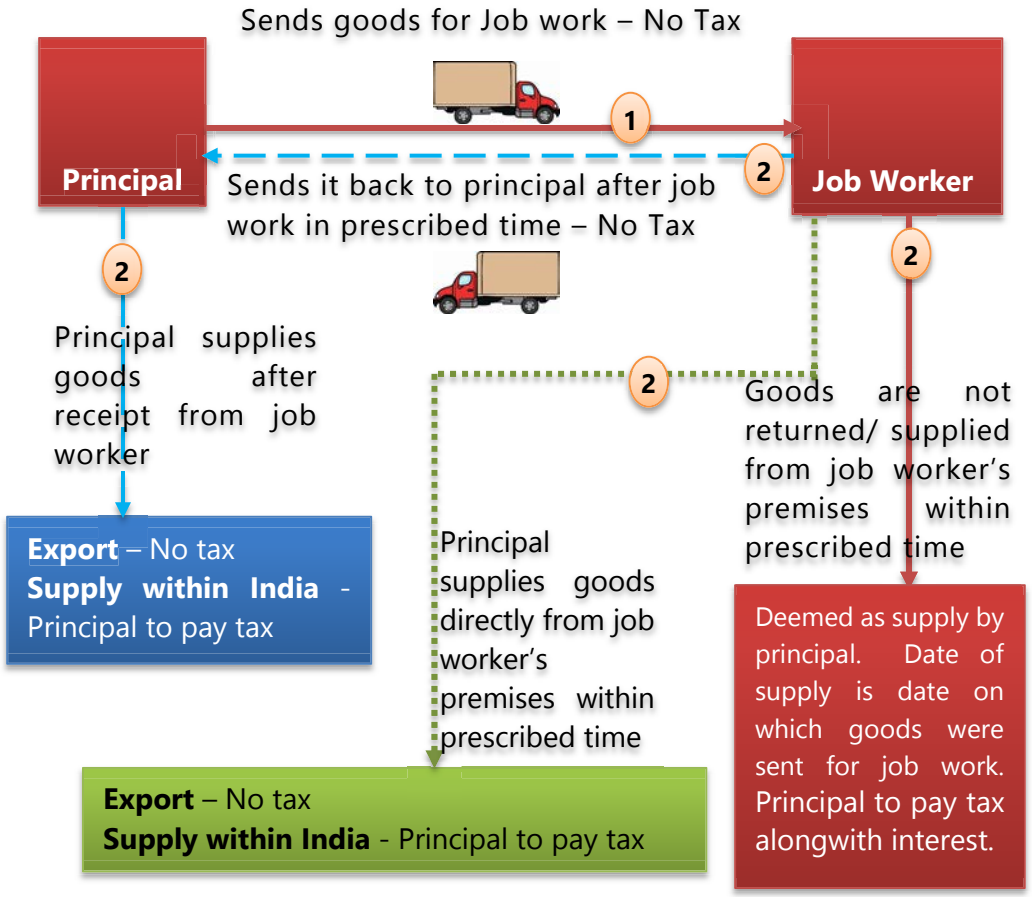
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- If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder.



- 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.

The above provisions have been summarized in the diagram below:



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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:*
	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*

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	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, 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

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	quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.
(2)	*The challan issued by the principal to the job worker shall contain the details specified in rule 55.*
(3)	*The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter 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 quarter or within such further period as may be extended by the Commissioner by a notification in this behalf:*
	Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.
(4)	*Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in **FORM GSTR-1** and the principal shall be liable to pay the tax along with applicable interest.*

Explanation.- *For the purposes of this Chapter,-*

(1)	*the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;*	
(2)	*for determining the value of an exempt supply as referred to in sub-section (3) of section 17-*	
	(a)	*the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and*
	(b)	*the value of security shall be taken as one per cent. of the sale value of such security.*

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ANALYSIS

Section 19 deals with ITC on inputs and capital goods sent for job work.

(i) Credit on 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]*.

Job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered[4].

(ii) Time limits for the return of goods sent for job-work or supply from job worker's place of business [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[5] respectively **from 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) on the day they were sent out to the job worker.

[4] *Circular No. 38/12/2018 GST dated 26.03.2018*

[5] *Extendible by further period not exceeding 1 year and 2 years respectively*

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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.

Summary of above provisions

- ❑ 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 (extendible by another 1 year)
- ♦ **Capital goods** - 3 years (extendible 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.



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. 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.

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(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 **challan** issued by him. Such 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 10: Tax Invoice, Credit and Debit Notes for detailed discussion on rule 55*].



The principal shall prepare **in triplicate**, the 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 challan along with the goods, while returning them to the principal.

Further, the principal would be required to send the 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 challan issued either by the principal or the job worker. Alternatively, the 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 challan [as received by him from the principal] while returning the goods to the principal after carrying out the job work.

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(d) Where the goods are sent directly by the supplier 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 challan[6] 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 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 job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and a fresh 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 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 a quarter in Form GST ITC-04 by the 25th day of the month succeeding the relevant quarter. 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 of the CGST Act.

[6] *required to be issued under rule 45*

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(g) Requirement to generate E-way Bill: In case of job work, e-way bill[7] 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[8].

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) of the CGST Act, 2017].

(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***

---

[7] *Rule 138 of the CGST Rules, 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 – Tax Invoice, Credit and Debit Notes.*

[8] *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 of the CGST Rules].*

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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[9].

(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[10].

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 of CGST Act, 2017].

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.*

   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

[9] *Circular No. 38/12/2018 GST dated 26.03.2018*
[10] *Circular No. 38/12/2018 GST dated 26.03.2018*

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bringing the mould back after three years of delivery to the job worker.

How should they respond to this?

ANSWERS/ HINTS

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 where the job worker is a registered taxable person or 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.

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) of CGST Act, 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.

   Hence, Genie Engineers have correctly taken the ITC on moulds.

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CHAPTER 17

ASSESSMENT AND AUDIT



LEARNING OUTCOMES

After reading this chapter, you shall be equipped to:

- understand and explain the different types of assessment which a registered 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



What is the need for assessment & audit?

A supplier will come to know the extent of his tax liability which has to be discharged on a continuous and regular basis only after assessment. Assessment means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

GST is a trust based taxation regime wherein the assessee is required to self-assess his returns and determine tax liability without any intervention by the tax official. Therefore, a tax regime that relies on self-assessment has to put in place a robust audit mechanism to measure and ensure compliance of the provisions of law by the taxable person.

"Audit" has been defined in section 2(13) of the CGST Act, 2017 and it means the examination of records, returns and other documents maintained or furnished by the registered person under the GST Acts or the rules made there under or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of the GST Acts or the rules made thereunder.

Chapter XII – Assessment [Sections 59 to 64] and Chapter XIII-Audit [Section 65 & 66] of the CGST Act stipulates the provisions relating to assessment and audit respectively. State GST laws also prescribe identical provisions in relation to assessment and audit.

In GST, Section 59 is for self-assessment by assessee whereas section 60 stands for provisional assessment with both assessee and departmental officer playing their respective roles. Sections 61-64 give power to departmental officer for assessment in different situations. Section 65 and section 66 pertains to audit by tax authorities and by CA/CWA nominated by Commissioner respectively. However, before going through the detailed study of Assessment and Audit provisions, let us first go through few relevant definitions.

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Provisions of assessment and audit under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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 assessment, he shall file the return required under section 39.

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4. PROVISIONAL ASSESSMENT [SECTION 60]

Situations demanding Provisional Assessment

Provisional assessment provides a method for determining the tax liability in case the correct tax liability cannot be determined at the time of supply. The major determinants of the tax liability are generally the applicable tax rate and the value. There might be situations when these determinants might not be readily ascertainable and may be subject to the outcome of a process that requires deliberation and time.

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 to be supplied by him,



he may furnish an application in prescribed form stating therein reasons for payment of 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 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**,** and may appear in person before the said officer if he so desires.

The proper officer shall issue an order**,** allowing payment of 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

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(b) the amount for which the bond is to be executed and security to be furnished not exceeding 25% of the amount covered under the bond.

Furnish of Security

The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in the prescribed form along with a security in the form of a bank guarantee for an amount as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

A 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 this Act 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 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.

Where the tax liability as per the final assessment is higher than in provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on 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

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specified rate will also be payable by the supplier 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 from the date immediately after the expiry of 60 days from the date of receipt of application 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) at the specified rate will be payable to the supplier.

Release of Security

The applicant may file an application for release of security furnished after issue of final assessment order.

The proper officer shall release the security after ensuring that applicant has paid the amount specified in final assessment order and issue an order within a period of 7 working days from the date of receipt of the application.

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.

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Reply to notice

The registered person to whom notice is issued may –

- 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 or
- submit his explanation regarding non-acceptance of discrepancy within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him.

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 of the Act.

6. ASSESSMENT OF NON-FILERS OF RETURNS [SECTION 62]

Best Judgment Assessment

Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person–

- fails to furnish the return under section 39 (monthly/quarterly) or under section 45 (final return), and

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- 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.



If a person defaults in filing of return for any tax period falling in F/Y 2017-18, period of 5 years shall be reckoned from the due date of filing of Annual Return for F/Y 2017-18 i.e. 31.12.2018. Accordingly, Best judgment Assessment can be made by Proper Officer on or before 31.12.2023.

Withdrawal of Assessment Order

Where the registered person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him) within 30 days of the service of the assessment order, the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (*1*) of section 50 or for payment of late fee under section 47 shall continue.

7. ASSESSMENT OF UNREGISTERED PERSONS [SECTION 63]

Best Judgment Assessment

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person–

- fails to obtain registration even though liable to do so; or

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- 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 not furnished returns for three consecutive tax periods; or

  (c) any registered person, other than a person specified in clause (*b*), has not furnished returns for a continuous period of six months; or

  (d) any person who has taken voluntary registration under sub-section (*3*) of section 25 has not commenced business within six months from the date of registration; or

  (e) registration has been obtained by means of fraud, 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.

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If the liability of a person to take registration arises at any time in the F/Y 2018-19 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 2018-19 i.e. 31.12.2019. Accordingly, Best judgment Assessment can be made by proper officer on or before 31.12.2024.

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 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.



When goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be

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ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax.

9. AUDIT BY TAX AUTHORITIES [SECTION 65]

Who may conduct the audit?

- The Commissioner; or
- Any officer authorised by him, by way of a general or a specific order,

may undertake audit of any registered person at the place of business of the registered person or in their office 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 now undertake audit of any registered person for part of financial year also.***

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, verify the 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

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respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues and record the observations in his audit notes.

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.

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 and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

Finalisation of Audit

The proper officer shall finalise the findings of the audit after due consideration of the reply furnished by registered person to audit observation brought to his notice during the course of audit.

On conclusion of audit, the proper officer shall within 30 days inform the registered person whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

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.

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 has not been correctly declared;

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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 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.

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.

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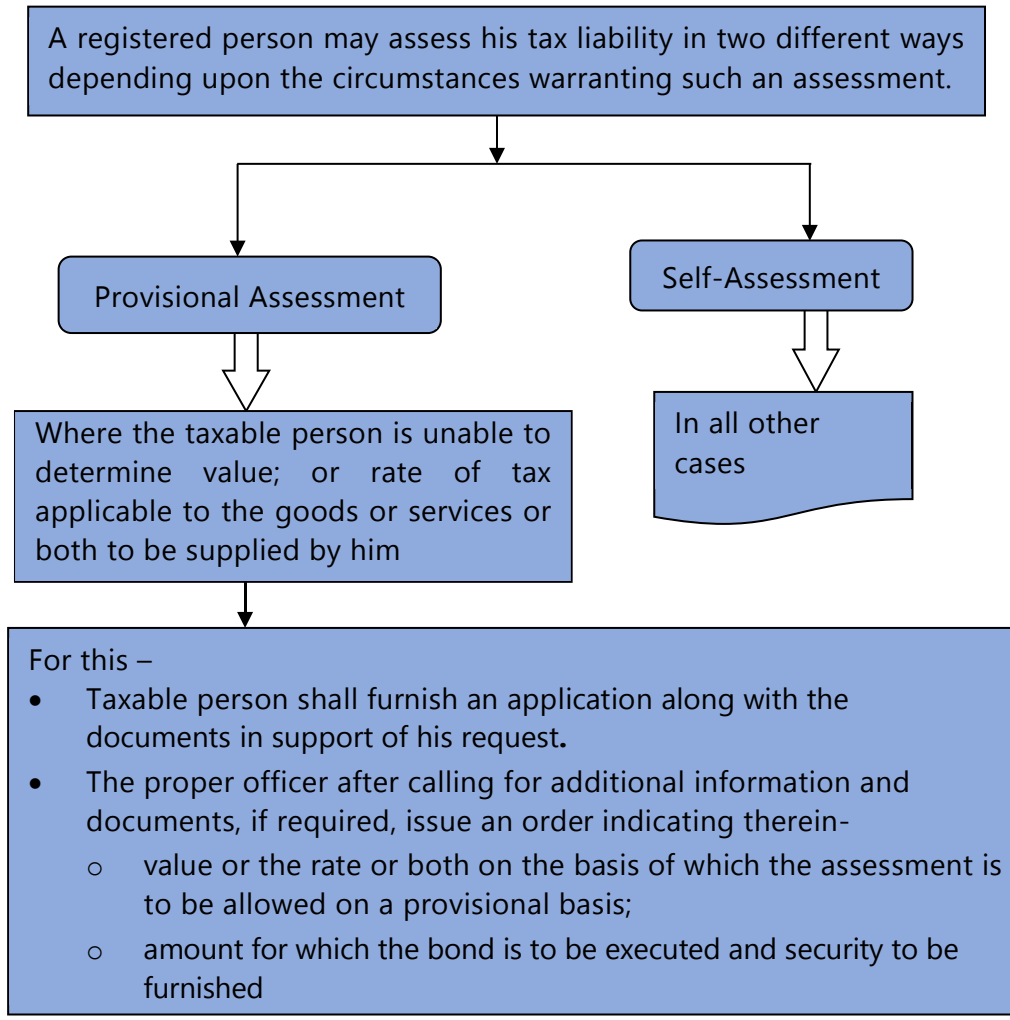
11. AUDIT OF ACCOUNTS [SECTION 35(5) READ ALONGWITH SECTION 44(2) AND RULE 80]

Refer Chapter 11: Accounts and Records [Page no. 11.15] for discussion on these provisions.

LET US RECAPITULATE

The provisions relating to assessment and audit have been summarised by way of diagrams to help students remember and retain the provisions in a better and effective manner:-

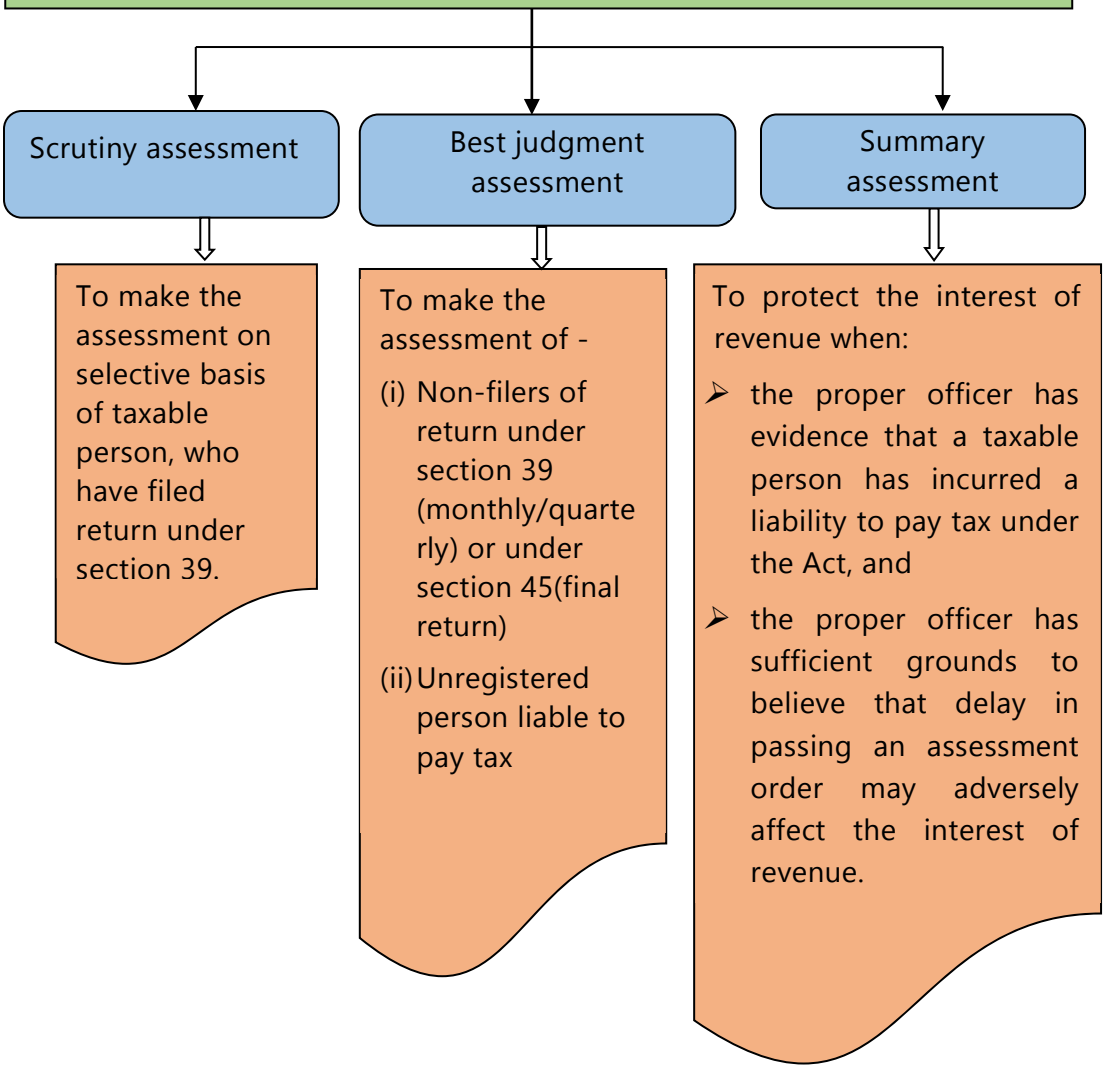
Different ways to assess the tax liability by a registered person



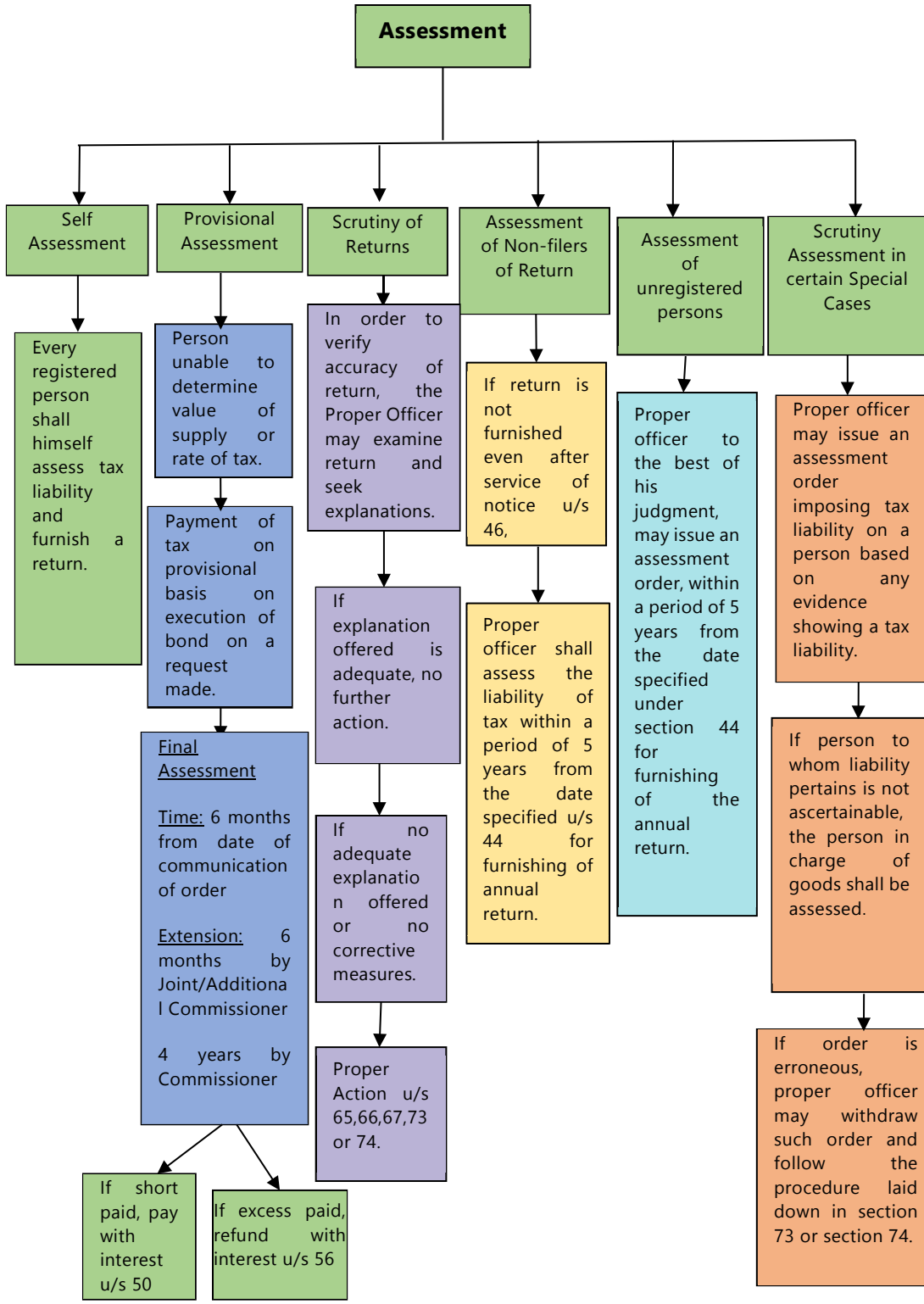
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Different types of assessments which may be conducted by the department against the taxable person

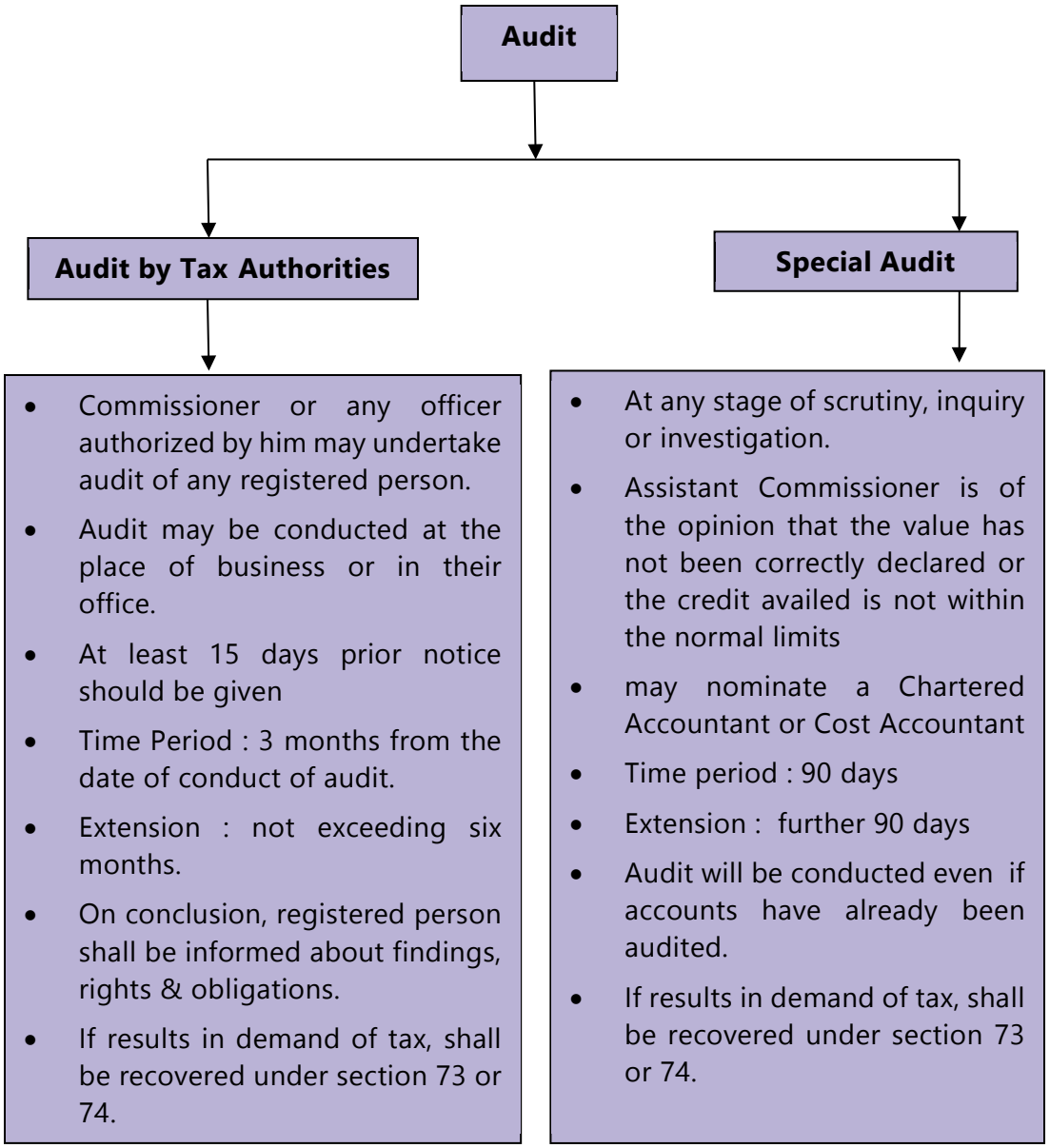
There are three different type of assessments, which may be conducted by tax authorities



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TEST YOUR KNOWLEDGE

1. *Is summary assessment order to be necessarily passed against the taxable person?*
2. *Whether principal of natural justice is must to be followed before passing assessment order against the taxable person?*
3. *In what cases, assessment order passed by proper officer may be withdrawn?*
4. *What recourse may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filed, while conducting scrutiny under section 61 of CGST ACT?*
5. *Who can conduct audit of taxpayers?*

ANSWERS/HINTS

1. No. In certain cases, like when 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.
2. Yes, principal of natural justice is must to be followed before passing assessment order against the taxable person seeking to impose any financial burden on him.
3. Assessment Order passed by proper officer may be withdrawn in the following cases:-

   (i) **Assessment of Non-filers of return** – The best judgment order passed by the Proper Officer under section 62 of CGST Act shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order

   (ii) **Summary Assessment** – A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty 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 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action

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on his own motion if he finds the summary assessment order to be erroneous.

4. If the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or after accepting discrepancies, fails to take corrective action in the return for the month in which the discrepancy is accepted, the Proper Officer may take recourse to any of the following provisions:

   (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 of the Act.

5. There are three types of audit prescribed in the GST Act(s) as explained below:

   (a) **Audit by Chartered Accountant or a Cost Accountant:** Every registered person whose turnover exceeds the prescribed limit, shall get his accounts audited by a Chartered Accountant or a Cost Accountant. (Section 35(5) of the CGST Act)

   (b) **Audit by Department:** The Commissioner or any officer of CGST or SGST or UTGST authorized by him by a general or specific order, may conduct audit of any registered person. The frequency and manner of audit will be prescribed in due course. (Section 65 of the CGST Act)

   (c) **Special Audit:** If at any stage of scrutiny, inquiry, investigations or any other proceedings, if department is of the opinion that the value has not been correctly declared or credit availed is not with in the normal limits, department may order special audit by Chartered Accountant or Cost Accountant, nominated by department. (Section 66 of the CGST Act)

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CHAPTER 18

INSPECTION, SEARCH, SEIZURE AND ARREST



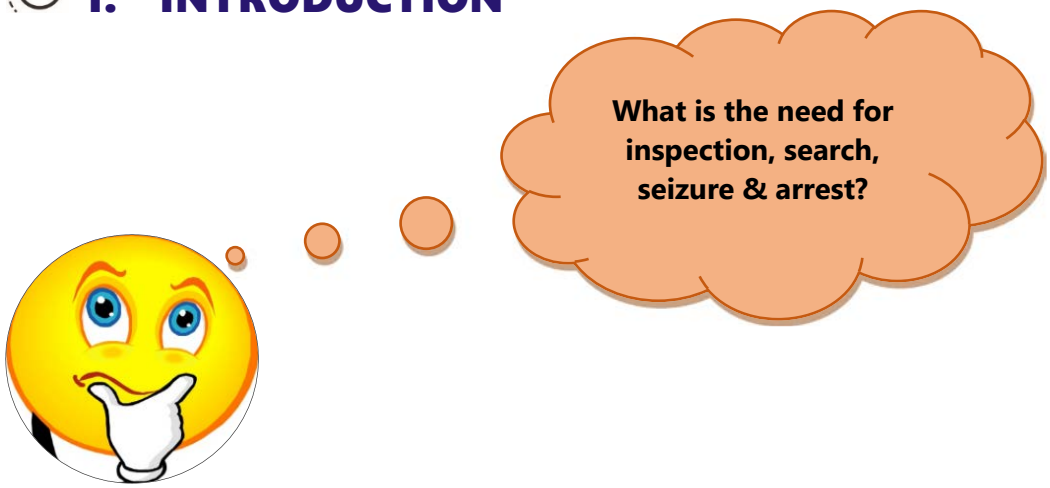
LEARNING OUTCOMES

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



In any tax administration the provisions for Inspection, Search, Seizure and Arrest are provided to protect the interest of genuine tax payers (as the Tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers) and as a deterrent for tax evasion. These provisions are also required to safeguard Government's legitimate dues. Thus, these provisions act as a deterrent and by checking evasion provide a level playing field to genuine tax payers.

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.

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2. POWER OF INSPECTION, SEARCH AND SEIZURE [SECTION 67]

'Inspection' is a new provision under the Act. It is a softer provision than search to enable officers to access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.



As per Section 67 of CGST Act, inspection can be carried out by proper officer only upon a written authorization given by an officer of the rank of Joint Commissioner or above.

Circumstances for carrying out inspection

A Joint Commissioner or an officer higher in rank can give such authorization 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;

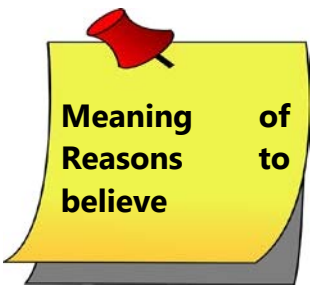
  ii. suppressed stock of goods in hand;

  iii. claimed excess input tax credit;

  iv. contravened any provision of the Act to evade tax;

(b) any person engaged in transporting of goods 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, whether or not he is a taxable person.

(c) an owner or an operator of a warehouse or a godown 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 is to have knowledge of 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

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evaluation as distinguished from a purely subjective consideration. It has to be and must be that of an honest and reasonable person based on relevant material and circumstances.

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.



The term 'seizure' has not been specifically defined in the GST Act. 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.



During such inspection, if any goods which are liable for confiscation under the Act are found or any documents/books of accounts are found, which may be useful for the department in the proceedings for demand of tax, the officers conducting the inspection could search and seize such goods/documents and books.



Confiscation of goods

As per section 130 of CGST Act, goods become liable to confiscation when any person does the following:

(i) supplies or receives any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion 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;

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(iv) contravenes any of the provisions of the CGST Act or rules made thereunder with intent to evade payment of tax.

The person from whom documents and books of accounts are thus seized, shall have the right to take copies of such documents and books of accounts, subject to the approval of the Proper Officer.

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. The person from whom these are seized shall be entitled to take copies/extracts of seized records. 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.

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 Commissioner 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. The inventory of such goods shall also be prepared in the prescribed manner.

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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 residence.
- 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 of the locality. If no such inhabitants are available /willing, the inhabitants of any other locality should be asked to be witness to the search. The witnesses should be briefed about the purpose of the search.
- Before the start of the search proceedings, the team of officers conducting the search and the accompanying witnesses should offer themselves for their personal search to the person in-charge of the premises being searched. Similarly, after the completion of search all the officers and the witnesses should again offer themselves for their personal search.
- A Panchnama / Mahazar of the proceedings of the search should necessarily be prepared on the spot. A list of all goods, documents recovered and seized/detained should be prepared and annexed to the Panchnama/Mahazar. The Panchnama / Mahazar and the list of goods/ 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.

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- 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.

Search Warrant and its contents.

The written authority to conduct 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.

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This period of six months can be extended on justified grounds up to a further period of maximum six months;

- An inventory of seized goods shall be made by the seizing officer;
- 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.
- 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 done of the 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-11: Accounts and Records. Inspection during transit can be done even without authorisation of Joint Commissioner.

4. POWER TO ARREST [SECTION 69]

The term 'arrest' has not been defined in the GST Act. However, as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'. In other words, a person is said to be arrested when he is taken and restrained of his liberty by power or colour of lawful warrant.



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 Act can be made only under authorisation from the Commissioner. Whenever the Commissioner has reason to believe that any

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person has committed any such 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 which purpose, the offender has to be prosecuted before appropriate Court. The nature of offences which are thus punishable with imprisonment are prescribed in Section 132 of the Act.

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 section 132(2) of the CGST Act. The detailed provisions relating to section 132 have been discussed in detail in Chapter-17: Offences and Penalties. 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.

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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.

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.

In section 132 of CGST Act, it is provided 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, it 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 longer period 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 arrested without warrant before a Magistrate having jurisdiction in the case.

Guidelines for arrest

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

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wrongfully availed, nature and quality of evidence, possibility of evidences being tampered with or witnesses being influenced, cooperation with the investigation, etc. Power to arrest has to be exercised after careful consideration of the facts of the case which may include:

- 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 mensrea/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 summon has been issued is duty bound to appear before the officer and bound to tender evidence. He is also bound to produce all documents which were required to be furnished.

Responsibilities of the person so summoned

A person who is issued summon 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 summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.

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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 summon, he is liable to a penalty upto ₹ 25,000 under section 122(3)(d) of the Act.

Guidelines for issue 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 the top management;
- the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;
- summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner 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;

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- senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking 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 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 summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.

(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) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.

(iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

6. ACCESS TO BUSINESS PREMISES [SECTION 71]

During the course of any enquiry under this Act, the duly empowered officer can have access to any business premises, which may be required for the purpose of such enquiry. 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. 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.

(i) the records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.

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(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.

7. OFFICERS TO ASSIST PROPER OFFICERS [SECTION 72]

Under section 72 of CGST Act, 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;

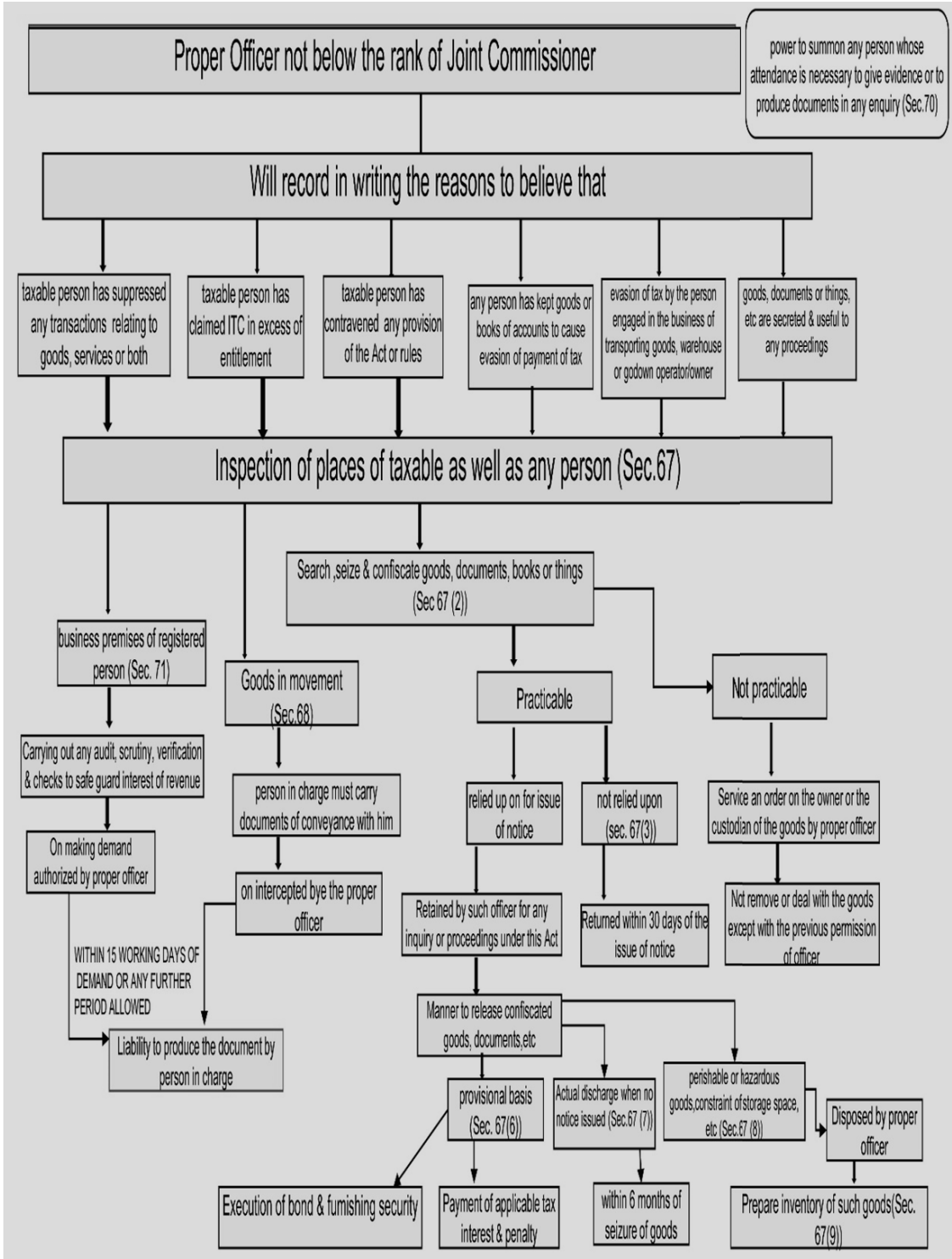
vi. All village officers;

vii. Any other class of officers as may be notified by the Central/State Government.

LET US RECAPITULATE

The provisions relating to inspection, search and seizure have been summarised by way of a diagram to help students remember and retain the provisions in a better and effective manner:-

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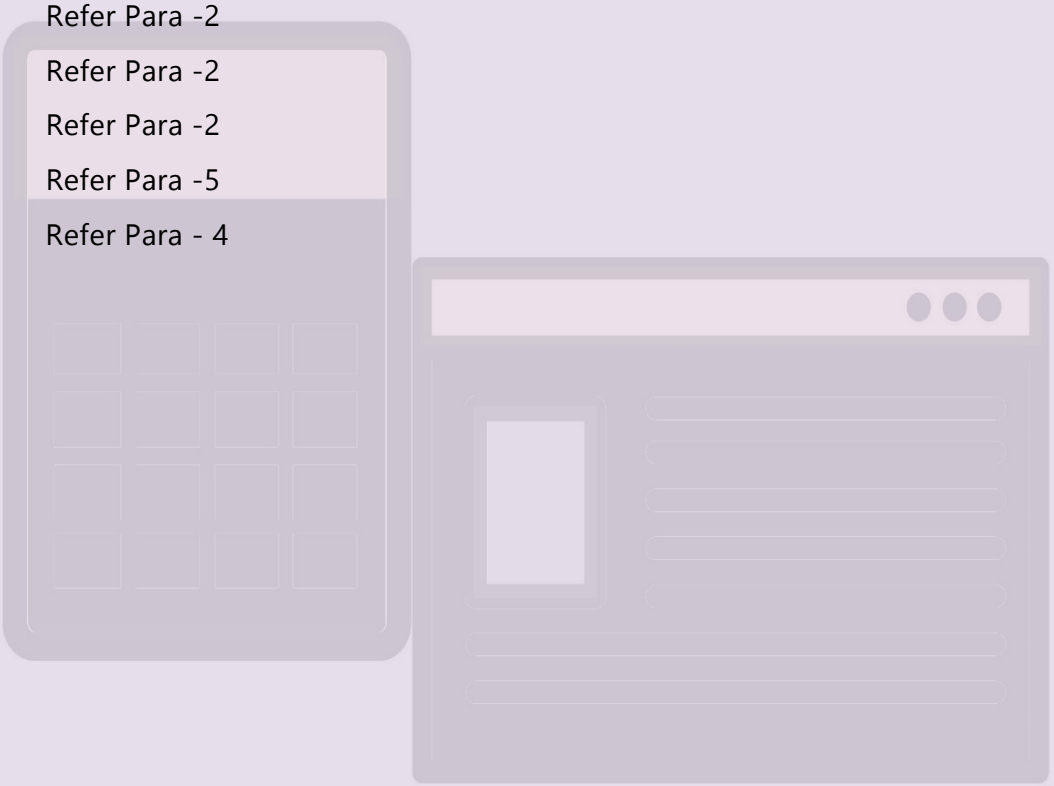
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TEST YOUR KNOWLEDGE

1. *Who can order for carrying out "Inspection" and under what circumstances? Can any premises be inspected by CGST officers?*
2. *Who can order for search and seizure under the provisions of CGST Act?*
3. *What powers can be exercised by an officer during valid search?*
4. *What are the duties of the person to whom summons has been issued?*
5. *What is meant by the term "arrest"? When can the proper officer authorize 'arrest' of any person under CGST Act?*

ANSWERS/ HINTS

1. Refer Para -2
2. Refer Para -2
3. Refer Para -2
4. Refer Para -5
5. Refer Para - 4



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CHAPTER 19

DEMANDS AND RECOVERY



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 for any reason other than 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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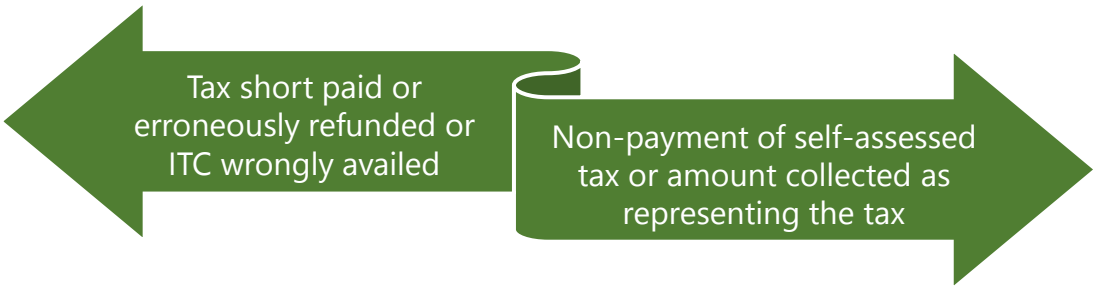
1. INTRODUCTION

- ✓ Though it is the duty of every taxable person to assess and pay his GST liabilities voluntarily, tax administration occasionally comes across situations where the tax dues are not paid correctly by the tax payers. 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.
- ✓ To minimize the inadvertent short payment of taxes, the concept of 'matching' the details of 'outward supplies' of supplier with the details of 'inward supplies' of recipient has been introduced in the GST Act.
- ✓ Moreover, the self-assessed tax has to be paid by the due date prescribed under the GST law and in case of any failure to pay the same by the due date, the Input Tax Credit (ITC) will not be available to customers and also the tax payer will not be able to file any return for further period. Effectually, these provisions work as a self-policing system and take care of any mis-match 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] and Chapter XVIII [Rules 142 to 161] of the CGST Rules, 2017 contains various provisions relating to demands and recovery.

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





❖ **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) of the CGST Act].

❖ **Appellate Tribunal:** means the Goods and Services Tax Appellate Tribunal constituted under section 109 [Section 2(9) of the CGST Act].

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- **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) of the CGST Act].

- **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) of the CGST Act].

- **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) of the CGST Act].

3. DETERMINATION OF TAX NOT PAID/SHORT PAID/ERRONEOUSLY REFUNDED/ITC WRONGLY AVAILED/ UTILISED [SECTION 73 & SECTION 74]



- Section 73 and section 74 of the CGST Act deal with 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/ utlisation of ITC.

- 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 (**Normal Cases**) or it may be a deliberate attempt (**Fraud Cases**) to evade the tax. Since the nature of offence is totally different in both the incidences, hence, under GST law, separate provisions for recovery of the tax and the amount of penalty have been made to deal with such type of cases. Besides these, there are provisions to encourage voluntary compliance such as no penalty or lesser penalty if the tax dues along with interest, are paid within the specified time limit/ incidence.

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❖ **Limitation period:** One of the fundamental legal principles is that an element of certainty must be brought to the legal proceedings. The law of limitation is based on this principle. Any action under any law has to be taken within the limitation period prescribed otherwise uncertainty would prevail eternally.



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. Further, while a lesser time limit is available to the Revenue to raise the demand in normal cases, it would have a longer limitation period available to raise the demand in fraud cases.

❖ **Show Cause Notice (SCN):** 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), asking the person chargeable with tax to show cause as to why the specified amount of tax 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 show cause notice 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.

The provisions contained in section 73 and section 74 have been discussed in detail below.

I. Non-payment/short payment etc. on account of reasons other than fraud, wilful misstatement or suppression of facts [Section 73]

A. Issue of SCN [Section 73(1)]



❖ In a case, where the non-payment/ short payment/ erroneous refund/ wrong availment/ utilisation of ITC is

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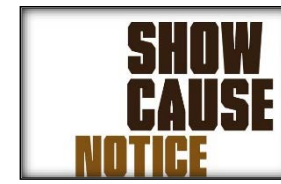
on account of reasons other than fraud, wilful misstatement or suppression of facts by the person chargeable with tax, the proper officer shall issue a notice, on the person chargeable such tax, requiring him to show cause as to why he should not pay the amount specified in the notice.

- The notice would specify the amount of tax along with interest payable thereon under section 50 ***[@ 18% p.a.*]*** and a penalty leviable under the provisions of this Act or the rules made thereunder, liable to be paid by him. Needless to say, the notice should 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.

**** as notified by Notification No. 13/2017 CT dated 28.06.2017***

B. Time limit to issue SCN [Section 73(2), (3) & (4) read with section 73(10)]

- The notice should be issued at least **3 months** prior to the time limit specified for passing the order determining the amount of tax, interest and any penalty payable by defaulter.



- The order referred herein has to be passed within **3 years** from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to or within **3 years** from the date of erroneous refund.

Thus, the **time-limit for issuance of SCN is 2 years and 9 months** from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

- Where a notice has been issued for any period on a person chargeable with tax, if such person commits such default in some other period also, instead of issuing a detailed notice, a mere statement containing the details of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilised for such periods, can be issued.

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- The Service of such Statement shall be deemed to be Service of SCN on such person, subject to the condition that the grounds relied upon for such tax periods [as covered in the Statement] are the same as are mentioned in the earlier notice.

C. Payment of tax before issuance of SCN [Section 73(5), (6) & (7)]

The law provides an opportunity to the person chargeable with tax to pay tax and interest before the issuance of notice. It emphatically stipulates that in such cases, no notice shall be issued and there shall be no other consequences (including penalty) for the default. The detailed provisions are as under:

- The person who is chargeable with tax, but has not paid the tax, or short paid the tax or wrongly availed/utilized the credit, or been granted an erroneous refund, may voluntarily come forward to pay such tax alongwith interest before the issue of SCN/Statement, as the case may be.
- In such case, he has to pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer. Further, he needs to inform the proper officer in writing of such payment.
- Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN.
- Where such voluntary payment is made, Department shall not serve any SCN/Statement. The matter closes at this stage itself and no penalty is imposed on the person.
- The **option of paying tax and interest before issuance of SCN** so as to avoid the issuance of SCN and penalty is available in only those cases where any tax has not been paid/short paid/erroneously refunded/ITC wrongly availed/utilized **for reasons other than fraud or any wilful misstatement or suppression of facts to evade tax**.
- After the person has voluntarily paid the tax along with interest, if the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, he can issue a SCN in respect of the amount which falls short of the amount actually payable.

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D. Payment of tax after issuance of SCN [Section 73(8)]

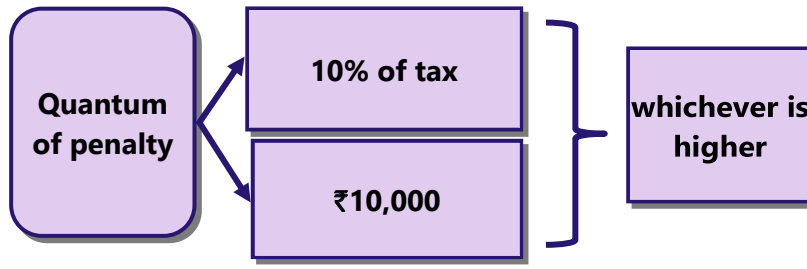
- Where a person is chargeable with tax not paid/short paid etc. and is issued a notice/statement under this section, misses the opportunity to pay the tax along with interest before the issue of SCN resulting in SCN not being issued thereafter and no penalty being imposed, he has another chance to discharge the tax with interest payable under section 50 with nil penalty within 30 days of issuance of SCN. All proceedings in respect of the said SCN shall be deemed to be concluded.
- In other words, where such person pays the tax demanded along with interest payable under section 50 within 30 days of issue of SCN, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

E. Adjudication order [Section 73(9) & (11)]



- Where an SCN/Statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defense, if he is the view that he is not so liable to pay whole/part of the amount mentioned in the SCN.
- The proper officer after considering the representation made by the person, if any, pass an order, determining the amount of tax, interest and penalty** due from such person.

****Quantum of penalty**



- The quantum of penalty will remain same whether the tax amount, alongwith interest is paid within 30 days of the communication of the order or after 30 days.

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****Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.**

From the above, it is clear that the non-payment of self-assessed tax or the amount collected as representing the tax has been treated differently than the other non/short payments as referred in section 73(1) [non payment/ short payment of tax/ erroneous refund of tax/ wrong availment/ utilisation of input tax credit].

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 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 sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

Clarification on levy of penalty under section 73 of the CGST Act in case of delayed filing of return

Issue: Whether penalty in accordance with section 73(11) of the CGST Act 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) of the CGST Act can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 of the CGST Act 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) of the CGST Act 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

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under section 125 of the CGST Act may be imposed after following the due process of law [Circular No. 76/50/2018 GST dated 31.12.2018]

F. Time limit for passing adjudication order [Section 73(10)]



- The proper officer shall issue the adjudication order within 3 years from the due date for furnishing of Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to. In case of erroneously granted refunds, such order should be passed within 3 years from the date of erroneous refund.
- Section 44(1) of the CGST Act stipulates that annual return for a financial year needs to be filed by 31st December of the next financial year.

II. Non-payment/short payment etc. on account of fraud, wilful misstatement or suppression of facts [Section 74]

A. Issue of SCN [Section 74(1)]



- In a case, where the non-payment /short payment/erroneous refund /wrong availment/utilisation of ITC is **on account of any fraud, wilful misstatement or suppression of facts** by the person chargeable to tax, proper officer shall issue a notice, on the person chargeable with such tax, requiring him to show cause as to why he should not pay the amount specified in the notice.
- The notice would specify the amount of tax along with interest payable thereon under section 50 and **a penalty equivalent to the tax specified in the notice**, liable to be paid by him. Needless to say, the notice should 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.

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B. Time limit to issue SCN [Section 74(2), (3) & (4) read with section 74(10)]



- The notice should be issued at least **6 months** prior to the time limit for passing the order determining the amount of tax, interest and penalty payable by defaulter.
- The said order has to be passed within **5 years** from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to or within **5 years** from the date of erroneous refund.

Thus, the **time-limit for issuance of SCN is 4 years and 6 months** from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

- Where a notice has been issued for any period on a person chargeable with tax, if such person commits such default in some other period also, instead of issuing a detailed notice, a mere statement containing the details of tax not paid/short paid/erroneously refunded/ITC wrongly availed/utilised for such periods, can be issued.
- The Service of such Statement shall be deemed to be Service of Notice on such person, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful misstatement or suppression of facts to evade tax, for such tax periods [as covered in the Statement] are the same as are mentioned in the earlier notice.

C. Payment of tax before issuance of SCN [Section 74(5), (6) & (7)]

The law provides an opportunity to the person chargeable with tax to pay tax, interest and penalty equivalent to 15% of such tax, before the issuance of notice. It emphatically stipulates that in such cases, no notice shall be issued and there shall be no other consequences for the default. The detailed provisions are as under:

- The person who is chargeable with tax, but has not paid the tax/short paid the tax/wrongly availed/utilised the credit/been granted an erroneous refund by reason of fraud etc., may voluntarily come forward to pay such tax alongwith interest and

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specified penalty before the issue of SCN/Statement, as the case may be.

- In such case, he has to pay the amount of tax along with interest payable thereon 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. Further, he needs to inform the proper officer in writing of such payment.
- Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN.
- Where such voluntary payment is made, Department shall not serve any SCN/Statement. The matter closes at this stage itself.
- After such person has voluntarily paid the tax along with interest and penalty, if the proper officer is of the opinion that the amount voluntarily paid falls short of the amount actually payable, he can issue a SCN in respect of the amount which falls short of the amount actually payable.

D. Payment of tax after issuance of SCN [Section 74(8)]

- Where a person is chargeable with tax not paid/short paid etc. and is issued a notice/statement under this section for reasons of fraud etc., misses the opportunity to pay the tax along with interest and penalty equivalent to 15% of tax, before the issue of SCN resulting in no SCN being issued thereafter, he has another chance to discharge tax alongwith interest payable under section 50 and **penalty equivalent to 25%** of tax within 30 days of issuance of SCN. All proceedings in respect of the said SCN shall be deemed to be concluded.
- In other words, where such person pays the tax demanded along with interest payable under section 50 and a penalty equivalent to 25% of such tax within 30 days of issue of SCN, all proceedings in respect of the said notice shall be deemed to be concluded.

E. Adjudication order [Section 74(9) & (11)]

- Where an SCN/Statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defense, if he is the view that



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he is not so liable to pay whole/part of the amount mentioned in the SCN.

- The proper officer after considering the representation made by the person, if any, pass an order, determining the amount of tax, interest and penalty due from such person.
- Where any person served with an adjudication order pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

F. Time limit for passing adjudication order [Section 74(10)]



- The proper officer shall issue the adjudication order within 5 years from the due date for furnishing of Annual Return for the Financial Year to which the tax not paid/short paid/ITC wrongly availed/utilised relates to. In case of erroneously granted refunds, such order should be passed within 5 years from the date of erroneous refund.

  Section 44(1) of the CGST Act stipulates that annual return for a financial year needs to be filed by 31st December of the next financial year.

I. For the purposes of section 73 and section 74:

(i) the expression **"all proceedings in respect of the said notice"** shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

II. 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.

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The above provisions have been summarized in the following tables:

Table A:

S. No.	Action by tax payer	Amount of penalty payable		Remarks
		Normal Cases	**Fraud Cases**	
1.	Tax amount, along with the interest, paid before issuance of notice	No penalty and no notice shall be issued	15% of the tax amount payable as penalty and no notice shall be not be issued	The penalty shall also be not chargeable in cases where the self-assessed tax or any amount collected as tax is paid (with interest) within 30 days from the due date of payment.
2.	Tax amount, along with the interest, paid within 30 days of issuance of notice	No penalty. All proceedings deemed to be concluded	25% of the tax amount payable as penalty. All proceedings deemed to be concluded.	
3.	Tax amount, along with the interest, paid within 30 days of communication of order	10% of the tax amount or ₹ 10,000/-, whichever is higher	50% of the tax amount payable as penalty. All proceedings deemed to be concluded.	
4.	Tax amount, along with the interest, paid after 30 days of communication of order	10% of the tax amount or ₹ 10,000/-, whichever is higher	100% of the tax amount	

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Table B:

S. No.	Nature of case	Time for issuance of notice	Time for issuance of order
1.	Normal Cases	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
2.	Fraud Cases	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
3.	Any amount collected as tax but not paid	No time limit	Within 1 year from the date of issue of notice *[to be discussed subsequently in this chapter]*
4.	Non- payment of self-assessed tax	No need to issue a SCN	Recovery proceedings can be started directly *[to be discussed subsequently in this chapter]*

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

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of the CGST Act[1], 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 of CGST Act:

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]*

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

[1] *made applicable to matters in relation to IGST vide section 20 of the IGST Act*

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not paid/short paid/ erroneously refunded/ITC wrongly availed/ utilised whether by reason of fraud/any wilful misstatement/suppression of facts or otherwise.

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 (10) of section 73 or sub-sections (2) and (10) of section 74*

B. In case charges of fraud/any wilful misstatement/suppression of facts are not established for a notice issued in a fraud case, tax to be determined deeming the demand notice to be issued in normal case [Section 75(2)]

Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under section 74(1) is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under section 73(1).

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.

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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 3 years in normal cases or 5 years in fraud cases, as the case may be, 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.

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, 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]*.

L. In case of penalty being imposed under section 73/74, 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, 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.

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- Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

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-



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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 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.

7. RECOVERY PROCEEDINGS [SECTIONS 78 & 79]

The recovery proceedings are final steps towards the realisation of any tax or 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 dos 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)[2]] present in different States/ UTs.***

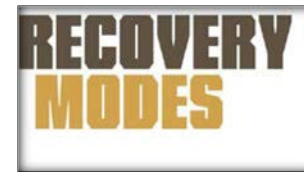
The options for recovery of Government dues include deduction of money from any amount payable to such tax payer, detaining and selling any

[2] *Concept of distinct persons has been explained in detail in Chapter 2 – Supply under GST.*

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goods, directing any other person from whom the money is due to such person, attaching any property belonging to the defaulter etc.

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.

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- 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.

(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.

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- Any person making any payment in compliance with the notice 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.

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- If proper officer finds merit in his claims/objection upon investigation, proper officer will release the property, wholly or partly. Otherwise, the proper officer will reject the claim and proceed with the process of sale through auction.
- Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.
- The amounts so realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,:-

  (a) first, be appropriated against the administrative cost of the recovery process;

  (b) next, be appropriated against the amount to be recovered;

  (c) next, be appropriated against any other amount due from the defaulter under the CGST Act or the IGST Act or the UTGST Act or any of the SGST Act and the rules made thereunder; and

  (d) any balance, be paid to the defaulter.
- Where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, instead of selling it by public auction, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.
- Any officer/other person who has a duty to perform in connection with such sale will not acquire any interest in property sold.
- No such sale will take place on Sundays/other general holidays recognized by Government.
- Proper officer may seek assistance from jurisdictional police station.

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(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 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.

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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)].

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 of the CGST Rules, 2017 have been explained in detail as under:

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- 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 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.

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- 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 on the property of such taxable person or such person.

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



- Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed [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.

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- The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.
- 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 within 7 days 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:

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(a) in the case of a debt, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the proper officer;

(b) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(c) in the case of any other movable property, the person in possession of the same from giving it to the defaulter.

- 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 person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then:

(a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal, revision or in other proceedings —

  (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

  (ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

  (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

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*

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required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76 of the CGST Act, 2017.

2. *Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74 of the CGST Act, 2017.*

3. *Is there any time limit prescribed for adjudication of the cases under 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 before issue of notice. Is there any immunity available to such person?*

5. *Briefly discuss the modes of recovery of tax available to the proper officer.*

ANSWERS/HINTS

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 amount was collected by him to the date such amount is paid by him to the Government.

2. The provisions relating to 'relevant date' as contained in CGST Act, 2017 are as under:

   (i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 2 years and 9 months from the due date of filing Annual Return for the

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Financial Year to which the demand pertains or from the date of erroneous refund.

(ii) In case of section 74 (cases involving fraud/suppression of facts/willful misstatement), the time-limit for issuance of SCN is 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.

3. The provisions relating to time-limit for adjudication of cases as contained in section 73 and 74 of the CGST Act, 2017 are as under:

(i) In case of section 73 (cases other than fraud/suppression of facts/willful misstatement), the time limit for adjudication of cases is 3 years from the due date for filing of annual return for the financial year to which demand relates to [Section 73(10)].

(ii) In case of section 74 (cases of fraud/suppression of facts/willful misstatement), the time limit for adjudication is 5 years from the due date for filing of annual return for the financial year to which demand relates to [Section 74(10)].

4. Yes. Person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% per cent of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid [Section 74(6)].

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;

(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

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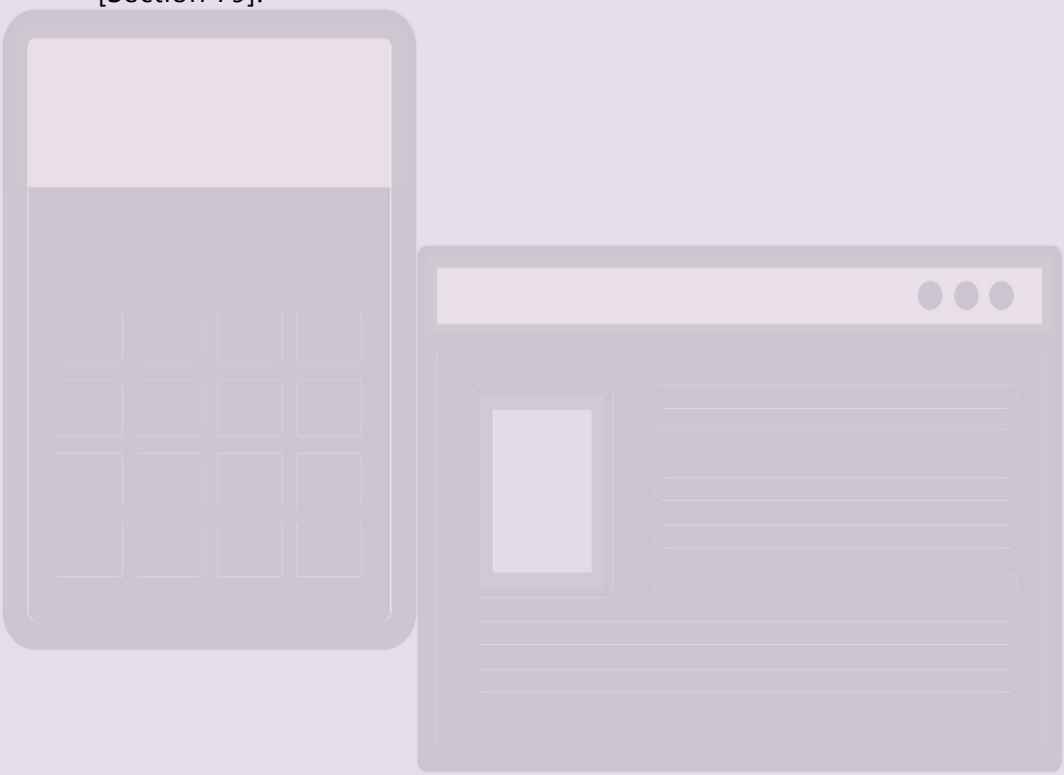
30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.

(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].



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CHAPTER 20

LIABILITY TO PAY IN CERTAIN CASES



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 and penalty.
- ✓ 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) of the CGST Act].
- ❖ **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) of the CGST Act].
- ❖ **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) of the CGST Act].

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



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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) of CGST Act].

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 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

[1] *Circular No. 96/15/2019 GST dated 28.03.2019*

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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.



5. LIABILITY TO PAY IN CASE OF AN AMALGAMATION/MERGER [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

[2] *Circular No. 96/15/2019 GST dated 28.03.2019*

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- ❖ 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 "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)].

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- **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)].

Summary of above discussion

LIABILITY IN CASE OF COMPANY IN LIQUIDATION

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

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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)].

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

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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.

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



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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.
- **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.

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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,
- 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,

[3] *Circular No. 96/15/2019 GST dated 28.03.2019*

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- 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
- 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.

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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.

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 of the CGST Act.*
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.*

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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?*

ANSWERS/HINTS

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. 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.

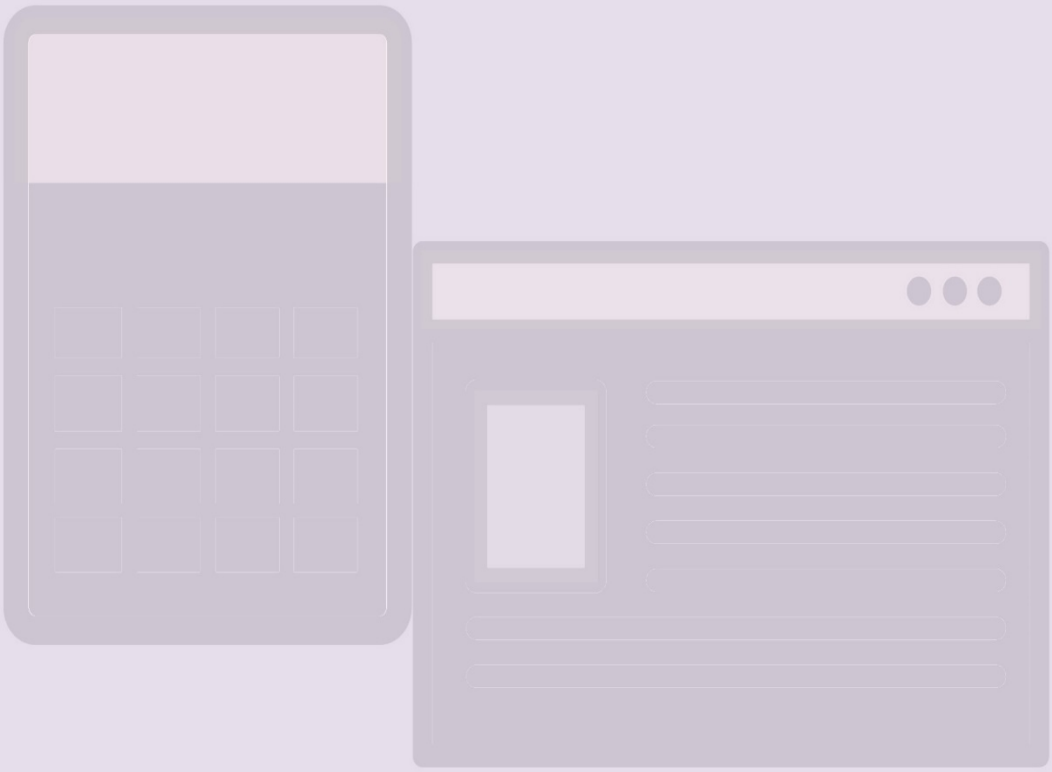
3. Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or 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

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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.

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.



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CHAPTER 21

OFFENCES AND PENALTIES



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 services 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.
- analyse and apply the offences that may be compounded and provisions relating thereto.

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1. INTRODUCTION



What is penalty and prosecution?

In the GST regime, there is uniform penalty and prosecution provision for similar type of offence that may be committed by a registered person, depending upon its severity.

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.

'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.

PENALTIES AND PROSECUTION

Whereas amount of penalty to be leviable will depend upon intention of person committing the offence, a person with fraudulent intention to evade payment of taxes will be subjected to higher amount of taxes, a relatively less amount of penalty will be levied for non-fraudulent offences.

Likewise, to institute the prosecution, offences will be classified into Cognizable (serious category of offences) and non-cognizable offences (relatively less serious category of offences). Whereas former will be non-bailable, latter will be bailable offence.

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Chapter XIX – Offences and Penalties [Sections 122 to 138] of the CGST Act stipulates the provisions relating to offences and penalties. State GST laws also prescribe identical provisions in relation to offences and penalties. 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.

However, before proceeding to understand the provisions, let us first go through few relevant definitions.

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[1] payable by a registered person for the specified offences are with reference to only the CGST Act. An equal amount of penalty would be payable by such person under the respective SGST/UTGST Act as well.

2. RELEVANT DEFINITIONS





- **Conveyance** includes a vessel, an aircraft and a vehicle; [Section 2(34)].
- **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)]
- **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)]

[1] *As discussed in this chapter*

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❖ **Confiscation:** The word 'confiscation' has not been defined in the 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 in means transfer of the title to the goods to the Government.

3. PENALTY FOR CERTAIN OFFENCES [SECTION 122]

As per the provisions of sub-section (1) of section 122, there are 21 offences, for which a **taxable person** may be held liable to penalty. The list of said offences is as under:

(i) Supply of any goods or services or both without issue of any invoice or issue of an incorrect or false invoice with regard to any such supply;



(ii) Issue of 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

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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;

(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;

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(xxi) Disposes off or tampers with any goods that have been detained, seized, or attached under this Act,

Amount of Penalty

(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

Whichever is higher.

As per the provisions of Sub-Section (2) of Section 122, any registered 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,—

Amount of Penalty

(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**
(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**

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As per the provisions of Sub-section (3) of section 122, penalty is leviable for any of the following offences committed by a person –

(a) aids or abets any of the 21 offences specified in Sub-section (1) of section 122;

(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,

Amount of Penalty

Penalty is leviable for an amount which may extend to ₹ 25,000/-.

4. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN [SECTION 123]

Where a person who is required to furnish information return under section 150, has not furnished the same within the time specified in terms of sub-section (1) or sub-section (2) of said Section, the Commissioner or an officer authorized by him in this behalf may serve upon the defaulting person a notice under section 150(3) requiring him to furnish the information return within a period not exceeding 90 days from the date of service of notice.

Information Return- ₹ 100/day, maximum-₹ 5,000

If the said person still fails to furnish the return within the period specified in notice issued under section 150(3), proper officer may direct that such person shall be liable to pay a penalty of one hundred rupees for each day of the period during which the failure to furnish such return continues, subject to a maximum of five thousand rupees.

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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
- wilfully 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 ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty- five thousand rupees.

6. GENERAL PENALTY [SECTION 125]

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

General Penalty- ₹ 25,000

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 [As per Explanation (b) to Section 126(1), an error is easily rectifiable if it is an error apparent on the face of record] and made without fraudulent intent or gross negligence

A breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000

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(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.

8. POWER TO IMPOSE PENALTY IN CERTAIN CASES [SECTION 127]

A person who is not covered by any proceeding under the following Provisions, namely –

(i) Assessment of non-filers of Returns, under section 62

(ii) Assessment of unregistered persons, under section 63

(iii) Summary Assessment under section 64

(iv) Determination under section 73 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

(v) Determination under section 74 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

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(vi) Detention, seizure and release of goods and conveyances in transit under section 129

(vii) Confiscation of goods or conveyances and levy of penalty under section 130 and 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 delay in filing of return) for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

10. DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT [SECTION 129]

(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.

The Goods and/or conveyance after detention or seizure, shall be released,—

Where owner of the goods comes forward for payment of applicable tax and penalty: -

(a) On payment of applicable tax and penalty equal to 100% of the tax payable on such goods; or

(b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

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However, in case of exempted goods, on payment of –

(a) An amount equal to 2% of the value of goods; or
₹ 25,000/- } Whichever is less; or

(b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

Where owner does not come forward for payment of applicable tax and penalty: -

(a) On payment of the applicable tax and penalty equal to 50% of the value of the goods reduced by the tax amount paid thereon; or

(b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

However, in case of exempted goods, on payment of –

(a) An amount equal to 5% of the value of goods; or
₹ 25,000/- } Whichever is lesser; or

(b) Upon furnishing a security equivalent to the amount payable under (a) above, in such form and manner as may be prescribed.

No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods. [Proviso to Section 129(1)]

It has been clarified vide Circular No. 76/50/2018 GST dated 31.12.2018 that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of goods.

(2) The provisions of sub-section (*6*) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances i.e. the above release of goods and/or conveyance shall be made on provisional basis on payment of applicable tax and penalty or on furnishing of security, as the case may be.

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(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under sub-section (1) above.

(4) No tax, interest or 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 the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within ***14 days*** of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

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 ***14 days*** may be reduced by the proper officer.



11. CONFISCATION OF GOODS OR CONVEYANCES AND LEVY OF PENALTY [SECTION 130]

(1) Notwithstanding anything contained in this Act, if any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

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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.

(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 subject to –

- Amount of fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:
- Aggregate of fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

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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.

13. PUNISHMENTS FOR CERTAIN OFFENCES [SECTION 132]

Section 132 of the CGST Act codifies the major offences under the Act which warrant institution of criminal proceedings and prosecution. According to the provisions of Section 132(1), **whoever** commits 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 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 such invoice or bill referred to in clause (b);

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

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(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;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable with the previous sanction of Commissioner, as under:

Offence Involving -	**Amount Involved (in ₹)**	**Punishment (Imprisonment minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court and extending to --)**
Tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken	> 5 crores	5 Years and with fine
	Exceeds 2 crores but ≤ 5 crores	3 Years and with fine
	Exceeds 1 crores but ≤ 2 crores	1 Years and with fine
Commits or abets the commission of an		6 months or with fine or with

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offence specified in clause (f) or clause (g) or clause (j)		both
For second and every subsequent offence under section 132	No limit	5 Years and with fine

Cognizable vs. Non- cognizable Offence

An offence shall be classified as Cognizable or Non-Cognizable as per the provisions of Sub-Section (4) and Sub-Section (5) as under. Whereas an offence classified as Cognizable shall be non-bailable, an offence classified as non-cognizable shall be bailable.

S. No.	Points of Distinction	Cognizable Offence	Non-cognizable Offence
1	Meaning	Generally, as per Cr. PC, 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. However, GST being a special legislation, only the officers, duly empowered under the Act can act as above.	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, except as may be authorized under special legislation.
2	Classification	Following offences, where	All offences

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	of offence as Cognizable or Non-Cognizable	amount of tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken > ₹ 5 crores, namely: (a) Supply of 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) Issue of 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 such invoice or bill referred to in clause (b); (d) Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;	specified under section 132 except the offences that are cognizable and non-bailable offence
3	Bailable/Non-Bailable	Non-Bailable	Bailable

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Meaning of 'Tax' for the purpose of 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 Goods and Services Tax (Compensation to States) Act. [Explanation to Section 132 of CGST 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 service on the common portal or the agent of common portal, wilfully 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 six months or with fine which may extend to twenty-five thousand rupees, 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.

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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.

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.

It shall, however, be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. 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

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(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 taxable 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.

However, for an offence that has been committed –

- with the consent or connivance of, or
- is attributable to any negligence on the part of, any 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 (1) and (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.

However, for an offence that has been committed –

- with the consent or connivance of, or
- is attributable to any negligence on the part of, any partner/member/trustee, manager, secretary or other officer of the partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a trust,

such partner/member/trustee, 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 (3) of Section 137]

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- 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]

- As per the provisions of Section 138(1), Any offence, other than the following, 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:

  (i) Offence specified in clauses (a) to (f) of sub-section (1) of section 132, if the person charged with offence had been allowed to compound earlier in respect of any of the said offences;

  (ii) Aiding/abetting offences specified in clauses (a) to (f) of sub-section (1) of section 132, if the person charged with offence had been allowed to compound earlier in respect of any of the said offences;

  (iii) Any offence (other than the above offences) under this Act or under the provisions of any SGST Act/UTGST Act/IGST Act, in respect of supplies of value > ₹ 1 crores, if the person charged with offence had been allowed to compound earlier in respect of any of the said offences;

  (iv) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

  (v) a person who has been convicted for an offence under this Act by a court;

  (vi) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and

  (vii) 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)]

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- The amount for compounding of offences under this section shall be such as may be prescribed, subject to –
  - The minimum limit for compounding amount is to be the higher of the following amounts:-
    (i) 50% of tax involved, or
    (ii) ₹ 10,000.
  - The upper limit for compounding amount is to be higher of the following amounts: -
    (i) 150% of tax involved or
    (ii) ₹ 30,000

  [Sub-Section (2) of Section 138]

- 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]

LET US RECAPITULATE

The provisions relating to offences and penalties have been summarised by way of a diagram to help students remember and retain the provisions in a better and effective manner:-

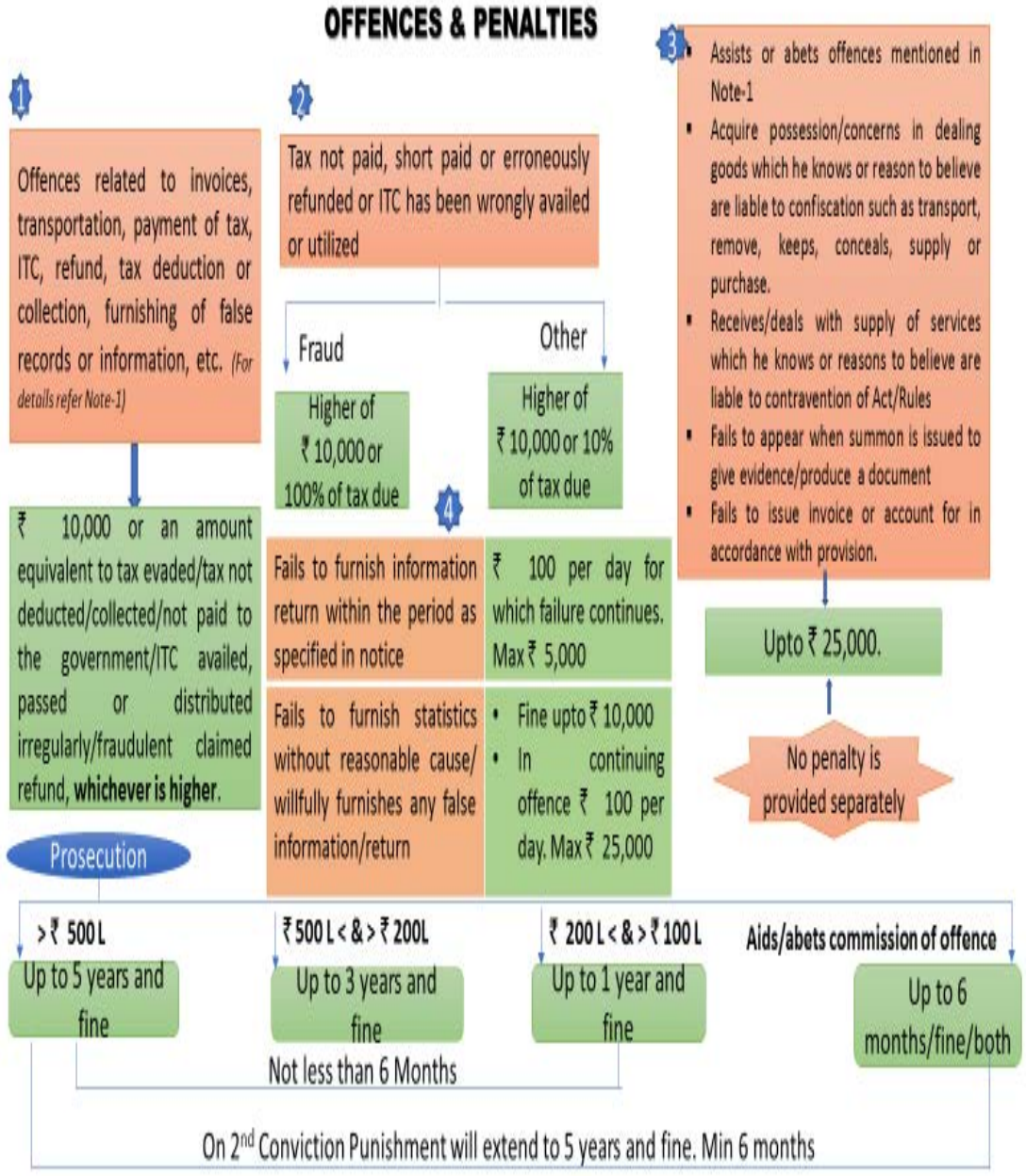


While, the penalty under section 122(1) is imposable on a **taxable person**, penalties under sections 122(3) and 132(1) are imposable on **any person**.



It may be noted that as per section 75(13) of the CGST Act, where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

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Note-1

1. Supplies of goods/services made without invoice/ false invoice, invoices or bills issued without any supply of goods/services, transports taxable goods without document cover.
2. Collects tax, but fails to pay to Government within 3 months from due date of payment.
3. Fails to deduct any tax or collect tax, deduct or collect lesser amount of tax, failed to pay the same to Government.
4. Takes or utilizes ITC or distributes ITC in contravention of the Act.
5. Obtains refund fraudulently.
6. Falsifies or substitutes financial records/ produces fake accounts/ furnishes false information with an intention to evade tax/ suppresses the turnover in order to evade tax.
7. Fails to obtain registration/ furnishes false particulars with regard to registration/ issues invoices using registration number of another person.
8. Obstructs or prevents officer in discharge of his duties.
9. Fails to keep, maintain or retain books of accounts.
10. Fails to furnish information or documents/ furnishes false information during any proceedings.
11. Supplies, transports or stores goods which person has a reason to believe are liable for confiscation.
12. Tampers with or destroys any material evidence or document. Disposes off or tampers any goods that have been detained, seized or attached.
13. Transporting any taxable goods without cover of documents

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TEST YOUR KNOWLEDGE

1. *What are the various type of offences which may be committed by a taxable person liable to penalty?*
2. *What is the quantum of penalty for an offence mentioned under section 122(1)?*
3. *Is there any penalty prescribed for a person other than the taxable person?*
4. *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. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom?*
5. *Suppose, in the above case, a disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000/- is imposed by issue of SCN 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 SCN issued by department?*

ANSWERS/ HINTS

1. There are 21 offences which may be committed by a taxable person and may be classified into following categories based upon their nature:

Offences having nexus with invoice

(i) Issue of invoice or bill without making supply;

(ii) Issuing invoice or document using GSTIN of another person;

(iii) Making a supply without invoice or with false/ incorrect invoice;

Offences having nexus with payment of tax

(iv) Not paying any amount collected as tax for a period exceeding three months;

(v) Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;

(vi) Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;

(vii) Non collection or lower collection of or non- payment of tax collectible at source under section 52;

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(viii) Availing/utilizing input tax credit without actual receipt of goods and/or services;

(ix) Availing/distributing ITC by an Input Service Distributor in violation of Section 20;

(x) Fraudulently obtains any refund of tax;

(xi) Suppressing turnover;

Offences having nexus with Records and related information

(xii) Falsification/substitution of financial records or furnishing of fake accounts/ documents or Furnishing false information/return with intent to evade payment of tax;

(xiii) Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act;

(xiv) Failure to furnish information/documents required by an officer in terms of the Act/Rules or furnishing false information/documents during the cours e of any proceeding;

(xv) Tampering/destroying any material evidence/documents;

(xvi) Obstructing or preventing any official in discharge of his duty;

Offences having nexus with Registration

(xvii) Failure to register despite being liable to pay tax;

(xviii) Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently

Offences having nexus with Supply/Transport of goods

(xix) Transporting goods without prescribed documents;

(xx) Supplying/transporting/storing any goods liable to confiscation;

(xxi) Disposing of /tampering with goods detained/ seized/attached under the Act.

2. Section 122(1) provides that any taxable person who has committed any of the 21 offences mentioned thereunder, shall be liable to a penalty which shall be higher of the following amounts:

(a) ₹ 10,000/-; or

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(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

However, Section 122(2) provides that if a registered person supplying goods or services has not paid any tax or short paid it or tax has been erroneously refunded to him, or ITC has been wrongly availed or utilized, for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, penalty shall be leviable for an amount higher of following:

(a) ₹ 10,000/-; or

(b) 10% of the tax due from such person

and in case of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ten thousand rupees or the tax due from such person, whichever is higher.

3. Yes, Section 122(3) provides for levy of penalty extending to ₹ 25,000/- for any person who-

- aids or abets any of the 21 offences,
- deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,
- receives or deals with supply of services in contravention of the Act,
- fails to appear before an authority who has issued a summon,
- fails to issue any invoice for a supply or account for any invoice in his books of accounts.

4. Both Mr. X and Mr. Y will be offender and will be liable to penalty as under:

Mr. X – Penalty under section 122(3) which may extend to ₹ 25,000/-;

Mr. Y – Penalty under section 122(1), which will be higher of following, namely

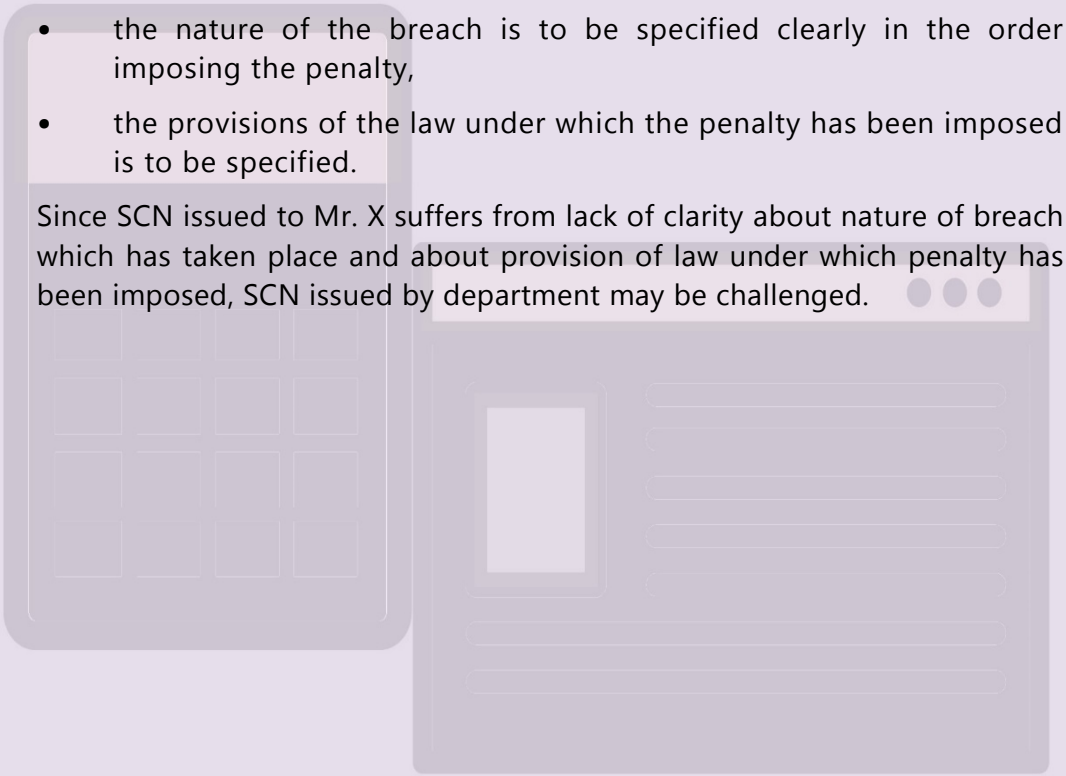
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(i) ₹ 10,000/- or (ii) 100% of tax evaded.

5. 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. Accordingly—

- no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity 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 SCN issued to Mr. X suffers from lack of clarity about nature of breach which has taken place and about provision of law under which penalty has been imposed, SCN issued by department may be challenged.



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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.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- identify the various kinds of appellate fora available under the CGST Act and their hierarchy
- explain the various aspects relating to filing of an appeal before the Appellate Authority by the assessee as well as by the Department and the provisions relating to revision of orders by the Revisional Authority
- appreciate and explain 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 assessee as well as by the Department
- comprehend and explain the concept of mandatory pre-deposit for filing appeals
- explain the 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 (or any law, for that matter) impose obligations. Such obligations are broadly of two kinds: tax-related and procedure-related. The taxpayer's compliance with these obligations is verified by the tax officer (by various instruments such as scrutiny, audit, anti-evasion, etc.), as a result of which, sometimes there are situations of actual or perceived non-compliance. If the difference in views persists, it results into a dispute, which is then required to be resolved.

Tax law recognizes that on any given set of facts and laws, there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further channels of appeal, to both sides.

However, since the right to appeal is a statutory right, the statute also places reasonable fetters on the exercise of that right. The time limits prescribed by the statute for filing of appeals and the requirement of pre-deposit of a certain sum before the appeal can be heard by the competent authority are examples of such fetters on the statutory right.

India has adopted a dual GST i.e., to say every supply attracting the levy will be leviable to both CGST and SGST. So, does this mean that if a taxpayer is aggrieved by any such transaction, he will have to approach both the authorities for exercising his right of appeal? The answer is a plain NO.

The Act makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction. The Act 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 only (CGST Act). So also, if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only.

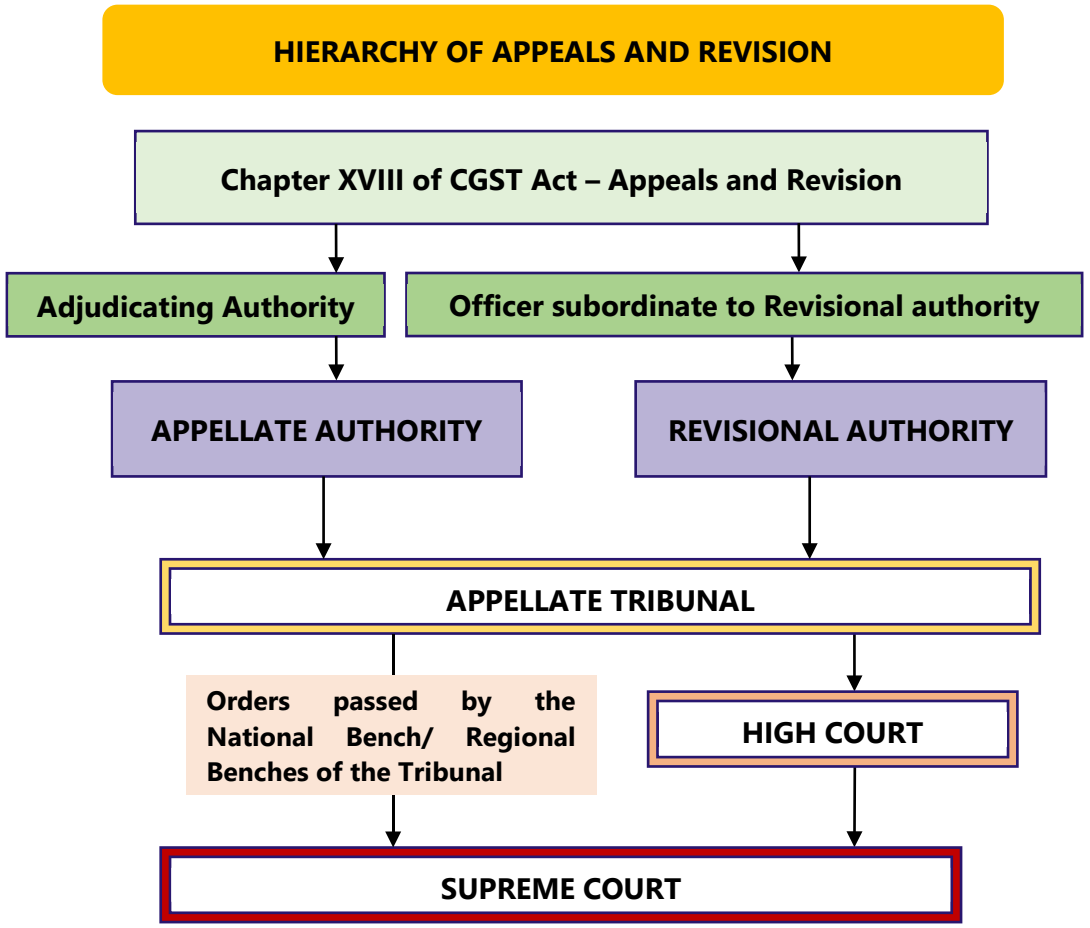
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Chapter XVIII [Sections 107 to 121] of the CGST Act supplemented with Chapter XIII [Rules 108 to 116] of the CGST Rules prescribe the provisions relating to appeals and revision. State GST laws also prescribe identical provision relating to appeals.

A brief overview of the provisions covered under the aforesaid sections 107 to 121,

Provisions of appeals and revision under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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 Excise 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 before the Appellate Authority (AA) by the assessee

(i) Orders appealable to AA

An appeal against a decision/order passed by any adjudicating authority

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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 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 before the AA within 3 months from the date of communication of such decision/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 [Section 107(4)].

(iii) Form for appeal to AA by the assessee

The appeal to the AA shall be filed in GST APL-01 either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgement shall be issued to the appellant immediately.

(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 has been discussed separately under Heading No. 7.*

B. Application before the AA by the Department



At times, the Department itself is not in agreement with the decision or order passed by the adjudicating authority. Section 107(2) provides that in such cases, the Department can file what is commonly known as a "review application/appeal" with the Appellate Authority.

(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, 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 the said decision/order [Section 107(2)].

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(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 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.

(iii) Form for application

The application shall be made in GST APL-03 either electronically or otherwise as may be notified by the Commissioner.

(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 case of departmental appeal.

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 (if found reasonable), etc.

(ii) Orders of the AA

- The AA can also make further inquiry and pass its (Order-in-Appeal) which may confirm, modify or annul the decision/order appealed against but 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

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show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

- 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 one year.
- 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 Appellate Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

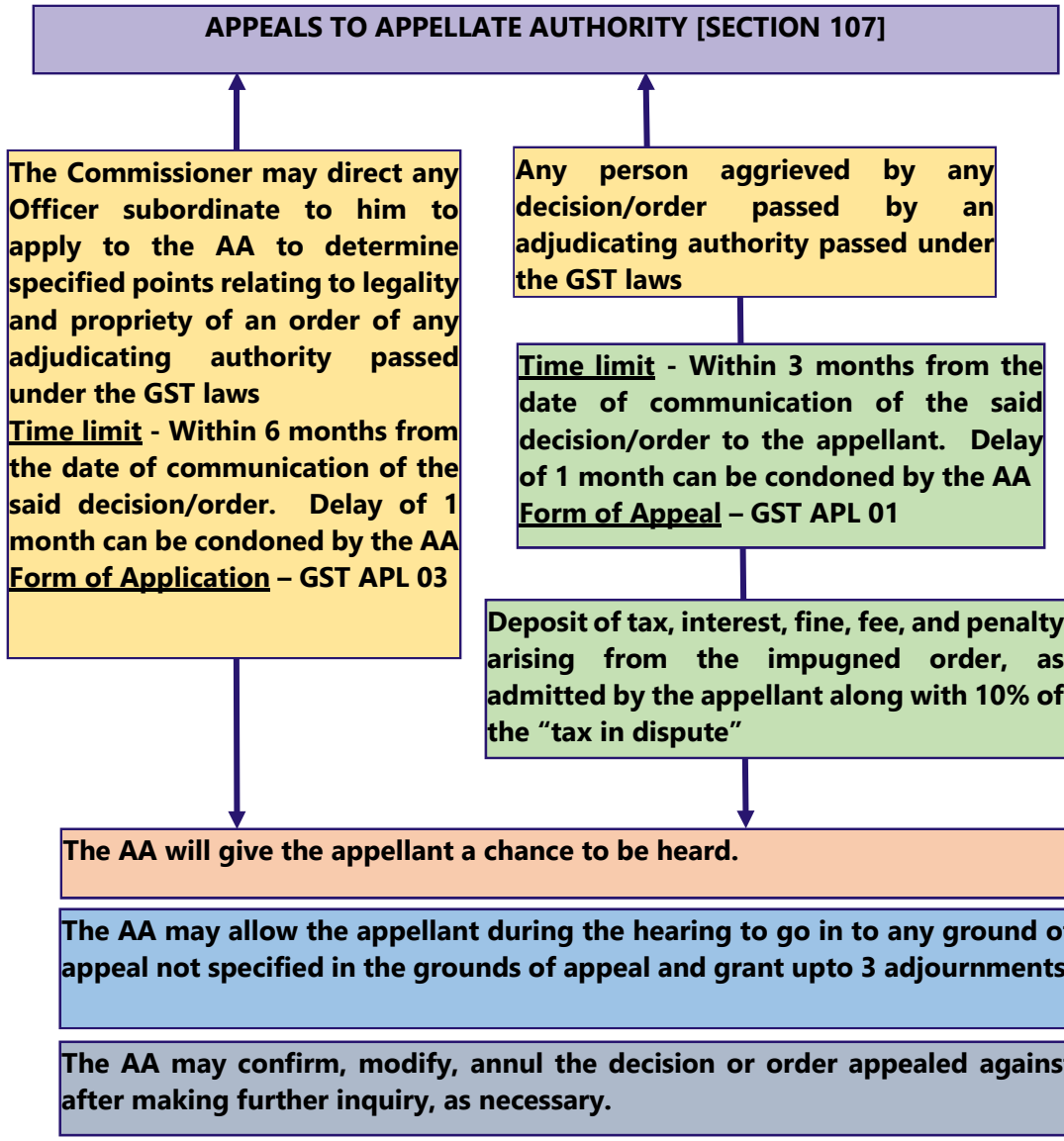
D. Appointment of Appellate Authority

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 6 months 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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Summary of the provisions of section 107



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.

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(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 or
- has not taken into account 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, stay the operation of such decision or order for such period as he deems fit.

(iv) Thereafter, the RA, after giving the person concerned an opportunity of being heard and 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.***

(vi) Every revision order shall be, 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 has been discussed under Heading 14 of this Chapter]*.

The RA shall not exercise the power of revision if:

(a) the order has been subject to an appeal before AA or Tribunal or High Court or Supreme Court*; or

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(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 a revisional order in the first place.

***The RA may 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.

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)].

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.

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A. Constitution and structure of Appellate Tribunal [Section 109]

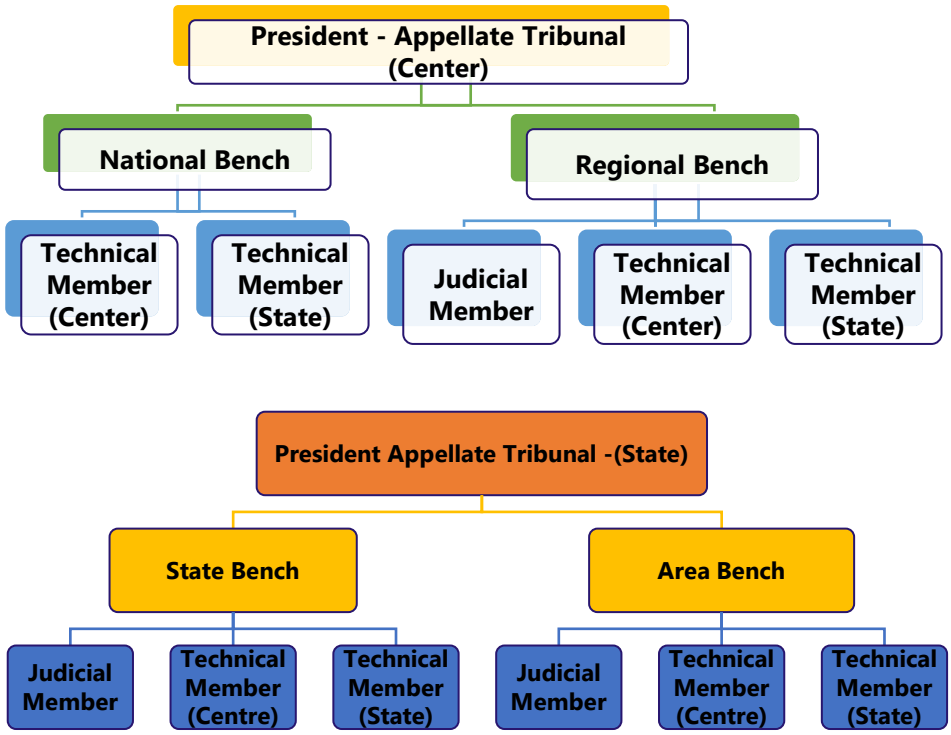
(i) The law envisages constitution of a two tier Tribunal i.e. National Bench/Regional Benches and the State Bench/ Area Benches. Jurisdiction of the two constituents of the GST Tribunal is also defined.

(ii) If place of supply is one of the issues in dispute, then the National Bench/ Regional benches of the Tribunal will have jurisdiction to hear the appeal.

If the dispute relates to issues other than the place of supply, then the State/Area Benches will have the jurisdiction to hear the appeal.

(iii) An appeal from the decision of the National Bench will lie directly to the Supreme Court and an appeal from the decision of the State Bench will lie to the jurisdictional High Court on substantial questions of law.

(iv) A diagrammatic representation of the structure of the Appellate Tribunal is shown below.



The appointments to the Tribunal and functioning shall be in the manner prescribed under sections 110 and 111 of the CGST Act. On

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ceasing to hold office, the appointees to the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

(v) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members.

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

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;

(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

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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.

6. APPEAL TO APPELLATE TRIBUNAL [SECTIONS 112 & 113]

A. Appeal by the assesse

(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.

(ii) Time limit for filing appeal

The appeal can be filed before the Appellate Tribunal within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.

(iii) Form for filing appeal



The appeal shall be filed in GST APL-05 either electronically or otherwise as may be notified by the Registrar on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

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(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.

(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 in GST APL-06 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 the initial appeal.

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.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

(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 has been discussed separately under Heading No. 7.*

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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 the said 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 for determination of such points arising out of the said order as may be specified him

(iii) The application shall be made in GST APL-07 either electronically or otherwise on the common portal.

(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.

There is no requirement of making a pre-deposit in case of departmental appeal.

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) For reasons of natural justice (reasonable opportunity) it is also provided that the Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to hearing of appeal to either side.

(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

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(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.

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.

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 flows from the principle that, an appellant must first deposit the adjudged dues before his further appeal can be heard. However, often 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 mandate some "pre- deposit" so as to discourage frivolous appeals and also safeguard the *bonafide* interests of both the taxpayers and the 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, ***subject to a maximum of 25 crore rupees.***

The payment of pre-deposit ensures staying of the recovery proceedings for the balance amount.

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

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(a) **full amount of** tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him, **and**

(b) 20% 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 50 crore rupees,*** in relation to which appeal has been filed.

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.

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 25 crore rupees***	Admitted IGST liability in full + 20% of the IGST in dispute, ***subject to a maximum of 50 crore rupees***
Appellate Tribunal	Admitted CGST liability in full + 20% of the CGST in dispute, in addition to the amount deposited before AA as pre-deposit, ***subject to a maximum of 50 crore rupees***	Admitted IGST liability in full + 40% of the IGST in dispute, in addition to the amount deposited before AA as pre-deposit, ***subject to a maximum of 100 crore rupees***

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,

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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 exceptional circumstances where the production of additional evidence before the AA or the Tribunal will be allowed as under:

(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.

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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 an authorised representative (except when he is required under the Act to appear personally for examination on oath or affirmation).

(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 indirect tax gazetted officers can appear as authorised representative after one year from 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.

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10. APPEAL TO THE HIGH COURT [SECTION 117]

(i) Appealable orders

The law provides that either side (department or party), if aggrieved by any order passed by the State Bench or Area Bench of the Tribunal, may file an appeal to the High Court.

The High Court may admit such appeal if it is satisfied that the case involves a **substantial question of law.**



(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 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 Bench/Area Bench) or has been wrongly determined by the Tribunal, 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.

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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.

Pre-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.

11. APPEAL TO THE SUPREME COURT [SECTIONS 118 - 119]



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 applicat ion 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 **National/Regional Bench of the Tribunal.**

The National/ Regional Bench of the Tribunal has jurisdiction to entertain appeal if the dispute or one of the issues in dispute involves place of supply.

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. Pre–deposit of all tax dues will be required unless stay is obtained from the Supreme Court pending the disposal of the appeal.

The Supreme Court can vary, confirm or reverse the judgement of the High Court or the Tribunal as the case may be and may award costs. It can also remand the matter for fresh consideration.

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12. SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL ETC. [SECTION 119]

Sums due to the Government as a result of an order passed by the Appellate Tribunal or the High Court, notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, shall be payable in accordance with the order so passed.

13. APPEAL NOT TO BE FILED IN CERTAIN CASES [SECTION 120]

(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.

14. 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 of the CGST Act.*

3. *With reference to sections 107(6) and 112(8) of the CGST Act, specify the amount of mandatory pre-deposit which should be made along with every appeal 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.*

ANSWERS/HINTS

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 is paid as pre-deposit by the appellant.

   However, 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).

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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 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 25 crore rupees.

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) 20% 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 50 crore rupees, in relation to which appeal has been filed.

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.

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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 three 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 partially correct.

Though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit ANY appeal. It can refuse to admit an appeal 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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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.

LEARNING OUTCOMES

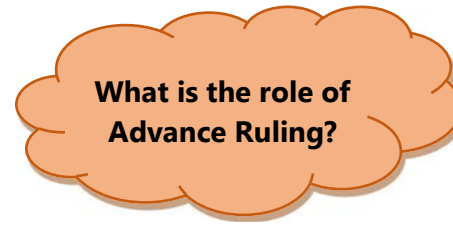
After studying this chapter, you would be able to:

- 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 Government authorities. 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 taxable person 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 stipulates 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

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(f) whether applicant is required to be registered

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.



Note: Matters which cannot be questioned before AAR are:-

- Question already pending in any proceedings in the case of applicant
- Question already decided in any proceedings in the case of an applicant



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 of Chapter-XII: Advance Ruling of CGST Rules, 2017]
- 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 application to AAR in a prescribed form and manner and shall be accompanied by a fee of five thousand rupees.
- 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 and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.
- 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.
- If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.
- If the application is admitted, the AAR shall pronounce its ruling within 90 days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.
- Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST.
- 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.

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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 AAAR.
- In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. Thus, it can be seen that a decision of the Appellate authority is also treated as an advance ruling.
- Any appeal must be filed within 30 days from the receipt of the advance ruling. 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/-. However, if the concerned officer or jurisdictional officer is aggrieved by the decision of AAR, then no fee is required to be paid. "
- The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.
- The said authority can either confirm or modify the ruling appealed against.
- 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.

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- 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.

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) find 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 (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued).
- An order declaring advance ruling to be void can be passed only after hearing the applicant/ appellant.
- A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.

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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.

TEST YOUR KNOWLEDGE

1. *Which are the matters enumerated in Section 97 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?*

ANSWERS/ HINTS

1. Refer Para -3
2. Refer Para -1
3. Refer Para -8
4. Refer Para -8
5. Refer Para -9

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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and the IGST 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 time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 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[1] relating to 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

[1] *Provisions existing as on the date when the Study Material was released for printing*

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New clause (f) in section 95	National Appellate Authority will also be an advance ruling.
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
(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B. **(2) The National Appellate Authority shall consist of -** **(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;** **(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;** **(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.** **(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee :** **Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member**	

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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**	persons; and to provide that the National Appellate Authority shall pass order within a period of ninety days from the date of filing of the appeal respectively.

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which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.

(9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office :

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who -

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest :

Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and

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(e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven 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.

New section 101 B: Appeal to National Appellate Authority

(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer 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.

New section 101C: Order of National Appellate Authority

(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 the Appellate Authority** within a period of six	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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	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.	

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Section 104(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:	**Section 104(1)** Where the Authority or the Appellate Authority **or the National Appellate Authority** finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 **or under section 101C** has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:	Section 104 of the CGST Act is being amended so as to provide that advance ruling pronounced 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,	**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	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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have all the powers of a civil court under the Code of Civil Procedure, 1908. (2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.	books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908. (2) The Authority or the Appellate Authority **or the National Appellate Authority** shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.	
Section 106: 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 CGST Act, unless otherwise specified.

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 micro films, 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
- understand and explain the provisions relating to anti-profiteering measure including the constitution of Anti-Profiteering Authority, its duties, orders, process followed by it etc.
- 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 collect statistics
	152	Bar on disclosure of information
	158	Disclosure of information by a public servant
	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
	170	Rounding off of tax, etc.

[1] *Section 150 is discussed in Chapter 13: Returns in Module 2 of this Study Material.*

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	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
	163	Levy of fee

[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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	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.

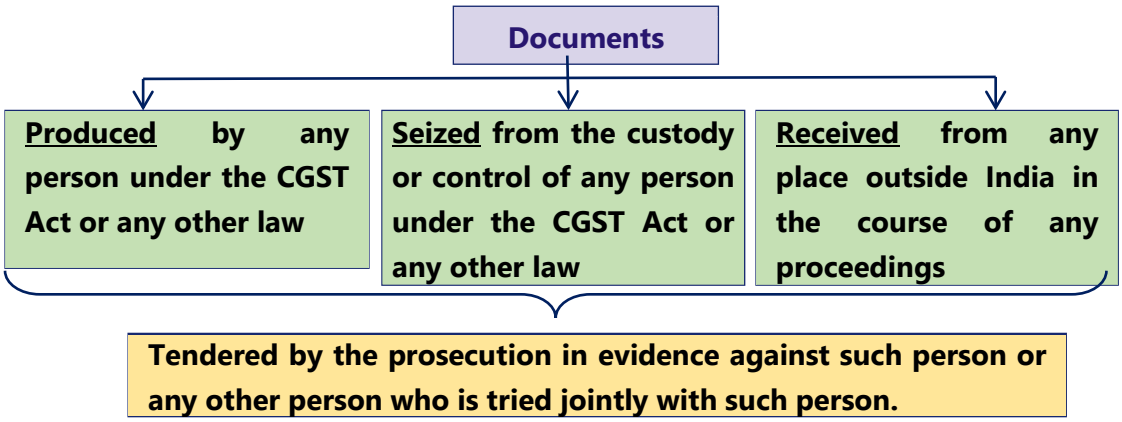
Miscellaneous provisions under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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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 observed by the Court when certain documents (given below in the diagram) are submitted as evidence by the prosecution in a proceeding under the GST Act 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
- 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 executed or attested by the person by whom it purports to have been so executed or attested

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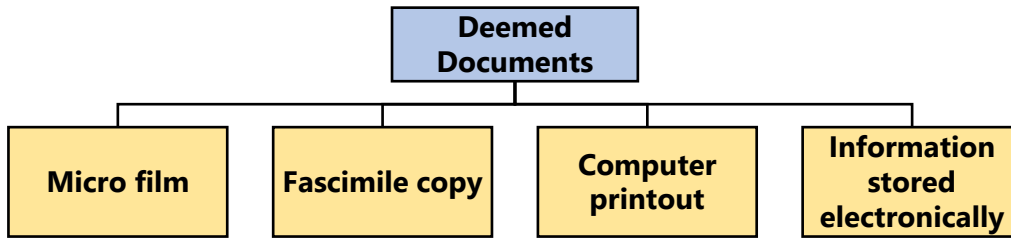
This implies that in case of such documents, if the said person claims that the document is not true or not signed or handwritten by him or not attested or executed by him, the burden of proof in respect of the same shall lie on him.

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;

  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 documents is a facsimile.

- **A statement** contained in a document and included in a printed material **produced by a computer**;

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- **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.

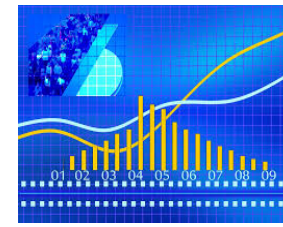
Furnishing, Collection and Publication of Information

4. POWER TO COLLECT STATISTICS & BAR ON DISCLOSURE OF INFORMATION [SECTIONS 151 & 152]

Section 151 lays down as under:

- If the Commissioner considers necessary to do so, he may direct that statistics be collected relating to any matter dealt with, by or in connection with the Act.

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- It may be noted that the statistics can be collected only for the purpose of better administration of the Act.
- Upon such notification being issued, the Commissioner, or any person authorized by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.

Bar on disclosure of information [Section 152]

- No information of any individual return with respect to any matter given for the purpose of sections 150 or 151 shall, without the previous consent in writing of the concerned person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular person.
- No such information shall be used for the purpose of any proceedings under the Act.

Confidentiality

Except for the purposes of prosecution under this Act, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.

Exception reporting

No restriction shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

5. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT [SECTION 158]

Section 158 lays down the provisions for disclosure of information as also maintaining the confidentiality of the same and related penal provisions in the event of contravention of the same.

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(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
- **For furnishing 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

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- **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
- **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).

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6. 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.
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.

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Removal of Difficulties

7. 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.



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.

8. 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

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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 be not called in question?	The service of any • 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.

9. 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.

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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 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 done 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.

10. 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.

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

11. REMOVAL OF DIFFICULTIES [SECTION 172]

Section 172 lays down the procedure that may be followed by the Government in case of any difficulty in giving effect to any provision of the Act. In such cases, the Central Government may, on the recommendations of the GST Council, by general or special order published in the Gazette, make such provisions not inconsistent with the provisions of the Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty.

The time limit for making such order shall be 3 years from the date of commencement of the Act. Every order so made shall be laid, as soon as may be, after it is made, before the Parliament.

Similar provisions relating to removal of difficulty have also been prescribed under section 25 of the IGST Act.

Some of the orders issued by the Government under this section are:

Order No.	Description
Order No. 6/2019 CT dated 28.06.2019	Seeks to extend the due date for furnishing GSTR-9, GSTR-9A and GSTR-9C under section 44 of the Central Goods and Services Tax Act, 2017.
Order No. 7/2019 CT dated	Seeks to remove difficulties regarding filing of Annual returns by extending the due date for

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28.06.2019	filing of Annual return / Reconciliation Statement for the Financial year 2017-18 in GSTR-9, GSTR-9A and GSTR-9C to 30th November, 2019.

Note: The above list is illustrative and not exhaustive.

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.

Thus, while the rule making power lies with the Government, the regulation making power has been delegated to the CBEC (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.

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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.



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.

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15. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS [SECTION 168]

Section 167 empowers the Board (CBEC) 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 shall 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
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 38(2)	Details of inward supplies (extension of time limit)
Section 39(6)	Return (extension of time limit)

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Section 66(5)	Determination of expenses of the examination and audit of records, including remuneration of the Chartered Accountant or Cost Accountant
Section 143(1)	Job-work procedure
Section 151(1)	Collection of statistics
Section 158(3)(l)	Exceptions to bar on disclosure of information by public servant
Section 167	Delegation of powers

Omission, Repeal and Saving

16. 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 shall stand repealed from July 1, 2017 i.e., the date of commencement of the CGST Act:

- The Central Excise Act, 1944 laid (except in respect of goods included in Entry 84 of Union List – petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, tobacco and tobacco products)
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- The Additional Duties of Excise (Goods of Special Importance) Act, 1957
- The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978
- The Central Excise Tariff Act, 1985

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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 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 may be instituted, continued or enforced and tax, penalty etc. 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

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(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.

Other Provisions

17. 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

CBEC 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.

18. 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:

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- 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
  - Filing of returns
  - Payment of tax
  - Administration

Some notifications issued by the Government under this section are:

Notification No.	Description
Notification No. 57/2017 CT dated 15.11.2017	Seeks to prescribe quarterly furnishing of return in Form GSTR-1 for taxpayers having aggregate turnover of upto ₹ 1.5 crores
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.

19. 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.

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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.

20. 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.

21. 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, this provision empowers the officer to presume that a person is not eligible for input tax credit and it shall be the onus of the such person to rebut the Department's contention.

22. 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. This implies that all officers shall be governed by the provisions of Indian Penal Code, wherever so applicable.

23. 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

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- Any other person authorised by the Appellate Tribunal
- Any officer appointed or authorised under the Act

It makes them immune 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.

24. 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 appeals in terms of Tribunals, the jurisdiction of civil courts is barred in 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.

25. 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.

26. 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 served on the assessee in consonance 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

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person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) **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.

27. 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 to the recipient by way of commensurate reduction in prices.

National Anti-profiteering Authority



Constitution

National Anti-profiteering Authority is therefore being constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.

Chapter XV: Anti-profiteering of CGST Rules, 2017 prescribe the provisions relating to constitution of such authority, duties of the authority, orders of the authority etc. The same are discussed hereunder.

The National Anti-Profiteering Authority shall be a 5-member committee consisting of a Chairman who holds/has held a post equivalent in rank to a Secretary to the Government of India; & 4 Technical Members who are/have been Commissioners of State tax/central tax for at least 1 year or have held an equivalent post under earlier laws.

The Authority shall cease to exist after the expiry of 2 years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise.

Duties of the Authority

It shall be the duty of the authority-

(i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices

(ii) to identify the taxpayer who has not passed on the benefit

(iii) to order

  (a) reduction in prices

  (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 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

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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 shall first be examined by the State Level Screening Committee. On being satisfied that the supplier has not passed on the benefit, the Screening Committee will forward the application with its recommendations to the Standing Committee on Anti-profiteering.

If the Standing Committee is satisfied that there is a *prima facie* evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-Profiteering (DFAP) for a detailed investigation.

Investigation: The DFAP 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 DFAP 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 DFAP can seek opinion of any other agency or statutory authorities in the discharge of his duties. The DFAP, 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 DFAP will complete the investigation within a period of 3 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 DFAP will furnish to the Authority, a report of its findings along with the relevant records.

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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 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 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.

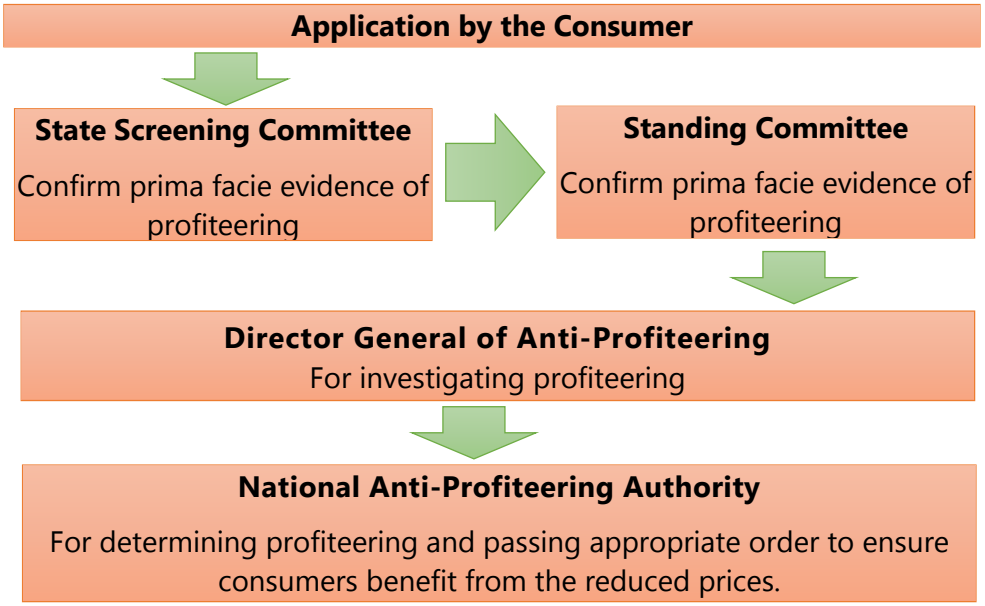
If the report of the DFAP recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the DFAP to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

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 3 months from the date of the receipt of the report from the DFAP.
- An opportunity of being heard will be given, if the interested parties request for it in writing.
- Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.

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- If the eligible person (i.e., the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.



28. 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;

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(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;

(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 1%.

Where the penalty is leviable under the CGST Act and the SGST/UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.

The words and expressions used and not defined in the IGST Act but defined in the CGST Act shall have the same meaning as assigned to them in the 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.

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29. 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.

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

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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.

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

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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).

C. Refund of IGST apportioned to a State/Central Government on account of a Union territory [Section 17(5)]

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.

Transfer of input tax credit [Section 18 of the IGST Act & Section 53 of the CGST Act]

Section 18 of the IGST Act provides as under:

- When IGST credit is utilised for payment of CGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the CGST account.
- When IGST credit is utilised for payment of UTGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the UTGST account.
- When IGST credit is utilised for payment of SGST, the amount collected as IGST shall stand reduced by the amount equal to such credit and shall be apportioned to the appropriate State Government. The Central Government shall transfer the amount so apportioned to the account of the appropriate State Government.

  Appropriate State means the State or Union territory where a taxable person is registered or is liable to be registered under the CGST Act.
- Section 53 of the CGST Act provides that when CGST credit is utilised for payment of IGST, the amount collected as CGST shall stand reduced by an amount equal to such credit so utilised. The Central Government shall transfer an amount equal to the amount so reduced from the CGST account to the IGST account.

Tax wrongfully collected and paid to Central Government or State Government [Section 19 of the IGST Act]

Section 19 provides that a registered person who has paid IGST on a supply

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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.

A registered person who has paid CGST and SGST/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.

30. 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)**

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Further, the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of CGST Act.

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 the SGST Act or the UTGST Act, as the case may be, under intimation to the jurisdictional officer of SGST or UTGST;

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(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.



31. 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.

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

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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. *How shall the GST compliance rating score be determined?*
2. *When shall the power to collect statistics be exercised under GST laws?*
3. *When shall the particulars relating to any proceedings or prosecution be published under GST laws?*
4. *Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?*
5. *What is Anti-profiteering measure?*

ANSWERS/HINTS

1. As per section 149(2), the GST compliance rating score shall be determined on a scale of ten on the basis of prescribed parameters.
2. As per section 151, if the Commissioner considers that collection of statistics is necessary for the purpose of better administration of the Act, he may direct that statistics be collected.
3. 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)]

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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)].

4. 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 done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

5. As per section 171 of the CGST Act, 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. National Anti-profiteering Authority may 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.

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AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and the IGST 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 time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 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[4] under Chapter XXI: Miscellaneous 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 168(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-	**Section 168(2)** The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, **sub-section (1) of section 44, sub-sections (4) and (5) of section 52,** sub-section (5) of section 66, sub-	Amendments made in sections 44 and 52 seek to empower the Commissioner to extend the due date for furnishing annual return (GSTR-9/9A) and monthly statement by an ECO liable to collect tax at source (GSTR-8). Consequently, section 168 is being

[4] *Provisions existing as on the date when the Study Material was released for printing*

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section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.	section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.	amended so as to specify that in respect of sub-section (1) of section 44 and sub-sections (4) and (5) of section 52, Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.
New sub-section (3A) of section 171 of the CGST Act		
<u>New sub-section (3A)</u> **Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:** **Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.** ***Explanation.* - For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.**		Section 171 of the CGST Act is being amended so as to empower the National Antiprofiteering Authority (under sub-section (2) of section 171 of the Act) to impose penalty equivalent to 10% of the profiteered amount.
New section 17A of the IGST Act		
<u>New section 17A of the IGST Act</u> ***<u>Transfer of certain amounts:</u>* Where any amount has been transferred from the electronic cash ledger under**		A new section 17A is being inserted in the IGST Act so as to

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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.	bring into the Act, provisions for transfer of amount between Centre and States consequential to amendment in section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.

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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 CBEC on its website www.cbec.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.

Attention of the students is invited to the following correction in Modules 1 and 2 of this Study Material:

The footnote no. 1 at page no. (v) [Initial pages of Module 1] be read as under:

"Section 103 of the Finance (No. 2) Act, 2019 amending section 54 of the CGST Act, 2017 which prescribes the provisions relating to refund of tax, has come into force on 01.09.2019. The same has been incorporated in Chapter 15: Refunds."

Further, footnote no. 25 at page no. 3.65 [Module 1], footnote no. 14 at page no. 9.72 [Module 2] and footnote no. 6 at page no. 10.47 [Module 2] be ignored.

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Final Course

(Revised Scheme of Education and Training)

Study Material

(Modules 1 to 4)

Paper 8

Indirect Tax Laws

Part – II: Customs & FTP

[As amended by the Finance Act, 2019]

Module – 4

(Relevant for May, 2020 and November, 2020 examinations)



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CONTENTS

PART – I : GOODS AND SERVICES TAX

MODULE – 1

Chapter 1: GST in India – An Introduction

Chapter 2: Supply under GST

Chapter 3: Charge of GST

Chapter 4: Exemptions from GST

Chapter 5: Place of Supply

Chapter 6: Time of Supply

Chapter 7: Value of Supply

MODULE – 2

Chapter 8: Input Tax Credit

Chapter 9: Registration

Chapter 10: Tax Invoice, Credit and Debit Notes

Chapter 11: Accounts and Records; E-way Bill

Chapter 12: Payment of Tax

Chapter 13: Returns

MODULE – 3

Chapter 14: Import and Export under GST

Chapter 15: Refunds

Chapter 16: Job Work

Chapter 17: Assessment and Audit

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Chapter 18: Inspection, Search, Seizure and Arrest

Chapter 19: Demands and Recovery

Chapter 20: Liability to Pay Tax in Certain Cases

Chapter 21: Offences and Penalties

Chapter 22: Appeals and Revision

Chapter 23: Advance Ruling

Chapter 24: Miscellaneous Provisions

PART – II: CUSTOMS & FTP

MODULE - 4

Chapter 1: Levy of and Exemptions from Customs Duty

Unit I-Introduction to Customs Law

Unit-II -Levy and Exemptions

Chapter 2: Types of Duty

Chapter 3: Classification of Imported and Export Goods

Chapter 4: Valuation under the Customs Act, 1962

Chapter 5: Importation, Exportation and Transportation of Goods

Chapter 6: Duty Drawback

Chapter 7: Refund

Chapter 8: Foreign Trade Policy

Unit I – Introduction to FTP

Unit II – Basic Concepts relating to Export Promotion Schemes under FTP

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DETAILED CONTENTS : MODULE - 4

CHAPTER 1 – LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY

Learning Outcomes 1.1

UNIT I-INTRODUCTION TO CUSTOMS LAW

1. Basic Concepts 1.2
2. Constitutional provisions 1.3
3. Overview of the Customs Law 1.3

UNIT-II -LEVY AND EXEMPTIONS

1. Determining factors 1.8
2. Point and circumstances of levy 1.9
3. Procedure, mechanism and organisation for assessment of duty 1.20
4. Remission, abatement and exemptions 1.22

Test your knowledge 1.39

Answers/Hints 1.41

Significant select cases 1.48

CHAPTER 2 - TYPES OF DUTY

Learning Outcomes 2.1

1. Basic customs duty [Section 12 of the Customs Act & Section 2 of the Customs Tariff Act] 2.2
2. Integrated Tax [Sections 3(7) of the Customs Tariff Act] 2.3
3. Goods and Services Tax Compensation Cess [Section 3(9) of the Customs Tariff Act] 2.3
4. Manner of Computing value in case of warehoused goods [Section 3(8A) of the Customs Tariff Act] 2.5

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5. Additional duty of Customs under Section 3 of Customs Tariff Act 2.6
6. Protective duties [Sections 6 & 7 of the Customs Tariff Act] 2.7
7. Emergency power to impose or enhance export duties [Section 8 of Customs Tariff Act] 2.8
8. Emergency power to impose or enhance import duties [Section 8A of Customs Tariff Act] 2.9
9. Safeguard duty [Section 8B of the Customs Tariff Act] 2.9
10. Countervailing duty on subsidized articles [Section 9 of the Customs Tariff Act] 2.11
11. Anti-dumping duty [Section 9A of the Customs Tariff Act] 2.14
12. No levy under section 9 or section 9A in certain cases [Section 9B of the Customs Tariff Act] 2.21
13. Appeal [Section 9C of the Customs Tariff Act] 2.23
14. Social Welfare Surcharge on Imported Goods 2.24

Test your knowledge 2.25

Answers/Hints 2.26

CHAPTER 3 - CLASSIFICATION OF IMPORTED AND EXPORT GOODS

Learning Outcomes 3.1
1. Customs Tariff 3.2
2. General explanatory notes 3.3
3. Rules of Interpretation of the First Schedule to Customs Tariff Act 3.6
4. Project imports 3.12

Test your knowledge 3.14

Answers/Hints 3.14

Significant select cases 3.16

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CHAPTER 4 - VALUATION UNDER THE CUSTOMS ACT, 1962

Learning Outcomes 4.1

1. Introduction 4.2
2. Concept of value 4.2
3. Terms used in commercial parlance 4.4
4. Technical terms relating to value in the course of import or export – International Commercial (INCO) Terms 4.7
5. Concept of indirect tax and valuation for the same 4.7
6. Two approaches for computing the assessable value 4.8
7. Valuation of goods based on section 14 ..... 4.9
8. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ..... 4.12
9. Customs Valuation (Determination of Value of Export Goods) Rules, 2007 ..... 4.42
10. Date for determination of rate of duty and tariff value 4.47
11. Special provisions for classification of sets of articles and accessories 4.66

Test your knowledge 4.68

Answers/Hints 4.73

Significant select cases 4.82

CHAPTER 5 - IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

Learning Outcomes 5.1

1. Introduction 5.2
2. Importation 5.2
3. Definitions of important terms 5.2
4. Statutory provisions 5.7
5. Procedure for clearance of imported goods 5.13
6. Exportation 5.30

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7. Procedure for the clearance of export goods 5.34
8. Procedure for postal articles 5.36
9. Special provisions relating to stores 5.38
10. Special procedures relating to clearance of baggage 5.41
11. Transit and Transhipment 5.53
Test your knowledge 5.63
Answers/Hints 5.65

CHAPTER 6 - DUTY DRAWBACK

Learning Outcomes 6.1
1 Introduction 6.2
2 Drawback allowable on re-export of duty paid goods [Sub-section (1) and (3) of Section 74] 6.3
3 Amount of drawback where imported goods are used before re-exportation [Section 74(2)] 6.6
4 Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 ..... 6.10
5 Drawback on imported materials used in the manufacture of export goods [Section 75] 6.13
6 Customs and Central Excise Duties Drawback Rules, 2017 ..... 6.17
7 Interest on drawback [Section 75A] 6.29
8 Prohibition and regulation of drawback [Section 76] 6.31
Test your knowledge 6.32
Answers/Hints 6.33

CHAPTER 7 - REFUND

Learning Outcomes 7.1
1 Introduction 7.2
2 Application for refund of import duty or interest [Section 27] 7.2

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3 Processing of refund claim [Section 27(2)] 7.3
4. Doctrine of unjust enrichment with respect to refund of duty 7.4
5 Interest on delayed refund [Section 27A] 7.7
6 Refund of export duty in certain cases [Section 26] 7.7
7 Refund of import duty in certain cases [Section 26A] 7.8
8 Refund claim cannot be a substitute for appeal 7.10
Test your knowledge 7.11
Answers/Hints 7.13
Significant select cases 7.18

CHAPTER 8 –FOREIGN TRADE POLICY

Learning Outcomes 8.1

UNIT-I: INTRODUCTION TO FTP

1. Introduction 8.2
2. Provisions regarding imports and exports 8.9

UNIT II: BASIC CONCEPTS RELATING TO EXPORT PROMOTION SCHEMES UNDER FTP

1. Duty Exemption & Remission Schemes 8.19
2. Reward Schemes – MEIS, SEIS and Status Holders 8.28
3. Export Promotion Capital Goods Scheme (EPCG) 8.37
4. EOU, EHTP, STP & BTP Schemes 8.41
5. Deemed Exports 8.48
6. Penalties 8.51
7. Glossary (Acronyms) 8.51
Test your knowledge 8.54
Answers/Hints 8.56

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CHAPTER 1

LEVY OF AND EXEMPTIONS FROM CUSTOMS DUTY



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the basic concepts of customs law.
- gather knowledge pertaining to Constitutional provisions.
- understand the provisions relating to overview of customs law.
- analysis of determining factors to levy customs duty.
- identify the points and circumstances of levy of customs duty.
- analysis and application of procedure for assessment of duty.
- analysis and application of provisions pertaining to remission, abatement and exemptions under customs law.

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UNIT – I : INTRODUCTION TO CUSTOMS LAW

1. BASIC CONCEPTS

Meaning of word "customs"

Customs is a form of indirect tax. Standard English dictionary defines the term **'customs'** as duties imposed on imported or less commonly exported goods. This term is usually applied to those taxes which are payable upon goods or merchandise imported or exported.

Historical Background

The term **'customs'** derives its colour and essence from the term 'custom', which means a habitual practice or course of action that characteristically is repeated in like circumstances. Duties on import and export of goods have been levied from time immemorial by all the countries. In the times, when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer certain offerings as gifts to the King for allowing him to sell his goods in that kingdom. Over a period of time, the system of governance took a paradigm shift from monarchy in favour of democracy.

Kautiliya's Arthashastra also refers to shulka (Customs Duty) consisting of import duty and export duty to be collected at the city gates on both goods coming in and going out. Subsequently, the levy of tax on goods imported into the country was organised through legislation during the British period.

The Customs Act was passed and promulgated in India by the Parliament in the year 1962 which replaced the erstwhile Sea Customs Act, 1878. Further, the Customs Tariff Act was passed in the year 1975 to replace the Indian Tariff Act, 1934. The Customs Tariff Act was amended in the year 1985 to move in times with and to deal with the complexities resulting from the rapid development in science and technology and consequent industrial development and expansion of manufacturing and trading activities. The Customs Act, as it stands now, consolidates the entire law on the subject of import and export duties, which were earlier contained in various enactments like the Sea Customs Act, 1878, Inland Bonded Warehouses Act, 1896 and the Land Customs Act, 1924. Thus, now the Act stands as a complete code in itself as to the levy and collection of duties on import and export of goods.

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2. CONSTITUTIONAL PROVISIONS

All the enactments enacted by the Parliament should have its source in the Constitution of India. The power for enacting the laws is conferred on the Parliament and on the legislature of a State by Article 245 of the Constitution. The said Article states:

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state. No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of states. The matters are listed in the seventh schedule to the Constitution.

The seventh schedule is classified into three lists as follows:

List I [referred as Union List]

This list enumerates the matters in respect of which the Parliament has an exclusive right to make laws. Entry 83 of Union List has given the power to Central Government to levy duties of Customs including export duties.

List II [referred as State List]

This list enumerates the matters in respect of which the legislature of any state has an exclusive right to make laws.

List III [referred as the concurrent list

This list enumerates the matters in respect of which both the Parliament and, subject to List I, legislature of any state, have powers to make laws.

Parliament has a further power to make any law for any part of India not comprised in a state, notwithstanding that such matter is included in the state list.

3. OVERVIEW OF CUSTOMS LAW

The Customs Act, 1962 extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person. The entire gamut of the Act is grouped into seventeen chapters.

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The following table presents an overview of the said chapters and aims at securing the reader's understanding of the provisions of the Act in a proper perspective.

Ch. No.	Chapter Heading	Sections	Content
I	Preliminary	1 & 2	Short title and definitions
II	Officers of Customs	3 to 6	Classes, appointment and powers of the customs officers.
III	Appointment of Customs ports, airports etc.	7 to 10	Appointment of ports, Airports, landing stations and customs area
IV	Prohibition on importation and exportation of goods	11	Power to prohibit the import or export of goods.
IVA	Detection of illegally imported goods and prevention of the disposal thereof	11A to 11G	Notified goods, control over storage, sale, accounting, transportation etc.
IVB	Detection and prevention of illegal export of goods	11H to 11M	Notified goods, storage, transportation etc.
IVC	Exemption from Ch. IVA and Ch. IVB	11N	Central Government's power to grant exemption.
V	Levy and exemption of Customs duty	12 to 28BA	Dutiable goods, valuation, rate of duty, assessment, remission, exemption, interest on delayed payments.
VA	Indicating amount of duty in the price of goods	28C & 28D	Price of goods and passing of incidence of duty
VB	Advance rulings	28E to 28M	Authority, application, procedure, applicability and powers.

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VI	Control over conveyances carrying imported or export goods	29 to 43	Arrival/departure reports, Import/Export general manifest, entry inwards, place time and restrictions on loading/unloading, water borne goods etc.
VII	Clearance of goods	44 to 51	Bill of entry, shipping bill, clearance for home consumption/warehousing and exportation, storage of goods,
VIIA	***Payments through electronic cash ledger***	***51A***	***Payment of duty, interest, penalty, etc.***
VIII	Goods in transit	52 to 56	Transit and transhipment procedures
IX	Warehousing	57 to 73A	Appointment & licensing of warehouse, bonding of goods, period of warehousing, payment of rent and charges, clearance of warehoused goods, allowance for volatile goods
X	Drawback	74 to 76	Drawback allowable, Interest allowable, prohibition and regulation
XA	Special Provisions relating to Special Economic Zone	76A to 76N	Omitted in view of the introduction of a separate Act namely, Special Economic Zones Act, 2005
XI	Special provisions relating to baggage, goods imported or exported by posts and stores	77 to 90	Declaration, rate of duty and valuation, exemption and procedures
XII	Coastal goods and vessels carrying coastal goods	91 to 99	Entry, restrictions, clearance, loading and unloading and application.

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XIIA	*Audit*	*99A*	*Audit*
XIII	Searches, Seizure and Arrest	100 to 110A	Powers and procedures of search, seizure and arrest.
XIV	Confiscation and penalties	111 to 127	Powers and procedures for confiscation and for levy and collection of penalties.
XIVA	Settlement of cases	127A to 127N	Application for settlement, procedure, powers of settlement commission, inspection etc.
XV	Appeals and revision	128 to 131C	Procedure and time limits for appeals and revisions
XVI	Offences and prosecutions	132 to 140A	Cognizable offences and procedures for prosecution.
XVII	Miscellaneous	141 to 161	Recovery of sums due, power to take samples, licensing of custom house agents, liability of principal and agent, delegation of powers, general power to make rules etc.



Some important definitions

Board [Section 2(6)]:- "Board" means the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)];

"Notification" [Section 2(30AA)]:"Notification" means notification published in the Official Gazette and the expression "notify" with its cognate meaning and grammatical variation shall be construed accordingly

India [Section 2(27)]:-"India" includes the territorial waters of India.

Meaning and significance of territorial waters of India

Territorial waters of India extend to 12 nautical miles into sea from the appropriate base line.

Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters.

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India includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

Indian customs waters [Section 2(28)]

"Indian customs waters" means the waters extending into the sea up to the limit of Exclusive Economic Zone under section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river.

If a person has committed any offence punishable under customs law within the Indian customs waters, he may be arrested. Also, goods may be confiscated and vessel be stopped in the Indian customs waters if the same is found to be used in the smuggling. Further, prohibited goods can also be confiscated if brought within the Indian customs waters.



ANALYSIS

Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well. Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. Therefore, Indian customs waters extend to a total of 200 nm from base line.

Few other important terms

1. Baseline

It is the lower water mark along the coast.

2. Continental Shelf of India

Continental shelf is the part of the sea floor adjoining a land mass where the depth gradually increases before it plunges into the ocean deeps. The maximum depth of sea water in the continental shelf is 200 meters. Continental shelf of India extends beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline.

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UNIT – II : LEVY AND EXEMPTIONS

1. DETERMINING FACTORS

Three stages of imposition of taxes and duties

All taxes and duties are imposed in three stages, which are levy, assessment and collection:-

(a) **Levy** is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.

(b) **Assessment** is the procedure of quantifying the amount of liability. The liability to tax or duty does not depend upon assessment.

(c) The final stage is where the tax or duty is actually collected. The **collection of tax or duty** may for administrative or other reasons be postponed to a later time.

The liability towards customs duty is broadly based upon the following 3 factors:

1. the goods, the point and the circumstances under which the customs duty becomes leviable;
2. the procedure, the mechanism and the organization for determining the amount of customs duty and collection thereof;
3. the exemption to the levy either on grounds of morality or equity or as a result of the discretionary powers vested in the Government as a tool for planning tax structure and control of economic growth of the country.

The customs duty is considered to be levied on the goods and not on the person importing the goods or paying the duty. Equitability requires charging of duty at the same level if the circumstances of importation are similar. This has given rise to a deemed provision under section 12 of the Customs Act.

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2. POINT AND CIRCUMSTANCES OF LEVY

CHARGING SECTION [SECTION 12]

1. This section is the charging section of the Act. Except as 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 (51 of 1975), or any other law for the time being in force, on goods imported into and exported from India [Sub-section (1)].

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.

Hence, there is no general exemption to goods imported by Government. But imports by Indian Navy, specific equipment required by police, Ministry of Defence, Costal Guard etc. are fully exempt from customs duty by virtue of specific notifications subject to fulfillment of conditions and/or procedure set out in the notification.

The following propositions arise from the above provisions:-

1. Duties of customs shall be levied on goods. However, it may be noted that this levy is subject to other sections in the Act. For instance:

   Section 13 – no duty on pilfered goods

   Section 22 – reduced duty on damaged goods

   Section 23 – remission of duty on destroyed goods.

2. The goods shall be such as are imported or exported to or from India;

3. The duty shall be charged at such rates as may be specified under the Customs Tariff Act, 1975.

4. Government goods shall be treated at par with non-Governmental goods for the purposes of levy of customs duty.

ANALYSIS OF SECTION 12

(a) Charge on goods

The charge of customs duty is considered to be on the goods and not on the person importing them or paying the duty. Being such, it is expected to be passed on to the buyer.

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(b) Taxable event-Import of goods into India/export of goods from India

Section 12 makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs.

Earlier, a lot of problems were faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of "India" given by section 2(27). Under the said section, India includes territorial waters of India. Consequently, even an innocent entry of a vessel into the territorial waters of India would result in import of goods. Further, it was almost impossible to determine when exactly the vessel crossed the territorial waters limit. But this matter is no longer *res integra*.

Relevant judgments regarding the determination of taxable event

The main test for determining the taxable event is the happening of the event on which the charge is affixed.

I. Imports

(a) In case of goods cleared for home consumption

The Supreme Court observed that import of goods will commence when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed.

[Garden Silk Mills v. UOI 1999 (113) E.L.T. 358 (S.C.)]

(b) In case of goods cleared for warehousing

In case of warehoused goods, the custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country.

[Kiran Spinning Mills v. Collector of Customs 1999 (113) E.L.T. 753 (S.C.)]

II. Exports

Export of goods is complete when the goods cross the territorial waters of India.

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DISTINCTION BETWEEN CLEARANCE FOR HOME CONSUMPTION AND CLEARANCE FOR WAREHOUSING

Clearance for home consumption implies that, the customs duty on import of the goods has been discharged and the goods are therefore cleared for utilization or consumption. The goods may instead of being cleared for home consumption be deposited in warehouse and cleared at a later time. When the goods are deposited in the warehouse the collection of customs duty will be deferred till such goods are cleared for home consumption. The revenue for the Government is safeguarded by the importer executing a bond binding himself in a sum equal to twice the amount of duty assessed on the goods at the time of import. The importer is also liable to pay interest, rent and charges for storage of goods in warehouse.

DUTY LIABILITY IN CERTAIN SPECIAL CIRCUMSTANCES

(A) Re-importation of goods produced/manufactured in India [Section 20]

If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof.

It implies that goods manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are otherwise imported.

CONCESSIONS IN THIS REGARD

However, the following notifications have provided certain concessions in this regard:

(i) Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback etc.

S.No.	Description of goods exported	Amount of import duty payable if re-imported
1.	Goods exported under claim for duty drawback, refund of integrated tax paid on export goods, bond without payment of integrated tax, etc.	Amount of incentive availed of at the time of export

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2*.	Goods other than those falling under Sl. No. 1 exported for repairs abroad	Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.

Conditions to be satisfied for claiming the above two concession/exemptions:-

(a) Time-limit for re-importation

The time limit for re-importation is 3 years. This is extendable to 5 years.

(b) Same goods

The exported goods and the re-imported goods must be the same.

(c) No change in ownership

In case of point (2*.), the ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU or a unit in FTP
- re-imported goods had been exported from a public/private warehouse
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944.

[Notification No. 45/2017 Cus. dated 30.06.2017]

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(ii) Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process

S. No.	Particulars	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Goods manufactured in India and re-imported for repairs or for reconditioning ***other than the specified goods***	3 years In case of export to Nepal, such time-limit is 10 years.	(a) Goods must be re-exported within six months (extendable till one year) of the date of re-importation. (b) The Assistant Commissioner/ Deputy Commissioner of Customs is satisfied as regards identity of the goods. (c) The importer at the time of importation executes a bond.
2*.	Goods manufactured in India and re-imported for (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above.	1 year	

[Notification no.158/95 Cus. dated 14.11.1995 ***as amended vide Notification No. 60/2018 Cus dated 11.09.2018]***

Note: In 2* above, if any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of Assistant/ Deputy Commissioner of Customs.

The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same.

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Illustration 1

A machine was originally imported from Japan at ₹ 250 lakh in July, 20XX on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 20XX and re-imported without any re-manufacturing or re-processing in October next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material ₹ 6 lakh) would have been ₹ 9 lakh. Actual insurance and freight charges (to and fro) were ₹ 3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

***Note:** The importer intends to avail exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad.*

Answer

As per *Notification No. 45/2017 Cus. dated 30.06.2017,* duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

(a) goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;

(b) exported goods and the re-imported goods must be the same;

(c) ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	₹
Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + ₹ 3 lakh]	12,00,000

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Add: Basic customs duty @ 10% **(A)**	1,20,000
Add: Social Welfare Surcharge @ 10% on ₹ 1,20,000 **(B)**	12,000
Value for computing integrated tax	13,32,000
Integrated tax @ 12% (₹ 13,32,000 x 12%) - **(C)**	1,59,840
Customs duty and integrated tax payable [(A) +(B)+ (C)]	**2,91,840**

(B) Goods derelict, wreck etc. [Section 21]

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.



ANALYSIS OF SECTION 21

The concept of 'goods brought into India' is not confined to goods, which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India. This implies that apart from goods which are normally imported in the course of international trade, flotsam, and jetsam, which are washed ashore and derelict and wreck brought into India out of compulsion are also treated on par with trade goods.

Meaning of the various terms

Derelict – This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.

Jetsam – This refers to goods jettisoned from the vessel to save her from sinking.

Flotsam – Jettisoned goods which continue floating in the sea are called flotsam.

Wreck – This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

Illustration 2

Distinguish between Jetsam and Flotsam

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Answer

Jetsam and Flotsam are goods which are jettisoned (i.e. thrown with speed) from the vessel into the sea to reduce weight of vessel to prevent it from sinking. They are not abandoned goods. Jetsam gets sunk whereas Flotsam does not sink but floats. Duty is payable on both unless they are entitled to be admitted free of duty.

C. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

The salient features of the rules are discussed hereunder:

1. **Application [Rule 2]:** These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service. These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

2. **Definition [Rule 3]:** In these rules, unless the context otherwise requires, -

   (a) Exemption notification: means a notification issued under section 25(1) of the Customs Act, 1962.

   (b) Information: means the information provided by the manufacturer who intends to avail the benefit of an exemption notification.

   (c) Jurisdictional Custom Officer: means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services.

   (d) Manufacture: means the 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.

   (e) Output service: means supply of service with the use of the imported goods.

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3. Information about intent to avail benefit of exemption notification [Rule 4]: An importer who intends to avail the benefit of an exemption notification shall provide the information to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the particulars, namely: -

(i) the name and address of the manufacturer;

(ii) the goods produced at his manufacturing facility;

(iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.

4. Procedure to be followed [Rule 5]

(i) The importer who intends to avail the benefit of an exemption notification shall provide information -

(a) in duplicate, to the Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding 1 year; and

(b) in one set, to the Deputy/ Assistant Commissioner of Customs at the Custom Station of importation.

(ii) The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, 1956, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of

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actual payment of the entire amount of the difference of duty that he is liable to pay.

(iii) The Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy/ Assistant Commissioner of Customs at the Custom Station of importation.

(iv) On receipt of the copy of the information, the Deputy/ Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

5. Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records [Rule 6]

(i) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within 2 days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

(ii) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

(iii) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the prescribed form, to the Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be

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put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.

6. Re-export or clearance of unutilised or defective goods [Rule 7]

(i) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may re-export the unutilised or defective imported goods, within 6 months from the date of import, with the permission of the jurisdictional Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.

However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(ii) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy/ Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of 6 months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

7. Recovery of duty in certain case [Rule 8]: The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of unutilised or defective goods under rule 7 and in the event of any failure, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to

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the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

[Notification No. 68/2017 Cus (NT) 30.06.2017 and Circular No. 25/2017 Cus dated 30.06.2017]

3. PROCEDURE, MECHANISM AND ORGANISATION FOR ASSESSMENT OF DUTY

MEANING OF ASSESSMENT

In the context of the customs duty, the term assessment means quantification of the amount of duty payable. The process of assessment involves the following stages.

a. Determination of the quantity and total value of the consignment.

b. Determination of the proper tariff classification of the goods.

c. Determination of the appropriate rate of duty after considering the various exemptions, abatements, remissions.

d. Determining whether the goods are to be cleared for home consumption or to be deposited in the warehouse.

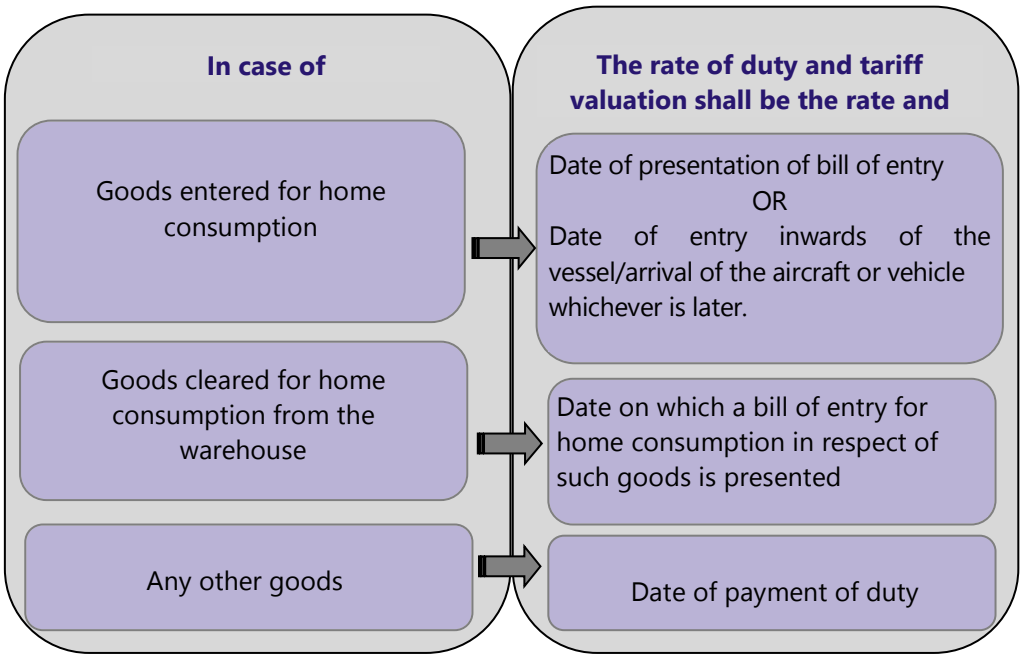
VALUATION OF GOODS [SECTION 14]

The method of valuation has been explained in detail in chapter 4.

DATE FOR DETERMINING THE RATE OF DUTY AND TARIFF VALUATION OF IMPORTED GOODS [SECTION 15]

Section 15 prescribes the relevant date for determining the rate of duty and tariff valuation, if any, applicable to any imported goods in the following manner:

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Bill of entry is presented on 01.01.20XX, the vessel arrives on 03.01.20XX. In this situation, relevant date for determination of the rate of import duty is 03.01.20XX because though for procedural purposes, the Bill of Entry was filed on 01.01.20XX, for the purpose of determining the rate of duty and tariff valuation of such goods, Bill of Entry will be deemed to have been filed on 03.01.20XX.

In respect of baggage and goods imported by post, the provisions of section 15 will not be applicable as they are independently covered by other sections.

Relevant case laws

Section 15 has generated a lot of interest in terms of case law development. In *Bharat Surfacants Pvt. Ltd. v. UOI 1989 (43) ELT 189,* the Supreme Court held that the rate of duty and tariff valuation would be done on the date of final entry of the ship. In this case, a ship entered Bombay and made prior entry on 4.7.81 at which time the duty was 12.5%. Since there was no space, the ship proceeded to Karachi and after that came back to Bombay on 23.7.81 and was granted final entry on 4.8.81 when the duty rate had been revised to 15.0%. The Supreme Court held that the rate applicable would be 15.0% only since the formality of entry inward could be done only on 4.8.81.

It would also be important to note that date of contract is not relevant and only the date of importation is relevant as per the decision of the Supreme Court in

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Rajkumar Knitting Mills P.Ltd vs CC 1998 (98) ELT 292.

It is also relevant to note that Section 15 deals with only the rate of duty and tariff valuation and not the valuation under section 14.

Illustration 3

An importer, imported consignment of goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May, 20XX. A bill of entry for warehousing the goods was presented on 2nd June, 20XX and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th October, 20XX reducing the effective customs duty to 25% ad valorem.

Thereafter, the importer filed a bill of entry for home consumption on 20th October claiming 25% duty. The customs Department charged higher rate of duty @ 40% ad valorem. Give your views on the same, discussing the relevant provisions of the Customs Act, 1962.

Answer

According to section 15(1)(b) of the Customs Act, the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20.10.20XX (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.

4. REMISSION, ABATEMENT AND EXEMPTIONS

The Customs Act provides for remission, abatement and exemptions from customs duty in certain circumstances. These provisions are discussed in the subsequent paragraphs.

NO DUTY ON PILFERED GOODS [SECTION 13]

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods. However, where such goods are restored to the importer after pilferage, the importer becomes liable to duty.

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ANALYSIS OF SECTION 13

The logic behind this section is that when the goods are not under the control of the importer, he should not be required to pay duty on such goods.

(a) Conditions to be satisfied for exemption from duty

a. The imported goods should have been pilfered.

b. The pilferage should have occurred after the goods are unloaded, but before the proper officer makes the order of clearance for home consumption or for deposit into warehouse.

c. The pilfered goods should not have been restored back to the importer.

The term **'pilfer'** means "to steal, especially in small quantities; petty theft". Therefore, the term does not include loss of total package.

(b) Circumstances in which pilferage can be claimed

In order to claim pilferage the following circumstances should exist:

a. there should be evidence of tampering with the packages;

b. there should be blank space for the missing articles in the package; and

c. the missing articles should be unit articles [and not part articles]

(c) Pilferage noticed at the time of removal of goods by the importer

The pilferage of goods would normally be noticed at the time of physical verification of goods by the customs authorities. However, in some circumstances, it may so happen that the pilferage may be observed only at the time of removal of goods by the importer. In such case, the order for clearance, or as the case may be, for bonding would already have been passed. Therefore, the importer has to ask for survey either by the steamer agents or by the insurance surveyors and the report issued by them would form the basis for claiming remission. As in such the circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.

(d) Following points merit consideration

1. If goods are pilfered after the order of clearance is made but before the goods are actually cleared, duty is leviable.

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2. Section 13 deals with only pilferage. It does not deal with loss/destruction of goods.

3. Provisions of section 13 would not apply if it can be shown that pilferage took place prior to the unloading of goods.

4. In case of pilferage, only section 13 applies and claim of refund under section 23(1) is not permissible.

5. Section 13 applies to the goods which are under the custody of the custodian under section 45. The goods, even though held by the custodian appointed by the Collector, are held by him for the purposes of customs formalities. Any pilferage noticed during the period is on the account of the Customs formalities. Section 13 and section 45 are independent provisions. In other words, whether duty is paid/ payable by the custodian or not, remission cannot be denied to the importer by the Department.

REMISSION OF DUTY ON GOODS LOST, DESTROYED OR ABANDONED [SECTION 23]

(a) Remission of duty

Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods. [Sub-section (1)].



ANALYSIS

1. An analysis of section 23 shows that it comes into play after the duty has been paid and even after an order for home consumption has been passed, but before the goods are actually cleared, and then it is found that they have been lost/destroyed. In that case the provision is not that goods will not be liable to duty, but duty paid on such goods shall be remitted by the Assistant/Deputy Commissioner of Customs.

2. In respect of the goods which have been pilfered after they have been unloaded but before the goods are cleared for home consumption or

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deposit in a warehouse, section 13 would apply and the importer would not be liable to pay the duty. In cases where section 23 is attracted, the importer is entitled to remission of duty.

3. The remission of duty is permissible only in the case of total loss of goods. This implies that the loss is forever and beyond recovery. The loss referred to in this section is generally due to natural causes like fire, flood, etc.

4. The loss referred to in sub-section (1) may be at the warehouse also.

5. In the above situation, the loss/ destruction have to be proved to the satisfaction of the Assistant Commissioner or Deputy Commissioner. Thereupon, he may pass remission orders canceling the payment of duty. In case duty has already been paid, refund can be obtained after getting the remission orders.

(b) Right to relinquish the title to the goods-abandonment of goods

The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.



ANALYSIS

1. **Meaning of relinquish**

   "Relinquish" means to give over the possession or control of, to leave off.

2. The aforementioned right can be exercised at any time before the passing of the order for clearance for home consumption. Before that date, it is open to the importer to relinquish the title to the goods.

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3. **Goods abandoned by importers**

Sometimes, it may so happen that the importer is unwilling or unable to take delivery of the imported goods. Some of the likely causes may be:

(i) the goods may not be according to the specifications;

(ii) the goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;

(iii) there might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer has to relinquish his title to the goods unconditionally and abandon them. Relinquishment is done by endorsing the document of title, viz. Bill of Lading, Airway Bill, etc. in favour of the Principal Commissioner/Commissioner of Customs along with the invoice. If the importer does so, he will not be required to pay the duty amount.

However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

(c) Distinction between section 13 and section 23

The provisions of section 13 and section 23 can be better appreciated after going through the following points of distinction:-

Basis	Pilferage of goods under section 13	Loss or destruction of goods under section 23
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft.	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of goods is possible where the importer is

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		unwilling/unable to take the delivery of the imported goods.
Duty on goods	The importer shall not be liable to pay the duty leviable on such goods.	The duty paid on such goods shall be remitted to the importer.
Subsequent restoration of goods	Where the pilfered goods are restored to the importer after pilferage, the importer become liable to duty.	In case of destruction of goods, the restoration is not possible.
Warehoused goods	Provisions of section 13 are not applicable to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/destruction or loss of goods	The onus to prove the pilferage does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss/destruction to the satisfaction of the Assistant/Deputy Commissioner of Customs.
Time of occurrence of pilferage or loss/destruction	The imported goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse.	The imported goods must have been lost/destroyed at any time before clearance for home consumption under section 47.

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ABATEMENT OF DUTY ON DAMAGED OR DETERIORATED GOODS [SECTION 22]

Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs -

(a) that any imported goods had been damaged or had deteriorated at any time before or during the unloading of the goods in India; or

(b) that any imported goods, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or

(c) that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2) [Sub-section (1)].

The duty to be charged on the goods referred to in sub-section (1) shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration [Sub-section (2)].

For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-

(a) the value of such goods may be ascertained by the proper officer, or

(b) such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods [Sub-section (3)].



ANALYSIS

(a) Cases where the abatement is available

Abatement is available if the goods are damaged/deteriorated under any of the following circumstances:

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S.No.	Goods damaged/deteriorated	
1.	before or during unloading	
2.	by accident after unloading but before examination for assessment by the customs authorities	Provided such accident is not due to any wilful act, negligence or default of the importer, his employee or agent
3.	by accident in warehouse before their actual clearance from such warehouse	

Meaning of damage

The term **'damage'** denotes physical damage to the goods. This implies that the goods are not fit to be used for the purpose for which they are meant.

Meaning of deterioration

Deterioration is reduction in quality of goods due to natural causes.

(b) Amount of duty chargeable after abatement

$$= \text{Duty on goods before damage / deterioration} \times \frac{\text{Value of damaged / deteriorated goods *}}{\text{Value of goods before damage / deterioration}}$$

Illustration 4

If the value of goods is ₹ 10,000 and after damage the value is ₹ 2,000 then duty payable on ₹ 10,000/- should be appropriately reduced to 20% (proportion of 2000 to 10000).

(c) *Valuation of the damaged or deteriorated goods

The value shall be:-

(a) Value ascertained by the proper officer

or

(b) The proper officer may sell such goods by public auction/tender or if the importer agrees, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

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Illustration 5

What will be the impact on the customs duty if the goods are –:

(i) damaged inside the warehouse before clearance for home consumption

(ii) deteriorated inside the warehouse before clearance for home consumption

(iii) destroyed in the warehouse before clearance for home consumption

(iv) destroyed on the wharf, before clearance for home consumption

(v) destroyed after clearance from warehouse

Answer

(i) When the goods are damaged inside the warehouse abatement in customs duty, on resultant loss in value, has been provided through section 22. Section 22 contemplates that for claiming abatement of duty, the damage (not deterioration) should occur at any time before clearance of the imported goods for home consumption from the warehouse. However, the damage should not be attributable to the importer. It should be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner of Customs that the imported goods have actually suffered damages. The claim for abatement is not tenable unless the importer factually proves the damage. The following equation provides the way to calculate the abatement of duty.

$$\frac{\text{Duty after damage}}{\text{Duty before damage}} = \frac{\text{Value after damage}}{\text{Value before damage}}$$

(ii) As discussed above, in case of warehoused goods, only damages are covered and not deterioration, hence abatement will not be available in this case and full duty will have to be paid.

However, as per first proviso to section 68 of Customs Act, 1962, owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods. Upon such relinquishment, duty will not be payable on such goods but rent, interest, other charges and penalties would be payable.

(iii) When the goods are destroyed in the warehouse before clearance for home consumption, customs duty will be remitted as per the provisions of section 23. Section 23(1) applies when the goods have been lost (otherwise than as a result of pilferage) or destroyed in entirety i.e. whole or part of goods is lost once for all. The goods cease to exist and cannot be retrieved. The loss is

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generally on account of natural causes such as fire, flood etc., and no human element is present as in section 13. The loss or destruction may occur at any time before clearance for home consumption. The loss/destruction has to be proved to the satisfaction of Assistant Commissioner or Deputy Commissioner.

(iv) As all the conditions of section 23 are fulfilled, duty will be remitted in this case also.

(v) As per the discussion made in (iii) above it is clear that remission of duty is possible only when destruction occurs before clearance for home consumption. In case of destruction after clearance from a warehouse, no remission of duty is possible.

Illustration 6

Peerless Scraps, imported during August 20XX, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tonnes) from U.S.A. They filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. Peerless Scraps thereafter found, on taking delivery from the Port Trust Authorities (i.e., before the clearance for home consumption), that only 5,500 M.T. of scrap were available at the docks although they had paid duty for the entire 6,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to Peerless Scraps.

On filing a representation to the Customs Department, Peerless Scraps has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M.T. not delivered by the Port-Trust.

You are approached by Peerless Scraps as "Counsel" for an opinion/advice. Examine the issues and tender your opinion as per law, giving reasons.

Answer

As per provisions of section 23, where it is shown to the satisfaction of Assistant or Deputy Commissioner that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the Assistant or Deputy Commissioner shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.

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In the given case, it is apparent from the facts that quantity of scrap received in India was 6000 metric tonnes and 500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. Also, the loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, Peerless Scraps may take shelter under section 23 justifying his claim for remission of duty.

DENATURING OR MUTILATION OF GOODS [SECTION 24]

Section 24 of the Customs Act, 1962 provides that an importer can request Central Government to make rules for permitting to denature/mutilate the imported goods, which are ordinarily used for more than one purpose, so as to render them unfit for one or more of such purpose.

If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, than denaturing or mutilation of such goods is useful. By denaturing, goods are made unfit for other purposes. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.

Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.



Ethyl Alcohol which is not denatured attracts a higher rate of customs duty whereas denatured ethyl alcohol attracts lower rate of duty. Assuming undenatured ethyl alcohol is imported, certain very bitter chemicals can be added to denature the spirits as per Rules and once they are denatured, they attract the lower rate of duty.

EXEMPTION FROM CUSTOMS DUTY [SECTION 25]

Central Government's power to grant exemption

Article 265 of the Constitution provides that "No tax shall be levied or collected except by authority of law". The power of the Central Government to alter the duty rate structure is known as delegated legislation and this power is always subject to superintendence and check by Parliament.

a. **General exemption:** If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

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b. Special exemption: If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, one hundred rupees.

Both the above mentioned exemptions may be granted by providing for the levy of duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable.

Further, the duty leviable under such altered form or method shall in no case exceed the statutory duty leviable under the normal form or method.

RATIONALE FOR GRANT OF EXEMPTION

The power for grant of exemption vests with the Central Government subject to the overall control of the Parliament. The Government on a rational basis may discretely use this power and the exemptions may be based on any of the following bases:

a. Moral grounds, where the duty should not be levied at all. Some of the instances, which may be given, are;

   (i) Where the goods do not reach the Indian soil at all.

   (ii) Where the goods have reached the Indian soil but are not available for consumption.

   (iii) Where the goods get damaged or deteriorated in transit.

b. Discretionary provision, where the exemption is used for controlling the economy and industrial growth of the country.

Interpretation of Exemption Notifications

In *Kasinka Trading v. U.O.I. 1994 (74) E.L.T. 782,* the Supreme Court held that the power to exempt includes the power to modify or withdraw in terms of Section 21 of the General Clauses Act, 1897. It was held that even a time bound exemption notification issued under section 5A of the Central Excise Act, 1944, or section 25 of the Customs Act, 1962 can be modified and revoked if it is in public interest and the doctrine of Promissory Estoppel cannot be invoked since a notification cannot be said to be making a representation or a promise to a party getting benefit thereof.

The Supreme Court has held in *Pankaj Jain Agencies v. U.O.I. 1994 (72) E.L.T. 805* that a Notification is to take effect from the date of the publication in the Official

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Gazette. In *ITC Ltd. v. CCE 1996 (86) E.L.T. 477* the Supreme Court reiterated this view and said that non-availability of the Gazette on the date of issue of the notification will not affect the operativeness and enforceability of the notification particularly when there are radio announcements and press releases explaining the changes on the very day

An exemption notification cannot be withdrawn and duty cannot be demanded with retrospective effect *[Honest Corporation v. State of Tamil Nadu 1999 STC 113 (HC)]*.

Effective date: Section 25 of the Act provides that the date of effect of the notification will be the date of its issue.

The following issues need to be kept in mind in case of general exemption.

(i) Where the exemption notification does not mention the date of its effect, the notification comes into effect from the date of its issue by the Central Government for publication in the Official Gazette.

(ii) Where the exemption is through a special order, the above rules do not apply. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government. The beneficiary can claim refund for the period reckoned from the date of its issue.

Sub-section 2A empowers the Government to issue clarifications to the notifications within one year from the issue of the notification and such clarifications will have retrospective effect.

EXEMPTION FROM CUSTOMS DUTY ON IMPORTED GOODS USED FOR INWARD PROCESSING OF GOODS [SECTION 25A]

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

(a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;

(b) the imported goods are identifiable in the export goods; and

(c) such other conditions as may be specified in that notification.

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EXEMPTION FROM CUSTOMS DUTY ON RE-IMPORTED GOODS USED FOR OUTWARD PROCESSING [SECTION 25B]

Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely :—

(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;

(b) the exported goods are identifiable in the re-imported goods; and

(c) such other conditions as may be specified in that notification.".

LIST OF IMPORTANT JUDICIAL DECISIONS ON SCOPE OF EXEMPTION NOTIFICATIONS

A. General Principles

Particulars	Citation
1. Exemption notifications represent the policy of the Government evolved to sub-serve public interest and public revenue. It is a part and parcel of the enactment subject to it not being against Article 14 of Constitution.	*U.O.I.* v. *Paliwal Electricals P. Ltd* 1996 (83) E.L.T. 241 (S.C.)
2. Supervening public equity overrides principle of promissory estoppel. Time bound notification can be withdrawn.	*Shrijee Sales Corporation* v. *U.O.I.* 1997 (89) E.L.T. 452 (S.C.)
3. Exemption notification is a class of delegated or conditional legislation. Power can be used not only for raising revenue but also to regulate the economy and for serving social objectives.	*U.O.I.* v. *Jalyan Udyog* 1993 (68) E.L.T. 9 (S.C.)

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4. Classification between small and big manufacturers not discriminatory.	*Murthy Match Works* v. *AC* 1978 (2) E.L.T. J429 (S.C.)
5. Choice of date in exemption notifications cannot be questioned being a question of policy.	*ITC Bhadrachalam Paper Boards Ltd.* v. *CCE* 1994 (71) E.L.T. 334 (S.C.)
6. Exemption notification not valid if it does not recite public interest.	*Ramdhan Pandey* v. *State of UP* 1993 (66) E.L.T. 547 (S.C.)
7. Public interest means an act beneficial to general public.	*MJ Exports* v. *CCE* 1992 (59) E.L.T. 112 (T) [approved by SC]
8. In case of omission to claim exemption does not result in denial of benefit.	*Hero Cycles Ltd. v Union of India 2009 (240) E.L.T. 490 (Bom.)* [maintained by SC]
9. For purpose of claiming exemption from payment of tax applicable to a commodity, assessee must bring on record sufficient materials to show that it comes within the purview of notification.	*Boc India Ltd. v State Of Jharkhand 2009 (237) E.L.T. 7 (S.C.)*

B. How to Interpret?

Particulars	Citation
1. Notification to be treated as a part of the enactment itself.	*CCE* v. *Parle Exports P. Ltd.* 1988 (38) ELT 741 (SC)
2. Interpretation given at the time of enactment or issue to be given weight.	
3. (a) Exemption notification should be construed strictly and reasonably having regard to the language employed.	*HMM Ltd.* v. *CCE* 1996 (87) E.L.T. 593 (SC)
(b) Strictness of construction does not mean that circuitous process should be followed. Strictness should also result in giving full effect.	*Swadeshi Polytex Ltd.* v. *CCE* 1989 (44) E.L.T. 794 (SC)
(c) Express language to be given effect. Supposed intention to be gathered from language used.	*GSFC Ltd.* v. *CCE* 1997 (91) E.L.T. 3 (SC)

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(d) Exemption notification not to be rendered nugatory or purposeless. The word singular includes plural.	*CC* v. *United Electrical Industries Ltd.* 1999 (108) E.L.T. 609 (SC).
4. (a) Exemption notification construable strictly.	*Novopan India Ltd.* v. *CCE* 1994 (73) E.L.T. 769 (SC)
(b) Exemption notification need not be construed strictly when there is no doubt or ambiguity in it.	*SG Glass Works P. Ltd.* v. *CCE* 1994 (74) E.L.T. 775 (S.C.)
5. Liberal construction which enlarges the term and scope of notification not permissible.	*Rajasthan Spg. & Wvg. Mills Ltd.* v. *CCE* 1995 (77) E.L.T. 474 (S.C.)
6. Exemption notification to be read as an ordinary man would read it. The word "and" to be read conjunctively as any one would do so.	*CCE* v. *Shibani Engineering Systems* 1996 (86) E.L.T. 453 (S.C.)
7. Expressions used in the Act should be understood in the same sense if used in Rules and notifications.	*Prestige Engg. India Ltd.* v. *CCE* 1994 (73) E.L.T. 497 (S.C.)
8. (a) Exemption cannot be claimed on the strength of Finance Ministers Budget speech. (b) Notings on Government files cannot be used as an aid in construction.	*BK Industries* v. *U.O.I.* 1993 (65) E.L.T. 465 (S.C.) *Doypack Systems P. Ltd.* v. *U.O.I.* 1988 (36) E.L.T. 201 (S.C.)
9. Exemption notification to be interpreted differently from statute. Strict interpretation applicable to find out whether a subject falls under the exemption. Once this is solved, liberal interpretation to be given by reading the notification as a whole.	*Bombay Chemicals P. Ltd.* v. *CCE* 1995 (77) E.L.T. 3 (SC), *Novapan India Ltd.* v. *CCE* 1994 (73) E.L.T. 769 (S.C.)
10. (a) Substantive conditions in notification to be satisfied mandatorily since it may facilitate fraud or introduce administrative inconveniences. Non-observance of procedural conditions	*MCF Ltd* v. *Dy. Commissioner* 1991 (55) E.L.T. 437 (S.C.); *Thermax P. Ltd.* v. *CCE* 1992 (61) E.L.T. 352 (SC); *Formica India Division* v. *CCE* 1995

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condonable. (b) If non-observance of procedural condition may facilitate fraud or administrative convenience, exemption can be denied.	(77) E.L.T. 511 (SC) *Indian Aluminium company Ltd.* v. *Thane Municipal Corporation* 1991 (55) E.L.T. 454 (S.C.).
11. Burden to prove eligibility to exemption notification on the claimant.	*Mysore Metal Industries* v. *CCE* 1988 (36) E.L.T. 369 (S.C.); *Motiram tolaram* v. *U.O.I.* 1999 (112) E.L.T. 749 (SC)
12. Exemption cannot be denied on a ground not originally contended.	*Prince Khadi Woollen Handloom Prod. Coop. Indl. Society* v. *CCE* 1996 (88) E.L.T. 637 (SC)
13. Assessee can opt for that notification which is more beneficial.	*CCE* v. *Indian Petro Chemicals* 1997 (92) E.L.T. 13 (SC); *Abrol Watches Pvt. Ltd* v. *CC* 1997 (92) E.L.T. 311 (S.C.)
14. A particular item not expressly excluded does not mean that it is included.	*CC* v. *Perfect Machine Tools Co. P. Ltd* 1997 (96) E.L.T. 214 (S.C.)
15. Benefit not to be extended on the ground that such benefit is wrongly extended to others.	*Faridabad CT Scan Centre* v. *DG Health Services* 1997 (95) E.L.T. 161 (S.C.)
16. In interpreting an earlier notification, narrow or broader view to be taken can be decided based on subsequent notification.	*Johnson & Johnson Ltd.* v. *CCE* 1997 (92) E.L.T. 23 (S.C.)
17. Assessee cannot suffer on account of illegal act of Department. Exemption notification applicable.	*Kuil Fireworks Industries* v. *CCE* 1997 (95) E.L.T. 3 (S.C.)
18. Words in Tariff Schedule to be interpreted keeping in mind the rapid march of technology as industry is not static.	*CC* v. *Lekhraj Jessumal & Sons* 1996 (82) E.L.T. 162 (S.C.)

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TEST YOUR KNOWLEDGE

1. What are the provisions relating to effective date of notifications issued under section 25 of the Customs Act, 1962?

2. ASC Ltd. entered in to technical collaboration with MSC Ltd. of Netherlands and imported drawings and designs in paper form through professional courier and post parcels. ASC Ltd. declared the value of these drawings and designs at a very nominal value. However, the Assistant Commissioner of Customs valued these drawings and designs at intrinsic value and levied duty on them. ASC Ltd. contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962.

   Do you feel the stand taken by the ASC Ltd. is tenable in law? Support your answer with a decided case law, if any.

3. An importer imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by the importer in the present case.

   Briefly examine whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

4. M/s. Pure Energy Ltd. is engaged in oil exploration and has imported software containing seismic data. The importer is entitled to exemption from customs duty subject to the condition that an "essentiality certificate" granted by the Director General of Hydrocarbons is produced at the time of importation of the goods. Though the importer applied for the certificate within the statutory time limit prescribed for the same, the certificate was not made available to the importer within a reasonable time by the Director General of Hydrocarbons. The customs department rejected the importer's claim for exemption.

   Examine briefly whether the department's action is sustainable in law.

5. Lucrative Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. Lucrative Laminates sought an extension of the

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warehousing period which was granted by the authorities. However, even after the expiry of the said date, it did not remove the goods from the warehouse. Subsequently, Lucrative Laminates applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the said goods had lost their shelf life and had become unfit for use on account of non-availability of orders for clearance.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by the Lucrative Laminates is valid in law?

6. Explain, with reference to decided case law, whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962.

7. M/s. XYZ, a 100% export oriented undertaking (100% E.O.U. in short) imported DG sets and furnace oil duty free for setting up captive power plant for its power requirements for export production. This benefit was available vide an exemptions notification. They used the power so generated for export production but sold surplus power in domestic tariff area.

   Customs Department has demanded duty on DG sets and furnace oil as surplus power has been sold in domestic tariff area. The notification does not specifically restrict the use of imported goods for manufacture of export goods.

   Do you think the demand of the Customs Department is valid in law.

8. Referring to section 25 of the Customs Act, 1962, discuss the following:

   (i) Special exemption

   (ii) General exemption

9. Write a brief note on the following with reference to the Customs Act, 1962:

   (i) Remission of duty on imported goods lost

   (ii) Pilfered goods

10. Distinguish between Pilfered goods and Lost/destroyed goods

11. Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.

12. Write a brief note on stages of imposition of taxes and duties.

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13. Discuss the provisions relating to denaturing or mutilation of goods.

14. Briefly explain the provisions relating to abatement of duty on damaged or deteriorated goods under section 22 of the Customs Act, 1962.

15. Briefly explain the following with reference to the provisions of the Customs Act, 1962:

    (i) Indian customs waters

    (ii) India

16. Distinguish between Indian territorial waters and Indian custom waters.

17. Write a brief note on the constitutional provisions governing the levy of customs duties.

ANSWERS/HINTS

1. Date of effect of every notification issued will be the date of its issue by the Central Government for publication in the Official Gazette, unless provided otherwise in the notification. Issue means signed by competent authority and sent for publication to Government press.

The provision is made as there may be delay of one or two days in publishing in Gazette e.g. if the notification is issued on 2nd November and published in Official Gazette on 4th November, the notification will be effective from 2nd November.

The above rules do not apply to exemptions granted through special orders. Special orders are issued separately for each case and communicated to the beneficiary directly by the Government.

2. This issue has been settled by the Supreme Court in the case of *Associated Cement Companies Ltd. v. CC 2001 (128) ELT 21 (SC).* The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty.

Therefore, the stand taken by the ASC Ltd. is not correct in law.

Note: At present, drawings fall under heading under 4906 and 4911 and are exempt as per Sr No. 275 of Notification No. 12/2012 Cus dated 17.03.2012.

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3. The facts of the case are similar to the case of *BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004) 174 ELT 5 (SC)* wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

4. This issue has been addressed by the Supreme Court in the case of *Commissioner of Customs v. Tullow India Operations Ltd. (2005) 189 ELT 401 (SC)*. The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come.

In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

5. No, the application for remission of duty filed by the Lucrative Laminates is not valid in law. The facts of the given case are similar to the case of *CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.).* The High Court, while interpreting section 23, stipulated that section 23 states that only when the imported goods have been lost or destroyed at any time before clearance for home consumption, the application for remission of duty can be considered. Further, even before an order for clearance of goods for home consumption is made, relinquishing of title to the goods can be made; in such event also, an importer would not be liable to pay duty.

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Therefore, the expression *"at any time before clearance for home consumption"* would mean the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not any period after the lapse of the aforesaid periods. The said expression cannot extend to a period after the lapse of the extended period merely because the licence holder has not cleared the goods within the stipulated time.

Moreover, since in the given case, the goods continued to be in the warehouse, even after the expiry of the warehousing period, it would be a case of goods improperly removed from the warehouse as per section 72(1)(b) read with section 71.

The High Court, overruling the decision of the Tribunal, held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not attract section 23 of the Act.

Further, in *Kesoram Rayon* v. *CC* 1996 (86) ELT 464, the Supreme Court has held that goods which are not removed from warehouse within the permissible period, are deemed to be improperly removed on the day they ought to have been removed. In view of this decision, goods would be deemed to have been removed when licensing period was over. Hence, section 23 would not be applicable as such loss occured after 'deemed removal' of goods.

6. In the case of Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.), it is held that the clearances of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations:-

- The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. Since there is no charging provision

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in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.

- Reading section 12(1) of the Customs Act, 1962 along with sections 2(18), 2(23) and 2(27) makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.

Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract section 12(1) [charging section for customs duty].

The above view has also been confirmed in *Essar Steel v. UOI 2010 (249) ELT 3 (Guj.)* [maintained by SC] wherein the Departmental appeal has been dismissed by Supreme Court on 12.07.2010 - *2010 (255) ELT A115*.

7. The facts of the case are similar to the case of *Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A044 (SC)* wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s XYZ for selling the surplus power in domestic tariff area for the following reasons:

(i) They have used the DG sets and furnace oil imported duty free for generation of power, and

(ii) such power generated has been used for manufacturing goods for export, and

(iii) only the surplus power has been sold, as power cannot be stored.

8. **(i)** **Special Exemption:** As per section 25(2) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from payment of duty, any goods on which duty is leviable only under circumstances of an exceptional nature to be stated in such order. Further, no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100. This type of exemption is called as *ad hoc* exemption. Order under section 25(2) is not required to be published in the Official Gazette.

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(ii) **General Exemption:** As per section 25(1) of the Customs Act, 1962, if the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon. Further, this exemption applies to all importers while exemption under section 25(2) is for specific importer and specific goods under import.

9. (i) **Remission of duty on imported goods lost:** Section 23(1) of the Customs Act, 1962 provides for remission of duty on imported goods lost (otherwise than as a result of pilferage) or destroyed, if such loss or destruction is at any time before clearance for home consumption. Such loss or destruction covers loss by leakage. Duty is payable under this section but it is remitted by Assistant/Deputy Commissioner of Customs if the importer is able to prove the loss or destruction. Thus, unless remitted, duty has to be paid and burden of proof is on the importer. The provisions of this section are applicable for warehoused goods also.

(ii) **Pilfered goods:** Section 13 provides that if imported goods are pilfered after unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, no duty is payable on the goods, unless the pilfered goods are restored to importer. In such a case, duty on pilfered goods is payable by the Port authorities. Also, the importer does not have to prove pilferage. However, the loss must be only due to pilferage. Section 13 is not applicable for warehoused goods.

10.

	Pilfered goods	**Lost/Destroyed goods**
1.	Covered by section 13	Covered by section 23(1)
2.	No duty payable on such goods	Duty paid on such goods to be remitted

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3.	Department gets compensation from the custodian [Section 45(3)]	No such compensation
4.	Petty theft by human being	Loss/Destruction by fire, flood etc (Act of God)
5.	Restoration possible	Restoration is not possible
6.	Occurrence is after unloading and before Customs clearance order for home consumption or warehousing	Occurrence may be at any time before clearance for home consumption
7.	Occurrence in warehouse not recognized	Occurrence in warehouse is recognized
8.	Duty need not be calculated	Duty should be calculated for determining the remission amount
9.	No need to prove pilferage. It is quite obvious	Should be proved and remission sought for

11. The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

(i) Maximum import duty will be restricted to duty drawback or refund availed or integrated tax not paid at the time of export.

(ii) Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above two concessions are given subject to the condition that:

(a) the re-importation is done within 3 years or 5 years if time is extended.

(b) the exported goods and re-imported goods must be the same.

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In case of point (ii) above, the ownership of the goods should also not have changed.

However, these concessions would not be applicable if-

- re-imported goods had been exported by EOU or a unit in FTP
- re-imported goods had been exported from a public/private warehouse
- re-imported goods which fall under Fourth schedule to the Central Excise Act, 1944.

[Notification No. 45/2017 Cus dated 30.06.2017]

(iii) When exported goods come back for repairs and re-export, the re-imported goods ***other than the specified goods*** can avail exemption from paying of import duty subject to the following conditions:

(i) the re-importation is for repairs only

(ii) the time limit is 3 years. In case of Nepal, such time-limit is 10 years.

(iii) the goods must be re-exported after repairs

(iv) the time limit for export is 6 months (extendable to one year).

[Notification No. 158/95 Cus. dated 14.11.1995 ***as amended vide Notification No. 60/2018 Cus dated 11.09.2018]***

12. [Refer para 1-Unit II]

13. [Refer para 4 -Unit II]

14. [Refer para 4 -Unit II]

15. [Refer para 3 -Unit I]

16. [Refer para 3 -Unit I]

17. [Refer para 2 -Unit I]

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SIGNIFICANT SELECT CASES

1. In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?

Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 (323) ELT 433 (SC)

Facts of the Case: The assessee imported crude oil. On account of ocean loss, the quantity of crude oil shown in the bill of lading was higher than the actual quantity received into the shore tanks in India. The assessee paid the customs duty on the actual quantity received into the shore tanks.

Point of Dispute: The Department contended that the quantity of crude oil mentioned in the various bills of lading should be the basis for payment of duty, and not the quantity actually received into the shore tanks in India. This was stated on the basis that duty was levied on an *ad valorem* basis and not on a specific rate. The assessee contended that it makes no difference as to whether the basis for customs duty is at a specific rate or is *ad valorem*, inasmuch as the quantity of goods at the time of import alone is to be looked at.

Tribunal's Observations: The Tribunal accepted the Department's contentions on the basis of the following reasons:

(i) Duty ought to be levied on the total payment made by the assessee irrespective of the quantity received.

(ii) An *ad valorem* duty would necessarily lead to this result but duty levied at the specific rate would not. The quantity of goods to be considered in the latter case will only be the quantity of crude oil received in the shore tank.

(iii) Section 14 of the Customs Act, 1962 kicks in when the duty is on an *ad valorem* basis and sections 13 and 23 of the Act do not stand in the way because it is not the question of demanding duty on goods not received, but it is the demand of duty on the transaction value. In spite of the "ocean loss", the assessee has to make payment on the basis of the bill of lading quantity.

Supreme Court's Observations: The assessee raised the issue before the Supreme Court. The Apex Court noted the following:

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(i) The levy of customs duty under section 12 of the Act is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place.

(ii) If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under sections 13 and 23 happen only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made.

(iii) Under section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon. In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation gets complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse.

(iv) Further, as per section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

The Supreme Court stated that Tribunal's reasoning for concluding that the bill of lading quantity alone should be considered for the purpose of valuing the imported goods is incorrect in law. The Apex Court examined each of the reasons given by the Tribunal as under:

(i) The Tribunal lost sight of the fact that a levy in the context of import duty can only be on imported goods, that is, on goods brought into India from a place outside of India. Till that is done, there is no charge to tax.

(ii) The taxable event in the case of imported goods is "import". The taxable event in the case of a purchase tax is the purchase of goods.

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The quantity of goods stated in a bill of lading would perhaps reflect the quantity of goods in the purchase transaction between the parties, but would not reflect the quantity of goods at the time and place of importation. A bill of lading quantity, therefore, could only be validly looked at in the case of a purchase tax but not in the case of an import duty.

(iii) The Tribunal wholly lost sight of sections 13 and 23 of the Act. Where goods which are imported are lost, pilfered or destroyed, no import duty is leviable thereon until they are out of customs and come into the hands of the importer. It is clear, therefore, that it is only at this stage that the quantity of the goods imported is to be looked at for the purposes of valuation.

(iv) The basis of the judgment of the Tribunal is on a complete misreading of section 14 of the Customs Act. First and foremost, the said section is a section which affords the measure for the levy of customs duty which is to be found in section 12 of the said Act. Even when the measure talks of value of imported goods, it does so at the time and place of importation, which again is lost sight of by the Tribunal.

(v) The Tribunal's reasoning that somehow when customs duty is *ad valorem* the basis for arriving at the quantity of goods imported changes, is wholly unsustainable. Whether customs duty is at a specific rate or is *ad valorem* does not make the least difference to the statutory scheme. Customs duty whether at a specific rate or *ad valorem* is not leviable on goods that are pilfered, lost or destroyed until a bill of entry for home consumption is made or an order to warehouse the goods is made. This is for the reason that the import is not complete until what has been stated above has happened.

Supreme Court's Decision: The Supreme Court set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

2. Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?

Tirupati Udyog Ltd. v. UOI 2011 (272) ELT 209 (AP)[maintained by SC]

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High Court's Observations and Decision: The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962:-

- A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.
- SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication.
- With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.

Notes:

1. *Chapter X-A of the Customs Act, 1962, inserted by the Finance Act 2002, contained special provisions relating to Special Economic Zones. However, with effect from 11-5-2007, Chapter X-A, in its entirety, was repealed by the Finance Act, 2007. Consequently, Chapter X-A of the Customs Act is considered as a law which never existed for the purposes of actions initiated after its repeal and thus, the provisions contained in this chapter are no longer applicable.*
2. *Karnataka High Court in case of CCE v. Biocon Ltd. 2011 (267) ELT 28 has also taken a similar view as elucidated in the aforesaid judgment.*

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CHAPTER 2

TYPES OF DUTY



For the sake of brevity "Goods and Services Tax Compensation Cess" has been referred to as "GST compensation cess".

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend various types of duties leviable under Customs law.
- analyse and apply basic customs duty, integrated tax, goods and services tax compensation cess and social welfare surcharge on importation.
- analyse and apply protective duties, safeguard duty, countervailing duty on subsidized articles and anti-dumping duty.
- appreciate the emergency power of Central Government to impose or enhance import and export duties.
- identify the cases where countervailing duty on subsidized articles and anti-dumping duty will not be levied.

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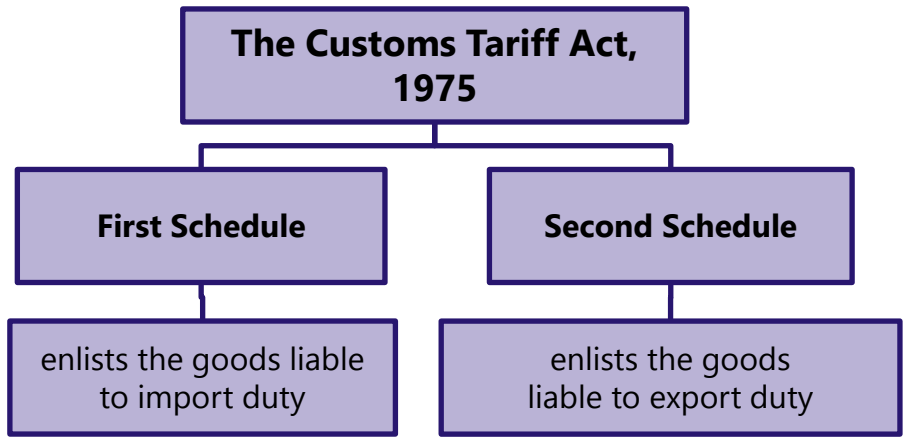
1. BASIC CUSTOMS DUTY [SECTION 12 OF THE CUSTOMS ACT & SECTION 2 OF THE CUSTOMS TARIFF ACT]

Basic Customs Duty is levied under the provisions of section 12 of the Customs Act and section 2 of the Customs Tariff Act.

Charging section: The duties of customs shall be levied

- at such rates* as may be specified under the Customs Tariff Act, 1975 or any other law for the time being in force
- on goods imported into or exported from India [Section 12 of the Customs Act, 1962]

Rates of basic custom duty: *The rates at which duties of customs shall be levied under the Customs Act 1962 are specified in the First and Second Schedules [Section 2 of the Customs Tariff Act, 1975]



Standard rate of duty: Generally, the rate of duty specified in column (4) is applicable.

Preferential rate of duty: If the goods are imported from the areas notified by the Central Government to be preferential areas, then the rate of duty under column (5) will be applicable.

The Government may by notification under section 25 of the Customs Act prescribe preferential rate of duty in respect of imports from certain preferential areas.

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Conditions to be fulfilled for preferential rate of duty: The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:-

(a) At the time of importation, he should make a specific claim for the preferential rate.

(b) He should also claim that the goods are produced or manufactured in such preferential area.

(c) The area should be notified under section 4(3) of the Customs Tariff Act to be a preferential area.

(d) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act.

If the importer fails to discharge the above duties, the goods shall be liable to standard rate of duty.

2. INTEGRATED TAX [SECTION 3(7) OF THE CUSTOMS TARIFF ACT]

Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40% as is leviable under section 5 of 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).

3. GOODS AND SERVICES TAX COMPENSATION CESS [SECTION 3(9) OF CUSTOMS TARIFF ACT]

GST compensation cess is a compensation cess levied under section 8 of the Goods and Services Tax (Compensation to State) Act, 2017. GST compensation cess is levied on intra-state supply of goods or services and inter-state supply of goods or services to provide compensation to the States for loss of revenue due to implementation of GST in India.

It may be noted that GST compensation cess would be applicable only on those supply of goods or services that have been notified by the Central Government. As of now, GST compensation cess is levied on luxury and sin goods like pan masala, tobacco etc.

Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of

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the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) or sub-section (10A).

Manner of computing assessable value for levying Integrated tax [Section 3(8) of Customs Tariff Act]

For the purposes of calculating the integrated tax 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 integrated tax referred to in section 3(7) of the Customs Tariff Act, 1975 or the goods and services tax compensation cess referred to in section 3(9) of the Customs Tariff Act, 1975.

The assessable value for levying GST compensation cess is to be computed in the same manner as discussed above. [Section 3(10) of Customs Tariff Act]

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act. **[Section 3(12) of the Customs Tariff Act]**

The duty or tax or cess chargeable under this section shall be in addition to any other duty or tax or cess, imposed under this Act or under any other law for the time being in force. **[Section 3(11) of the Customs Tariff Act]**

Point which merit consideration:-

Following tax/cess would not be included while computing the assessable value for computation of Integrated tax and GST compensation cess:-

(a) Integrated tax [Section 3(7)]

(b) Goods and Services Tax compensation cess [Sections 3(9)]

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4. MANNER OF COMPUTING VALUE IN CASE OF WAREHOUSED GOODS [SECTION 3(8A) OF THE CUSTOMS TARIFF ACT]

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.

However, 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).

Further, 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).

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.

The value for levying GST compensation cess in case of warehoused goods is to be computed in the same manner as discussed above. [Section 3(10A) of Customs Tariff Act]

Tariff value: [Section 2(40)]

"Tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14.

Value: [Section 2(41)]

"Value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14.

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5. ADDITIONAL DUTY OF CUSTOMS UNDER SECTION 3 OF CUSTOMS TARIFF ACT

1. **Additional duty under section 3(1):** Any article which is imported into India is also liable to a duty equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. This duty is called as additional duty. If the excise duty is leviable at a percentage of the value of the goods, the additional duty will also be calculated at that percentage of the value of the imported article.

   Rate of additional duty in case of alcoholic liquor: In case of any alcoholic liquor for human consumption imported into India, the Central Government may notify the rate of additional duty having regard to the excise duty for the time being leviable on like alcoholic liquor produced or manufactured in different States. In case if the like alcoholic liquor is not produced or manufactured in any State, then, the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs would be the applicable rate.

2. **Countervailing duty under section 3(3):** Special additional duty under sub-section (3) is levied to counter balance the excise duty leviable on raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of the imported article. The Central Government can levy such duty if it is satisfied that it is necessary in the public interest to do so even if such article is liable to additional duty leviable under sub-section (1).

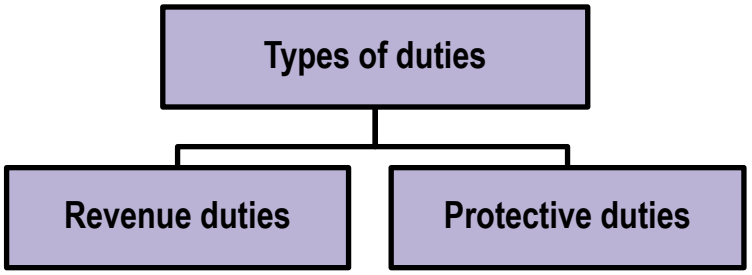
3. **Levy of special additional duty under section 3(5):** If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article [whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not] such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding 4% of the value of the imported article as specified in that notification.

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Note: *Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and /or services except supply of alcoholic liquor for human consumption. Further, GST 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. Thus, additional duty of customs will be levied only on the few products not leviable to GST.*

6. PROTECTIVE DUTIES [SECTION 6 & 7 OF THE CUSTOMS TARIFF ACT]

Types of duties



The two types of custom duties are revenue duties and protective duties:-

(a) Revenue duties: are those which are levied for the purpose of raising customs revenue.

(b) Protective duties: are intended to give protection to indigenous industries. If resort to protective duties is not made there could be a glut of cheap imported articles in the market making the indigenous goods unattractive.

Factors to be considered while giving protection through protective duties: The protection through protective duties is given considering the following factors.

(a) The protective duties should not be very stiff so as to discourage imports.

(b) It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.

Levied by Central Government: The protective duties are levied by the Central Government upon the recommendation made to it by the Tariff Commission and

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upon it being satisfied that circumstances exist which render it necessary to take immediate action to provide protection to any industry established in India [Section 6].

Duration of protective duties: The protective duty shall be effective only upto and inclusive of the date if any, specified in the First Schedule [Section 7(1)].

Power of Central Government to alter such duties: The Central Government may reduce or increase the duty by notification in the Official Gazette.

However, such duty shall be altered only if it is satisfied, after such inquiry as it thinks necessary, that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India [Section 7(2)].

In case of increase in duty, approval of Parliament required: If there is any increase in the duty as specified above, then the Central Government is required to place such notification in the Parliament for its approval.

Every notification in so far as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People. If the Parliament recommends any change in the notification, then the notification shall have effect subject to such changes. However, anything done pursuant to the notification before the recommendation by the Parliament shall be valid [Section 7(3)].

7. EMERGENCY POWER TO IMPOSE OR ENHANCE EXPORT DUTIES [SECTION 8 OF CUSTOMS TARIFF ACT]

Central Government empowered to impose/enhance the export duties: The Central Government may impose or enhance export duties by making amendment to the Second Schedule by issue of a notification in the Official Gazette.

Conditions to be satisfied

a. The goods may or may not be specified in the Second Schedule.

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b. The Central Government is satisfied that circumstances exist, which render it necessary for the imposition or enhancement of export duties.

If the above conditions are satisfied, the Central Government may impose or enhance export duties.



Generally in summer season, the production of milk becomes low as compared with other seasons. If the available milk is not able to meet the requirements of the people, the Government may impose or enhance the duty on exports of milk powder or stop the exports of milk powder.

8. EMERGENCY POWER TO IMPOSE OR ENHANCE IMPORT DUTIES [SECTION 8A OF CUSTOMS TARIFF ACT]

Central Government empowered to impose/enhance the import duties: The Central Government may impose or enhance import duties by making amendment to the First Schedule by issue of a notification in the Official Gazette.

Conditions to be satisfied: If the following conditions are satisfied, the Central Government may provide for the enhancement of the import duty.

a. The goods should be specified in the First Schedule.

b. The Central Government is satisfied that circumstances exist, which render it necessary for the enhancement of import duties.

Proviso to sub-section (1) provides that the Central Government shall not issue any notification under this section unless the earlier notification amending the rate of duty has been placed before the Parliament and the same has been passed with or without modifications.

9. SAFEGUARD DUTY [SECTION 8B OF THE CUSTOMS TARIFF ACT]

Circumstances in which safeguard duty can be imposed: Central Government can impose the safeguard duty if it is satisfied that,

(a) Any article is imported into India in increased quantities;

(b) Such increased importation is causing or threatening to cause serious injury to domestic industry.

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The duty is imposed by issuing a notification in the Official Gazette.

Objective of safeguard duty: The safeguard duty is imposed for the purpose of protecting the interests of any domestic industry in India aiming to make it more competitive.

Points which merit consideration

1. Safeguard duty is product specific i.e. the safeguard duty is applicable only for certain articles in respect of which it is imposed.
2. This duty is in addition to any other duty in respect of such goods levied under this Act or any other law for the time being in force.
3. Education cess and secondary and higher education cess is not payable on safeguard duty.

Duration of safeguard duty: The duty imposed under this section shall be in force for a period of 4 years from the date of its imposition.

Extension of period: The Central Government may extend the period of such imposition from the date of first imposition provided it is of the opinion that:-

(a) Domestic industry has taken measures to adjust to such injury or as the case may be to such threat and

(b) It is necessary that the safeguard duty should continue to be imposed.

However, the total period of levy of safeguard duty is restricted to 10 years.

Applicability of all machinery provisions of the Customs Act, 1962: The provisions of the Customs Act, 1962 and the rules and regulations made there under, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

Exemptions from safeguard duty

(a) Articles from developing country: Articles originating from developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India.

(b) Articles originating from more than one developing country: Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India.

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(c) Imports by 100% EOU or units in a Special Economic Zone: Safeguard duty shall not apply to articles imported by a 100% EOU/unit in a SEZ unless -

(i) specifically made applicable; or

(ii) the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Provisional Assessment

(a) The Central Government is also empowered to impose provisional safeguard duty pending determination of the final duty.

(b) This provisional duty may be imposed on the basis of preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry.

(c) The provisional duty shall be in force for a maximum period of 200 days from the date of its imposition.

(d) If upon final determination, the Central Government is of the opinion that the increased imports have not caused or threatened to cause serious injury to a domestic industry, the duty collected shall be refunded.

Illustration 1

Write a short note on the applicability of safeguard duty under the Customs Tariff Act, 1975 on articles imported by EOU/SEZ unit and cleared as such into domestic tariff area (DTA).

Answer

Section 8B(2A) of Customs Tariff Act, 1975, provides for levy of safeguard duty on articles imported by an 100% EOU/unit in a SEZ that are cleared as such into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared as was leviable when it was imported into India.

10. COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES [SECTION 9 OF THE CUSTOMS TARIFF ACT]

Conditions to be satisfied: The countervailing duty on subsidized articles is imposed if the following conditions are satisfied.

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(a) Any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article.

(b) Such articles are imported into India.

(c) The importation may/may not directly be from the country of manufacture/production.

(d) The article, may be in the same condition as when exported from the country of manufacture or production or may be changed in condition by manufacture, production or otherwise.

Subsidy shall be deemed to exist if-

(a) There is financial contribution by the Government or any public body in the exporting or producing country or territory. Such contribution may include direct transfer of funds like grants, loans etc., waiver of revenue due to the Government etc.

(b) There is any form of income or price support granted or maintained by the Government, which results in increased export of such article or reduced import of any article into that country.

(c) A Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments.

Anti-circumvention measure in respect of countervailing duty: ***Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty has taken place, by either of the following ways:-***

(i) by altering the description or name or composition of the article on which such duty has been imposed

(ii) by import of such article in an unassembled or disassembled form

(iii) by changing the country of its origin or export or

(iv) in any other manner, whereby the countervailing duty so imposed is rendered ineffective

it may extend the countervailing duty to such other article also.

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Amount of countervailing duty on subsidized articles: The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.

Points which merit consideration

(a) This duty is in addition to any other duty chargeable under this Act or any other law for the time being in force.

(b) Countervailing duty shall not be levied unless it is determined that -

  (i) The subsidy relates to export performance;

  (ii) The subsidy relates to the use of domestic goods over imported goods in the export article; or

  (iii) The subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

Duration of countervailing duty on subsidized articles: Unless revoked earlier, the duty imposed under this section shall be in force for a period of 5 years from the date of its imposition.

Extension of period: Central Government may extend the period of such imposition from the date of such extension provided it, in a review, is of the opinion that such cessation is likely to lead to continuation or recurrence of such subsidization and injury.

However, the extension can be for a maximum period of 5 years.

If the review is not completed before the expiry of the period of imposition (5 years) then the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.

Provisional countervailing duty on subsidized articles

(a) When the determination of the amount of subsidy is pending, the Central Government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it.

(b) If the final subsidy determined is less than the subsidy provisionally determined, then the Central Government shall reduce such duty and also refund the excess duty collected.

Retrospective imposition of countervailing duty

Conditions to be satisfied: The following conditions should be satisfied for imposition of countervailing duty with retrospective effect.

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(a) The injury to domestic industry, which is difficult to repair, is caused by massive imports in a relatively short period, of the articles benefiting from subsidies.

(b) In order to preclude recurrence of such injury, it is necessary to levy countervailing duty retrospectively.

Note: The retrospective date from which the duty is payable shall not be beyond 90 days from the date of notification.

Applicability of all machinery provisions of Customs Act, 1962: The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

11. ANTI-DUMPING DUTY [SECTION 9A OF THE CUSTOMS TARIFF ACT]

When the export price of a product imported into India is less than the Normal Value of 'like articles' sold in the domestic market of the exporter, it is known as dumping. Although there is nothing inherently illegal or immoral in exporter charging a price less than the price prevailing in its domestic market, Designated Authority can initiate necessary action for investigations and subsequent imposition of anti-dumping duties, if such dumping causes or threatens to cause material injury to the domestic industry of India.

Anti-dumping action can be taken only when there is an Indian industry which produces "like articles" when compared to the allegedly dumped imported goods. Further, this duty is country specific i.e. it is imposed on imports from a particular country.



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Under the General Agreement on Tariffs and Trade (GATT) provisions, anti-dumping duties higher than the margin of dumping cannot be imposed. However, a lesser duty which is adequate to remove the injury to the domestic industry, is permissible. In India, the Government is obliged to restrict the anti-dumping duty to the lower of the two i.e., dumping margin and the injury margin.

Section 9A(1) of the Customs Tariff Act, 1975 provides that where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Every notification issued under this section shall as soon as may be after it is issued, be laid before each House of Parliament [Sub-section (7)]. Further, the provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act [Sub-section (8)].

Computation of anti-dumping duty: Anti-dumping duty is:

(i) Margin of dumping

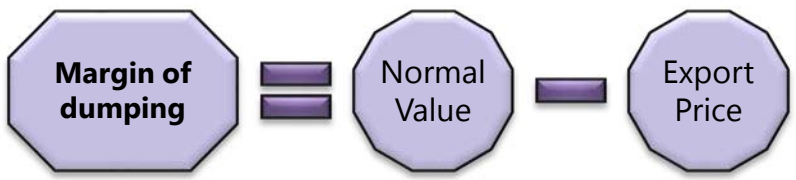
or

(ii) Injury margin

whichever is lower.

The anti-dumping duty chargeable under this section is in addition to any other duty imposed under this Act or any other law for the time being in force.

(a) Margin of dumping: In relation to an article, it means the difference between its export price and normal value. It is generally expressed as a percentage of the export price.



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(b) **Export price:** in relation to an article, means of goods imported into India is the price of an article exported from the exporting country or territory.

Constructed export price: In cases where there is no export price or the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed at the price at which the imported articles are first resold to an independent buyer.

In case where the article is not resold to an independent buyer or not resold in the condition as imported, the export price shall be constructed on such reasonable basis as may be determined in accordance with the rules made.

(c) **Normal value:** in relation to an article, means comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules.

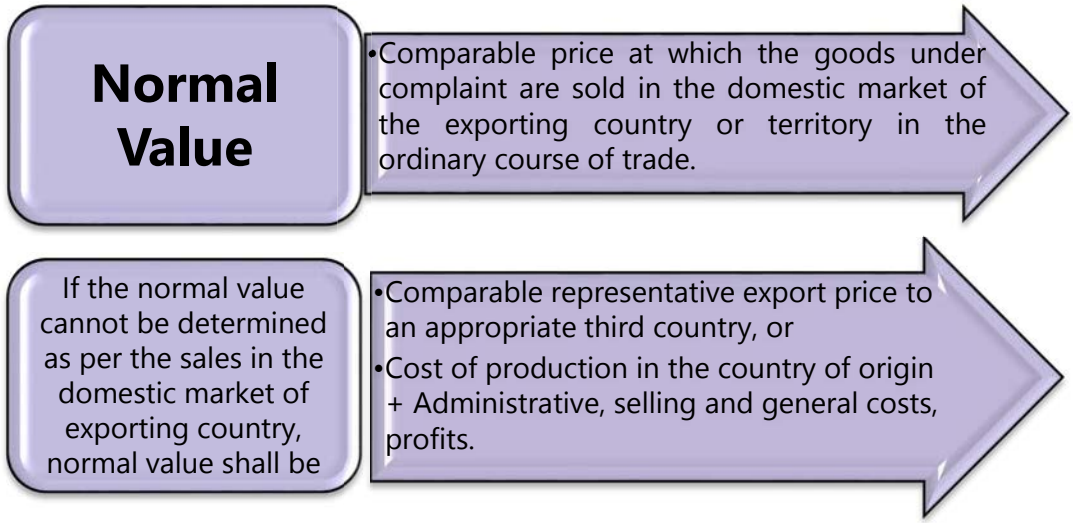
When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(i) Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made; or

(ii) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made.

However, in case the article is imported from a country other than the country of origin or where the article has merely been transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

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(d) Injury margin: Injury margin is the margin adequate to remove the injury to the domestic industry. It is the difference between the Fair Selling Price [Non-Injurious Price (NIP)] due to the Domestic Industry and the Landed Value of the dumped imports.

(e) Fair Selling Price (FSP) [Non-Injurious Price]: is that level of price, which the industry is, expected to have charged under normal circumstances in the Indian market during the period defined. This price would have enabled reasonable recovery of cost of production and profit after nullifying adverse impact of those factors of production which could have adversely effected the company and for which dumped imports can't be held responsible. In other words, it is the fair selling price of a product for the domestic industry.

There would be a single Non-Injurious Price for a product and not several Non-Injurious Price for the same product *[Reliance Industries ltd. v. Designated Authority 2006 (202) E.L.T. 23 (S.C.)]*.

(f) Landed Value: is taken as the assessable value under the Customs Act and the applicable basic customs duties except CVD, SAD and special duties.

In case of circumvention of anti-dumping duty imposed on an article, Central Government may extend the anti-dumping duty to such article or an article originating in/exported from such country: Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that

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circumvention of anti-dumping duty has taken place, by either of the following ways:-

(i) by altering the description or name or composition of the article subject to such anti-dumping duty

(ii) by import of such article in an unassembled or disassembled form

(iii) by changing the country of its origin or export or

(iv) in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective

it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be [Sub-section (1A)].

Provisional anti-dumping duty: When determination of the normal value and margin of dumping in relation to any article in accordance with this section and rules made there under is pending, the Central Government may impose anti-dumping duty on the basis of provisional estimate of such value and margin. If the provisional duty is higher than the margin finally determined, then the Central Government shall reduce the anti-dumping duty and shall also refund the excess duty collected [Sub-section (2)].

No anti-dumping duty to articles imported by a 100% EOU: Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless, —

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

For the purposes of this sub-section, the expression "100% EOU" shall have the meaning assigned to it in *Explanation* 2 to sub-section (1) of section 3 of the Central Excise Act, 1944.

Imposition of duty with retrospective effect: If the following conditions are satisfied, then the Central Government may by notification in the Official Gazette levy anti-dumping duty retrospectively from a date prior to the date of imposition

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of anti dumping duty. Notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification. The retrospective date from which the duty is payable shall not be beyond 90 days from the date of such notification.

(a) There is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(b) The injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

Duty ceases to have effect on expiry of 5 years: The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition

However, if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of 5 years and such further period shall commence from the date of order of such extension.

It was held in *Rishiroop Polymers Pvt. Ltd. v. Designated Authority and Additional Secretary 2006 (196) ELT 385 (SC),* that the entire purpose of the review enquiry is not to see whether there is a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase and the domestic industry suffer.

Further, where a review initiated before the expiry of the aforesaid period of 5 years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding 1 year.

Rules relating to anti dumping duty: The Central Government will determine and ascertain the margin of dumping as referred to in sub-section (1) or sub-section (2) from time to time after carrying out necessary inquiry. Central Government, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner:

(i) in which articles liable for anti-dumping duty may be identified,

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(ii) in which the export price, the normal value, the margin of dumping in relation to such articles may be determined and

(iii) for the assessment and collection of such anti-dumping duty [sub-section (6)].

Records to be furnished for determination of margin of dumping: The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer.

However, where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

Refund of anti-dumping duty: Section 9AA provides that where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty.

In *Designated Authority vs Haldor Topsoe 2000 (120) ELT 11,* the Supreme Court held that anti-dumping duty could be fixed with reference to prices in a territory and that European Union could also be a territory.

Illustration 2

What will be the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the rules made thereunder:

(i) where no provisional duty is imposed;

(ii) where provisional duty is imposed;

(iii) where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.

Answer

The Central Government has power to levy anti-dumping duty on dumped

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articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

(i) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.

(ii) In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.

(iii) In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

12. NO LEVY UNDER SECTION 9 OR SECTION 9A IN CERTAIN CASES [SECTION 9B OF THE CUSTOMS TARIFF ACT]

This section provides that, notwithstanding anything contained in section 9 or section 9A,-

(a) No article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

(b) Countervailing and anti-dumping duties shall not be levied just because such articles are exempt from duties or taxes borne by like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.

(c) These duties shall not be levied on imports from member country of WTO or from a country with whom the GOI has a most favored nation agreement unless a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

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(d) The provisional countervailing and anti-dumping duties shall not be levied on any article imported from specified countries unless preliminary findings have been made of subsidy or dumping and consequent injury to domestic industry and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation

The points (b), (c) and (d) mentioned above shall not be applicable in a case where countervailing or anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India.

Illustration 3

With reference to the Customs Tariff Act, 1975, discuss the validity of the imposition of customs duties in the following cases:-

(a) Both countervailing duty and anti-dumping duty have been imposed on an article to compensate for the same situation of dumping.

(b) Countervailing duty has been levied on an article for the reason that the same is exempt from duty borne by a like article when meant for consumption in the country of origin.

(c) Definitive anti-dumping duty has been levied on articles imported from a member country of World Trade Organization as a determination has been made in the prescribed manner that import of such article into India threatens material injury to the indigenous industry.

Answer

(a) Not valid. As per section 9B of the Customs Tariff Act, 1975, no article shall be subjected to both countervailing and anti-dumping duties to compensate for the same situation of dumping or export subsidization.

(b) Not valid. As per section 9B of the Customs Tariff Act, 1975, countervailing or anti-dumping duties shall not be levied by reasons of exemption of such articles from duties or taxes borne by the like articles when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes.

(c) Valid. As per section 9B of the Customs Tariff Act, 1975, no definitive countervailing duty or anti-dumping duty shall be levied on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favored nation agreement, unless a determination has been made in the

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prescribed manner that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

13. APPEAL [SECTION 9C OF THE CUSTOMS TARIFF ACT]

The provisions of section 9C of the Customs Tariff Act enumerate the orders against which an appeal can be preferred to CESTAT. The procedure, time limit and other related matters of filing an appeal are addressed to in this section.

An appeal against the order of determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) constituted under section 129 of the Customs Act, 1962 in respect of the existence, degree and effect of—

(i) any subsidy or dumping in relation to import of any article; or

(ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.

An appeal filed under this section shall be accompanied by a fee of ₹ 15,000. Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of ₹ 500.

Every appeal under this section shall be filed within 90 days of the date of order under appeal. However, the Appellate Tribunal may entertain any appeal after the expiry of the said period of 90 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

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14. SOCIAL WELFARE SURCHARGE ON IMPORTED GOODS

Social welfare surcharge(SWS) @ 10% is levied in lieu of education cesses for providing and financing education, health and social security.

SWS is leviable on the aggregate of duties, taxes and cesses leviable on such goods 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. However, following duties shall be excluded for computing this cess:

(a) Safeguard duty under section 8B of the Customs Tariff Act, 1975

(b) Countervailing duty under section 9 of the Customs Tariff Act, 1975

(c) Anti-dumping duty under section 9A of the Customs Tariff Act, 1975

(d) Social welfare surcharge itself on imported goods

The SWS on imported goods are in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refunds, exemptions, interest, appeals, offences and penalties shall apply in relation to the levy and collection of social welfare surcharge on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods.

Social welfare surcharge leviable on integrated tax and goods and services tax compensation cess has been exempted vide *Notification No. 13/2018-Cus dated 02.02.2018*.

Relevant case law

UoI Vs M/s Adani Power Ltd 2016 (331) ELT A129 (SC) dated 20.11.2015

When no customs duty is payable on electrical energy imported into India, no duty would be payable on similar goods transferred from SEZ to DTA in view of Section 30 read with Section 51 of the SEZ Act.

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TEST YOUR KNOWLEDGE

1. *With reference to section 9AA of Customs Tariff Act, 1975, state briefly the provisions of refund of anti-dumping duty.*

2. *With reference to section 9A(1A) of the Customs Tariff Act, 1975, mention the ways that constitute circumvention of antidumping duty imposed on an article which may warrant action by the Central Government.*

3. *When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not imposed? Discuss briefly.*

4. *What are the conditions required to be fulfilled by the importer to make the imported goods eligible for preferential rate of duty prescribed by the Central Government by notification under section 25 of the Customs Act, 1962?*

5. *Write a note on "Emergency power to impose or enhance import duties under section 8A of the Customs Tariff Act, 1975".*

6. *Determine the customs duty payable under the Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand:*

Assessable value of Sodium Nitrite imported from a developing country from 26th February, 2018 to 25th February, 2019 (both days inclusive)	*₹ 30,00,000*
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	*4%*
Basic custom duty	*10%*
Integrated tax	*12%*
Social welfare surcharge	*10%*

Note: Ignore GST compensation cess.

7. *Differentiate between protective duty and safeguard duty.*

8. *Briefly examine the nature and significance of the levy of anti-dumping duty under the Customs Tariff Act, 1975.*

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ANSWERS/HINTS

1. According to the provisions of section 9AA of the Customs Tariff Act, 1975, where an importer proves to the satisfaction of the Central Government that he has paid any anti-dumping duty imposed on any article, in excess of the actual margin of dumping in relation to such article, he shall be entitled to refund of such excess duty. However, the importer will not be entitled for refund of provisional anti-dumping duty under section 9AA as the same is refundable under section 9A(2) of the said Act. Refund of excess anti-dumping duty paid is subject to provisions of unjust enrichment – *Automotive Tyre Manufacturers Association v. Designated Authority 2011 (263) ELT 481 (SC).*

2. As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention (avoiding levy of duty by unscrupulous means) of antidumping duty imposed on an article that may warrant action by the Central Government:

(i) altering the description or name or composition of the article subject to such anti-dumping duty,

(ii) import of such article in an unassembled or disassembled form,

(iii) changing the country of its origin or export, or

(iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

In such cases, investigation can be carried out by Central Government and then anti dumping can be imposed on such articles.

3. The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

(i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;

(ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;

(iii) Articles imported by a 100% EOU or units in a Special Economic Zone

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unless the duty is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

4. The Government may by notification under section 25 of the Customs Act, 1962 prescribe preferential rate of duty in respect of imports from certain preferential areas. The importer will have to fulfill the following conditions to make the imported goods eligible for preferential rate of duty:

(i) At the time of importation, he should make a specific claim for the preferential rate.

(ii) He should also claim that the goods are produced or manufactured in such preferential area.

(iii) The area should be notified under section 4(3) of the Customs Tariff Act, 1975 to be a preferential area.

(iv) The origin of the goods shall be determined in accordance with the rules made under section 4(2) of the Customs Tariff Act, 1975.

Determination of Origin' is important to allow concessional rate of customs duty. Generally, as per the rules (a) if the goods are un-manufactured, it should be grown or produced in that area (b) If it is fully manufactured in that country, it should be manufactured from material produced or with un-manufactured materials from that country. (c) if it is partially manufactured in that country, final process should be completed in that country and at least specified percentage of expenditure on material or labour should be in that country.

5. Section 8A of Customs Tariff Act, 1975 provides that the where the Central Government is satisfied that the basic customs duty leviable on any article should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification amend the First Schedule of the Customs Tariff to increase the import duty leviable on such article to such extent as it thinks necessary.

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6. Computation of customs duty and integrated tax payable thereon

Particular	Amount (₹)
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (₹ 30,00,000 × 10%)	3,00,000
Safeguard duty @ 30% on ₹ 30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(1) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% x ₹ 3,00,000	30,000
Total	42,30,000
Integrated tax (₹ 42,30,000 × 12%) [Note]	5,07,600
Total customs duty payable (₹ 3,00,000 + ₹ 9,00,000+ ₹ 30,000+ ₹ 5,07,600)	17,37,600

Note: It has been clarified by DGFT vide Guidance note that value for calculation of integrated tax shall also include safeguard duty amount.

7. [Refer para 6 and 9]

8. [Refer para 11]

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CHAPTER 3

CLASSIFICATION OF IMPORTED AND EXPORT GOODS



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the need for classification of goods and identify the general explanatory notes.
- list the rules of interpretation of the First Schedule to the Customs Tariff Act.
- understand the concept of Project imports.

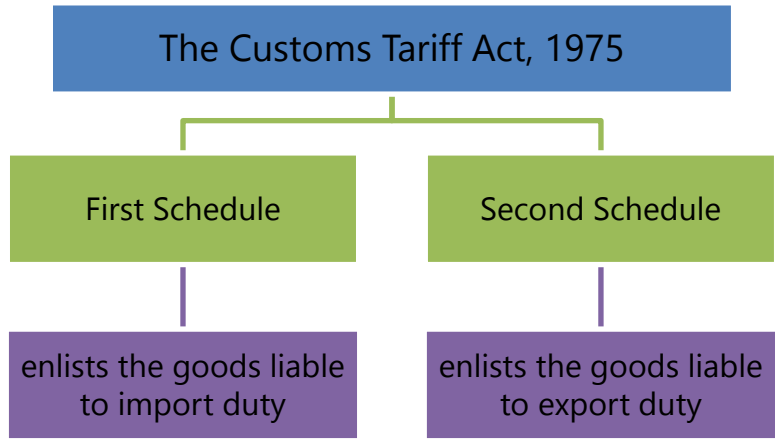
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1. CUSTOMS TARIFF

❖ **Need for classification of goods:** One of the important steps in assessing the amount of duty payable is classification of the goods within the ambit of the Schedule to the Customs Tariff Act. The correct classification of goods is necessary to ascertain the rate of custom duty which goods are subject to.

❖ **The Customs Tariff Act, 1975**

(a) Schedules to tariff



(b) Rules of interpretation and explanatory notes

The Indian Customs Tariff is based upon the Harmonized System of Nomenclature.

The **Harmonized Commodity Description and Coding System** (HS) of tariff nomenclature generally referred to as "Harmonized System of Nomenclature" is an internationally standardized system of names and numbers for classifying traded products developed and maintained by the World Customs Organization (WCO) (formerly the Customs Co-operation Council), an independent inter governmental organization.

Along the lines of HSN, the customs tariff has a set of Rules of Interpretation of the First Schedule i.e. Import tariff schedule and General Explanatory notes.

(i) Rules of interpretation:- Six

(ii) General explanatory notes: Three

These rules of interpretation and general explanatory notes are an integral part of the Schedule. The purpose of inclusion of the rules of

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interpretation and the general explanatory notes as an integral part of the first schedule is to give clear direction as to how the nomenclature in the schedule is to be interpreted and to give statutory force to the interpretative rules and the general explanatory notes.

(c) First Schedule of the Customs Tariff

The First Schedule comprises of 98 chapters grouped under 21 sections.

(i) Sections: A group of Chapters representing a particular class of goods.

(ii) Chapters: Each section is divided into various chapters and sub-chapters. Each chapter contains goods of one class.

(iii) 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.

(iv) Heading: Each chapter and sub-chapter is further divided into various headings.

(v) Sub-heading: Each heading is further divided into various sub-headings.

2. GENERAL EXPLANATORY NOTES

There are **three general explanatory notes** included in the First Schedule. They are-

(a) Relevance of one dash ["-"] and two dash ["--"]

- **"-"** denotes that the said article or group of articles shall be taken to be sub-classification of the article or group of article covered by the said heading.
- **"--"** denotes that that the said article or group of articles shall be taken to be sub-classification of the immediately preceding article/group of articles which has "-".

(b) Meaning of abbreviation "%" in relation to the rate of duty

The abbreviation "%" in any column of the Schedule in relation to the rate of duty means that the duty shall be computed at the percentage specified on the value of the goods as defined in section 14 of the Customs Act.

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(c) Standard rate of duty applicable if no preferential rate specified

In any entry, if no preferential rate of duty has been notified, the standard rate of duty shall be applicable.

Illustration

The above general explanatory notes can be understood with the following illustration:-

Tariff Item	Description of goods	Units	Rate of duty®	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
0801	**Coconuts, brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled**			
	- *Coconuts:*			
0801 11 00	- - Desiccated	Kg.	70%	60%
0801 12	- - *In the inner shell (endocarp):*			
0801 12 10	- - - Fresh	Kg.	70%	60%
0801 12 20	- - - Dried	Kg.	70%	60%
0801 12 90	- - - Other	Kg.	70%	60%
0801 19	- - *Other:*			
0801 19 10	- - - Fresh	Kg.	70%	60%
0801 19 20	- - - Dried	Kg.	70%	60%
0801 19 90	- - - Other	Kg.	70%	60%
	- *Brazil nuts:*			
0801 21 00	- - In shell	Kg.	30%	20%

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0801 22 00	- - Shelled	Kg.	30%	20%
	- *Cashew nuts:*			
0801 31 00	- - In shell	Kg.	30%	Free
0801 32	- - *Shelled:*			
0801 32 10	- - - Cashew kernel, broken	Kg.	70%	20%
0801 32 20	- - - Cashew kernel, whole	Kg.	70%	20%
0801 32 90	- - - Other	Kg.	70%	20%

In the above entry, following columns are there:-

Column (1): Tariff Item

Column (2): Description of goods

Column (3): Units

Column (4): Standard rate of duty

Column (5): Preferential rate of duty

(a) In the above entry, Coconuts, which is preceded by **"-"** is classification of the heading Coconuts, Brazil nuts and Cashew nuts, fresh or dried, whether or not Shelled or peeled.

"- -" is sub-classification of coconut which is preceded by "-".

(b) The second explanatory note states that the abbreviation **"%"** stands for specifying that the rate of duty is *ad valorem*. It means the duty shall be computed at the rates specified in the First Schedule on the value of the goods determined in accordance with section 14 of the Customs Act. In the above entry, the standard rates are 30% or as the case may be, 70%.

Illustration

Briefly explain "standard unit of quantity" with reference to the First Schedule to the Customs Tariff Act, 1975.

Answer

Standard Unit of Quantity is a unit of measure. It has been prescribed in column 3 of the First Schedule to the Customs Tariff for each tariff item to facilitate the collection, comparison and analysis of trade statistics. The unit of measure is

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indicated by abbreviations. Some abbreviations are cc-cubic centimeter, cm-centimetre(s), g-gram(s), mt-metric tonne.

3. RULES OF INTERPRETATION OF THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT

❖ **Rule 1 – General Rule of Classification:** The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or notes do not otherwise require, according to the subsequent rules [i.e. rule 2 to 6].



ANALYSIS

The above rule lays down the following propositions:-

(a) The titles of sections, chapters and sub-chapters do not have any legal force.

(b) Terms of headings read with relative section and chapter notes are legally relevant for the purpose of classification.

(c) The rules of interpretation need not be resorted to when classification is possible on the basis of description in heading, sub-heading, chapter notes and section notes.

(d) Notes of one chapter or section cannot be applied for interpreting entries in other chapters or sections.



Product: Letter closing and sealing machine

Sub-heading 8422 30 00: Machinery for filling, closing, sealing or labeling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages.

Sub-heading 8472 30 00 *inter alia* covers machines for closing or sealing mails.

Both the headings appear to be relevant for the product in question. However, chapter note 2 to chapter 84 inter alia provides that Heading No. 8422 does not cover office machinery of Heading No. 8472. Therefore, the product in question will be classified under 8472 30 00.

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Illustration

Write a brief note on rule 1 of the Rules of Interpretation of the First Schedule to Customs Tariff Act, 1975.

Answer

Rule 1 of the general rules for interpretation states that the titles of sections, chapters and sub-chapters in the First Schedule to the Customs Tariff Act, 1975 are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or chapter notes do not otherwise require, according to the subsequent rules.

Thus, the tiles of sections, chapters and sub-chapters cannot be used to determine classification of a product.

❖ **Rule 2(a) Classification of Incomplete/Unfinished Articles**

(i) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented; the incomplete or unfinished article has the essential character of the complete or finished article.

(ii) It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or dis-assembled.



ANALYSIS

(i) If any particular heading refers to a finished/complete article, the incomplete/unfinished form of that article shall also be classified under the same heading provided the incomplete/unfinished goods have the essential characteristics of the finished goods.

(ii) If any particular heading refers to a finished/complete article, the unassembled/dis-assembled form of that article shall also be classified under the same heading provided the unassembled/dis-assembled goods have the essential characteristics of the finished goods.



(a) Railway coaches removed without seats would still be railway coaches.

(b) A car without seats would still be classified as car.

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Only goods requiring minor adjustments can be construed as having the essential character

Only goods requiring minor adjustments would be construed as having the essential character. Those requiring major processes like turning, grinding, broaching, groove cutting, heat treatment, surface treatment etc., cannot be construed as having the essential character of complete and finished articles and cannot fall within the scope of rule 2(a) of the General Interpretative Rules.

❖ **Rule 2(b) – Classification of Mixtures/Combinations of a Material/Substance with Other Materials/Substances**

(i) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances.

(ii) Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.

(iii) The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.



ANALYSIS

The following propositions are laid out by the above rule.

(a) Any reference to a material or substance would refer to mixture or combination of that material or substance.

(b) Any reference to goods containing a particular material or substance would include a reference to goods consisting wholly or partly of such specified material or substance.



(a) The term coffee will include coffee mixed with chicory.

(b) Natural rubber will cover a mixture of natural and synthetic rubber.

❖ **Rule 3 – Classification in case goods are classifiable under two or more headings:** The application of this rule arises when the goods consists of more than one material or substance.

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When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

❖ **Rule 3(a) – Specific over general**

(i) The heading which provides the most specific description shall be preferred to headings providing a more general description.

(ii) However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.



ANALYSIS

The heading that provides a more specific description should be preferred over the heading that provides a general description.

Relevant case law: Electric shaving machine was classifiable under following two headings:-

Heading No. 85.10: Shavers and hair clippers with self contained electric motors

Heading No. 85.09: Electro-mechanical domestic appliances with self-contained electric motor

The said product in the above instance would be classifiable under heading No. 85.10 as heading No. 85.10 is more specific as compared to heading No. 85.09.

❖ **Rule 3(b) – Essential character principle:** Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified with reference to (a), shall be classified as if they consisted of material which gives them their essential character, in so far as this criterion is applicable.



ANALYSIS

Sub-rule (b) would apply only if the goods cannot be classified under sub-rule (a). This sub-rule provides that composite goods should be classified on the basis of that material or substance that gives it its essential character.

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In order to find out whether the incomplete article as imported has the essential character of the completed article, the tests to be applied would be whether the imported article has attained the approximate shape or outline of the finished article or part and whether it can only be used for completion into the particular finished article.



Product: Lead pencil with an eraser at the back.

Classification: Though the above product is composite goods, the essential character is that it is a pencil and the attachment of eraser at the stub is only for the purpose of adding convenience to the user. Therefore, it shall be classified as a pencil and not as an eraser.

- **Rule 3(c) – Latter the better:** When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.



ANALYSIS

If both sub-rules (a) and (b) fails to classify the goods in question, then resort may be had to sub-rule (c), which provides that composite goods shall be classified on the basis of the heading that occurs last in numerical order.

Relevant case law:-

Mahindra and Mahindra v. CCE 1999 (109) E.L.T. 739 (Tribunal) **[maintained by SC]**

When the goods cleared by assessee were equally classifiable under the following two headings:-

Heading No. 87.03:- Motor cars and other vehicles principally designed for the transport of persons.

Heading No. 87.04: Motor vehicles meant for transport of goods.

It was held that heading 87.04 occurs last and as both the headings equally merit classification, goods shall be classified under 87.04 applying the interpretative Rule 3(c).

- **Rule 4 – Akin Rule:** Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

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ANALYSIS

This rule is popularly referred to as **Akin rule**. This rule specifies that if the goods cannot be classified in accordance with the earlier rules, they shall be classified under the heading in which the most akin goods are classified.



Product: Plastic films used to filter or remove the glare of the sun light, pasted on car glass windows, window panes etc.

Classification: These goods do not find a specific entry in the tariff schedule. However, heading 3925 30 00 covers Builder's wares of plastic not elsewhere specified – shutters, blinds (including Venetian blinds) and similar articles & parts thereof. Even though the product in question is not a builders ware, they are most akin to plastic blinds and hence it can be classified under 3925 30 00 heading.

❖ **Rule 5:** In addition to the foregoing provisions, the following rules shall apply in respect of goods referred to therein:

(a) Classification of cases/containers used for packaging of goods: Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers shall be classified with a specific article or a set of articles when of a kind normally sold therewith.

Conditions to be fulfilled:-

(i) These cases/containers are specially shaped or fitted to contain a specific article or a set of articles.

(ii) These cases/containers are suitable for long term use and presented with the articles for which they are intended.

This rule does not, however, apply to containers which give the whole its essential character.

(b) Classification of packing materials and packing containers: Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods, if they are of a kind normally used for packing such goods.

However **this provision does not apply** when such packing material or packing containers are clearly suitable for repetitive use.

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ANALYSIS

This rule lays down that:-

(i) Cases which are specially designed or fitted to contain a specific article and given with the articles for which they are intended shall follow the classification of the items which are packed.

(ii) The packing materials and containers cleared along with the goods are classifiable with the goods.



Leather cases, which are normally supplied along with the goods, however costly they may be, need not be treated separately for the purpose of classification.

Exceptions to rule 5

(a) Durable containers capable of repetitive use should be classified separately.



Gas cylinders are meant for repetitive use and therefore cannot be classifiable along with gas.

(b) When packing material itself gives the essential character as a whole.

❖ **Rule 6: Only Sub-Headings at the Same Level are Comparable**

(i) For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading notes and, *mutatis mutandis*, to the above rules, on the understanding that only sub-headings at the same level are comparable.

(ii) For the purposes of this rule the relative section and chapter notes also apply, unless the context otherwise requires.

The main proposition laid down by this rule is that sub-heading at the same level are comparable. This implies that a sub-heading can be compared only with another sub-heading within the same heading.

4. PROJECT IMPORTS

Project Imports are the imports of machinery, instruments, and apparatus etc., falling under different classifications, required for initial set up of a unit or for

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substantial expansion of an existing unit. In a project several different items are required, each of which is importable at different rates of customs duties. Hence, it becomes very complicated to make assessment for such project imports. Therefore, one consolidated rate of customs duty has been made applicable for all items imported under a project irrespective of the nature of the goods and their customs classification. Further, individual exemption notification will apply even for items grouped under the said heading of the customs tariff liable to duty at the project rate as per recent Supreme Court judgement.

The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975. These include all items of machinery, instruments, apparatus and appliances, components or raw materials etc. for initial setting up of a unit or for substantial expansion of the same. The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported.

This scheme has been made applicable to Industrial Plants, Irrigation Projects, Power Projects, Mining Projects, Projects for Oil or Mineral Exploration and other projects as may be notified by the Central Government.

❖ **Some judgements on classification**

1. *Saurashtra Chemicals v. CC 1986 (23) ELT 283 (Tri-LB)* [approved by SC]

This case brings out the importance of section notes and chapter notes in the classification of goods. The Tribunal observed that Section Notes and Chapter Notes in the Customs Tariff are a part of the statute and thus are relevant in the matter of classification of goods. These notes sometimes restrict and some times expand the scope of headings. The scheme of the Customs Tariff is to determine the coverage of headings in the light of section notes and chapter notes. These notes, in this sense have an overriding effect on the headings.

2. *CC v. Maestro Motors Ltd. 2004 (174) E.L.T 289 (S.C.)*

In this case, the Court observed that if a tariff heading is specially mentioned in exemption notification, the general interpretative rules would be applicable to such exemption notification. But, if an item is specifically mentioned without any tariff heading, then exemption would be available even though for the purpose of classification, it may be otherwise.

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3. *CC v .Hewlett Packard India Sales (p) Ltd. 2007 (215) E.L.T. 484 (S.C.)*

In this case the assessee was engaged in the manufacture of, and trading in, computers including Laptops (otherwise called 'Notebooks') falling under Heading 84.71 of the CTA Schedule. They imported Notebooks (Laptops) with Hard Disc Drivers (Hard Discs, for short) preloaded with Operating Software like Windows XP, XP Home etc. These computers were also accompanied by separate Compact Discs (CDs) containing the same software, which were intended to be used in the event of Hard Disc failure.

The assessee classified the software separately and claimed exemption. The court held that without operating system like windows, the laptop cannot work. Therefore, the laptop along with software has to be classified as laptop and valuation to be made as one unit.

TEST YOUR KNOWLEDGE

1. *What is the purpose of including Interpretation Rules in Customs Tariff? Do they form part of the Tariff Schedule? Explain the Akin Rule of interpretation.*
2. *Write a note on "Project Imports" under the Customs Tariff Act, 1975.*
3. *Explain rule 3 of the rules for Interpretation of the Customs Tariff.*

ANSWERS/HINTS

1. The Customs Tariff has a set of six Rules for Interpretation of the Tariff Schedule and three General Explanatory Notes. The six Rules of Interpretation and three General Explanatory Notes are integral part of the Tariff Schedule. The purpose of their inclusion in Customs Tariff is to standardize the manner in which the nomenclature in the schedule is to be interpreted so as to reduce classification disputes.

Rule 4 of the Rules of Interpretation is called as akin rule. This rule lays down that goods which cannot be classified in accordance with rules 1, 2 and 3 of the Rules of Interpretation shall be classified under the heading appropriate to the goods to which they are most akin. In other words, akin rule' is a residual rule which is to be applied when classification is not possible by applying any of the earlier rules. It is a rule of last resort.

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2. Project Imports are the imports of machinery, instruments, and apparatus etc., falling under different classifications, required for initial set up of a unit or for substantial expansion of an existing unit.

Heavy customs duty on imported machinery for projects make the initial project cost very high and project may become unviable. Hence, concept of 'project import' is introduced to bring machinery etc. required for initial setup or substantial exemption at concessional customs duty.

In a project several different items are required, each of which is importable at different rates of customs duties. Thus, this simple method is adopted, as otherwise, classifying each machinery and its parts in different heads and valuing them would have been cumbersome and would have delayed clearances, which would cause demurrages. Further, individual exemption notification will apply even for items grouped under the said heading of the customs tariff liable to duty at the project rate as per recent Supreme Court judgement.

The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975. These are: all items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those for research and development, testing and quality control); as well as components or raw materials for manufacture of these items and their components; required for initial setting up of a unit or substantial expansion of a specified (1) industrial project (2) Irrigation project (3) Power projects (4) Mining project (5) Project for exploration of oils or other minerals and (6) Other projects as may be notified by Central Government.

The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported.

Few of the eligible projects are:

(i) Industrial plant

(ii) Irrigation project

(iii) Power project

(iv) Mining project

(v) Oil & mineral exploration project

(vi) Other projects as notified by the Central Government

3. [Refer para 3]

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SIGNIFICANT SELECT CASES

1. Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?

Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) ELT 578 (SC)

Facts of the Case: Department contended that 'Electronic Automatic Regulators' were classifiable under Chapter sub-heading 8543.89 whereas the assessee was of the view that the aforesaid goods were classifiable under Chapter sub-heading 9032.89. An exemption notification dated 1-3-2002 exempted the disputed goods by classifying them under chapter sub-heading 9032.89. The period of dispute, however, was prior to 01.03.2002.

Point of Dispute: The dispute was on classification of Electronic Automatic Regulators.

Supreme Court's Decision: The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.

2. Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?

State of Punjab v. Nokia India Private Limited 2015 (315) ELT 162 (SC)

In this case, the assessee classified the mobile battery charger as an integral part of the main product i.e. Nokia mobile phone. It contended that cell phone could not be operated without the charger. Further, mobile battery chargers were provided free with the cell phone in a composite package. Therefore, it applied the concessional rate of tax on the mobile battery charger also, as applicable on the mobile phone. However, it also admitted that whenever it sold the chargers separately, tax was not charged at the concessional rate.

According to Department, a battery charger was not a part of the cell phone but merely an accessory thereof. Thus, concessional rate of tax applicable on cell phones was not applicable to the mobile battery chargers.

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Supreme Court's Observations: The Supreme Court decided the case in favour of Revenue and against the assessee holding that the battery charger is not a part of the mobile/cell phone but an accessory to it, on the basis of the following observations:

(i) Had the charger been a part of cell phone, cell phone could not have been operated without using the battery charger. However, as a matter of fact, it is not required at the time of operation. Further, the battery in the cell phone can be charged directly from the other means also like laptop without employing the battery charger, implying thereby, that it is nothing but an accessory to the mobile phone.

(ii) As per the information available on the website of the assessee, it had invariably put the mobile battery charger in the category of an accessory which means that in the common parlance also, the mobile battery charger is understood as an accessory.

(iii) A particular model of Nokia make battery charger was compatible with many models of Nokia mobile phones and also many models of Nokia make battery chargers are compatible with a particular model of Nokia mobile phone, imparting various levels of effectiveness and convenience to the users.

(iv) Rule 3(b) of the General Rules for Interpretation of the First Schedule of the Customs Tariff Act, 1975 can also not be applied in the assessee's case as merely making a composite package of cell phone and mobile battery charger will not make it composite goods for the purpose of interpretation of the provisions.

Supreme Court's Decision: The Apex Court held that mobile battery charger is an accessory to mobile phone and not an integral part of it. Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately without selling the cell phone.

Note: *Though the above judgement has been rendered in context of VAT laws, the principle of classification of mobile charger may hold good in case of customs classification matter as well.*

3. Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of

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classification, if not otherwise disputed on the basis of any technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?

M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)

High Court's Decision: The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export.

Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.

The Headings cited in some of the case laws in this chapter may not co-relate with the Headings of the present Customs Tariff as these cases relate to an earlier point of time.

Note - Case laws given in this Chapter are solely for the understanding of provisions relating to classification.

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CHAPTER 4

VALUATION UNDER THE CUSTOMS ACT, 1962



For the sake of brevity "Goods and Services Tax Compensation Cess" has been referred to as "GST compensation cess" respectively.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the concept of value in relation to import or export
- appreciate the concept of indirect tax and valuation for the same
- identify two approaches for computing the assessable value
- analyse and apply the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Customs Valuation (Determination of Value of Export Goods) Rules, 2007
- identify the date for determination of rate of duty and tariff value.
- analyse and apply the special provisions for classification of sets of articles and accessories.
- synthesis of the above provisions to determine the assessable value of imported/exported goods and total customs duty and integrated tax payable on importation.

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1. INTRODUCTION

The manner in which duties of customs are charged on goods imported into India (import duty) or goods exported from India (export duty) is basically either by way of –

(a) A specific duty based on the quantity of the goods like ₹ 1000 per metric tone of steel or

(b) Ad valorem, namely expressed as percentage of the value of the goods i.e. 40% ad valorem etc.

The disadvantage with a specific rated levy is that the revenue to the Government remains fixed, unless there is variation in the quantum of total imports and exports. The continuous upward trend in the price of goods has suggested that the Government is losing increase in its revenue by not following ad valorem basis of duties.

2. CONCEPT OF VALUE

Section 2(41) of the Customs Act, 1962, defines value in relation to any goods as the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14.

Some of the values commonly known to the public are:

(i) Cost price to the manufacturer: It is the total cost incurred by the manufacturer of an article or product in producing or manufacturing the product.

(ii) Sale price of the manufacture: It is the price at which the manufacturer is selling the goods to the buyer.

(iii) There are two sale prices namely

  (a) a domestic sale price

  (b) an export price in the course of international trade.

(iv) In the course of sale, there are two situations namely, wholesale transactions and retail trade. Thus we have (a) Whole sale price and (b) retail price

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(v) The sale may be on down right cash basis, or payment on delivery of the goods or the title documents or deferred payment say either on installments or after 30 or 90 days.

These situations give rise to (a) cash price; (b) payment by sight draft; (60 or 90 days draft).

(vi) There are situations where the manufacturer himself may not be exporting the goods in the course of international trade. This gives rise to the concept of suppliers. As a result we have supplier's price.

(vii) In the course of international trade, where the buyer is in another country, the seller has often to resort to price list or catalogues. This is in turn gives rise to list price.

(viii) There is always a negotiation between the buyer and the seller. The contracted price is arrived at by giving discounts to the list price. Such discounts are given for various considerations. We have therefore terms like

(i) Trade discount

(ii) Quantity discount

(iii) Prompt payment cash discount

(iv) L/C discount

(v) Special discount

(ix) There are situations where the goods are defective, sub – standard or there is a glut of stock and the goods have to be sold at the best price available. This yields disposal price.

(x) The price may vary from consignment from consignment even though there may not be any underhand dealing in the transaction. Such a price is called transaction value.

(xi) There may be a clear understanding between the overseas seller and the Indian buyer of the goods. They may have a special relationship, such as, the Indian buyer may be the sole selling agent for the goods of the overseas seller. He may be the sole distributor. He may even be a branch or subsidiary of the seller and the sale may be a stock transfer. In such a situation, the price is known as dealer's price.

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(xii) Lastly, if we have no information of any of the matters relating to the transaction and we have only the commercial invoice used in the transaction, the price is invoice price.

3. TERMS USED IN COMMERCIAL PARLANCE

It would be useful to know and understand the terms and contents of documents used in the International Trade transactions.

(1) Invoice	This is the basic commercial document showing particulars regarding description of goods - quantity and unit price - discounts and net price - names of consignor and consignee - payment particulars. - Contract or acceptance of order on the basis of which the goods are supplied.
(2) Packing specification	Giving particulars of the contents of each of each of the package in the consignment.
(3) Certificate of Origin	A certificate issued by the competent authority in the country of manufacture giving the extent of the manufacture in that country.
(4) Bill of Lading	A negotiable document given by the carriers of the cargo giving particulars of (a) Port of shipment (b) No. of packages covered by the consignment (c) Marks and numbers on the page (d) Name of the vessel in which the goods have been dispatched (e) Name of the consignee of the goods, (f) whether the freight has been pre-paid or is to be collected at the destination. It is a negotiable document which has to be surrendered to the carrier for getting delivery of the goods.

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(5) Air Consignment Note	It is a document corresponding to Bill of Lading, in the case of cargo imported or exported by air.
(6) Indent	It is a document showing the particulars of the consignment for which the buyer has placed an order with the supplier. It normally gives particulars about (i) full description of the goods (ii) unit price (iii) mode of payment (iv) quantity required (v) delivery instructions.
(7) Quotation	It is a document, which indicates the price, the terms and other conditions on which the seller is willing to supply goods to the buyer.
(8) Acceptance	It refers to the formalisation of the contract of sale between the buyer and the seller. Once the seller of the goods sends his acceptance of the order of the buyer (the indent) the contract is complete. The acceptance will *inter alia* contain particulars of description of the goods to be supplied, unit price, including discounts and other charges, time and terms of delivery, penal clause for breach of contract, agreed terms of payment.
(9) Letter of Credit	This is an instrument delivered by the bank intimating the seller that the buyer has instructed the bank and the bank will according to these instructions pay the seller of the goods, the bill amount for the supply of the goods on presentation of certain documents evidencing shipment of the goods.
(10) Sight draft	A document evidencing the amount of money paid for the importation.
(11) Delivery Order	An authorisation given by the local agent of the carriers, on surrender of the original negotiable copy of the bill of lading or air consignment note, directing the custodian of the cargo to

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	deliver the consignment to the importer or his agent.
(12) Mate's Receipt	A receipt given by the First mate or First officer or cargo supervisor of the conveyance certifying the total quantity of the consignment received on board the vessel or the aircraft. A bill of lading or air consignment note is issued by the agent of the Carrier Company on surrender of the mate's receipt.
(13) Retirement of documents	The original negotiable copies of the shipment documents like invoice, packing specification, certificate of origin.
(14) Non-negotiable documents	Since retirement of the original document takes time, non negotiable documents are given to the importer to facilitate clearance.
(15) Boat/Lighterage Charge	Sometimes the vessel is unable to get a berth alongside the quay in the harbour. The goods are then transported from the ship to the shore by boats / lighters. The charges paid therefore are called Boat / Lighterage charges.
(16) Customs Broker	Since the importers / exporters may not be able to devote time and energy to clear imported goods or export goods, and since it involves running about to several organisations apart from customs, like Port, Trust, steamer agents, insurance companies, the assistance of agency organisation having adquate technical knowledge and expertise has been provided in the form of customs broker.
(17) Insurance cover	It is customary to insure all goods which are traded in the course of international trade. The general cover relates to risk on account of loss, pilferage, fire, storm etc. However, loss of goods

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	on account of seizure of goods due to war, is a separate cover. It is therefore customary to refer to the insurance as marine risk insurance and war risk insurance. The policy and cover of such insurance is a relevant document for valuation.

4 TECHNICAL TERMS RELATING TO VALUE IN THE COURSE OF IMPORT OR EXPORT – INTERNATIONAL COMMERCIAL (INCO) TERMS

(1) Ex-Factory Price	It is the price of the goods at the factory gate. It includes cost of production and manufacturer's margin of profit.
(2) F.A.S (Free Alongside)	It is the cost at which the export goods are delivered alongside the ship, ready for shipment. It includes ex-factory +local freight + local taxes.
(3) F.O.B. (Free on Board)	Technically there is not much of a difference between FAS and FOB cost. FOB means the stage at which the goods are placed on board the conveyance carrying the vessel. It can be said to include FAS + loading charges + export duty cess.
(4) C.I.F. (Cost Insurance Freight)	It is the cost at which the goods are delivered at the Indian port (F.O.B. +Insurance + Freight). It covers cost of goods. Sometimes there is referred as CFC also.

5. CONCEPT OF INDIRECT TAX AND VALUATION FOR THE SAME

Customs duty is an indirect tax. It is a tax on the goods and it is not a tax on the person having or owning the goods. The charge of tax attaches to the goods. Unless the tax liability is discharged, the goods are not allowed to proceed further. It becomes therefore necessary for the importer, who desires to take

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clearance of the goods into town for home consumption, to discharge the duty liability. Similarly, in case of baggage of the passenger travelling from abroad, the passenger cannot take his goods unless the duty liability is discharged.

The essence is simple. Like articles in similar situations should attract the same burden. As a corollary it follows that

(i) There should be uniformity in tax burden.

(ii) Since the rate of duty is already fixed for like goods, the value of goods should be uniform for all imports / exports for like good at the same time and place.

(iii) The value of the goods should be proximate to the point of taxation i.e. in the case of import the value at the point of import is relevant.

(iv) Variations in the price/agreed in each transaction on account of factors other than in the course of normal international wholesale trade should be adjusted.

6. TWO APPROACHES FOR COMPUTING THE ASSESSABLE VALUE

In the course of import, the goods take the following route.

1	2	3	4	5	6	7
Manufacturer	→ **Supplier**	→ **Port of shipment**	→ **Port of import**	→ **Cost to Importer**	→ **Cost to Wholesale Dealer**	→ **Cost to Retailer/ consumer**

Theoretically the value of the goods at stages (1) (2) (3) (5) (6) (7) is tangible and ascertainable. Furthermore, these values are documented and capable of verification by comparison with corresponding values for such or similar goods. The documents involved in such stages are

(i) Manufacturer's price list / quotation / sale invoices.

(ii) Supplier's sale invoices/ market prices

(iii) Customs approved attested documents showing value adopted for levy of export duty and allied controls.

(iv) Importer's account books

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(v) Sale invoices issued by importer to the wholesale dealer or the next purchaser. Market trend of the prices of the goods.

(vi) Sale invoices of wholesale dealers; and trend of prices in the market.

The invoice values normally give CIF or FOB values of the goods. The general rule is that the value declared by the importer i.e. the declared value shall be accepted by the customs officers subject to fulfillment of conditions. Else, the market value is the wholesale market price at which the importers are regularly selling imported goods. These two are the tangible and readily available data, at the hands of the customs officers to arrive at the "assessable value" i.e. a notional deducted value of the goods. This is an approach that may be used by the customs officers if the declared value is not acceptable in law.

Thus, two well accepted approaches have evolved for cases of rejection of declared value:

(i) one starting from the actual whole sale market price of the goods in question and giving necessary abatements to adjust the post – importation costs;

(ii) the second, to take as base, the value given in the invoice and make necessary adjustments for factors influencing the price in individual transactions.

However, the default mode of valuation is always the declared transaction value, plus the elements that are to be added under law (refer section 14).

7. VALUATION OF GOODS BASED ON SECTION 14

Section 14 of the Customs Act, 1962 prescribes the mode of identifying the value of imported or export goods for the purpose of payment of customs duty. The provisions of section 14 are discussed below: -

TRANSACTION VALUE

(i) Sub-section (1) lays down that for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the 'transaction value' of such goods.

(ii) In case of export goods, the transaction value shall be

- the price actually paid or payable for the goods

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- when sold for export **from** India
- for delivery at the time and place of exportation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale.

However further conditions may be specified in the rules made in this behalf.

(iii) In case of imported goods, the transaction value shall be

- the price actually paid or payable for the goods when sold for export **to** India
- for delivery at the time and place of importation
- where the buyer and seller of the goods are not related and
- price is the sole consideration for the sale.

However, in this case also further conditions may be specified in the rules made in this behalf.

Such transaction value shall also include in addition to the price as aforesaid, any amount paid or payable for costs and services, including:

- commissions and brokerage,
- engineering,
- design work,
- royalties and licence fees,
- costs of transportation to the place of importation,
- insurance
- loading,
- unloading and
- handling charges

to the extent and in manner specified in the rules made in this behalf.

(iv) Such rules may provide for:

(a) the circumstances in which the buyer and the seller shall be deemed to be related;

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(b) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(c) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

CONVERSION DATES

(v) For imported goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing bill of entry under section 46.

(vi) For export goods, the conversion in value shall be done with reference to the rate of exchange prevalent on the date of filing shipping bill (vessel or aircraft) or bill of export (vehicle) under section 50.

In case of *Samar Timber Corporation v. ACC 1995 (79) E.L.T. 549 (Bom.)*, it was held that relevant date in respect of rate of duty payable is the date of presentation of Bill of Entry and not date of re-presentation after correction.

CURRENCY CONVERSION RATE

(vii) The rate of exchange is notified by three agencies- the Central Board of Indirect taxes and Customs (Board), the Reserve Bank of India and the Foreign Exchange Dealers' Association of India. For the purpose of customs valuation, "rate of exchange" means the rate of exchange-

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct,

for the conversion of Indian currency into foreign currency or foreign currency into Indian currency. Thus, for the purpose of valuation under customs laws, rate notified by CBIC (Board) shall be taken into account.

The CBIC notifies the rates periodically, generally every fortnight. There are separate rates for imported goods (selling rate) and export goods (buying rate).

(viii) "Foreign currency" and ''Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.

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TARIFF VALUE

(ix) Sub-section (2) provides that the Board may fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods by notification in the Official Gazette if it is satisfied that it is necessary to do so.

(x) Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. Provisions of sub-section (2) have an overriding effect on the provisions of sub-section (1).

8. CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007

Notification No. 94/2007 Cus. (NT) dated 13.09.2007 notified Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. They apply to imported goods. The rules are given below:

RULE 2 – DEFINITIONS

(1) In these rules, unless the context otherwise requires, -

(a) **"computed value"** means the value of imported goods determined in accordance with rule 8.

(b) **"deductive value"** means the value determined in accordance with rule 7.

(c) **"goods of the same class or kind",** means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(d) **"identical goods"** means imported goods –

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

(ii) produced in the country in which the goods being valued were produced; and

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(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

(da) **"place of importation"** means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse

(e) **"produced"** includes grown, manufactured and mined.

(f) **"similar goods"** means imported goods –

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.

(2) For the purpose of these rules, persons shall be deemed to be "related" only if –

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognised partners in business;

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(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Explanation I. – The term "person" also includes legal persons.

Explanation II. – 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 for the purpose of these rules, if they fall within the criteria of this sub-rule.

In case of *CC v. East African Traders 2000 (115) E.L.T. 613 (S.C.),* it was held that Customs authorities and Tribunal can pierce the veil of the respondent company to determine whether or not the buyer and the seller were 'related persons within the scope of rule 2(2) of the erstwhile Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [now rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Illustration 1

M/s IES Ltd. (assessee) imported certain goods at US $ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US $ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports i.e., at US $20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007.

State briefly, whether the Department's action is sustainable in law?

Answer

No, the Department's action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, *inter alia,* provides that persons shall be deemed to be "related" if one of them directly or

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indirectly controls the other. The word "control" has not been defined under the said rules. As per common parlance, control is established when one enterprise holds at least 51% of the equity shareholding of the other company. However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company did not exercise control over the assessee. So, the two parties cannot be said to be related.

The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under-valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable.

In the light of foregoing discussion, it can be inferred that Department's action is not sustainable in law.

RULE 3 – DETERMINATION OF THE METHOD OF VALUATION

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that-

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

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(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods.

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

RULE 4 – TRANSACTION VALUE OF IDENTICAL GOODS

(1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

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(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

RULE 5 – TRANSACTION VALUE OF SIMILAR GOODS

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

RULE 6 – DETERMINATION OF VALUE WHERE VALUE CAN NOT BE DETERMINED UNDER RULES 3, 4 AND 5

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

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RULE 7 – DEDUCTIVE VALUE

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions: —

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

RULE 8 – COMPUTED VALUE

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

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(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

RULE 9 – RESIDUAL METHOD

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of' this rule on the basis of—

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

The residuary method can be considered if valuation is not possible by any other method. *[Sanjay Chandiram v. CC 1995 (77) E.L.T. 241 (S.C.)]*

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RULE 10 – COST AND SERVICES

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods:

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials.

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the Imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.

(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a

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third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include –

(a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;

(b) the cost of insurance to the place of importation:

However, where the cost referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods:

Further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be 20% of such sum:

Where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

In the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of free on board value of the goods:

In the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

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Explanation-

The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.

Illustration 2

Answer the following with reference to the provisions of section 14 of the Customs Act, 1962 and the rules made thereunder:

(i) What shall be the value, if there is a price rise of the imported goods in international market between the date of contract and the date of actual importation but the importer pays the contract price?

(ii) Whether the payment for post-importation process is includible in the value if the same is related to imported goods and is a condition of the sale of the imported goods?

Answer

(i) The value of the imported goods or export goods is its transaction value, which means the price actually paid or payable for the goods. Where a contract has been entered into, the transaction value shall be the price stated in the contract, unless it is not legally acceptable.

Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.

(ii) As per explanation to Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the payment for post-importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

RULE 11 – DECLARATION BY THE IMPORTER

(1) The importer or his agent shall furnish –

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer

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or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

RULE 12 – REJECTION OF DECLARED VALUE

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:–

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include–

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(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

RULE 13 – INTERPRETATIVE NOTES

The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules.



Interpretative Notes

General Note:

Use of generally accepted accounting principles

"Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations shall be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

Notes to Rules

Note to rule 2

In rule 2(2)(v), for the purposes of these rules, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

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Note to rule 3

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods.

The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

(a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(b) The cost of transport after importation;

(c) Duties and taxes in India.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Rule 3(2)(a)(iii): Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Rule 3(2)(b): If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include-

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(a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semifinished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 3. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value.

Rule 3(3)

1. Rule 3(3)(a) and rule 3(3)(b) provide different means of establishing the acceptability of a transaction value.

2. Rule 3(3)(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value of imported goods provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the proper officer of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the proper officer of customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to

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supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the proper officer of customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Rule 3(3)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the proper officer of customs and is therefore acceptable under the provisions of rule 3. Where a test under rule 3(3)(b) is met, it is not necessary to examine the question of influence under rule 3(3)(a). If the proper officer of customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in rule 3(3)(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In rule 3(3)(b) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Rule 3(3)(b): A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another

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type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in rule 3(3)(b).

Notes to rule 4

1. In applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

   (a) a sale at the same commercial level but in different quantities; or

   (b) a sale at a different commercial level but in substantially the same quantities; or

   (c) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

   (a) quantity factors only;

   (b) commercial level factors only; or

   (c) both commercial level and quantity factors.

3. For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(1)(b) and (c) and rule 4(2) which has already been accepted under rule 3.

4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the

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absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.

Note to rule 5

1. In applying rule 5, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. For the purpose of rule 5, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 5(2) which has already been accepted under rule 3.

2. All other provisions contained in note to rule 4 shall mutatis mutandis also apply in respect of similar goods.

Note to rule 7

1. The term "unit/price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 -10 units	100	10 sales of 5 units 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a price is 80, therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

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4. A third example would be the following situation where various quantities are sold at various prices.

(a) Sales

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(b) Totals

Total quantity sold	Unit price
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65, therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in India, as described in paragraph 1 above to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in rule10(l)(b), should not be taken into account in establishing the unit price for the purposes of rule 7.

6. It should be noted that "profit and general expenses" referred to in rule 7(1) should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in India, of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit

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and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of rule 7(1)(iii) shall be deducted under the provisions of rule 7(1)(i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of rule 7(1), the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in India, of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 7 goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of rule 7(2) the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported, goods are made in sufficient quantity to establish the unit price.

11. Where the method in rule 7(3) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in rule 7(3) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

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Note to rule 8

1. As a general rule, value of imported goods is determined under these rules on the basis of information readily available in India. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside India. Furthermore, in most cases, the producer of the goods will be outside the jurisdiction of the proper officer. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the proper officer the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in clause (a) of rule 8 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in clauses (1)(a)(ii) and (1)(a)(iii) of rule 10. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to rule 10, of any element specified in rule 10(l)(b) which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods. The value of the elements specified in rule 10(l)(b)(iv) which are undertaken in India shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in clause(b) of rule 8 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, producer's profit figure is low and his general expenses are high, the

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producer's profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in India and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in India and accept a low profit to maintain competitivity. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. The "general expenses" referred to in clause (b) of rule 8 covers the direct and indirect costs of producing and selling the goods for export which are not included under clause (a) of rule 8.

7. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of rule 8, sales for export to India of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 8 "goods of the same class or kind" must be from the same country as the goods being valued.

Note to rule 9

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application

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of such methods would be in conformity with the aims and provisions of rule 9.

3. Some examples of reasonable flexibility are as follows:

   (a) **Identical goods.** The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

   (b) **Similar goods.** The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.

   (c) **Deductive method.** The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

Note to rule 10

In rule 10(l)(a)(i), the term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Rule 10(1)(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in rule 10(l)(b)(ii) to the imported goods – the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person

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related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the proper officer of customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Rule 10(1)(b)(iv)

1. Additions for the elements specified in rule 10(l)(b)(iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and proper officer of customs in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The case with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the

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country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of rule 10.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of rule 10 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Rule 10(1)(c)

1. The royalties and licence fees referred to in rule 10(1)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Rule 10(3)

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 10, the transaction value cannot be determined under the provisions of rule 3. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors, which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished

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from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Circular No. 38/2007 Cus. dated 09.10.2007 has been issued to clarify the major changes in the new Import Valuation Rules i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 notified vide *Notification No 94/2007-Cus (NT) dated 13-9-2007*.

The clarifications are given below for proper application of the Valuation Rules, i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:-

(i) Transaction Value has been defined to mean the value referred to in sub-section (1) of section 14 of the Customs Act, 1962.

(ii) A 'proviso' has been added to rules 4(1)(a) and 5(1) concerning identical goods and similar goods respectively, to the effect that the value of the goods provisionally assessed under section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.

(iii) In the residual method of Valuation, which has been renumbered as Rule 9 (erstwhile Rule 8), a proviso has been added with a view to keeping Rule 9 in line with Article 7 of the WTO Valuation Agreement which corresponds to the said Rules and refers to the provisions of Article VII of the GATT.

(iv) An 'Explanation' has been added to Rule 10(1) [erstwhile Rule 9(1)] to clarify that the royalty, licence fee or any other payment for using a process, when they are otherwise includible in terms of clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable, notwithstanding the fact that such goods may be subjected to the said process after their importation. At times, royalty, license fee or any other payment for a process to be paid by the importer may be linked to post–importation activity like running of the machine/ plant, when the process is put to use. This Explanation has been added in the context of the Supreme Court judgement in the case of *Commissioner of Customs (Port) Kolkata v. J.K. Corporation Ltd. 2007 (208) ELT 485 (SC)* so as to clarify that such royalty, license fee, etc., if otherwise includible in terms of clauses (c) or (e) of Rule 10, will be includible in the value of the goods irrespective of the fact that such royalty, licence fee, etc., relates to a process which is made operational during the running of the machines, i.e., after importation of the goods.

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(v) An 'Explanation' has been added to Rule 10(2) clarifying that the cost of transport of the imported goods includes ship demurrage charges on chartered vessels, lighterage charges or barge charges. This Explanation is to take care of cases of imports by time chartered vessels or bulk carriers discharging goods on high seas needing additional expenditure for delivery of the goods at the "Place of Importation" mentioned in Rule 10(2)(a). The 'place of importation', as observed by the Supreme Court in the case of *Garden Silk Mills Ltd Versus Union of India 1993 (113) E.L.T. 358 (S.C)* means the place where the imported goods reach the landmass of India in the Customs area of the port, airport or land customs station, or if they are consumed before reaching the landmass of India, the place of consumption. Therefore, in cases where ship demurrage charges are paid by the importer for detention of the ship in the harbour before touching the landmass at the docks or at the place of consumption, these charges would be includible in the cost of transportation. Similarly, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, small boats, etc., the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as lighterage charges, barge charges will also be included in the cost of transportation.

(vi) An 'Explanation' has been added to Rule 12, which relates to rejection of declared value, to bring more clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

Circular No. 39/2017 Cus. dated 26.09.2017 has been issued to clarify the amendment in Rule 10(2) of Import Valuation Rules i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007[CVR].

The valuation of imported and export goods is governed by the provisions of Section 14 of the Customs Act, 1962 and the rules made thereunder. The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR) contain

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the detailed provisions for arriving at the transaction value of the imported goods, on which the customs duty is levied.

A need had arisen to examine certain provisions of the CVR in light of Supreme Court's ruling in the case of *M/s Wipro Ltd. Vs. Assistant Collector of Customs 2015 (319) ELT 177 SC dated 16.04.2015*.

After examination and public consultations, the Government has amended the CVR vide *Notification 91/2017 Customs (N.T) dated 26.09.2017*, as explained below:

Definition of the term 'place of importation'

The term "place of importation" has been used in the CVR; however, the term was not defined. To bring in clarity, the "place of importation" has been defined as:

"Place of Importation" means the customs station where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse"

In view of the above definition, the transaction value of the imported goods in terms of section 14 of the Customs Act, 1962 would include the costs incurred up to the place of importation, as defined above.

Treatment of the loading, unloading and handling charges

The Hon'ble Supreme Court had ruled in the case of *M/s Wipro Ltd. Vs Assistant Collector of Customs-2015 (319) ELT 177 (S.C.) dated 16.04.2015* that the landing charges to be added to the value of goods, should be based on actual charges incurred, and not a notional charge of 1% as has been provided in the Rules.

By virtue of the amendment now carried out to the CVR, 2007, the loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation, shall no longer be added to the CIF value of the goods.

The phrase "loading, unloading and handling charges" appearing in the amended rule 10(2)(a) is to be understood in context of Article 8(2) of the WTO Agreement which reads as "the cost of transport of the imported goods to the port or place of importation". Thus, only charges incurred for delivery of goods "to" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.

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Computation of freight and insurance

Now, the 2nd and 4th provisos to rule 10 (2) impart more clarity in computation of transport and insurance charges, when actuals of each individual element are not known, but the cumulative value of FOB and freight, or, FOB and insurance charges are known.

Treatment of transshipment costs

In the erstwhile 4th proviso to rule 10 (2), while the transshipment charges with respect to a container being moved from port to an ICD and CFS were excluded from the transaction value of the goods, there was no mention of a similar treatment to transshipment of goods by sea or air. Now, by virtue of the 6th proviso to rule 10 (2), costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport etc.) within India will be excluded, providing uniform treatment to different modes of transshipment.

Levy of Social Welfare Surcharge on imported goods:

Social welfare surcharge @ 10% has been levied on imported goods. [For detailed discussion, refer para 14 of chapter-2.]

Valuation of goods cleared from a 100% EOU to a depot from where the sale to DTA is effected through consignment agents: *Circular No. 933/23/2010 CX dated 16.08.2010* clarifies that the value of goods cleared from a 100% Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

Determination of assessable value in case of sale of warehoused goods before being cleared for home consumption

Issue: Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption should be taken as the price at which the original importer has sold the goods, before a Bill of Entry for home consumption is filed?

Clarification: Section 14 of the Customs Act provides that the value of the imported goods is the transaction value of goods. Transaction value is defined to mean the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. In the instant case, the goods are sold after being warehoused, therefore, it cannot be said that export of goods is not complete and thus the sale of warehoused goods cannot be

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considered a sale for export to India. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14.

[Circular No.11/2010 dated 03.06.2010]

Illustration 3

Mother Mary Hospital and Research Centre imported a machine from Delta Scientific Equipments, Chicago for in house research. The price of the machine was settled at US $ 5,000. The machine was shipped on 10.04.20XX. Meanwhile, the Hospital Authorities negotiated for a reduction in the price. As a result, Delta Scientific Equipments agreed to reduce the price by $ 850 and sent the revised price of $ 4,150 under a telex dated 15.04.20XX. The machine arrived in India on 18.04.20XX. The Commissioner of Customs has decided to take the original price as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

Do you agree to the stand taken by the Commissioner? Give reasons in support of your answer.

Answer

No, the Commissioner's approach is not correct in law.

As per section 14 of the Customs Act, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case *Garden Silk Mills v. UOI* has held that importation gets complete only when the goods become part of mass of goods within the country. Therefore, since in the instant case the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

Illustration 4

'A' had imported goods from Finland. Due to deep draught at the port, such goods were not taken to the jetty in the port but were unloaded at the outer anchorage. The charges incurred for such unloading and transport of the goods from outer anchorage to the jetty in barges (small boats) were ₹ 1,35,000. 'A' claims that such charges form part of the loading and unloading charges and should be deemed to be included in the CIF value of such goods, made under rule 10(2)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

Discuss the tenability of 'A's' claim.

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Answer

As per Rule 2(da), "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. Therefore, the outer anchorage where the goods are unloaded would not be the place of importation. Rule 10(2)(a) stipulates that for the purposes of section 14(1) of the Customs Act, 1962 and Valuation rules, value of imported goods shall be the value of such goods and shall include, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation.

Therefore, in cases where the big mother vessels cannot enter the harbour for any reason and goods are brought to the docks by smaller vessels like barges, the cost incurred by the importer for bringing the goods to the landmass or place of consumption, such as barge charges will also be included in the cost of transportation. Therefore, 'A's claim is not tenable in law.

9. CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

Notification No. 95/2007 Cus. (NT) dated 13.09.2007 has notified Customs Valuation (Determination of Value of Export Goods) Rules, 2007. They shall apply to the export goods.

RULE 2 – DEFINITIONS

(1) In these rules, unless the context otherwise requires, -

(a) **"goods of like kind and quality"** means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and

(b) **"transaction value"** means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

(2) For the purposes of these rules, persons shall be deemed to be "related" only if –

(i) they are officers or directors of one another's businesses;

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(ii) they are legally recognised partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - 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 for the purpose of these rules, if they fall within the criteria of this sub-rule.

RULE 3 - DETERMINATION OF THE METHOD OF VALUATION

(1) Subject to rule 8, the value of export goods shall be the transaction value.

(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

RULE 4 - DETERMINATION OF EXPORT VALUE BY COMPARISON

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

(i) difference in the dates of exportation,

(ii) difference in commercial levels and quantity levels,

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(iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,

(iv) difference in domestic freight and insurance charges depending on the place of exportation.

RULE 5 - COMPUTED VALUE METHOD

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

(a) cost of production, manufacture or processing of export goods;

(b) charges, if any, for the design or brand;

(c) an amount towards profit.

RULE 6 - RESIDUAL METHOD

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

RULE 7 - DECLARATION BY THE EXPORTER

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

RULE 8 - REJECTION OF DECLARED VALUE

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

(2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

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Explanation **-** (1) For the removal of doubts, it is hereby declared that-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter**.**

(iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include –

(a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

(c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

Analysis: *Circular No. 37/2007 Cus. dated 09.10.2007* has been issued regarding the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 notified vide *Notification No 95/2007 Cus. (NT) dated 13.09.2007*. The Customs Valuation (Determination of Value of Export Goods) Rules 2007 have been framed in a format similar to the Valuation Rules for the imported goods. Conceptually also, acceptance of Transaction Value for export goods has been emphasized in the said rules, in as much as Rule 3 specifically provides for it.

Rule 3 of the said rules also stipulates that the Transaction Value for export goods shall be accepted even where buyer and seller are related, provided that the relationship did not influence the price of the goods. Where the relationship is found to influence the price, as determined by the proper officer on receipt of further information from the exporter, the value of the export goods shall be determined by proceeding sequentially through rules 4 to 6 of the said Valuation Rules. The persons who shall be deemed to be 'related' have been specified in Rule 2(2) of the said Valuation Rules, and this provision has been adopted from the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

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Thus, transaction value is the primary basis for valuation of export goods and the method specified under Rule 3 will be applicable in the vast majority of cases of export by acceptance of declared value. In cases where the transaction value is not accepted, the valuation of the export goods shall be done by application of Rules 4 to 6 sequentially.

Acceptance of transaction value is, however, subject to the provision of Rule 8 which provides for rejection of declared value for the export goods in certain exceptional cases. These are situations where the assessing officer has reasons to doubt the truth or accuracy of the declared value and further enquiry or investigation is needed to determine the appropriate value. It is hereby instructed that when an investigation / enquiry is undertaken to determine whether or not the Declared Value should be accepted as Transaction Value, the export consignment shall not be ordinarily detained. Wherever there are doubts about the declared value of the export goods, the proper officer shall retain representative sealed samples, wherever considered necessary and feasible, and allow the goods to be exported after due processing. However, it is clarified that in a situation of serious violation such as outright mis-declaration of goods, attempt to export the goods unauthorisedly, i.e., smuggle the goods out of the country, or where there is forgery or fraudulent documentation, the goods may be detained or seized as required. No export consignment shall be detained for reasons of doubts regarding valuation without the approval of the jurisdictional Principal Commissioner/Commissioner of Customs.

An 'Explanation' relating to rejection of declared value of export goods has been added to Rule 8 to bring clarity and objectivity in exercising the authority for rejection of declared value. The Explanation clarifies that this rule as such does not provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value of export goods in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the exporter, the declared value shall be accepted. This Explanation also gives certain illustrative reasons which could form the basis for having doubt about the truth or accuracy of the declared value.

While raising doubt about truth or accuracy of the declared value in terms of Rule 8, the proper officer shall issue a query memo specifying reasons for such doubt. Meanwhile, the goods will be released for export against a simple undertaking after drawal of representative sample as indicated in para 5. The decision to initiate the process of investigation into valuation aspects, if any, shall be taken at the earliest at the level of Joint /Additional Commissioner.

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In a case where transaction value cannot be determined or the declared value is rejected under Rule 8, and export value has to be determined by comparison in terms of Rule 4, the proper officer shall take utmost care in selecting an export product for an in-depth inquiry. The proper officer will make the adjustments objectively on the basis of the relevant factors, some of which have been illustrated at sub rule (2) of Rule 4.

Where the value has to be determined by Computed value method under Rule 5, the proper officer shall give due consideration to the cost-certificate issued by a Cost Accountant or Chartered Accountant or Government approved valuer, as produced by the exporter.

It is clarified that the main purpose of introducing the Export Valuation Rules is to provide for a sound legal basis for the valuation of export goods. It is also expected to check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes. At the same time due care has to be taken to facilitate the movement of bonafide export goods which is vital for the country's economic growth. The assessing officers shall, therefore, exercise due caution to avoid unnecessary queries regarding truth or accuracy of the declared export value. The Export Valuation Rules are not intended to bring about any significant change in the existing pattern of valuation of export goods. It is the responsibility of the supervisory officers to monitor regularly the export valuation practices, so as to ensure proper implementation of the said Valuation Rules without hindering the flow of bona fide export goods.

Rule 7 of the Export Valuation Rules calls for a declaration relating to the value to be filed by the exporter.

10. DATE FOR DETERMINATION OF RATE OF DUTY AND TARIFF VALUE

FOR IMPORTED GOODS [SECTION 15]

Section 15 of the Customs Act, 1962 specifies the relevant date for determining the rate of duty and tariff valuation of imported goods. They are different for different situations as given below:

(a) Goods are entered for home consumption under section 46 – The relevant date for the three modes of transport as laid down by section 15(1)(a) read with proviso would be as follows:

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(i) For goods imported by vehicle at land customs station – the relevant date is the date of filing the B/E under section 46 or date of arrival of vehicle, whichever is later.

(ii) For goods imported by a vessel at a customs port – the relevant date is the date of filing the B/E under section 46 or date of entry inwards to vessel under section 31, whichever is later.

(iii) For goods imported by aircraft at a customs airport – the relevant date is the date of filing the B/E under section 46 or date of arrival of aircraft, whichever is later.

(b) Goods cleared from a warehouse under section 68 – the relevant date is the date on which a bill of entry for home consumption in respect of such goods is presented.

(c) In the case of any other goods – the relevant date is the date of payment of duty.

These provisions relating to determination of relevant date do not apply to baggage and imports by post, in which sections 78 and 83 apply respectively.

FOR EXPORT GOODS [SECTION 16]

The relevant date for export goods is determined as per section 16. However, the provisions do not apply to baggage and imports by post.

The provisions are as follows:

(a) In case of goods entered for export (irrespective of the mode of transport) – the relevant date is the date of the 'let export' order of the proper officer permitting export and loading of cargo on board under section 51.

(b) In case of any other goods – the relevant date is the date of payment of duty.

Illustration 5

A material was imported by air at CIF price of 5,000 US$. Freight paid was 1,500 US$ and insurance cost was 500 US$. The banker realized the payment from importer at the exchange rate of ₹ 71 per dollar. Central Board of Indirect taxes and Customs notified the exchange rate as ₹ 70 per US$. Find the value of the material for the purpose of levying duty.

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Answer

Computation of assessable value

Particulars	Amount
CIF value	5000 US $
Less: Freight	1500 US $
Less: Insurance	500 US $
Therefore, FOB value	3000 US $
Assessable value for Customs purpose	
FOB value	3000 US $
Add: Freight (20% of FOB value) [Note 1]	600 US $
Add: Insurance (actual)	500 US $
CIF for customs purpose	4100 US $
Exchange rate as per CBIC [Note 2]	₹ 70 per US $
Assessable value (₹ 70 x 4100 US $)	**₹ 2,87,000**

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [clause (a) of the explanation to section 14 of the Customs Act, 1962].

Illustration 6

From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962:

		US $
(i)	*Cost of the machine at the factory of the exporter*	*10,000*
(ii)	*Transport charges from the factory of exporter to the port for shipment*	*500*
(iii)	*Handling charges paid for loading the machine in the ship*	*50*

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(iv)	*Buying commission paid by the importer*	*50*
(v)	*Freight charges from exporting country to India*	*1,000*
(vi)	*Exchange rate to be considered: 1$ = ₹ 70*	
(vii)	*Actual insurance charges paid are not ascertainable*	

Answer

Computation of assessable value of the imported goods

		US $
(i)	Cost of the machine at the factory	10,000.00
(ii)	Transport charges up to port	500.00
(iii)	Handling charges at the port	50.00
	FOB	10,550.00
(iv)	Freight charges up to India	1,000.00
(v)	Insurance charges @ 1.125% of FOB [Note 1]	118.69
	CIF	11,668.69
		₹
	CIF in Indian rupees @ ₹ 70/ per $	₹ 8,16,808.30
	Assessable Value	₹ 8,16,808.30
	Assessable Value (rounded off)	**8,16,808**

Notes:

(1) Insurance charges have been included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

(2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

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Illustration 7

Compute export duty from the following data:

(i) FOB price of goods: US $ 1,00,000.

(ii) Shipping bill presented electronically on 26.04.20XX.

(iii) Proper officer passed order permitting clearance and loading of goods for export (Let Export Order) on 04.05.20XX.

(iv) Rate of exchange and rate of export duty are as under:

	Rate of Exchange	***Rate of Export Duty***
On 26.04.20XX	*1 US $ = ₹ 70*	*10%*
On 04.05.20XX	*1 US $ = ₹ 72*	*8%*

(v) Rate of exchange is notified for export by Central Board of Indirect taxes and Customs.

(Make suitable assumptions wherever required and show the workings.)

Answer

Computation of export duty

Particulars	**Amount (US $)**
FOB price of goods [Note 1]	1,00,000
	Amount (₹)
Value in Indian currency (US $ 1,00,000 x ₹ 70) [Note 2]	70,00,000
Export duty @ 8% [Note 3]	**5,60,000**

Notes:

1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.

2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.

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3. As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Illustration 8

A consignment of 800 metric tonnes of edible oil of Malaysian origin was imported by a charitable organization in India for free distribution to below poverty line citizens in a backward area under the scheme designed by the Food and Agricultural Organization. This being a special transaction, a nominal price of US$ 10 per metric tonne was charged for the consignment to cover the freight and insurance charges. The Customs House found out that at or about the time of importation of this gift consignment there were following imports of edible oil of Malaysian origin:

S. No.	*Quantity imported in metric tonnes*	*Unit price in US $ (CIF)*
1.	*20*	*260*
2.	*100*	*220*
3.	*500*	*200*
4.	*900*	*175*
5.	*400*	*180*
6.	*780*	*160*

The rate of exchange on the relevant date was 1 US $ = ₹ 70.00 and the rate of basic customs duty was 10% ad valorem. Ignore Integrated tax and GST Compensation Cess. Calculate the amount of duty leviable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations, where required.

Answer

Determination of transaction value of the subject goods:-

In the instant case, while determining the transaction value of the goods, following factors need consideration:-

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1. In the given case, US $10 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods. Consequently, we have to look for transaction value of identical goods under rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [Customs Valuation (DVIG) Rules, 2007].

2. Rule 4(1)(a) of the aforementioned rules provides that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In the six imports given during the relevant time, the goods are identical in description and of the same country of origin.

3. Further, clause (b) of rule 4(1) of the said rules requires that the comparable import should be at the same commercial level and in substantially same quantity as the goods being valued. Since, nothing is known about the level of the transactions of the comparable consignments, it is assumed to be at the same commercial level.

4. As far as the quantities are concerned, the consignments of 20 and 100 metric tonnes cannot be considered to be of substantially the same quantity. Hence, remaining 4 consignments are left for our consideration.

5. However, the unit prices in these 4 consignments are different. Rule 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods. Accordingly**,** the unit price of the consignment under valuation would be US $ 160 per metric tonne.

Computation of amount of duty payable

CIF value of 800 metric tonnes**:**

= 800 x 160 = US $ 1,28,000

At the exchange rate of $ 1 = ₹ 70

CIF Value (in Rupees)	= ₹ 89,60,000
Assessable Value	= ₹ 89,60,000
10% of Ad Valorem duty on ₹ 89,60,000	= ₹ 8,96,000
Add: Social Welfare Surcharge @ 10% (rounded off)	= ₹ 89,600
Total custom duty payable	**=₹ 9,85,600**

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Illustration 9

Foreign Trade International Ltd. has imported one machine from England. It has given the following particulars:

(i)	*Price of machine*	*8,000 UK Pounds*
(ii)	*Freight paid (air)*	*2,500 UK Pounds*
(iii)	*Design and development charges paid in UK*	*500 UK Pounds*
(iv)	*Commission payable to local agent of exporter @ 2% of price of machine, in Indian Rupees*	
(v)	*Date of bill of entry*	*24.10.20XX (Rate BCD 10%; Exchange rate as notified by CBIC ₹ 100 per UK Pound)*
(vi)	*Date of arrival of aircraft*	*20.10.20XX (Rate of BCD 20%; Exchange rate as notified by CBIC ₹ 98 per UK Pound)*
(vii)	*Integrated tax is 12%*	
(viii)	*Insurance charges have been actually paid but details are not available.*	

Compute the total customs duty and integrated tax payable by Foreign Trade International Ltd.

Note: Ignore GST Compensation Cess.

Answer

Computation of total duty and integrated tax payable

Particular	**Amount**
Price of machine	8,000 UK pounds
Add: Design and development charges [Note 1]	500 UK pounds
Total	8,500 UK pounds

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	(₹)
Total in rupees @ ₹ 100 per pound [Note 2]	₹ 8,50,000.00
Add: Local agency commission [Note 1] (2% of 8000 UK pounds) = 160 UK pounds × ₹ 100	₹ 16,000.00
FOB value as per Customs	8,66,000.00
Add: Air freight (8,66,000 x 20%) [Note 3]	1,73,200.00
Add: Insurance @ 1.125% of customs FOB [Note 4]	9,742.50
CIF Value	10,48,942.50
Assessable value (rounded off)	10,48,942.00
Add: Basic custom duty @ 10% [Note 5]	1,04,894.20
Add: Social Welfare Surcharge @ 10% on ₹ 1,04,894.20	10,489.42
Total	11,64,325.62
Add: Integrated tax @ 12% [Note 7]	1,39,719.07
Total duty and integrated tax payable (Rounded off) (₹ 1,04,894.20+ ₹ 10,489.42+ ₹ 1,39,719.07)	**2,55,102**

Notes:

1. Design and development charges paid in UK and commission paid to local agent (since it is not buying commission) are includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007]
2. The rate of exchange notified by the CBIC on the date of presentation of bill of entry has been considered [Section 14 of the Customs Act, 1962].
3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
4. Where the insurance charges are not ascertainable, such cost is taken as 1.125% of FOB value of the goods [Third proviso to Rule 10(2) of the Customs (Determination of value of Imported Goods) Rules, 2007].

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5. Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.

6. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 10

Compute the total duty and integrated tax payable under the Customs Law on an imported equipment based on the following information:

(i) Assessable value of the imported equipment US $ 10,100

(ii) Date of bill of entry is 25.4.20XX. Basic customs duty on this date is 10% and exchange rate notified by the Central Board of Indirect taxes and Customs is US $ 1 = ₹65.

(iii) Date of entry inwards is 21.4.20XX. Basic customs duty on this date is 20% and exchange rate notified by the Central Board of Indirect taxes and Customs is US $ 1 = ₹70.

(iv) Integrated tax: 12%

(v) Social Welfare surcharge 10%

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest rupee.

Note: Ignore GST Compensation Cess.

Answer

Computation of total customs duty and integrated tax payable

Particulars	₹
Assessable value ($ 10,100 x 65) [Note-1]	6,56,500.00
Add: Basic custom duty @ 10% [Note-2]	65,650.00
Add: Social Welfare Surcharge @ 10% on ₹ 65,650	6,565.00
Total	7,28,715.00
Add: Integrated tax @ 12% [Note-3]	87,445.80
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	1,59,660

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Notes:

1. Rate of exchange notified by CBIC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) of Customs Act,1962].
2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].
3. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 11

Assessable value of an item imported is ₹ 1,00,000. Basic customs duty is 10%, integrated tax is 12%, and social welfare surcharge is 10% on duty. Compute the amount of total customs duty and integrated tax payable.

Note: Ignore GST Compensation Cess.

Answer

Computation of total customs duty and integrated tax payable

	Particulars	₹
1.	Assessable Value	1,00,000
2.	Basic customs duty @ 10%	10,000
3.	Add: Social Welfare surcharge* @ 10% on ₹ 10,000	1000
4.	Sub-total	1,11,000
5.	Integrated tax @ 12% of ₹ 1,11,000	13,320
6.	**Total customs duty and integrated tax payable** [(2) + (3) + (5)]	**24,320**

*Social Welfare surcharge is presently exempt on IGST and GST compensation cess

Illustration 12

From the following particulars, calculate total customs duty and integrated tax payable:

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(i) Date of presentation of bill of entry: 20.6.20XX [Rate of BCD 20%; Inter-bank exchange rate: ₹ 61.60 and rate notified by CBIC ₹ 70].

(ii) Date of arrival of aircraft in India: 30.6.20XX [Rate of BCD 10%; Inter-bank exchange rate: ₹ 61.80 and rate notified by CBIC ₹ 73.00].

(iii) Rate of Integrated tax: 12%. Ignore GST Compensation Cess.

(iv) CIF value 2,000 US Dollars; Air freight 500 US Dollars, Insurance cost 100 US Dollars.

(v) Social Welfare Surcharge 10%

Answer

Computation of total customs duty and integrated tax payable

Particulars		Amount
CIF value		2000 US Dollars
Less: Freight	500	
Insurance	100	600 US Dollars
FOB Value		1400 US Dollars
Add: Air Freight [Note1]	280	
Insurance (actual amount)	100	380 US Dollars
		1780 US Dollars
		₹
Value @ ₹ 70.00 [Note 2]		1,24,600.00
Assessable Value		1,24,600.00
Basic Custom Duty @ 10% **(a)** [Note 3]		12,460.00
Add: Social Welfare Surcharge @ 10% on 12,460 **(b)**		1,246.00
Sub-total		1,38,306.00
Integrated tax (12% on ₹ 1,38,306) **(c)** [Note 4]		16,596.72
Total duty and integrated tax (a +b + c) (rounded off)		**30,303**

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Notes:

(1) If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

(2) Rate of exchange notified by CBIC on the date of presentation of bill of entry would be the applicate rate. [Proviso to Section 14(1) of the Customs Act, 1962].

(3) Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].

(4) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 13

15000 chalices were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the cost of goods or for the design and development charges, which was borne by the supplier. Customs officer computed its FOB value at USD 20,000 (including design and development charges), which was accepted by the Trust. Other details obtained were as follows:

Sl. No.	Particulars	Amount
1.	Freight paid (air) (in USD)	4,500
2.	Design & development charges paid in USA (in USD)	2,500
3.	Commission payable to an agent in India (in ₹)	12,500
4.	Exchange rate notified by CBIC and rate of basic duty is as follows: **Date of Bill of Entry** — **BCD** — **Exchange Rate in ₹** 08.09.20XX — 20% — 70 **Date of arrival of aircraft** — **BCD** — **Exchange Rate in ₹** 30.09.20XX — 10% — 72 The inter-bank rate was 1 USD = ₹ 73	

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5.	*Integrated tax*	*12%*
6.	*Social Welfare surcharge as applicable*	

Compute the amount of total customs duty and integrated tax payable on importation of chalices. Make suitable assumptions where required. Working notes should form part of your answer.

Note: Ignore GST Compensation Cess.

Answer

Computation of total customs duty and integrated tax payable

Particulars	**Amount**
FOB value computed by Customs Officer (including design and development charges)	20,000 US $
Exchange rate [Note 1]	₹ 70 per $
	₹
FOB value computed by Customs Officer (in rupees)	14,00,000.00
Add: Commission payable to agent in India	12,500.00
FOB value as per customs	14,12,500.00
Add: Air freight (₹ 14,12,500 × 20%) [Note 2]	2,82,500.00
Add: Insurance (1.125% of ₹ 14,12,500) [Note 3]	15,890.63
CIF value for customs purposes	17,10,890.63
Assessable value	17,10,890.63
Add: Basic custom duty @ 10% (₹17,10,890.63× 10%) – rounded off [Note 4]	1,71,089
Add: Social Welfare surcharge @ 10% on ₹ 1,71,089 rounded off	17,109
Total	18,99,089

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Integrated tax @ 12% (₹18,99,089× 12%) [Rounded off] [Note 5]	2,27,890
Total customs duty and integrated tax payable (₹ 1,71,089 + ₹ 17,109 + ₹ 2,27,890)	**4,16,088**

Note:

1. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
2. In case of goods imported by air, freight cannot exceed 20% of FOB value [fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].
5. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

Illustration 14

Mr. Backpack imported second-hand goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

Particulars	***Contract Price (£)***	***Changed Price (£)***	***Negotiated Price (£)***
CIF Value	*5000*	*5800*	*5500*
Air Freight	*300*	*600*	*500*
Insurance	*500*	*650*	*600*

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Other details for computing assessable value and duty payable are tabled below:

Particulars	***Amount***
Vendor inspection charges (inspection carried out by foreign supplier on his own, not required under contract or for making the goods ready for shipment)	*£ 600*
Commission payable to local agent @ 1% of FOB in local currency	

Date of bill of entry	***Basic customs duty***	***Exchange rate in ₹ (notified by CBIC)***
18.02.20XX	*10%*	*102*
Date of arrival of aircraft	***Basic custom duty***	***Exchange rate in ₹ (notified by CBIC)***
15.02.20XX	*15%*	*98*

Inter-bank rate 1 UK Pound = ₹ 106

Compute the assessable value and calculate basic customs duty payable by Mr. Backpack.

Answer

Computation of custom duty payable

Particulars	**Amount (£)**
CIF value (negotiated price) [Note-1]	5,500
Less: Air freight	500
Less: Insurance	600
FOB value	4,400
Add: Vendor inspection charges [Note-2]	Nil
FOB value as per Customs	4,400
Freight [Note-3]	500

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Insurance [Note-4]	600
	5,500
Exchange rate is ₹ 102 per £ [Note-5]	
	₹
Value in rupees	5,61,000.00
Add: Commission payable to local agent [1% of FOB value] [Note-6] = (US $ 4,400 × ₹ 102) × 1%	4,488.00
Total	5,65,488.00
Assessable value	5,65,488.00
Add: Basic custom duty @ 10% [Note-7] – rounded off	56,548.80
Social Welfare Surcharge (10% of ₹ 56,548.80) [rounded off]	5,655.00
Customs duty payable [rounded off]	62,204.00

Notes:

1. As per Section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
2. Only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value under rule 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods [*Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)].*
3. Actual amount incurred towards freight will be considered since freight is not more than 20% of FOB value [Fifth proviso to rule 10(2) of Customs Valuation Rules].
4. Actual insurance charges paid are includible in the assessable value as per rule 10(2)(b) of the Customs Valuation Rules.

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5. Rate of exchange notified by CBIC on the date of filing of bill of entry will be considered as per third proviso to section 14 of the Customs Act, 1962.

6. Commission paid to local agent (since it is not buying commission) is includible in the assessable value on the presumption that local agent has been appointed by the exporter [Rule 10(1)(a)(i) of the Customs Valuation Rules].

7. As per proviso to section 15 of the Customs Act, 1962, rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later.

Illustration 15

F. Ltd. imported a machine from UK in May, 20XX. The details in this regard are as under:

(i) FOB value of the machine: 10,000 UK Pound

(ii) Freight (Air): 3,000 UK Pound

(iii) Licence fee, the buyer was required to pay in UK: 400 UK Pound

(iv) Buying commission paid in India ₹ 20,000

(v) Date of bill of entry was 20.05.20XX and the rate of exchange notified by CBIC on this date was ₹ 99.00 per one pound. Rate of BCD was 7.5%.

(vi) Date of arrival of aircraft was 25.05.20XX and the rate of exchange notified by CBIC on this date was ₹ 98.50 per pound and rate of BCD was 10%.

(vii) Integrated tax was 12% and ignore GST Compensation Cess.

(viii) Insurance premium details were not available.

You are required to compute the total customs duty and integrated tax payable on the importation of machine. You may make suitable assumptions wherever required.

Answer

Computation of assessable value and total customs duty and integrated tax payable by F Ltd.

Particular	Amount (£)
FOB value	10,000
Add: License fee required to be paid in UK [Note – 1]	400

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Customs FOB value	10,400
Exchange rate is ₹ 99 per £ [Note – 2]	
	₹
Value in rupees	10,29,600.00
Add: Air freight [Restricted to 20% of ₹ 10,29,600 (customs FOB value)] [Note – 3]	2,05,920.00
Insurance @ 1.125% of ₹ 10,29,600 [Note – 4]	11,583.00
Buying commission is not includible in the assessable value [Note – 5]	-
CIF Value	12,47,103.00
Assessable value	12,47,103.00
Rate of duty is 10% [Note – 6]	
Add: Basic custom duty @ 10% (₹ 12,47,103 × 10%) – rounded off (A)	1,24,710
Add: Social Welfare Surcharge (10% of ₹ 1,24,710) [rounded off] (B)	12,471
Value for integrated tax	13,84,284
Add: Integrated tax @ 12% -rounded off (C) [Note – 7]	1,66,114
Total customs duty and integrated tax payable [(A) + (B) + (C)]	**3,03,295**

Note:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value - Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [hereinafter referred to as Customs Valuation Rules].

2. Rate of exchange notified by CBIC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].

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3. In case of goods imported by air, freight cannot exceed 20% of FOB value [Fifth proviso to rule 10(2) of the Customs Valuation Rules].

4. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation Rules].

5. Buying commission is not included in the assessable value [Clause (a)(i) of sub-rule (1) of rule 10 of the Customs Valuation Rules].

6. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15 of the Customs Act, 1962].

7. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.



11. SPECIAL PROVISIONS FOR CLASSIFICATION OF SETS OF ARTICLES AND ACCESSORIES

Section 19 of the Customs Act provides that:

Except as otherwise provided in any law for the time being in force, where goods consist of a set of articles, duty shall be calculated as follows: -

(a) Articles liable to duty with reference to quantity shall be chargeable to that duty;

(b) Articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;

(c) Articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b).

However, -

(a) Accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;

(b) If the importer produces evidence to the satisfaction of the proper officer or the evidence is available regarding the value of any of the articles liable to

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different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

As per the Accessories (Conditions) Rules, 1963, accessories of and spare parts and maintenance or repairing implements for, any article when imported along with that article shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade such accessories, parts and implements are compulsorily supplied along with that article and no separate charge is made for such supply and their price being included in the price of the relevant article.

Relevant Case Law:

CC Vs M/s Denso Kirloskar Industries Pvt Ltd dated 13.08.2015

Consideration paid for the technical know-how - the technical information which was to be provided by the Japanese company to the respondent was for the manufacture of the contract products by the respondent herein, naturally, after the setting up of the plant. This cost is, thus, incurred after the importation of the goods and therefore cannot be loaded on to the assessable value of the imported goods. The matter is squarely covered by the judgment of the Court in the case of *'Commissioner of Customs, Ahmedabad v. M/s. Essar Steel Limited ' 2015 (319) ELT 202 (SC).*

Mangalore Refineries and Petrochemicals Ltd Vs CC 2015(323) ELT 433 (SC) dated 02.09.2015

Quantity or Price - Duty is payable on the quantity received in India, not the quantity exported from another country. It is clear that the levy of customs duty under Section 12 is only on goods imported into India. Goods are said to be imported into India when they are brought into India from a place outside India. Unless such goods are brought into India, the act of importation which triggers the levy does not take place. If the goods are pilferred after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India and until the act of importation is complete which under Sections 13 and 23 happens only after an order for clearance for home consumption is made and/or an order permitting the deposit of goods in a warehouse is made. Under Section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the goods and shall not be liable to pay any duty thereon.

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In short, he may abandon the said goods even after they have physically landed at any port in India but before any of the aforesaid orders have been made. This again is for the good reason that the act of importation is only complete when goods are in the hands of the importer after they have been cleared either for home consumption or for deposit in a warehouse. Further, as per Section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption. Obviously, the quantity of goods imported will be the quantity of goods at the time they are entered for home consumption.

TEST YOUR KNOWLEDGE

1 Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007:

(i) Goods of the same class or kind

(ii) Computed value

2. Whether the assessable value of the warehoused goods which are sold before being cleared for home consumption, should be taken as the price at which the original importer has sold the goods?

3. Explain when are the costs and services as given in rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 be added to the value of the identical goods under rule 4.

4. Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons:

(i) Service charges paid to canalizing agent are not includible in the assessable value of imports. Such agent imports the goods from foreign sellers and enters into an agreement to sell such goods with buyers in India in high seas.

(ii) Charges for "vendor inspection" on the second hand goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods.

5. An importer entered into a contract for supply of crude sunflower seed oil @ U.S. $ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July. The period was extended by mutual agreement and goods were shipped on 5th August at old prices.

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In the meanwhile, the international prices had gone up due to volatility in market and other imports during the month of August were at higher prices. Department sought to increase the assessable value on the basis of the higher prices of contemporaneous imports.

Decide whether the contention of the Department is correct, with reference to a decided case law, if any.

6. BSA & Company Ltd. has imported a machine from U.K. From the following particulars furnished by it, arrive at the assessable value for the purpose of customs duty payable.

	Particulars	Amount
(i)	Price of the machine	10,000 U.K. Pounds
(ii)	Freight (air)	3,000 U.K. Pounds
(iii)	Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv)	License fee relating to imported goods payable by the buyer as a condition of sale	20% of Price of machine
(v)	Materials and components supplied in UK by the buyer free of cost valued at ₹ 20,000	
(vi)	Insurance paid to the insurer in India	₹ 6,000
(vii)	Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other particulars:

(i) Inter-bank exchange rate: ₹ 98 per U.K. Pound.

(ii) CBIC had notified for purpose of section 14 of the Customs Act, 1962, exchange rate of ₹ 100 per U.K. Pound.

(iii) Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations)

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7. Briefly explain with reference to the provisions of the Customs Act, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle.

8. With reference to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, explain briefly the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value.

9. Jagat Corporation Limited imported some goods from US. The details of the transaction are as follows:-

Authority	Rate of exchange
CBIC	1 US $=₹ 70
RBI	1 US $=₹ 71

CIF value of the goods is $ 1,50,000

Rate of basic custom duty is 10%

Rate of social welfare surcharge is 10%

Integrated tax is 18%. Ignore GST Compensation Cess.

Calculate total customs duty and integrated tax payable thereon.

10. ABC Industries Ltd. imports an equipment by air. CIF price of the equipment is 6,000 US$, freight paid is 1,200 US$ and insurance cost is 1,800 US$. The banker realizes the payment from importer at the exchange rate of ₹ 61 per US$. Central Board of Indirect taxes and Customs notifies the exchange rate as ₹ 70 per US$ while rate of exchange notified by RBI is ₹ 72 per US$. ABC Industries Ltd. expends ₹ 56,000 in India for certain development activities with respect to the imported equipment.

Basic customs duty is 10%, Integrated tax is leviable @ 12% and social welfare surcharge is 10% on duty. Ignore GST Compensation Cess.

You are required to compute the amount of total duty and integrated tax payable by ABC Industries Ltd. under Customs law.

11. Compute the total customs duty and integrated tax payable under Customs law on an imported machine, based on the following information:

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		US $
(i)	Cost of the machine at the factory of the exporter	20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	800
(iii)	Handling charges paid for loading the machine in the ship	50
(iv)	Freight charges from exporting country to India	5,000
(v)	Buying commission paid by the importer	100
		(₹)
(vi)	Lighterage charges paid by the importer at port of importation	12,000
(vii)	Freight incurred from port of entry to Inland Container depot	60,000
(viii)	Ship demurrage charges paid at port of importation	24,000
Date of bill of entry	20.01.20XX (Rate BCD 20%; Exchange rate as notified by CBIC ₹ 70 per US $)	
Date of entry inward	25.03.20XX (Rate of BCD 10%; Exchange rate as notified by CBIC ₹ 75 per US $)	
Integrated tax	12%	

Note: Ignore GST Compensation Cess.

12. Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

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Kaveri Enterprises contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any.

13. M/s Impex imported some consignment of goods on 01.6.20XX. A bill of entry for warehousing of goods was presented on 05.6.20XX and the materials were duly warehoused. The goods were subject to duty @ 50% ad valorem. In the meanwhile, on 01.07.20XX, an exemption notification was issued reducing the effecting customs duty @ 30%, ad valorem. M/s Impex filed their bill of entry for home consumption on 01.08.20XX claiming duty @ 30% ad valorem. However, Customs Department charged duty @ 50% ad valorem being the rate on the date of clearance into the warehouse.

    Explain with reference to the provisions of the Customs Act, 1962:

    (i) the rate of duty applicable for clearance for home consumption in this case.

    (ii) whether the rate of exchange on 01.08.20XX could be adopted for purpose of conversion of foreign currency into local currency?

14. Differentiate between deductive value and computed value.

15. What is residual method of valuation? Discuss with reference to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

16. Enumerate the various costs and services that are to be added under rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to arrive at the "transaction value".

17. In the context of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, explain the meaning of:

    (i) Similar goods

    (ii) Identical goods

18. Briefly discuss the provisions relating to date for determining the rate of duty and tariff valuation of imported goods.

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ANSWERS/HINTS

1. **(i)** As per rule 2(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(ii) As per rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with rule 8. The value of imported goods is taken as computed value when valuation is not possible as per any of rules earlier than rule 8 and cost is ascertainable.

As per rule 8, subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of –

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

2. Section 14 of the Customs Act provides that the value of the imported goods shall be the transaction value of goods which is the price actually paid or payable for the goods *when sold for export to India* for delivery at the time and place of importation. The sale of goods after warehousing them in India cannot be considered a sale for export to India. It cannot be stated that the export of goods is not complete even after the imported goods were cleared for warehousing in the country of import. Hence, the price at which the imported goods are sold after warehousing them in India does not qualify to be the transaction value as per section 14. This has been clarified vide *Circular No. 11/2010 Cus. dated 03.06.2010.*

3. As per rule 4(1)(c) of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007) where imported goods are being valued as per rule 4, the value of the identical goods is adjusted to take into account

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the difference attributable to the commercial level or to the quantity or both. According to rule 4(2) where costs and charges referred to in rule 10 are included in the value of identical goods, adjustment has to be made of the difference in such costs and charges between the imported goods and the identical goods.

Therefore, if the value of the identical goods does not include certain specific costs and charges relating to the imported goods, these are to be included as per rule 10.

4. **(i)** The statement is not valid. Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases in bulk by canalizing agency from foreign seller and subsequent sale by it to Indian importer on high seas sale basis are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission *[Hyderabad Industries Ltd. v. UOI 2000 (115) ELT 593 (SC)]*.

(ii) The statement is valid. As per rule 10(1)(e) of the Customs (Determination of Value of Imported Goods) Rules, 2007, only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value.

Thus, charges of vendor inspection on the goods carried out by foreign supplier on his own and not required for making the goods ready for shipment, are not includible in the assessable value of the imported goods *[Bombay Dyeing & Mfg. v. CC 1997 (90) ELT 276 (SC)]*.

5. No, the contention of the Department is not correct.

The facts of the given case are similar to the case of *CCus., Vishakhapatnam v. Aggarwal Industries Ltd. 2011 (272) E.L.T. 641 (SC)*. The Supreme Court, in the instant case, observed that since the contract entered into for supply of crude sunflower seed oil @ US $ 435 CIF/metric ton could not be performed on time, the extension of time for shipment was agreed upon by the contracting parties.

The Supreme Court pointed out that the commodity involved had volatile fluctuations in its price in the international market, but having delayed the shipment; the supplier did not increase the price of the commodity even after the increase in its price in the international market.

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Further, there was no allegation regarding the supplier and importer being in collusion. Thus, the appeal was allowed in the favour of the assessee and the contract price was accepted as the 'transaction value'.

6. Computation of assessable value of machine imported by BSA & Co.

Particulars	Amount (£)
Price of the machine	10,000
Add: Engineering and design charges paid in UK [Note 1]	500
Licence fee relating to imported goods payable by the buyer as a condition of sale (20% of Price of machine) [Note 1]	2,000
Total	12,500
	Amount (₹)
Value in Indian currency [£12,500 x ₹100] [Note 2]	12,50,000
Add: Materials and components supplied by the buyer free of cost [Note 1]	20,000
FOB	12,70,000
Add: Freight [Note 3]	2,54,000
Insurance paid to the insurer in India [Note 1]	6,000
CIF value	15,30,000
Assessable value	15,30,000

Notes:

1. Engineering and design charges paid in UK, licence fee relating to imported goods payable by the buyer as a condition of sale, materials and components supplied by the buyer free of cost and actual insurance charges paid are all includible in the assessable value [Rule 10 of the Customs (Determination of Value of Imported Goods) Rules, 2007].

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2. As per Explanation to section 14(1) of the Customs Act, 1962, assessable value should be calculated with reference to the rate of exchange notified by the CBIC.

3. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

4. Buying commission is not included in the assessable value [Rule 10(1)(a) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

5. Only ship demurrage charges on chartered vessels are included in the cost of transport of the imported goods. Thus, demurrage charges for delay in clearing the machine from the Airport will not be includible in the assessable value [Explanation to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].

7. As per section 15(1) of the Customs Act, 1962, the relevant date for determination of rate of duty and tariff valuation of goods entered for imports through a vehicle is the date of presentation of bill of entry OR date of arrival of the vehicle, whichever is later.

Therefore, the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle will be the date of the arrival of the vehicle.

8. As per explanation to rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the chief reasons on the basis of which the proper officer can raise doubts on the truth or accuracy of the declared value may include:-

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

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(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

9. Computation of total custom duty and integrated tax payable

Particulars	Amount
CIF Value	$ 1,50,000.00
Assessable value (in ₹) =$1,50,000 × ₹ 70 (Note -1)	₹ 1,05,00,000.00
Add: Basic custom duty @ 10% (₹ 1,05,00,000 × 10%)	₹ 10,50,000.00
Add: Social Welfare surcharge [₹10,50,000 × 10%]	₹ 1,05,000
Sub-total	1,16,55,000.00
Add: Integrated tax (₹ 1,16,55,000 × 18%) (Note-2)	₹ 20,97,900.00
Total custom duty and integrated tax payable (rounded off)	**₹ 32,52,900**

Notes:-

(1) The applicable exchange rate is the rate notified by CBIC [Explanation to section 14(1) of the customs Act, 1962].

(2) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

10. Computation of customs duty and integrated tax payable by ABC Industries Ltd.

Particulars	Amount
CIF value	6,000 US $
Less: Freight	1,200 US $
Less: Insurance	1,800 US $
FOB value	3,000 US $
Add: Freight (20% of FOB value) [Note 1]	600 US $

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Add: Insurance (actual)	1,800 US $
CIF	5,400 US $
Exchange rate as per CBIC [Note 3]	₹ 70 per US $
Assessable value = ₹ 70 x 5,400 US $	₹ 3,78,000
Add: Basic customs duty @ 10%	₹ 37,800
Add: Social Welfare Surcharge @ 10%	₹ 3,780
Sub-total	₹ 4,19,580
Integrated tax @ 12% of ₹ 4,19,580[Note 5]	₹ 50,349.60
Total customs duty and integrated tax payable [₹37,800 + ₹ 3,780 + ₹ 50,349.60]	₹ 91,929.60
Total customs duty and integrated tax payable (rounded off)	₹ 91,930

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
2. Rate of exchange determined by CBIC is considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
3. Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 *inter alia* provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges of ₹ 56,000 paid for work done in India have not been included for the purposes of arriving at the assessable value.
4. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.

11. Computation of customs duty and integrated tax payable on the imported goods

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Particulars	US $
Cost of the machine at the factory	20,000
Transport charges up to port	800
Handling charges at the port	50
FOB	20,850
FOB value in Indian rupees @ ₹ 70/- per $ [Note 1]	14,59,500
Freight charges up to India [US $ 5,000 x ₹ 70]	3,50,000
Lighterage charges paid by the importer [Note 2]	12,000
Ship demurrage charges on chartered vessels [Note 2]	24,000
Insurance charges @ 1.125% of FOB [Note 3]	16,419.38
CIF	18,61,919.38
Add: Basic customs duty @ 10% [Note 4] **[a]**	1,86,192
Add: Social Welfare surcharge @ 10% **[b]**	18,619.20
Total	20,66,730.58
Add: Integrated tax @ 12% of ₹ 20,66,730.58 **[c]** [Note 5]	2,48,007.67
Total custom duty and integrated tax payable [(a) +(b) + (c)] rounded off	**4,52,819**

Notes:

(1) Rate of exchange notified by CBIC on the date of presentation of bill of entry is considered [Explanation to section 14 of the Customs Act, 1962].

(2) Cost of transport of the imported goods includes ship demurrage charges and lighterage charges [Explanation to Rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

(3) Insurance charges is included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

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(4) Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later [Section 15 of the Customs Act, 1962].

(5) Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable Social welfare surcharge.

(6) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

(7) Freight incurred from port of entry to Inland Container depot is not includible in assessable value [Rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

12. The facts of the given case are similar to the case of *Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)* decided by the Supreme Court. In the instant case, the Supreme Court observed that since Revenue did not supply the copy of the computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions.

The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and they should have been given reasonable opportunity to establish that the import transactions were not comparable.

In view of the above-mentioned judgment, contention of Kaveri Enterprises is correct.

13. (i) Section 15(1)(b) of the Customs Act, 1962 provides that in the case of goods cleared from a warehouse, rate of duty applicable is the rate of duty in force on the date on which a bill of entry for home consumption in respect of such goods is presented.

In the given case, since M/s Impex has filed the bill of entry for home consumption on 01.08.20XX, rate of duty is the rate prevalent on the said date viz. 30%.

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(ii) Third proviso to section 14 of the Customs Act, 1962 provides that the rate of exchange notified by the CBIC as prevalent on the date of presentation of bill of entry for warehousing is the applicable rate of exchange for conversion of foreign currency into local currency.

Therefore, in the given case, rate of exchange that would be prevalent on date of presentation of bill of entry for warehousing i.e. 05.06.20XX and not the one prevalent on date of presentation of bill of entry for home consumption i.e., 01.08.20XX, would be adopted.

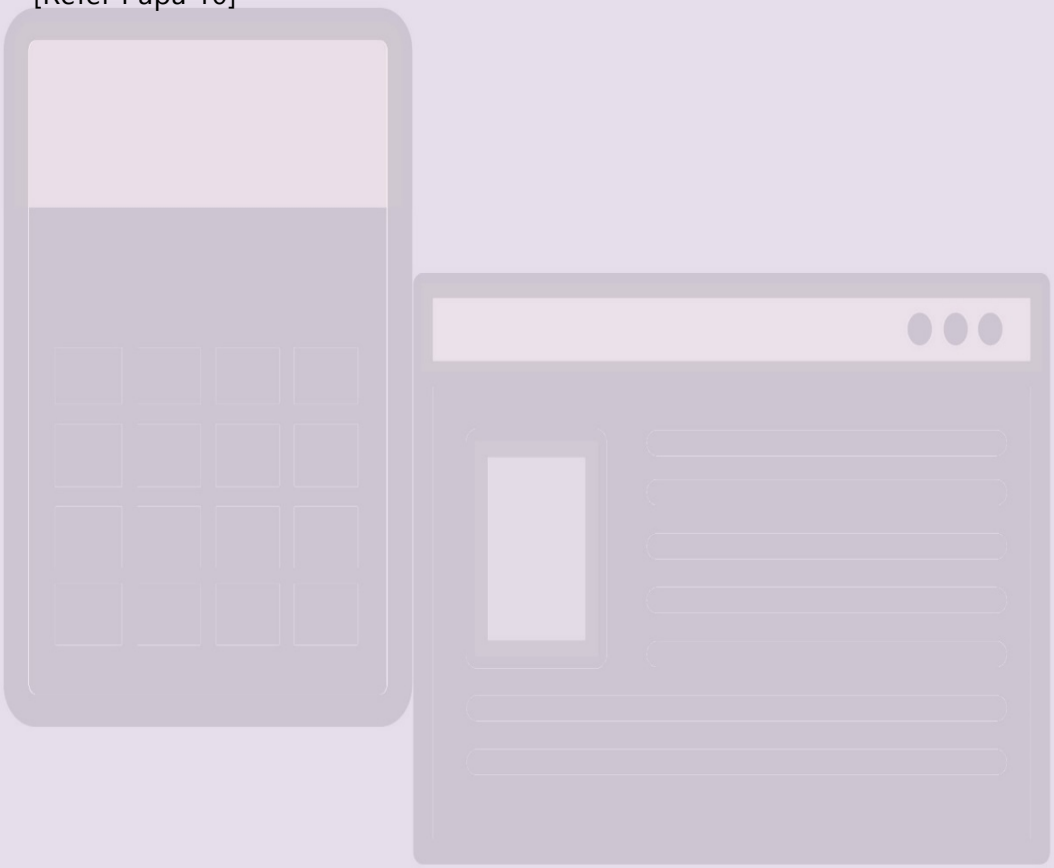
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18. [Refer Papa 10]



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SIGNIFICANT SELECT CASES

1. Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?

Gira Enterprises v. CCus. 2014 (307) ELT 209 (SC)

Facts of the Case: The appellant imported some goods from China. On the basis of certain information obtained through a computer printout from the Customs House, Department alleged that during the period in question, large number of such goods were imported at a much higher price than the price declared by the appellant. Therefore, Department valued such goods on the basis of transaction value of identical goods as per erstwhile rule 5 [now rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007] and demanded the differential duty alongwith penalty and interest from the appellant. However, Department did not provide these printouts to the appellant.

The appellant contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printout which formed the basis of such demand had not been supplied to them. Resultantly, the appellant had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time.

Supreme Court's Observations: Supreme Court observed that since Revenue did not supply the copy of computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions.

Supreme Court's Decision: The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.

***Note**: This case establishes the principle that the onus to prove that identical goods have been imported at a price higher than the value of the goods declared by the importer, lies with the Department.*

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CHAPTER 5

IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the statutory provisions pertaining to importation and exportation.
- Comprehend the duties and obligations of a person-in-charge of a conveyance bringing goods into or taking goods out of India.
- understand and apply the procedure for clearance of imported goods and export goods.
- understand the provisions relating to postal articles and stores.
- understand and apply the procedures relating to clearance of baggage.
- analyse the statutory provisions pertaining to transit and transhipment and appreciate the difference between the two.

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1. INTRODUCTION

The principles governing levy and exemption from customs duties have already been discussed in the previous chapters. There are various procedures under the Customs Act which govern assessment, collection, transportation and other important aspects. The procedures relating to assessment and collection of customs duty are discussed in this chapter.

The provisions relating to transportation are well understood when studied with the importation and exportation procedures since both chapters are governed by the same legal provisions. Hence the procedures relating to transportation have been covered in the current chapter under the relevant headings.

2. IMPORTATION

In this chapter, we will consider the procedure for assessment and collection of customs duty in respect of the following six situations of imports:

1. Goods imported by Sea
2. Goods imported by Air
3. Goods imported by Land
4. Goods imported by Post
5. Goods imported by passengers as their baggage
6. Ship stores considered to be imported and charged to customs duty

Special provisions have been made in respect of the latter three kinds of imports though they will necessarily be covered in one of the three earlier categories.

3. DEFINITIONS OF IMPORTANT TERMS

- **Adjudicating authority [Section 2(1)]:** means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal. The adjudicating authority can adjudicate demand of customs duty, confiscation and penalties under Customs Act.
- **Assessment [Section 2(2)]:** "Assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975

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(hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to —

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

and includes provisional assessment, self-assessment, reassessment and any assessment in which the duty assessed is nil.

- **Baggage [Section 2(3)]:** includes unaccompanied baggage but does not include motor vehicles.
- **Beneficial owner [Section 2(3A)]:** "Beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.
- **Bill of entry [Section 2(4)]:** means a bill of entry referred to in section 46, to be filed when goods are imported by sea or air. This is not to be confused with bill of lading, which is a receipt issued by the carrier to the consignor for the goods.
- **Bill of export [Section 2(5)]:** means a bill of export referred to in section 50.to be filed when goods are exported *via* land route.

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- **Coastal goods [Section 2(7)]:** means goods, other than imported goods, transported in a vessel from one port in India to another.
- **Conveyance [Section 2(9)]:** includes a vessel, an aircraft and a vehicle.
- **Customs airport [Section 2(10)]:** "customs airport" means any airport appointed under clause (a) of Section 7 to be a customs airport and includes a place appointed under clause (aa) of that section to be an air freight station.
- **Customs area [Section 2(11)]:** "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.
- **Customs port [Section 2(12)]:** means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.
- **Customs Station [Section 2(13)]:** means any customs port, customs airport, international courier terminal, foreign post office or land customs station.
- **Dutiable goods: [Section 2(14)]** means any goods:-

  (a) which are chargeable to duty and

  (b) on which duty has not been paid.

  In order to be dutiable, any article must first satisfy both the following conditions:-

  (i) The article should fall within the ambit of the word goods [defined under sec 2(22)].

  (ii) The article should find a mention in the Customs Tariff.
- **Entry [Section 2(16)]:** in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84.
- **Exporter [Section 2(20)]: "**Exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.
- **Foreign Post Office [Section 2(20A)]:** means any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office.

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Foreign going vessel or aircraft: [Section 2(21)] means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not

includes-

- any naval vessel of any foreign Government taking part in any naval exercise;
- any vessel engaged in fishing or any other operations outside the territorial waters of India;
- any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

Hence, the definition consists of two limbs:-

(a) The first limb applies to the vessel/aircraft for the time being engaged in the carriage of passengers/goods between any port/airport in India and any port/airport outside India.

(b) The second limb covers other vessels which are which are proceeding to a place outside India or engaged in activities outside the territorial waters of India or which are foreign naval vessels taking part in a naval exercise.

Goods: [Section 2(22)] "Goods" includes

(a) vessels, aircrafts and vehicles

(b) stores

(c) baggage

(d) currency and negotiable instruments and

(e) any other kind of movable property.

Import: [Section 2(23)] with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

The definition of imports is not restricted only to commercial imports. It only means bringing of goods from any place outside India into India.

The meaning of import has been one of the most contentious issues in Customs. There are two school of thoughts. One school of thought is that import gets completed when the vessel carrying goods crosses the territorial

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waters of India. The other school of thought is that the import is complete only when the goods mingle with the landmass of India. Now the settled law is in favour of second school of thought. It has been held in *Garden Silk Mills v. UOI 1999 (113) ELT 358 (SC)* that import of goods into India commences when the goods enter the territorial waters of India, but continue and complete only when the goods become part of mass of goods within the country. The taxable event occurs only when the goods reaches the customs barrier and the bill of entry for home consumption is filed.

- **Import report [Section 2(24)]:** means the report required to be delivered under section 30. It may be noted that import report is required only when goods are imported *via* land route.

- **Imported Goods: [Section 2(25)]** means any goods brought into India from a place outside India but does not include goods, which have been cleared for home consumption.

- **Importer: [Section 2(26)]:-** "Importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

  The definition of importer includes not only the owner but also any other person holding out to be an importer. Owner is a person who is holding the documents of title to the goods. This will include a high sea buyer.

  However, importer also includes any person holding himself to be the importer for purpose of clearance of goods. This is the person who files the import documents.

  However, between the two, the owner takes precedence over person holding himself out to be the importer *[Union of India v Sampath Raj Dugar, 1991 (56) ELT 739 (Bom)]* The goods being abandoned by original importer, ownership thereof continues to vest in foreign supplier. The goods transferred to petitioner and petitioner holding document of title to be regarded as 'importer' under Section 2(26) of the Customs Act, 1962. *[Agrim Sampada Ltd v Union of India, 2004 (168) ELT 15 (Del)]*

- **India: [Section 2(27)]** includes the territorial waters of India.

  The definition of India is an inclusive definition and includes not only the land mass of India but also the territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the appropriate base line.

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- **International Courier Terminal [Section 2(28A)]:** means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal.

- **Person-in-charge: [Section 2(31)]**

S.No.	In relation to	Person-in-charge means
1.	vessel	the master of the vessel
2.	aircraft	the commander or the pilot-in-charge of the aircraft
3.	railway train	the conductor, guard or other person having the chief direction of the train
4.	any other conveyance	the driver or other person-in-charge of the conveyance

- **Prohibited goods [Section 2(33)]:** means any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

- **Stores [Section 2(38)]:** means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

  The definition does not cover goods for use in a vehicle.

- **Vehicle [Section 2(42)]:** means conveyance of any kind used on land and includes a railway vehicle.

4. STATUTORY PROVISIONS

From the above it is seen that import is an act of bringing anything into India from a place outside India and it gets completed once the goods culminate with the land mass of India. Also goods include Vessels, Aircrafts, Vehicles, Stores, Baggage, Currency, and other movable property and are subject to duty of Customs. The provisions for procedure for importation of goods are given in section 29 to 38 and

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46 to 49 of Customs Act, 1962. The same has been discussed in detail in the subsequent paragraphs.

ARRIVAL OF VESSELS AND AIRCRAFTS IN INDIA [SECTION 29]

This section provides that the person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land -

(a) for the first time after arrival in India; or

(b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft;

at any place other than a customs port or a customs airport, as the case may be, unless permitted by the Board.

In other words, vessels or aircrafts entering India from outside India can only call or land at a customs port or a customs airport. However, the Central Board of Indirect taxes and Customs can permit calling/landing of vessels and aircrafts at any place other than customs port or customs airport. Any contravention of this provisions will operate as a presumption against the person-in-charge of conveyance or beneficial owner to have an intention to illegally imports goods into India. So, entry (or attempt to enter) goods originating from outside India into any place not notified as a customs station is barred.

Exception: The above provisions are not applicable in relation to any vessel or aircraft, which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport. However, the person-in-charge of the vessel has the following obligation cast on him:

1. He will have to report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or officer in charge of police station and produce the log book if demanded.
2. He should not allow any unloading of goods without permission and should not allow any passengers or crews to leave the immediate vicinity of the vessel or aircraft. However, the goods can be removed, or the passengers and crews can be allowed to depart if the same is necessary for reason of health, safety or preservation of life or property.
3. He should comply with all the directions given by such officers with respect to any such goods.

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DELIVERY OF ARRIVAL MANIFEST OR IMPORT MANIFEST OR IMPORT REPORT [SECTION 30]

After ensuring that the vessels are landed only in approved customs port or airports, further duty is cast upon the person in charge of the vessel to deliver the arrival manifest or import manifest.

Arrival manifest or import manifest or import report is a detailed information to customs about goods in the vessels/air crafts which have been brought in at any port/airport for unloading at that particular port/international airport as also that which would be carried further for other ports/airports. Declarations of such cargo has to be made in a prescribed form (which is termed 'Import General Manifest' or IGM*)* and in prescribed manner. Imports via land route require filing of declaration (called 'Import Report'). Goods involved in an export may be carried in the conveyance (vessel or other) without being delivered in India. The IM/IR must also contain details of goods meant for export and carried by the conveyance. Similar provision for including 'import goods' is required by section 41 regarding manifest to be filed for dispatch of goods.

Time limit for delivery of IGM/IR: The person-in-charge of a vessel, or an aircraft, or a vehicle, carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an arrival manifest or import manifest by presenting electronically prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form.

Particulars	Import Document	Time limit for presentation of IM/IR	Mode of presentation
Where the imported goods are brought in a vessel	Arrival manifest or import manifest	Any time prior to the arrival of the vessel	Electronic filing*
Where the imported goods are brought in an aircraft	Arrival manifest or import manifest	Any time prior to the arrival of the aircraft	Electronic filing*
Where the imported	Import Report	Within twelve	Manual filing

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goods are brought in a vehicle		hours after its arrival in the customs station	

*Note: In cases where it is not feasible to deliver arrival manifest or import manifest by presenting them electronically, the Principal Commissioner/Commissioner of Customs may, allow the same to be delivered in any other manner.

If the arrival manifest or import manifest or the import report or any part thereof, is not delivered to the proper officer within the specified time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge would be liable to a penalty up to ₹ 50,000. The person delivering the arrival manifest or import manifest or import report shall make and subscribe a declaration as to the truth of its contents as a footnote thereof.

Belated filing of IGM: Arrival manifest or import manifest/Report filed belatedly may also be accepted by the proper officer on valid justified grounds.

Amendment to IGM: If the proper officer is satisfied that the arrival manifest or import manifest or import report is in any way incorrect or incomplete and there is no fraudulent intention, he may permit it to be amended or supplemented. [Section 30(3)].

Subsequent amendment of IGM will not be treated as late filing. [CBIC's Customs Manual 2015, chapter 2] However, the CBIC has cautioned (circular *supra*) that this should not be used to circumvent the penal provisions for late filing.

PASSENGER AND CREW ARRIVAL MANIFEST AND PASSENGER NAME RECORD INFORMATION. [SECTION 30A]

The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified, shall deliver to the proper officer—

(i) the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and

(ii) the passenger name record information* of arriving passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other specified person shall be liable to such penalty, not exceeding ₹ 50,000, as may be prescribed.

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*Passenger name record information [Section 2(30B)]: means the records prepared by an operator of any aircraft or vessel or vehicle or his authorized agent for each journey booked by or on behalf of any passenger.

IMPORTED GOODS NOT TO BE UNLOADED FROM VESSEL UNTIL ENTRY INWARDS GRANTED [SECTION 31]

This section provides that the master of a vessel shall not permit the unloading of any goods until an order has been given by the proper officer granting ENTRY INWARDS to such vessels. This is specified only for vessels and not for aircrafts or vehicles. Application for entry inward has to be submitted along with the import manifest in the prescribed form and will be allowed by the proper officer of customs upon verification. The date of entry inward is entered in the customs record maintained for the purpose.

Section 31(2) provides that Entry Inwards shall not be given until the arrival manifest or import manifest has been delivered or the proper officer is satisfied that a valid reason is given for not delivering it within prescribed time. Grant of Entry Inwards is an acknowledgement of the fact that Customs Department is ready to supervise the unloading of the cargo, and is prepared to assess the goods to duty. It is not given if there is no berth for the ship to dock *[Bharat Surfactants Pvt Ltd v Union of India, 1989 (43) ELT 189 (SC)]*; or if customs supervision is not possible for other reasons *[SRS Engineering Industries v Secretary, Ministry of Finance 2009 (245) ELT 143 (Del)]*. Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

Entry inwards date is crucial for the calculation of applicable rate of duty whenever bill of entry has been filed in advance.

Section 31(3) excludes certain items from the scope of the section. It provides that the provisions of the section will not apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

IMPORTED GOODS NOT TO BE UNLOADED UNLESS MENTIONED IN ARRIVAL MANIFEST OR IMPORT MANIFEST OR IMPORT REPORT [SECTION 32]

Without the permission of the proper officer, the imported goods cannot be unloaded, unless they are mentioned in the Import General Manifest for being unloaded in that customs station.

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LOADING AND UNLOADING OF GOODS AT APPROVED PLACES ONLY [SECTION 33]

Section 33 provides that loading and unloading of goods are to be undertaken only at places approved under section 8(a) of the Customs Act, 1962.

GOODS NOT TO BE LOADED OR UNLOADED EXCEPT UNDER THE SUPERVISION OF CUSTOMS OFFICER [SECTION 34]

Section 34 provides that loading and unloading of goods should be done under the supervision of the proper officer.

However, the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case, give special permission for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

In almost all major ports, customs officers are deployed at the wharfs and berths where the goods are imported or exported. These officers supervise all loading and unloading, and shipping operations.

RESTRICTIONS ON GOODS BEING WATER-BORNE [SECTION 35]

In certain circumstances (like size of vessel, hazardous nature of cargo etc) the vessel cannot be berthed at the port the cargo is ferried from or to the ships anchored at mid-sea to the port in boats, otherwise known as lighters.

Section 35 of the Customs Act stipulates that no imported goods shall be water borne for being loaded in any vessel, and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a boat note in the prescribed form. The Boat Notes Regulations 1976 prescribe the form and manner of issue of boat notes.

However, the board may, by notification give general permission and the proper officer may in any particular case, give special permission, for any goods or any class of goods to be water borne without being accompanied by a boat-note.

Other Controls

The following are further controls exercised on the conveyances and the loading/unloading of goods.

1. The goods cannot be loaded and unloaded on Sundays or other holidays observed by the Customs Department, or on any other day after the working hours unless the prescribed notice and the prescribed fee are paid. [Section 36]

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2. The proper officer may, at any time, board any conveyance carrying imported goods ore export goods and may remain on such conveyance for such period, as he considers necessary. [Section 37]

3. The proper officer may require the person in charge of any conveyance to produce any document or answer any questions and such person shall be bound to comply with the same. [Section 38]

5. PROCEDURE FOR CLEARANCE OF IMPORTED GOODS

The procedures for clearance of imported goods are contained in Section 45 to Section 49 of the Customs Act. These procedures are not applicable to Baggage and Goods imported or to be exported by post.

RESTRICTIONS ON CUSTODY AND REMOVAL OF IMPORTED GOODS [SECTION 45]

Once the imported goods have entered the Customs area, there arises the question of who is responsible for the safe custody of goods.

This section requires that until the imported goods are cleared for home consumption or are warehoused or are exported for transhipment, they shall remain in the custody of such person as may be approved by the Principal Commissioner/Commissioner of Customs [Section 45(1)]. This person is called the custodian. The responsibility of the custodian commences in respect of imported goods the moment the ship is berthed in the harbour or the goods are ready for unloading from the aircraft. In major ports, the Port Trust is the custodian. In Inland Container Depots, the Container Corporation of India, which operates the Container Freight Station (CFS) is the custodian of the imported cargo. In case of air cargo, the Airport Authority of India is the custodian in most airports. For goods brought by rail, the custodian is the Station Master.

Responsibility of Custodian of goods: During the time the goods are in the custody of the custodians, they have the following responsibilities [Section 45(2)].

1. Maintain a proper record of goods received from the carriers and send a copy of the record to the proper officer.

2. Not to permit such goods to be removed from the customs area or allow them to be dealt with otherwise except under the specific permission in

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writing of the proper officer or in accordance with a general procedure that may be prescribed that avoid subjectivity of the officer as to the manner of removal of such goods.

In pursuance to this responsibility, the custodian is required to tally the particulars of the goods landed by a vessel, and send a report known as out turn statement to the customs authorities. This enables the customs authorities to check whether all goods manifested in the import general manifest for landing in a particular palace have actually been landed. In case of the goods are not so landed, action is taken against the carriers.

Liability of the Custodians [Section 45(3)]

This provision provides that notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading in any customs area, while in the custody of the custodian, such custodian shall be liable to pay duty on such goods. Therefore, in respect of pilfered goods covered by section 13, the loss of revenue is compensated by the custodian. The duty shall be paid at the rate prevailing on the day of delivery of the arrival manifest or import manifest or as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which such goods were carried.

This provision is intended to make the custodian of the imported goods lying in customs area liable for duty even if they are pilfered when they were in their custody. Earlier, in the matter of pilfered goods, the government has been losing the revenue, while the importer's interest was protected.

Illustration 1

M/s Pipli Imports Ltd. imported certain goods, which were unloaded in the customs area on 01.10.20XX. When order for clearance was passed by proper officer on 05.10.20XX, it was found that there was some pilferage of such goods. As the imported goods were in the custody of Port Trust, the Department demanded duty from the custodian under section 45(3) of the Customs Act, 1962, on such pilferage. The Port Trust denied such demand contending that it was not an approved custodian falling under section 45 and possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods.

M/s Pipli Imports Ltd. has also asked the Port Trust to make good the loss of goods. Examine, whether the demands made by the Department and M/s Pipli Imports Ltd. are justified in law, referring to decided case law.

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Answer

The facts of the case are similar to the case of *Board of Trustees v. UOI (2009) 241 ELT 513 (Bom HC DB)*, wherein the High Court held that considering the language of section 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person under section 45 of the Act. Therefore, section 45(3) applies only to the private custodians who are required to be approved by Principal Commissioner/ Commissioner of Customs under section 45(1). Accordingly, the major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3). Thus, the Department cannot demand duty from Port Trust on the pilferage under section 45(3) of the Customs Act, 1962.

Section 45(3) of the Customs Act, 1962 holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, the Port Trust, as bailee of the goods, is liable for value of the goods to the importer.

FILING OF IMPORT BILL OF ENTRY [SECTION 46]

It is the duty of the importer of any goods to make an application electronically on the customs automated system to the proper officer for clearance of the goods. The importer is required to make an electronic integrated declaration to the Customs Computer Systems through network facility. The Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 , provides the details. Bill of Entry is a document of assessment and when assessed becomes an assessment order.

The Principal Commissioner/ Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in the prescribed manner and form. Hence, manual submission of Bill of Entry is allowable in cases where electronic submission is not feasible. The form of the bill of entry is governed by Bill of Entry (Forms Regulations, 1976).

The goods may be cleared for home consumption or for deposit in a warehouse or for transit or transhipment. Therefore, there are three types of Bills of Entries prescribed for these three different purposes.

Form I (White) – for home consumption.

Form II (Yellow) – for warehousing (into bond).

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Form III (Green) – for ex-bond clearance for home consumption (ex-bond).

When Bill of Entry is filed electronically, it is in four copies:

(a) Original, meant for the customs authorities for assessment and collection of duty;

(b) Duplicate, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;

(c) Triplicate, as a copy for record for the importer; and

(d) Quadruplicate, as a copy to be presented to the bank or Reserve Bank of India for the purposes of making remittance for the imported goods.

The importer is required to declare in the Bill of Entry amongst other things the particulars of packages, the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and the correct value of the goods for the determining the amount of duty.

The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Importer unable to furnish details: If for any reason the importer is unable to furnish these details, he may request the customs officials to examine the goods in his presence to enable him to ascertain the necessary details for making a proper declaration in the bill of entry. Alternatively, he can seek permission to deposit the goods in a public bonded warehouse appointed under section 57 pending receipt of the necessary information and the supporting documents under section 49. This is also called warehousing without warehousing.

Such goods shall not be deemed to be warehoused goods for the purpose of the Act and accordingly warehousing provisions shall not apply to such goods.

Bill of Lading: The Bill of Lading given by the carrier of the goods is the importer's document of title to the goods. The Bill of Lading covers all the goods imported with full description.

Time limit for filing: According to section 46(3), the importer shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such

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goods are to be cleared for home consumption or warehousing.

The proviso to section 46(3) provides that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.

However, where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay prescribed charges for late presentation of the bill of entry.

ASSESSMENT OF GOODS [SECTION 17]

(a) **Duty to be self-assessed by the importer/exporter:** An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85 (i.e. stores allowed to be warehoused without assessment of duty), self-assess the duty, if any, leviable on such goods.

(b) **Verification by proper officer:** The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Further, the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

For the purposes of verification, the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(c) **Reassessment of duty by the proper officer if self-assessment not done correctly:** Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(d) **Speaking order for re-assessment to be passed unless the importer agrees with the reassessment:** Where any re-assessment done is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass

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a speaking order on the re-assessment, within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

PROVISIONAL ASSESSMENT OF DUTY [SECTION 18]

Provisional assessment can be resorted to in the following circumstances:

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information, but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.

In any of the above cases, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed [Sub-section(1)].

Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within prescribed time, and the proper officer shall finalise the provisional assessment within prescribed time and in prescribed manner [Sub-section (1A)].

Provisional assessment is allowed both in respect of imports as well as exports.

When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then, -

(i) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the case may be,, the

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importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(ii) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty [Sub-section (2)].

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order. The interest shall be payable at the rate fixed by the Central Government under section 28AA. This interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof [Sub-section 3].

Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount [Sub-section 4].

The refund of duty and interest thereon is subject to the principle of unjust enrichment and shall be paid to the importer or the exporter, as the case may be, only if such amount is relatable to:

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.

In all other cases, the amount of such refund and interest shall be credited to the Consumer Welfare Fund [Sub-section 5].

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Further, CBIC has issued following guidelines for provisional assessment vide *Circular No. 38/2016 Cus. dated 22.08.2016*:

Wherever, duty is to be assessed provisionally, the importer shall:

(a) execute a bond in the prescribed form, for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed and the duty provisionally assessed; and

(b) furnish prescribed amount of security for the payment of the duty deficiency. No sureties shall be obtained. The security to be obtained shall be in the form of a bank guarantee or a cash deposit, as convenient to the importer.

CUSTOMS (FINALISATION OF PROVISIONAL ASSESSMENT) REGULATIONS

CBIC vide *Notification No. 73/2018 Cus (NT) dated 14.08.2018* has prescribed Customs (Finalisation of Provisional Assessment) Regulations, 2018.

The significant provisions contained in said regulations are discussed as under:

Time-limit and manner for submission of documents or information by importer/ exporter for the purpose of finalisation of provisional assessment

a) Reasons for Provisional Assessment:

(i) the necessary documents have not been produced or information has not been furnished

(ii) the proper officer requires the importer or the exporter to produce any additional documents or information

Such information or documents would be made available by the importer /exporter within 1 month from the date of such order of provisional assessment or the date of such requisition by the proper officer.

(b) The proper officer would inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced within 15 days from the date of such order of provisional assessment. If the document/information is not made available within 15 days, this period may, for reasons recorded in writing, be further extended by proper officer for 3 months on his own or at the request of the importer or the exporter.

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(c) The Additional Commissioner/Joint Commissioner of Customs, may further extend the time period referred for another 3 months, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within prescribed time limit.

(d) If the aforesaid time limits don't suffice, the Commissioner of Customs, may extend the time period further as deemed fit.

(e) All the requisite information/ documents need to be submitted in one instance by importer/ exporter and importer/exporter themselves or his authorised representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.

(f) For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally shall be treated as a separate case of provisional assessment.

Time-limit for finalisation of provisional assessment

The proper officer will finalise the provisional assessment within 2 months of receipt of:

(a) an intimation from the importer or the exporter or his authorised representative or Customs Broker or

(b) a chemical or other test report, where the provisional assessment was ordered for that reason; or

(c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

However, where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of 2 months shall be reckoned from the date of last intimation.

Further, where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed, the proper officer shall proceed to finalise the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

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(d) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of 3 months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months.

(e) This regulation would not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.

Manner of finalisation of provisional assessment

(a) The provisional assessment will be finalised as per the provisions of section 18 of the Act.

However, if the amount so paid at the time of provisional assessment or after adjustment under section 18(2)(a) of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the shortfall will be adjusted from the security, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter,

However, if the amount so adjusted or paid falls short of the duty finally assessed or re-assessed, as the case may be, the importer or exporter of the goods would pay the shortfall in terms of the provisions of section 18.

(b) The Bond executed at the time of provisional assessment with security, if any, will be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.

(c) Where the final assessment is contrary to the provisional assessment, the proper officer will pass a speaking order following principles of natural justice.

(d) Where the final assessment confirms the provisional assessment, the proper officer will finalise the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.

(e) Where a Bill of Entry or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer will finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

Penalty

If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails

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to comply with any provision of these regulations, he shall be liable to a penalty which may extend to ₹ 50,000.

Illustration 2

Mr. Krishna Bhansali, has imported some garments from Paris. He is unable to make self-assessment under section 17(1) of the Customs Act, 1962 because of differential rates for different kinds of material and hence has made a request in writing to the proper officer for provisional assessment pending technical testing. Is he eligible to apply for provisional assessment? Discuss.

Answer

Yes, Mr. Krishna Bhansali can apply for provisional assessment under section 18 of the Customs Act, 1962. Section 18(1) provides that provisional assessment can be resorted to, *inter alia,* where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment. While 'unable' is not about willingness but deficiency of information to make an accurate determination of the liability, in this case Mr Bhansali satisfies the criterion because he lacks the information necessary to classify the goods pending technical testing.

CUSTOMS AUDIT [SECTION 99A]

In supersession of On-site Post Clearance Audit at Premises of Importer and Exporter Regulations, 2011, Government has notified Customs Audit Regulations, 2018. For this reason, a separate section 99A is introduced authorizing the proper officer to audit of assessment that has already been conducted at the time of customs clearance. Such audit is permitted to the carried out swiftly either at the premises of the auditee or at the office of the proper officer.

It may be noted that 'auditee' is defined in this section to include not only the principal (importer or exporter) but also persons concerning themselves with dealing with goods attracting section 12 of Customs Act.

In the 2018 Regulations, **'auditee' is defined in 2(c) to mean "a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods"**

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Salient feature of this audit procedure are as follows:

(i) Auditee is to preserve records for conduct of this audit for a period of five years

(ii) Risk based assessment will identify persons to be audited

(iii) Audit will be conducted at the premises of the auditee by the authorized officers who will intimate fifteen days in advance of their schedule visit

(iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable

(v) Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs

(vi) Contravention of these Regulations attracts penalty of ` 50,000

TYPES OF AUDIT-TRANSACTION BASED AUDIT (TBA) AND PREMISE BASED AUDIT (PBA)

Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed.

- ***TBA (audit of transactions): Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA).***
- ***PBA (audit at the premises): The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of Premises Based Audit by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or Theme for the audit.***

Selection criteria for audit:

Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.

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Executive Commissionerates to assist Audit Commissionerates

The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Theme based audit and Premises based audit.

The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit. Apart from overall supervision, Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit Commissionerates to ensure that audit has been conducted as per prescribed procedures.

[Circular No. 02/2019-Cus dated 08.01.2019]

CLEARANCE OF GOODS [SECTION 47]

Once the customs check and payment of duty is completed, the customs officers allow clearance of the goods. Section 47 provides that where the proper officer is satisfied that the goods entered for home consumption are not prohibited and the appropriate import duty and any charges payable thereon has been paid, he can make an order permitting clearance of the goods for home consumption**.** However, Central Government may permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules. In this respect, Central Government has permitted importers certified under Authorized Economic Operator program as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers). AEO means Authorized Economic Operator certified by the Directorate General of Performance Management under CBIC**.** On making this order, which is popularly known as "pass out of customs charge order" the bill of entry (duplicate) copy is produced to the custodian who delivers the goods to the importer. These orders will be passed on the CAS (customs automated system) on the basis of risk evaluation through appropriate selection criteria as a trade facilitation measure to improve efficiency in custom clearance.

Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods. They have to make a declaration in the declaration form at the time of filing of bill of entry. The appraisement is done as per normal procedure except that there would be no physical examination of the goods. Only marks and number are to be checked

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in such cases. However, in rare cases, if there are specific doubts regarding description or quantity of the goods, physical examination may be ordered by the senior officers/investigation wing like SIIB.

Time limit for payment of import duty: The importer shall pay the import duty—

(a) on the date of presentation of the bill of entry in the case of self-assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or

(c) in the case of deferred payment, from such due date as may be specified by rules made in this behalf, and if he fails to pay the duty either in full or in part within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment.

The rate of interest shall be not below 10% and not exceeding 36% per annum and shall be fixed by the central government. However, the interest may be waived by the CBIC in public interest. [Section 47(2)]

Deferred Payment of Import Duty Rules, 2016 read with Circular No. 52/2016-Cus dated 15.11.2016:

- **Information about intent to avail benefit of notification**: An eligible importer intending to avail the benefit of deferred payment shall intimate to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer allow him to pay the duty by due dates.

- **Due dates for deferred payment of import duty—**

S. No.	Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1st day to 15th day of any month	16th day of that month
2.	16th day till the last day of	1st day of the following month

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	any month other than March	
3.	16th day till the 31st day of March,	31st March

- **Electronic payment of duty:** The eligible importer shall pay the duty electronically: However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

- **Deferred payment not to apply in certain cases:** If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry.

MANDATORY ELECTRONIC PAYMENT OF DUTY

The Central Government has notified the following classes of importers who have to pay customs duty electronically, namely:-

(i) Importers registered under Authorized Economic Operator

(ii) Importers paying customs duty of ₹ 10,000 or more per bill of entry

The Board has set up a dedicated payment gateway called, 'ICEGATE' through which the payments are to be made.

The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

Note: Integrated Declaration under Indian Customs Single Window Project

- CBIC has implemented 'Indian Customs Single Window Project' to facilitate trade. Under project, the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.

- The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, Food Safety and Standards Authority of India, Textile Committee etc. is obtained online without the importer/exporter having to separately approach these agencies.

- This is possible through a common, seamlessly integrated IT systems utilized

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by all regulatory agencies, logistics service providers and the importers/exporters. The Single Window thus provides the importers/exporters a single point interface for clearance of import and export goods thereby reducing dwell time and cost of doing business.

- CBIC has since developed the 'Integrated Declaration', under which all information required for import clearance by the concerned government agencies has been incorporated into the electronic format of the Bill of Entry.
- The Customs Broker or Importer has to submit the "Integrated Declaration" electronically to a single-entry point, i.e. the Customs Gateway (ICEGATE). Separate application forms required by different Participating Government Agencies (PGAs) have been dispensed with.
- The Integrated Declaration is applicable for consignments to be cleared under the Indian Customs EDI Systems. For the clearance of imported goods in the manual mode, separate documents prescribed by the respective agencies continues to apply.
- Apart from incorporating such forms, the Integrated Declaration also includes different types of undertakings, declarations, and letters of guarantee that are presently required to be submitted on company letter head.
- Upon filing of the Integrated Declaration, the bill of entry automatically be referred to concerned agency, if required, based on risk. The system has been modified to enable simultaneous processing of bill of entry by PGA and Customs.

[Circular No. 10/2016 Cus dated 15.03.2016]

PAYMENT THROUGH ELECTRONIC CASH LEDGER

PAYMENT OF DUTY, INTEREST, PENALTY ETC. [SECTION 51A]

A new system to leverage payments-automation is enabled in Customs clearance (imports or exports) where Central Board of Indirect Taxes and Customs (CBIC) to prescribe the persons who are permitted to hold balance in Electronic Cash Ledger and the procedures for deposit, utilization and refund of surplus balance. These regulations are yet to be notified.

With the use of an authorized mode of payment, persons who regularly make payment – duty, interest and even penalty, if any – are permitted to 'deposit' a certain amount of money. And then when the occasion to make payment arises, they can pay by debit to the balance in this deposit account (electronic cash ledger

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balance). Person who may be required to regularly make payment are importer, exporter (of dutiable goods) or Customs Brokers.

(1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to prescribed conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in the prescribed manner.

(2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in the prescribed manner and conditions and prescribed time limit.

(3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in the prescribed manner.

(4) Board is empowered to exempt the deposits made by specified class of persons or with respect to specified categories of goods, from all or any of the provisions of this section if it is necessary or expedient so to do.

PROCEDURE FOR DISPOSAL OF GOODS NOT CLEARED [SECTION 48]

If there are any goods imported from a place outside India, which are not cleared either for home consumption or for warehouse within 30 days or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, the custodian of the goods is permitted, with the approval of the customs department and after giving notice to the importer, to sell the goods by auction.

CBIC has clarified vide Circular No. 49/2018-Cus dated 03.12.2018 that after the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per section 46 of the customs Act, 1962 read with Un-Cleared Goods (Bill of entry) regulations, 1972 (Regulation 2 & 3).

(a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.

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(b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

In the case of sensitive goods like animals, foodstuffs and hazardous goods etc. the custodian with the approval of the proper officer can sell the goods even before the expiry of the 30 days limit. Similarly, in the case of arms or ammunition, which cannot be sold in public auction, the disposal is regulated by the rules made in this regard.

STORAGE OF IMPORTED GOODS IN WAREHOUSE PENDING CLEARANCE OR REMOVAL [SECTION 49]

Where the Assistant Commissioner/Deputy Commissioner of Customs is satisfied on the application of the importer that—

(a) the goods cannot be cleared within a reasonable time in the case of imported goods, whether dutiable or not, entered for home consumption.

(b) the goods cannot be removed for deposit in a warehouse within a reasonable time in the case of any imported dutiable goods, entered for warehousing.

then in such cases, goods can be stored in a public warehouse for a period not exceeding 30 days.

Such goods deposited under public warehouse will not be covered under Chapter IX of the Act. However, the Principal Commissioner/Commissioner of Customs may extend such period of storage for further 30 days at a time.

6. EXPORTATION

IMPORTANT DEFINITIONS

(a) Export [Section 2(18)] with its grammatical variations and cognate expressions, means taking out of India to a place outside India.

(b) Export goods [Section 2(19)] means any goods, which are to be taken out of India to a place outside India.

(c) Exporter [Section 2(20)] in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.

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CONTROL OVER EXPORT GOODS

It would be convenient at this juncture to discuss the provision relating to the export of the goods in so far as it applies to the master of the vessel or his agent. The steamer agent comes into the picture only after the customs have permitted the export goods to be shipped.

LOADING OF EXPORT GOODS [SECTION 40]

The first and foremost duty cast on the master of the vessel under section 40 is that export goods are not to be loaded unless duly passed by Proper Officer.

The person-in-charge of a conveyance shall not permit the loading at a customs station

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;

(b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

ENTRY OUTWARDS [SECTION 39]

Section 39 stipulates that export goods are not to be loaded on vessel until entry outwards is granted. The master of the vessel shall not begin the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel. This restriction is for vessels and not for aircraft and vehicles.

EXPORT GOODS NOT TO BE LOADED UNLESS DULY PASSED BY PROPER OFFICER [SECTION 40]

This section applies to all types of conveyances. The goods can be taken on board only if they are accompanied by the following documents:

(i) In case of export goods other than baggage and mail bags – the goods shall be accompanied by

- Shipping Bill (at seaports/airports), or
- Bill of Export (at Land Customs Station), or
- Bill of Transshipment (for transshipment goods),

all duly passed by the proper officer.

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(ii) In case of baggage and mail bags – they should be permitted by Customs for export.

In sum, for loading of goods for export, the following requirements are to be fulfilled:

(i) Entry outwards to be granted under section 39.

(ii) Shipping bill under section 50

(iii) 'Let-export' order under section 51

(iv) Boat note under section 35 in case the vessel is anchored away from the wharf and the goods are carried in a boat to the vessel.

EXPORT GENERAL MANIFEST [SECTION 41]

Section 41 has been amended so as to provide a facility, that the departure manifest and export report can also be furnished by a person notified by the Central Government, in addition to the person-in -charge of the conveyance.

It consists of a general declaration of particulars of the vessel, its crew and passengers, its date and port of departure; a list of ship's stores; a list of crew's personal effects; and a cargo declaration which is a complete list of the goods shipped from the port, goods transshipped at the port, goods lying in the vessel but not landed or transshipped ("same bottom cargo"), and dutiable goods, including arms and ammunition, forming part of the equipment of the vessel.

Section 41(1) of the Customs Act, 1962 provides that the person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a Customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding fifty thousand rupees.

However, in cases where it is not feasible to deliver departure manifest or export manifest by presenting them electronically, the Principal Commissioner/ Commissioner of Customs may, allow the same to be delivered in any other manner. [Section 41(1)]

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The person delivering the departure manifest or export manifest or export report shall make and subscribe a declaration as to the truth of its contents as a footnote thereof. [Section 41(2)]

Amendment to EGM: If the proper officer is satisfied that the departure manifest or export manifest or the export report is in any way incorrect and there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented. [Section 41(3)]

Preparation of Cargo Manifest: The procedure for preparation of cargo manifest is as follows:

(i) In the case of shipment by sea, the ship's officer gives a receipt after he has received the consignment on board the ship. This receipt is called mate receipt. It is surrendered to the steamer agent or the agent who issues the bill of lading.

(ii) In the case of shipment by air, after the cargo is delivered to the airways for loading, the airways issues an air consignment note.

(iii) In the case of train and lorry, a railway receipt or a lorry receipt as the case may be, is issued as soon as the consignment is received by the carrier.

The export general manifest or report is the consolidated report of all such Bills of Lading/air consignment notes/railway receipts/lorry receipts issued.

PASSENGER AND CREW DEPARTURE MANIFEST AND PASSENGER NAME RECORD INFORMATION [SECTION 41A]

The person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government, shall deliver to the proper officer—

(i) the passenger and crew departure manifest; and

(ii) the passenger name record information of departing passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

Where the passenger and crew departure manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other specified person shall be liable to such penalty, not exceeding ₹ 50,000, as may be prescribed.

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NO CONVEYANCE TO LEAVE WITHOUT WRITTEN ORDER [SECTION 42]

The person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Subsection (2) of section 42 stipulates that no such order shall be given until

(a) The person-in-charge of a conveyance has answered the questions put to him under Section 38;

(b) The provisions of section 41 have been complied with;

(c) The shipping bills or bills of export, the bills of transshipment, if any and such other documents, as the proper officer may require, have been delivered to him;

(d) All duties leviable on any stores consumed in such conveyance and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;

(e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;

(f) In any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force in relation to export of goods-

  (i) Such goods have been unloaded, or

  (ii) Where the Assistant Commissioner is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

7. PROCEDURE FOR THE CLEARANCE OF EXPORT GOODS

ENTRY OF GOODS FOR EXPORTATION [SECTION 50]

The exporter is, under section 50 of the Customs Act, required to present electronically on the customs automated system to a proper officer of customs a

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shipping bill in case of export by a vessel or by air and a bill of export, in case of export by a vehicle. With this extent of automation, Customs expects that filing of shipping bill and payment of duty is on the automated system of customs department or CAS.

However, the Principal Commissioner/Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner. Hence, manual submission of shipping bill/bill of export is allowable in cases where electronic submission is not feasible.

The form of the shipping bill is prescribed under the Shipping Bill and Bill of Export (Forms) Regulations, 2017.

Normally a shipping bill is permitted to be filed only after an entry outward has been granted for the particular vessel or aircraft by which the goods are to be exported. However, under special circumstances the Principal Commissioner/ Commissioner of Customs may permit advance shipping bill to be filed. The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely :—

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

CLEARANCE OF GOODS FOR EXPORTATION [SECTION 51]

After the shipping bill is filed, they are presented for the customs appraisal. The officer of customs checks that the goods are not prohibited for export and whether they are liable to any export duty. Physical check is carried out in terms of prevailing instructions. After the customs officer is satisfied that the goods are not prohibited, and the exporter has paid the duty and other charges payable in respect of same, he makes the order for shipment on the duplicate copy of the shipping bill. This is known as "Let Export" order**.** However, Central Government may permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules, in which case 'let export' can be ordered before duty is paid.

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Further, in case of deferred payment of duty, where the exporter fails to pay the export duty, either in full or in part, by such due date as may be specified by rules, he will have to pay interest on said duty not paid or short-paid till the date of its payment. The Central Government will notify the rate of interest within a range of 5% p.a. to 36% p.a.

NOTICE OF SHORT-EXPORT OF GOODS

According to the Notice of Short Export Rules, 1963, if any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the exporter shall, within seven days, from the date of departure of the conveyance by which such goods were exported, furnish the prescribed information to the proper officer in respect of such goods.

8. PROCEDURE FOR POSTAL ARTICLES

IMPORT / EXPORT OF GOODS BY POST OR COURIER

Sections 83 and 84 of the Customs Act contain the substantive provisions relating to goods imported or exported by post or through authorized courier.

Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post [Section 83]

(1) The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which postal authorities or the authorized courier present to the proper officer a list containing the particulars of such goods for the purposes of assessing the duty thereon.

However, where the postal goods arrive on a vessel, and the list containing the particulars is available and is filed by the Post Master, before the arrival of the vessel, the list shall be deemed to have been filed on the date of arrival of the vessel.

The effect of this proviso is that the relevant date for imports by post is the date of submission of the list by the Post Master or the date of arrival of the vessel, whichever is later.

(2) The rate of duty and tariff value applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorized courier for exportation.

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Procedure for goods imported or to be exported by post or courier [Section 84]

This section empowers the Board to make regulations providing

(a) the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier

(b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier

(c) the transhipment or transit or goods imported by post or courier from one Customs station to another or to a place outside India.

PROCEDURE FOR IMPORT AND EXPORT OF GOODS BY POST

In the case of goods imported by post the agency for the carriage of goods is the Government of India be it through sea, air or land. The control of the Customs Department is only on goods, whether imported or exported

(i) on which there is a duty; and

(ii) which are subject to prohibition or restriction under the Customs Act or any other law for the time being in force.

The customs have no concern over other goods or other mail.

PROVISIONS UNDER INDIAN POST OFFICE ACT

The Indian Post Office Act, 1898, contains certain provisions to facilitate this control. The first of these is section 24 of the Indian Post Office Act, which reads as under:

Power to deal with postal articles containing goods contraband or liable to duty [Section 24 of the Indian Post Office Act]

Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force, or anything is liable to duty, writing to the addressee, initiating him to attend, either in person, or by an agent, within a specified time at a post office, and shall in the presence of the addressee, or his agent, or if the addressee or his agent fails to attend as aforesaid, then in his absence open and examine the postal article.

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It therefore, follows that

(1) The post office authority has a right and duty to open and examine a postal article.

(2) The right can be exercised only if he has a reasonable suspicion that the goods contained in the postal article are-(a) liable to duty of customs, or (b) subject to a prohibition under any law in force.

(3) Before opening and examining the postal article he should issue a notice in writing to the addressee asking him to be present at an appointed time and place for the opening of the postal article.

(4) The addressee can be present either in person or by an agent; and if the addressee or his agent does not turn up at the appointed time and place, the postal authorities are entitled to open and examine the postal article in his absence.

Delivery to customs authority [Section 24A of the Indian Post Office Act]

The power enabling the postal authorities to deliver such articles to the Customs authorities is enshrined in section 24A of the Indian Post Office Act. The relevant provisions read as follows:

The Central Government may, by a general or special order, empower any officer of the post office, specified in such order, to deliver any postal article, received from beyond the limits of India and suspected to contain anything liable to duty, to such customs authority as may be specified in the said order and such customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act [now Customs Act, 1962] or any other law for the time being in force.

Thus, once the postal authorities have found some postal article to contain dutiable or prohibited goods, that authority should deliver the postal article in question to the customs authority for necessary action.

9. SPECIAL PROVISIONS RELATING TO STORES

The term "stores" has been defined under section2(38) of the Customs Act to mean "goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting". It covers items like food, drink, medicines, life-saving equipment like oxygen and life boats, articles or equipment used for entertainment, in addition to fuel, spare parts and other equipment.

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These items are not imported into or exported out of India in the course of international trade, but by the very fact of their being brought into India from a place outside India, and vice versa, they attract the rigours of the controls on import and export of goods. This has necessitated special provisions to deal with such stores. Sections 85 to 90 of the Customs Act contain detailed provisions relating to treatment of Stores under the Act.

"Store list" in the prescribed format is required to be filed as part of the import manifest as well as export manifest / import report or export report.

WAREHOUSING OF STORES [SECTION 85]

It has been found convenient to allow imported ships stores to be kept in a bonded warehouse and thereafter supply it to vessels/aircraft as and when required. Section 85 provides that "where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircraft without payment of import duty under this chapter the proper officer may permit the goods to be warehoused without the goods being assessed to duty."

TRANSIT AND TRANSHIPMENT OF STORES [SECTION 86 AND 87]

Section 86 of the Customs Act provides that:

1. Any stores imported in a vessel or aircraft, may remain on board such vessel or aircraft, without payment of duty, while it is in India. (Transit)
2. Any stores imported in a vessel or aircraft may, with the permission of the proper officer be transferred to any vessel or aircraft as stores for consumption therein. (Transhipment)

Section 87 of the Customs Act provides that any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed during the period such vessel or aircraft is a foreign going vessel or aircraft.

This covers the situation between the first Indian port/airport of arrival to the final Indian port/airport of departure to a destination outside India.

In other words, no duty is leviable as long as the vessel/aircraft is a foreign going vessel/ aircraft. However, if the vessel/aircraft ceases to be so and converts to a total run/local flight, duty will be chargeable on the stores on board.

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As a result of these two specific provisions of law, it follows that in other cases normal law of levy and assessment to import duty would apply. Thus, in the case of:

(i) vessels/aircraft arriving in India and terminating their voyage at the port of arrival:

(ii) vessel/aircraft arriving in India and subsequently converting into coastal voyage/run or domestic flight import duty would be chargeable on the unconsumed stores brought by the vessel/aircraft/conveyance at the point of its entry into India. The stores list in the arrival manifest or import manifest forms the basic document for determination of duty liability.

APPLICATION OF SECTION 69 AND CHAPTER X TO STORES [SECTION 88]

This section provides that the provisions of Section 69 and chapter X (which contains the provisions for drawback of duty) shall apply to stores other than those covered by section 90. Thus, it follows that,

(i) Section 69 allows warehoused goods to be exported without payment of import duty. By virtue of section 88, this benefit as available to warehoused goods if they are taken on board any foreign going vessel or aircraft as stores.

(ii) Further, as per section 74, where duty paid imported goods are exported within two years then subject to certain conditions, such duty shall be repaid as drawback. By virtue of section 88, this benefit has been made available to imported stores.

In case of imported stores, which have been re-exported after the import duties for the same have been paid, the original import duty paid is eligible as drawback. For stores like fuel and lubricants oil taken on board any foreign going aircraft the whole of the import duty paid is eligible as drawback as against 98% eligible for other imported goods.

Imported goods can be exported without clearing it for home consumption on payment of duty from the warehouse under Section 69.

SUPPLY OF STORES [SECTION 89]

Section 89 of the Customs Act covers the case of indigenous goods, which are supplied to a vessel as ship stores. It states that goods produced or manufactured in India and required as stores on any foreign going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine having regard to the size of the vessel or aircraft, the number of passengers and the crew and the length of the voyage or journey on which the vessel or aircraft is about to depart. In a nutshell, the duty-free supply of stores should be as per estimated requirement.

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SPECIAL PROVISIONS REGARDING SHIPSTORES SUPPLIED TO INDIAN NAVAL VESSELS [SECTION 90]

Following are the special provisions in relation to supply of stores to Naval vessels:

(i) Stores for the use in a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy, in accordance with their conditions of service, may be supplied without payment of duty to be consumed on board the ship of Indian Navy.

(ii) The provisions of section 69 (duty-free export from a warehouse) and Chapter X (drawback) shall apply as they apply to other goods. However, they will be entitled to drawback of the whole of the duty of customs if any paid therein, instead of 98% alone otherwise applicable.

10. SPECIAL PROCEDURES RELATING TO CLEARANCE OF BAGGAGE

BAGGAGE

The term "baggage" has been defined under section 2(3) of the Customs Act in an inclusive manner, to include unaccompanied baggage as well but does not include motor vehicles. In common parlance the term means the luggage of a passenger comprising trunks or bags and the personal belongings of the passenger.

The term "goods" has been defined under section 2(22) of the Customs Act, to include *inter alia,* baggage also. Therefore, the restrictions and regulations governing the import and export of goods will apply *mutatis mutandis* to baggage also.

ISSUES RELEVANT TO BAGGAGE

The person-in-charge of the conveyance is to file an Import General Manifest in the case of imported goods and an Export General Manifest in the case of export goods. In both the cases, "baggage goods" are required to be declared in separate sheets.

STATUTORY PROVISIONS

The statutory provisions relating to Baggage are covered by sections 77 to 81 of the Customs Act.

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ENTRY OF BAGGAGE BY OWNER [SECTION 77]

Under this section the owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing it. This is known as Baggage Declaration Form.

Declaring packing list is sufficient declaration.

RATE OF DUTY AND TARIFF VALUATION APPLICABLE TO BAGGAGE [SECTION 78]

Section 78 of the Customs Act stipulates that the rate of the duty and tariff valuation, if any applicable to baggage shall be the rate of and valuation in force on the date on which a declaration is made in respect of such baggage under section 77. Therefore, the relevant date for determining rate of duty is the date of filing baggage declaration under section 77.

Rate of duty on baggage is 35% ad valorem. This rate of duty is not applicable to fire arms, cartridges of fire arms exceeding 50, cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules and goods imported through a courier service.

Valuation rules apply to valuation of baggage also.

DUTY EXEMPTION TO BAGGAGE [SECTION 79]

Section 79(1) of the Customs Act refers to the duty relief available in respect of baggage. It stipulates that the proper officer, may subject to any rules made under sub-section (2) pass free of duty

(a) any article in the baggage, of a passenger or a member of the crew, in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the officer is satisfied that it is for the use of the passenger or his family or is a bonafide gift or souvenir, provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rule.

The law thus envisages two categories of baggage, namely those belonging to (a) passengers; and (b) members of the crew.

Similarly, it envisages three classes of goods, namely (a) personal effects, which have been in the use of the person for a minimum period; (b)

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household effects, which is used by the family including the person; and (c) gifts and souvenirs.

Sub-section (2) of section 79 enables the Central Government to make rules for the purposes of carrying out the provisions of section 79(1). It also stipulates that such rules may specify

(a) the minimum period for which any article has been used by a passenger or a member of the crew for the purposes of [clause (a) of sub-section (1)] determining personal effects;

(b) The maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty [under clause (b) of sub-section (1)] i.e., household effects, gifts, souvenirs etc;

(c) the conditions to be fulfilled before or after clearance subject to which the baggage may be passed free of duty. Sub-section (3) of section 79 provides that different rules may be made for different classes of persons.

PASSENGER BAGGAGE RULES

In pursuance of the powers conferred under section 79 of the Customs Act, the Government had earlier passed the Baggage Rules 1998. The Baggage Rules, 1998 have been substituted with the new Baggage Rules, 2016. The salient features of the Baggage rules 2016 are discussed hereunder:

General duty-free baggage allowance: The general duty-free baggage allowance for different class of passengers coming from different countries is given hereunder:

Rule No.	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
3	Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹ 50,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger

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3	Tourist of foreign origin excluding infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹ 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
4	Indian resident or Foreigner residing in India or Tourist, excluding an infant	Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs; and (ii) Articles up to the value of ₹ 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger. On arriving by land: Only used personal effects.

When a passenger is an infant, only used personal effects will be allowed duty free. The general duty-free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

(a) "Infant" means a child not more than two years of age;

(b) "Resident" means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;

(c) "Tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;

(d) "Personal effects" means things required for satisfying daily necessities but does not include jewellery.

Jewellery Allowance [Rule 5]:

Rule No.	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
5	Passenger residing	Any country	Gentleman: Jewellery upto a weight of 20 gms with a

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	abroad for more than one year		value cap of ₹ 50,000 Lady passenger: Jewellery upto a weight of 40 gms with a value cap of ₹ 1,00,000

Transfer of residence [Rule 6]: A person, who is engaged in a profession abroad, or is transferring his residence to India, will be allowed duty free clearance of articles on his return in the manner given in the Appendix below.

This allowance would be in addition to the general duty free baggage allowance under rule 3 or 4, as the case may be.

Appendix

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
From 3 months upto 6 months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 60,000	Indian passenger	-
From 6 months upto 1 year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles	Indian passenger	-

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	Mentioned in Annexure III, upto an aggregate value of ₹ 1,00,000		
Minimum Stay of 1 year during the preceding 2 years	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 2,00,000	The Indian passenger should not have availed this concession in the preceding 3 years.	-
Minimum stay of 2 years or more	Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 5,00,000	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence;	The shortfall of upto 2 months in stay abroad can be condoned by Deputy/Assistant Commissioner of Customs if the early return is on account of - (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special

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			circumstances for reasons to be recorded in writing.
		(ii) Total stay in India on short visit during the two preceding years should not exceed 6 months; and	The Principal Commissioner / Commissioner may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.
		(iii) Passenger has not availed this concession in the preceding 3 years.	No relaxation

- **Currency [Rule 7]:** The import and export of currency under these rules will be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

- **Unaccompanied Baggage [Rule 8]:** The various provisions in the above rules are also applicable to the unaccompanied baggage, unless specifically excluded, if unaccompanied baggage had been in possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India or such further period as the Deputy/Assistant Commissioner may allow.

  The said unaccompanied baggage can also land in India upto 2 months before the arrival of the passenger. However, if the passenger is not able to arrive in India within two months due to circumstances beyond his control like sudden illness to himself or any member of family, natural calamities, disturbed

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conditions, disruption of the transport or travel arrangements in the country etc., the Deputy/Assistant Commissioner may extend the said period of 2 months upto a maximum of 1 year for reasons to be recorded.

- **Crew baggage [Rule 9]:** These baggage rules are also applicable to the members of the crew engaged in foreign going conveyance for importation of their baggage, when they are finally paid off on termination of their engagement.

  However, other crew members of a vessel and aircraft will be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use for a value not exceeding ₹ 1500.

- Family, under these rules, includes all persons who are residing in the same house and form part of the same domestic establishment.

- Goods listed in Annexure I, II and III are given below:

ANNEXURE–I (See rule 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

ANNEXURE–II (See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-

   (a) television receiver;

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(b) sound recording or reproducing apparatus;

(c) video reproducing apparatus.

7. Cinematographic films of 35 mm and above.

8. Gold or Silver, in any form, other than ornaments.

ANNEXURE III (See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

Illustration 3

Mr. Sujoy, an Indian entrepreneur, went to London to explore new business opportunities on 01.04.2016. His wife also joined him in London after three months. The following details are submitted by them with the Customs authorities on their return to India on 15.04.2017:

(a) used personal effects worth ₹ 80,000,

(b) 2 music systems each worth ₹ 50,000,

(c) the jewellery brought by Mr. Sujoy worth ₹ 48,000 [20 grams] and the jewellery brought by his wife worth ₹ 96,000 [40 grams].

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With reference to Baggage Rules, 2016, determine whether Mr. and Mrs. Sujoy will be required to pay any customs duty?

Answer

As per rule 3 of the Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], upto the value of ₹ 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is ₹ 50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth ₹ 80,000 and 2 music systems each worth ₹ 50,000.

As per rule 5 of the Baggage Rules, 2016, the jewellery allowance is as follows:

Jewellery brought by	Duty free allowance
Gentleman Passenger	Jewellery upto a weight of 20 grams with a value cap of ₹ 50,000
Lady Passenger	Jewellery upto a weight of 40 grams with a value cap of ₹ 1,00,000

However, the jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Sujoy as he had stayed abroad for period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than ₹ 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of ₹ 50,000 allowed under rule 3.

Illustration 4

After visiting USA for a month, Mrs. and Mr. X (Indian residents aged 40 and 45 years respectively) brought to India a laptop computer valued at ₹ 80,000, used personal effects valued at ₹ 90,000 and a personal computer for ₹ 52,000. What is the customs duty payable?

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Answer

(1) As per Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of-

(i) Used personal effects and travel souvenirs without any value limit.

(ii) Articles [other than certain specified artcles] upto a value of ₹ 50,000 carried as accompanied baggage [General duty-free baggage allowance].

Further, such general duty-free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

(2) One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) as baggage is exempt from whole of the customs duty *[Notification No. 11/2004 Cus. dated 08.01.2004].*

(3) Accordingly, there will be no customs duty on used personal effects (worth ₹ 90,000) of Mrs. and Mr. X and laptop computer brought by them will be exempt from duty.

Duty payable on personal computer after exhausting the duty free baggage allowance will be ₹ 52,000 – ₹ 50,000 = ₹ 2,000.

Effective rate of duty for baggage = 38.5% [including social welfare surcharge @ 10%]

Therefore, total customs duty = ₹ 770

Illustration 5

What is the relevant date for determination of rate of duty under the Customs Act, 1962 in the case of clearance of baggage?

Answer

As per section 78 of the Customs Act, 1962, the relevant date for determination of rate of duty in case of clearance of baggage is the date on which a declaration is made in respect of such baggage under section 77.

TEMPORARY DETENTION OF BAGGAGE [SECTION 80]

It may so happen that a passenger has brought with him an article, which is prohibited. The passenger may not insist on taking it into the Indian Territory. On the contrary, he may opt to re-export it or take it with him when he leaves the country.

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Similarly, a passenger may not unnecessarily pay duty on an article, which he can conveniently avoid taking into the town, if the duty is heavy. In such case also, he may opt to take the article with him when he leaves the country.

In both the cases, he will have to deposit the article with the customs authorities and take it back at the port of his departure.

"Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name".

Declaration – the essence: The declaration of the goods brought in is an absolute necessity. If the goods are not declared under section 77, the passenger cannot subsequently claim the benefit under section 80 and the goods are liable for confiscation.

REGULATIONS IN RESPECT OF BAGGAGE [SECTION 81]

Since the provisions in respect of baggage are a complete code by themselves, it is desirable to supplement detailed procedures wherever necessary with the rule making powers. Section 81 therefore provides that the Board may make regulations in the following matters:

(a) providing for the manner of declaring the contents of any baggage;

(b) providing for the custody, examination, assessment to duty and clearance of baggage;

(c) providing for transit or transhipment of baggage from one customs station to another or to a place outside India.

Baggage declaration form: In exercise of these powers, the form of the baggage declaration has been prescribed and standardized. Transit or transhipment of baggage from one customs station to another becomes a necessity for convenient clearance of unaccompanied baggage.

In the Customs Baggage Declaration Regulations, 2013, the baggage declaration will have to be filed only by those passengers who come to India and carry dutiable or prohibited goods or have anything to declare.

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Note: CBIC vide *Circular No. 08/2016 Cus. dated 08.03.2016* has clarified that the domestic passengers who board international flights in the domestic leg are not required to file the Customs Baggage Declaration Form.

11. TRANSIT AND TRANSHIPMENT

TRANSIT AND TRANSHIPMENT OF IMPORT CARGO – AN INTRODUCTION:

A conveyance may not carry goods intended for a particular customs station only. It may carry goods intended for other Indian ports and other foreign ports. There are two distinct possibilities:

(a) The conveyance may not call at all other Indian ports/customs stations and foreign ports for which it carries goods.

(b) The conveyance may call at all other Indian ports/customs stations and foreign ports for which it carries goods.

In the case of the former, the goods will have to be transferred to any other conveyance onward carriage to the destination. This is called transhipment. This will cover both goods intended for Indian ports and foreign ports.

In the latter situation, the goods will continue to be carried by the same conveyance. This is called transit of goods.

In both the situations, import duty is not collected on the goods even though the liability has already accrued by the fact of import into India (which includes the territorial waters of India). It would be necessary to ensure that

(a) in the case of goods intended for Indian ports, the goods have actually to be conveyed to the Indian port of destination and appropriate duty of customs is collected thereupon;

(b) in the case of goods intended for foreign ports, the goods are actually conveyed out of India and are not landed in any Indian customs station.

DIFFERENCE BETWEEN TRANSIT AND TRANSHIPMENT

The essential difference between transit and transhipment lies in the continuity of records and documentation.

(a) In the case of transit of goods by the same conveyance, the record already made in the ship's/aircraft's manifest will continue. The goods would have to

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be shown in the manifest as same bottom cargo. The destination of the cargo consignment wise has to be shown in the same bottom cargo manifest. These entries have necessarily to figure in the departure manifest or export manifest of the conveyance. Thereafter when the conveyance calls at the next Indian customs port or airport the goods have to figure in the Import General Manifest filed there as landing cargo or same bottom cargo as the case may be. Thus, there is continuity in the record and there is no chance of the control over such transit goods being lost.

(b) The position of the transhipment is entirely different. In the first instance such transhipment goods are landed in the particular Indian customs station. There after they have to be shipped by a conveyance to the destination to be transhipped. These are the following stages where care and caution have to be exercised to ensure that the goods are not illicitly landed and smuggled into India.

(i) during the period when the transhipment goods lie in the Indian customs station;

(ii) when the goods are transhipped by another conveyance to their final destination;

(iii) where the transhipped goods are destined to another Indian customs station, care has to be taken at that station for actual landing and proper clearance.

STATUTORY PROVISIONS

The statutory provisions relating to Transit and Transhipment of goods are covered in sections 52 to 56 of the Customs Act.

EXCEPTIONS TO THIS CHAPTER [SECTION 52]

The provisions of this chapter shall not apply to

(a) Baggage

(b) Goods imported by post and

(c) Stores

TRANSIT OF GOODS IN THE SAME VESSEL OR AIR [SECTION 53]

Subject to the provisions of section 11, where any goods imported in a conveyance and mentioned in the arrival manifest or import manifest or the

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import report, as the case may be, as for transit in the same conveyance to any place outside India or to any customs station, the proper officer may allow the goods and the conveyance to transit without payment of duty, subject to such conditions, as may be prescribed.

TRANSHIPMENT OF GOODS WITHOUT PAYMENT OF DUTY [SECTION 54]

(1) Where any goods imported into a customs station are intended for transhipment, a bill of transhipment shall be presented to the proper officer in the prescribed form, which is generally prescribed already. Where the goods are being transferred under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transhipment instead of a bill of transhipment shall be presented to the proper officer in the prescribed form.

(2) Subject to the provisions of sections 11, where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the import report, as the case may be, as for transhipment to anyplace outside India, such goods may be allowed to be so transhipped without payment of duty.

(3) Where any goods imported into a customs station are mentioned in the arrival manifest or import manifest or the Import report, as the case may be, as for transshipment:-

(a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi, or Chennai or any other custom port or customs airport which the board may, by notification in the Official Gazette, specify in this behalf, or

(b) to any other customs station and the proper officer is satisfied that the goods bonafide intended for transhipment to such customs station,

the proper officer may allow the goods to be transhipped without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

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Illustration 6

State the difference between transit and transhipment of goods under the provisions of the Customs Act.

Answer

Transit	Transshipment
(i) Section 53 of the Customs Act, 1962 provides for transit of goods.	(i) Section 54 of the Customs Act, 1962 provides for transshipment of goods.
(ii) In case of transit of goods, goods are allowed to remain on the same conveyance.	(ii) In case of transshipment of goods, the conveyance changes i.e., the goods are unloaded from one conveyance and loaded in another conveyance.
(iii) In case of transit of goods, there is continuity of records.	(iii) In transshipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.

LIABILITY OF DUTY ON GOODS TRANSITED UNDER SECTION 53 OR TRANSHIPPED UNDER SECTION 54 [SECTION 55]

Where any goods are allowed to be transhipped under section 53 or transhipped under sub-section (3) of section 54 to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.

TRANSPORT OF CERTAIN CLASSES OF GOODS SUBJECT TO PRESCRIBED CONDITIONS [SECTION 56]

The provisions of sections 53 and 54 apply only to goods imported at an Indian customs port/airport and transmitted or transshipped to another

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Indian customs port/airport. They do not cover transport by land from one Indian land custom station to another Indian land customs station.

In the case of goods destined to foreign ports/airports/custom station, the problem had been specifically faced in the case where imported goods meant for Nepal landed at any Indian customs port/airport or land customs station. Such goods had to be transported by road or rail to Indian land customs station along the Indo Nepal Border and thereafter crossed over to the corresponding Nepalese customs station. Similarly, there was rail traffic between West and East Pakistan before the latter was liberated and named Bangladesh. The movement across the Indian territory was found to be faster and cheaper compared to movement by sea around the Indian subcontinent. Such a situation is dealt with by section 56 of the Customs Act.

Section 56 specifically provides that Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.

In the first part there is a substantial exemption from customs duty. The second part technically amounts to export and subsequent re-import.

IMPORT AND EXPORT PROCEDURES

The brief description of Import and Export Procedures is given as under:

IMPORT PROCEDURES

The procedure for importation of goods by air, by sea or by land has been outlined below:-

(1) Landing /calling of vessel/aircraft: In case goods are imported by sea/air, the goods shall be loaded in the vessel/aircraft in the exporting country and sent to India. In case of import by land, the goods shall be sent in a vehicle.

When the vessel/aircraft carrying imported goods arrives in India, the **person-in-charge of such vessel/aircraft** *[master/pilot of the vessel/aircraft respectively]* entering into India from outside India shall allow calling /landing

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of the vessel/aircraft only at the customs port/customs airport unless otherwise permitted by CBIC.

(2) Delivery of import manifest/report: The person-in-charge of a vessel/aircraft shall deliver to the proper officer an **import manifest** *[detailed information about goods in vessel/aircraft]* by presenting the same electronically before the arrival of the vessel/aircraft at the customs port/customs airport. In case of import by land, the person-in-charge of the vehicle shall deliver to the proper officer an **import report** *[detailed information about goods in vehicle]* within 12 hours of the arrival of vehicle at the customs station.

(3) Grant of Entry Inwards to the master of the vessel/permission to unload the goods: On receiving import manifest from the master of a vessel, the proper officer shall grant Entry Inwards to the master. The master of the vessel shall not permit the goods to be unloaded until the order of Entry Inwards has been granted by the proper officer to such vessel. Date of Entry Inwards is the date on which the customs department is ready to supervise the unloading of cargo.

(4) Unloading of goods: Imported goods shall be unloaded:-

(a) only if mentioned in the import manifest/import report.

(b) only at the approved places in any customs port/customs airport.

(c) under the supervision of the proper officer.

(d) during working hours and shall not be unloaded on Sunday/on any holiday.

(5) Unloaded goods to be in the custody of the Custodian until their clearance: Once the imported goods have entered the customs area, they shall remain in the custody of the **Custodian** *[a person approved by the Commissioner of Customs for this purpose]*. If the imported goods are pilfered after unloading in a customs area, while in the custody of the Custodian, then the Custodian shall be liable to pay duty on such goods.

(6) Filing of entry for import, i.e. Bill of Entry: The importer of any goods, other than goods intended for transit or transhipment *[provisions of goods in transit/transhipment are discussed below in point (11)]*, shall file a Bill of Entry electronically for clearance of goods from the custom station port/airport.

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In case the goods are to be cleared for home consumption, importer would file Bill of Entry for home consumption. However, if the importer does not need the goods immediately, he may request the goods to be warehoused. In that case, an Into-Bond Bill of Entry (for warehousing) would be filed. When subsequently, the goods are to be cleared from warehouse for home consumption, an Ex-Bond Bill of Entry is required to be filed.

(7) Timing of filing of Bill of Entry: A Bill of Entry may be presented at any time after the delivery of the Import Manifest/Import Report but within the next day of the arrival of the conveyance at the customs station A bill of entry may be presented even before the delivery of such Import Manifest/Import Report if the vessel or the aircraft or the vehicle by which the goods have been shipped for importation into India is expected to arrive within 30 days from the date of such presentation.

(8) Assessment of duty on the imported goods: Assessment is the procedure of quantifying the amount of liability. The importer will self-assess the duty considering the applicable rate of exchange and rate of import duty. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by such officer if the assessment made by the importer is found to be incorrect. The proper officer shall return the Bill of Entry to the importer after determination of the duty amount.

(9) Payment of duty: If the goods are cleared to be stored in a warehouse, payment of duty is deferred till the time of clearance from such warehouse. However, in case the goods are cleared for home consumption, customs duty has to be paid. The benefit of deferred payment of duty has also been permitted in respect of certain class of importers (discussed in preceding paragraphs).

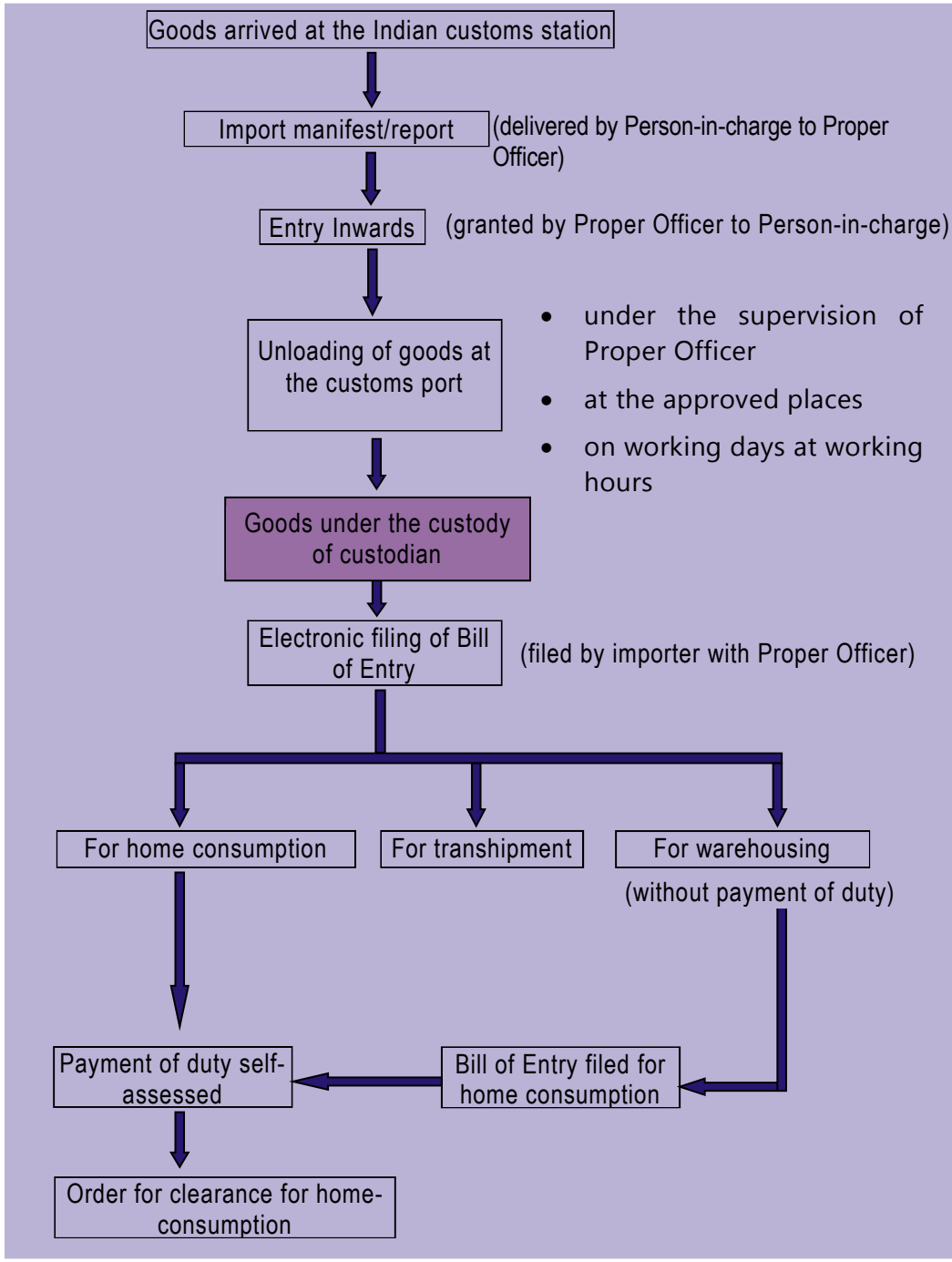
The importer has to pay the duty within the prescribed time-limit as discussed under section 47. In case he fails to do so, he is required to pay interest on the duty till the time he actually pays the duty and clears the goods.

(10) Clearance of imported goods from the custom station: The goods lying under the custody of the custodian have to be cleared either for home consumption or for warehousing or for transhipment within 30 days (or such extended time as the proper officer may allow) from the date of unloading of goods at the customs station.

Note: *There are separate import procedures for import of baggage and import by post.*

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The brief procedure for import of goods has been depicted in the diagram below:-



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EXPORT PROCEDURES

The procedure for exportation of goods by air, by sea or by land has been outlined below:-

(1) Filing of shipping bill/ bill of export: The exporter is required to present electronically to a proper officer of customs a **shipping bill** *[in case of export by a vessel or by air]* and a **bill of export** *[in case of export by a vehicle]*.

An exporter entering any export goods self-assesses and pays the duty, if any, leviable on such goods subject to verification by the proper officer.

(2) Order permitting clearance and loading of goods for exportation: Where the proper officer is satisfied that:

- goods entered for export are **NOT prohibited goods and**
- exporter has **paid duty, if any,** on them,

he passes order permitting clearance and loading of goods for exportation called Let Export Order.

(3) Grant of Entry Outwards: A vessel intending to start loading of export goods must be first granted an 'Entry Outwards' by the proper officer. The master of a vessel shall not permit the loading of any export goods, until the proper officer grants entry-outwards to such vessel.

Note: *Entry outwards is the permission granted by the Customs authorities to a vessel to go on a foreign voyage to the port of consignment.*

(4) Loading of goods on conveyance for exportation: The export goods shall be loaded on the conveyance for exportation with the permission of person-in-charge. He shall not permit the loading at a customs station unless a shipping bill/bill of export/bill of transhipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter.

Note: *In case of goods exported in a vessel, grant of entry outwards is also mandatory requirement before loading of goods.*

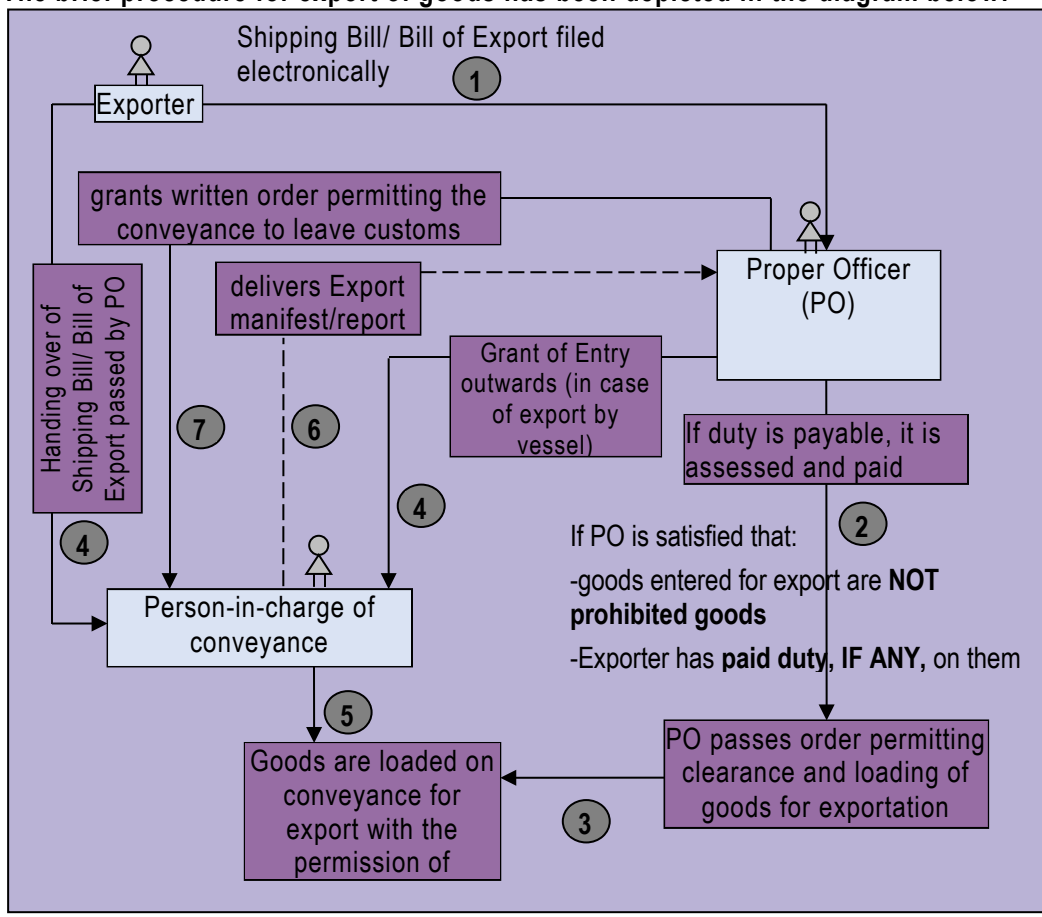
(5) Delivery of export manifest/report: The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest electronically, and in the case of a vehicle, an export report.

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(6) No conveyance to leave without written order: The person-in-charge of a conveyance which has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Note: *There are separate export procedures prescribed for export of baggage and export by post.*

The brief procedure for export of goods has been depicted in the diagram below:-



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TEST YOUR KNOWLEDGE

Note: *The rates of duties, wherever mentioned in the illustrations may not always be the actual rate prevalent during the period in question. They may be hypothetical rates assumed to explain the provisions of law with more clarity.*

1. *'Queen Marry', was a vessel containing the goods imported by XML Ltd. The events relating to its entry into India and the discharge and onward movement and storage of the goods were as follows.*

   24.05.20XX *Vessel entered the India territorial waters.*

   25.05.20XX *Import manifest was delivered to the customs authorities*

   27.05.20XX *XML Ltd filed bill of entry for the goods*

   29.05.20XX *Entry inwards granted to the vessel*

   The rate of customs duty on the goods was increased from 8% to 10% on 28.05.20XX.

   At what rate should XML Ltd. pay the customs duty on the goods imported by it?

2. *Write a brief note on self-assessment in customs under the Customs Act, 1962.*
3. *State briefly the provisions of the Customs Act, 1962 relating to payment of interest in case of provisional assessment.*
4 *What is meant by 'boat notes'?*
5. *Discuss the provisions regarding transit of goods and transhipment of goods without payment of duty under the Customs Act.*
6. *Explain in brief the duty exemption to baggage under section 79(1) of the Customs Act, 1962.*
7. *What is the relevant date for determining the rate of duty and tariff valuation in respect of goods imported/exported by post?*
8. *Explain the obligation cast on person-in-charge on arrival of vessels or aircrafts in India under section 29 of the Customs Act, 1962.*
9. *Explain briefly the meaning of entry inwards and entry outwards with reference to the customs law.*

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10. *Which class of importers is required to pay customs duty electronically? Name the dedicated payment gateway set up by the Board (CBIC) to use e-payment facility easily by an importer.*

11. *Mr. Anil and his wife (non-tourist Indian passengers) are returning from Dubai to India after staying there for a period of two years. They wish to bring gold jewellery purchased from Dubai. Please enumerate provisions of customs laws for jewellery allowance in their case.*

12. *Can the customs audit cover a person who is not an exporter or importer?*

13. *Differentiate between Inland Container Depots (ICD) and Container Freight Stations (CFS).*

14. *A fishing trawler is operating 10 nautical miles from the baseline. Is it entitled to duty-free stores?*

15. *What are the circumstances under which assessment is done provisionally under section 18?*

16. *State the provisions of transhipment of goods without payment of duty under section 54 of the Customs Act, 1962.*

17. *Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.*

18. *Write short notes on:*

    (a) Export general manifest

    (b) Boat note (or restriction on goods being water borne)

19. *Discuss briefly:*

    (a) Temporary detention of baggage

    (b) Relevant date for rate of duty and tariff valuation in respect of goods imported and exported by post

20. *What is the permissible time limit with respect to the following- :*

    (i) for filing a bill of entry

    (ii) for paying the assessed duty

    (iii) for delivery of arrival manifest or import manifest/report and departure manifest or export manifest/report

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21. *State in brief the provisions of the Customs Act, 1962 relating to filing of "Arrival manifest or import manifest/ Report".*

22. *Write a brief note on the declaration made by the owner of baggage.*

23. *State and summarise the provisions and procedure in the Customs Act, 1962 governing preparation and filing of a bill of entry.*

24. *Under what situations the amount of duty and interest refundable under section 18 of the Customs Act, 1962 shall be paid to the importer/exporter instead of being credited to the Consumer Welfare Fund?*

25. *State the procedure for clearance of goods imported by post.*

26. *Briefly explain the following with reference to the provisions of the Customs Act, 1962:*

(i) Bill of export
(ii) Import report
(iii) Imported goods
(iv) Entry
(v) Prohibited goods
(vi) Customs port
(vii) Goods
(viii) Stores
(ix) Conveyance
(x) Dutiable goods
(xi) Customs area
(xii) Adjudicating Authority
(xiii) Foreign going vessel or aircraft
(xiv) Assessment

ANSWERS/HINTS

1. Rate of duty will be 10%, because the bill of entry is deemed to have been filed on the date of entry inward though it was actually filed before the rate of duty increased.

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2. Refer section 17.

3. Interest is payable from the first day of the month in which the provisional assessment began. Refer section 18.

4. Boat notes are issued to cover transport of cargo to or from vessels that cannot come into the port. Refer 'Restrictions on goods being water-borne'. (section 35)

5. Refer sections 53 and 54.

6. Refer section 79 and Baggage Rules.

7. Refer Section 83.

8. Vessel / aircraft must call or land only at a notified customs port or airport, unless otherwise permitted, and except in an emergency. Refer section 29 of the Customs Act.

9. Entry inwards is permission to begin unloading of the imported goods, and entry outwards is permission to begin loading of export goods. Refer section 31 and section 39.

10. Authorised economic operators and those importers who are paying ₹ 10,000 or more per bill of entry. They will pay through ICEGAT. Refer para "Mandatory E-payment of duty".

11. As per rule 5 of the Baggage Rules, 2016, a passenger who has been residing abroad for more than one year and returns to India shall be allowed duty free clearance of jewellery in *bona fide* baggage as under:

- Jewellery upto a weight of 20 grams with a value cap of ₹ 50,000 for a gentlemen passenger
- Jewellery upto a weight of 40 grams with a value cap of ₹ 1,00,000 for a lady passenger

Thus, in the given case, Mr. Anil would be allowed duty free jewellery upto a weight of 20 grams with a value cap of ₹ 50,000 and his wife would be allowed duty free jewellery upto a weight of 40 grams with a value cap of ₹ 1,00,000.

Further, in addition to the jewellery allowance, Mr. Anil and his wife would also be allowed duty free clearance of jewellery worth ₹ 1,00,000 (₹ 50,000 per person) as part of free baggage allowance.

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12. Yes, persons dealing with the goods can also be audited. Refer section 99A and related regulations.

13. CFS is a customs area like the precincts of a port; ICD is a customs station.

14. No. Refer definitions of Foreign going vessel and 'India'.

15. Refer provisional assessment of duty under para 5.

16. Refer transit and transhipment of goods under para 11.

17. Refer section 48: The goods can be auctioned.

18. (a) EGM: Refer section 41;(b) boat note: Refer section 35

19. (a) Refer section 80 (b) Refer section 83

20. (i) Refer section 46: 30 days prior to arrival, & not later than the day after the day of arrival. (ii) Refer section 47: day of filing bill of entry (self-assessment) or within a day of receiving re-assessed bill of entry. (iii) Refer section 30: import manifest: before arrival; import report: within 12 hours of arrival of conveyance at customs station; section 41: departure or export manifest / report: before departure of conveyance.

21. Refer section 30

22. Refer section 77 read with Baggage Declaration Regulations 2013

23. Refer section 46 read with Bill of Entry (Integrated Declaration & Paperless Processing) Regulations 2018.

24. Refer section 18

25. Refer section 84

26. Refer para 3

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CHAPTER 6

DUTY DRAWBACK



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the conditions under which drawback is allowable on re-export of duty paid goods.
- compute the amount of drawback where the imported goods are used before re-exportation.
- analyse and apply the provisions of section 75 to determine the drawback on imported materials used in the manufacture of export goods.
- compute the amount of interest on drawback as per section 75A.
- identify the situations in which drawback is prohibited.

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1. INTRODUCTION

An important principle in the levy of customs duty is that the goods should be consumed within the country of importation. If the goods are not so consumed, but are exported out of the country, the cost of export goods gets unduly escalated on account of incidence of customs duty.

The re-export of the goods imported into the country is broadly on two occasions:

(a) Where the goods are sent back as such to the foreign country owing to any of the following mentioned reasons:-

  (i) Goods not conforming to the specification of the order

  (ii) Goods not permitted to be imported into the country on account of trade-restriction.

  (iii) Goods after being imported are temporarily retained in the country and later taken out of the country. In other words, the very objective of the importation was limited to temporary retention in India.

(b) Where the goods are used in the manufacture of other articles and such other articles are exported.

The latest cause for relief of import duty paid is when the goods are ultimately exported. This factor gained greater importance with the establishment of 100% Export Oriented Units where goods manufactured are mainly exported to earn foreign exchange.

On parallel plane was placed the goods imported by tourists and other passengers transmitting through India. Under this category was the motor vehicles brought by tourists which were used in the country for a short period of 6-12 months alone. The grant of duty relief is contingent upon factual export of the goods.

This consequentially necessitated grant of the rebate or drawback at the port of export of the goods. This in turn necessitated formulation of certain rules and the procedure for regulating the application for grant of drawback and the rates at which such drawback could be granted. In subsequent paragraphs we propose to examine the matter in some detail.

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2. DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS [SUB-SECTION (1) AND (3) OF SECTION 74]

Sub-section (1) of section 74 provides that when goods capable of being easily identified, which have been imported into India and upon which any duty has been paid on importation-

(i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51; or

(ii) are to be exported as baggage and the owner of the baggage for the purposes of clearing it, makes a declaration of its contents to the proper officer under section 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation, or

(iii) are entered for export by post under clause (a) of Section 84 and the proper officer makes an order permitting clearance of the goods for exportation,

98% of such duty, shall except as otherwise provided hereafter, be paid back.

Conditions to be satisfied in this regard:-

(a) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported and

(b) the goods are entered for export within two years from the date of payment of duty on the importation thereof.

However, in any particular case, the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period, as it may deem fit.

Sub-section (3) of section 74 provides that the Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may —

(a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;

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(b) specify the goods which shall be deemed to be not capable of being easily identified; and

(c) provide for the manner and the time within which a claim for payment of drawback is to be filed.

Analysis of sub-sections (1) and (3) of section 74:

Conditions under section 74: The substance of this provision is that

(a) The goods should have been imported into India

(b) The duty of customs should be paid thereon

(c) The goods should be capable of being easily identified as the goods, which were originally imported.

(d) The goods should have been entered for export either on a shipping bill through sea or air; or on a bill of export through land; or as baggage; or through post and the proper officer after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export should have permitted clearance of the goods for export.

(e) the goods are identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and

(f) the goods are entered for export within two years from the date of payment of duty on the importation thereof

Once these conditions are satisfied, then the export goods are entitled to payment of drawback of an amount equal to 98%. The conditions could be amended or modified depending upon other factors.



Section 74 is resorted to where there is an excess shipment or wrong shipment or goods have been imported for the purpose of participating in an exhibition and sent back etc.

Time limit for section 74 drawback:

Under sub-clause (b) of section 74(1), it has been provided that such imported goods should be entered for export within 2 years from the date of payment of duty on the importation. It may be noted that the time period is related to the date of payment of duty and not date of importation.

For instance, if the importer warehoused the imported goods, the relevant date is the date on which the warehoused goods are cleared for home consumption and not the date when the goods are imported.

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Extension of time-limit: In any particular case, if sufficient reason is shown by the importer as to why he was prevented from exporting the goods within the said period of two years, the Central Board of Indirect taxes and Customs may, in its discretion, extend the period further depending upon the merits of each case.

Identity of the goods

1. One of the important conditions is that the identity of the goods exported should be established as the one which has been imported earlier on payment of duty.

2. The authority who has to be satisfied in this behalf is the Assistant or Deputy Commissioner of Customs at the port of export.

3. The concerned authority can be satisfied:-

   (a) primarily by physical examination of the goods

   (b) and as alternative through the correspondence exchanged between the overseas seller of the goods and the Indian importer. In the course of physical examination emphasis will be laid on

      (i) description of the goods

      (ii) quantity and weight

      (iii) identifying markings/distinguishing features

      (iv) original packing of the goods.

Where the goods are at the time of import itself, intended to re-export later, it is desirable to have the above aspects ascertained during the customs examination of the imported goods and recorded on the Bill of Entry. A certified copy of the Bill of Entry with the customs examination report showing the above factors is obtained at the port of import and produced to the customs authorities at the port of export. The customs authorities would physically examine the goods with reference to the above recorded examination report recorded at the time of import. If identity is to be established through documents, the relevant materials are: -

(i) import documents including indent, acceptance, contract, invoice, packing specification, payment documents, triplicate copy of Bill of Entry, insurance and or other survey reports;

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(ii) correspondence covering the circumstances necessitating return of the goods, the importation/test report thereon, the letter to supplier posing the problem and the subsequent full correspondence;

(iii) the terms and conditions on which the supplier is prepared to take the goods back, the financial settlement for the cost of the goods, import duty paid on the goods and all the expenditure incurred by the importer on the goods.

(iv) the clearance of appropriate authorities for the re-export and settlement of the financial aspect, whether refund or credit of cost etc. or free replacement etc.

Power to make rules under section 74: Central Government is empowered to make rules for the purpose of carrying out the provision of section 74 and in particular such rules may provide for the following:

(a) Establishing the manner of identification of goods imported in different consignments which are ordinarily stored together in bulk;

(b) Specifying the goods which shall be deemed to be not capable of being easily identified and

(c) The manner and the time within which a claim for payment of drawback is to be filed.

3. AMOUNT OF DRAWBACK WHERE IMPORTED GOODS ARE USED BEFORE RE-EXPORTATION [SECTION 74(2)]

Under sub-section (2) of section 74, where the imported goods are used after importation, the amount of drawback will be at the reduced rates as fixed by the Central Government having regard to the duration of use, depreciation in value and other relevant circumstances prescribed by a Notification.

In this regard, *Notification No.19/65 Cus dated 6-2-1965* as amended provides as follows:

List of goods which are not entitled to drawback at all under this notification: As per this notification, no drawback of import duty will be allowed in respect of the following goods, if they have been used after their importation in India:

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(i) Wearing Apparel;

(ii) Tea Chests;

(iii) Exposed cinematograph films passed by Board of Film Censors in India.

(iv) Unexposed photographic films, paper and plates, and X-ray films.

It implies that if these goods are not used after their importation into India and subsequently re-exported in the condition they were imported, then they would be entitled to 98% drawback.

Reduced drawback rates having regard to duration of use: Following percentages have been fixed as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control.

S. No.	Length of period between the date of clearance for home consumption and the date when the goods are placed under Customs control for export	Percentage of import duty to be paid as Drawback
1.	Not more than three months	95%
2.	More than three months but not more than six months	85%
3.	More than six months but not more than nine months	75%
4.	More than nine months but not more than twelve months	70%
5.	More than twelve months but not more than fifteen months	65%
6.	More than fifteen months but not more than eighteen months	60%
7.	More than eighteen months	Nil

Even if imported goods are merely tested though not used, it will be treated as "used" after importation.

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Special rate of drawback in respect of motor vehicles: Having regard to the international practice, a different percentage of import duty to be paid as drawback has been prescribed in the case of motor vehicles and goods imported by the person for his personal and private use.

(i) **If the car or specified goods are re-exported immediately:** 98% of the duty paid is refundable.

(ii) **If the car or specified goods are re-exported after being used:** Percentage of reduction of the drawback is related to use of the motor vehicle per quarter as under:-

S.No.	Year	Drawback of duty shall be calculated by reducing the import duty by
1.	1st	4% per quarter or part thereof
2.	2nd	3% per quarter or part thereof
3.	3rd	$2\frac{1}{2}$% per quarter or part thereof
4.	4th	2% per quarter or part thereof

It has been specifically provided that where such cars are exported after the expiry of the period of two years, the drawback would be allowed only if the Central Board of Indirect taxes and Customs, on sufficient cause being shown, extends the period for expiry beyond two years. It is further provided that no drawback shall be allowed if such motor car or goods have been used for more than four years.

Note: Anti-dumping duty, Safeguard duties and countervailing duties are rebatable as duty drawback.

CBIC has clarified that safeguard duties, anti-dumping duties and countervailing duties are rebatable as drawback in terms of section 75 of the Customs Act.

Illustration

Spatial Wireless Pvt. Ltd. imported five mainframe computer systems from Flexsonics Computers, USA on 31.01.20XX paying customs duty of ₹30.45 lakhs. The computers worked for some time but in June 20XX some technical faults developed in the

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systems resulting in complete closure of work. On being informed about the problem, Flexsonics Computers sent his technicians from USA, to repair the systems in June 20XX itself. However since no solution was found, the Management of Spatial Wireless Pvt. Ltd re-shipped/returned the goods to Flexsonics Computers, USA on 31.12.20XX.

You are the Financial Controller of the Spatial Wireless Pvt. Ltd. Board of Directors has approached you for advising whether import duty paid can be taken back from the Central Government when goods are sent back. Advise, in the light of the provisions of Customs Act, 1962.

Answer

Yes, the import duty already paid can be claimed back on five mainframe computer systems imported by Spatial Wireless Pvt. Ltd. in accordance with the provision of section 74 of Customs Act.

Under this section, it is provided that when goods capable of being easily identified, which have been imported into India and upon which duty has been paid on importation are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, 98% of such duty shall be paid back as drawback. However, the goods should be identified to the satisfaction of Assistant Commissioner of Customs as the goods that were imported and the goods should have entered for export within two years from the date of payment of duty on the importation thereof.

Further, it is provided in the section that 98% of drawback shall be allowed only in those cases where the goods have not been used at all after the importation. Various percentages have been fixed by the Government as the amount of drawback payable in respect of goods that are used after their importation.

In the instant case, all the conditions specified in provisions of section 74 are satisfied. The goods are identifiable, import duty has been paid and they are scheduled to be exported within the prescribed time limit. However, the goods have been used for some time. Here, the period between the date of clearance for home consumption and the date when the goods are placed under the customs control for export is more than 9 months, but not more than 12 months. Therefore, Spatial Wireless Pvt. Ltd will be eligible for the drawback claim at the rate of 70% (rate notified by the Government in such case) of the import duty paid.

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4. RE-EXPORT OF IMPORTED GOODS (DRAWBACK OF CUSTOMS DUTIES) RULES, 1995

In exercise of the powers conferred by section 74 of the Customs Act, 1962 (52 of 1962), the Central Government has notified the **Re-Export of Imported Goods (Drawback of Customs Duties) Rules, 1995** which provide as follows:-

Definitions: In these rules, unless the context otherwise requires, -

(a) **"drawback"**, in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff Act, 1975 and paid on importation of such goods in terms of section 74 of the Customs Act.

(b) **"export"**, with its grammatical variations and cognate expressions means taking out of India to a place outside India and includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port or airport.

Procedure for claiming drawback on goods exported by post [Rule 3]

(a) **Goods exported by post**

Where goods are to be exported by post under a claim for drawback,-

(a) the outer packing shall carry the words "DRAWBACK EXPORT".

(b) the exporter shall deliver to the competent Postal Authority a claim in the prescribed form.

(b) **Date of filing of drawback claim for the purpose of section 75A:** In case of export by post, the date of filing of drawback claim for the purpose of section 75A would be the date on which the aforesaid claim form is received by the proper officer of customs from the postal authorities.

(c) **Deficiencies in the claim:** In case the aforesaid claim form is not complete in all respects, the exporter shall be informed of the deficiencies therein within 15 days by a deficiency memo and such claim shall be deemed not to have been received.

When the exporter complies with the requirements specified in deficiency memo within 30 days, he shall be issued an acknowledgement.

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The date of such acknowledgement shall be deemed to be date of filing the claim for the purpose of section 75A.

Statements/Declarations to be made on exports other than by post [Rule 4]: In the case of exports other than by post, the exporter shall at the time of export of the goods:-

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export that-

(i) the export is being made under a claim for drawback under section 74 of the Customs Act;

(ii) that the duties of customs were paid on the goods imported;

(iii) that the goods imported were not taken into use after importation;

or

(iii) that the goods were taken in use :

However, the Principal Commissioner/Commissioner of Customs may exempt the exporter or his authorized agent from the provisions of this clause if he is satisfied that failure to comply with the said provisions is due to the reasons beyond his (exporter/authorized agent) control.

(b) furnish to the proper officer of customs, copy of the Bill of Entry or any other prescribed document against which goods were cleared on importation, import invoice, documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary.

Manner and time of claiming drawback on goods exported other than by post [Rule 5]

(a) Time-limit for filing drawback claim

A claim for drawback under these rules shall be filed:-

- in the prescribed form
- within **three months** (extendable by another three months)

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from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

Extension of the aforesaid time-limit

Authority	Period of extension	Application fee	Grant / refuse of extension
Assistant/Deputy Commissioner of Customs	three months	(i) 1% of the FOB value of exports or (ii) ₹ 1000/- whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal
Principal Commissioner/ Commissioner of Customs	further extension of six months	(i) 2% of the FOB value of exports or (ii) ₹ 2000/- whichever is less	

(b) Documents to be filed alongwith drawback claim: The claim shall be filed alongwith the following documents, namely:-

(a) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.

(b) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation.

(c) Import invoice.

(d) Evidence of payment of duty paid at the time of importation of the goods.

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(e) Permission from Reserve Bank of India for re-export of goods, wherever necessary.

(f) Export invoice and packing list.

(g) Copy of Bill of lading or Airway bill.

(h) Any other documents as may be specified in the deficiency memo.

(c) Date of filing of the claim for the purpose of section 75A: The date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims.

(d) Deficiencies in the claim: In case of incomplete claim/claim without the specified documents, such claim shall be returned to the claimant with the deficiency memo within 15 days of submission and shall be deemed not to have been filed.

Where exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under sub-rule (1).

Under the GST regime, goods upon import shall be subject to integrated tax and compensation cess in terms of sections 3(7) and 3(9) respectively of the CTA, 1975. Further, in terms of section 3(12) of the CTA, 1975, the provisions of the Customs Act, 1962 and rules and regulations made thereunder relating *inter alia* to drawback shall apply to integrated tax and compensation cess also. Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc.

Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc. *[Notification No. 57/2017 Cus (NT) dated 29.06.2017 read with Circular No. 21/2017-Cus dated 30.06.2017]*

5. DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE OF EXPORT GOODS [SECTION 75]

The drawback under section 75 is on a totally different footing. The following important aspects should be remembered in this regard:

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(i) The goods exported are entirely different from the inputs.

(ii) The input could be either imported goods on which duty of customs has been paid or indigenous goods on which central excise duty has been paid.

(iii) The existence of the imported/indigenous excise duty paid goods in the final product is not capable of easy verification at the point of export.

(iv) The goods, namely the inputs might have undergone changes in physical shape, property etc.

(v) The quantity of inputs per piece of final product may not be uniform and may not also be capable of verification at the time of exportation.

The underlying principle of the drawback under section 75 is that, the Government fixes a rate per unit of final article to be exported out of the country as the amount of drawback payable on such goods. This amount is dependent upon prior verification of the mode of manufacture, the quantum of raw material required, the average content of duty paid articles in the final product and lastly, the standardization of the final product conforming to these norms.

Statutory Provisions: Sub-section (1) of section 75 provides that where it appears to the Central Government that in respect of good of any class or description manufactured, processed or on which any operation has been carried out in India, being

(1) the goods have been entered for export and an order permitting the clearance and holding thereof for exploration has been made under section 51 by the proper officer, or

(2) the goods have been entered for export by post under clause (a) of Section 84 and an order permitting clearance for exportation has been made by the proper officer,

a drawback should be allowed of the duties of customs chargeable under this Act or any imported materials class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may by notification in the Official Gazette, direct that drawback shall be allowed.

Explanation: In this case, the rate of duty is not determined by the officer granting the drawback nor is it related to the actual import duty or excise duty paid on the raw materials or the components used in the manufacture of the final product exported. It is, therefore, an average amount determined

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by the Government having regard to all the circumstances and the facts of the manufacturing industry.

As a corollary to this proposition, it would follow that the rate fixed by the Government would be applicable for a prescribed period only. If there is (a) any variation in the rate of duty paid on the input whether customs or excise duty; (b) variation in the composition of the final product and (c) change in the process of manufacture, the rate of duty already fixed by the Government would not be applicable. It would require to be revised. The fixation of a rate of drawback is, therefore a continuous process and the industry availing of such facility of drawback is required to furnish continuously its costing and production data to the organization entrusted with the responsibility of fixation of rates of drawback.

Drawback not to be allowed in certain cases [proviso to section 75(1)]: It will be noticed that in the case of drawback under section 74 the amount of drawback was related to the actual duty paid on the goods. It did not have any correlation to either the valuation of the goods at the time of exportation or the prevailing rates of duty on the goods at the time of export. However, in the case of section 75 drawback, since the identity of the inputs which have suffered customs or excise duty as the case may be, is extinguished in the final product, there has been a necessity to correlate the grant of drawback with the value of the goods exported. It has therefore been prescribed under proviso to section 75(1) of the Customs Act that no drawback of duty shall be allowed under this section if:

(a) the export value of the finished goods or the class of goods is less than the value of the imported material used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods; or

(b) the export value is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as may be notified by the Central Government; or

(c) any drawback has been allowed on any goods and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act (FEMA). In such a case, the drawback shall be deemed never to have been allowed and the Central Government, may, by rules made under sub-section (2) specify the procedure for the recovery or

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adjustment of the amount of such drawback. In this regard, Central Government is empowered to prescribe the circumstances under which duty drawback would not be disallowed even though the export remittances are not received within the period allowed under FEMA.

Section 75(1A): Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which any operation has been carried out in India and exported outside India, then the Central Government, may, by notification in the Official Gazette declare that so much of the material as is contained in the goods exported shall for the purpose of sub-section (1) be deemed to be imported material.

Power of Central Government to frame rules [Section 75(2)]: Sub-section (2) of section 75, empowers the Central Government to make rules, providing for, *inter alia*

(a) the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the Rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying out any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest if any payable thereon.

(b) Specifying the goods in respect of which no drawback shall be allowed and

(c) Specifying the procedure for recovery or adjustment of the drawback in case where there is variation in the basic material on which the drawback rate or the interest chargeable has been prescribed

(d) Prescribing the details of certificates, documents and other evidence necessary for determining the drawback amount and

(e) Requiring the manufacturer or the person carrying on any processor other operation to give access to every part of his manufacturing factory or the place where any manufacture process or other operations are carried out to any officer of customs to enable such officer to make

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necessary examination of and study the process of manufacture, and to verify the data furnished about use of duty paid inputs etc.

(f) The manner and the time within which the claim for payment of drawback may be filed.

Sub-section (3) extends the rule-making power to include the power to make rules to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in the export of goods.

6. CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017

In exercise of the powers conferred upon it by section 75(2), the Central Government has made the Customs and Central Excise Duties Drawback Rules, 2017 vide *Notification No.88/2017-N.T. dated 21.09.2017.*

Definitions [Rule 2]

(a) **Drawback** in relation to any goods manufactured in India and exported, means the rebate of duty excluding integrated tax leviable under sub-section (7) and compensation cess leviable under sub-section (9) respectively of section 3 of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of such goods.

(b) **Excisable material:** means any material produced or manufactured in India subject to a duty of excise under the Central Excise Act, 1944.

(c) **Export:** with its grammatical variations and cognate expressions, means

(i) taking out of India to a place outside India or

(ii) taking out from a place in Domestic Tariff Area (DTA) to a special economic zone and

includes loading of provisions or store or equipment for use on board a vessel or aircraft proceeding to a foreign port.

(d) **Imported material:** means any material imported into India and on which duty is chargeable under the Customs Act, 1962.

(e) **Manufacture:** includes processing of or any other operation carried out on goods, and the term manufacturer shall be construed accordingly.

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(f) Tax invoice: means the tax invoice referred to in section 31 of the Central Goods and Services Tax Act, 2017.

Drawback [Rule 3]: Subject to the provisions of the Customs Act, 1962, the Central Excise Act, 1944, and the rules made there-under; and these rules [Drawback rules], a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government.

However, where any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not on the rest, or only a part of the duty chargeable has been paid; or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained.

No drawback in certain cases: No drawback shall be allowed -

(i) if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;

(ii) if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid;

(iii) on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre) yarn, twist etc.

(iv) if the said goods, being packing materials have been used in or in relation to the export of jute yarn, jute fabrics etc.

Factors considered while determining amount/rate of drawback: In determining the amount or rate of drawback under this rule, the Central Government shall have regard to -

(a) the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.

(b) the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods.

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(c) the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.

(d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents.

However, if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted.

(e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods.

(f) any other information which the Central Government may consider relevant or useful for the purpose.

Revision of rates [Rule 4]: The Central Government may revise amount or rates determined under rule 3.

Determination of date from which the amount or rate of drawback is to come into force and the effective date for application of amount or rate of drawback [Rule 5]:

- The Central Government may specify the period upto which any amount or rate of drawback determined under rule 3 or revised under rule 4, as the case may be, shall be in force.
- Where the amount or rate of drawback is allowed with retrospective effect, such amount or rate shall be allowed from such date as may be specified by the Central Government by notification in the Official Gazette which shall not be earlier than the date of changes in the rates of duty on inputs used in the export goods.
- The provisions of section 16, or section 83(2), of the Customs Act, 1962 shall determine the amount or rate of drawback applicable to any goods exported under these rules.

Cases where amount or rate of drawback has not been determined [Rule 6]:

Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within 3 months from the date relevant for the applicability of the amount/rate of drawback, apply to the Principal Commissioner/ Commissioner of Customs, as the case may be,

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having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

However, in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner/ Commissioner of Customs, having jurisdiction over any one of the said places of export.

On receipt of an application, the Principal Commissioner/ Commissioner of Customs, as the case may be, shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

Provisional drawback:

While making an application under this rule, an exporter may apply for a provisional amount of drawback pending determination of the amount or rate of drawback.

The Principal Commissioner/ Commissioner of Customs, may, after considering the application, allow provisionally payment of an amount not exceeding the amount claimed by the exporter in respect of such export

For the said purpose, he may require the exporter to enter into a general bond for such amount, and subject to such conditions, as he may direct; or to enter into a bond for an amount not exceeding the full amount claimed by such exporter as drawback in respect of a particular consignment and binding himself to refund the amount so allowed provisionally, if for any reason, it is found that the duty drawback was not admissible; or to refund the excess, if any, paid to such exporter provisionally if it is found that a lower amount was payable as duty drawback. The bond may be required to be furnished with prescribed surety or security.

When the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such exporter shall repay to the Principal Commissioner/ Commissioner of Customs, as the case may be, the excess or be entitled to the deficiency, as the case may be.

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Revocation of or direction to withdraw the rate/ amount of drawback determined under this rule:

Where the Central Government considers it necessary so to do, it may revoke the rate of drawback/ amount of drawback determined under this rule or may direct the Principal Commissioner/ Commissioner of Customs to withdraw the rate of drawback or amount of drawback determined.

Explanation - For the purpose of this rule, **"place of export"** means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

Cases where amount or rate of drawback determined is low [Rule 7]:

Where, in respect of any goods, the exporter finds that the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, for the class of goods is less than 80% of the duties paid on the materials or components used in the production or manufacture of the said goods, he may, except where a claim for drawback under rule 3 or rule 4 has been made, within 3 months from the date relevant for the applicability of the amount or rate of drawback, make an application to the Principal Commissioner/ Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

However, in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner/ Commissioner of Customs, having jurisdiction over any one of the said places of export.

Extension of the time-limits prescribed under rule 6 & 7:

Authority	Period of extension	Application fee	Grant/refuse of extension
(i) Assistant / Deputy Commissioner of Customs	three months	(i) 1% of the FOB value of exports	The concerned authority may, on an application

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		or (ii) ₹1000/- whichever is less	and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal.
Principal Commissioner/ Commissioner of Customs	further extension of six months	(i) 2% of the FOB value of exports or (ii) ₹2000/- whichever is less	

On receipt of the application, the Principal Commissioner/ or Commissioner of Customs, as the case may be, may, after making or causing to be made such inquiry as it deems fit, allow payment of drawback to such exporter at such amount or at such rate as may be determined to be appropriate, if the amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4, is in fact less than 80% of such amount or rate determined under this sub-rule.

Provisional drawback:

Provisional drawback amount, as may be specified by the Central Government, shall be paid by the proper officer of Customs and where the exporter desires that he may be granted further drawback provisionally, he may, while making an application, apply to the Principal Commissioner/ Commissioner of Customs, in this behalf in the manner as has been provided in rule 6 for the application made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback shall be considered in the manner and subject to the conditions as specified in rule 6, subject to the condition that bond required to be executed by the claimant shall only be for the difference between amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 by the Central Government and the provisional drawback authorised by the Principal Commissioner/ Commissioner of Customs under this rule.

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Revocation of or direction to withdraw the rate/ amount of drawback determined under this rule:

Where the Central Government considers it necessary so to do, it may revoke the rate of drawback/ amount of drawback determined under this rule or may direct the Principal Commissioner/ Commissioner of Customs to withdraw the rate of drawback or amount of drawback determined.

Explanation - For the purpose of this rule, **"place of export"** means customs station or any other place appointed for loading of export goods under section 7 of the Customs Act, 1962 from where the exporter has exported the goods or intends to export the goods in respect of which determination of amount or rate of drawback is sought.

Note: CBIC has clarified that since safeguard duties and countervailing duties are not taken into consideration while fixing All Industry Rates of drawback, the drawback of the same can be claimed under an application for Brand Rate under rule 6 or rule 7 of the Customs & Central Excise Duties Duties Drawback Rules, 1995.

This implies that drawback shall be admissible only where the inputs which suffered safeguard duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

Further, where imported goods subject to safeguard duties/countervailing duties are exported out of the country as such, then the drawback payable under section 74 of the Customs Act would also include the incidence of safeguard duties/countervailing duties as part of total duties paid, subject to fulfillment of other conditions.

Cases where no amount or rate of drawback is to be determined [Rule 8]: No amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is

(i) less than the value of the imported materials used in the manufacture of such goods or class of goods, or

(ii) is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

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- **Upper limit of drawback amount or rate [Rule 9]:** The drawback amount or rate determined under rule 3 shall not exceed one third of the market price of the export product.

- **Power to require submission of information and documents [Rule 10]:** For the purpose of -

  (a) determining the class or description of materials or components used in the production or manufacture of goods or for determining the amount of duty paid on such materials or components; or

  (b) verifying the correctness or otherwise of any information furnished by any manufacturer or exporter or other persons in connection with the determination of the amount or rate of drawback; or

  (c) verifying the correctness or otherwise of any claim for drawback; or

  (d) obtaining any other information considered by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, to be relevant or useful,

  any officer of the Central Government specially authorised in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, may require any manufacturer or exporter of goods or any other person likely to be in possession of the same to furnish such information and to produce such books of account and other documents as are considered necessary by such officer.

- **Access to manufactory [Rule 11]:** Whenever an officer of the Central Government specially authorised in this behalf by an Assistant Commissioner/ Deputy Commissioner of Customs, as the case may be, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under these rules.

- **Procedure for claiming drawback on goods exported by post [Rule 12]:** Where goods are to be exported by post under a claim for drawback under these rules, -

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(a) the outer packing carrying the address of the consignee shall also carry in bold letters the words "DRAWBACK EXPORT";

(b) the exporter shall deliver to the competent Postal Authority, along with the parcel or package, a claim in the Form at Annexure I, in quadruplicate, duly filled in.

The date of receipt of the aforesaid claim form by the proper officer of Customs from the postal authorities shall be deemed to be date of filing of drawback claim by the exporter for the purpose of section 75A and an intimation of the same shall be given by the proper officer of Customs to the exporter in such form as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may prescribe.

Statement/Declaration to be made on exports other than by Post [Rule 13]: In the case of exports other than by post, the exporters shall at the time of export of the goods -

(a) state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that -

(i) a claim for drawback under these rules is being made;

(ii) in respect of duties of Customs and Central Excise paid on containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central Excise authorities.

However, if the Principal Commissioner/ Commissioner of Customs, as the case may be, is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from the provisions of this clause;

(b) furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.

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Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that -

(a) there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and

(b) the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

Manner and time for claiming drawback on goods exported other than by post [Rule 14]: Electronic shipping bill in Electronic Data Interchange (EDI) under the claim of drawback or triplicate copy of the shipping bill for export of goods under a claim of drawback shall be deemed to be a claim for drawback filed on the date on which the proper officer of Customs makes an order permitting clearance and loading of goods for exportation under section 51 and said claim for drawback shall be retained by the proper officer making such order.

The said claim for drawback should be accompanied by the following documents, namely:

(i) copy of export contract or letter of credit, as the case may be;

(ii) copy of ARE-1, wherever applicable;

(iii) insurance certificate, wherever necessary; and

(iv) copy of communication regarding rate of drawback where the drawback claim is for a rate determined by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under rule 6 or rule 7 of these rules.

If the said claim for drawback is incomplete in any material particulars or is without the documents specified above, shall be returned to the claimant with a deficiency memo in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, within 10 days and shall be deemed not to have been filed for the purpose of section 75A.

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Where the exporter resubmits the claim for drawback after complying with the requirements specified in the deficiency memo, the same will be treated as a claim filed in this rule for the purpose of section 75A.

For computing the period of 1 month prescribed under section 75A for payment of drawback to the claimant, the time taken in testing of the export goods, not more than 1 month, shall be excluded.

Payment of drawback and interest [Rule 15]: The drawback under these rules and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.

The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.

The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment -

(a) by cheque, the date of issue of such cheque; or

(b) by credit in the exporter's account maintained with the Custom House, the date of such credit.

Supplementary claim [Rule 16]: Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Central Government/ Principal Commissioner/ Commissioner of Customs, as the case may be, he may prefer a supplementary claim in the specified form.

However, the exporter shall prefer such supplementary claim within a period of 3 months:

(i) where the rate of drawback is determined or revised under rule 3 or rule 4, from the date of publication of such rate in the Official Gazette;

(ii) where the rate of drawback is determined or revised upward under rule 6 or rule 7, from the date of communicating the said rate to the person concerned;

(iii) in all other cases, from the date of payment or settlement of the original drawback claim by the proper officer.

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Extension of the time-limit

Authority	Period of extension	Application fee	Grant / refuse of extension
Assistant/Deputy Commissioner of Customs	Nine months	(i) 1% of the FOB value of exports or (ii) ₹ 1000/- whichever is less	The concerned authority may, on an application and after making such enquiry as he thinks fit, grant extension or refuse to grant extension after recording in writing the reasons for such refusal
Principal Commissioner / Commissioner of Customs	further extension of six months	(i) 2% of the FOB value of exports or (ii) ₹ 2000/- whichever is less	

The date of filing of the supplementary claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on such claims which are complete in all respects and for which an acknowledgement shall be issued in the form prescribed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

- **Repayment of erroneous or excess payment of drawback and interest [Rule 17]:** Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962.

- **Recovery of amount of drawback where export proceeds not realized [Rule 18]:** Where an amount of drawback has been paid to an exporter or a person authorised by him (hereinafter referred to as the claimant) but the sale proceeds in respect of such export goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (FEMA), including any extension of such period, such drawback shall, except under circumstances or conditions specified in in this rule, be recovered in the manner specified below.

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However, the time-limit referred to in this sub-rule shall not be applicable to the goods exported from the DTA to a SEZ.

If the exporter fails to produce evidence in respect of realisation of export proceeds within the period allowed under the Foreign Exchange Management Act, 1999, or any extension of the said period by the Reserve Bank of India, the Deputy/Assistant Commissioner of Customs shall issue a notice to the exporter to produce evidence of realisation of export proceeds within 30 days. Where the exporter does not produce such evidence within the said period of thirty days, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall pass an order to recover the amount of drawback paid to the claimant and the exporter shall repay the amount so demanded within thirty days of the receipt of the said order. Recovery of drawback will be effected in case of non – receipt of payment from the consignee, based on R.E.I. or bank certificate.

However, such recovery shall not be made in case the non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

If export proceeds are not realized, duty drawback allowed can be recovered even if proceedings under FEMA are dropped.

Power to relax [Rule 19]: Any relaxation in procedure may be made by the Government after recording the reasons in writing.

7. INTEREST ON DRAWBACK [SECTION 75A]

Section 75A provides for payment of interest on delayed payment of drawback.

(a) Where any drawback payable to a claimant under section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, there shall be paid to the claimant, in addition to the amount of drawback, interest at the rate fixed under section 27A from the date after the expiry of the said period of one month till the date of payment of such drawback.

(b) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the Rules, the claimant shall within a period of 2 months from the date of demand, pay in addition to the said

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amount of drawback, interest at the rate fixed under section 28AA and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

Illustration

Answer the following with reference to the provisions of the Customs Act, 1962 and rules made thereunder:

(1) Mr. A filed a claim for payment of duty drawback amounting to ₹ 50,000 on 30.07.20XX. However, the amount was received on 28.10.20XX. You are required to calculate the amount of interest payable to Mr. A on the amount of duty drawback claimed.

(2) Mr. X was erroneously refunded a sum of ₹ 20,000 in excess of actual drawback on 20.06.20XX. A demand for recovery of the same was issued by the Department on 28.08.20XX. Mr. X returned the erroneous refund to the Department on 20.10.20XX. You are required to calculate the amount of interest chargeable from Mr. X.

Provide brief reasons for your answer.

Answer

(1) Computation of interest payable to Mr. A on duty drawback claimed

Particulars	
Duty drawback claimed	₹ 50,000
No. of days of delay [31.08.20XX to 28.10.20XX]	59 days
Rate of interest	6%
Quantum of interest (rounded off) [₹ 50,000 x 59/365 x 6/100]	**485**

Note: Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [Section 75A(1) of the Customs Act, 1962].

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(2) Computation of interest chargeable from Mr. X on excess duty drawback paid

Particulars	
Duty drawback erroneously refunded	₹ 20,000
No. of days of delay [21.06.20XX to 20.10.20XX]	122 days
Rate of interest	15%
Quantum of interest (rounded off) [₹ 20,000 x 122/365 x 15/100]	**1,003**

Note: Interest is payable by the claimant on erroneous refund of duty drawback @ 15% per annum for the period beginning from the date of payment of such drawback to the claimant, till the date of recovery of such drawback [Section 75A(2) of the Customs Act, 1962].

8. PROHIBITION AND REGULATION OF DRAWBACK [SECTION 76]

(a) Notwithstanding anything herein before contained, no drawback shall be allowed

(i) in respect of any goods, the market price of which is less than the amount of drawback due thereon,

(ii) where the amount of drawback in respect of any goods is less than fifty rupees. [Sub-section (1)]

(b) Without prejudice to the provision of sub- section (1), if the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this chapter are likely to be smuggled back into India, it may by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

The market price is as prevailing in India and not the price which exporter expects to receive from the foreign customer *[Om prakash Bhatia v. CC 2003(155) ELT 423 (SC)]*.

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Illustration

Ascertain whether the exporter is entitled to duty drawback in the following case and if yes, what is the quantum of such duty drawback?

FOB value of 2,000 kg of goods exported is ₹ 2,00,000. Rate of duty drawback on such export is ₹ 30 per kg. Market price of goods is ₹ 50,000 (in wholesale market).

Answer

Section 76(1)(b) of the Customs Act, 1962 *inter alia* provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 50,000, which is less than the amount of duty drawback, i.e. 2,000 kgs x ₹ 30 = ₹ 60,000. Hence, no drawback shall be allowed.

RELEVANT CASE LAW

In order to appreciate the importance of the basic principles underlying the law relating to grant of drawback, we have discussed below two important cases:

ABC India v. Union of India 1992 (61) E.L.T. 205 (Del.) **[maintained by Supreme Court]**

There is distinction between section 74 and 75 of the Customs Act- section 74 of the Customs Act comes into operation when articles are imported and thereupon exported, such articles being easily identifiable; and section 75 comes into operation when imported materials are used in the manufacture of goods which are exported.

TEST YOUR KNOWLEDGE

1. *Write a short note on "prohibition and regulation of drawback" with reference to the provisions of section 76 of the Customs Act, 1962.*
2. *Explain briefly the provisions relating to drawback allowable on re-export of duty paid imported goods when:*
   - *(i) Duty paid imported goods are re-exported as such*
   - *(ii) Duty paid imported goods are used before being re-exported*
3. *Can the rate of drawback be granted provisionally to the exporter where amount or rate of drawback has not been determined? Briefly explain.*
4. *Write a short note on "interest on drawback" with reference to section 75A of the Customs Act, 1962.*

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5. *What is the minimum and maximum rate or amount of duty drawback prescribed under the Customs & Central Excise Duties Drawback Rules, 2017? Explain with a brief note.*

6. *Your client loaded a machine on the vessel for export. He has paid import duty on the components used in the manufacture. The vessel set sail from Mumbai, but runs into trouble and sinks in the Indian territorial waters. The customs department refuses to grant duty drawback for the reason that the goods have not reached their destination. Advise your client citing case law, if any.*

7. *M/s. RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All Industry Rates under the Customs & Central Excise Duties Drawback Rules, 2017 were fixed taking into account the incidence of customs duty on imported inputs.*

   Explain briefly with reference to clause (ii) of second proviso to rule 3 of the said rules whether the claim of M/s. RIL will merit consideration by the authorities.

8. *With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:*

   (i) What is the time limit for re-exportation of goods as such?

   (ii) What is the rate of duty drawback if the goods are exported without use?

   (iii) Is duty drawback allowed on re-export of wearing apparel without use?

9. *With reference to the Customs & Central Excise Duties Drawback Rules, 2017, briefly state whether an exporter who has already filed a duty draw back claim under All Industry Rates, can file an application for fixation on special brand rate.*

ANSWERS/ HINTS

1. The provisions in respect of prohibition and regulation of drawback as contained in section 76 of the Customs Act, 1962 are explained hereunder:

   (1) No drawback is allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. This provision has been made to prohibit export of cheap goods at inflated price to get benefit of higher duty drawback. Further, drawback is also not allowed where the amount of drawback in respect of any goods is less than ₹ 50.

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(2) If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed are likely to be smuggled back into India, it may, not allow drawback in respect of such goods or alternatively allow the drawback subject to certain restrictions and conditions.

2. (i) Duty paid imported goods re-exported as such

When duty paid goods are re-exported as such, drawback is allowed under the provisions of section 74(1) of the Customs Act, 1962. Sub-section (1) of section 74 of the Customs Act, 1962 provides that following conditions need to be satisfied before claiming drawback:

(a) the goods should have been imported into India;

(b) the import duty should have been paid thereon;

(c) the goods should be capable of being easily identified as the goods, which were originally imported;

(d) the goods should have been entered for export either on a shipping bill through sea or air or on a bill of export through land, or as baggage, or through post and the proper officer, after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export, should have permitted clearance of such goods for export;

(e) the goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and

(f) the goods should have been entered for export within two years - which can be extended further by Board on sufficient cause being shown - from the date of payment of duty on the importation thereof.

Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback.

(ii) Duty paid imported goods re-exported after being used

When duty paid imported goods are used before re-export, drawback is allowed under the provisions of section 74(2) of the Customs Act, 1962. If the imported goods are used after importation, the drawback is allowed at reduced rates as fixed by the Central Government having

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regard to the duration of use, depreciation in value and other relevant circumstances prescribed by a Notification. If the goods were in possession of the importer, they are treated as used by the importer. Following percentages have been fixed vide *Notification No. 19/65-Cus dated 6-2-1965* as amended as the rates at which drawback of import duty shall be allowed in respect of goods which were used after their importation and which have been out of Customs control:

Length of period between the date of clearance for home consumption and the date when the goods are placed under customs control for export	**% of import duty to be paid as duty drawback**
Not more than three months 3 months	95%
More than three months but not more than six months	85%
More than six months but not more than nine months	75%
More than nine months but not more than twelve months	70%
More than twelve months but not more than fifteen months	65%
More than fifteen months but not more than eighteen months	60%
More than eighteen months	Nil

3. The exporter may be granted provisional duty drawback when he executes a bond binding himself to repay the entire or excess amount of drawback. Where an exporter desires that he may be granted drawback provisionally, he may make an application in writing to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the final amount of drawback. The exporter may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.

However, it is to be noted that rate of drawback is determined provisionally only when exporter intends to get Brand Rate of duty drawback for his

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exports. The provision has no applicability when exporter intends to get duty drawback on the basis of All Industry Drawback Rates.

4. Section 75A of the Customs Act provides for payment of interest on delayed payment of drawback. Where any drawback payable to a claimant under section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, interest @ 6% p.a. shall be paid along with the amount of drawback. Such interest shall be paid from the date after the expiry of the said period of one month till the date of payment of such drawback [Section 75A(1)].

   Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under the Customs Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA [presently such interest has been fixed @ 15% p.a.] and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback. [Section 75A(2)].

5. **Minimum rate of duty drawback** - Rule 8 of Customs and Central Excise Duties Drawback Rules, 2017 provides that no amount or rate of drawback shall be determined in respect of any goods or class of goods under rule 6 or rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf.

   Maximum rate of duty drawback - Rule 9 of Customs and Central Excise Duties Drawback Rules, 2017 provides that the drawback amount or rate shall not exceed one third of the market price of the export product. This provision has been made to avoid over invoicing of export goods.

6. Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 2017 *inter alia* provides that "export" means "taking out of India to a place outside India". Section 2(27) of the Customs Act, 1962 provides that India includes the territorial waters of India.

   In case of *CC v. Sun Industries 1988 (35) ELT (241*), the Supreme Court held that the expression "taking out of India to a place outside India" would also

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mean a place in high seas, if that place is beyond territorial waters of India. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out of India to a place outside India". The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place.

In the instant case, the vessel sunk within territorial waters of India and therefore, there is no export. Accordingly, no duty drawback shall be available in this case. Similar decision was given by the Supreme Court in the case of *UOI v. Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC).*

In other words, if the goods cross the territorial waters, drawback will be available even if they do not reach the destination or are destroyed provided the payment for the goods is received in convertible foreign exchange. Para 2.85.2 of HBP Vol. 1 2015-20 states that payment through insurance cover from General Insurance and approved Insurance Companies would be treated as payment realised for exports under various export promotion schemes.

7. Clause (ii) of second proviso to rule 3(c) of the Customs and Central Excise Duties Drawback Rules, 2017 *inter alia* provides that no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials in respect of which duties have not been paid.

In the given case, there was no duty incidence on 97% of the inputs of the export product except the duty incidence on remaining 3% of the inputs, which was insignificant. All Industry Rates fixed for particular export products are applicable to all exporters who export the same. However, in a case where there is clear evidence, as in the present one, that the inputs of such export products have not suffered any duty, no drawback can be claimed. Same view was expressed by the Tribunal in the case of *Rubfila International Ltd. v. CCus. Cochin 2005 (190) ELT 485 (Tri.-Bang.) [maintained in Rubfila International Ltd. v. Commissioner - 2008 (224) E.L.T. A133 (S.C.)*].

8. (i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation. This period can be extended by CBIC if the importer shows sufficient reason for not exporting the goods within two years.

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(ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.

(iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used. However, *Notification No. 19/65 Cus dated 06.02.1965* as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

9. Rule 7 of the Customs and Central Excise Duties Drawback Rules, 2017 provides that application for Special Brand Rate cannot be made where a claim for drawback under rule 3 or rule 4 has been made.

In other words, where the exporter has already filed a duty drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate.



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CHAPTER 7

REFUND



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- understand and analyse the manner in which application for refund of import duty or interest is to be made.
- comprehend the manner of processing of refund claim.
- compute the amount of interest payable on delayed refund.
- identify the cases in which refund of import duty/ export duty is made.
- analyse and apply the principle of doctrine of unjust enrichment with respect to refund of duty.

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1. INTRODUCTION

Sometimes customs duty is found to have been paid in excess of what was actually leviable on the goods. This may happen for various reasons, like error or lack of information. In such cases, refund of excess amount of duty paid can be claimed. Refund of any excess interest paid by the importer/exporter can also be claimed.

2. APPLICATION FOR REFUND OF IMPORT DUTY OR INTEREST [SECTION 27]

Person who can claim refund of duty / interest: The claim for refund of duty or interest can be made by (i) the person who paid the duty or interest in excess; or (ii) the person who bore the incidence of such duty or interest.

Application for refund to be made in proper form and manner: The claim for refund of any duty or interest paid or borne by the claimant must be made in such form or manner as may be prescribed.

Application for refund to be filed within one year: A claim by the importer / exporter for refund of duty / interest, must be made before the expiry of one year from the date of payment of such duty or interest [Section 27(1)].

A claim by another person, from whom duty was collected, must be made before expiry of one year from the date of purchase of the goods [Explanation to Section 27(1)].

Other situations require computation of one year as follows:

Event	Limitation of one year to be computed from the
Exemption of duty by a special order issued under section 25(2)	Date of issue of such order [Section 27(1B)(a)]
Refund of duty arising as a consequence of any judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction [Section 27(1B)(b)]
Provisional payment of duty under	Date of adjustment of duty after the

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section 18	final assessment, or in case of re-assessment, from the date of such re-assessment [Section 27(1B)(c)].

No limitation in case of duty paid under protest: The limitation of one year shall not apply where any duty or interest has been paid under protest. Hence, in case of duty/interest paid under protest, refund claim may be filed without any time-limit [Section 27(1) second proviso].

Minimum amount of refund: Where the amount claimed is less than ₹ 100, it will not be refunded. In other words, refund will be granted only when the duty amount involved is ₹ 100 or more [Section 27(1) third proviso)].

Documentary evidence to be furnished to prove that incidence of the duty/interest for which refund claim has been filed is not passed on to any other person: Refund application must be accompanied by documentary or other evidence (including the documents, like invoice, referred to in section 28C to establish that the amount of duty or interest, in relation to which such refund is claimed, was collected from or paid by him, and that the incidence of such duty or interest has not been passed on by him to any other person [Section 27(1A)].

(It must be noted that section 28D creates a statutory presumption that the incidence of duty has been passed on to the buyer, unless the contrary is proved. The documents enclosed to the refund claim must refute this presumption. Please see the section on unjust enrichment, later in this chapter.)

3. PROCESSING OF REFUND CLAIM [SECTION 27(2)]

The application of refund, if found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case the whole or any part of the duty and interest is found to be refundable, an order for refund is passed. However, in view of the provisions of unjust enrichment (see below) enshrined in the Customs Act, the amount found refundable has to be transferred/credited to the Consumer Welfare Fund. Only in following situations, the amount of duty and interest found refundable, instead of being credited to the Consumer Welfare Fund, is to be paid to the applicant:

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(a) if the importer has not passed on the incidence of such duty and interest to any other person;

(b) if imports were made by an individual for his personal use;

(c) if the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;

(d) if amount found refundable relates to export duty paid on goods which has returned to exporter as specified in section 26;

(e) if amount relates to drawback of duty payable under section 74 and 75;

(f) if the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.

(g) if the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—

(i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or

(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

4. DOCTRINE OF UNJUST ENRICHMENT WITH RESPECT TO REFUND OF DUTY

When an importer imports goods, he has to pay the customs duty on such goods. This duty is recovered from the purchasers when the goods are sold by the importer. In other words, the incidence or burden of duty is passed on to the purchaser, from whom the importer collects the customs duty. Subsequently, if the importer makes a claim for refund of duty and receives the amount from the government also, then this would be called as unjust enrichment.

Therefore, wherever there is excess collection of duty, the refund is to be given only to the person who has borne the burden of duty and interest, if any. When the person who applies for refund is not the person who has borne the burden of duty, the refund is paid into a fund called 'Consumer Welfare Fund'.

In terms of Section 27, the importer or his agent, or the buyer who has been charged the duty by the importer, has to prove that he has not passed the burden of duty to another person, in order to be given refund of duty. Section 28D creates a statutory presumption that he did pass on the burden of duty; this presumption has to be refuted by proving the contrary. If he succeeds in this, the claimant is

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given the refund in terms of Section 27(2), clause (a) for the importer and clause (c) for the buyer.

Illustration

The importer has imported an article, which has been valued at ₹1000/-. The customs duty on this article comes to ₹250/-. Now the importer adds his profit margin of say ₹250/- and sells the article for ₹1500/-. Now the price charged by the importer consists of the duty element which has been passed on to the buyer.

If later on it is found that there was an error resulting in excess payment of duty, such excess duty is liable to be refunded. But as may be seen above, the importer has already collected the duty from the purchaser and if any refund is granted to him, it would confer on him a double benefit to which he does not have a valid right. Therefore in such cases the refund is credited to the "Consumer Welfare Fund".

The landmark judgment on refund is by a Nine Member Bench of the Supreme Court in *Mafatlal Industries Ltd. v. U.O.I.- 1997 (89) E.L.T. 247*. The salient features of this judgment can be summarised as under:

a. The theory of unjust enrichment is valid and constitutional. However, the theory that, conversely, the manufacturer would be unjustly impoverished in case of demands has not been agreed to.

b. Section 27 (Customs Act) is self contained code for refunds; resort to civil suits or writs is not permissible unless the taxing provision is struck down as unconstitutional. The general theory laid down in certain judgments of both the Supreme Court and High Courts that refund could be claimed within three years of discovery of mistake has been disapproved.

c. Unless the levy is struck down as unconstitutional, all Courts must exercise jurisdiction in terms of section 11B and refuse to grant relief if the incidence of tax has been passed on.

d. Whatever amount is collected as duty will have to paid to the Government. If excess is collected than that payable, it would be credited to the Consumer Welfare Fund or given as refund to the person who has borne the incidence of duty.

The Supreme Court has held in *Solar Pesticides case 2000 (116) ELT 401* that the bar of unjust enrichment will apply to refunds even in case of captive consumption of inputs by the importer, as the incidence of duty paid on the inputs are passed on to the customers.

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Further, the Supreme Court in the case of *CCE v. Allied Photographics 2004 (166) ELT 3* has held that doctrine of unjust enrichment applies even when duty is paid under protest. It has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of duty), it does not lead to the inevitable conclusion that incidence of duty has been passed on to the buyer, as such uniformity may be due to various factors.

Exceptions to the Doctrine of Unjust Enrichment

As seen above, clauses (a) and (c) of sub-section (2) of section 27 provide that a refund may be paid to the applicant if the said applicant proves that he did not pass on the incidence of duty to another person. Sub-section (2) also provides for certain exceptions to the doctrine of unjust enrichment. In these exceptions refund of duty and interest may be paid to the applicant if such amount is relatable to:

- drawback of duty payable under sections 74 and 75;
- export duty as specified in section 26;
- the duty and interest on imports made by an individual for his personal use;
- the duty and interest borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify. However, no notification shall be issued unless in the opinion of the Central Government the incidence of duty and interest has not been passed on by the persons concerned to any other person.
- the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where (i)such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

Illustration

State briefly with reference to the provisions of section 27 of the Customs Act, 1962 whether the principle of "unjust enrichment" will apply in case of refund of excess duty paid on car imported for personal use?

Answer

The bar of unjust enrichment applies in case of refund of customs duty under section 27(2) of the Customs Act, 1962.

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The principle of unjust enrichment will not apply to refund of duty on car imported for personal use, as clause (b) of the proviso to sub-section (2) of section 27 of the Customs Act, 1962 stipulates that in case of imports made by an individual for his personal use, the refund should not be credited to consumer welfare fund, but shall be paid to the applicant.

5. INTEREST ON DELAYED REFUND [SECTION 27A]

The Customs has to finalize refund claims without delay upon receipt of the refund application in proper form along-with all the documents. In case any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, interest is to be paid to the applicant. The government is permitted to fix such interest between 5% and 30%. **Currently, the rate of interest is 6%** vide *Notification No. 75/2003-Cus (NT) dated 12.09.2003*. The interest is to be paid for the period beginning from the date immediately after the expiry of 3 months from the date of receipt of such application, till the date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund. In other words, in cases where no refund claim has been made, if a refund results from an order passed by the appellate authorities mentioned above or by a court of law, refund is to be paid within 3 months of the order, and interest will be payable after that.

The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

6. REFUND OF EXPORT DUTY IN CERTAIN CASES [SECTION 26]

Where export duty has been paid on the exportation of any goods, upon return of the goods such duty shall be refunded to the person by whom or on whose behalf

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it was paid, if -

(a) the goods are returned to such person otherwise than by way of re-sale;

(b) the goods are re-imported within one year from the date of exportation; and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

This provision compensates the export duty in a situation where the goods which are exported are rejected and returned by the buyer.

7. REFUND OF IMPORT DUTY IN CERTAIN CASES [SECTION 26A]

Section 26A provides that the import duty paid on clearance of imported goods for home consumption shall be refunded to the person who has paid such duty subject to the fulfillment of the following conditions:

(a) Goods are defective/not as per specifications: The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods. However, the goods should not have been worked upon, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(b) Goods identified as imported goods: The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) No drawback claimed: The importer does not claim drawback under any other provisions of this Act; and

(d) Importer exports the goods/relinquishes title to goods/destroys or renders them commercially valueless

(i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer

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in the prescribed manner within 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47. However, the period of 30 days may, on sufficient cause being shown, be extended by the Principal Commissioner/Commissioner of Customs for a period not exceeding 3 months.

Goods in respect of which offence has been committed: It may be noted that the provisions of this section do not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Application for refund of import duty: An application for refund of duty shall be made before the expiry of 6 months from the relevant date in such form and in such manner as may be prescribed [sub-section 2].

Meaning of relevant date: Explanation to sub-section (2) provides the relevant dates in various circumstances as under:-

S.No.	Case	Relevant date
1.	In case the goods are exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51
2.	In case of relinquishment of title to the goods	Date of such relinquishment
3.	In case of goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

No refund in case of perishable goods: In respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period, the refund shall not be allowed [Sub-section (3)].

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The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund may be allowed [Sub-section (4)].

8. REFUND CLAIM CANNOT BE A SUBSTITUTE FOR APPEAL

The Customs Act has separate provisions and timelines for filing appeal against an order passed by a customs officer. Appeal to the Commissioner (Appeals) is to be made within 60 days of receipt of the order against which the person is aggrieved. On the other hand, a refund claim can be filed within one year from the date of payment of duty or clearance of goods or such other event as specified in section 27. However a refund claim cannot be a substitute for an appeal.

In the case of *Priya Blue Industries Limited, 2004 (172) ELT 145 (SC*), duty was assessed on the imported item and the importer paid the duty under protest. Thereafter, the importer filed a claim for refund of the duty. In this matter the Supreme Court ruled that, "Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order."

In view of the above ruling of the Supreme Court, refund claims based on challenge to an order of assessment are liable to be rejected.

Important Judgments on Refund

If excess tax is paid, except cases involving the principles of unjust enrichment, the excess tax must be refunded	*Corporation Bank v. Saraswati Abharansala 2009 (233) ELT 3 (SC)*
Refund claim cannot be a substitute for appeal	*Priya Blue Industries Limited v CCus, 2004 (172) ELT 145(SC)*
Refund claim cannot be filed by the CH agent in his own name, without power of attorney	*Jaswant b. Shah v. CC 1996 (81) E.L.T. 669 (Tribunal)*

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Burden of proof that incidence of duty has not been passed on to consumers is on assessee.	*Banmore Foam v. CCE 2006 (193) ELT 112 (Tribunal-Delhi)*
Interest on delayed refund is payable at the rates as applicable time to time and not at the rate applicable on day when refund was due.	*CCus. v Consolidated Solvents and Chemical Corporation (2009) 243 ELT 625 (Tri.)*

TEST YOUR KNOWLEDGE

1. *Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.*

2. *The assessee furnished bank guarantee to the department as required, and imported capital goods at concessional rate of duty under an authorisation with export obligation, but failed to complete the export obligation within the prescribed time. Consequently, the Department invoked the bank guarantee and realized the amount of duty foregone. Subsequently the assessee fulfilled the export obligation and the same was also accepted by the Department. The assessee filed a refund claim for the amount realized by the Department under the bank guarantee. The Department rejected the refund claim on the ground that it was time barred in terms of section 27 of the Customs Act, 1962.*

   Was the stand taken by the Department correct in law? Examine with the support of case law on the issue.

3. *M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.*

   M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has rejected the refund claim on the grounds of unjust enrichment. Discuss whether the action of the department is correct in law?

4. *XYZ Ltd imported capital goods and used them in its factory to produce goods for sale. Upon discovery of an error by which excess import duty had been paid*

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on the said capital goods, it filed a claim for refund. As regards unjust enrichment, it contended -

- *that the capital goods were not sold and hence the principle of unjust enrichment will not apply to the refund of import duty paid on capital goods; and*
- *that in any case the price of the finished goods manufactured in the factory remained the same before and after the import and installation of the capital goods, which is sufficient proof to establish that duty burden has not been passed on.*

Examine the merits of these contentions, with the support of case law, if any.

5. *Section 26A of Customs Act, 1962 provides for refund of import duty paid if goods are found defective or not as per specifications. Discuss the conditions governing such refund in brief.*

6. *What is the minimum monetary limit prescribed in the Customs law below which no refund shall be granted?*

7. *Explain the doctrine of unjust enrichment with respect to refund of duty.*

8. *Acme Sales' imports were being provisionally assessed pending a verification that the department was carrying out. Upon completion of the verification, the assessments were finalized, and Acme Sales was asked to pay ₹ 12 lakhs, which it paid. After six months, upon detailed scrutiny of the verification report and taking legal opinion on it, Acme Sales filed a claim for refund of ₹ 8 lakhs on the ground that the differential amount should be ₹ 4 lakhs only and that there were factual errors in the verification report. Was this the correct mode of redressal for Acme Sales? What will be likely outcome of the claim? Discuss on the basis of case law on the subject.*

9. *Mr. N has, over three consignments of 200, 400 and 400 units, imported a total of 1000 units of an article "ZEP", which has been valued at ₹ 1,150 per unit. The customs duty on this article has been assessed ₹ 250 per unit. He adds his profit margin ₹ 350 per unit and sells the article for ₹ 1,750 per unit.*

   After one month of selling the entire consignment of article "ZEP", Mr. N found that there had been an error in payment of amount of duty, in which duty for the consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Mr. N files an application for refund for ₹ 50,000 (200 X 250). Is the bar of unjust enrichment attracted?

10. *Explain the relevant dates as provided in section 26A(2) of the Customs Act,*

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1962 for purpose of refund of duty under specified circumstances, namely:

(i) goods exported out of India

(ii) relinquishment of title to goods

(iii) goods destroyed or rendered valueless.

ANSWERS/ HINTS

1. According to section 27(1) of the Customs Act, 1962, a refund claim should be lodged before the expiry of one year from the date of payment of such duty or interest. The period of limitation of one year should be computed in the following manner:

   (a) If the refund claim is lodged by the importer, the time limit should be calculated from the date of payment of duty.

   (b) If the refund claim is lodged by the buyer of imported goods, the time limit should be calculated from the date of purchase of goods.

   (c) In case of goods which are exempt from payment of duty by an ad-hoc exemption, the limitation of one year should be computed from the date of issue of such exemption order.

   (d) Where any duty is paid provisionally, the time limit should be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.

   (e) Where the refund arises as a result of any judgement/decree/order/direction of the Appellete Authority/ Appellate Tribunal/Court, the time limit should be calculated from the date of such judgement/decree/order/direction.

   The time limit of one year is not applicable if duty is paid under protest. Finally, it is worth mentioning that above provisions regarding time limit are mandatory and customs authorities cannot grant a refund which is filed beyond the maximum permissible period.

2. In this case the bank guarantee was for the purpose of security for fulfilment of export obligation. It cannot be construed as payment of 'duty'. As section 27 applies only to refund of duty and not to refund of other amounts, the time bar under the said section cannot be invoked to deny the refund.

   The facts of given case are similar to the facts of *CCus. (Exports) v. Jraj Exports (P) Ltd. 2007 (217) ELT 504 (Mad.)*. The High Court, in the instant case, held

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that furnishing of bank guarantee for export obligation could not be regarded as payment of duty; therefore time-bar was not applicable for its return.

The High Court relied on the Supreme Court's ruling in the case of *Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise 1994 (70) ELT 48 (SC)*, wherein it was held that furnishing of bank guarantee pursuant to an order of the Court would not be equivalent to payment of excise duty. The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue. Since section 27 governs the refund of 'duty', and the bank guarantee is not 'duty', the limitation prescribed therein for refund of duty would not apply to refund of a bank guarantee.

Applying the principle laid down in the abovesaid case, the High Court stated that the requirement to establish that the duty incidence had not been passed on by the assessee to any other person would also not get attracted since section 27 has no application to this case. Therefore, the stand of the Department is not correct in law.

3. Section 18 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of Customs Act, 1962 provides that if any amount is found to be refundable after finalisation of provisional assessment, such refund will be subject to doctrine of unjust enrichment.

Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.

Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

4. The incidence of duty can be passed directly or indirectly. Where the capital goods are used for manufacture, the duty paid on their import will go into the costing of the goods manufactured and sold, and can thus be passed on to the buyers. The Large Bench of the Tribunal in the case of *SRF Ltd. v. CCus. Chennai 2006 (193) ELT 186 (Tri. - LB)* has held that the doctrine of unjust enrichment would be applicable in case of imported capital goods used captively for manufacture of excisable goods. As regards the relevance of the fact that price remained the same before and after the capital goods were imported, the Larger Bench also clarified that uniformity in price before and after assessment does not lead to inevitable conclusion that duty burden has

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not been passed, as such uniformity may be due to various reasons. In view of this, the contentions of XYZ Ltd are liable to be rejected.

5. Often, goods imported are found to be defective or not according to specifications. In such cases, earlier, the refund of customs duty paid at the time of import could be obtained only if the imported goods were physically returned to foreign supplier. Generally, cost of return of the rejected goods is heavy and it is economical to dispose of the goods in India itself. Realising this practical difficulty, section 26A of Customs Act makes provision for refund of import duty paid if goods are found defective or not as per specifications. The refund is admissible if goods are re-exported or relinquished and abandoned to the customs authorities or destroyed. Thus, refund is possible even if goods are destroyed or relinquished in India without re-exporting the same.

The section stipulates the following conditions for the refund:

(i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;

(ii) the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

(iii) the goods are identified to the satisfaction of Assistant/Deputy Commissioner of Customs as the goods which were imported;

(iv) the importer does not claim drawback under any other provision of this Act; and

(v) the goods are exported or the importer relinquishes his title to the goods and abandons them to customs or such goods are destroyed/rendered commercially valueless in the presence of proper officer in prescribed manner within 30 days from the date on which the order of clearance of imported goods for home consumption is made by the proper officer. This period of 30 days can be extended up to 3 months.

(vi) An application for refund of duty shall be made before the expiry of 6 months from the relevant date in prescribed form and manner.

(vii) Imported goods should not be such regarding which an offence appears to have been committed under this Act or any other law.

(viii) Imported goods should not be perishable goods and goods which have exceeded their shelf life or their recommended storage before use period.

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6. As per third proviso to section 27(1) of the Customs Act, 1962, the minimum monetary limit below which refund cannot be granted is ₹ 100.

7. When an importer imports goods, he has to pay the customs duty on such goods. This duty is recovered from the purchaser when these goods are sold by the importer. In other words, the burden of duty is passed on to the purchaser. Subsequently, if the importer is refunded the duty by the government, this double benefit would be called as unjust enrichment, because he recovers the duty from customer and again gets the said amount from Government as refund. The same applies to a buyer who again passes on the incidence of duty to another person.

   Therefore, wherever there is excess payment or collection of duty, the refund is given only to the person who bears the burden of duty and interest, if any. If the person who claims the refund is not the person who bore the burden, the refund is paid into a fund called Consumer Welfare Fund. Therefore, even if the duty / interest is refundable on merits, it is important for the applicant for a refund to prove that he has not passed the burden of duty, in order to succeed in getting refund of duty.

   Section 28D provides that every person who has paid duty under the Customs Act, unless the contrary is proved by him, shall be deemed to have passed the full incidence of such duty to the buyer; hence the applicant for refund has to refute the presumption of passing on the incidence of duty.

8. Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of ₹ 12 Lakhs. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of *Priya Blue Industries Limited, 2004 (172) ELT 145 (SC),* that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

9. Mr. N's invoices show that he collected duty of ₹ 250 per unit on 1,000 items. However he paid duty on 200 items more. This payment, in the normal course, was made before the order permitting the clearance of the goods. It would be evident from the bill of entry that the amount paid was more than the amount of duty assessed. Thus Mr N's case falls within the exception to unjust

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enrichment listed at clause (g) of the first proviso to section 27(2). He will be able to refute the charge of unjust enrichment. Furthermore, clause (a) of the same sub-section provides that the doctrine of unjust enrichment will not apply to the refund of duty and interest, if any, paid on such duty if such amount is relatable to the duty and interest paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person. Mr N's invoices will show how much duty he collected from his customers, hence he may be covered by this clause also to escape the bar of unjust enrichment.

10. The relevant dates provided under Explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

	Case	**Relevant date**
(i)	Goods exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation
(ii)	Relinquishment of title to the goods	Date of such relinquishment
(iii)	Goods being destroyed or rendered valueless	Date of such destruction or rendering of goods commercially valueless

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SIGNIFICANT SELECT CASES

1. Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?

Parimal Ray v. CCus. 2015 (318) ELT 379 (Cal.)

Facts of the Case: The petitioners imported tunnel boring machines which were otherwise fully exempt from customs duty. However, owing to erroneous classification of such machines, they paid large amount of customs duty.

After expiry of more than 3 years, the petitioners filed a writ petition claiming the refund of the amount so paid. The said refund claim was rejected on the ground that the petitioners failed to make a proper application of refund under section 27 of the Customs Act, 1962 within the stipulated period of 1 year of payment of duty.

High Court's Observations and Decision: The High Court observed that the provisions of section 27 apply only when there is over payment of duty or interest under the Customs Act, 1962. When the petitioners' case is that tunnel boring machines imported by it were not exigible to any duty, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account. The Government could not have claimed or appropriated any part of this as duty or interest. **Therefore, there was no question of refund of any duty by the Government. The money received by Government could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay under section 72 of the Indian Contract Act, 1872.**

A person to whom money has been paid by mistake by another person becomes at common law a trustee for that other person with an obligation to repay the sum received. This is the equitable principle on which section 72 of the Contract Act, 1872 has been enacted. Therefore, the person who is entitled to the money is the beneficiary or *cesti qui trust**. **When the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner.** The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it.

The High Court, therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to the petitioner.

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Notes:

(i) The principle enunciated in this case is that law of limitation under Customs Act is applicable to duty or interest paid under that Act. However, any sum paid to the exchequer by mistake is not duty or excess duty but is simply money paid to the account of Government. Therefore, limitation of one year applicable to refunds of customs duty will not apply to refunds of amount paid to the Government by mistake. The High Court elaborated that under the Limitation Act, 1963, money paid by mistake can be recovered up to three years from the time the plaintiff discovers the mistake or could have discovered the same with reasonable diligence.

(ii) A cestui que trust is a person for whose benefit a trust is created; a beneficiary. Although legal title of the trust is vested in the trustee, the cestui que trust is the beneficiary who is entitled to all benefits from a trust.

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CHAPTER 8

FOREIGN TRADE POLICY



For the sake of brevity, Foreign Trade Policy has been referred to as FTP at many places in this Chapter.

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- explain the legislation governing FTP, salient features of an FTP, administration of FTP, contents of FTP and other related provisions
- appreciate and explain the basic concepts relating to import and export of goods under FTP
- analyse the basic concepts relating to export promotion schemes provided under FTP namely, duty exemption and remission schemes, reward schemes, EPCG, EOU, EHTP, STP & BTP schemes, deemed exports and apply the same in problem solving

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UNIT – I : INTRODUCTION TO FTP

1. INTRODUCTION

Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India viz., **foreign trade**. In the era of globalization, foreign trade has become the lifeline of any economy. Its primary purpose is not merely to earn foreign exchange, but also to stimulate greater economic activity. International trade not only enables a nation to specialize in the goods which it can produce most cheaply and efficiently, but also to consume more than it would be able to produce with its own resources. International trade enlarges the potential markets for the goods of a particular economy.

Legislation governing foreign trade: In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade. The main legislation concerning foreign trade is the **Foreign Trade (Development and Regulation) Act, 1992 FT(D&R) Act**. The FT(D&R) Act provides for the development and regulation of foreign trade by facilitating imports into, and augmenting exports from, India and for matters connected therewith or incidental thereto. As per the provisions of the Act, the Government:-

(i) may make provisions for facilitating and controlling foreign trade;

(ii) may prohibit, restrict and regulate exports and imports, in all or specified cases as well as subject them to exemptions;

(iii) is authorised to formulate and announce an export and import policy and also amend the same from time to time, by notification in the Official Gazette;

(iv) is also authorised to appoint a 'Director General of Foreign Trade' for the purpose of the Act, including formulation and implementation of the export-import policy.

Foreign Trade Policy: In exercise of the powers conferred by the FT(D&R) Act, the Union Ministry of Commerce and Industry, Government of India generally announces the integrated **Foreign Trade Policy (FTP)** every five years with certain underlined objectives. The Foreign Trade Policy was earlier called as Export Import policy i.e., EXIM Policy. However, export import policy is now referred to as Foreign Trade Policy (FTP) of the country as it covers

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areas much beyond export and import. This policy is updated every year, in addition to changes that are made throughout the year.

The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position. The policies are driven by factors like export led growth, improving efficiency and competitiveness of the Indian industries, ease of doing business etc.

SALIENT FEATURES OF AN FTP

The following are some of the key attributes of the FTP:

- Export-Import of goods and services is generally free unless specifically regulated by the provisions of the Policy or any other law for the time being in force.
- Export and import goods are broadly categorized as – (a) Free (b) Restricted (c) Prohibited.
- Some goods are 'free' for import and export but can be imported/exported only through State Trading Enterprises (STE).
- There are restrictions on exports and imports for various strategic, health, defence, environment, and other reasons. If the goods are restricted for import/export but not prohibited, the Government can give a permission/license for specific reasons.
- Exports are promoted through various promotional schemes.
- Goods and services are to be exported and not taxes. Hence, the taxes on exports are either exempted or adjusted or refunded on both outputs and inputs, through schemes of Duty Exemption, Duty Refund (Drawbacks and Rebates).
- Capital goods can be imported at NIL duty for the purpose of exports under the scheme of EPCG.
- For units undertaking to export all their production, there are special schemes so that they can avoid taxes at every stage under the scheme of EOU/SEZ.
- In certain cases imports get duty exemption/concession for certain special purposes. In such cases, to enable domestic suppliers to compete with the international suppliers, the supplies of domestic suppliers are treated as deemed exports.

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- Duty credit scrips Schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services.

Foreign Trade Policy 2015-2020 - The present Foreign Trade Policy, which was announced on 01.04.2015, is an integrated policy for the period between 01.04.2015 and 31.03.2020.

Guiding principles: The guiding principles of FTP 2015-2020 are as follows –

- Generation of employment and increasing value addition in country, in keeping with 'Make in India' vision.
- Focus on improving 'ease of doing business' and 'trade facilitation' by simplifying procedures and extensive use of e-governance – move towards paperless working.
- Encouraging e-commerce exports of specified products.
- Steps to encourage manufacture and export by SEZ, EOU, STP, EHTP and BTP.
- Duty credit scrips to (a) encourage exports of specified products to specified markets (b) export of services.
- Special efforts to resolve quality complaints and trade disputes.

The various measures taken in said direction include:

- The number of mandatory documents required for exports and imports of goods from/into India have been reduced to 3 each..
- The facility of 24 X 7 Customs clearance for specified imports has been made available at the 18 specified sea ports. The facility of 24 X 7 Customs clearance for specified imports has also been made available at the 17 specified air cargo complexes.
- Single window scheme has been introduced to enable importer and exporter to lodge their clearance documents at a single point thereby providing a common platform to trade to meet requirements of all regulatory agencies involved in exim trade.
- To facilitate processing of shipping bills before actual shipment, prior online filing facility for shipping bills has been provided by the Customs - 7 days for air shipments & ICDs and 14 days for shipments by sea.

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- DGFT under the EDI initiatives has provided the facility of on line filing of applications to obtain Importer Exporter Code and various authorizations /scrips.

Exports from and imports in India, need a lot of regulatory requirements to be complied with at various stages. Yet if properly planned, exports and imports can utilize a lot benefits that are available under various provisions of the FTP. The policy not only prescribes the guidelines as to which goods and services can be imported/exported and the relevant procedures thereto but also provides a lot of benefits if properly planned.

Schemes like Duty Exemption Schemes, EPCG Schemes, Deemed Exports, etc., benefit exporters, importers and even defined domestic businesses thereby assisting all businesses to reduce costs at every stage in the value chain. In addition, exporters can avail other benefits under promotional schemes.

ADMINISTRATION OF THE FTP

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

DGFT issues **authorization** (earlier called as licence) for import/export. 'Authorization' means a permission in terms of the FT(D&R) Act to import or export. It also grants **Importer Exporter Code** (IEC) Number to importers and exporters. Import and Export without IEC number is not permitted, unless specifically exempted.

Decision of DGFT is final and binding in respect of interpretation of any provision of foreign trade policy, classification of any item in ITC(HS), content scope or issue of any authorization issued under the FTP.

Other authorities involved: Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

(1) Central Board of Indirect Taxes and Customs (CBIC): CBIC comes under Ministry of Finance and its two Departments namely, Customs and GST facilitate in implementing the provisions of the FTP.

Customs Department is responsible for clearance of export and import goods after their valuation and examination. Customs authorities follow the policy formed by the DGFT while clearing the imported and export goods.

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Since there is Goods and Services Tax on almost all the goods and services (except petroleum products, tobacco products and alcoholic liquor), Central GST authorities need to be involved for all matters of exports, where goods have to be cleared without payment of GST.

(2) Reserve Bank of India (RBI): RBI is the nodal bank in the country which formulates the policies related to management of money, including payments and receipts of foreign exchange. It also monitors the receipt and payments for exports and imports. RBI works under the Ministry of Finance.

(3) State GST Departments: To avoid duel control, some taxable persons are under jurisdiction of State GST authorities. In their case, State GST Authorities are controlling authorities.

CONTENTS OF FOREIGN TRADE POLICY

The contents of the FTP 2015-2020 are as follows

(i) FTP 2015-2020: having 9 Chapters giving basic policy. This has been notified by the Central Government on 01.04.2015. The policy is amended normally in April every year and also during the year.

(ii) Handbook of Procedures 2015-2020: (HBP 2015-2020) containing 9 chapters, covering procedural aspects of policy. This has been notified by Director General of Foreign Trade on 01.04.2015. It is amended from time to time as per requirements.

(iii) Appendices and Aayat Niryat Forms (AANF): containing various appendices and forms relating to import and export.

(iv) Standard Input-Output Norms: Standard Input-Output Norms (SION) of various products are notified from time to time. Based on SION, exporters are provided the facility to make duty-free import of inputs required for manufacture of export products under the Duty Exemption Schemes like Advance Authorisation and DFIA.

(v) ITC(HS) Classification of Exports and Import Items: The Export Import Policy regarding import or export of a specific item is given in the Indian Trade Classification Code based on Harmonized System of Coding [ITC(HS)]. ITC-HS Coding was adopted in India for import-export operations. Indian custom uses eight digit ITC-HS Codes to suit the national trade requirements.

ITC-HS codes are divided into two schedules. **ITC(HS) Import Schedule I** describe the rules and guidelines related to import policies whereas **Schedule II** describe the rules and regulation related to export policies. Presently, most of the goods can be imported without any authorization. Schedule II contains

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very few products, where export is prohibited or restricted. Excluding those items, export of all other goods is free.

Any changes or formulation or addition of new codes in ITC-HS Codes are carried out by DGFT (Directorate General of Foreign Trade).

Foreign Trade Policy *vis a vis* tax laws: The Foreign Trade Policy is closely knit with the Customs, GST Laws and Excise laws of India. However, the policy provisions *per-se* do not override tax laws. The exemptions extended by FTP are given effect to by issue of notifications under respective tax laws (e.g., Customs Tariff Act). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC. In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

FTP, Handbook of procedures under FTP, CGST Act, SGST Act, IGST Act, Central Excise Act (for petroleum products and tobacco products), Customs Act and notifications issued hereunder form an integrated scheme of indirect taxation. All these statues have to be read as a whole and not in isolation, since they are series of statues relating to related subject matter.

SCOPE OF FTP

The FTP covers the policies and regulations with respect to the following matters:

(i) Legal framework and trade facilitation – Chapter 1

(ii) Policy for regulating import and export of goods and services – Chapter 2

(iii) Export Promotional Measures – Export from India Scheme – Chapter 3

(iv) Duty Remission and Duty Exemption Scheme for promotion of exports – AA and DFIA and duty drawback – Chapter 4

(v) Export promotion Capital Goods (EPCG) Scheme – Chapter 5

(vi) Export Oriented Undertakings (EOU) / Electronic Hardware Technology Park (EHTP) / Software Technology Park (STP) and Bio Technology Parks (BTU) Schemes – Chapter 6

(vii) Deemed Exports – Chapter 7

(viii) Quality Complaints and Trade Disputes – Chapter 8

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(ix) Definitions – Chapter 9

Provisions relating to Special Economic Zone (SEZ) are contained in a separate Act and are not part of FTP. However, provisions of SEZ are closely related to Foreign Trade Policy.

Handbook of Procedures (HBP 2015-2020) has 9 corresponding chapters which mainly deal with procedural aspects of the foreign trade policy.

Special Focus Initiatives: The FTP provides certain special focus initiatives for Market Diversification, Technological Upgradation, Support to status holders, Agriculture, Handlooms, Handicraft, Gems & Jewellery, Leather, Marine, Electronics and IT Hardware Manufacturing Industries, Green products, Exports of products from North-East, Sports Goods and Toys sectors wherein the Government of India shall make concerted efforts to promote exports.

Board of Trade: Board of Trade (BOT) has been constituted to advise Government on Policy measures for increasing exports, review export performance, review policy and procedures for imports and exports and examine issues relevant for promotion of India's foreign trade. Commerce & Industry Minister will be the Chairman of the BOT. Government shall also nominate upto 25 persons, of whom at least 10 will be experts in trade policy. In addition, Chairmen of recognized Export Promotion Councils (EPCs) and President or Secretary-Generals of National Chambers of Commerce will be ex-officio members. BOT will meet at least once every quarter.

Trade facilitation through EDI initiatives: DGFT has put in place a robust EDI system for the purpose of export facilitation and good governance. DGFT has set up a secured EDI message exchange system for various documentation related activities including import and export authorizations established with other administrative departments, namely, Customs, Banks and EPCs. This has reduced the physical interface of exporters and importers with the Government Departments and is a significant measure in the direction of reduction of transaction cost. The endeavour of DGFT has been to enlarge the scope of EDI to achieve higher level of integration with partner departments. E-BRC (Electronic Bank Realisation Certificate) has enabled DGFT to capture details of realisation of export proceeds directly from the banks through secured electronic mode. Further, an online complaint registration and monitoring system allows users to register complaint and receive status/ reply online.

DGCI&S Commercial Trade Data: DGCI&S has put in place a Data Suppression Policy. Transaction level data would not be made publically available to protect privacy. DGCI&S trade data shall be made available at

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aggregate level with a minimum possible time lag in a query based structured format on commercial criteria.

2. PROVISIONS REGARDING IMPORTS AND EXPORTS

A. GENERAL PROVISIONS APPLICABLE TO IMPORT AND EXPORT OF GOODS

1. Exports and imports are free unless regulated: Exports and Imports shall be free, except where regulated by FTP or any other law in force. The item wise export and import policy shall be specified in ITC(HS) notified by DGFT from time to time. These are classified as – (a) Free (b) Restricted (c) Prohibited (d) Exclusive trading through State Trading Enterprise (STEs).

2. Compliance with laws: Every exporter or importer shall comply with the provisions of the FT (D&R) Act, the rules and orders made there-under, the FTP and terms and conditions of any authorization granted to him. All imported goods shall also be subject to domestic laws, rules, orders, regulations, technical specifications, environmental and safety norms as applicable to domestically produced goods unless specifically exempted.

3. Interpretation of policy: If any question or doubt arises in respect of interpretation of any provision, said question or doubt shall be referred to DGFT whose decision thereon shall be final and binding.

4. Procedure: DGFT may specify procedure to be followed by an exporter or importer or by any licencing or any other competent authority for the purpose of implementing provisions of Foreign Trade Act, the rules and the orders made there-under and FTP. Such procedures shall be published in Hand Book of Procedures by means of a Public Notice, and may, in like manner, be amended from time to time.

5. Exemption from Policy/Procedure: DGFT may pass such orders or grant such relaxation or relief, as he may deem fit and proper, on grounds of genuine hardship and adverse impact on trade. DGFT may, in public interest, exempt any person or class or category of persons from any provision of FTP or any procedure and may, while granting such exemption, impose such conditions as he may deem fit.

6. Principles of Restriction: DGFT may, through a notification, adopt and enforce any measure necessary for:

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(a) **Protection** of:-

(i) public morals.

(ii) human, animal or plant life or health.

(iii) patents, trademarks and copyrights and the prevention of deceptive practices.

(iv) national treasures of artistic, historic or archaeological value

(v) trade of fissionable material or material from which they are derived

(b) **Prevention** of traffic in arms, ammunition and implements of war and use of prison labour.

(c) **Conservation** of exhaustible natural resources.

7. Export/import of restricted goods/services: Any goods/services, export or import of which is restricted under ITC(HS) may be exported or imported only in accordance with an Authorization or in terms of a public notice/notification issued in this regard.

8. Terms and Conditions of an authorization: Every Authorization shall be valid for prescribed period of validity and shall, *inter alia,* include the following terms and conditions (as applicable) in addition to such other conditions as may be specified:

(a) Quantity, description and value of goods;

(b) Actual User condition;

(c) Export obligation;

(d) Minimum Value Addition to be achieved;

(e) Minimum export/ import price; and

(f) Bank Guarantee/ Legal Undertaking/ Bond with Customs Authority/ RA.

9. Authorization not a right: No person may claim an Authorization as a right and DGFT or RA shall have power to refuse to grant or renew the same in accordance with provisions of FT(D&R) Act, rules made there under and FTP.

10. Penalty: If an authorization holder violates any condition of such authorization or fails to fulfill export obligation, he shall be liable for action in accordance with FT (D&R) Act, the Rules and Orders made there under, FTP and any other law for time being in force.

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11. State Trading Enterprises (STEs): STEs are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import. Any goods, import or export of which is governed through exclusive or special privileges granted to State Trading Enterprises [STE(s)], may be imported or exported by STE(s) as per conditions specified in ITC(HS). DGFT may, however, grant an authorization to any other person to import or export any of these goods. Some items should be imported or exported only through State Trading Enterprises.

12. Importer-Exporter Code (IEC): It is a unique 10 digit code issued by DGFT to a person. IEC is mandatory to export any goods out of India or to import any goods into India unless specifically exempt. Permanent Account Number (PAN) is pre-requisite for grant of an IEC. Only one IEC can be issued against a single PAN.

DGFT has decided to use income tax PAN as IEC number i.e., IEC will be issued by DGFT with the difference that it will be alpha numeric (instead of 10 digit numeric at present) and will be same as PAN of an entity.

With the introduction of GST, GSTIN would be used for purposes of

(i) credit flow of IGST on import of goods, and

(ii) refund or rebate of IGST related to export of goods.

In view of this, it has been decided that importer/exporter would need to declare only GSTIN (wherever registered with GSTN) at the time of import and export of goods. For residuary categories, UIN issued by GSTN and authenticated by DGFT will be used. For others, common number will be notified by DGFT.

An application for IEC /modification in IEC to be made only electronically by applicants through digital signature (Class-II or Class-III). Further, only the following are required to be uploaded/submitted along with the application for IEC:

(a) Digital photograph of the signatory applicant;

(b) Copy of the PAN card of the business entity in whose name Import/Export would be done (Applicant individual in case of Proprietorship firms);

(c) Cancelled cheque bearing entity's pre-printed name or Bank certificate in prescribed format ANF-2A(I).

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In case of STPI/ EHTP/ BTP units, the Regional Offices of the DGFT having jurisdiction over the district in which the Registered/ Head Office of the STPI unit is located shall issue or amend the IECs.

13. Trade with neighbouring countries: DGFT may issue instructions or frame schemes as may be required to promote trade and strengthen economic ties with neighbouring countries.

14. Transit facility: Transit of goods through India from/ or to countries adjacent to India shall be regulated in accordance with bilateral treaties between India and those countries and will be subject to such restrictions as may be specified by DGFT in accordance with international conventions.

15. Mandatory documents for export/import of goods from/into India:

(a) Mandatory documents required for export of goods from India:

1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt
2. Commercial Invoice cum Packing List*
3. Shipping Bill/Bill of Export

(b) Mandatory documents required for import of goods into India

1. Bill of Lading/Airway Bill/Lorry Receipt/Railway Receipt/Postal Receipt
2. Commercial Invoice cum Packing List*
3. Bill of Entry

***Note:** As per CBIC Circular No. 01/15-Customs dated 12/01/2015, separate Commercial Invoice and Packing List would also be accepted.*

B. PROVISIONS RELATING TO IMPORT OF GOODS

1. Actual user condition: Goods which are importable without any restriction, may be imported by any person. However, if such imports require an Authorization, actual user alone may import such goods unless actual user condition is specifically dispensed with by DGFT.

2. Second hand goods: Import of second hand capital goods, including refurbished/ re-conditioned spares shall be allowed freely. However, second hand personal computers/ laptops, photocopier machines, air conditioners, diesel generating sets will only be allowed against authorisation. Second hand (used) goods, [except second hand capital goods], shall be restricted for imports and may be imported only against Authorization.

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3. Removal of scrap/ waste from SEZ: Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/ Developer/ Co-developer shall be allowed to be disposed in DTA (Domestic Tariff Area) freely, subject to payment of applicable customs duty.

4. Import of gifts and samples: Import of gifts shall be permitted where such goods are otherwise freely importable under ITC(HS). In other cases, a Customs Clearance Permit (CCP) shall be required from DGFT. Further, import of samples shall be governed by the prescribed procedures. Authorisation for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto ₹ 2,000 (CIF) per consignment will be allowed without authorization. Samples upto ₹ 3,00,000 can be imported by all exporters without duty.

5. Passenger Baggage:

(a) Bonafide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in the Baggage Rules, 1998.

(b) Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorization.

(c) Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage without an Authorization.

Note: Baggage provisions have been discussed in detail in Chapter-5- Importation, Exportation and Transportation of Goods.

6. Re-import of goods repaired abroad: Capital goods, equipments, components, parts and accessories, whether imported or indigenous, except those restricted under ITC(HS) may be sent abroad for repairs, testing, quality improvement or upgradation or standardization of technology and re-imported without an Authorization.

7. Import of goods used in projects abroad: After completion of projects abroad, project contractors may import, without an Authorization, goods including capital goods used in the project provided they have been used for at least one year.

8. Sale on high seas: Sale of goods on high seas for import into India may be made subject to FTP or any other law in force.

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9. Import under lease financing: It is freely permitted. Permission of Regional Authority is not required for import of capital goods under lease financing. However, RBI approval is required in some cases.

10. Clearance of goods from customs: Goods already imported/ shipped/ arrived, in advance, but not cleared from customs may also be cleared against an Authorization issued subsequently. However, this facility will not be available to restricted items or items traded through STEs.

11. Execution of BG/ LUT: Whenever goods are imported duty free or otherwise specifically stated, importer shall execute prescribed LUT (Letter of Undertaking)/ BG (Bank Guarantee)/ Bond with Customs Authority before clearance of goods. In case of indigenous sourcing, Authorization holder shall furnish LUT/ BG/ Bond to RA concerned before sourcing material from indigenous supplier/ nominated agency as per the prescribed procedures.

12. Private/ public bonded warehouses for imports: Private/ public bonded warehouses may be set up in DTA (Domestic Tariff Area) as per terms and conditions of notification issued by DoR. Any person may import goods, except prohibited items, arms and ammunition, hazardous waste and chemicals and warehouse them in such bonded warehouses. Such goods may be cleared for home consumption against authorisation, whenever required. Customs duty as applicable shall be paid at the time of clearance of such goods. If such goods are not cleared for home consumption within a period of one year or such extended period as the custom authorities may permit, importer of such goods shall re-export the goods.

C. PROVISIONS RELATING TO EXPORT OF GOODS

1. Free exports: All goods may be exported without any restriction except to the extent that such export is regulated by ITC(HS) or any other provision of FTP or any other law for the time being in force. DGFT may however, specify through a public notice such terms and conditions according to which any goods, not included in ITC(HS), may be exported without an Authorization.

2. Export of samples: Export of samples and free of charge goods shall be governed by prescribed procedures. Export of bona fide trade and technical samples of freely exportable item shall be allowed without any limit. In case of restricted items, application should be made to DGFT. Such samples can be exported as part of passenger baggage without an Authorisation.

3. Export of passenger baggage: Bonafide personal baggage may be exported either along with passenger or, if unaccompanied, within one year before or after passenger's departure from India. However, items mentioned as

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restricted in ITC(HS) shall require an Authorization. Government of India officials proceeding abroad on official postings shall, however, be permitted to carry alongwith their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption. Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation.

4. Export of gifts: Goods, including edible items, of value not exceeding ₹5,00,000 in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorization. For export of samples/gifts/ spares/ replacement goods (other than SCOMET items) in excess of ceiling/period, application can be made to DGFT in form ANF-2Q.

5. Export of spares: Warranty spares (whether indigenous or imported) of plant, equipment, machinery, automobiles or any other goods, [except those restricted under ITC(HS)] may be exported along with main equipment or subsequently, but within contracted warranty period of such goods subject to approval of RBI.

6. Third party exports: Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). In such cases, export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s). BRC, GR declaration, export order and invoice should be in the name of third party exporter. Such third party exports shall be allowed under FTP.

Illustration

CD Corporation, a merchant exporter, procured order of goods from a customer in USA. It approached AB Corporation, a manufacturer, for execution of the said order. The shipping bills relating to the consignment bear the name of CD Corporation. Bank Realization Certificate, export order and invoice are also in the name of CD Corporation. Comment whether AB Corporation would be deemed as the exporter under FTP.

Answer

The given scenario is a case of third-party exports.

Third-party exports means exports made by an exporter or manufacturer on behalf of another exporter(s). The conditions for being allowed as third-party exports under FTP are:

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(i) Export documents such as shipping bills shall indicate name of both manufacturing exporter/manufacturer and third party exporter(s).

(ii) BRC, export order and invoice should be in the name of third party exporter.

In the above case, though BRC, export order and invoice are in the name of CD Corporation (third party exporter), the shipping bill does not have the name of AB Corporation (manufacturer). Therefore, AB Corporation will not be treated as the exporter in this case[1].

7. Export of imported goods: Goods imported, in accordance with FTP, may be exported in same or substantially the same form without an Authorization, provided that an item to be imported or exported is not restricted for import or export in ITC(HS).

Exports of such goods imported against payment in freely convertible currency would be permitted provided export proceeds are realized in freely convertible currency. However, export of such goods to notified countries will be permitted in Indian rupees subject to at least 15% value addition. Such exports shall not be eligible for any export incentives.

8. Export of replacement goods: Goods or parts thereof on being exported and found defective/ damaged may be replaced free of charge by the exporter and such goods shall be allowed clearance by customs authorities, provided that replacement goods are not mentioned as restricted items for exports in ITC(HS).

9. Export of repaired goods: Goods or parts exported and found defective, damaged or otherwise unfit for use may be imported for repair and subsequent re-export. Such goods shall be allowed clearance without an Authorization and in accordance with customs notification.

However, re-export of such defective parts/spares by the Companies/firms and Original Equipment Manufacturers shall not be mandatory if they are imported exclusively for undertaking root cause analysis, testing and evaluation purpose.

10. Private Bonded Warehouses for exports: Private bonded warehouses, which are set up exclusively for exports shall be entitled to procure goods from domestic manufacturers without payment of duty. Supplies made by a domestic supplier to such notified warehouses shall be treated as physical exports provided payments are made in free foreign exchange.

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[1] However, AB Corporation can supply goods without payment of GST under bond of Merchant Exporter.

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11. Denomination of export contracts: All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realised 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. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account.

Free foreign exchange remitted by buyer to his non-resident bank (after deducting the bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP. Contracts for which payments are received through ACU shall be denominated in ACU Dollar. Central Government may relax provisions in this regard in appropriate cases. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/ Government of India line of credit.

12. Non-realisation of export proceeds: If an exporter fails to realise export proceeds within time specified by RBI, he shall, without prejudice to any liability or penalty under any law in force, be liable to action in accordance with provisions of FT(D&R) Act, rules and orders made thereunder and provisions of FTP.

13. Free movement of export goods: Consignments of items meant for exports shall not be withheld/ delayed for any reason by any agency of Central/ State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.

14. No seizure of export related stock: No seizure of stock shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on basis of prima facie evidence of serious irregularity. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.

D. PERSONAL HEARING BY DGFT FOR GRIEVANCE REDRESSAL:

Government is committed to easy and speedy redressal of grievances from Trade and Industry. As a last resort to redress grievances of Foreign Trade players, DGFT may provide an opportunity for Personal hearing before Policy Relaxation Committee (PRC) subject to fulfillment of certain conditions.

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Export Promotion Councils: Basic objective of Export Promotion Councils (EPCs) is to promote and develop Indian exports. Each Council is responsible for promotion of a particular group of products, projects and services.

Registration-cum-Membership Certificate (RCMC): Any person, applying for an Authorization to import/ export, or any other benefit or concession under FTP shall be required to furnish on DGFT's website in the Importer Exporter profile, RCMC granted by competent authority. For instance, Certificate of Registration as Exporter of Spices (CRES) issued by Spices Board shall be treated as RCMC for the purposes under this Policy.

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UNIT – II : BASIC CONCEPTS RELATING TO EXPORT PROMOTION SCHEMES UNDER FTP

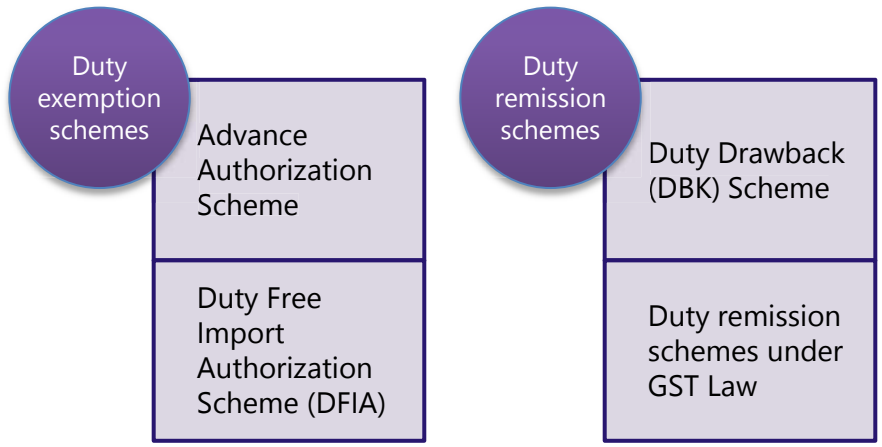
Export promotion schemes

Exports of a country play an important role in the economy. Government always endeavors to encourage exports by introducing various export promotion schemes. Consequently, there are various promotional measures under FTP and other schemes operated under Ministry of Commerce through various Export Promotion Councils.

As per WTO, export incentives cannot be given to the exporters as such otherwise there would be no free competition. Hence, all the export promotion schemes in India are directed towards ensuring that the inputs as well as final products are made tax-free.

1 DUTY EXEMPTION & REMISSION SCHEMES

The Duty Exemption and Remission Schemes are the most important schemes in the Foreign Trade Policy, because they are most widely utilized and are largely compatible with the provisions of the Agreement on Subsidies and Countervailing Measures (ASCM) of the WTO.



(A) Duty exemption schemes: Under duty exemption schemes, exporter can import the inputs duty free for export production. The two duty exemption schemes are as follows:-

1. Advance Authorization Scheme
2. Duty Free Import Authorization Scheme (DFIA)

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(B) Duty remission schemes: Under duty remission scheme, duty on inputs and input services used in the export product is either replenished or remitted. Duty Drawback (DBK) Scheme is designed for this purpose. Duty remission is also granted under GST Law.

Duty exemption schemes

1. ADVANCE AUTHORIZATION SCHEME

- Under advance authorization scheme, **INPUTS** which are used in the export product can be imported without payment of customs duty. IGST and GST Compensation Cess have been exempted upto ***31.03.2020*** on imports under Advance Authorisation for physical exports ***or following deemed exports:-***

  (a) Supply of goods by a registered person against Advance Authorisation.

  (b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.

  (c) Supply of goods by a registered person to Export Oriented Unit.

- The goods imported are exempt from basic customs duty, additional customs duty, education cess, anti-dumping duty and safeguard duty, unless otherwise specified. However, specified[2] deemed exports are not exempted from payment of applicable anti-dumping duty and safeguard duty. The conditions for duty free imports against physical exports are provided in notification issued under the Customs law.

- Period of fulfillment of export obligation under Advance Authorization is 18 months from the date of issue of Authorization or as notified by DGFT.

- Exports proceeds shall be realized in freely convertible currency except otherwise specified.

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[2] *Deemed exports specified for this purpose are Supply of capital goods against EPCG authorisation and supply to goods to UN or international organisations for their official use or supplied to projects financed by them.*

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(i) Basis of issuance of Advance Authorisation: Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(A) As per SION[!] notified (available in Hand Book of Procedures)

or

(B) On the basis of self declaration Regional Authority may also issue Advance Authorisation where there is no SION/valid Ad hoc Norms for an export product or where SION / Ad hoc norms have been notified / published but exporter intends to use additional inputs in the manufacturing process, based on self-declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by decision of Norms Committee.

or

(C) Applicant specific prior fixation of norm by the Norms Committee.

or

(D) On the basis of Self Ratification Scheme. Where there is no SION/valid Adhoc Norms for an export product and where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter can apply for an Advance Authorisation under this scheme on self-declaration and self-ratification basis. RA may issue Advance Authorisations and such cases need not be referred to Norms Committees for ratification of norms. An exporter (manufacturer or merchant exporter) who holds AEO (Authorised Economic Operator) Certificate under Common Accreditation Programme of CBIC is eligible to opt for the scheme.

[!] **Standard Input Output Norms (SION)** are standard norms which define the amount of input(s) required to manufacture unit of output for export purpose. SION is notified by DGFT on basis of recommendation of Norms Committee.

(ii) Items which can be imported duty free against advance authorization:

- Inputs, which are physically incorporated in export product (making normal allowance for wastage).
- Fuel, oil, catalysts which are consumed/utilised to obtain export product.

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- Mandatory spares which are required to be exported/supplied with resultant product permitted upto 10% of CIF value of Authorization.
- Specified spices only when used for activities like crushing/ grinding /sterilization/ manufacture of oils or oleoresins and not for simply cleaning, grading, re-packing etc.

However, items reserved for imports by STEs cannot be imported against advance authorization.

(iii) Actual user condition for Advance Authorisation: Advance Authorization and/ or materials imported thereunder will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorization holder will have an option to dispose off product manufactured out of duty free inputs in DTA once export obligation is completed.

Waste/scrap arising out of manufacturing process, as allowed, can be disposed off on payment of applicable duty even before fulfillment of export obligation.

(iv) Who are eligible for advance authorization: Advance Authorization can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer(s).

Such Authorization can also be issued for:

(1) Physical exports

(2) Intermediate supply

(3) Supplies made to specified categories of deemed exports

(4) Supply of 'stores' on board of foreign going vessel/aircraft provided there is specific SION in respect of items supplied.

(v) Domestic sourcing of inputs: Holder of advance authorization has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/ Back to Back Inland Letter of Credit. However, Advance Authorisation holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

(vi) Conditions for redeeming authorisation: ***Wherever SION permits use of either (a) a generic input or (b) alternative input, unless the name of the specific input together with quantity [which has been used in***

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manufacturing the export product] gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, within quantity specified and match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. The name/description of the input in the Authorisation must match exactly with the name/description endorsed in the shipping bill.

Further, quantity of input to be allowed under Advance Authorisation shall be in proportion to the quantity of input actually used/ consumed in production. If goods are imported against advance authorization but export obligation is not fulfilled, duty and interest is payable.

Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.

(vii) Annual Advance authorization: Advance Authorization can be issued for annual requirement also.

- Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for Annual Requirement.
- Entitlement in terms of CIF value of imports shall be upto 300% of the FOB value of physical export and/ or FOR value of deemed export in preceding financial year or ₹ 1 crore, whichever is higher.
- Authorisation for Annual Requirement shall be issued only where SIONs or valid Ad hoc norms exists on the date of issue of Authorisation. It is not available on self-declaration basis.

(viii) Value addition (VA): will be calculated as follows (except for gem and jewellery sector)–

VA = [(A-B) x 100]/B

A = FOB value of export realised/FOR value of supply received.

B = CIF value of inputs covered by authorisation plus any other imported materials used on which benefit of duty drawback (DBK) is claimed or intended to be claimed.

If some items are supplied free of cost by foreign buyer, its notional value will be added in the CIF value of import and FOB value of export for purpose of calculating value addition. Exports to SEZ Developers/ Co-developers, irrespective of currency of realization, would also be covered.

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Minimum value addition required to be achieved under Advance Authorization is 15%, except for physical exports for which payments are not received in freely convertible currency and some other specified export products. For tea, minimum value addition required shall be 50%.

(ix) Admissibility of drawback: Drawback as per rate determined and fixed by Customs authority shall be available for duty paid imported or indigenous inputs used in the export product.

Illustration

Answer the following questions with reference to the provisions of Foreign Trade Policy:

(i) Flintex Manufacturers manufactures goods by using imported inputs and supplies the same under Aid Programme of the United Nations. The payment for such supply is received in free foreign exchange. Can Flintex Manufacturers seek Advance Authorization for the supplies made by it?

(ii) XYZ Ltd. has imported inputs without payment of duty under Advance Authorization. The CIF value of such inputs is ₹ 10,00,000. The inputs are processed and the final product is exported. The exports made by XYZ Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by XYZ Ltd. in the processing. What should be the minimum FOB value of the exports made by the XYZ Ltd. as per the provisions of Advance Authorization?

(iii) 'A' has used some duty paid inputs in its export products. However, for the rest of the inputs, he wants to apply for the Advance Authorization. Can he do so? Explain.

Answer

(i) Supply to goods to UN or international organisations for their official use or supplied to projects financed by them are 'deemed exports'. Advance Authorization can be issued for supplies made to such 'deemed exports'. Therefore, Flintex Manufacturers can seek an Advance Authorization for the supplies made by it.

(ii) Advance Authorization necessitates exports with a minimum of 15% value addition (VA).

VA = [(A – B)/B x 100]

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A = FOB value of export realized, B = CIF value of inputs covered by authorization.

Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be ₹ 11,50,000.

(iii) Yes, 'A' can do so. In case of part duty free and part duty paid imports, both Advance Authorization and drawback will be available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by DoR, Ministry of Finance (Directorate of Drawback). Advance Authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for Advance Authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from Commissioner for these exported goods.

2. DUTY FREE IMPORT AUTHORIZATION (DFIA) SCHEME

- Provisions applicable to Advanced Authorisation are broadly applicable in case of DFIA. However, these Authorizations shall be issued only for products for which Standard Input and Output Norms (SION) have been notified. Duty Free Import Authorisation (DFIA) is issued to allow duty free import of inputs. In addition, import of oil and catalyst which is consumed / utilised in the process of production of export product, may also be allowed.
- The goods imported are exempt ONLY from basic customs duty.
- DFIA shall be exempted only from payment of Basic Customs Duty (BCD). IGST will be payable on imports.
- DFIA shall be issued on post export basis for products for which SION have been notified. Separate DFIA shall be issued for each SION and each port.
- The applicant shall file an online application to RA concerned before starting exports under DFIA. Export shall be completed within 12 months from the date of online filing of application and generation of file number. While doing export/supply, applicant shall indicate file number on the export documents.
- After completion of exports and realization of export proceeds, request for issuance of transferable DFIA may be made to concerned RA within a period of:

  (a) 12 months from the date of export

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or

(b) 6 months (or additional time allowed by RBI for realization) from the date of realization of export proceeds,

whichever is later.

- RA shall issue transferable DFIA with a validity of 12 months from the date of issue.
- Exports proceeds shall be realized in freely convertible currency except otherwise specified.

(i) No DFIA for 'Actual User' condition inputs: No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

(ii) Domestic sourcing of inputs: Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/ Back to Back Inland Letter of Credit. DFIA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

(iii) Conditions for redeeming authorisation: It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under the authorization and inputs actually imported must be used in the export product, for redeeming the DFIA. The name/description of the input in the DFIA must match exactly with the name/description endorsed in the shipping bill.

Further, quantity of input to be allowed under DFIA shall be in proportion to the quantity of input actually used/ consumed in production.

If goods are imported against advance authorization but export obligation is not fulfilled, duty and interest is payable.

Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.

(iv) Value addition (VA): will be calculated as follows (except for gem and jewellery sector)–

VA = [(A-B) x 100]/B

A = FOB value of export realised/FOR value of supply received.

B = CIF value of inputs covered by authorisation plus any other imported materials used on which benefit of duty drawback (DBK) is claimed or intended to be claimed.

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If some items are supplied free of cost by foreign buyer, its notional value will be added in the CIF value of import and FOB value of export for purpose of calculating value addition. Exports to SEZ Developers/ Co-developers, irrespective of currency of realization, would also be covered.

Minimum value addition required to be achieved under DFIA is 20%, except for physical exports for which payments are not received in freely convertible currency.

(v) Admissibility of drawback: Drawback as per rate determined and fixed by Customs authority shall be available for duty paid imported or indigenous inputs used in the export product.

Illustration

Discuss the similarities and differences between Advance Authorization and DFIA (Duty Free Import Authorization) schemes.

Answer

In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty.

The differences between DFIA and Advance Authorisation schemes are as follows -

(i) 'Advance Authorisation' is not transferable. DFIA is transferable after export obligation is fulfilled.

(ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.

(iii) Advance Authorisation scheme is available to gem and jewellery sector but not DFIA.

(iv) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation].

(v) Advance Authorisation can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for that product to be exported.

(vi) IGST has been exempted on imports under Advance Authorisation scheme upto ***31.03.2020***, but there is no such exemption available if imports are under DFIA scheme

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Duty remission schemes

1. DUTY DRAWBACK (DBK) SCHEME

- Various schemes like EOU, SEZ, DFIA, Advance Authorisation, manufacture under bond etc. are available to obtain inputs without payment of customs duty or obtain refund of duty paid on inputs.
- Suppliers who are unable to avail any of these schemes can avail 'duty drawback'. Here, the customs duty paid on inputs is given back to the exporter of finished product by way of 'duty drawback'. Section 75 of Customs Act, 1962 provide for drawback on materials used in manufacture or processing of export product.
- It may be noted that duty drawback under section 75 is granted when imported materials are used in the manufacture of goods which are then exported, while duty drawback under section 74 is applicable when imported goods are re-exported as it is, and article is easily identifiable.
- As per rule 2(a) of the Customs and Central Excise Duties Drawback Rules, 2017, drawback in relation to any goods manufactured in India and exported, means the rebate of duty excluding IGST and Compensation Cess, chargeable on any imported materials or excisable materials used in the manufacture of such goods.
- It is important to note that the duty drawback is only of customs duty[3]. There is no duty drawback in respect of GST.

2. DUTY REMISSION SCHEMES IN GST LAW

Duty remission/exemption is also granted under GST Law.

2. REWARD SCHEMES – MEIS, SEIS AND STATUS HOLDERS

Reward schemes are the schemes which entitle the exporters to duty credit scrips subject to various conditions. These scrips can be used for payment of customs duties on import of inputs/goods including notified capital goods.

[3] *This scheme has been discussed in detail in Chapter-6: Duty Drawback*

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These scrips are transferable, i.e. they can be sold in market, if the holder of duty credit scrip does not intend to import goods against the scrips. Goods imported under the scrip are also freely transferable.

Following are two schemes for exports of merchandise and services:

(i) Merchandise Exports from India Scheme (MEIS)

(ii) Service Exports from India Scheme (SEIS)

A MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS)

The objective of MEIS scheme is to promote the manufacture and export of notified goods/ products.

(i) Reward under the scheme: Under MEIS, exports of notified goods/products to notified markets shall be eligible for reward at the specified rate(s). Unless otherwise specified, the basis of calculation of reward would be:

(i) on realised FOB value of exports in free foreign exchange,

or

(ii) on FOB value of exports as given in the Shipping Bills in free foreign exchange,

whichever is less.

(ii) Ineligible categories under MEIS: Some exports categories/sectors ineligible for Duty Credit Scrip entitlement under MEIS are listed below:

- Supplies made from DTA units to SEZ units
- Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India
- Deemed Exports
- SEZ/EOU/EHTP/BPT/FTWZ products exported through DTA units
- Export products which are subject to Minimum export price or export duty
- Exports made by units in FTWZ.

(iii) Export of goods through courier/foreign post offices using e-commerce*: *Exports of handicraft items, handloom products, books/periodicals, leather footwear, toys and tailor made fashion*

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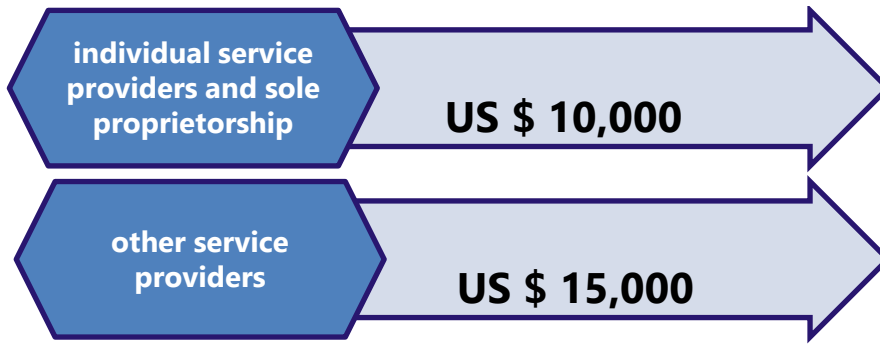
garments through courier or foreign post office using e-commerce of FOB value upto ₹5,00,000 per consignment shall be entitled for rewards under MEIS. If the value of exports is more than ₹ 5,00,000 per consignment, then MEIS reward would be calculated on the basis of FOB value of ₹5,00,000 only.

*__E-commerce__ means buying and selling of goods and services, including digital products, conducted over digital and electronic network. For the purposes of Merchandise Exports from India Scheme (MEIS), e-commerce shall mean the export of goods hosted on a website accessible through the internet to a purchaser. While the dispatch of goods shall be made through courier or postal mode, as specified under MEIS, the payment for goods purchased on e-commerce platform shall be done through international credit/debit cards and as per RBI Circular (RBI/2015-16/185) as amended from time to time.

B SERVICE EXPORTS FROM INDIA SCHEME (SEIS)

The objective of SEIS scheme is to encourage export of notified services from India.

(i) **Eligible service providers:** A service provider (with active IEC at the time of rendering services) located in India, providing notified services rendered in the specified manner* shall be eligible for reward at the notified rate(s) on net foreign exchange earned provided the minimum net free foreign exchange earnings of such service provider in year of rendering service is:



***Specified manner** is supply of a 'service' from India to any other country; (Mode 1- Cross border trade) and supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2-Consumption abroad).

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1. **Net Foreign exchange earnings**
   = Gross Earnings of Foreign Exchange **Minus** Total expenses/ payment/ remittances of Foreign Exchange by the IEC holder, relating to service sector in the financial year.
2. **'Services'** include all tradable services covered under General Agreement on Trade in Services (GATS) and earning foreign exchange.
3. **'Service Provider'** means a person providing:
   (i) Supply of a 'service' from India to any other country; *(Mode1- Cross border trade)*
   (ii) Supply of a 'service' from India to service consumer(s) of any other country in India; *(Mode 2- Consumption abroad)*
   (iii) Supply of a 'service' from India through commercial presence in any other country. *(Mode 3 – Commercial Presence)*
   (iv) Supply of a 'service' from India through the presence of natural persons in any other country *(Mode 4- Presence of natural persons)*.

Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India.

(ii) Ineligible categories under SEIS:

(A) Foreign exchange remittances other than those earned for rendering of notified services would not be counted for entitlement. Thus, other sources of foreign exchange earnings such as equity or debt participation, donations, receipts of repayment of loans etc. and any other inflow of foreign exchange, unrelated to rendering of service, would be ineligible.

(B) Following shall not be taken into account for calculation of entitlement under the scheme:

(1) Foreign Exchange remittances

A. Related to Financial Services Sector:

- Raising of all types of foreign currency Loans
- Export proceeds realization of clients
- Issuance of Foreign Equity through ADRs/ GDRs or

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	other similar instruments ♦ Issuance of foreign currency Bonds ♦ Sale of securities and other financial instruments ♦ Other receivables not connected with services rendered by financial institutions. B. Earned through contract/ regular employment abroad (e.g. labour remittances)
(2)	Payments for services received from EEFC Account
(3)	Foreign exchange turnover by Healthcare Institutions like equity participation, donations etc.
(4)	Foreign exchange turnover by Educational Institutions like equity participation, donations etc.
(5)	Export turnover relating to services of units operating under EOU/ EHTP/ STPI/ BTP Schemes or supplies of services made to such units
(6)	Clubbing of turnover of services rendered by EOU/ EHTP/ STPI/ BTP units with turnover of DTA Service Providers
(7)	Foreign Exchange earnings for services provided by Airlines, Shipping lines service providers plying from any foreign country X to any foreign country Y routes not touching India at all
(8)	Service providers in Telecom Sector

Common Provisions for Exports from India Schemes (MEIS and SEIS)

(i) Drawback:

Basic Custom duty paid in cash or through debit under Duty Credit scrip shall be adjusted for Duty Drawback as per DoR rules or notifications.

Duty credit scrip shall be permitted to be utilized for payment of customs duty in case of import of capital goods under lease financing.

(ii) Transfer of export performance: Transfer of export performance from one IEC holder to another IEC holder shall not be permitted. Thus, a shipping bill

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containing name of applicant shall be counted in export performance / turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e - BRC / FIRC.

However, MEIS rewards can be claimed either by the supporting manufacturer (along with disclaimer from the company / firm who has realized the foreign exchange directly from overseas) or by the company/ firm who has realized the foreign exchange directly from overseas.

(iii) Incentives of MEIS & SEIS are available to units located in SEZs also.

Illustration

Examine whether benefit of Service Exports from India Scheme (SEIS) can be availed with respect to notified services provided by service providers located in India in the current financial year in the following independent cases:

(i) Net Foreign exchange earned by Mr. Aniket, a service provider, in the year of rendering service is USD 3,000.

(ii) X and Y Brothers, a firm of service providers, has earned net foreign exchange to the tune of USD 16,500 in the year of rendering service.

(iii) Mr. Ishaan, a service provider, has earned net foreign exchange of USD 12,000 in the year of rendering service. Out of this, USD 3,000 has been paid to Mr. Ishaan through the credit card of the foreign client.

***Note:** All the above service providers have an active IEC at the time of rendering services.*

Answer

In order to be eligible for duty credit scrip entitlement under SEIS:-

(a) Service provider must be located in India.

(b) It must provide only notified services in specified manner.

(c) It must have an active IEC at the time of rendering such services for which rewards are claimed.

(d) An individual service provider/Sole-proprietorship should have minimum net foreign exchange earnings of USD 10,000 and a service provider other than individual/Sole-proprietorship should have minimum NFE of USD 15,000, in *the* year of rendering service.

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Free foreign exchange earned through International Credit Cards and other instruments as permitted by RBI for rendering of service are also be taken into account for computation of NFE.

In the light of the above provisions, the cases are examined as under:

(i) Mr. Aniket is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).

(ii) X and Y Brothers are eligible for the Scheme as their net foreign exchange earnings exceed the limit of USD 15,000 (minimum limit for firms).

(iii) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme. Thus, Mr. Ishaan is eligible for SEIS Scheme.

C STATUS HOLDER

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance**.

An applicant shall be categorized as status holder upon achieving export performance during current and previous three financial years*, as indicated below:

*However, for Gems & Jewellery Sector, the performance during the current and previous two financial years shall be considered for recognition as status holder.

Status category	Export Performance [FOB/ FOR (as converted) Value (in US $ million)]
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2,000

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****Points which merit consideration while computing export performance for grant of status:**

(a) Export performance will be counted on the basis of FOB value of export earnings in free foreign currencies.

(b) For deemed export, FOR value of exports in Indian Rupees shall be converted in US$ at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.

(c) For granting status, export performance is necessary in at least 2 out of 4 years.

(d) For calculating export performance for grant of One Star Export House Status category, exports by IEC holders under the following categories shall be granted double weightage:

  (i) Micro, Small & Medium Enterprises (MSME) as defined in Micro, Small & Medium Enterprises Development (MSMED) Act 2006

  (ii) Manufacturing units having ISO/BIS

  (iii) Units located in North Eastern States including Sikkim and Jammu & Kashmir

  (iv) Units located in Agri Export Zones.

(e) Export performance of one IEC holder shall not be permitted to be transferred to another IEC holder. Hence, calculation of exports performance based on disclaimer shall not be allowed.

(f) Exports made on re-export basis shall not be counted for recognition.

(g) Export of items under authorization, including SCOMET items, would be included for calculation of export performance.

Privileges of Status Holders: Status holders are granted certain benefits like:

(a) Authorisation and custom clearances for both imports and exports on self-declaration basis.

(b) Fixation of Input Output Norms (SION) on priority i.e. within 60 days by Norms Committee.

(c) Exemption from compulsory negotiation of documents through banks. The remittance/ receipts, however, would continue to be received through banking channels.

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(d) Exemption from furnishing of Bank Guarantee in Schemes under FTP.

(e) Two Star Export Houses and above are permitted to establish export warehouses.

(f) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBIC.

(g) DGFT vide Notification No. 28/2015-20 dated 27th August 2018 has provided that status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit as below:

a) Annual limit of 2% of average annual export realization during preceding three licensing years for all exporters (excluding the exporters of following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).

b) Annual limit of Rupees 1 Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower. (for exporters of the following sectors-(1) Gems and Jewellery Sector, (2) Articles of Gold and precious metals sector).

Illustration

Two exporters namely, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. have achieved the status of Status Holders (One Star Export House) in the current financial year. Both the exporters have been regularly exporting goods (other than Gems and Jewellery) every year. What would have been the minimum export performance of the two exporters to achieve such status?

Both the exporters want to establish export warehouses in accordance with the applicable guidelines. What should be their export turnover to enable them to establish export warehouses?

Answer

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder. Status recognition depends upon export performance**.

In order to be categorized as One Star Export House, an exporter needs to achieve the export performance of 3 million US $ million [FOB/ FOR (as

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converted)] during current and previous three financial years. Thus, export performance of Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. would have been at least 3 million US $ million [FOB/ FOR (as converted)] during current and previous three financial years. For granting status, export performance is necessary in at least 2 out of 4 years.

Further, Two Star Export Houses and above are permitted to establish export warehouses. Therefore, Red Sky Pvt. Ltd. and Black Night Pvt. Ltd. can establish export warehouses in India only if they achieve the status of Two Star Export House and above. In order to achieve said status, export performance of the exporters during current and previous three financial years should be as indicated below:

Status Category	Export Performance [FOB/FOR (as converted value on us$ million
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2,000

3. EXPORT PROMOTION CAPITAL GOODS SCHEME (EPCG)

- Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods for pre-production, production and post-production at zero customs duty or procure them indigenously without paying duty in the prescribed manner. In return, exporter is under an obligation to fulfill the export obligation.
- Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto ***31.03.2020.***
- Import under EPCG scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization. Authorisation shall be valid for 18 months from the date of issue of Authorisation.

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- Import of capital goods shall be subject to **'Actual User'** condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.
- In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided input tax credit is not availed.

(i) Eligible exporters: Following are eligible for EPCG scheme:

- Manufacturer exporters with or without supporting manufacturer(s),
- Merchant exporters tied to supporting manufacturer(s), and
- Service providers including service providers designated as Common Service Provider (CSP) subject to prescribed conditions.

(ii) Eligible capital goods:

- Capital Goods including capital goods in CKD/SKD condition
- Computer systems and software which are a part of the Capital Goods being imported
- Spares, moulds, dies, jigs, fixtures, tools & refractories
- Catalysts for initial charge plus one subsequent charge
- Capital goods for Project Imports notified by CBIC.

(iii) Export Obligation: Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority.

Export obligation consists of average export obligation and specific export obligation.

Specific export obligation (Specific EO) under EPCG scheme is equivalent to 6 times of duty saved on capital goods imported under EPCG scheme, to be fulfilled in 6 years reckoned from Authorization issue-date. Specific EO is over and above the Average EO.

Note: In case of direct imports, EO shall be reckoned with reference to actual duty saved amount. In case of domestic sourcing, EO shall be reckoned with reference to notional Customs duties saved on FOR value.

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Average export obligation (Average EO) under EPCG scheme is the average level of exports made by the applicant in the preceding 3 licensing years for the same and similar products. It has to be achieved within the overall EO period (including extended period unless otherwise specified).

Conditions applicable to the fulfilment of the Export Obligation (EO):

(a) EO shall be fulfilled by the authorisation holder through export of goods which are manufactured by him or his supporting manufacturer / services rendered by him, for which the EPCG authorisation has been granted.

(b) In case of indigeneous sourcing of capital goods, specific EO shall be 25% less than the EO mentioned above, i.e. EO will be 4.5 times (75% of 6 times) of duty saved on such goods procured.

(c) Shipments under Advance Authorisation, DFIA, Drawback scheme, or reward schemes; would also be counted for fulfilment of EO under EPCG Scheme.

(d) EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.

(e) Both physical exports as well as specified deemed exports shall also be counted towards fulfilment of export obligation.

(iv) Incentives for early fulfillment of export obligation

In cases where Authorization holder has fulfilled 75% or more of specific export obligation and 100% of Average Export Obligation till date, if any, in half or less than half the original export obligation period specified, remaining export obligation shall be condoned and the Authorization redeemed.

(v) Post Export EPCG Duty Credit Scrip(s)

Under this scheme, capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods is remitted in the form of freely transferable duty credit scrip(s) [similar to the Reward schemes discussed earlier].

Salient features of the schemes are as follows:-

- Specific EO shall be 85% of the applicable specific EO stipulated under EPCG scheme. Average EO remains unchanged.

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- Duty remission shall be in proportion to the EO fulfilled.
- These Duty Credit Scrip(s) can be utilized in the similar manner as the scrips issued under reward schemes can be utilised.

(vi) Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefits under FTP and as may be provided under GST Rules under the category of deemed exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfilment of positive NFE by said EOU.

Illustration

XP Pvt. Ltd., a manufacturer, wants to import capital goods in CKD condition from a foreign country and assemble the same in India. The import of the capital goods will be under notified Project Imports. The capital goods will be used for pre-production processes. The final products of XP Pvt. Ltd. would be supplied in SEZ. XP Pvt. Ltd. wishes to sell the capital goods imported by it as soon as the production process starts.

XP Pvt. Ltd. seeks your advice whether it can avail the benefit of EPCG Scheme for importing the intended capital goods.

***Note** – Base your opinion on the facts given above assuming that all other conditions required for being eligible to the EPCG Scheme are fulfilled in the above case.*

Answer

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods at zero customs duty or procure them indigenously without paying duty in prescribed manner.

In return, exporter is under an obligation to fulfill the export obligation. Export obligation means obligation to export product(s) covered by Authorisation/permission in terms of quantity or value or both, as may be prescribed/specified by Regional or competent authority. Exports to SEZ unit/developer/co-developer will be considered for discharge of export obligation of EPCG Authorization, irrespective of currency.

The authorisation holder can either procure the capital goods (whether used for pre-production, production or post-production) from global market or

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domestic market. The capital goods can also be imported in CKD/ SKD to be assembled in India.

An EPCG Authorization can also be issued for import of capital goods under Scheme for Project Imports notified by CBIC. Export obligation for such EPCG Authorizations would be 6 times of duty saved.

However, import of capital goods is subject to 'Actual User' condition till export obligation is completed. After export obligation is completed, capital goods can be sold or transferred.

Therefore, based on the above discussion, XP Pvt. Ltd. can import the capital goods under EPCG Scheme. However, it has to make sure that it does not sell the capital goods till the export obligation is completed.

4. EOU, EHTP, STP & BTP SCHEMES

Units under Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme:

- **export their entire production of goods and services** (except permissible sales in DTA), and
- **can import inputs and capital goods without payment of customs duty**.

STP/EHTP/BTP schemes are similar to EOU schemes and provisions are more/ less identical. EOU scheme is administered by Ministry of Commerce and Industry, while STP/EHTP/BTP schemes are administered by their respective administrative ministries.

Software Technology Park (STP) is set up for development of software exports. Electronic Hardware Technology Park (EHTP) are for export of electronics hardware and software. STP/EHTP Scheme is administered by Ministry of Information Technology. Bio Technology Park (BTP) is established on the recommendation of Department of Biotechnology.

(I) ELIGIBILITY

- Such units may be set up for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture.
- Trading units are not covered under these schemes.

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- Only projects having a minimum investment of ₹ 1 crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to units in EHTP/ STP/ BTP, EOUs in Handicrafts/ Agriculture/ Floriculture/ Aquaculture/ Animal Husbandry/ Information Technology Services, Brass Hardware and Handmade jewellery sectors. Board of Approvals (BoA) may also allow establishment of EOUs with a lower investment criteria.

(II) NET FOREIGN EXCHANGE EARNINGS

- EOU/ EHTP/ STP/ BTP unit must be a positive net foreign exchange earner. However, a higher value addition is specified for some sectors.
- **How to compute NFE earnings?:** NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.

In case unit is not able to achieve NFE due to:

(i) prohibition/ restriction imposed on export of any product, 5 years block period may be extended suitably by BoA.

(ii) adverse market condition or any grounds of genuine hardship having adverse impact on functioning of the unit, 5 year block is extendable upto 1 year.

Who monitors NFE?: Performance of EOU/ EHTP/ STP/ BTP units shall be monitored by Units Approval Committee as per prescribed guidelines.

Which supplies to DTA can be counted for positive NFE?: Following supplies effected from EOU/ EHTP/ STP/ BTP units to DTA (Domestic Tariff Area) will be counted for fulfillment of positive NFE:

(a) Supplies in DTA to holders of Advance Authorisation/ Advance Authorisation for annual requirement/ DFIA under duty exemption/ remission scheme/ EPCG scheme subject to certain exceptions.

(b) Supplies affected in DTA against foreign exchange remittance received from overseas.

(c) Supplies to other EOU/ EHTP/ STP/ BTP/ SEZ units, provided that such goods are permissible for procurement in terms of relevant provisions of FTP.

(d) Supplies made to bonded warehouses set up under FTP and/ or under section 65 of Customs Act and free trade and warehousing zones, where payment is received in foreign exchange.

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(e) Supplies of goods and services to such organizations which are entitled for duty free import of such items in terms of general exemption notification issued by MoF.

(f) Supplies of Information Technology Agreement (ITA-1) items and notified zero duty telecom/ electronics items.

(g) Supplies of items like tags, labels, printed bags, stickers, belts, buttons or hangers to DTA unit for export.

(h) Supply of LPG produced in an EOU refinery to Public Sector domestic oil companies for being supplied to household domestic consumers at subsidized prices under the Public Distribution System (PDS) Kerosene and Domestic LPG Subsidy Scheme, 2002, subject to specified conditions.

(III) ENTITLEMENTS TO UNITS UNDER EOU, EHTP, STP AND BTP SCHEMES

(a) Entitlements for supplies from DTA

- **Supplies from DTA to EOU/ EHTP/ STP/ BTP units will be regarded as "deemed exports**" and DTA supplier shall be eligible for relevant entitlements for deemed exports, besides discharge of export obligation, if any, on the supplier. The refund of GST paid on such supply would be available to the supplier subject to specified conditions and documentations under GST law.
- In addition, EOU / EHTP / STP / BTP units shall be entitled to following:-
  - ✓ Imported goods are exempt from basic customs duty. Further, IGST and GST compensation cess is exempt upto ***31.03.2020.***
  - ✓ Input Tax Credit of GST paid on inputs and capital goods.

(b) Other Entitlements

- Units will be allowed to retain 100% of its export earnings in the EEFC account.
- Unit will not be required to furnish bank guarantee at the time of import or going for job work in DTA, subject to fulfillment of required conditions.

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- 100% FDI investment permitted through automatic route similar to SEZ units.

(IV) EXPORT AND IMPORT OF GOODS

Export : Following exports are permitted:

✓ all kinds of goods and services except items that are prohibited in ITC(HS),

✓ Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) subject to fulfillment of the conditions indicated in ITC (HS).

Import : Following imports are permitted:

1. Export promotion material upto a maximum value limit of 1.5% of FOB value of previous years exports.

2. All types of goods, including capital goods, required for its activities, **from (i) DTA, (ii) bonded warehouses in DTA/ International exhibition held in India**, subject to 'Actual User' condition, provided such goods are not prohibited items of import in the ITC (HS) subject following conditions:

   (a) The imports and/ or procurement from bonded warehouse in DTA/International exhibition held in India shall be without payment of basic customs duty. Such imports and/ or procurements shall be made without payment of integrated tax and GST compensation cess upto ***31.03.2020.***

   (b) The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such conditions and documentations as specified under GST law.

   Goods including capital goods (on a self-certification basis) required for approved activity, free of cost or on loan/ lease from clients, subject to 'Actual User' condition are permitted to be imported.

3. Certain specified goods from DTA for creating a central facility, with/without payment of duty/ taxes as provided in point 2(a) and 2(b) above.

4. Second hand capital goods, without any age limit, with/without payment of duty/ taxes as provided in point 2(a) above.

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Procurement and export of spares/ components, upto 5% of FOB value of exports, may be allowed to same consignee/ buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits.

(V) LEASING OF CAPITAL GOODS

- An EOU/EHTP/STP/BTP unit may, on the basis of a firm contract between parties, source capital goods from a domestic/ foreign leasing company with/without payment of duty/ taxes as provided in point 2(a) and 2(b) of heading (IV) above. In such a case, EOU/EHTP /STP / BTP unit and domestic/ foreign leasing company shall jointly file documents to enable import/ procurement of capital goods.
- An EOU/ EHTP/ STP/ BTP unit may sell capital goods and lease back the same from a Non Banking Financial Company (NBFC) subject to fulfillment of specified conditions.

(VI) INTER UNIT TRANSFER

- Transfer of manufactured goods from one EOU / EHTP / STP / BTP unit to another EOU / EHTP / STP / BTP unit is allowed on payment of applicable GST and compensation cess with prior intimation to concerned Development Commissioners of the transferor and transferee units as well as concerned Customs authorities, following the prescribed procedure.
- Capital goods may be transferred or given on loan to other EOU/ EHTP/ STP/ BTP/ SEZ units, with prior intimation to concerned DC and Customs authorities on payment of applicable GST and compensation cess. Such transferred goods may also be returned by the second unit to the original unit in case of rejection or for any reason on payment of applicable GST and compensation cess.

Note: Goods supplied by one unit of EOU/ EHTP/ STP/ BTP to another unit shall be on payment of applicable GST and compensation cess following the prescribed procedure.

(VII) SALE OF UNUTILIZED MATERIAL

- In case an EOU/ EHTP/ STP/ BTP unit is unable to utilize goods (including capital goods and spares that have become obsolete/surplus) and services, imported or procured from DTA, it may be

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- ✓ transferred to another EOU/ EHTP/ STP/ BTP/ SEZ unit; or
- ✓ disposed off in DTA with intimation to Customs authorities on payment of applicable duties and/ or taxes and compensation cess. Further, exemption of basic customs duties availed, if any, on the goods, at the time of import will also be payable and submission of import Authorisation; or
- ✓ exported.

Such transfer from EOU/ EHTP/ STP/ BTP unit to another such unit would be treated as import for receiving unit.

- ❖ In case of capital goods, benefit of depreciation, as applicable, will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed.
- ❖ No duty shall be payable other than the applicable taxes under GST laws in case capital goods, raw material, consumables, spares, goods manufactured, processed or packaged, and scrap/ waste/ remnants/ rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities.
- ❖ Disposal of used packing material will be allowed on payment of duty on transaction value.

(VIII) DTA SALE OF FINISHED PRODUCTS/ REJECTS/ WASTE/ SCRAP/ REMNANTS AND BY-PRODUCTS

Entire production of EOU/ EHTP/ STP/ BTP units must be exported. However, the following are allowed as exceptions subject to the conditions specified:

(1) Sale of goods in DTA:

- ❑ Units (other than gem and jewellery units) will be permitted to sell finished goods manufactured by them which are freely importable under FTP in DTA, subject to fulfilment of positive NFE, on payment of applicable GST and compensation cess along with reversal** of basic customs duty availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods.

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**on the basis of SION published by DGFT or norms approved by Norms Committee of DGFT (when no SION is fixed)

- No DTA sale shall be permissible in respect of, pepper & pepper products, marble and such other notified items as also to units engaged in only packaging. Labelling, refrigeration, pulverilasiton etc.
- Such DTA sale shall also be subject to refund of deemed export benefits availed by the EOU/supplier as per FTP, on the goods used for manufacture of the goods cleared into the DTA.
- An amount equal to Anti-Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.

(2) Services provided in DTA: For services (including software units), sale in DTA shall also be permissible up to 50% of FOB value of exports and/ or 50% of foreign exchange earned, where payment of such services is received in foreign exchange.

(3) Sale of rejects in DTA: Rejects may be sold in DTA on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs on prior intimation to Customs authorities. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.

(4) Sale of scrap/ waste/ remnants, arising out of production, in DTA: Scrap/ waste/ remnants arising out of production process or in connection therewith may be sold in DTA, as per SION notified under Duty Exemption Scheme, on payment of applicable duties and/ or taxes and compensation cess. Such sales of scrap/ waste/ remnants shall not be subject to achievement of positive NFE. Scrap/waste/remnants may also be exported.

In case scrap/ waste/ remnants are destroyed with permission of Customs authorities, no duties/ taxes payable on same. However, the expression "no duties/ taxes" shall not include applicable taxes and cess under the GST laws.

(5) Sale of by-products in DTA: By-products may also be sold in DTA subject to achievement of positive NFE, on payment of applicable GST

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and compensation cess along with reversal of basic customs duty availed as exemption on inputs.

(6) Procurement of spares / components, up to 2% of the value of manufactured articles, cleared into DTA, during the preceding year, may be allowed for supply to the same consignee / buyer for the purpose of after-sale-service. The same can be cleared in DTA on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption on inputs.

(IX) EXPORT THROUGH OTHER EXPORTERS

An EOU/ EHTP/ STP/ BTP unit may export goods manufactured/ software developed by it through another exporter or any other EOU/ EHTP/ STP/ SEZ unit subject to specified conditions

(X) EXIT FROM EOU SCHEME

With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force. If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.

(XI) CONVERSION

Existing DTA units may also apply for conversion into an EOU/ EHTP/ STP/ BTP unit. Existing EHTP / STP units, who have applied for conversion / merger to EOU unit and vice-versa, can avail exemptions in duties and taxes as applicable. Applications for conversion into an EOU / EHTP / STP / BTP unit from existing DTA units, having an investment of ₹ 50 crores and above in plant and machinery or exporting ₹ 50 crores and above annually, shall be placed before BOA for a decision.

5. DEEMED EXPORTS

The objective of deemed exports is to ensure that the domestic suppliers are not in disadvantageous position *vis-à-vis* foreign suppliers in terms of the fiscal concessions. The underlying theory is that foreign exchange saved must be treated at par with foreign exchange earned by placing Indian manufacturers at par with foreign suppliers.

Deemed Exports for the purpose of this FTP

It refers to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free

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foreign exchange. Supply of goods as specified in FTP shall be regarded as "Deemed Exports" provided goods are manufactured in India.

Deemed Exports for the purpose of GST

It would include only the supplies notified under section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

We will restrict our discussion to 'Deemed exports for the purpose for FTP' in this chapter.

Deemed exports broadly cover three areas.

a. Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.

b. Supplies to projects/ purposes that involve international competitive bidding.

c. Supplies to infrastructure projects of national importance.

(I) CATEGORIES OF SUPPLIES CONSIDERED AS 'DEEMED EXPORT'

Supply by manufacturer	Supply by main/sub-contractors(s)
Supply of goods against Advance Authorisation/ Advance Authorisation for Annual Requirement/ DFIA	Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
Supply of goods to units located in EOU/ STP/BTP/EHTP	Supply of goods to any project where import is permitted at zero customs duty as per customs *Notification No. 50/2017-Customs dated 30.6.2017,* provided supply is made against International Competitive Bidding.
Supply of capital goods against EPCG authorisation	Supply of goods to mega power projects against International Competitive Bidding (even if customs duty on imports made by such project is not zero). The ICB procedures should be followed. Supplier

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	is eligible for benefits as specified. International Competitive Bidding (ICB) is not mandatory for mega power projects if requisite quantum of power has been tied up through tariff based competitive bidding or if project has been awarded through tariff based competitive bidding.
	Supply to goods to UN or international organisations for their official use or supplied to projects financed by them.
	Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

(II) BENEFITS FOR DEEMED EXPORTS

Deemed exports shall be eligible for any/ all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to specified terms and conditions:

a. Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA

b. Deemed Export Drawback. The refund of drawback in the form of basic customs duty of the inputs used in manufacture and supply under the said category shall be given on brand rate basis upon submission of documents evidencing actual payment of basic custom duties.

(III) COMMON CONDITIONS FOR DEEMED EXPORT BENEFITS

(i) Supplies shall be made directly to entities listed in the point (I) above. Third party supply shall not be eligible for benefits/exemption.

(ii) In all cases, supplies shall be made directly to the designated Projects/Agencies/Units/ Advance Authorisation/ EPCG Authorisation holder. Sub-contractors may, however, make supplies to main contractor instead of supplying directly to designated Projects/ Agencies. Payments in such cases shall be made to sub-contractor by main-contractor and not by project Authority.

(iii) Supply of domestically manufactured goods by an Indian Sub-contractor to any Indian or foreign main contractor, directly at the designated project's/

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Agency's site, shall also be eligible for deemed export benefit provided name of sub-contractor is indicated either originally or subsequently (but before the date of supply of such goods) in the main contract. In such cases payment shall be made directly to sub-contractor by the Project Authority.

6. PENALTIES

In case any exporter or importer in the country violates any provision of the Foreign Trade Policy or for that matter any other law in force, like GST, Central Excise or Customs or Foreign Exchange, his IEC number can be cancelled by the office of DGFT and thereupon that exporter or importer would not be able to transact any business in export or import. The premises where any violation of the provisions of FTP has taken place or is expected to take place can be searched and the suspicious material seized.

Violations would cover situations when import or export has been made by unauthorized persons who are not legally allowed to carry out import or export or when any person carries out or admits to carry out any import or export in contravention of the basic FTP.

7. GLOSSARY (ACRONYMS)

Acronym	Explanation
AA	Advance Authorisation
ACC	Assistant Commissioner of Customs
ANF	Aayaat Niryaat Form
BG	Bank Guarantee
BIFR	Board of Industrial and Financial Reconstruction
BoA	Board of Approval
BRC	Bank Realisation Certificate
BTP	Biotechnology Park
CBIC	Central Board of Indirect Taxes and Customs
CCP	Customs Clearance Permit
CEA	Central Excise Authority
CEC	Chartered Engineer Certificate
CIF	Cost, Insurance & Freight

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CVD	Countervailing Duty
DC	Development Commissioner
DFIA	Duty Free Import Authorisation
DGCI&S	Director General, Commercial Intelligence & Statistics.
DGFT	Director General of Foreign Trade
DoR	Department of Revenue
DTA	Domestic Tariff Area
EDI	Electronic Data Interchange
EEFC	Exchange Earners' Foreign Currency
EFC	Exim Facilitation Committee
EFT	Electronic Fund Transfer
EH	Export House
EHTP	Electronic Hardware Technology Park
EIC	Export Inspection Council
EO	Export Obligation
EOP	Export Obligation Period
EOU	Export Oriented Unit
EPC	Export Promotion Council
EPCG	Export Promotion Capital Goods
FDI	Foreign Direct Investment
FIEO	Federation of Indian Export Organisation
FOB	Free On Board
FT (D&R) Act	Foreign Trade (Development & Regulation) Act, 1992
FTP	Foreign Trade Policy
GATS	General Agreement on Trade in Services
ICD	Inland Container Depot
IEC	Importer Exporter Code
ISO	International Standards Organisation
ITC(HS)	Indian Trade Classification (Harmonised System)

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Classification for Export & Import Items

ITPO	India Trade Promotion Organisation
LoC	Line of Credit
LoI	Letter of Intent
LoP	Letter of Permit
LUT	Legal Undertaking
MEA	Ministry of External Affairs
MoD	Ministry of Defence
MoF	Ministry of Finance
NC	Norms Committee
NFE	Net Foreign Exchange
NOC	No Objection Certificate
PSU	Public Sector Undertaking
R&D	Research and Development
RA	Regional Authority
RBI	Reserve Bank of India
RCMC	Registration-cum-Membership Certificate
S/B	Shipping Bill
SEZ	Special Economic Zone
SION	Standard Input Output Norms
SSI	Small Scale Industry
STE	State Trading Enterprise
STP	Software Technology Park
TEE	Towns of Export Excellence
VA	Value Addition

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TEST YOUR KNOWLEDGE

1. *What do you understand by the term 'Foreign Trade Policy' (FTP)? Which is the governing legislation for FTP? Which Government authorities administer FTP in India?*

2. *Briefly explain as to how FTP is linked with customs laws.*

3. *Enumerate the various matters in respect of which policies and regulations are framed under FTP.*

4. *With reference to the provisions of FTP 2015-2020, discuss giving reasons whether the following statements are true or false:*

   (i) If any doubt arises in respect of interpretation of any provision of FTP, the said doubt should be forwarded to CBIC, whose decision thereon would be final and binding.

   (ii) Authorization once claimed by an importer cannot be refused by DGFT.

   (iii) IEC is a unique 12 digit PAN based alphanumeric code allotted to a person for undertaking any export/ import activities.

   (iv) Waste generated during manufacture in an SEZ Unit can be freely disposed in DTA on payment of applicable customs duty, without any authorization.

   (v) A Customs Clearance Permit (CCP) is required from DGFT in certain specific cases of import of gifts.

5. *Mr. A has brought a laptop from USA with him. Such laptop has been used by Mr. B - the seller for few months there. Mr. A contends that he can freely import such laptop as baggage without any restriction/ authorization. Examine the correctness of Mr. A's claim in the light of the provisions of FTP 2015-2020.*

6. *State in brief policy for import of samples.*

7. *State salient aspects of Advance authorisation for annual requirements to exporters.*

8. *What are the salient features of Duty-Free Import Authorization Scheme (DFIA)? Which duties are exempted under this scheme?*

9. *Answer the following questions with reference to the provisions of Duty Credit Scrips under Export from India Schemes under FTP 2015-2020.*

   (i) Rishita provides services eligible for SEIS Scheme. She wants to sell SEIS

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scrips earned by her. Can she do so?

(ii) Can a manufacturer, instead of importing the inputs, source the same indigenously without payment of GST?

(iii) An exporter was issued duty credit scrip dated 15.07.20XX. What is the period within which he must utilize the scrip?

(iv) An exporter exported leather footwears through courier using e-commerce of value of ₹ 24,000. Can he apply for duty credit scrips under Merchandise Exports from India Scheme (MEIS)?

10. *Mention the reward scheme provided under FTP which aims to promote the manufacture and export of notified goods/ products. Discuss the basis of computation of reward under said scheme. How can the duty scrips issued under the Scheme be utilized?*

11. *Explain salient features of post export EPCG scheme.*

12. *With reference to the provisions relating to EOU, EHTP, STP, BTP & SEZ Schemes as contained in FTP, answer the following questions:*

(i) A unit intending to trade in handicrafts wants to set up an EOU. Is it allowed?

(ii) An EOU has started production after 4 years 10 months from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). Is it correct?

(iii) A EOU wants to import a second hand capital goods which is prohibited under ITC (HS). Can it do so?

13. *List some supplies which are 'deemed exports' for purpose of benefits under Foreign Trade Policy 2015-2020.*

14. *Explain the salient features of Foreign Trade Policy.*

15. *Write a short note on 'Board of Trade'.*

16. *What are the features of Advance Authorization Scheme? Enlist the items which can be and which cannot be imported against Advance Authorization.*

17. *Discuss the benefits granted under FTP to Status Holders.*

18. *Explain the significant features of EPCG Scheme. Which type of capital goods cannot be imported under such Scheme?*

19. *Write short notes on the following with reference to the provisions relating to EOU/EHTP/STP/BTP as contained in the FTP:*

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(i) *Entitlement for supplies from DTA*

(ii) *Inter-unit transfer*

(iii) *Sale of unutilized material*

(iv) *Replacement/repair of imported/indigenous goods*

(v) *Exit from EOU Scheme*

20. *What is 'deemed exports'? Which type of supplies are regarded as deemed exports?*

ANSWERS/ HINTS

1. Foreign Trade Policy is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India viz., foreign trade. The FTP, in general, aims at developing export potential, improving export performance, encouraging foreign trade and creating favorable balance of payments position.

In India, Ministry of Commerce and Industry governs the affairs relating to the promotion and regulation of foreign trade. The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992 FT (D&R) Act.

In exercise of the powers conferred by the FT (D&R) Act, the Union Ministry of Commerce and Industry, Government of India announces the integrated Foreign Trade Policy (FTP) in every five years with certain underlined objectives. This policy is generally updated every year in April, in addition to changes that are made throughout the year.

The FTP is formulated, controlled and supervised by the office of the Director General of Foreign Trade (DGFT), an attached office of the Ministry of Commerce & Industry, Government of India. DGFT has several offices in various parts of the country which work on the basis of the policy formed by the headquarters at Delhi.

Though the FTP is formulated by DGFT, it is administered in close coordination with other agencies. Other important authorities dealing with FTP are:

(i) Central Board of Indirect Taxes and Customs (CBIC)

(ii) Reserve Bank of India (RBI)

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(iii) State VAT Departments

2. The Foreign Trade Policy is closely knit with the Customs laws of India. However, the policy provisions *per-se* do not override tax laws. The exemptions extended by FTP are given effect to by issue of notifications under respective tax laws (e.g., IGST Act, CGST Act, SGST/UTGST Act, Customs Tariff Act, 1975, Central Excise Act, 1944, Customs Act, 1962 etc.). Thus, actual benefit of the exemption depends on the language of exemption notifications issued by the CBIC.

In most of the cases the exemption notifications refer to policy provisions for detailed conditions. Ministry of Finance/ Tax Authorities cannot question the decision of authorities under the Ministry of Commerce (so far as the issue of authorization etc. is concerned).

Decision of Director General of Foreign Trade (DGFT) is final and binding in respect of (a) Interpretation of any provision of foreign trade policy or provision of Handbook of Procedures, Appendices, Aayat Niryat Forms (b) Classification of any item in ITC(HS).

3. Following issues are covered under FTP 2015-2020 -

- General provisions regarding import and export of goods – Chapter 2 of FTP 2015-2020.
- Export from India Scheme [MEIS and SEIS] to encourage exports of specified goods to specified countries and also export of services – Chapter 3 of FTP 2015-2020.
- Duty Exemption and Remission Schemes [Advance Authorisation, DFIA and Duty Drawback Scheme and duty remissions schemes under GST law] to enable exporters to import inputs without payment of customs duty – Chapter 4 of FTP 2015-2020.
- Export Promotion Capital Goods (EPCG) scheme [to obtain capital goods without payment of customs duty] – Chapter 5 of FTP 2015-2020.
- EOU/EHTP/STP and BTP schemes – Chapter 6 of FTP 2015-2020.
- Deemed Exports – Chapter 7 of FTP 2015-2020.
- Quality Complaints and Trade Disputes – Chapter 8 of FTP 2015-2020.

Policy in respect of Special Economic Zones [SEZ] is contained in SEZ Act, 2005 and Rules.

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4. **(i) False.** If any question or doubt arises in respect of interpretation of any provision of the FTP, said question or doubt ought to be referred to DGFT whose decision thereon would be final and binding.

(ii) False. No person may claim an Authorization as a right and DGFT shall have power to refuse to grant or renew the same in accordance with provisions of FT(D&R) Act, rules made thereunder and FTP.

(iii) False. IEC is a unique 10 digit code allotted to a person for undertaking export/ import activities.

(iv) True. Any waste or scrap or remnant including any form of metallic waste & scrap generated during manufacturing or processing activities of an SEZ Unit/ Developer/ Co-developer are allowed to be disposed in DTA freely, without any authorization, subject to payment of applicable customs duty.

(v) True. A Customs Clearance Permit (CCP) for import of gifts is not required from DGFT if such goods are otherwise freely importable under ITC(HS). Thus, only when the goods imported as gifts are not freely importable under ITC(HS), a CCP is required.

5. Import of one laptop computer (notebook computer) as baggage is exempt from whole of the customs duty. Further, Foreign Trade Policy 2015-2020 provides that import of second hand laptop requires authorization.

In view of above, Mr. A's claim is not correct as second hand laptops can be imported only against an authorization.

6. No authorisation is required for import of *bona fide* technical and trade samples. These are importable freely. Samples upto ₹ 3,00,000 can be imported by all exporters without duty.

Authorisation for import of samples is required only in case of vegetable seeds, bees and new drugs. Samples of tea upto ₹ 2,000 (CIF) per consignment will be allowed without authorization.

7. Annual Advance authorisation would be issued to exporters having past export performance for at least two financial years, to enable them to import the inputs required by them on annual basis.

Advance authorization for Annual Basis can be only on basis of prescribed manner and not on basis of *ad hoc* norms.

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Annual Advance Authorisation in terms of CIF value of imports will be granted upto 300% of FOB value of physical exports in preceding financial year and/or FOR value of deemed exports in preceding year or ₹ 1 crore, whichever is higher.

8. DFIA is issued to allow duty free import of inputs, oil and catalyst which are required for production of export product. The goods imported are exempt ONLY from basic customs duty.

DFIA shall be issued on post export basis for products for which SION have been notified. Separate DFIA shall be issued for each SION and each port.

No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/ Back to Back Inland Letter of Credit. However, DFIA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation. A minimum 20% value addition is required for issuance of DFIA except for items in gems and jewellery sector.

9. **(i)** **Yes.** The duty credit scrips and goods imported or domestically procured against them are freely transferable.

(ii) ***No.*** Utilization of duty credit scrip is not permitted for payment of GST for procurement from domestic sources.

(iii) The duty credit scrip will be valid for ***24 months*** from date of issue.

(iv) ***Yes. Exports of leather footwears through courier using e-commerce of FOB value of ₹ 5,00,000 per consignment are eligible for MEIS.***

10. The scheme is known as Merchandise Exports from India Scheme (MEIS).

The objective of MEIS scheme is to promote the manufacture and export of notified goods/ products.

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Under MEIS, exports of notified goods/products to notified markets shall be eligible for reward at the specified rate(s). Unless otherwise specified, the basis of calculation of reward would be:

(i) on realised FOB value of exports in free foreign exchange,

or

(ii) on FOB value of exports as given in the Shipping Bills in free foreign exchange,

whichever is less.

These scrips can be used for payment of customs duties on import of inputs/goods including notified capital goods.

11. In EPCG scheme, first capital goods are imported without payment of customs duty and then export obligation is fulfilled.

In case of post export EPCG scheme, the capital goods are imported on full payment of applicable duties in cash. Later, basic customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrips. ***Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto 31.03.2020.***

In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided input tax credit is not availed.

These Duty Credit Scrips can be used for payment of applicable custom duties for imports. All other provisions of EPCG Scheme apply to post export EPCG scheme also.

Specific Export Obligation under this Scheme shall be 85% of the applicable specific EO [6 times of duties, taxes and cess saved on capital goods imported under EPCG scheme to be fulfilled in 6 years reckoned from authorization issue date]. Average EO remains unchanged.

Duty remission shall be in proportion to the Export Obligation fulfilled.

The advantage of the scheme is that the exporter does not have any specific export obligation when he imports capital goods on payment of full customs duty. Later, he gets remission on the basis of exports made by him.

12. **(i)** **No.** Units undertaking to export their entire production of goods and services (except permissible sales in DTA), may be set up under the

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Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park (STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re- making, reconditioning, re-engineering and rendering of services. Trading units are not covered under these schemes.

(ii) **No.** EOU/ BTP/ EHTP/ STPs should start production within 2 years from the date of grant of Letter of Permission (LoP)/ Letter of Intent (LoI). In other words, LoP/ LoI have an initial validity of 2 years, by which time unit should have commenced production. Its validity may be extended further up to 2 years by competent authority. However, proposals for extension beyond four years shall be considered in exceptional circumstances, on a case to case basis by BoA.

(iii) **No.** Though an EOU is permitted to import duty free second hand capital goods, without any age limit, it cannot import capital goods that are prohibited items of import in the ITC(HS).

13. As per FTP 2015-2020, following are treated as deemed exports:

- Supplies against Advance Authorisation/DFIA
- Supplies to EOU/STP/EHTP/BTP
- Supplies against EPCG authorization
- Supply of marine freight containers by 100% EOU
- Supplies to projects against International Competitive Bidding
- Supplies to projects where imports permitted at zero customs duty
- Supply to mega power projects
- Supplies to UN or International Organizations for their official use.
- Supplies to nuclear projects

14. Refer para 1 of Unit I
15. Refer para 1 of Unit I
16. Refer para 1 of Unit II
17. Refer para 2 of Unit II
18. Refer para 3 of Unit II
19. Refer para 4 of Unit II
20. Refer para 5 of Unit II

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