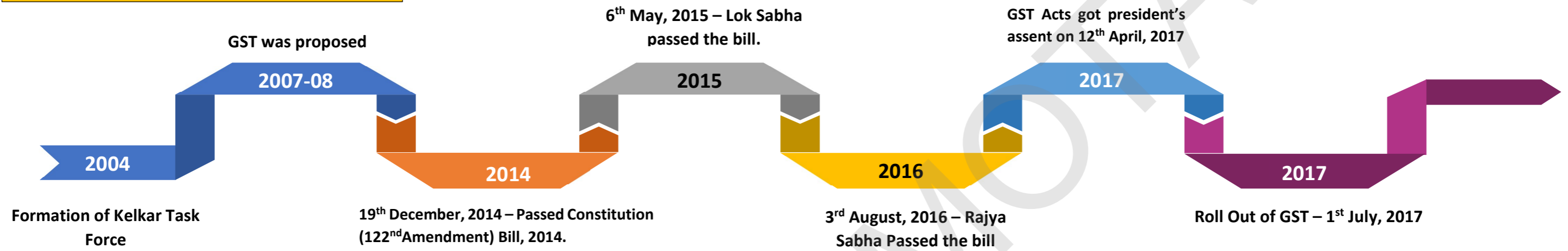


Road Map of GST

Goods & Services Tax – An Introduction & its constitutional provisions

By CA. Keval Mota



Concept of GST

Chain of Indirect Tax can be understood as below

| Particulars | A (Mfg.) | B (Wholesaler) | C (Retailer) | D (Consumer) |
|---------------------------------|----------|----------------|--------------|--------------|
| Cost | 100.00 | 110.00 | 121.000 | 149.072 |
| + Profit | 10.00 | 11.00 | 12.100 | NA |
| Total | 110.00 | 121.00 | 133.100 | NA |
| GST | 13.20 | 14.52 | 15.972 | NA |
| Total Invoice Value (incl. GST) | 123.20 | 135.52 | 149.072 | NA |
| GST Payable | 13.20 | 14.52 | 15.972 | NA |
| Less: Input Tax credit | 0.00 | 13.20 | 14.520 | NA |
| Net Payable | 13.20 | 1.32 | 1.4520 | NA |

Notes: -

- Each seller's selling price (excl. GST) becomes cost of procurement for next supplier. GST will be available as ITC to all dealers in chain. Thus, it is called as seamless flow of Credit. Accordingly, there is no Cascading of Taxes.
- Burden Borne by Final Consumer: The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages. It can be seen that the goods of Rs. 100 at first stage added with profit and Taxes at all levels has been borne by Final Consumer. i.e. $(100 + 10 + 11 + 12.1 + 13.20 + 1.32 + 1.4520) = 149.072$ (Cost + All Profits + Taxes)
- Tax has been paid by supplier **TO GOVERNMENT**. However, the same has been recovered by consumer indirectly by adding in MRP. Thus, it is called as Indirect Taxes.
- GST is destination-based consumption tax i.e. tax that would accrue to the taxing authority which has jurisdiction over the place of consumption which is also termed as place of supply. Being a consumption tax, tax revenue arising out of GST shall belong to the destination territory.

Overview of GST

Type of Tax – GST is destination-based consumption tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof. SGST & certain portion of IGST will be apportioned to consuming states.

Dual GST Model (Article 246A)– GST in India will comprise of Central Goods Service Tax (CGST) - levied and collected by Central Government, State Goods and Service Tax (SGST) - levied and collected by State Governments/Union Territories with State Legislatures and Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without State Legislatures, on intra-state supplies of taxable goods and/or services. Inter-State supplies of taxable goods and/or services will be subject to Integrated Goods and Service Tax (IGST). IGST will approximately be a sum total a CGST and SGST/UTGST and will be levied by Centre on all inter-state supplies and then apportioned to place of supply state (Article 269A – Levy & Collection of GST on inter-state trade or commerce)

No Centralised Registration – Supplier has to take registration in each state from where he is making taxable supplies. One registration for all branches across India is not possible in GST Regime.

Registration – Normal & Composition - In GST regime, tax (i.e. CGST and SGST/UTGST for intra-state supplies and IGST for inter-state supplies) shall be paid by every taxable person and in this regard, provisions have been prescribed in the law. However, for providing relief to small businesses, a simpler method of paying taxes and accounting thereof is also prescribed, known as Composition Scheme. Along with providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on specified goods and/or services.

Out of Ambit Products– GST will be levied on all supply of goods and services except alcoholic liquor for human consumption. (Article 366)

Further, 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. VAT will be levied on such products.

GST Council Provisions [Article 279A]

Apportionment of IGST: -

B2B Supplies: - IGST collected by Centre is allowed as ITC to recipient, thus, no apportionment.

B2C Supplies: - 50% of IGST Collected by centre is apportioned to State (SG) where supply takes place- i.e., destination state.

IGST is allowed as input tax credit to recipient. Following is the manner: -

- If registered person utilises credit of SGST to pay IGST, then SG will pay such amount to CG.
- If registered person utilises credit of IGST to pay SGST, then CG will pay such amount to SG.

GST Council is framed to make recommendations to union and state on various aspects of GST such as which taxes to be levied/which taxes shall be subsumed, threshold limit for registrations and many other matters.

Constitution: - (Constituted on 12th September, 2016)

1. Union finance minister – Chair person
2. The Union Minister of State in charge of Revenue or Finance – Member
3. the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government. – Members

QUORUM: - 50% of Total Members (Min 17 members out of 33 members refer note below)

Decision is taken on basis of 3/4th Majority by following below principal:

- The vote of the Central Government shall have a weightage of one third of the total votes cast, and
- The votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(Currently there are 33 members in GST Council (2 from Union & 31 from Other states and union territories. Thus, in essence out of 2 members at least 1 member of Centre shall completely agree (> than 1/3rd) & 21 members from states and union territory shall agree (> 2/3rd) to effect any decision).

"If you are working on something that you really care about, you don't have to be pushed. The vision pulls you."

Taxable event is which on its occurrence creates a liability to pay tax.
Taxable event in GST is supply of goods / services or both.

Note: Provisions of CGST Act, 2017 shall also be applicable for Inter-state supplies vide Section 20 of IGST Act, 2017.

Applicable for May, 2021 / June, 2021 Attempt

By CA. Keval Mota

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Supply under GST [1/3] (Section 7, 8 of CGST Act, 2017)

Supply should be for consideration & in course or furtherance of business [S. 7(1)(a) of CGST Act, 2017 r/w Sch. I to CGST Act]

- Supply includes all forms of supply of goods or services such as sale, transfer, barter, exchange, lease, rental etc.
- Consideration means everything received or recoverable in return for supply / not for effecting supply i.e. Non-Compete Fees.
- Supplies made without consideration will also be supply if specified in Schedule I of CGST Act, 2017 [S. 7(1)(c) of CGST Act]

Notes: -

- 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.
 - Examples of Actionable claims are unsecured debt, bills of exchange etc.
 - All Actionable claims are goods but only lottery, betting & gambling are supply (Sch. III).
- Service means anything other than goods, money & securities but includes activity relating to use of money / conversion for which separate consideration is charged. **Service includes facilitating or arranging transactions in securities. (CGST Amendment Act, 2018)**

Schedule I Activities r/w 7(1)(c) of CGST Act, 2017: - (Entries are as below)

3) Supply of Goods By: - Principal to Agent (Selling Agent) / Agent to Principal (Purchasing Agent) (r/w Circular No.57/31/2018-GST dated September 4, 2018): -

Agent issues invoice in own name to recipient
It is supply between principal & Agent

Agent does not issue invoice in own name to recipient
It is not a supply between principal & Agent

(If agent is issuing invoice in his own name, he has to take compulsory registration (S. 24 of CGST))

4) Import of Service by Taxable Person (CGST Amendment Act, 2018)

If for Consideration – Always Supply whether or not in furtherance of business [S. 7(1)(b)]

If without consideration - & from related party for furtherance of Business then its supply. [Para 4 of Sch. I]

To remove anomaly, law has classified certain activities into Goods/Services [S. 7(1A)] r/w Schedule II to CGST Act, 2017 (Note: Below are not entry numbers)

- Transfer of Title in Goods – **Goods**
- Title in Goods under an agreement that property shall pass at future date - **Goods**
- Right / undivided share in goods without transfer of title in them - **Services**
- Transfer of Right in use (no title) – **Services**
- Lease, Tenancy, Easement, Licence to Occupy land, letting out & Treatment or Process – **Services (Activities in respect of residential dwelling are exempt vide NN 12/2017 – CTR)**
- Business Assets**
 - Assets of Business transferred **with/without consideration** – **Goods (As amended by FA, 2020)**
 - Goods put to private use – **Services**
 - Ceases to be Taxable person, stock / assets deemed to be supplied (except going concern & business carried on by personal representative) – **Goods**
- Renting of Immovable property, under construction building (building where consideration has been received before completion certificate or first occupation whichever is earlier), Works Contract Service, Restaurant – **Services**
- Temporary transfer or permitting the use or enjoyment of any intellectual property right - **Services**
- Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software - **Services**
- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; - **Services**
- Supply of Goods by Unincorporated Association to Members – **Supply of Goods**

Classification of Goods or Services through Circulars: -

- In the case of printing of books, pamphlets etc. where only content is supplied by the publisher or the person who owns the usage rights, supply of printing of the content supplied by the recipient of supply is supply of service. Printing of envelopes, letter cards etc. are supply of goods.
- Transfer of Tenancy Rights – Supply of Service (Also Known as "Pagadi" System) –**
 - Tenancy Premium earned on residential units by landlord / residential units by outgoing tenant** – Exempted vide exemption entry 12 of Notification 12/2017-CT(Rate)
 - Tenancy Premium earned on other than residential units by land lord/ outgoing tenant** – Taxable
 - Share of tenancy premium received on such units from outgoing tenant by the landlord on sale of tenancy rights by such outgoing tenant** – Taxable
- Priority Lending Certificate – Supply of Goods
- Re-treading of tyres** – In re-treading of tyres, which is a composite supply, the pre-dominant element is the process of re-treading which is a supply of service. However, Supply of re-treaded tyres is supply of goods. (MCQ – November, 2019 New Syllabus)

Neither goods nor services [S 7(2) r/w Sch. III] (Entries are as below)

- Services by an employee to the employer.
- Services by any Court or Tribunal.
- Functions performed by MPs, MLAs, etc.
- Funeral, burial, crematorium or mortuary including transportation of the deceased.
- Sale of land and completed building (construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, 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.)
- Actionable claims, other than lottery, betting and gambling
- 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.
- (a) Supply of warehoused goods to any person before clearance for home consumption; (b) High-Seas Sales
- Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called.

Supply should be made by Taxable person & shall be taxable in order to be treated as taxable supply.

Composite [Sec 8 r/w S. 2(30)] & Mixed Supplies [Sec 8 r/w S. 2(74)]

Tax Rate/ Place of Supply / Time of Supply etc. will be as per pre-dominant supply.

Tax Rate/ Place of Supply / Time of Supply etc. will be as per supply having highest rate of tax.

| Description | Composite | Mixed |
|----------------------------|-----------|-------|
| Naturally Bundled | Yes | No |
| Can be supplied separately | No | Yes |
| One is pre-dominant | Yes | No |
| Priced Separately | Yes/No | No |
| Supplied Together | Yes | Yes |

Other Important Points / Circulars: -

- The movement of artwork from artist to art galleries shall not be constituted as supply as the same is sent on approval basis and the supply takes place when buyer selects a particular art work displayed at the gallery.
- Inter-state movement of modes of conveyance b/w distinct persons is not a supply (unless for further supply). If given for R&M, only R&M Charges are supply.
- GST not leviable on fees/ penalty / pre-deposit charged by Consumer Dispute Redressal Commission.
- Cash Calls by JV to Purchase Asset – Not a Supply; if paid as charges to member who owns such asset will be a supply of service
- Original Equipment Manufacturer Supplying Free of Cost Moulds & Dies to Component Manufacturer it is not a supply.
- Supply of seized / detained/ used goods by govt to Regd person – RCM u/s 9(3), otherwise FCM. (NN 36/2017-CTR)
- Activity of fabrication and fitting and mounting of bus bodies on chassis supplied by other party is a composite supply of service with supply of goods, i.e., bus bodies, being principal supply and same is supply of goods.
- As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors (licensor/lessor and licensee/lessee), in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum". Cost petroleum is not a consideration for service to GOI and thus **not taxable**. However, cost petroleum may be an indication of the value of mining or exploration services provided by **operating member to the joint venture**, in a situation where the operating member is found to be **supplying service** to the oil exploration and production joint venture.

Schedule I Activities r/w 7(1)(c) of CGST Act, 2017: - (Entries are as below)

Note: - Schedule I activities are an exception to "payment of invoice value within 180 days from date of invoice" to supplier as mentioned in Section 16 of CGST Act, 2017 (Refer ITC Chapter for more details)

- Permanent Transfer of business assets where input tax credit (ITC) has been availed;

Notes: -

 - There is **no requirement of another person in the case of 'disposal'**. Therefore, if a business asset on which credit is claimed has been discarded, the transaction shall be regarded as a supply.
 - A registered person shall **not be required to comply with both the provisions** i.e. reverse ITC u/s 17(5)(h) as well as pay tax as it is supply under **Schedule I**, compliance with any of the above will suffice.
 - There is no permanent transfer in case of goods sent for job work. Thus, credit will be available to principal even if goods are given to Job Worker (without consideration).

- Supply of Goods/Services between related persons / distinct persons in course or furtherance of business. However, gifts by employer to employee (related person) less than or equal to Rs. 50,000/- are not a supply. [There is a list of related persons, employer employee is one of them]

Notes: -

- If gift of > Rs. 50,000 is given then ITC can be claimed on such gifts even if Section 17(5)(h) of CGST Act calls for reversal of ITC on giving of gifts (to be discussed in ITC)
- Cash gifts of any value, given that the 'transaction in money' is not a subject matter of supply;
- A service can also constitute a gift (such as gift vouchers for a beauty treatment)
- Right of the employee in terms of the employment contract / employee policy of the entity, then such gift shall be treated as emoluments arising out of the employment (including perquisites), and cannot be treated as a supply as per Sch. III to CGST Act, 2017. (Example – Pre-mature termination as per employment terms are not supply)
- Rule 28 shall be applicable to value supply of goods between distinct persons / related persons. (to be learnt in Value of supply)

Other Important Points (Cont.)

9) Taxability of additional / penal interest on late payment of EMI (Circular No. 102/21/2019-GST dated 28th June, 2019): -

| Case | Legal Provisions | Taxability |
|---|---|---|
| Purchase of <u>goods/ service on EMI</u> Basis & delaying EMI payment | Section 15(2)(d) of CGST Act, 2017 | The amount of additional / penal interest is to be included in the value of supply. If the transaction is of Taxable goods/services such penal / additional interest would be added in Value of supply. |
| Purchase of <u>goods in cash by taking loan</u> & delaying such EMI | Sl. No. 27 of Notification No. 12/2017 – CTR dated 28.06.2017 | Penal interest charged on a transaction would not be subject to GST, as the same would be covered under Sl. No. 27 of notification No. 12/2017-Central Tax (Rate) dated 28 th June, 2017. |

10) The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude to Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes.

Accordingly, if all the three conditions are satisfied then GST will not be levied on consideration received namely: -

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

(Circular No. 116/35/2019-GST dated 11th October, 2019)

11) Procedure & Documentation in respect of goods (specifically) sent/taken out of India for exhibition or on consignment basis for export promotion (For the sake of brevity effect of amendment on further chapters have been clubbed over here itself): (Circular No. 108/27/2019-GST dated 18th July, 2019)

| Aspect | Legal Provision | Analysis |
|--|---|---|
| Supply | - Section 7 of CGST Act r/w Schedule I to CGST Act, 2017 (Activities to be treated as supply without consideration) - Zero Rated Supply (Sec 16 of IGST Act) | It is <u>not a supply</u> as in case of sale on approval basis transaction there is <u>no consideration</u> . Further it also <u>falls out of ambit of Schedule I</u> , accordingly it is <u>not a supply</u> under GST even if it is for without consideration. Since it is <u>not a supply</u> , the question of zero-rated “supply” does not arise. Accordingly, it is not a zero-rated supply (it does not mean it is exempt supply). Accordingly, the goods can be <u>sent even without LUT</u> & question of refund does not arise at the time of sending goods. |
| Documentation (Tax Invoice & Delivery Challan) to be kept by taxable person. | - Section 31(7) of CGST Act (Invoicing in case of sale or approval basis) - Rule 55 of CGST Rule (Delivery Challan) & Rule 46 of CGST Rules (Tax Invoice) | Goods sent on approval shall be accompanied with <u>delivery challan</u> u/r 55 of CGST Rules, 2017. As per section 31(7) of CGST Act, 2017; if the goods are not returned within 6 months from date of removal, it shall be deemed to be supplied on expiry of 6 months. In such a case it would be treated as supply & tax invoice (R. 46) shall be raised on expiry of 6 months. |
| Accounts & Records | Circular No. 108/27/2019-GST dated 18 th July, 2019 | The registered person dealing in specified goods shall maintain a record such as Description, removal date, quantity, value, shipping bill No., details of goods not bought back etc. |
| Refund of Tax for goods sent out of India. | Circular No. 108/27/2019-GST dated 18 th July, 2019 | As the same is not a zero-rated supply, question of refund of tax does not arise. However, when it is treated as supply it would be a Zero – rated supply & refund of tax is permissible. It will be treated as supply: - (i) On the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or (ii) On the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months. Accordingly, on such date where it has been sold within specified period, the refund can be claimed by registered person in accordance with Rule 89(4) of CGST Rules in respect of such goods sold. Further, it is important to note that question of “Export on payment of GST” does not arise in this case as, when goods were sent, they were not actually exported (unless accepted / time-limit expired). |

OUT OF BOX THINKING POINTS: -

1. **Import of Services for personal purposes – Exempt Supply:** - Import of services by individual for personal purpose is a supply (if consideration is involved) however, the same are exempt in terms of IGST exemptions (other than OIDAR Services and Ocean freight) by charitable trusts & CG/SG/UT/LA, [Sr. No. 10(a) of Notification 9/2017]
2. **Significance of Schedule III transactions:** - Schedule III transactions not to be included in exempt turnover other than Land & Completed Building for the purpose of reversal of input tax credit. Further to note that schedule III transactions are not to be added in aggregate turnover.
3. **Director Services:** - Any amount paid to a director of a company for attending board of director’s meeting, etc., shall be chargeable to GST, because it is not paid in the capacity of an employee. But, if any amount is paid to whole time director in the capacity of employee, then, no GST will be charged on the same.
4. **Composite Supplies:** - It shall be noted that above definition covers two or more taxable supplies. But definition of taxable supplies includes those supplies of goods which are leviable to tax and chosen to be exempted under section 11 of CGST Act and hence the exempt supplies also fall under the category of taxable supplies.

It is equally important that in order to treat a supply as composite one it shall be naturally bundled. Any artificial bundling must be sought out with equal care as they could fall within mixed supply and not composite supply.

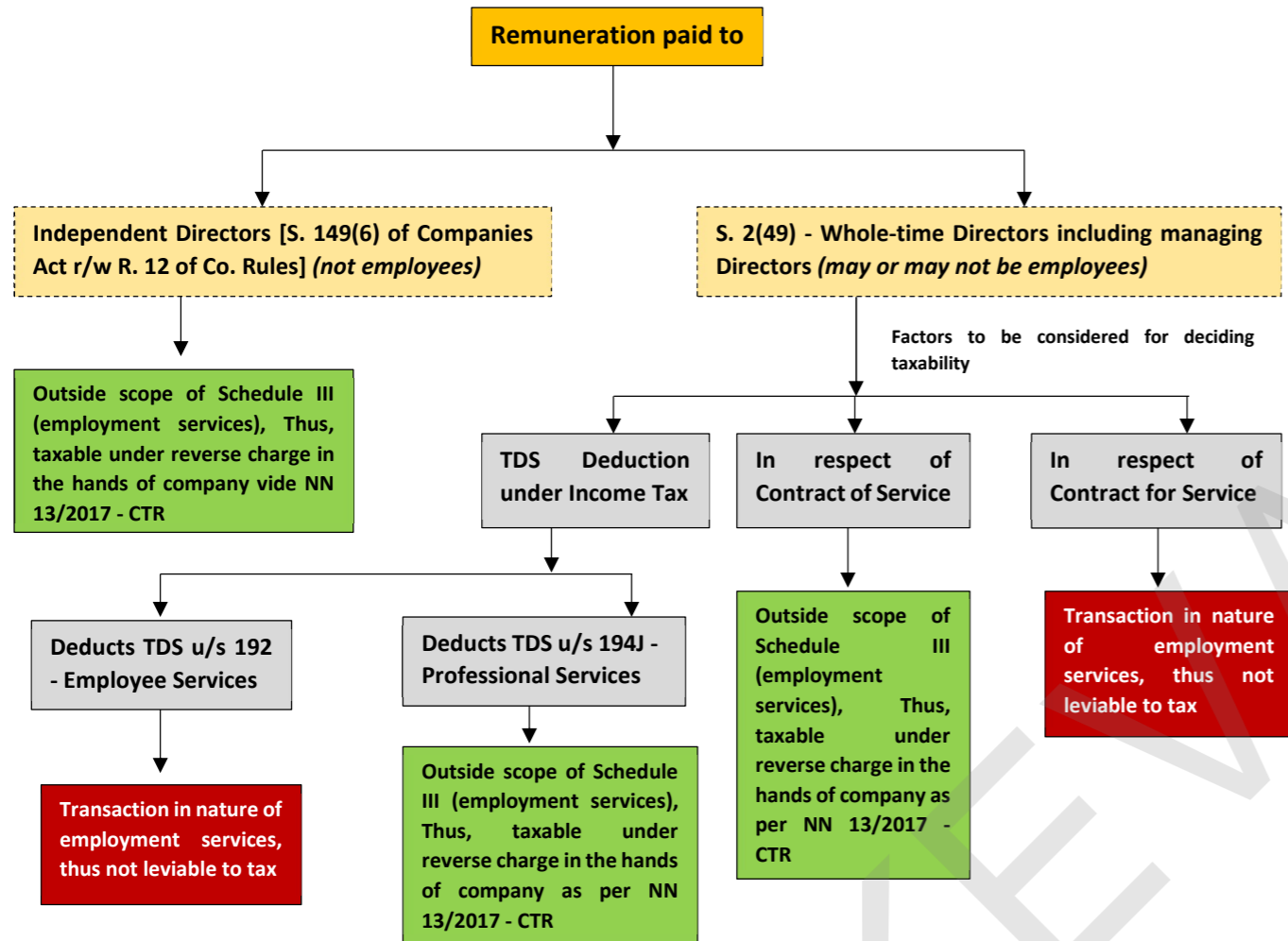
5. **Example for Cost Petroleum to understand Concept much better: -**
Case I – Mr. K wishes to explore mines thus a production sharing contract has to be entered into with Government of India. Mr. K will incur costs relating to extraction of mines and profit, royalty will be shared with GOI. Incurring of these costs is called as cost petroleum. Mr. K having incurred these costs is not treated as K has provided services provided to GOI because they have agreement as licensor and licensee and not as joint venture. Accordingly cost petroleum would not be taxable.

Case II – Mr. K & ONGC a Joint venture firm named “ONGCK” wishes to explore mines thus a production sharing contract has to be entered into with Government of India., the terms were decided as Mr. K will incur costs relating to extraction of mines and will recover the same from Joint venture in requisite proportion. Thus, in this case it is treated as Mr. K is providing services to Joint Venture “ONGCK” and hence taxable. However, JV having incurred these costs is not treated as services provided to GOI because they have agreement as licensor and licensee and not as joint venture. Accordingly cost petroleum would not be taxable.
6. **Priority Lending Certificates:** - Priority Sector lending certificate (PSLCs) are tradable instruments issued as certificates against priority sector lending by banks. The certificates help banks to meet their lending goals specified for the priority sector. Buyers of PSLC are generally those banks who are not able to meet there required target of lending priority sector. Thus, banks moving ahead of their targets issues PSLC to non-achievers to balance the flow of lending and credit. PSLC is goods. Tax will be payable by purchaser of PSLC under reverse charge w.e.f. 27th May, 2018 onwards (*Not in syllabus*)

**What does it take to become an expert or master performer in any field?
10,000 hours of practice.**

Supply under GST [3/3] (Section 7, 8 of CGST Act, 2017)

Clarification on Taxability in Respect of Remuneration paid to Directors [Circular No: 140/10/2020 - GST dtd. 10th June, 2020]



To Join Channel, Click -<https://t.me/idtbycakevalmota>
Applicable for May, 2021 / June, 2021

Composition Levy under GST [S. 10 of CGST Act, 2017] (1/2)

By CA. Keval Mota

(1) Eligibility for Composition Levy

Eligible if aggregate turnover in preceding financial year is UPTO (as amended by NN 14/2019 CT)

| Rs. 75 Lakhs | Rs. 1.5 crore |
|-------------------|--------------------------------------|
| Arunachal Pradesh | Himachal Pradesh |
| Manipur | Assam |
| Meghalaya | Jammu & Kashmir |
| Mizoram | All other states & Union Territories |
| Nagaland | |
| Sikkim | |
| Tripura | |
| Uttarakhand | |

(2) Aggregate Turnover for Determining eligibility as per 2(6) of CGST Act, 2017 [All India PAN Basis]: -

| Include | Exclude |
|---|--|
| All Taxable Supplies (Excl. RCM Inward) | CGST, SGST/UTGST, IGST & Cess. |
| Exempt Supplies | Exempt supply by way of extending deposit, loan, advance where consideration is represented by interest or discount {Explanation 1 to Section 10(1)} |
| Export of goods or services | |
| Inter-state Supplies | |

(3) Persons Ineligible to opt: -

- Supplier of Non-Taxable Goods (Petroleum products)
- Inter-state supplier of goods.
- Supplier of Goods through Electronic Commerce Operator who is required to collect tax u/s 52.
- Ineligible Manufacturers (not traders) – Tobacco, Ice-cream & PAN Masala, Aerated Waters, (TIPA)
- Eligible person supplying Service (other than restaurant) where value of supply exceeds 10% of Total Turnover in State (excl. exempt supplies by way of Loan, Discount, Interest) or Rs. 5,00,000/-, whichever is higher.
- Exclusive Supplier of Service other than restaurant service provider (he may opt for presumptive scheme but not Composition Scheme)
- Casual Taxable person & Non-resident taxable person cannot opt.

(4) Composition Tax Rates in Lieu of 9(1) of CGST Act, 2017: - (As amended by CGST Amendment Act, 2018 w.e.f. 01.02.2019)

| Type of person | CGST Rate | SGST Rate |
|--------------------------------------|---|---|
| (a) Manufacturer (other than TIPA) | 0.5% of Total Turnover in State or Union Territory | 0.5% of Total Turnover in State or Union Territory |
| (b) Restaurant | 2.5% of Total Turnover in State or Union Territory | 2.5% of Total Turnover in State or Union Territory |
| (c) Other Suppliers (E.g. – Traders) | 0.5% of Taxable supplies of goods and services in State or Union Territory | 0.5% of Taxable supplies of goods and services in State or Union Territory |

[Note: - For (a), (b), (c) above, supplier may supply service (other than restaurant service) not exceeding 10% of Turnover in State in preceding financial year (excl. Exempt supply by way of extending deposit, loan, advance where consideration is represented by interest or discount) or Rs. 5,00,000/- whichever is higher.

Important Point: -Exempt supply by way of extending deposit, loan, advance where consideration is represented by interest or discount shall not be included for the purpose of determining eligibility and for the purpose of payment of Tax under composition scheme and presumptive scheme [Explanations to Section 10(1) of CGST Act]

Conditions & Restrictions for Composition Levy (Rule 5 of CGST Rules, 2017)

- Goods held in Stock by him shall not have been purchased from unregistered person & where such goods are purchased, he pays tax u/s 9(4) of CGST Act, 2017.
- 9(3) & 9(4) [RCM] shall be applicable @ normal rates, no composition rate shall be applicable on such procurements.
- Not engage in manufacture of notified goods (Tobacco, Ice-cream & Pan Masala).
- To Mention "Composition Taxable Person" on all notices, signboards displayed at prominent place, & he is not eligible to collect tax on its outward supplies.
- To mention "Composition taxable person, not eligible to collect tax on supplies" on Tax Invoice. Further he is not eligible to take any input tax credit.

(5) Presumptive Scheme of Taxation for Service Suppliers & Mixed Suppliers [Section 10(2A) of CGST Act]

Introduction: -

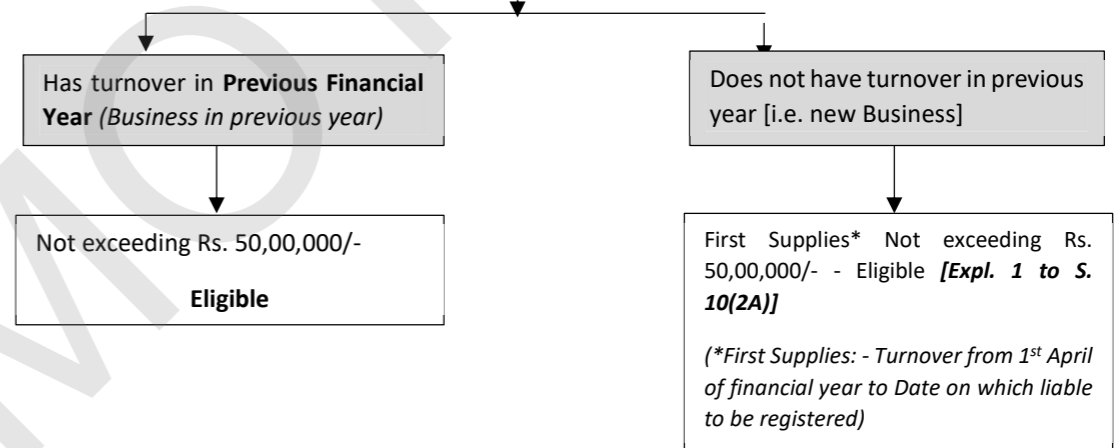
- Scheme is available from 1st April, 2019.
- If any person is eligible (even if not opted) for composition scheme cannot take this scheme.
- As per Amended Rule 7 of CGST Rules, GST shall be paid @ 6% of Taxable supplies of goods and services in State or Union Territory [CGST 3%, SGST 3%]**

Conditions: -

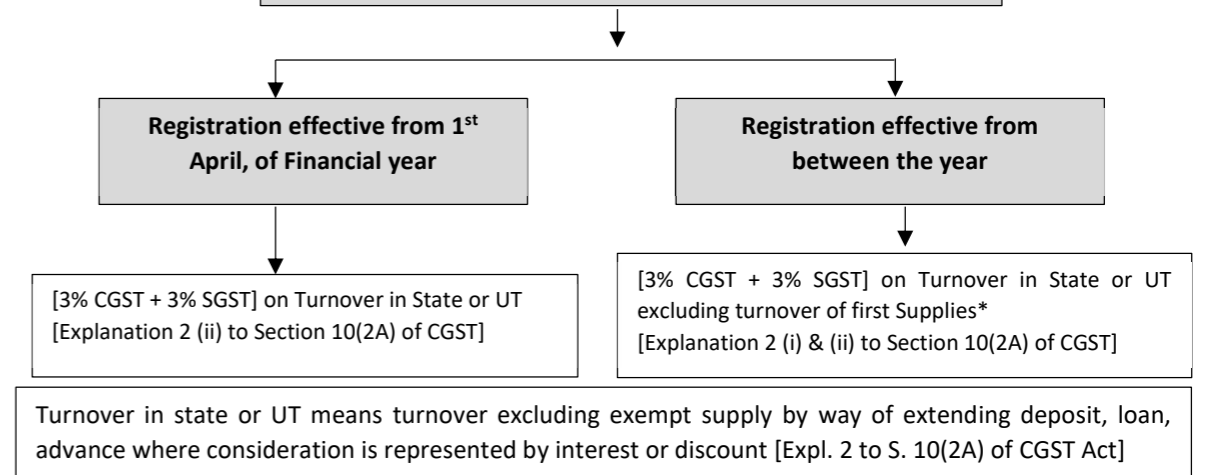
- Aggregate Turnover in preceding Financial shall not exceed Rs. 50,00,000/- (Exclude exempt supply by way of extending deposit, loan, advance where consideration is represented by interest or discount [Expl. 1 to S. 10(2A) of CGST])
- Section 10 shall not be applicable to that person.
- Not to be engaged in selling non-taxable goods.
- Inter-state goods & service not allowed.
- Casual Taxable person & Non-resident taxable person cannot opt.
- Cannot supply through Electronic Commerce Operator.
- No Supply of Tobacco, Ice-cream & Pan-masala, Aerated Waters (Not even Trading).

(Please note that S. 10(2A) of CGST Act states that Manufacturer of TIPA cannot opt for presumptive scheme, however if a person is eligible (i.e. trader of TIPA) for composition scheme he cannot opt for presumptive scheme. Accordingly, trader of TIPA cannot opt for presumptive scheme)

Presumptive Scheme – Determining Eligibility [S. 10(2A)]



Payment of Tax under presumptive scheme (18th of month succeeding Quarter) [S. 10(2A)]



Return filing for Composition person & presumptive scheme suppliers (Amended by NN 20/2019 dated 23/04/2019) – GSTR 4 – Annually by 30th April of Succeeding Financial Year. Payment of Tax for Composition & Presumptive Supplier – 18th of month succeeding Quarter

(6) Other Miscellaneous Points (Common for Composition & Presumptive Levy)

- ITC cannot be availed; Tax cannot be levied.
- Issues Bill of Supply S. 31(3)(c) of CGST Act–
 - Composition person to mention – "Composition Taxable person not eligible to collect tax on supplies" on invoices
 - Presumptive supplier to mention – Taxable person paying taxes in terms of NN 02/2019 – CTR, not eligible to collect taxes on supplies.
- When switching over to presumptive scheme / composition scheme, ITC on stock to be reversed. [S. 18(4) r/w NN 09/2019 CTR].
- One PAN can have only one registration i.e. either composition / presumptive or normal.
- Composition person not to maintain stock & tax details.
- Option to opt for composition scheme lapses if Turnover exceeds 1.5 crores / 75 lakhs (in SCS), option to opt for presumptive scheme lapses if turnover exceeds Rs. 50 Lakhs in current financial year.
- Despite of being ineligible if a person opts for composition scheme consequence under section 73 / 74 of CGST Act, 2017 will follow.

PRACTICAL QUESTIONS FOR UNDERSTANDING CONCEPTS

Q1) Mr. Ram, a registered person in Maharashtra has provided following supplies in current year; you are requested to answer: -

- a) Turnover in State if he is Manufacturer, Trader & Restaurant service provider.
b) Tax Liability if he is Manufacturer, Trader & Restaurant service provider.

Details are hereunder.

| Sr. No. | Particulars | Turnover |
|---------|---|-----------|
| 1) | Taxable Supplies | 85,00,000 |
| 2) | Interest on FD earned by Mr. Ram @ 0% | 14,00,000 |
| 3) | Sale of exempted goods @ 0% | 35,00,000 |
| 4) | Exempt services by way of loading of agriculture produce @ 0% | 3,78,000 |
| 5) | Purchases on which tax has been paid by Mr. A under reverse charge (This service is taxable @ Rate of 18%) | 4,50,000 |

Solution: -

| Sr. No. | Particulars | As a Manufacturer | As a Trader | As a restaurant service provider |
|---------|---|-------------------|-----------------|----------------------------------|
| 1) | Taxable supplies | 85,00,000 | 85,00,000 | 85,00,000 |
| 2) | Interest on FD earned by Mr. Ram (For Traders only taxable turnover to be considered, for others exempt interest turnover not to be considered vide Explanation to section 10 of CGST Act) | - | - | - |
| 3) | Sale of exempted goods @ 0% (For Traders only taxable turnover to be considered) | 35,00,000 | - | 35,00,000 |
| 4) | Exempt services by way of loading of agriculture produce @ 0% (For Traders only taxable turnover to be considered) | 3,78,000 | - | 3,78,000 |
| 5) | Total Turnover on which Tax to be Discharge in lieu of S. 9(1) (1+2+3+4) | 1,23,78,000 | 85,00,000 | 1,23,78,000 |
| 6) | Rate of Tax (Full Rate) | 1% | 1% | 5% |
| 7) | Tax to be Discharge in lieu of S. 9(1) (6 x 5) | 1,23,780 | 85,000 | 6,18,900 |
| 8) | Purchases on which tax has been paid by Mr. A under reverse charge | 4,50,000 | 4,50,000 | 4,50,000 |
| 9) | Tax to be Discharge u/s 9(3) [18% of (8)] | 81,000 | 81,000 | 81,000 |
| 10) | Total Tax payable (7) + (9) | 2,04,780 | 1,66,000 | 6,99,900 |

Composition Levy under GST [S. 10 of CGST Act, 2017] (2/2)

Q2) Mr. A, a registered person in Maharashtra has provided following supplies in 2018-19; you are requested to answer: -

- a) Whether he is eligible to opt for composition scheme in FY 2019-20.
b) If Further to (a) is in affirmative, find out how much services he can provide in current financial year Details are hereunder.

| Sr. No. | Particulars | Turnover (Rs) |
|---------|--|---------------|
| 1) | Turnover (within the state) | 85,00,000 |
| 2) | Inter-state sales | 45,00,000 |
| 3) | Interest on FD earned by Mr. A | 14,00,000 |
| 4) | GST component included in (1) & (2) above | 20,00,000 |
| 5) | Sale of exempted goods | 35,00,000 |
| 6) | Exempt services by way of loading of agriculture produce | 3,78,000 |
| 7) | Supplies on which tax has been paid by recipient | 95,000 |
| 8) | Purchases on which tax has been paid by Mr. A under reverse charge | 4,50,000 |

Solution

(Inclusion method)

(A) Computation of Aggregate Turnover for determining eligibility [S. 10(1) of CGST Act r/w CGST ROD]

| Sr. No. | Particulars | Add / Ignore / Less | Turnover |
|---------|---|---------------------|--------------------|
| 1) | Turnover (within the state) (All Outward Taxable supplies shall be added) | Add | 85,00,000 |
| 2) | Inter-state sales (All Inter-state supplies shall be added) | Add | 45,00,000 |
| 3) | Interest on FD earned by Mr. A [Exempt supply by way of where consideration is represented by interest (As per explanation to Section 10 of CGST Act as amended vide Finance Act, 2019)] | Ignore | 14,00,000 |
| 4) | GST component included in (1) & (2) above (Since GST component was included it has to be expressly reduced. If GST component had not been included, we would have ignored) | Less | 20,00,000 |
| 5) | Sale of exempted goods (Exempt supplies to be added) | Add | 35,00,000 |
| 6) | Exempt services by way of loading of agriculture produce (Exempt supplies to be added) | Add | 3,78,000 |
| 7) | Supplies on which tax has been paid by recipient (It is outward reverse charge supplies thus to be added, exclusion is for inwarded reverse charge supplies) | Add | 95,000 |
| 8) | Purchases on which tax has been paid by Mr. A under reverse charge (It is Inwarded reverse charge supplies thus not to be considered) | Ignore | 4,50,000 |
| | Aggregate Turnover [1+2(-)4+5+6+7] | | 1,49,73,000 |

Thus, Mr. A is eligible to opt for composition scheme as his Aggregate turnover in preceding financial year does not exceed Rs. 1.5 crores.

(B) Computation of Limit upto which service can be provided in FY 2019-20

- 10% of Turnover in State in preceding financial year (excl. Exempt supply by way of extending deposit, loan, advance where consideration is represented by interest or discount) or
(10% of 1,49,73,000 = 14,97,300)
- Rs. 5,00,000/-

whichever is higher. Thus, Mr. A can provide services upto Rs. 14,97,300 in FY 2019-20

"Work like hell. I mean you just have to put in 80 to 100 hours weeks every week. [This] improves the odds of success.

- 1) Location of Supplier & Place of Supply in Same State/UT – It is intra-state supply, CGST & SGST/UTGST shall be levied, otherwise it is an inter-state supply, IGST shall be levied.
- 2) UT are Andaman Nicobar Island, Lakshadweep, Dadra & Nagar Haveli, **Ladakh**, Chandigarh Delhi, Puducherry. Intra-State sale in Delhi, Puducherry & **Ladakh** will have levy of CGST & SGST even if they are union territory as they have their own state legislature. **(Intra-state in J&K to attract CGST, SGST)**
- 3) Export of Goods / Services & Supplies TO SEZ are Inter-state supplies. Further these are Zero Rate.
- 4) If Location of the supplier (LOS) or place of supply (POS) is in the territorial waters, then LOS and POS shall be coastal State or Union Territory where the nearest point of the appropriate baseline is located.

| Section (CGST Act) | Description |
|--------------------|--|
| 9(1) | Subject to the provisions of 9(2), CGST shall be levied 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 20% (CGST + SGST together or IGST shall not exceed 40%) . |
| 9(2) | GST shall be levied from notified date on supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. |
| 9(3) | Normally supplier pays tax, however for specified services specified recipient will pay tax on reverse charge basis. The list of specified services has been notified vide NN 13/2017 – CTR. |

Specified Services

| Specified Service | Supplier | Recipient |
|--|--|---|
| 1) Supply of Services by a goods transport agency (GTA) who has not paid CGST @ 6%, SGST @ 6% in respect of transportation of goods by road Notes: - This entry will not be applicable to recipient who has taken registration in GST for deducting Tax u/s 51 of CGST Act and not for making any taxable supplies. (NN 29/2018 – CT) Exemption of Rs. 750 & Rs. 1500 in respect GTA shall also be seen while applying RCM provisions (GTA is person who issues consignment note) | Goods Transport Agency (GTA) (Not opting to pay GST @ 12%) Notes: - GST will be paid by specified recipient @ 2.5% CGST, 2.5% SGST (or IGST @ 5%) | a) Factory registered under Factories Act, 1948; or b) Society registered under the Societies Registration Act, 1860 or under any other law or c) Co-operative society established under any law; or d) Person registered under GST e) Body corporate f) Partnership firm (incl. LLP) whether registered or not under any law including association of persons; or g) Casual taxable person; located in the taxable territory. <i>(If GTA provides services to other than Specified recipient (including unregistered Casual Taxable person) it is exempt vide NN 32/2017 – CTR.</i> |
| 2) Legal Services supplied by an individual advocate, a senior advocate or firm of advocates by way of representational services before any court, tribunal or authority. | An individual advocate including a Senior advocate or firm of advocates or | Any business entity located in the taxable territory having turnover of more than such amount in PFY as it becomes ineligible for exemption from registration (E. 45 of NN 12/2017 r/w NN 21/2019 – CTR) |
| 3) Legal Services by Arbitral Tribunal | Arbitral tribunal. | |
| 4) Sponsorship Services (The person who sponsors is the recipient of service) | Any person | Body Corporate / Partnership firms |
| 5) Services supplied by the CG / SG/ UT/ LA to a business entity excluding, - a) Renting of immovable property, b) Services by the Department of posts by way of speed post, express parcel post, life insurance, and agency services (SALE) provided to a person other than CG / SG/ UT/ LA. c) Services in relation to an aircraft or a vessel, d) Transport of goods or passengers. | CG / SG / UT / LA | Any business entity located in the taxable territory having aggregate turnover more than such amount in PFY as it becomes ineligible for exemption from registration under GST. (E 7 of NN 12/2017 r/w NN 21/2019 – CTR) <i>[In case of (b), (c), (d) – Service provider i.e. CG/SG/UT/LA will always levy tax under FCM]</i> [No exemptions in regards to (b), (c), (d)] |

Charge of GST (S. 9 of CGST Act & S. 5 of IGST Act) (1/2)

By CA. Keval Mota

| Specified Service | Supplier | Recipient |
|---|--|---|
| 5A) Renting of immovable property by CG/SG/UT/LA <i>[Inserted vide NN 3/2018 – Central Tax (Rate) dated January 25, 2018]</i> | CG/SG/UT/LA | Person registered under GST. <i>(If Renting of Immovable property is provided to unregistered business – Service provider will levy tax on FCM) (If provided to other than BE - Exempt)</i> |
| 5B) Services supplied by way of Transfer of Development rights or FSI for Construction of Project | Any Person | Promoter |
| 5C) Services supplied by way of Long-Term Lease (>30 years) against consideration as upfront amount such as premium, salami etc. <i>(Inserted NN 05/2019 – CTR)</i> | Any Person | Promoter |
| 6) Director of a company or a body corporate to the said company or the body corporate. (Only Part Time Directors Covered, as whole-time directors are employees) | 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. |
| 8) Recovery agent Services to a banking company or a financial institution or a NBFC | A recovery agent | Banking company or a financial Institution or a NBFC, 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 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. |
| 9A) Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause Copyright Act, 1957 relating to original literary works to a publisher. | Author | Publisher located in the taxable territory provided: - Author can pay under Forward Charge Mechanism if below are satisfied: - i) The author has taken registration under the GST and filed a declaration, in the specific form (Annexure I of Notification) that he exercises the option to pay GST on the service specified here under FCM in accordance with Section 9 (1) of the CGST Act, and to comply with all the provisions of CGST Act as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both. ii) The author makes a declaration, as prescribed in Annexure II of said Notification on the invoice issued by him in Form GST Inv-I to the publisher. Note: - The said option cannot be withdrawn within a period of 1 year from the date of exercising such option |

| Specified Service | Supplier | Recipient |
|--|--|---|
| 10) Supply of services by the members of Overseeing Committee to Reserve Bank of India | Members of Overseeing Committee constituted by the RBI | RBI |
| 11) Services by Direct Selling Agents (DSAs) | Individual DSAs other than a body corporate, partnership or limited liability partnership firm | A banking company or a non-banking financial company, located in the taxable territory. (Financial Institutions not covered) |
| 12) Services by Business facilitator (BF can refer clients, and facilitate the bank to carry out its transactions, but cannot transact on behalf of the bank) | Business facilitator (BF) | A banking company, located in the taxable territory (FI & NBFC not covered) |
| 13) Services by agent of business correspondent (BC are permitted to carry out transactions on behalf of the bank as agents) | 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: As per NN 29/2018 – CTR This entry not applicable to (i) Persons which have taken registration under GST for deducting TDS u/s 51 of CGST Act & not for effecting any taxable supply (ii) Composition person (S. 10) | Any person other than a body corporate | A registered person, located in the taxable territory. |
| 15) Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body Corporate. | Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent to the service Recipient. | Any Body corporate located in the taxable territory. [Notification No. 22/2019- Central Tax (Rate) dated 30th September, 2019 w.e.f. 1st October, 2019 as amended by Notification No. 29/2019 Dated 31st December, 2019] |
| 16) Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended. | Lender i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI | Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI." (w.e.f. 1 st October, 2019) |

Note for Point 16 above: - Taxability of lending & borrowing of securities under Securities Lending Scheme, 1997 (Circular No. 119/38/2019-GST dated 11th October, 2019 r/w Notification No. 22/2019 – CTR dated 30th September, 2019). SEBI has prescribed Securities Lending Scheme, 1997 under which lender (the person on whose name securities are registered) lends his securities to borrower (who borrows securities) of securities through an intermediary which is registered with SEBI. It is pertinent to note here that lending of securities is not a transaction in securities as it does not involve disposal of securities.

Scheme does not treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.

The taxability can be better understood with the below table

| Person | Consideration | Remarks |
|--------------|-------------------|--|
| Lender | Lending Fees | Taxable as it is considered as Supply under GST clarified by this circular. ➤ Taxability for period 1st July, 2017 to 30th September, 2019 would be IGST @ 18% under forward charge. ➤ W.e.f. 1 st October, 2019 it would attract 18% IGST – RCM. If the service provider has already paid CGST & SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again. |
| Intermediary | Commission or Fee | Already Taxable @ 18% GST under heading 997119 |

The Mind Is Like a Magnet, you attract into your life what you think about frequently.

Following additional category of supply of services is listed under Notification No. 10/2017- Integrated Tax (Rate) on which GST shall be paid by the recipient on RCM basis

| Specified Service | Supplier | Recipient |
|---|---|--|
| 1) 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. |
| 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 |

NTOR 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.

- i) All taxpayers required to pay tax under reverse charge have to mandatorily obtain registration and the threshold exemption is not applicable on them.
- ii) Payment of taxes under Reverse Charge cannot be made with utilisation of Input Tax Credit and has to be made in Cash.
- iii) The recipient can take the credit of tax paid on inward supplies liable to reverse charge once the recipient makes payment of tax in cash.

| Section (CGST Act) | Description |
|--------------------|---|
| 9(4) | <p>Specified registered persons purchasing specified categories of goods or services from an unregistered supplier, shall pay the tax on RCM basis as if he is the person liable to pay tax (CGST Amendment Act, 2018)</p> <p>Such notified persons are promoters. For promoters' new rates of tax (subject to conditions) are: -</p> <p>1% without ITC on construction of affordable houses (area 60 sqm in metro & 90 sqm in non-metro and value up to Rs. 45 lakhs) 5% without ITC on construction of all houses other than affordable houses & commercial apartments (less than or equal to 15% of total carpet area)</p> <p>Conditions: -</p> <ul style="list-style-type: none"> (a) ITC shall not be available (b) 80% of Inputs and input services (other than TDR, Long Term Lease, electricity & S. 9(2) Supplies) shall be procured from registered persons. <p>However, if less than 80% is procured from registered person, promoter shall be liable to pay tax on differential procurements @ 18% u/s 9(4). Purchase of Cement from unregistered person will attract rate of tax @ 28% without applying 80% criteria. Capital Goods shall attract tax rate @ applicable rates</p> |
| 9(5) | <p>E-commerce operator (ECO) – Services provided through ECO</p> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Passenger Transportation Service</p> <p>Always ECO will pay tax as if he is the person supplying those service</p> </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Hotel Accommodation & Utility Services (Carpenter / Plumbing)</p> <p>If Hotel / Utility service provider is registered – He will pay GST; Otherwise ECO will pay GST as if he is the person supplying those service</p> </div> </div> <p>Note: - If ECO is the person providing services of 9(5) it has to take compulsory registration. If ECO is not having physical presence in India then he has to pay tax through its representative. If there is no representative, it has to appoint a person to pay tax.</p> |

Similar provisions have been made applicable for inter-state transactions vide Section 5 of IGST Act, 2017

Charge of GST (S. 9 of CGST Act & S. 5 of IGST Act) (2/2)

By CA. Keval Mota

Taxability of Passenger Service Fees (PSF) & User Development Fee (UDF) charged by Airline Companies to Passenger as per Airports Economic Regulatory Authority of India Act, 2008 (Circular No. 115/34/2019-GST dated 11th October, 2019)

Airport licensee (Airport Operator) is liable to collect PSF & UDF from embarking passengers. This fee is utilised for infrastructure and facilitation of passengers. Further for convenience in collection, Director General of Civil Aviation has clarified that such fees shall be collected by Airline companies from passengers & remitted to Airport authority. Airline company is providing "Collection Services" to Airport Operator.

In lieu of such service, Airline company charges Rs. 5 per ticket from Airport operator. Accordingly, Airline company is providing "Collection Services" to Airport Operator. Taxability on these transactions can be understood as below: -

(A) Taxability of Collection Services provided by Airline company to Airport Operator: -

GST shall be levied by Airline Company under forward charge mechanism on such collection services & airline operator shall be eligible to take ITC on same.

(B) Taxability of PSF & UDF charged by Airline Company from Passenger & remitted to Airport Licensee: -

Airline company acts as a pure agent for the supply of airport services in accordance with Rule 33 of the CGST Rules thus it shall be excluded from the value of supply, if certain conditions are satisfied (See Value of supply chapter for conditions).

Accordingly, PSF & UDF remitted to Airport operator shall not be leviable to GST as same is excluded from value of supply being in nature of pure agent service.

"To see what is right and not do it is a lack of courage."

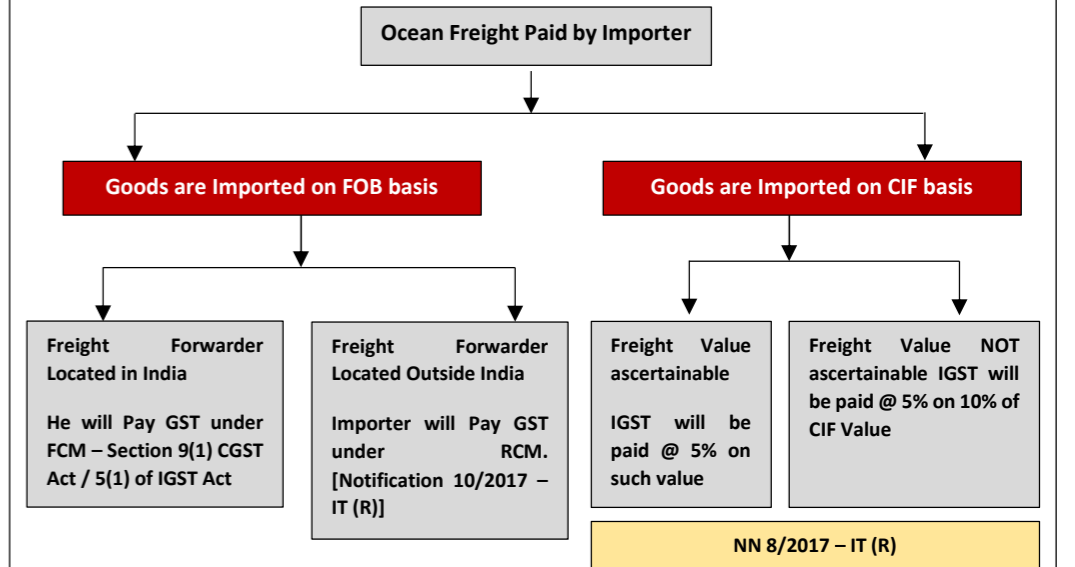
OUT OF BOX THINKING POINTS: -

1. It shall be noted that Tax shall be paid u/s 9 by "Taxable person", taxable person means a person who is registered or liable to be registered under GST. However, Input Tax credit is to be availed by "registered person". Thus, when a person crosses threshold limit for registration, he is liable to pay tax, however he would be eligible to avail ITC only when he is registered.

2. **Taxability of Ocean Freight: -**

Import pricing is of two types, viz., FOB (Free on board) or CIF (Cost, Insurance and Freight). For the purpose of export, FOB Value is treated as Transaction Value. Under FOB pricing, the foreign suppliers bear all the cost upto loading the goods into the vessel and the importer has to bear the cost of freight.

In case of CIF (Cost, Insurance & Freight Value) expense is paid by a seller to cover the costs, insurance, and freight of a buyer's order while it is in transit. The importer may engage either an Indian based shipping line or a foreign based shipping line and the importer would be availing the services of such shipping line for ocean transport of the import goods.



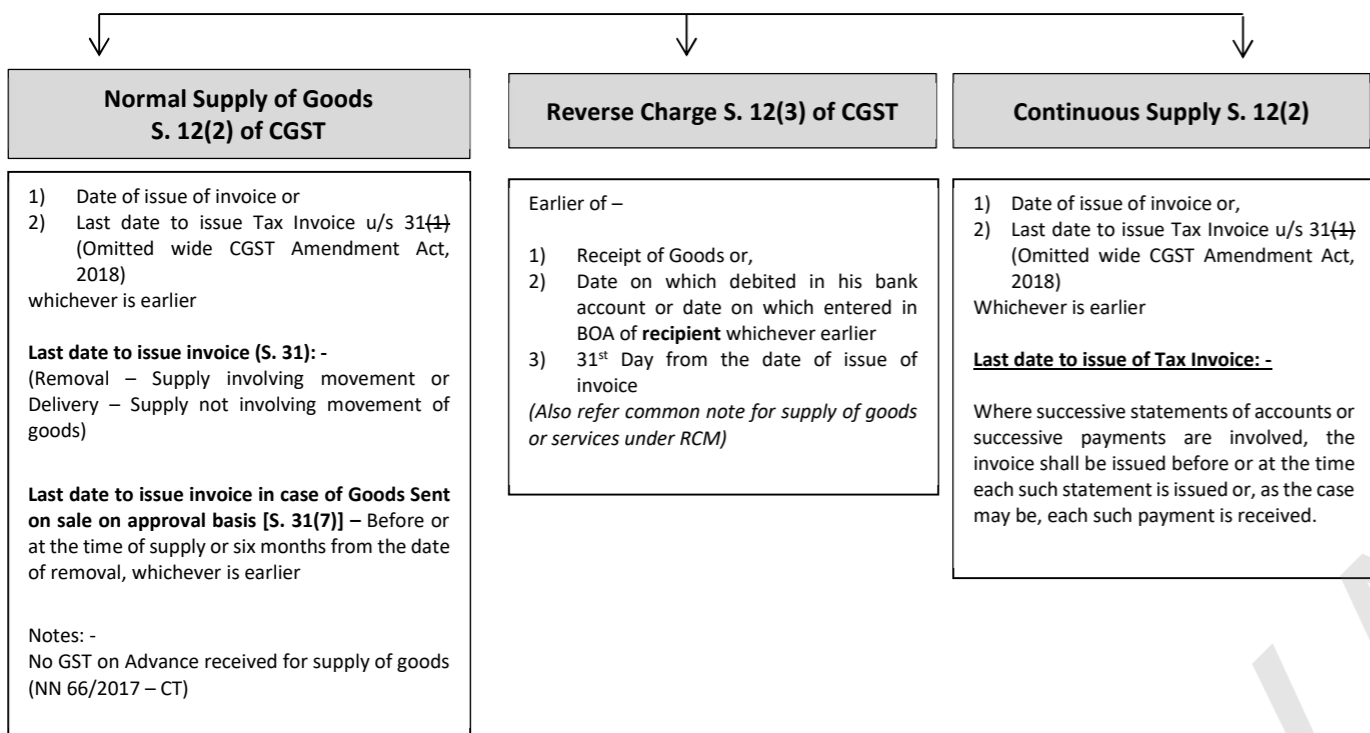
Note: - Trade & Industry is of the view that IGST is already levied on (Total) CIF value, further notification 8/2017 IT(R) & Notification 10/2017 – IT(R) casts responsibility to pay GST on freight amount again which leads to double taxation. (Students may refer High Court Judgment Mohit Minerals Private Limited vs. Union of India (SCA No. 726 of 2018), Gujarat High Court for knowledge purpose where HC has declared Notification 10/2017 – IT(R) & Notification 8/2017 – IT(R) as ultra vires the act. However, for exam purpose this HC judgement do not applies

Time of Supply [TOS] (S. 12, 13, 14 of CGST Act, 2017) (1/2)

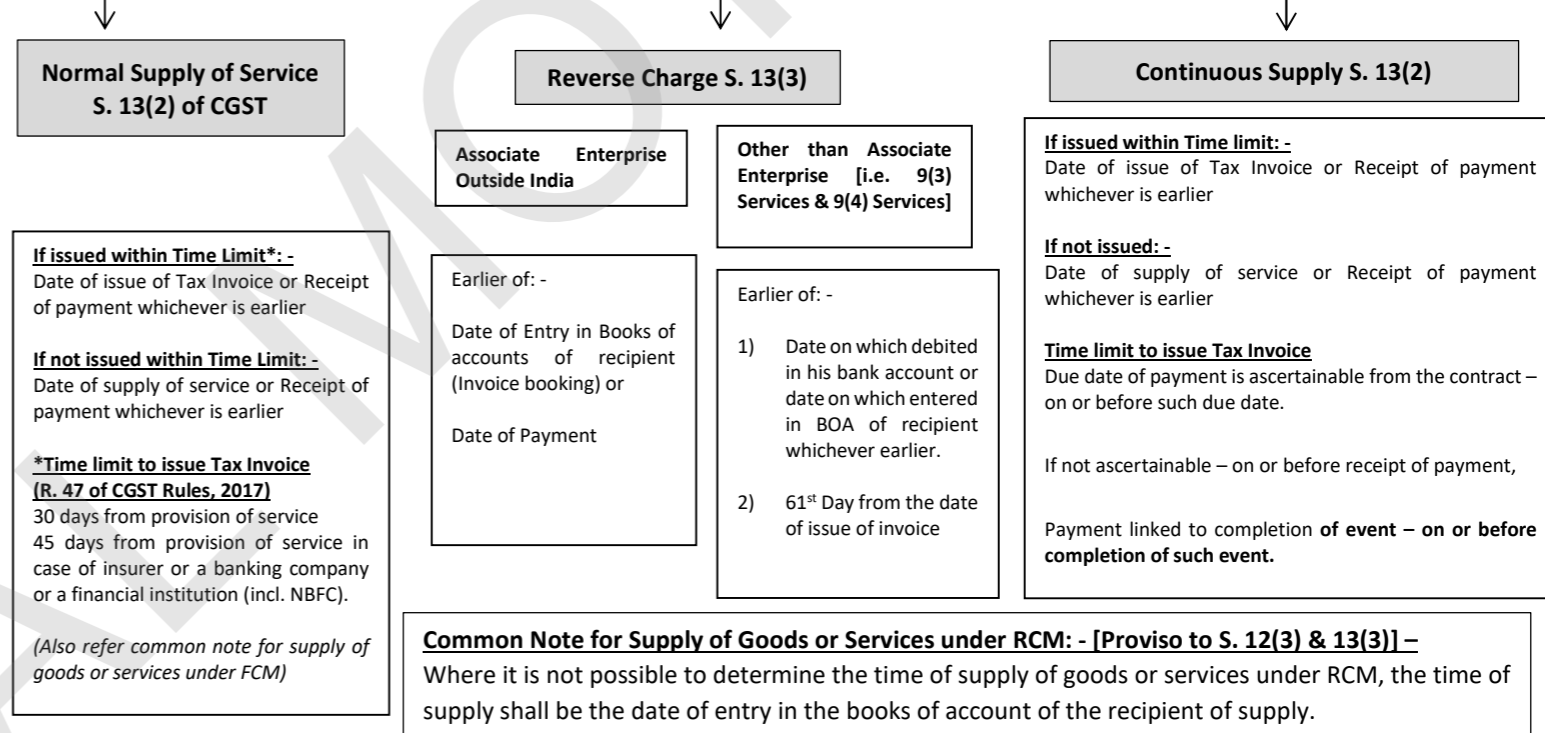
Time of supply is the point (date) when liability to pay GST arises. There are many events occurring in related to supply viz. invoice date, Payment date, completion of service date, but which is time when GST liability is triggered is mentioned in Time of Supply.

To Join Channel, Click - <https://t.me/idtbycakevalmota>
Applicable for Nov, 2020 / Dec, 2020 exams

TOS for Goods



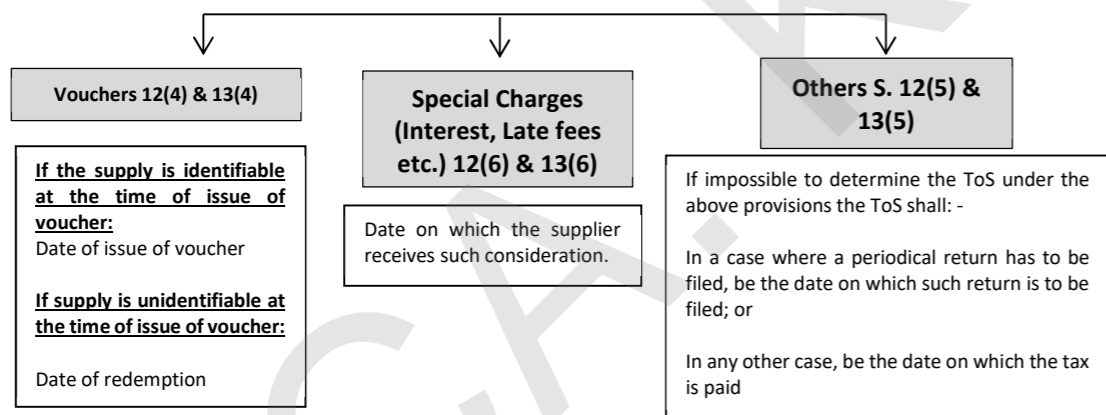
TOS for Services



Common Note for Supply of Goods or Services under FCM: - [Proviso to S. 12(2) & 13(2)]

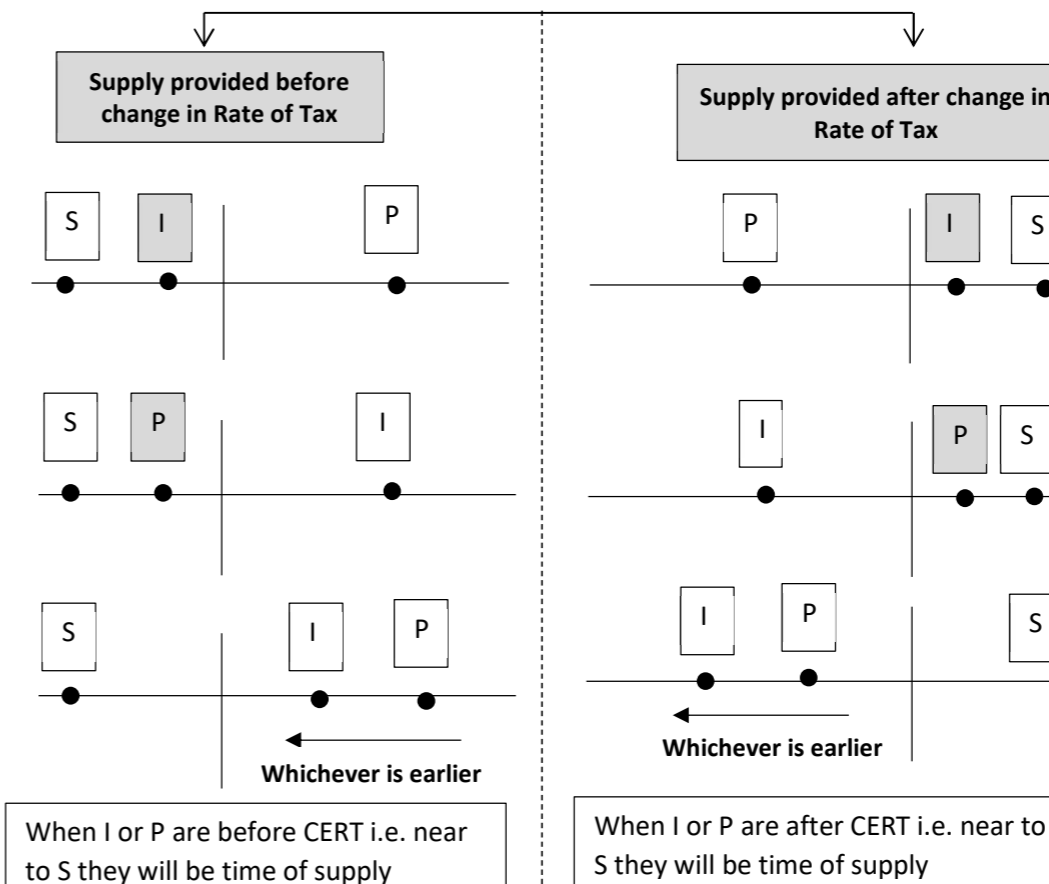
Where the supplier of taxable goods / Services receives an amount up to Rs. 1,000/- in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

TOS (Common Provisions) for Goods & Services



Amendment vide Notification 06/2019 – CTR – TOS in case of TDR, FSI, Long term Lease for construction of Residential or commercial apartment - Date of issuance of Completion Certificate or First occupation whichever is earlier. TDR, FSI & Long-term lease are taxable in the hands of promoter under reverse charge.

TOS in case of Change in Rate Effective of Tax (CERT) S. 14 of CGST



(S – Supply of goods & services, I – Date of issue of Tax Invoice, P – Receipt of Payment, Line indicates date of change in Rate of tax, and Grey Box Indicates Time of Supply)

The date of receipt of payment if payment (P) is credited

If credited within 4 Working Days from CERT (Incl. Date of CERT): -

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

After 4 working days from Change of Rate of Tax

Shall be date on which payment is credited in Bank account.

PRACTICAL QUESTIONS FOR UNDERSTANDING CONCEPTS

Time of Supply [TOS] (S. 12, 13, 14 of CGST Act, 2017) (2/2)

Q1) Determine time of supply in following cases. GST rate has been increased to 12% w.e.f. 1-10-2018, before the said date the rate of tax was 5% (Assume 2/10/2018 is working day)

| S. No. | Date of supply of service | Date of Invoice | Date of Payment (Books) | Date of Payment (Bank) |
|--------|---------------------------|-----------------|-------------------------|------------------------|
| 1 | 25-09-2018 | 27-09-2018 | 28-09-2018 | 5-10-2018 |
| 2 | 25-09-2018 | 27-09-2018 | 28-09-2018 | 4-10-2018 |
| 3 | 25-09-2018 | 1-10-2018 | 30-09-2018 | 4-10-2018 |

Solution: -

| S. No. | Date of supply of service | Date of Invoice (I) | Date of Payment (Books) | Date of Payment (Bank) | Time of Supply (Explanation is only for easy reference and not for writing in exam) |
|--------|---------------------------|---------------------|-------------------------|------------------------|---|
| 1 | 25-09-2018 | 27-09-2018 | 28-09-2018 | 5-10-2018 | 27-09-2018 (Since payment is not credited within 4 working days from 1-10-2018, credit in Bank i.e. 5-10-2018 is "P" further, Invoice is near to supply thus is time of supply) |
| 2 | 25-09-2018 | 27-09-2018 | 28-09-2018 | 4-10-2018 | 27-09-2018 Since all 3 incidents are on same side TOS shall be determined as per S. 12/13 not section 14 of CGST Act. |
| 3 | 25-09-2018 | 01-10-2018 | 30-09-2018 | 04-10-2018 | 30-09-2018 (Since payment is credited within 4 working days (including 1 st October) from 1-10-2018, credit in Bank or books whichever is earlier is P, i.e. 30.09.2018 is "P". Further, P becomes the event nearer to supply thus "P" is time of supply) |

Q2) L&T Ltd. was awarded a contract to construct Airport for Maharashtra International Airport Limited (MIAL), the said contract was for 2 years beginning from 1st January, 2019. The contract was for Rs. 500 crores (excluding GST). It was agreed in contract between the parties that, payment of Rs. 50 crores will be made in first year at the end of every quarter. It is the system of L&T Ltd. to issue invoice within 3 days from receipt of payment. Terms for balance payment were on the basis of completion which reads as "MIAL would be liable to pay L&T Ltd. 70% of balance amount on completion of 70% of work, remaining 30% of balance amount would be paid on completion of contract i.e. 100%". L&T provides you the following information in respect of its work completion as certified by surveyors for 2nd year:

| % Completion | Date of completion | Date of Invoice to MIAL | Payment Made |
|--------------|--------------------|-------------------------|--------------|
| 70% | 31-08-2020 | 17-09-2020 | 02-09-2020 |
| 30% | 14-10-2020 | 17-10-2020 | 20-10-2020 |

You are required to ascertain time of supply during contract period.

Solution: -

| Year | Payment Made | Date of Invoice | Last Date to issue invoice [S. 31(5)] | Time Earlier of (c) or (d) |
|------|--------------|--|--|---|
| 1 | 31-03-2019 | 3-04-2019 (As per system of L&T for year 1) | 31-03-2019 (Due date to make such payment) | 31-03-2019 for Rs. 50 crores [Given] (Payment terms ascertainable from contract invoice to be issued upto due date of payment, here it is not issued thus, earlier of due date of payment or invoice date is time of supply) |
| 1 | 30-06-2019 | 3-07-2019 (As per system of L&T for year 1) | 30-06-2019 (Due date to make such payment) | 30-06-2019 for Rs. 50 crores [Given] (Payment terms ascertainable from contract invoice to be issued upto due date of payment, here it is not issued thus, earlier of due date of payment or invoice date is time of supply) |
| 1 | 30-09-2019 | 3-10-2019 (As per system of L&T for year 1) | 30-09-2019 (Due date to make such payment) | 30-09-2019 for Rs. 50 crores [Given] (Payment terms ascertainable from contract invoice to be issued upto due date of payment, here it is not issued thus, earlier of due date of payment or invoice date is time of supply) |
| 1 | 31-12-2019 | 3-01-2020 (As per system of L&T for year 1) | 31-12-2019 (Due date to make such payment) | 31-12-2019 for Rs. 50 crores [Given] (Payment terms ascertainable from contract invoice to be issued upto due date of payment, here it is not issued thus, earlier of due date of payment or invoice date is time of supply) |
| 2 | 02-09-2020 | 17-09-2020 | 31-08-2020 (Completion of 70% Work - Milestone) | 31-08-2020 for Rs. 210 crores {{(500(-)50x4}x70%} (Since payment is linked to completion of event invoice to be issued upto such date. Here it has been issued thus earlier of Invoice date or receipt of payment date is time of supply) |
| 2 | 20-10-2020 | 17-10-2020 | 14-10-2020 (Completion of 30% Work - Milestone) | 14-10-2020 for Rs. 90 crores {{(500(-)50x4}x30%} (Since payment is linked to completion of event invoice to be issued upto such date. Here it has not been issued thus earlier of date of completion or the date of receipt of payment is time of supply) |

OUT OF BOX THINKING POINTS

- Time of supply in case of Hire-purchase contracts-** In case of hire-purchase, we very well know that ownership will be transferred at future date, thus it is a supply of goods as per Schedule II to CGST Act. Thus, time of supply shall be governed under section 12. In hire-purchase, it is not a month-to-month hire-purchase but a single agreement for the entire duration and each periodic payment is only an instalment, therefore there is only one supply with one time of supply and tax is payable at the rate applicable to those goods and on ENTIRE hire-purchase price.
- 4 Working Days from change in rate of tax shall include date on which tax rate has been changed.
- It is quite interesting to note that in case of change in rate of tax for "goods", we already know that for goods, invoice is to be issued at the time of removal & time of supply is invoice date or last date to issue invoice whichever is earlier. Accordingly, "S" i.e. date when supply is made & "I" i.e. invoice issued will generally be one and the same.

There might be few cases where it will differ for example, supply of identifiable goods under voucher i.e. goods are supplied at a later date however time of supply would be date of issue of voucher.

"A man who views the world the same at fifty as he did at twenty has wasted thirty years of his life."

GST is understood as a 'destination-based consumption tax'. In place of supply we find that this principal has been captured [except 3 services as contained in section 13(8) of IGST Act].

Place of Supply (Section 10,11,12,13,14 of IGST Act; Rule 3 to 9 IGST Rules, 2017) [1/3]

By CA. Keval Mota

Section 10(1): - The place of supply of goods in case of domestic transactions, other than supply of goods imported into, or exported from India (For Import of goods & Export of goods Section 11 applies)

| Section | Description | Place of Supply |
|----------|---|---|
| 10(1)(a) | Supply involves movement of goods whether by supplier / recipient or any other person. (Final delivery destination will be POS) | Location of the goods at the time at which the movement of goods terminates for delivery to the recipient |
| 10(1)(b) | Goods are delivered by the supplier to a recipient (person taking delivery) or any other person on the direction of a third person. (Bill to Ship to Model) | Location of Third Person Notes: - 1) In this case Mr. A can take ITC even if he has not received goods (Deemed Receipt of goods by 3 rd person – Section 16 of CGST Act) 2) When Goods are moved from a place outside India to Place outside India on direction of person located in India without entering into India on direction of 3 rd person is not a supply (Entry 7 of Sch. III) |
| | | |
| 10(1)(c) | Supply does not involve movement of goods (Examples – Sale of Asset in Finance Lease, Sale or return basis / hire-purchase) | Location of such goods at the time of the delivery to the recipient |
| 10(1)(d) | Goods are assembled, or installed at site (E.g. - Servers supplied and installed at an office in Karnataka for recipient of Maharashtra, POS will be Karnataka) | Place of such installation or assembly |
| 10(1)(e) | Goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle. | Location at which such goods are taken on board. |

Sec 11: - POS for Import & Export of Goods –

Import means bringing goods into India from a place outside India.

Export means taking goods out of India to a place outside India.

Import of Goods & Export of goods are inter-state supplies.

| | | |
|-----------|---|------------------------|
| Sec 11(a) | Import of Goods (IGST is levied as per S. 3(7) of Customs Tarrif Act, 1975) | Location of Importer |
| Sec 11(b) | Export of Goods (Zero-Rated supply as per S. 16 of IGST Act) | Location Outside India |

Notes:

- High Sea Sales of imported goods is a term used to denote a transaction whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. IGST shall be levied & collected when the import declarations are filed before the customs authorities for the customs clearance purposes for the first time. (Buyer of High Sea Sales shall be liable to discharge IGST). Further as per Schedule III, High Sea Sales are not a supply.

Section 12 of IGST Act is applicable only when location of **supplier of SERVICE and recipient of SERVICE is in India**. Further Intra-state Supplies (S. 8 of IGST) are subjected to provisions of Section 12 meaning thereby a Supply will be an Intra-state supply only when Supplier & Recipient are in India. (Abbreviations - LOS – Location of Supplier, LOR – Location of Recipient, Unregistered person – URP, Registered Person – RP)

| Section | Description of Service | PoS when Supplied to URP | PoS when Supplied to RP |
|---------|---|---|--|
| 12(2) | Default Rule for all services except 12(3) to 12(14) | i) Address in record exists – LOR ii) Address in record do not exists – LOS | PoS location of such registered person |
| 12(5) | Services in relation to Training & Performance appraisal | Actual Place of performance | |
| 12(7) | Organization of events including ancillary services or assigning sponsorship to such events / exhibitions. (Not amusement park) (Refer Rule 5 of IGST Rules, Next Page) | If held in India: - Place where event is actually held. If held O/S India: - LOR | |
| 12(8) | Transportation of goods including mail or courier. (If Place of Destination is outside India then such location is POS – IGST Amendment Act, 2018) | Place where goods are handed over for their transportation | |
| 12(9) | Passenger transport service Exception: Right to passage is given for future use & point of embarkation is not known – POS as per 12(2) | Place where passenger embarks on the conveyance for continuous journey | |
| 12(13) | Insurance service | LOR of service in records of insurance company | |
| 12(3) | Service directly related to immovable property including agents, architect experts etc, lodging in hotels, inn, accommodation for functions & ancillary services (Refer Rule 4 of IGST Rules, Next Page) | Immovable Property Located in India: - Place where immovable property is located or intended to be located. Immovable Property Located O/S India: - LOR | |
| 12(4) | Restaurant & catering, personal grooming fitness, beauty, treatment, health services including plastic surgery (Performance based services) | Place where service is actually performed. | |
| 12(6) | Admission to cultural, artistic, sporting, scientific, educational, entertainment events or amusement park | Place where event actually held or park is located. | |
| 12(10) | Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle | Location of the first scheduled point of departure of that conveyance for the journey | |
| 12(11) | Supply of telecom services including data transfer, broadcast, cable or DTH (Refer Rule 6 of IGST Rules, Next Page) (a) Fixed lease or cable line (b) Post-paid mobile, internet, DTH (c) Pre-paid vouchers i) Through selling agent ii) By any person to final subscriber | (a) Location of installation - Billing Address on record of supplier of service. - Address of selling agent as per record of supplier. - Location where such pre-payment is received / such vouchers are sold. | |
| | Proviso - Prepaid – electronic Payment | LOR | |
| | In other cases: - (a) Address of recipient in records of supplier is available. (b) Where such address is not available | Address of recipient as per records of supplier. Location of supplier of service. | |
| 12(12) | Banking & Financial Sector including stock broking | LOR if address available in records of supplier else, LOS | |
| 12(14) | Advertisement services to CG/SG/Statutory body/LA/UT (Refer Rule 3 on Next Page) | Value in each of such state/UT where advertisements broadcasted run, played. | |

Section 13 of IGST Act is applicable for services when location of supplier or location of recipient is outside India (any one of them is outside India)

| Section | Service | PoS |
|---------|---|---|
| 13(2) | All services other than covered in 13 (3) to 13(13) default Rule | If LOR available: - LOR If LOR is not available: - LOS |
| 13(3) | (a) Services supplied on goods which are required to be made physically available by recipient of service to supplier of service, or to a person acting on behalf of supplier of service in order to provide services. (Refer Rule 7 of IGST Rules, Next Page) (b) Physical presence of recipient is required for supply of service: - Service supplied to individual, represented either as recipient of service / person acting on behalf of recipient which require physical presence of recipient or person acting on behalf of recipient, with service supplier. | Place of performance Exceptions: - i) Electronic Means: - Location of Goods at Time of supply ii) Imported temporarily for repairs or for any other treatment or process exported without use in India - POS 13(2) LOR (IGST Amendment Act, 2018 w.e.f. 1 st February, 2019) Place of performance |
| 13(4) | Supply of service directly on immovable property (includes experts renting, architect, interior design etc.), accommodation by hotel, inn, guest house etc. (Refer Rule 8 of IGST Rules, Next Page) | Place where immovable property located or intended to be located. |
| 13(5) | Admission/Organisation to events including ancillary services. (Refer Rule 9 of IGST Rules, Next Page) | Place where event is actually held |
| 13(6) | Supply of service u/s 13(3), (4), (5) in multiple location including location in Taxable territory. | Taxable territory. Entire contract in taxable territory. |
| 13(7) | Supply of service u/s 13(3), (4), (5) more than 1 state/UT | As per value of supply of service in each respective State as per contract or agreement. In absence of contract or agreement, Rule 7 of IGST Rules to be considered. |
| 13(8) | Services Supplied by: - 1) Banks/FI/NBFC to A/c holders 2) Intermediary services 3) Hiring all means of transport (incl. yacht) other than vessel or aircraft up to 1 month. (for vessel & aircraft S. 13(2) applies irrespective of period of hire) | Location of supplier of Service. (In these cases, POS deviates from the 'destination' principle and appoints the POS to be the location of the supplier) |
| 13(9) | Transportation of goods other than mail or courier (For Mail or Courier Section 13(2) shall apply) | Place of destination of Goods |
| 13(10) | Passenger transport service | Place where passenger embarks for continuous journey |
| 13(11) | Services provided on board during course of passenger transport operation, intended to be wholly consumed while on board. | First scheduled point of departure of conveyance |
| 13(12) | Online Information Database Access or Retrieval Service | Location of Recipient |

Put your heart, mind, and soul into even your smallest acts. This is the secret of success

**Place of Supply (Section 10,11,12,13,14 of IGST Act;
Rule 3 to 9 IGST Rules, 2017) [2/3]**

By CA. Keval Mota

Special provision for payment of tax by a supplier of Online Information and Database Access or Retrieval services (OIDAR)

(Section 14 of IGST Act, 2017)

OIDAR services can be defined in simple words as Services (and not goods) supplied and delivered over **continuous internet connectivity** which involves **minimal human intervention** & is impossible to avail service in absence of information technology.

In order to bring clarity in understanding the following some examples of OIDAR services would be worth noting: -

- 1) Banner ads, pop-up ads, sponsored ads (Google Ads)
- 2) Webhosting (Cloud Services by Amazon)
- 3) Data warehousing
- 4) Access to content permitted only 'online' even if stored in cache on user-end device but not allowing (official) permanent download (Gaana.com)
- 5) TV programs and movies supplied over the internet like monitored by issuing user login / password.

Following are **NOT** to be construed as OIDAR Services: -

- 1) Advertisement in newspaper, on posters and on television
- 2) Downloadable e-books, movies, music, etc. which are available for offline viewing
- 3) Educational or professional courses, where the content is delivered by a teacher over the internet or electronic network.
- 4) Online order processing in respect of offline supply of goods
- 5) Services of lawyers and financial consultants who advise clients through email
- 6) Computer/ mobile games to be used after downloading to user-end device

The PoS of OIDAR services would be Location of recipient. It is crucial to note the taxability of OIDAR services after critically understanding OIDAR services.

Supplier of OIDAR service shall always be located in Non-Taxable territory i.e. Outside India. The recipient can be the following: -

- a) Non-Taxable Online recipient - Government, a local authority, a government authority, an individual or any person not registered under GST 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)
- b) Intermediary (who is responsible to supply to Non-Taxable Online recipient)
- c) Registered Taxable Persons (B2B)

| Supplier of Service | Recipient | Tax Payer & Payment Status |
|----------------------------------|---|--|
| Located in Non-Taxable Territory | B2C – Non-Taxable Online recipient (NTOR) | Supplier located in NTT (through representative) |
| | Intermediary [@] (Deemed to be recipient & re-supplying to NTOR) | Recipient i.e. Intermediary itself (Forward Charge) |
| | B2B (All others) # | Business Entity (Recipient itself) (RCM – Import of Service) |

OIDAR Service provider is liable to IGST under FCM

[@] issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay. # B2B may be registered taxable person for any output supply

The proportion of value attributable to different states or union territories in case of advertisement services provided TO Government, statutory body or local authority u/s 12(14), in absence of any contract between supplier & recipient shall be determined as per Rule 3 of IGST Rules, 2017, as follows-

| Rule 3 – Mode of Advertisement | Basis of Proportion in each State / UT | Rule 3 – Mode of Advertisement | Basis of Proportion in each State / UT |
|---|--|--|---|
| a) Newspapers and publications | Amount Payable for Publication in each state | f) Television channels | Viewership as per Broadcast Audience Research Council for last week of quarter. |
| b) Printed Material like pamphlet, leaflets, diaries, t-shirts and the like | Amount payable for the distribution of specified number of such printed material | Viewership figures relate to a region comprising of more than one State/UT | Ratio of populations in those States/UTs as per the last census. |
| c) Hoardings (other than those on trains) | Amount payable for the hoardings | g) Cinema Halls or screens in Multiplex | Amount payable to cinema hall or screens in multiplex. |
| ii) Advt. on trains | Proportion to the length of the railway track | h) Internet | Number of internet subscriber figures published by TRAI for the last quarter of the immediately preceding financial year. |
| d) i) Back of utility bills | number of consumers having billing addresses in such State/UT | Internet subscribers' figures relate to a region comprising of more than one State/UT | Ratio of populations in those States/UTs as per the last census. |
| ii) Railway Tickets | proportion to the number of railway stations | i) SMS | Number of telecom subscriber figures published by TRAI for the immediately preceding quarter |
| e) Radio stations | Amount payable to each radio station | Fig. of Telecom subscribers relate to a telecom circle comprising of more than one state or UT | Ratio of populations in those States/UTs as per the last census. |

| Rule No | Type of Service | Basis |
|---------|---|--|
| 4. | Lodging accommodation by a hotel, inn, guest house, club or campsite, (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services, referred under section 12(3) of the IGST Act, 2017 | In proportion to the number of nights stayed in such property (Example: - Consolidated Contract is made for lodging services in Maharashtra & Gujrat) |
| 4. | All other services in relation to immovable property including supply of accommodation by a hotel, inn, guest house, club or campsite, where such property is a single property located in two or more contiguous States or Union territories or both (except services provided by way of lodging accommodation by a house boat or any other vessel), and services ancillary to such services, referred under section 12(3) of the IGST Act, 2017. | In proportion to the area of the immovable property lying in each State or Union territory as declared by service provider. |
| 4. | The Supply of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, referred under section 12(3) of the IGST Act, 2017. | in proportion to the time spent by the boat or vessel in each such State or Union territory, |
| 5. | 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 services ancillary to organisation of any of the events or services referred earlier or assigning of sponsorship to such events etc. referred under 12(7) of IGST Act | In absence of such contract or other basis – POS shall be determined as per application of the generally accepted accounting principles. |
| 6. | Services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services 12 (11) of IGST Act, 2017 | In proportion to the number of points lying in the State or Union territory The number of points in a circuit shall be determined in the following manner. a) 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; b) 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. |
| 7. | Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of the supply of services in respect of goods which are required to be made physically available, services supplied to an individual which require the physical presence, etc. covered by 13(3) of IGST Act, 2017 | a) In the case of services supplied on the same goods , by equally dividing the value of the service in each of the States and Union territories where the service is performed; b) In the case of services supplied on different goods , by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory; c) In the case of services supplied to individuals , by applying the GAAP . |
| 8. | Where the location of the supplier of services or the location of the recipient of services is outside India, the supply of services directly in relation to an immovable property, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property etc. referred under section 13(4) of the IGST Act, 2017. | By applying the provisions of rule 4, mutatis mutandis |
| 9. | Where the location of the supplier of services or the location of the recipient of services is outside India, in the case of the supply of services 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 etc. referred under section 13 of the IGST Act, 2017 | By applying the provisions of rule 5, mutatis mutandis |

Other Important Aspects: -

- 1) If a supply is made within the state from Non-SEZ area to SEZ / SEZ Developer it is to be termed as Inter-state supply even though supplier and recipient are in same state [S. 7(5)(b)] (In simple words supplies to SEZ are always inter-state supplies).
- 2) As per circular 48/22/2018 GST dated 14-06-2018; Services of short-term accommodation, conferencing, banqueting provided to SEZ / SEZ unit developer shall be treated as an inter-state supply.
- 3) Provisions of Section 8 (Intra-state supplies) are subject to Section 12 of IGST Act (POS for Services when Supplier & Recipient are in India). Thus, if agent in India provides services to foreign supplier [S. 13(8)] IGST shall be levied as POS in this case is governed by Section 13 & not Section 12. Accordingly, even though LOS & POS are in same state it is an inter-state supply & IGST shall be levied (S. 7(5)(c) of IGST Act, 2017)
- 4) Taxability of satellite services provided by ANTRIX Corporation Limited to: -
Customers Located Outside India – POS would be as per **Section 13(9)** of IGST Act & such supplies will be **zero-rated services** as per **Section 16** of IGST Act, 2017
Customers Located in India – POS would be determined as per **Section 12(8)** of IGST Act, 2017 would be **taxable**. (Circular 2/1/2017 – IGST dated 27/09/2017)

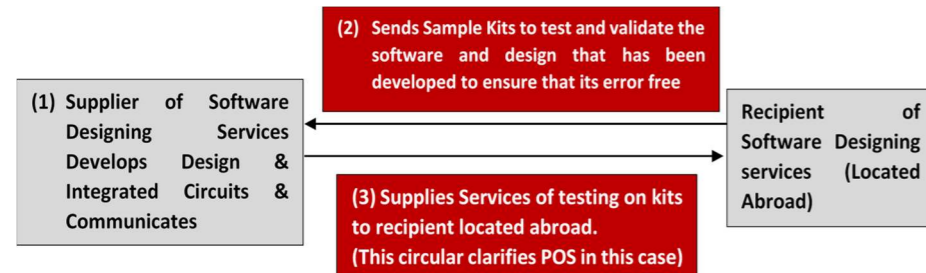
**Place of Supply (Section 10,11,12,13,14 of IGST Act;
Rule 3 to 9 IGST Rules, 2017) [3/3]**

Other Important Aspects (Cont.)

CBIC vide Circular No. 103/22/2019-GST dated 28th June, 2019 clarified below aspects: -

- 5) CBIC clarified that services provided by port authorities to its clients in relation to cargo handling are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in S. 12(2) of IGST Act, 2017 or S. 13(2) of the IGST Act.
- 6) POS for cutting and polishing activity on unpolished diamonds which are temporarily imported into India which are not put to any use in India, would be determined as per the provisions contained in Section 13(2) of IGST i.e. Location of Recipient [as these services are an exception to Section 13(3)(a)].
- 7) Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry (Circular No. 118/37/2019-GST dated 11th October, 2019)

Flow of Transaction is below: -



Service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider.

Where such testing is an ancillary supply, Place of Supply is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) i.e. Performance based services do not apply separately for determining the place of supply for ancillary supply in such cases.

- 8) Clarification of Place of Supply in case of pharmaceutical sector (Notification No. 04/2019- Integrated Tax w.e.f. 1st October, 2019)

CBIC by virtue of this notification has clarified POS for certain services such as Integrated discovery & development, Bio-equivalence and Bio- availability Studies etc. provided by pharmaceutical industry, (Refer Amendment sheet for detailed analysis of why such provision has been introduced) on goods physically made available by service recipient, that POS shall be the location of the recipient of services (and not where performed) subject to fulfilment of the following conditions: -

- i) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory.
 - ii) Such supply of services fulfils all other conditions in the definition of export of services, except (iii) i.e. "the place of supply of service is outside India".
- 9) Place of supply for "Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business" would be The place of supply of services shall be the location of the recipient of service [Notification No. 02/2020- Integrated Tax dated 26th March, 2020 w.e.f. 1st April, 2020]

OUT OF BOX THINKING POINTS: -

- 1) **Ex – factory delivery:** - It is quite interesting to evaluate such kind of transactions where supplier sells goods to recipient on ex-factory basis (i.e. recipient collects goods from suppliers' factory) and takes such goods to his location (in another state).

As per section 10(1)(a) of IGST Act, "Location where movement terminates for delivery" is place of supply. Accordingly, the location where movement is terminated i.e. his factory seems to be place of supply. However, the term "Delivery" shall be read along with section 2(2) of CGST Act which reads "address of delivery" as the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both.

Further, section 2(3) of CGST Act states that "address on record" as the address of the recipient as available in the records of the supplier. Thus, it can be argued and inferred that delivery of goods done by the supplier or taken by the recipient would deem to be terminated at the registered place or address of recipient on record mentioned in the tax invoice.

- 2) **Bill to Ship to Model:** - If goods are delivered from say U.S. to Dubai on direction given by a person located in Maharashtra what would be tax consequence.

It is here to be noted that since goods are moving from non-taxable territory to non-taxable territory without entering into India, it is not a supply in itself (schedule III) Accordingly, place of supply shall cannot be determined for supply of goods.

The intermediary agent charging commission on such transaction is also exempt vide Entry 12AA of Notification 9/2017 – IT(R) which reads as Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory are exempt.

- 3) **Recipient of training & performance appraisal services can also be corporate entities:** - In case of Services in relation to Training & Performance appraisal [S. 12(5) of IGST Act], recipient here being the 'person liable to pay the consideration' is not to be misconstrued to be the 'trainee' or 'person appraised'. E.g.: In case of a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore, the consideration is paid by the corporate through the individual participants who would be required to pay a certain delegate fee. Hence, the POS has to be determined on the basis of location of the recipient being the corporate entity and not based on the place where the services are actually performed.

- 4) **Proviso to Section 12(8) does not benefit to Sector, thus intention of government did not get fulfilled:** IGST (Amendment) Act, 2018 was made effective from 1st February, 2019 by Notification No. 01/2019 – IT dated 29th January, 2019; among other amendments, a proviso was inserted in Section 12(8) of the IGST Act. The relevant provision is extracted as under: "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."

Prior to insertion of the proviso, the place of supply for transportation services was dependent on the location of the service recipient (& Location of supplier in few cases). If the service recipient was in the same state as that of service provider, then the supply was treated as intra-state supply otherwise inter-state supply.

However, due to insertion of the proviso, the place of supply for goods which are to be exported shall always be outside India and thus supply shall always be inter-state supply, irrespective of the location of recipient. It is very crucial to note here that if a supplier (shipping agency such as FedEx) provides such services of exporting goods it would not be treated as export of service due to non-fulfilment of all conditions (especially recipient & foreign currency) as enshrined in Section 2(6) of IGST Act, 2017 (Export of Service).

The government did not pay attention on a fact that location of recipient and location of supplier still continues to remain in India & such sector would not be benefited due to insertion of such proviso. Therefore, such supply of service does not fulfil the criteria of export of service and accordingly, the intention of government does not get fulfilled and it would be still an exempt supply.

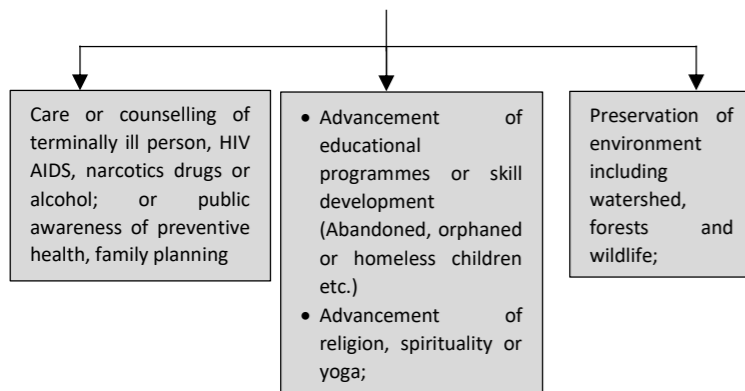
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Before learning exemptions under GST following points must be noted: -

- 1) The person supplying exempt supplies will have to **reverse ITC** in accordance with section 17 of CGST Act, 2017.
- 2) **Zero rated** supplies are not exempt supplies thus **ITC can be availed**.
- 3) Even though **exempt supplies are exported**, registered person **can still claim refund** of taxes paid on manufacture / procurement of such exempt supplies.
- 4) As per section 2(47) of CGST Act, 2017 "**exempt supply**" means supply of any goods or services or both which attracts **nil rate** of tax (e.g. fruits & vegetables) or which may be **wholly exempt** from tax under section 11 (to be learnt in this chapter), or under section 6 of the Integrated Goods and Services Tax Act, and includes **non-taxable supply** (e.g. petrol);
- 5) If notification exemption is issued under CGST Act, the registered person can avail the benefit of same in SGST / UTGST Act also, however vice – versa is not possible. Also, notification issued under IGST Act will only be relevant for inter-state supply purposes only not for CGST / SGST purposes.
- 6) 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 this Act or under the Integrated Goods and Services Tax Act is **not liable to take registration** under GST Act.
- 7) Section 31(3)(c) of the CGST Act provides that a registered person **supplying exempt goods or services or both or paying tax under the provisions of section 10 of CGST Act (composition) & presumptive levy** shall issue, instead of a tax invoice, a **bill of supply**.
- 8) **For supplying exempt goods E-way bill is not required to be generated.**

(1) Charitable Institutions

To avail exemptions the entity should be registered under **Section 12AA** of the IT Act, 1961 & services should be by way of **charitable activities**



| | |
|---|--|
| 1) Advancement of any other object of public utility | Taxable |
| 2) Cost of Lodging incurred for above charitable activities (pre-dominant activity shall be charitable) | Exempt |
| 3) Hospitals run by charitable trust | Exempt |
| 4) Hostel Accommodation for students | Exempt if value of supply is below Rs. 1,000/- per day |
| 5) Training in art, culture, or sports by charitable entities | Exempt |
| 6) Import of Services (other than OIDAR & Import freight) | Exempt |
| 7) Old age home run by 12AA where consideration is up to Rs. 25,000/- per month per member to its residents aged 60 or more | Exempt |

Exemptions under GST (S. 11 of CGST r/w NN 12/2017 – CTR)

1/4

By: - CA. Keval Mota

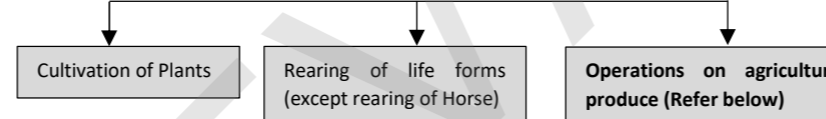
(2) Religious Institutions

| Sr. No. | Category | Exemption up to | Notes |
|--|---|--|--|
| 1 | Conduct of religious ceremonies | 100% of supplies made in this nature is exempt | Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage and death involve elaborate religious ceremonies. |
| Renting of precincts of a religious place | | | |
| 2 | Room rent | Rs. 1,000 or more per day. | Precincts of such religious place should be owned or managed by a charitable or religious trust under 12AA of Income Tax Act, 1961; a trust or an institution registered under section 10(23C) (v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act. |
| 3 | Renting of premises, community halls, Kalyan mandapam or open area etc. | Rs.10,000 or more per day. | |
| 4 | Charges for renting of shops or commercial spaces. | Rs.10,000 or more per month. | |

Important Points: -

Services in respect of religious pilgrimage facilitated by GOI under bilateral arrangement are exempt.

(3) Agriculture Sector



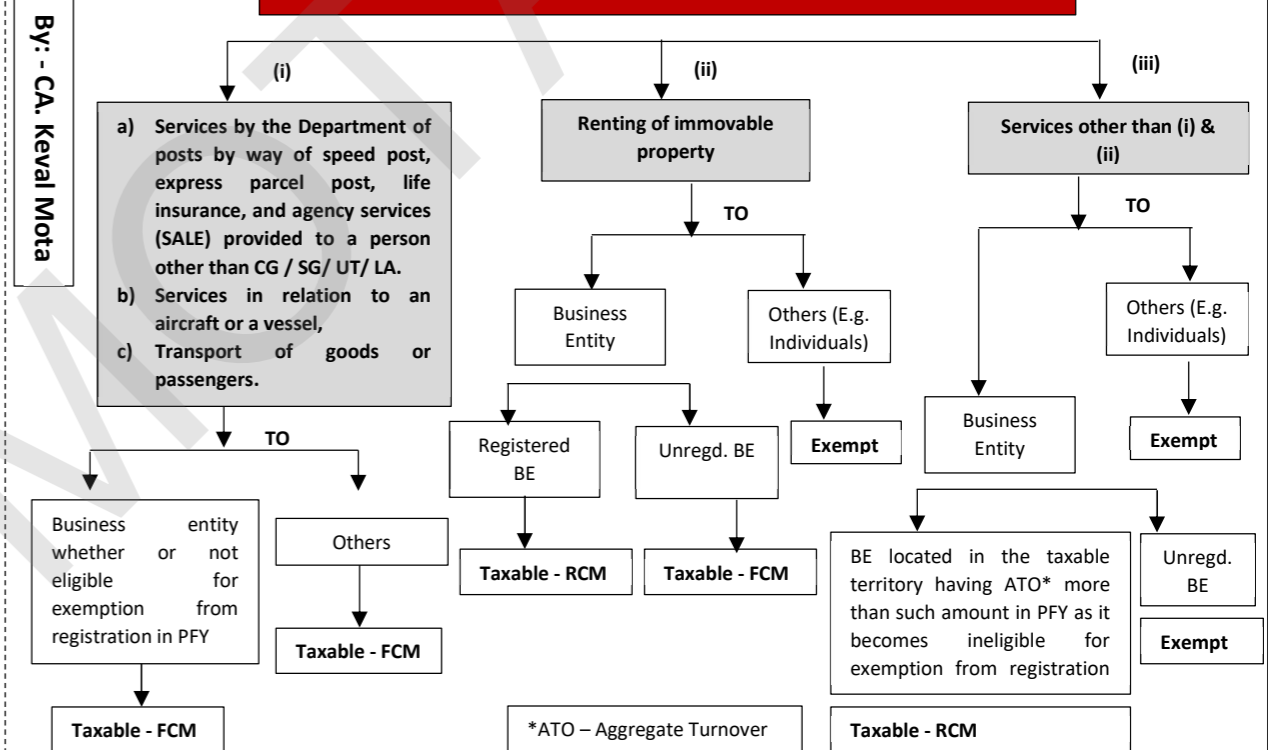
Following are exempt

- Operations on agriculture produce such as cultivation, Harvesting, Threshing, Testing of Agriculture Produce, Loading / unloading, supply of farm labor, tending, pruning, cutting, which do not alter essential characteristics for primary market are exempt.
- Renting / Leasing of Agro-machinery, Services by APMC
- Fumigation in warehouse
- Agriculture extension services
- Pisciculture, sericulture, floriculture

Other Important Points

- 1) Rubber, green tea leaves, coffee is exempt (processed coffee is taxable)
- 2) Lease of vacant land with storage shed meant for agriculture produce are exempt
- 3) Processed products of Black Tea, Green Tea, White Tea, Jaggery are taxable. However, whole grain pulse is exempt
- 4) 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 are exempt
- 5) Services provided by the National Centre for Cold Chain Development under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination are exempt.
- 6) Cleaning of wheat outside farm, Sales commission for wheat – exempt
- 7) **Milling of paddy into rice is taxable.**
- 8) Services by way of loading, unloading, packing, storage, or warehousing of rice are exempt.
- 9) Artificial insemination of livestock (*other than horses*) are exempt.
- 10) Testing activities in relation to agriculture produce such as soil testing, animal feed testing etc. are exempt.
- 11) Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea are exempt (E. 24B)

(4) Services provided by CG/SG/UT/LA



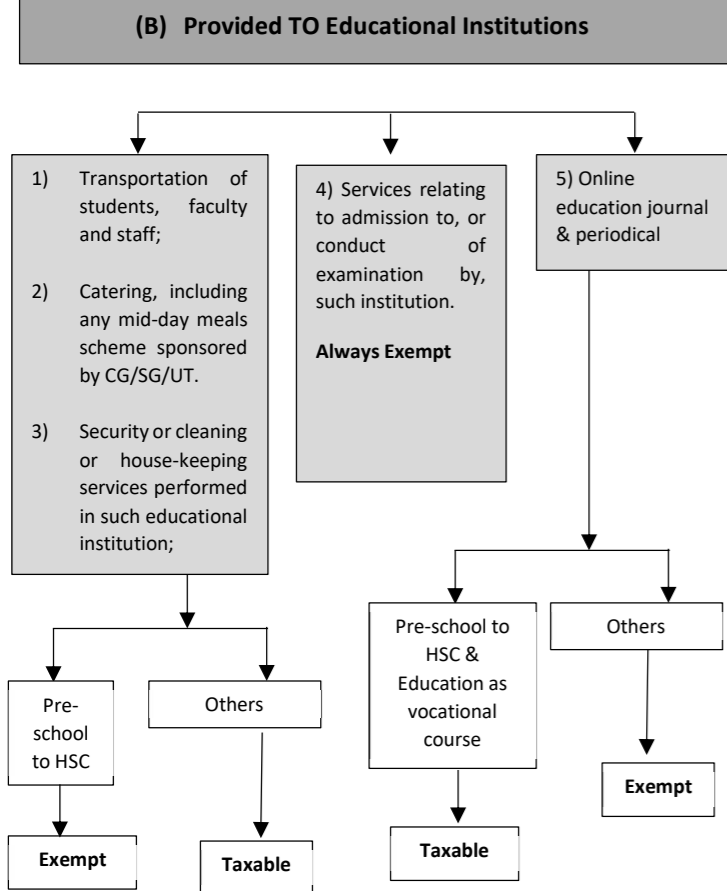
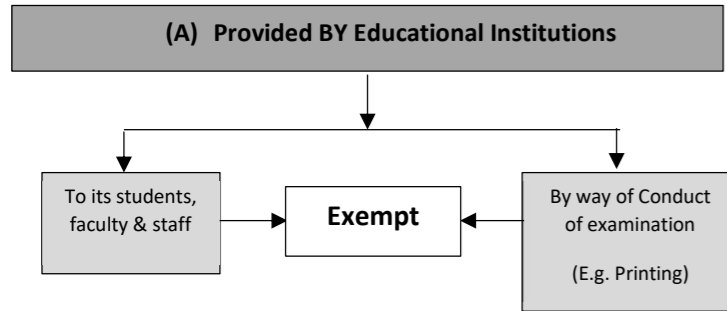
Important Points for Services provided BY CG/SG/UT/LA.:-

- 1) Services of other than (i) above provided by CG/SG/UT/LA to CG/SG/UT/LA are exempt.
- 2) For the purpose of services referred in (ii) & (iii) above, provided by CG/SG/UT/LA where **Gross consideration does not exceed Rs. 5,000 are exempt.**
- 3) Services by CG/SG/UT/LA by way of **guaranteeing loan** taken by their undertakings or PSU's from **banking companies & financial institutions** are exempt.
- 4) Services by CG/SG/UT/LA for **testing/calibration/safety check** or certification relating to **protection or safety of workers & consumers** are **exempt**. Further as per circular 100/19/2019-GST – Services provided for **issue of seed certificates / tags** by seed certification agency to seed producing organization are **exempt**. However, **supply of seed tags by other departments / manufacturers** to SG / Seed certification agencies is supply of goods & **taxable**.
- 5) Issuance of passport, visa, driving license, birth certificate or death certificate are exempt
- 6) Services provided way of **tolerating non-performance of a contract** entered into by the CG/SG/UT/LA where payments received **by CG/SG/UT/LA by way of fines, penalty** etc. for tolerating non-performance of contract **are exempt**.
- 7) Excess Royalty Collection Contractor is a person to whom govt authorized to collect royalty on their behalf from mining lease holder. Mining leaseholders are liable to GST under RCM on such services. ERCC & Govt enters into contract wherein ERCC is required to collect the amount as per agreement entered. Accordingly, 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 are exempt**. This exemption is restricted to amount of GST paid by mining lease holder and ERCC shall be liable to pay GST on difference between GST exempted & GST paid by mining lease holders if GST paid by mining lease holder is less than amount of GST exempted. (**November, 2019 ICAI Exam Question**) (**Refer Example on Page 4/4 – Exemption**)

Important Points for Services provided TO CG/SG/UT/LA.:-

- 1) Pure services (labor contracts) or; **Composite supplies where value of goods is not more than 25% of Total value**
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 are exempt.
- 2) Services by Govt. entity to CG/SG/UT/LA in form of **grants – Exempt**
- 3) Services to CG/SG/UT 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 (LA not covered) are exempt.
- 4) Services provided to the CG/SG/UT under any **insurance scheme for which total premium is paid by CG/SG/UT** (LA not covered) – exempt
- 5) Services by GSTN (GST NETWORK) to CG/SG/UT – exempt

(5) Education Sector



Other Important Points:-

- Education as a part of curriculum for obtaining qualification recognized under any law in India is exempt (E.g. Pursuing CA)
- Services provided by Boarding Schools along with residence & food is exempt as pre-dominant supply is of education.
- Service of giving motor vehicle on hire for transportation of students, faculty & staff to Educational institution of pre-school to HSC – Exempt.
- Placement services provided to Educational institutions are taxable.
- Catering services provided by educational institutions is exempt. However, if provided by third party then its taxable
- Services by ITI (Industrial Training Institutes) including private ITI: -

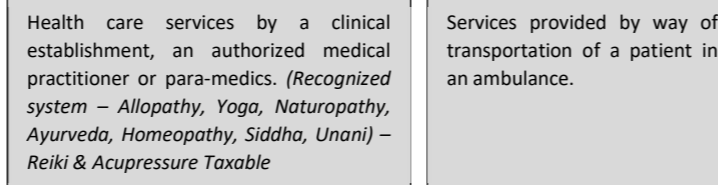
| Circular 55/29/2018-GST dated 9th August, 2018 | | |
|--|--|---------------------|
| Sr. No. | Category | Exemption / Taxable |
| 1 | Vocational training provided by private ITIs in designated trades (as per apprentice act eg. Barber/Hair Cutter/Dresser, CAD-CAM Operator-cum-Programmer, Chemical Laboratory Assistant) | Exempt |
| 2 | Vocational training provided by private ITIs in other than designated trades. | Taxable |
| 3 | Service, provided by a private Industrial Training Institute for conduct of examination against entrance fees [Sl. No. 66 of notification No. 12/2017-CT(Rate)] | Exempt |

- Foreign courses by private institutes are taxable, education for non-recognized qualification are taxable
- Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.

Exemptions under GST (S. 11 of CGST r/w NN 12/2017 – CTR)

2/4

(6) Healthcare Service Sector



- Room rent charged from in-patients in hospital is exempt
- GST is not applicable on consultancy by doctor.
- Treatment of Food Supplied by Hospitals:
 - Food Supplied directly by Hospital to in-patients as advised by doctor – Exempt. (Food Supplied to Attendant of Patient is taxable)
 - Supply of Food is outsourced by hospital to another agency – Agency will charge GST & Hospital will not get ITC (as providing exempt supplies)
- GST will not be levied on Retention money. E.g. If hospital charges Rs. 10,000/- from patient and pays Rs. 7500/- to doctors & keeps Rs. 2500/- with them for ancillary expenses, Rs. 2500 will also be exempt.
- Ambulance services by NHM – Exempt
- Services by recognised rehabilitation professionals are exempt
- Cord Blood Bank & preservation of stem cells, veterinary services are exempt.
- Common Bio-medical waste treatments or disposal – Exempt

(7) Banking & Financial Sector

- Services by RBI – Exempt (TO RBI Taxable). Note: - Services to RBI by members of overseeing committee, GST will be paid by RBI under RCM. (Refer RCM Chapter)
- 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);
 - inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers are exempt.
 Note: - Service charges collected over and above loan are taxable.
- Services provided by international finance corporation & Asian development bank are exempt.
- GST shall not be charged on charges charged by bank of payment of upto Rs. 2,000/- made by any person through debit / credit card. The said exemption is to encourage online transaction for small amounts made by credit card, debit card, charge card or other payment card service. (Sl. 34)
- 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) are exempt.
- Services by the following persons in respective capacities are exempt—
 - business facilitator (BF) or a business correspondent (BC) to a banking company with respect to accounts in its rural area branch; (urban area branches covered under RCM)
 - any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
 - business facilitator or a business correspondent to an insurance company in a rural area.

(8) Construction Industry

- Pure labour contracts of construction, or any work 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 are exempt.
- Services by way of erection or construction of original works pertaining to single residential unit otherwise as a part of a residential complex;

Residential complex means any complex comprising of a building or buildings, having more than one single residential unit.
- Transfer of Development Rights / FSI / Lease Land for construction of residential apartments: -

Exemption is available in respect of transfer of development rights, FSI made after 1-4-2019 or upfront amount for long term lease paid after 1-4-2019 to the extent of residential apartments by promoter, when sale is made by promoter during construction (i.e. consideration received before completion certificate or first occupation w.es. earlier)

TDR & FSI for Construction of residential properties

Amount of Exemption:-

$$\text{GST Payable on TDR / FSI} = \text{Carpet Area of Residential Apt} \times \frac{\text{Total Carpet Area of Residential Apt + Commercial Apt.}}{\text{Total Carpet Area of Residential Apt}}$$

Further, promoter will be liable to pay GST under RCM on un-booked flats as on date of CC or first occupation whichever is earlier: -

$$\text{GST Payable on TDS/FSI for Residential Apts but for exemption contained} = \text{Carpet Area of Residential Apt which remain un-booked on date of CC or first occupation} \times \frac{\text{Total Carpet Area of Residential Apt}}{\text{Total Carpet Area of Residential Apt}}$$

Long Term Lease (LTL) (>30 years) for construction of residential apartments

$$\text{GST Payable on upfront amount payable for LTL construction} = \text{Carpet Area of Residential Apartments} \times \frac{\text{Total Carpet Area of Residential Apts + Commercial Apts}}{\text{Total Carpet Area of Residential Apts}}$$

Further, promoter will be liable to pay GST under RCM on un-booked flats as on date of CC or first occupation whichever is earlier: -

$$\text{GST Payable on LTL for construction of residential Apts but for exemption contained} = \text{Carpet Area of Residential Apt which remain un-booked on date of CC or first occupation} \times \frac{\text{Total Carpet Area of Residential Apt}}{\text{Total Carpet Area of Residential Apt}}$$

By: - CA. Keval Mota

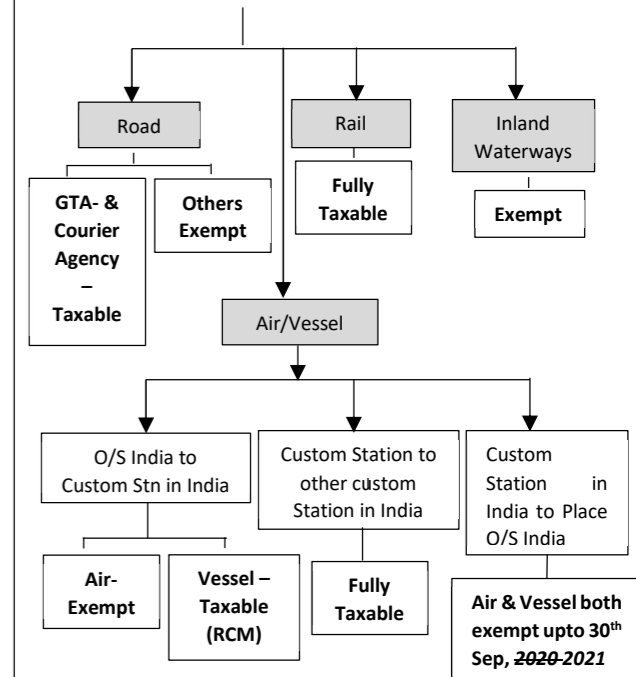
(9) Transportation Sector

Services provided by a goods transport agency, by way of transport in a goods carriage of –

Exemption on Transportation of specific goods & Value exemption:

- Agricultural produce;
- Goods, where consideration charged for the transportation of goods transported in a single carriage does not exceed Rs. 1500, OR where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750;
- Transportation by rail or a vessel or by GTA of relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; defence or military equipment; newspaper or magazines registered with the Registrar of Newspapers; or materials; agricultural produce; milk, salt and food grain including flours, pulses and rice; and organic manure.
- Transportation of railway equipment or materials by rail or vessel.

are exempt. Exemption on Mode of Transportation of Goods



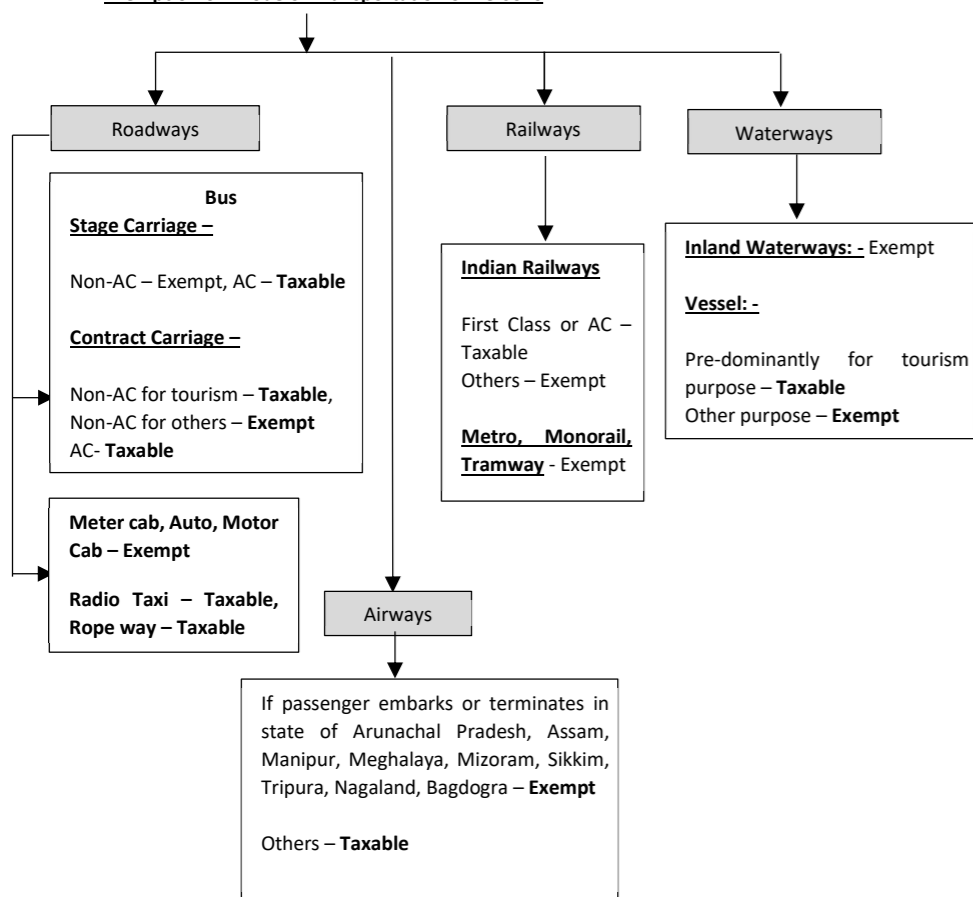
Supply through pipelines or conduit are fully taxable

Exemption on Passenger Transportation Mode: (Covered in Next Page)

Other Important Points:-

- GTA Service taxable under RCM as per 9(3) of CGST Act / 5(3) of IGST Act if GTA not availed 12% with ITC - FCM option.
- In addition to Invoice requirements of Rule 46, GTA has mention the following Gross weight of consignment; Name of the Consignor and Consignee; registration No. of Vehicle; Details of goods transported; Origin and destination; GSTIN of person liable to pay tax whether as consignor / consignee / GTA.
- GTA Service provider whose all supplies are taxable under RCM shall not be liable to be registered under GST (S. 23 of CGST Act)
- Services by GTA to unregistered person (except unregistered specified person are exempt)
- GTA providing supplies to recipient who has taken registration in GST for deducting Tax u/s 51 of CGST Act and not for making any taxable supplies are exempt (NN 28/2018 – CT)

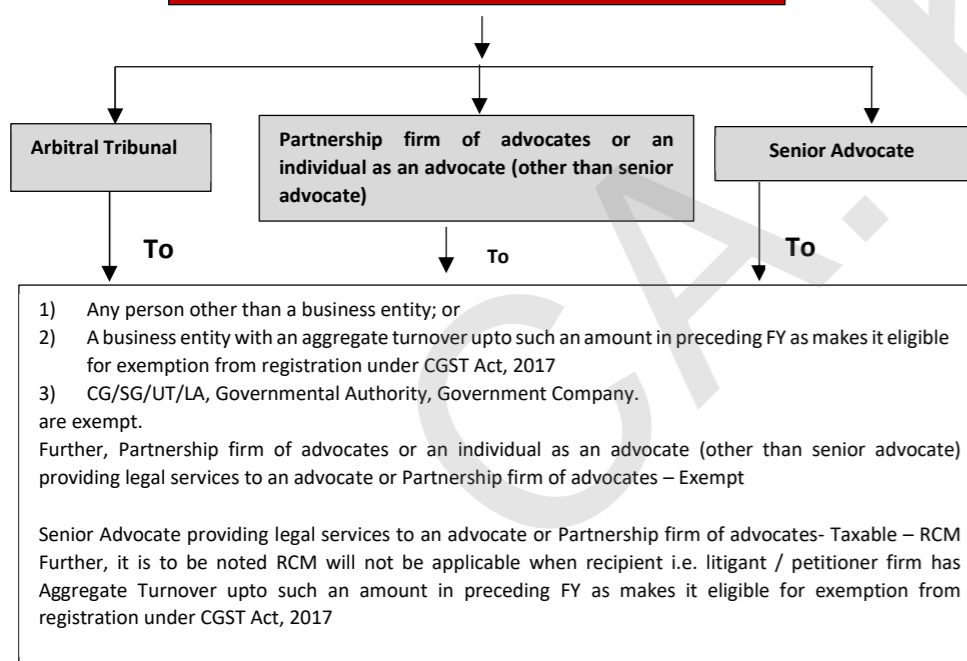
Exemption on Mode of Transportation of Persons



Other Important Points:-

- 1) Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
- 2) Example of Contract Carriage, if a bus is operating between Mumbai & Delhi, it must pick up all its passengers before leaving Mumbai & must drop all its passengers at Delhi & not have any stops in between.
- 3) Stage Carriage can be understood as a MV adapted to carry more than 6 passengers (excluding driver) at separate fares for individual depending on length of journey.

(10) Legal Service by



Exemptions under GST (S. 11 of CGST r/w NN 12/2017 – CTR)

(11) Life Insurance Business

- Services of life insurance business provided by way of annuity under the **National Pension System** regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013);
- Life Insurance to members of army, navy, Airforce, under group insurance scheme of CG are exempt.
- W.e.f. 1st October, 2019, Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force are exempt
- Coastal Guards under Naval Group Insurance Funds are also exempt.
- Life Insurance scheme **under various schemes**:- (only imp covered)
 - (a) Janashree Bima Yojna
 - (b) Life – Micro insurance product approved by IRDA having **MAXIMUM cover of Rs. 2,00,000/- are exempt**
 - (c) PM Jeevan Bima Yojana

(12) General Insurance Business (only imp covered)

- Hutt / Cattle Insurance
 - Insurance for Tribals
 - PM Fasal Bima Yojna
 - PM Suraksha Bima Yojna
 - Nirmaya Helath Insurance Scheme
 - w.e.f. 1st October, 2019; Bangla Shasya Bima (Entry 35)
- Are exempt. Note: - Re-insurance of above is also exempt.

(13) Leasing Services

- 1) Lease Long term (> 30 years) – Charges payable as upfront amount is exempt if it is
 - > Provided by SG Industrial Development or entity having ownership >20% of CG/SG/UT and,
 - > Provided to Industrial units or developers in any industrial / financial business
- Note: - Even if upfront amount is paid in instalment it is exempt provided it is determined.

14) Exemptions on Programs conducted by IIM

| Sr. No. | Period | Programmes offered by Indian Institutes of Management | Whether exempt from GST |
|---------|--|---|-------------------------|
| 1 | 1 st July, 2017 to 30 th January, 2018 | Two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management, Fellow programme in Management, Five years integrated programme in Management. | Exempt from GST |
| | | i. One- year Post Graduate Programs for Executives, | Not Exempt from GST |
| | | ii. Any programs other than those mentioned at Sl. No. 67 of notification No. 12/2017- Central Tax (Rate), dated 28.06.2017. | |
| | | iii. All short duration executive development programs or need based specially designed programs (less than one year). | |
| 2 | 31 st January, 2018 onwards | All long duration programs (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives. | Exempt from GST |
| | | All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law. | Not Exempt from GST |

(15) Artist Services

Services by an artist by way of a performance in folk or classical art forms of Music, or Dance, Theatre, if the consideration charged for such performance is upto Rs. 1,50,000/- are exempt. This exemption shall not apply to service provided by such artist as a brand ambassador.

(16) Admission to various events

- 1) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.
- 2) Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958 or any other law for time being in force.
- 3) 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 recognized sporting event;
 - c) recognised sporting event & planetarium where the consideration for admission in not more than Rs. 500 per person are exempt.

(17) Services by unincorporated body or Not for Profit Organisation

- 1) 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;
 - b) For the provision of carrying out any activity which is exempt from the levy of GST;
 - c) Up to an amount of **Rs. 7,500/-** per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

Legal position on taxability of maintenance charges collected by RWA (Circular No.109/28/2019- GST dated 22nd July, 2019)

| Particulars | Case I | Case II | Case III | Case IV |
|---|--|---------------------------------|---------------------------------|---------------------------------|
| Annual Turnover | More than Rs. 20L/- | More than Rs. 20L/- | Less than or equal to Rs. 20L/- | Less than or equal to Rs. 20L/- |
| Charges per month per member for each residential apartment | More than Rs. 7,500/- | Less than or equal to Rs. 7,500 | More than Rs. 7,500/- | Less than or equal to Rs. 7,500 |
| Taxability | Taxable | Exempt | Exempt | Exempt |
| Notes | Entire amount is taxable not just in excess of Rs. 7,500/- | NA | NA | NA |

ITC on Inputs / Input Services & Capital Goods

RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services provided: -

Amount charged by RWA is more than Rs. 7,500/- per month per member & RWA is registered under GST (i.e. annual turnover is more than Rs. 20 Lakhs).

Further, it is important to note that if charges per member are less than or equal to Rs. 7,500/- and RWA is registered under GST, RWA shall be liable to reverse ITC as per Section 17 of CGST Act)

“An expert is someone who knows some of the worst mistakes that can be made in his subject, and how to avoid them.”

(17) Miscellaneous Exemptions (Only Imp)

- 1) 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** is exempt.
- 2) **Royalty & License Fees included in transaction value** u/r 10(1)(c) of Customs Valuation Rules is exempt.
- 3) GTA Services to recipient registered only for the purpose of deduction of TDS is exempt.
- 4) Services by **sponsorship** of event organised by **National Sports Federation**, Indian Sport Council for Deaf, Paralympic, Indian Olympic Association etc. **are exempt**
- 5) Services by **National Skill development corporation** / sector skill council in relation to recognised skill development program **is exempt**.
- 6) Transfer of business as a going concern is exempt
- 7) Services by way of **renting of residential dwelling for use as residence** is exempt
- 8) **Services by a hotel, inn, guest house, club or campsite etc. for residential or lodging purposes**, having **value of supply** of a unit of accommodation **less than or equal to Rs. 1000** is exempt.
- 9) Services by way of **giving on hire** to
(a) To a **State transport undertaking**, a motor vehicle meant to carry > 12 passengers;
(b) To a **GTA**, a means of **transportation of goods**; or
(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**.
(d) to a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; to a goods transport agency, a means of transportation of goods. **are exempt**.
- 10) Service by way of access to a road or a bridge on payment of **toll charges** is exempt
- 11) Transmission or distribution of electricity by an **electricity transmission or distribution utility** – exempt.
- 12) Services provided by an incubatee up to a total turnover of Rs. 50 Lakhs in a financial year subject to the following conditions, namely: -
(a) the **total turnover had not exceeded Rs. 50 lakhs during the preceding financial year**; and
(b) a period of **three years has not elapsed** from the date of entering into an agreement as an incubatee are exempt
- 13) 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** are exempt
- 14) Services by way of slaughtering of animals is exempt.
- 15) Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets **are exempt**.
- 16) Service provided by (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India is exempt
- 17) Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020
- 18) **Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited are exempt w.e.f. 16th October, 2020 vide NN 05/2020 CT(R) dated 16th October, 2020.**

(18) IGST Exemptions (Only Imp)

1) Import of Services by: -

CG, SG, UT, LA, Govt. Authority or individual in relation to any purpose other than business purpose - Exempt

12AA entity for charitable purpose - Exempt

Way of Online Educational journal / periodical other than pre-school/HSC, Education as vocational course - Exempt

OIDAR Services are taxable

Further, Sea Freight is taxable for all the three persons.

- 2) Service received by RBI from Outside India in relation to management of forex reserve is exempt.
- 3) Export of service to own establishment outside India is exempt if Place of supply is outside India, accordingly this will not be a zero-rated supply and refund cannot be claimed.
- 4) Import of service by UN or specified international organisation is exempt
- 5) Goods as well as services imported by SEZ for authorised operations are exempt.
- 6) Government's share of profit from grant of license / lease to explore or mine petroleum crude or natural gas is exempt. Similar notification has been extended to Intra-state supplies.

Exemptions under GST (S. 11 of CGST r/w NN 12/2017 – CTR)

4/4

CA. Keval Mota

OUT OF BOX THINKING POINTS

1) ANALYSING CONCEPT OF ERC CONTRACTOR

It is pertinent to note that there are two considerations flowing from miner to state govt. viz. Dead (fix) Rent at periodic interval & Royalty to State Government. Dead Rent is pre-determined amount, royalty % is determined on suitable basis such as % of sales by miner etc.

Excess Royalty Collection Contract" means a contract for specified mineral(s) and area given to collect royalty in excess of annual dead rent, on behalf of the Government from the holder of mining lease (s) under the contract whereunder the contractor shall pay a fixed amount annually to the Government as per terms of the contract.

Example if ONGC Limited has obtained license from Maharashtra State Government. Maharashtra State Govt. agrees to receive dead rent of Rs. 5,00,000/- per annum. Further, they agree that royalty shall 10% of Sales value for first 3 years i.e. contract period. Maharashtra SG appoints Mr. Kumar as a person to collect revenue for this contract. Maharashtra State assigns right to collect royalty from ABC Ltd to Mr. Kumar for Rs. 85,00,000. Thus, Mr. Kumar is treated as ERCC. Determine Taxability in below cases

- i) ONGC Ltd. was able to sell 8,30,00,000 of mineral
- ii) ONGC Ltd. was able to sell 5,50,00,000 of mineral

Let us understand taxability of above example as per Entry 65B & Notification 13/2017 – CTR.

Case (i) ONGC Ltd. was able to sell 8,30,00,000 of mineral

➤ Tax Impact on Miner – ONGC

Thus, ONGC is liable to pay GST under reverse charge as per entry no. 4 of Notification 13/2017 – CTR Amount on which reverse charge is to be discharged: -

- a) Fixed Rentals: - Rs. 5,00,000 x 3 years = 15,00,000
- b) Royalty: - 8,30,00,000 x 10% = 83,00,000

Totalling to Rs. 98,00,000 x 18% = 17,64,000

(Please note that Tax has to be discharged in accordance with Time of Supply provisions)

➤ Tax Impact on ERCC Contractor i.e. Mr. Kumar

As per Entry No. 65B Mr. Kumar will get an exemption of Rs. 85,00,000. Since total tax is paid by ONGC Ltd. on amount exceeding 85,00,000/-, ERCC will not be liable to pay tax.

Case (ii) ONGC Ltd. was able to sell 5,50,00,000 of mineral

➤ Tax Impact on Miner – ONGC

Thus, ONGC is liable to pay GST under reverse charge as per entry no. 4 of Notification 13/2017 – CTR Amount on which reverse charge is to be discharged: -

- a) Fixed Rentals: - Rs. 5,00,000 x 3 years = 15,00,000
- b) Royalty: - 5,50,00,000 x 10% = 55,00,000

Totalling to Rs. 70,00,000 x 18% = 12,60,000/-

(Please note that Tax has to be discharged in accordance with Time of Supply provisions)

➤ Tax Impact on ERCC Contractor i.e. Mr. Kumar

As per Entry No. 65B Mr. Kumar will get an exemption of Rs. 85,00,000 when he will pay this amount to SG (at first instance). However, since ONGC Ltd. discharged tax on Rs. 70,00,000/-, ERCC Contractor has to pay GST on shortfall of Rs. 15,00,000 [85,00,000(-)70,00,000].

2) Liquidated Damages:-

(a) Fines / Penalties or liquidated damages payable to Government

As per entry 62 of NN 12/2017 – CTR Fines / Penalties or liquidated damages payable to Government or Local Authority are Exempted, therefore, **NO GST IS CHARGED NOR EVEN PAYABLE ON RCM BASIS.**

(b) Fines / Penalties or liquidated damages payable by Government

In this case contractor issues invoice on the Government or Local Authority to Recover Penalty / Compensation/ LD, **GST IS PAYABLE** on the amount of Penalty or liquidated damages claimed by the Contractor on the Government or Local Authority.

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"When you feel like quitting think about why you started"

Input Tax is GST paid on procurement of goods or services which are used or intended to be used in furtherance of business (subject to eligibility u/s 17 of CGST Act)

1) Conditions to avail Input Tax Credit (S. 16 of CGST + R. 36 of CGST Rules)

a) Recipient 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;**

Other tax paying documents (R. 36 of CGST Rules):-

- Tax invoice or debit note issued by supplier
- Bill of Entry for import of goods
- Self-Invoice [31(3)(f)] – for RCM Credit]
- Invoice or Debit Note for ISD

(Payment voucher is not the required document)

b) Recipient has received the goods or services or both.

Exception:- Delivery of goods or services on direction of third person is valid receipt of goods or services. (CGST Amendment Act, 2018). *Bill to Ship to Model* – In such model even if goods are not received by 3rd person he shall be eligible to take ITC on invoice raised to him by supplier.

Note:- If Goods are received in instalment, ITC to be taken on receipt of last instalment.

c) The tax charged shall be paid by supplier 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, (Provisional ITC can be taken initially prior to matching on common portal)

d) Recipient has furnished the GSTR 2 under section 39 by 15th of next month (not operational)

Notes:-

1) Recipient is allowed to avail ITC at first instance without paying the invoice value to supplier; however, he has to pay invoice value to supplier within 180 days otherwise credit availed shall be reversed (by adding in output tax liability) along with interest @ 18% for the period from date of availment to date of reversal.

Further, the same would be re-credited when the recipient makes payment subsequently (only tax amount will be re-credited).

Exception to above:- (i.e. 180 days payment rule shall not be applicable in below 3 scenarios):-

- RCM Supplies – 9(3) & 9(4) of CGST Act, 2017 and 5(3) & 5(4) of IGST Act, 2017.
 - Activities specified in **Schedule I** to CGST Act, 2017 i.e. activities treated as supply without consideration. (Refer Supply chapter)
- (i.e. Permanent Transfer of BA where ITC has been availed, Supply b/w related & distinct person, Principal Agent Transaction, & Import of Services from RP for Furtherance in Business).

- **Additions made in value of supply u/s 15(2)(b)** of CGST Act – Amount incurred by buyer on behalf of supplier.

- 2) Even if goods are lost in production ITC will be available
- 3) Nexus between input supply & outward supply shall be there.

4) Time limit to avail ITC:-

- (a) Due Date of filing return for the month of September of succeeding Financial year or,
 - (b) Actual Date of filing annual return;
- whichever is earlier.

Note:- R. 37(4) - This time-limit is not applicable when a person re-pays even after such due date in respect of invoice value reversed on account of non-payment of consideration w/i 180 days.

5) If tax component has been capitalised and depreciation is claimed under Income Tax Act (S.32) on such tax amount, then ITC cannot be claimed.

Input Tax Credit (S. 16, 17, 18, 20 of CGST Act; R 38, 39, 40, 42, 43, 44, 45 of CGST Rules) (1/5)

2) Apportionment & Blocked Credit (S. 17 of CGST Act)

1) **Goods or Services used for partly business & partly other purposes S. 17(1) of CGST:-**
If 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 input tax credit only attributable to the purposes of his business shall be allowed. (For example – Goods taken by employer for his own use).

2) **Goods or Services used for effecting partly taxable (incl. zero rated i.e. exports & supply to SEZ) & partly exempt supplies (Nil rated + Non-GST + Wholly exempt) S. 17(2) of CGST:-**
Where the goods or services or both are used by the registered person partly for effecting taxable supplies (including zero-rated supplies) and partly for effecting exempt supplies the amount of ITC as is attributable to the said taxable supplies including zero-rated supplies shall only be available.

The manner of reversal on account of exempt supplies has been given in Rule 42 of CGST Rules, 2017 as below:-

| Sr. No. | Particulars | Calculation | Denote by |
|---------|--|---|---------------------------------|
| I | Total input tax involved on inputs and input services | | T |
| II | Input tax Exclusively for the purposes other than business (Non-Business Purpose) | | T ₁ |
| III | Input tax Exclusively for effecting exempt supplies | | T ₂ |
| IV | Ineligible Credit as per 17(5) – See Pt. 4 of Chart | | T ₃ |
| V | Amount of input tax credit credited to the electronic credit ledger | T - (T ₁ +T ₂ +T ₃) | C ₁ |
| VI | ITC for exclusively for effecting Taxable & Zero-Rated Supplies | | T ₄ |
| VII | Common ITC available for apportionment | C ₁ - T ₄ | C ₂ |
| VIII | Common Credit Attributable towards exempt supplies (E – Exempt T.O., F – Total T.O.) (See Notes) | (E+F) × C ₂ | D ₁ |
| IX | Common Credit Attributable towards Non-Business purpose | 5% × C ₂ | D ₂ |
| X | Common credit attributable towards effecting Taxable & Zero-Rated Supplies | C ₂ - (D ₁ +D ₂) | C ₃ |
| XI | Total credit eligible (Exclusive + Common) | | T ₄ + C ₃ |

T₁, T₂, T₃, T₄ shall be determined at invoice level in GSTR 2 & at summary level in GSTR 3B

Notes:- (These figures above shall be calculated for CGST SGST IGST Separately)

1) Exempt Turnover (E) includes the following S. 17(3) of CGST:-

- Non-taxable supply – Supplies not leviable to tax under GST. E.g. Alcoholic Liquor for human consumption
- Outward Supplies on which the recipient is liable to pay tax on reverse charge basis – it would be treated as exempt in the hands of the supplier and not recipient.
- Transaction in securities – Value shall be 1% of the sale value (Rule 45 of CGST Rules, 2017);
- Sale of Land – Value shall be stamp duty value;
- Sale of Completed Building on which GST is not applicable (sale after receipt of occupancy certificate or after first occupation) – Value shall be the same as adopted for stamp duty purposes.

(Value of exempt supplies shall not include Schedule III activities except Sale of Land & Completed Building – CGST Amendment Act, 2018)

& excludes the following:- Explanation to R. 43(1)

- Excise Duty & VAT applicable on 9(2) of CGST Act supplies & tobacco and tobacco products.
- Interest / Discount received on deposits, loans etc. (except for Banks and other Financial Institutions) [Explanation to Rule 43]
- Services by Transport of Goods “by vessel” from customs station to place outside India [Explanation to Rule 43]

2) **Total Turnover (F) in the State means:-** Value of all taxable supplies (other than inward supplies covered under reverse charge) made within the State, Value of all exempt supplies made within the State, Exports, Inter State Supplies but excludes CGST, SGST, IGST and Compensation cess.

3) The reversals as represented by D1 & D2 shall be reversed in form GST-DRC 03 & computed while filing return of every tax period and also calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates.

4) The short reversal of D1 & D2 shall attract interest under section 50(1) of CGST Act @ 18% p.a. from the 1st April of the succeeding FY till the date of payment.

5) The excess reversal of D1 & D2 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.

6) The amount of input tax credit shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

By: CA Keval Mota

3) Special Provision for Banking Co. or a Financial Institution & NBFC

Option 1:-

Comply with the provisions of 17(2) of CGST Act r/w Rule 42 of CGST Rules, 2017 i.e. reversal of input tax credit attributable to exempt supplies (Pt. 2 of Chart)

(Bank provides exempt supplies by way of accepting deposits or extending loans or advances. Transaction in merely in money is not a service accordingly an exempt supply)

Any Option to be exercised for a full FY

Option 2 – 17(4) r/w Rule 38 of CGST Rules, 2017:-

- NOT avail the credit of Tax paid on inputs and input services that are used for non-business purposes, and the ineligible ITC, in FORM GSTR-2;
- The said company or institution SHALL AVAIL 100% of the credit of tax paid supplies made by one registered person to another registered person having the same Permanent Account Number.
- NOT avail the credit of 50% 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.

4) Ineligible Input Tax Credit (Blocked Credit) – S. 17(5) of CGST Act, 2017

Section 17(5) of CGST Act is NON-OBSTANTE clause for anything contained in 16(1) and 18(1) of CGST Act, meaning thereby even if it has been used in course or furtherance of business unless specifically provided.

Section 17(5)(a) & 17(5) (aa) & 17(5)(ab) :- Credit in respect of Motor Vehicle / Aircraft / Vessel:- (Amended w.e.f. 1-2-2019 by CGST Amendment Act, 2018)

ITC will not be eligible on **Motor vehicles** (as per MV Act) for **TRANSPORTATION OF PERSONS** (it means transportation of goods is allowed) which has approved seating capacity of less than or equal to 13 persons (including the driver). However, credit will be available when they are used for making the following taxable supplies, (accordingly, in below mentioned situations seating capacity need not be checked i.e. even if seating capacity is below 13 in below scenario ITC will still be eligible).

- Further supply of such motor vehicles (Motor vehicle Dealers);
- Transportation of passengers;
- Imparting training on driving such motor vehicles (Driving Schools);

Also, ITC will not be available on **vessels & aircrafts**, however it will be eligible if used for making the following taxable supplies, namely:-

- Further supply of such vessels or aircraft; or
- Transportation of passengers; or
- Imparting training on navigating such vessels; or
- Imparting training on flying such aircraft;
- Transportation of goods.

Further, credit of general insurance, servicing, repair and maintenance shall be available in so far as it relates to motor vehicle, vessels or aircraft on which credit is available.

Notes:-

- 1) ITC of Motor vehicles used in Goods Transportation is always allowed. Also, ITC of general insurance, servicing, repair and maintenance is also allowed in this case.
- 2) ITC of motor vehicle in case of “GTA” – Goods Transportation Agency is allowed only if GTA discharges its liability @ 12% GST under forward charge, however if GTA avails option of 5% RCM then ITC on motor vehicle will not be available.
- 3) ITC will be available in scenario when registered person purchased truck & given it on rent to other for his business & charges GST on such rent.
- 4) The definition of **Motor vehicle** (as per motor vehicle Act) does not include the vehicles used as mining equipment, like, tippers, dumpers, JCB. Therefore, as per present provisions, the GST charged on purchase of earth moving machinery & vehicles, including dumpers, tippers used for transportation of goods by a business will be allowed as input credit.

4) Ineligible Input Tax Credit (Blocked Credit) – S. 17(5) of CGST Act (Cont.)**17(5)(b) :- Supply of Certain Services**

| | | | | | |
|-----------------|------------------|------------------|-----------------|----------------------------|---|
| Food & Beverage | Outdoor Catering | Beauty treatment | Health Services | Cosmetic & Plastic Surgery | <ul style="list-style-type: none"> ➤ Leasing, Renting, or hiring of MV, vessel or aircraft on which ITC is NOT ALLOWED. ➤ Life & Health Insurance. |
|-----------------|------------------|------------------|-----------------|----------------------------|---|

In respect of above services Input tax credit shall be available where: -

- **Inward** Supply is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or,
- It is **obligatory for an employer to provide** the same to its employees under any law.

ITC on membership of a club, health and fitness centre; and travel benefits extended to employees on vacation such as leave or home travel concession shall only be allowed if it is obligatory for an employer to provide the same to its employees under any law.

Notes: -

- 1) A company got organized an event by hiring an Event Manager. Event Manager is contracted to ensure all arrangements relating to food, guests, lighting, decoration, cab services for pick up and drop services. In such case ITC will be available to event manager as such services are in furtherance of business & ITC will be available to company as the services are availed as composite supply of event management and not a standalone supply.
- 2) Maharashtra Shops & Establishment Act provides that rent-a-cab facility has to be provided by employer to night shift employees & female employees leaving office after certain time in night. (Rule 13 of the 2018 Rules – Maharashtra Shops Establishment Rules), thus ITC will be eligible as it is mandatory under law to provide such services.

c) Works Contract Services (WCT) 17(5)(c): -

ITC is not eligible on works contract services when supplied for CONSTRUCTION (capitalisation) of an immovable property. However, it is available in following cases (exceptions). (Construction means capitalisation i.e. debited to fixed asset account and not charged to P & L account)

Exceptions: -

- ITC is eligible in case of construction of **IMMOVABLE PLANT AND MACHINERY (even if capitalized)**.
- ITC is eligible when WCT Service is an **input service for further supply** of works contract service; (Sub-contracting Services)
- ITC is eligible when WCT Services are taken for immovable property **other than plant & machinery** provided such amount is not capitalized in Books of Accounts i.e. Debited to Statement of Profit & Loss Account (analysed from definition of "Construction") – For example – ITC will be **available** on major building repairs **debited to P&L** as it falls out of purview of construction

d) Goods & Services used in Self Construction: -

ITC on 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 is not eligible. Construction has same meaning as assigned in point (c).

- Goods or Services or both on which tax has been paid under **section 10** (Composition Scheme)
- Goods or services or both received by a **non-resident taxable person** except on goods imported by him;
- Goods or services or both used for **personal consumption**
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples: -**

Notes: -

- Destruction of goods (e.g. Natural Calamity) will call for reversal of ITC
- **Normal losses should not entail any reversal** of input tax credit. When any goods are found to be lower upon physical verification, it may be considered as stolen.
- Schemes such as "**Buy 1 Get 1 free**" are very common in such cases even if one item is given free, ITC **reversal is not required on such free item** the reason being supplier recovers the price of both products in a single price.
- Registered persons generally **write off** stocks at year end during valuation / **impairs assets** such writing off / impairments **will call for reversal** of GST as per Section 17(5) (h) of GST Act.
- i) Any tax paid in accordance with the provisions of sections 74 (Fraud), 129 (Detention Seizure) and 130 (Confiscation)

Input Tax Credit (S. 16, 17, 18, 20 of CGST Act; R 38, 39, 40, 42, 43, 44, 45 of CGST Rules) (2/5)**5) Availability of credit in special circumstances (Change in nature of supply or change in nature of registered person) – Section 18 of CGST Act, 2017**

| Sr. No. | Supplier | Inputs / Semi Finished / Finished | Capital Goods | ITC on Stock to be considered as on |
|---------|--|-----------------------------------|---|---|
| 1 | Liab. for registration (crosses the turnover of Rs 20 Lakhs / 10 lakhs) – Applies for registration within 30 days of becoming liable for registration and obtains registration (Note 3) – 18(1)(a) | Available (Refer Note 6) | Not Available | Day immediately preceding the date from which he becomes liable to pay tax . |
| 2 | Voluntary Registration – 18(1)(b) (<i>Applies on its own without T.O. crossing specified limits</i>) | Available (Refer Note 6) | Not Available | Day immediately preceding the date of grant of registration |
| 3 | Composition Scheme to Regular Scheme – 18(1)(c) r/w Rule 40 | Available (Refer Note 6) | Available after reducing 5% per quarter or part thereof from Date of Invoice . | Day immediately preceding the date from which supplier is liable to pay tax under regular scheme |
| 4 | Exempt Supplies become Taxable 18(1)(d) r/w Rule 40 | Available (Refer Note 6) | Available after reducing 5% per quarter or part thereof from Date of Invoice . | Day immediately preceding the date from which exempt supplies become taxable |
| 5 | 1) Regular Scheme to Composition Scheme or Presumptive Scheme (NN 02/2019 – CTR) (NN 9/2019 – CTR) 2) Taxable to exempt supplies 3) Cancellation of Registration u/s 29(5) of CGST Act (Sec 18 (4) of CGST Act r/w R. 44(1) of CGST Rules) (Note 7) | - | - | Reverse (& + in output tax) amount of tax in respect of: - Stock on which ITC has been availed at the time of purchase. Capital Goods after reducing ITC proportionately on the basis of usage life in months. Balance ITC if any shall be lapsed (Rule 44 of CGST Rules) |

Notes: -**1) Sale of Capital Goods under GST, GST to be discharged as [18(6)]: -**

- ITC reduced by 5% per quarter or (b) Tax on Transaction Value whichever is higher. (Note: - For Moulds, Dies, Jigs Transaction Value can be taken directly)
- Credit of Stock & Capital goods will **not be allowed after expiry of 1 year** from invoice date. [S. 18(2) of CGST]

3) If the supplier cross turnover limit & becomes **liable to be registered** under section 22 of CGST Act, 2017 and he **applies for registration & obtains** such registration **within 30 days of becoming liable** to be registered; he **will be deemed to be registered on the date on which his turnover crossed the specified limits** (20 lakhs / 10 lakhs SCS). In such situations the date on which he was liable to be registered is called as "**effective date of registration**". (If registration is not obtained within 30 days effective date would be date of grant of registration). The consequences of the same would be as follows: -

- He would be eligible to take ITC of stock as on day immediately **PRECEDING** the date (not on the date) from which he becomes liable to pay tax.

- He may, **within 1 month from the date of issuance of certificate of registration**, issue a **revised invoice** against the invoice already issued during the period **from effective date of registration** (date on which he crossed limits) **till the date of issuance of certificate of registration** to him. [Section 31(3)(a)]

4) **Declaration in Form GST ITC-01 must be filed within 30 days** from the date of becoming eligible to input tax credit as mentioned in S. 18(1)(a) to 18(1)(d). Rule 40 of CGST Rules, 2017 requires a declaration to be filed containing details of stocks and capital goods along with a **certificate from a practicing Chartered Accountant or Cost Accountant** where the aggregate credit of CGST, SGST/UTGST and IGST so **claimed exceeds Rs. 2 lakhs**.

5) ITC for the purpose of 18(1)(c) & 18(1)(d) to 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.

6) Where tax invoices are not available credit amount shall be reversed on **basis of market price**.

7) In respect of 18(4) (Point 5 of Table above) details to be furnished in GST ITC 03 & GSTR 10 (final return in case of cancellation of registration). Further, it should be certified by CA / CMA.

6) Manner of Reversal in case of Capital Goods (Rule 43)

The need of these provisions arises when **taxable (regd.) person avails input tax credit** in respect of **CAPITAL GOODS** & provides supplies 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**. Amount of ITC attributable to supplies other than taxable (incl. zero rated supplies) shall be **reversed in the below prescribed manner**.

| CG Used For: - | Impact on ECL |
|---|---|
| 1) Fully Taxable | Fully Credit to ECL |
| 2) Fully Exempt | Do not credit to ECL |
| 3) Partly Exempt/ Partly Taxable | Credit fully to ECL but to be reversed in below manner "A" = Full ITC on such capital goods |
| 4) Earlier used for exclusive taxable supplies now will be used for exempt as well as taxable supplies | Would have been credited to ECL fully. Now "A" as reflected in invoice will be reversed in below manner. |
| 5) Earlier used for exclusive exempt supplies now will be used for exclusive taxable supplies | Covered under Part 5 Sr. No. 4 of this Chart. |
| 6) Earlier used for exclusive taxable supplies now will be used for exclusive exempt supplies | Capital Goods after reducing ITC proportionately on the basis of usage life in months. Covered under Part 5 Sr. No. 5 of this Chart. |
| 7) Earlier exclusively used for non-business or exempt supplies now will be used for taxable & exempt supplies | Nothing would have been credited to ECL. Now "A" i.e. ITC reflected in invoice be credited to ECL & then reversed in below manner. T _{ie} will be calculated @ 5% p.q. or part thereof for period during which CG was used for effecting exempt & non-business supply and be added to output tax liability in the month in which "A" is credited to ECL |

Manner of Reversal (R. 43 of CGST Rules)**1) Aggregation of Common Credit T_c**

T_c = ∑A ("A" credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as "Tc")

2) Calculation of Monthly Common Credit on Capital Goods i.e. T_m

T_m = T_c / 60 ... (Since life is 5 years it is taken as 60 months)

3) Calculation of Common Credit Attributable towards exempt supplies: -

T_e = (E / F) x T_c, where; (*instead of T_c it should be T_m*)

"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

Notes: -

- Further, Exempt Turnover & Total Turnover shall have same meaning as discussed earlier in this chapter. (Part 2 of this Chapter)
- If 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.
- The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax.

Important Comment: - It is important to note that unlike Rule 42 which mandates determination of the actual amount of reversal on the completion of the financial year (Refer Part 2 of Chapter), Rule 43 does not prescribe any re-computation at the end of the financial year.

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Input Tax Credit (S. 16, 17, 18, 20 of CGST Act; R 38, 39, 40, 42, 43, 44, 45 of CGST Rules) (3/5)

7) Input Service Distributor (S. 20 of CGST Act r/w R. 39, 54 of CGST Rules)

ISD is an office of supplier of SERVICES (not goods, i.e. ISD can distribute credit of common services only). A supplier may have number of establishments located in different States, however, as regards input services, a supplier may insist for obtaining invoices in the name of its one central location, irrespective of which establishment has actually received the services. The purpose could be centralized accounting or centralized payment system.

For example: - If X & Co. is conducting statutory audit of Reliance Industries Limited's branches it would be so difficult for X & Co. to issue separate invoice for each branch in different state, thus concept of ISD enables X & Co. to raise tax invoice on head office & after taking ISD registration ISD can distribute credit attributable to concerned branch.

Note: - Payment of Tax through Input Tax Credit & ITC provisions in relation to Job work will be covered separately in separate chapters.

8) Rule 36(4) of CGST Rules, 2017 – ITC Availment restricted on account of suppliers not filed GSTR – 1 to 10% 20% of Eligible Credit

- 1) Introduction to Amendment:** - The emphasis of the circular is to restrict the ITC claimed by registered person in GSTR 3B whose corresponding details of sales have not been uploaded on GST Portal by supplier in his GSTR – 1 (i.e. GSTR – 1 have not been filed by supplier) thereby not visible to the recipient in its GSTR – 2A (Auto-populated return).
- 2) Analysis:** - As per the notification, ITC in respect of invoices or debit notes which (are required to be uploaded by taxpayer) have not been uploaded, shall not exceed total **20% 10%** of total eligible credit (not to consider ineligible credit which have been uploaded by tax payer) which has been uploaded by tax payers. Further, after applying **10% 20%** limit, Total ITC as per 36(4) shall not exceed total eligible ITC before application of the said rule.
- 3) Restriction Applicable on which type of documents:** - The restriction of availment of ITC is imposed only in respect of those invoices / debit notes, details of which are required to be uploaded by the supplier u/s 37(1) of CGST Act, 2017 and which have not yet uploaded (Basically B2B Sales Invoices).

Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are not to be uploaded by supplier, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09th October, 2019.

Further, Calculation of restriction of **10% 20%** of Eligible ITC, shall be on consolidated Basis and not supplier-wise

Illustrations for better understanding of concept: -

"R" receives 100 invoices (for inward supply of goods or services) involving ITC of Rs. 10,00,000/- from various suppliers during the month of Oct, 2019 and has to claim ITC in his FORM GSTR-3B of October, to be filed by 20th Nov, 2019. (Assuming all is eligible credit).

| Case | Details of Supplier's invoices for which recipient is eligible to take ITC | 10% of Eligible Credit | Eligible ITC to be taken in GSTR – 3B to be filed by 20 th November, 2019. |
|------|--|--------------------------------------|---|
| I | Suppliers have furnished in Form GSTR 1 – 80 Invoices involving ITC of Rs. 6,00,000/- as on due date of furnishing the details of outward supplies by supplier | Rs. 60,000 (Rs. 6,00,000 * 10%) | Rs. 6,60,000/- (Rs. 6,00,000/- + 10% of Rs. 6,00,000/- restricted to 10,00,000) |
| II | Suppliers have furnished in Form GSTR 1 – 80 Invoices involving ITC of Rs. 7,00,000/- as on due date of furnishing the details of outward supplies by supplier | Rs. 70,000/- (Rs. 7,00,000 * 10%) | Rs. 7,70,000/- (Rs. 7,00,000/- + 10% of Rs. 7,00,000/- restricted to 10,00,000) |
| III | Suppliers have furnished in Form GSTR 1 – 75 Invoices involving ITC of Rs. 9,50,000/- as on due date of furnishing the details of outward supplies by supplier | | Rs. 10,00,000/- (Rs. 9,50,000 + 10% of Rs. 9,50,000 = 10,45,000 restricted to 10,00,000) |

The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under Section 37(1) of CGST) remains under **20 10** per cent of the eligible input tax credit, the details of which are uploaded by the suppliers. Thus, in a nutshell, if suppliers file their return to the tune of **83.33% 90.90%** of eligible credit, recipient can avail 100% ITC. (Further Analysis have been made in Amendment Sheet on Telegram Channel)

(A) Conditions for Distribution (S. 20 of CGST Act)

- The **credit can be distributed** to the recipients of credit against a **document** containing such details as prescribed in **Rule 54 of CGST Rules, 2017**.
- The amount of the credit **distributed** shall **not exceed** the amount of credit **available for distribution**;
- The credit of tax paid on **input services attributable to a recipient** of credit shall be distributed **only to that recipient** (having the same Permanent Account Number as that of the Input Service Distributor)
- 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.
- 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**.

Notes: -

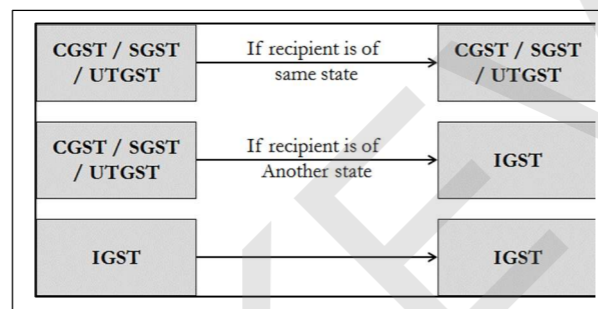
- "Turnover in Relevant period" means the following: -Turnover for preceding year;

If above is not available then the last quarter for which details of such turnover of all the recipients are available,
If above is also not available previous to the month during which credit is to be distributed.
- Turnover means taxable goods as well as goods not taxable (exempt) under this Act reduced by excise duty & VAT levied (**As amended by CGST Amendment Act, 2018**)
- ISD has to file GSTR – 6 on or before 13th of every month showing input tax credit distributed to recipient & details of credit notes / debit notes issued to recipient.

(B) Manner of Distribution (R. 39 of CGST Rules)

- ISD shall distribute input tax by below the formula to a recipient: -
 $C_1 = (t_1 \div T) \times C$ where,
"C" is the amount of credit to be distributed,
"t₁" is the turnover in state of recipient during relevant period;
"T" is the aggregate of the turnover during relevant period for all recipients to whom credit is attributable.

2) Distribution of Credit: -



- 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.
- ISD shall separately distribute the amount of eligible ITC & ineligible ITC [*ineligible under the provisions of 17(5) of CGST Act*]
- ISD to distribute to **ALL RECIPIENTS** irrespective of being registered or not, of providing exempt supply or not.
- Tax credit of **CGST, SGST / UTGST, IGST shall be distributed separately** in the document as per Rule 54 / of CGST Rules, 2017.

(If ISD is Banking Co., or Financial Institution or NBFC, document for distributing credit may not be serially numbered)

Further ISD credit note and debit note shall be issued in same proportion in which credit was distributed to recipient & shall be reported in GSTR 6. ITC of IGST shall be distributed as IGST only (*cannot be distributed as CGST / SGST, UTGST*)

Do it NOW. Sometimes LATER becomes NEVER."

Input Tax Credit (S. 16, 17, 18, 20 of CGST Act; R 38, 39, 40, 42, 43, 44, 45 of CGST Rules) (4/5)

Clarification in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules [Circular 133/2019 – Circular dated 23rd March, 2020]

Circular intends to clear doubts in regards to section 18(3) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act) and Rule 41(1) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) in the context of business reorganization.

Issue 1: In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that 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. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.

Clarification: - If a company is demerging its part of assets of unit in one state, unutilised ITC of that state shall be transferred (to resultant company) in the ratio of assets Transferred pertaining to that state to total assets of that state (not total assets at PAN India Level)

Example: - A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crores, while its assets in State of M.P. and U.P are Rs 60 crores and Rs 40 crores respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crores are transferred to company ABC in State of M.P, while assets amounting to Rs 10 crores only are transferred to ABC in State of U.P. (Total assets amounting to Rs 40 crores at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e. 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e. 10/40 = 0.25.

Issue 2: - Is the transferor required to file FORM GST ITC – 02 in all States where it is registered? Formula is applicable to which type of re-organisations

Clarification: - No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

The formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities even if the proviso to rule 41 (1) of the CGST Rules explicitly mentions 'demerger'.

Issue: - Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess?

No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.

Illustration: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakhs and 10 lakhs respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakhs.

Issue: - How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC-02 by the transferor?

The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under sub-rule (1) of rule 41 of the CGST Rules [refer above issue]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head. This is shown in the illustration below: -

| State | Asset Ratio of Transferee | Tax Heads | ITC balance of Transferor (pre-apportionment) as on the date of filing FORM GST ITC-02) | Total amount of ITC transferred to the Transferee under FORM GST ITC-02 (at discretion) | ITC balance of Transferor (post-apportionment) after filing of FORM GST ITC-02 [Col (4) – Col (5)] |
|---------|---------------------------|-----------|---|---|--|
| Delhi | 70% | CGST | 10,00,000 | 10,00,000 | - |
| | | SGST | 10,00,000 | 10,00,000 | - |
| | | IGST | 30,00,000 | 15,00,000 | 15,00,000 |
| | | Total | 50,00,000 | 35,00,000 | 15,00,000 |
| Haryana | 40% | CGST | 25,00,000 | 3,00,000 | 22,00,000 |
| | | SGST | 25,00,000 | 5,00,000 | 20,00,000 |
| | | IGST | 20,00,000 | 20,00,000 | - |
| | | Total | 70,00,000 | 28,00,000 | 42,00,000 |

Relevant Date: - for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.

Out of Box Thinking Points: -

- 1. Time-Limit to avail ITC in case of Debit Notes: -** There is no time-limit to issue debit note. However, it would be important to note that the due date for availing credit of debit notes, it is linked to the financial year to which invoice relating to such debit note pertains to and not the financial year in which the debit note has been issued.
- 2. Availment of ITC by Taxable Person: -** ITC can be availed by registered person (not taxable person), but tax is payable by taxable person (which includes regd. person). If registration is applied and obtained within 30 days from turnover crossing exemption limit, the effective date of registration will be date on which he was liable to be registered. Accordingly, taxable person can avail ITC for the period starting from date on which turnover crossed the exemption limit till date on which registration was granted (provided regn is obtained w/i 30 days).
- 3. Blocked Credit u/s 17(5)(i): -** Section 74 states that payment of taxes in a situation where taxes is not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of "fraud or willful misstatement or suppression of facts". If the supplier is making payment of taxes under forward charge due to the aforesaid reasons, no input tax credit will be available to the recipient. In case of reverse charge, if the recipient is making payment of taxes under this section, even the recipient will not be allowed to avail input tax credit.

Further, if supplier is issuing tax invoice to recover the amount from recipient, he shall state on face of invoice "INPUT TAX CREDIT INADMISSIBLE" [Rule 53(3) of CGST Rules]
- 4. Payment within 180 days: -** It is not necessary that payment shall be made only by way of money, payment can also be made through BOOK ADJUSTMENT. Thus, if dues are settled vide a book adjustment entry, credit cannot be denied for non-payment within 180 days.
- 5. ITC on supplies made to fulfil CSR obligations under Companies Act: -** ITC will not be available.

Input Tax Credit (S. 16, 17, 18, 20 of CGST Act; R 38, 39, 40, 42, 43, 44, 45 of CGST Rules) (5/5)

Practice Question on Utilisation of Input Tax Credit

Mr. Aman has following balances he requests you to figure out what is the net liability to be discharged by him in cash for payment of GST.

| Particulars | IGST | CGST | SGST |
|--------------------------------|--------|--------|--------|
| Opening Cash Ledger Balances | 5,000 | 8300 | 8300 |
| Opening Credit Ledger Balances | 12,000 | 7,300 | 7,300 |
| Current Month ITC | 57,000 | 67,000 | 67,000 |
| Output Tax Liability | 63,600 | 84,400 | 84,400 |

Further Mr. Aman gives following details.

1. He availed legal services from his brother for business matters. Being his brother, he didn't charge any consideration. The value of similar service is 1,00,000\$ @ Rs. 64 per dollar. [His brother is well settled in US and earns good (independent)]
2. Mr. Aman wishes to pay CGST liability prior to SGST liability
3. The credit of RCM liability (if any) shall be taken in current month only.

Please compute GST Liability / Credit Balance / Cash Ledger Balance (if any).

Solution: -

| Tax | IGST | CGST | SGST | TOTAL |
|--|----------|----------|----------|--------|
| Output Tax Liability | 63,600 | 84400 | 84400 | - |
| (-) ITC | | | | |
| IGST | (63,600) | (5,400) | - | 69,000 |
| CGST | - | (74,300) | X | 74,300 |
| SGST | - | X | (74,300) | 74,300 |
| Liability to be discharged | 0 | 4,700 | 10,100 | |
| (-) Cash Ledger Balances | 0 | (4,700) | (8,300) | |
| Final Liability to be discharged in cash | 0 | 0 | 1,800 | |

Notes: -

- 1) Import of services from related party without consideration in furtherance of business attracts tax under reverse charge mechanism. However, independent brother is not a family member thus he is not a related person. Thus, reverse charge will not be attracted [Schedule I Para 4 r/w S. 2(49) of CGST Act]

Consideration is quid pro quo in a contract and price is the consideration expressed in monetary terms. **GST will be levied on value of supply of goods & services.** In this chapter we will learn how to derive at value of supply, what shall be added/subtracted in computing value of supply, & provisions for different persons.

1) Value of Supply (VOS) (when Parties are unrelated & price is sole consideration) S. 15 of CGST Act

This section is applicable only when below conditions are **CUMULATIVELY SATISFIED**:-

- (i) Supplier & recipient are not related persons; **AND**
- (ii) Price is only sole consideration

This means if (i) & (ii) are satisfied, Value of supply is **transaction value i.e. price actually paid / payable in respect of supply.** If any of condition as stated in (i) / (ii) is not satisfied we value the supply as per CGST Rules, 2017

Inclusions in Value of Supply [S. 15(2) of CGST]

- a) Any **taxes, duties, cesses, fees** and charges levied **other than GST & GST Compensation Cess** if separately charged.
- 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** charged by the supplier to the recipient of a supply and any amount charged by the supplier for supply **at the time of, or before delivery** of goods or supply of services; (e.g. commission, packing, freight etc)
- d) **Interest or late fee or penalty for delayed** payment of any **consideration** for any supply; and,
- e) **Subsidies** directly linked to the price **excluding** subsidies provided by the **CG & SG**

Notes:-

- 1) **TCS** shall **not be includible** in value of supply as per Circular 76/50/2018.
- 2) Time of Supply for point (d) is receipt of consideration & value of supply shall generally be considered as inclusive of taxes.
- 3) While computing value of supply for **component manufacturer**, value of **Free of Cost Moulds & Dies** supplied by **Original Equipment Manufacturer** shall **not be added**. However, if provided **under obligation**, only **amortised cost** shall be added. (Circular 47/21/2018-GST)
- 4) If **Free-issue-material** provided by client to contractor is **in scope of client** (as per contract) then **not be added**, otherwise to be added as per 15(2)(b) above.
- 5) **S. 15(2)(b)** is an **exception to payment** of invoice value **within 180 days to supplier**. (refer ITC chapter for more details)

Exclusions in Value of Supply [S. 15(3) of CGST]

- (a) **Pre-Supply Discounts:-**
Pre-supply discounts to be reduced from Value of Supply only if:-
 - **Given before or at the time of supply;**
 - **Shown in Invoice separately.**
- **Post-Supply Discounts:-**
Post supply discounts can be reduced on satisfaction of below 3 conditions.
 - Discount is established in terms of an **agreement** entered into at or before the time of such supply
 - Specifically **linked** to relevant invoices; and
 - **ITC** as is attributable to the discount has been **reversed by the recipient** of the supply.

Notes:-

- 1) Generally, **Cash Discounts** are **not reduced** from Value of Supply, only **trade discounts** are **deductible**.
- 2) **Quantity discounts** are those that are aimed at reducing the price of each supply on the condition that a certain quantity of stocks need to be exhausted within a specified duration of time. They are allowed to be **reduced if it satisfies post-supply discount conditions**.
- 3) **Buy one get one free Scheme:-**
Value of one product which is being purchased is **value of supply itself**. Further it will not call for reversal of ITC on free supplies (Discussed in ITC Chapter)
- 4) The amount of **cashback offered** is **never mentioned on invoice** as the amount to be collected from the customer is full price of the product and not after reducing cashback. The amount collected from the customer (before cashback) shall be the entire price of the product. Hence, the amount of cashback is just promotional expenses of the supplier and has **no impact of reducing the GST liability**.

Value of Supply (S. 15 r/w Rule 27 to 35 of CGST Rules) (1/2)

2) Value of Supply (VOS) (applicable when parties related or price is not the sole consideration wholly or partially) Rule 27 to Rule 31 r/w Section 15(4) of CGST

- Rule 27: - Consideration not wholly in money
- Rule 28: - Supply between related persons or distinct persons (same PAN) other than through Agent
- Rule 29: - Supply between principal & agent
- Rule 30: - Value of supply based on cost – 110% of Cost of Supply
- Rule 31: - Residual method for determination of value of supply of goods or services or both (*reasonable means in line with general principles of S. 15 of CGST*)

The following points from (i) to (v) in Table shall be applied in below order only meaning thereby if (i) is not available then move on to (ii), if (i) & (ii) not available then (iii) & so on.

| Parameter | Rule 27 | Rule 28 | Rule 29 |
|--|---------|---------|----------------|
| i) Open Market Value | ✓ | ✓ | ✓ |
| ii) Consideration in Money + Non-monetary consideration | ✓ | X | X |
| iii) Value of like kind and quality | ✓ | ✓ | X |
| iv) Rule 30 (110% of Cost of Supply) | ✓ | ✓ | (Refer Note 2) |
| v) Rule 31 (Residual) (Service provider can directly go for Rule 31 without applying Rule 30) | ✓ | ✓ | (Refer Note 2) |
| At the option of supplier, 90% of the price charged for goods of like kind and quality by recipient to his unrelated customer (For R. 28 this is applicable if goods are further supplied as such by recipient. For R. 29 it is applicable without "as such" restriction. (Nevertheless, agent always sells as such) | X | ✓ | ✓ |
| If recipient Eligible for Full ITC, any value in invoice is VOS. | X | ✓ | X |

Notes:-

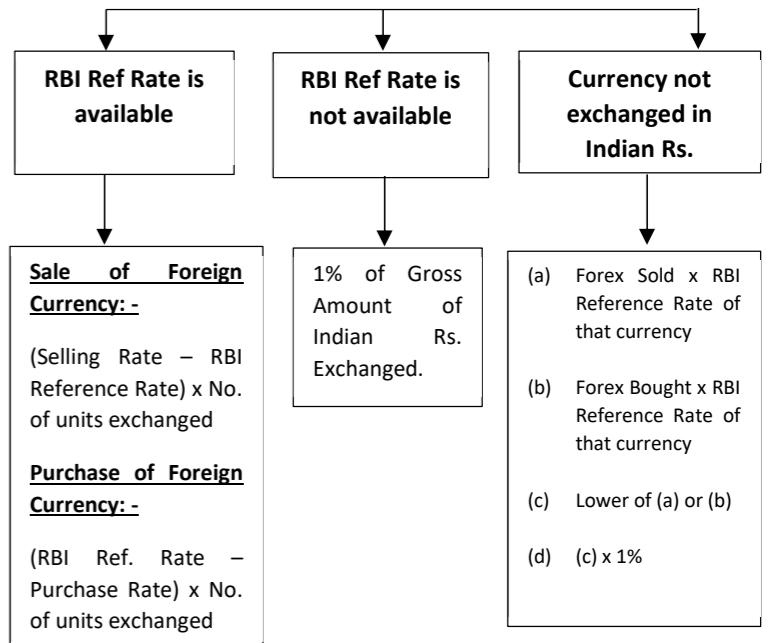
- 1) Open market value is the 'full value in money payable by an unrelated person as its sole consideration at the same time as the supply. OMV is not comparable price to unrelated customer.
- 2) For the purpose of Rule 29 of CGST Rules, 2017; if open market value is not available then at the option of supplier, one can go for 90% option. **If both these parameters are not available then Rule 30 & 31 shall be applied in order.**
- 3) Let us understand Sum of consideration in money & non-monetary (when OMV not available) through an example:-
An old antique art of work is sold against which consideration is partly in the form of money of Rs. 20,000 and partly in the form of a new furniture whose value known at the time of supply is Rs. 35,000. Then the value for the purpose of GST will be the monetary consideration combined with the equivalent money value of the new furniture i.e. Rs. 55,000.
- 4) Del-credere Agent (DCA) is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. DCA Guarantees payment to supplier. Following scenarios are pertinent with respect to advance credit given to customer to enable him make payment to principal. These situations have been clarified vide **Circular No. 73/47/2018-GST dated 05-11-2018**:-
 - (a) **If DCA is Agent in terms of Para 3 of Schedule I i.e. Agent issues invoice in his own name:-**
Interest charged by DCA to customer would be **includible in value of goods** supplied by **DCA to recipient** in terms of Sec 15(2)(d). (*The advance 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 accordingly int is added*)
 - (b) **If DCA is not the agent in terms of Para 3 of Schedule I i.e. Agent issues inv. in name of principal:**
Interest charged by DCA to customer is an **independent supply & shall not be added** in VOS of goods. Further, such **interest is exempt** in terms of notification 12/2017- CTR.

By: CA Keval Mota

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3) Valuation in Special Cases [R. 32]

(1) Purchase / Sale of Foreign incl. Money Changing [R. 32(2)(a)]



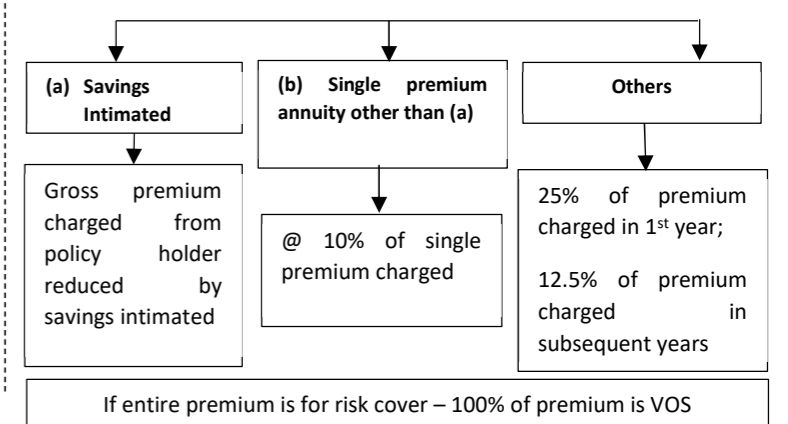
(2) Value of Supply for money changing business (optional) [R. 32(2)(b)]

| For an Amount (Rs.) | Value of Supply (Not Tax) |
|-------------------------|--|
| 1) Upto 1,00,000 | 1% of Gross Amount Exchanged or Rs. 250 higher (i.e. minimum Rs. 250) |
| 2) 1,00,001 – 10,00,000 | Rs. 1000 + 0.5% of Gross Amount Exchanged (in excess of Rs. 1,00,000) |
| 3) 10,00,001 & above | Rs. 5500 + 0.1% of Gross Amount Exchanged (in excess of Rs. 10,00,000) or Rs. 60,000/- whichever is lower. (i.e. maximum Rs. 60,000) |

Option shall not be withdrawn during financial year

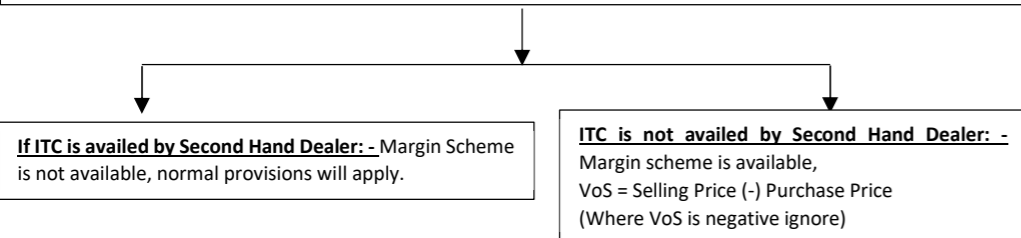
Example:- If Rs. 2,54,00,000/- are converted then Value of Supply will be Rs. 29,900/- (Hint – Upto Rs. 10,00,000 = Rs. 5,500, for more than Rs. 10,00,000/-, i.e. 2,44,00,000 x 0.1% = 24,400 or 60,000 w.e. is lower)

(3) Value of Supply for Life Insurance business [R. 32(4)]



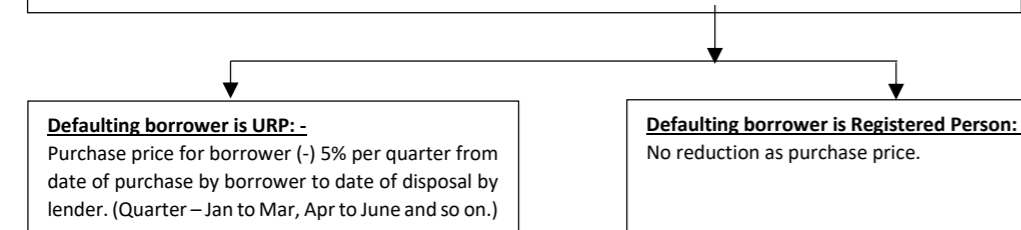
(4) Margin Scheme under GST [R. 32(5) of CGST Rules, 2017]

Normally GST is charged on the transaction value of the goods. However, in respect of second-hand goods as such (minor processing & repairs are allowed), 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.



Goods Repossession (For lenders repossessing from defaulting borrower & selling)

VoS for Lender: - Selling Price (-) Purchase Price



Very Imp Note: - Margin Scheme is available even if dealer is supplying inter-state supplies (Rajasthan AAR – Shambhu Traders Private Limited)

5) R. 32 (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.

6) R. 32 (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.

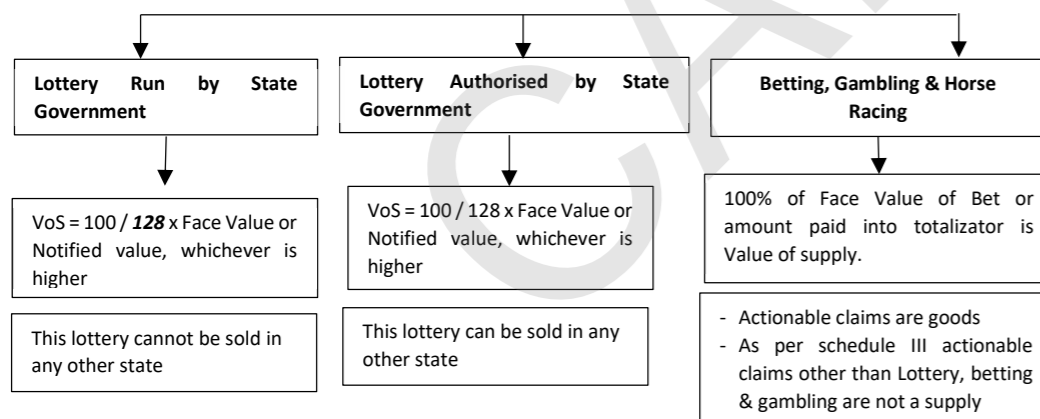
7) R. 32(3): - Air Travel Agent: -

The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent

In case of Domestic Bookings: - Basic Fare x 5%
In case of International Bookings: - Basic Fare x 10%

Basic fare means fare on which commission is normally paid to the air travel agent by the airlines.

Rule 31A: - VOS in case of Lottery Tickets, Betting, Gambling & Horse Racing



Value of Supply (S. 15 r/w Rule 27 to 35 of CGST Rules) (2/2)

(4) Pure Agent (R. 33 of CGST Rules)

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- **[CODE: - ASA & CIT(A)]**

- 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. **(A)**
- 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, **(S)**
- 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. **(A)**

Pure Agent means: -

- 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; **(C)**
- 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; **(T)**
- c) Does **not use for his own interest** such goods or services so procured; **(I)** 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. **(A)**

Examples of Pure Agent are: -

- Port fees, Port charges, Custom duty, dock dues, transport charges etc. paid by Customs Broker on behalf of owner of goods.
- Expenses incurred by C& F agent and reimbursed by principal such as freight, godown charges.

(5) Rate of Exchange (R. 34 of CGST Rules)

For Import of Goods: -

Rate of exchange shall be as per section 14 of the Customs Act, 1962 **on the date of time of supply of such goods in terms of section 12 of CGST Act.**

For Import of Services: -

Rate of exchange shall be as per the **generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of CGST Act.**

(6) Price cum Tax (R. 35 of CGST Rules)

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-

(Example: - Supplier forgets to charge & recover tax from customer, he has to pay as per below. Further, Interest, penalty for delayed consideration shall be generally considered as inclusive of tax.)

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 %)

OUT OF BOX THINKING POINTS

1. Special Discussion on Warranty Contracts involving Dealership: -

Let us first try and understand the nature of transaction between the parties by taking an example.

Mr. Rahul buys Laptop from Dream Machines (Maharashtra based) an authorised dealer of HP. He buys Laptop of Rs. 40,000 (incl. GST) which has warranty of 1 year for other than physical damage. Mr. Rahul uses the laptop for 4 months and finds that its hard disk has been crashed. He approaches Dream Machines and get it repaired at free of cost since the laptop was in warranty period. Dream Machines installs new hard-disk from its inventory. Let us understand taxability of same: -

Transaction between HP & Rahul: - The price for the replacement of Hard-disk is built into the price of the Laptop originally supplied and therefore tax has already been paid on such supply by HP.

Transaction between Dream Machine & HP: - Hard-disk is replaced at first instance by Dream Machines. Thus, Dream Machine "delivers" the part to customer but "supplies" it to HP. Accordingly, HP will issue a credit note to Dream Machine.

2. For the purpose of rule 28, it is stated that any value declared in invoice value shall be value of supply. However, if value is declared Nil then ITC is not available to supplier. Thus, some nominal value shall be declared.

3. In case of Margin scheme, the problem which the supplier face is disclosure of his purchase price. GST is to be charged on margin, accordingly purchase price would be indirectly disclosed to seller.

4. Some examples to understand concepts: -

Q) Mrs. Jaya purchases a Samsung television set costing Rs. 85,000 from Giriya's, in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept Rs. 78,000 instead of his quote of Rs. 81,000, as he would still be in a profitable position (the old TV can be sold for Rs. 8,000).

Ans. As per section 15(4) r/w Rule 27(a) of Central Goods and Service Tax Rules, Where the price is not the sole consideration for the supply, the 'open market value' would be the value of the supply. Therefore, Rs. 85,000 would be the value of the supply.

Q) Mr. Mohan located in Manipal purchases 10,000 Hero ink pens worth Rs. 4,00,000 from Lekhana Wholesalers located in Bhopal. Mr. Mohan's wife is an employee in Lekhana Wholesalers. The price of each Hero pen in the open market is Rs. 52. The supplier additionally charges Rs. 5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. Mohan and Lekhana Wholesalers would not be treated as related persons merely because the spouse of the recipient is an employee of the supplier, although such spouse and the supplier would be treated as related persons. Therefore, the transaction value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: Rs. 4,05,000 (i.e., 4,00,000 + 5,000).

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Registration under GST (S. 22,23,24 of CGST Act, 2017 r/w Rules) (1/3)

(1) Normal Registration (S. 22 of CGST Act)

Every **supplier** shall be liable to be registered under GST Act in the State or Union territory, from where he makes a taxable supply of goods or services or both, if his **aggregate turnover** in a financial year **exceeds Rs. 20 Lakhs / 10 Lakhs** in case of Special Category States (TNMM – Tripura, Nagaland, Manipur, Mizoram)

Notes: -

- It is deemed that person is making supplies from a state, if he has place of business or fixed establishment in a state.
- Aggregate Turnover (ATO)** (to be calculated on all India PAN Basis) [S. 2(6) of CGST Act, 2017] (Example – If a person has 2 units in 2 different states then both unit's Turnover shall be added to arrive at aggregate turnover)

| Include | Exclude |
|---|--------------------------------|
| All Taxable Supplies (Excl. RCM Inward) | CGST, SGST/UTGST, IGST & Cess. |
| Exempt Supplies | |
| Export of goods or services | |
| Inter-state Supplies | |

Further, for calculating the threshold limit, the **turnover shall include all supplies** made by the taxable person, whether on his own account or made on behalf of all his principals.

Further, **supply of goods by a registered job worker**, after completion of job work, shall be **treated as the supply of goods by the "principal"** referred to in section 143 of CGST Act. The value of such goods shall not be included in the aggregate turnover of the registered job worker. Only job-work charges shall be the T.O of job-worker.

- Analysis of words "from where he makes taxable supplies": -

Case 1: - MH & GJ are engaged in Taxable supplies
(Aggregate TO = Rs. 21 Lakhs i.e. > 20L)

| TURNOVER | | Registration Requirement | |
|-----------|----------|--------------------------|----|
| MH | GJ | MH | GJ |
| 16,00,000 | 5,00,000 | ✓ | ✓ |

Case 2: - MH – Taxable Supplies & GJ – 100% Exempt Supplies
(Aggregate TO = Rs. 21 Lakhs i.e. > 20L)

| TURNOVER | | Registration Requirement | |
|-----------|----------|--------------------------|----|
| MH | GJ | MH | GJ |
| 16,00,000 | 5,00,000 | ✓ | X |

- Analysis of Threshold Limit of registration (MH & Tripura – Taxable Supplies)

| TURNOVER | | Registration Requirement | |
|----------|----------|--------------------------|---------------|
| MH | TRIPURA | MH | TRIPURA (SCS) |
| 9,00,000 | 3,00,000 | ✓ | ✓ |

Since the **entity has presence in special category State**, the **threshold limit** is only **Rs.10,00,000**. Since the entity crosses such limit, Registration will be required in both the states if taxable supply is made from such states.

- No Centralised Registration** under GST Regime. **Its State wise registration**. However, a registered person may obtain more than 1 registration in same state for: -
 - Different business verticals or,
 - Multiple place of business in same state as per R. 11 of CGST Rules, 2017 r/w NN 03/2019 – CT dated 29th January, 2019 w.e.f. 01st February, 2019.

If regd. person is **paying tax under section 9** for any place of business, such person **cannot pay tax under composition scheme** for any of his **other places of business / other registrations under same PAN**.

- It is pertinent to note unlike composition scheme here there is no mention of fact to check "preceding financial year turnover".

(2) Registration for Exclusive Supplier of Goods (Notification 10/2019 – CT dtd. 7th March, 2019)

Any person, who is engaged in **EXCLUSIVE SUPPLY OF GOODS*** and whose aggregate turnover in the financial year does **not exceed Rs. 40 Lakh, except, -**

- Persons required to take **compulsory registration** under section 24 of CGST Act (Refer Part 6 of chapter)
- Persons engaged in making supplies of the **Tobacco, ice-cream & Pan-masala** (unlike composition scheme not only manufacturing but also trading is restricted)
- Persons engaged in making **intra-State supplies** in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; (**M³NS T²APU**). (It does not mean inter-state supplier from these states can avail benefit of this notification as Inter-state suppliers of goods are compulsorily liable for registration (S.24) & covered in point (a) above.
- Persons exercising option of **voluntary registration**, or such registered persons who intend to continue with their registration. (Optional scheme)

shall **not be liable to obtain registration** under GST.

*A person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of service by way of extending deposits, loans or advances where consideration is represented by way of interest or discount.

(3) Transfer of Business [S. 22(3) of CGST Act, 2017]

When **business is transferred as a going concern**, transferee shall be liable to be **registered w.e.f. date of such transfer or succession**.

- To **transfer unutilised ITC, GST-ITC 02** to be filled & certified by CA, CMA.
- Transfer of business as going concern is exempt** supply (NN 12/2017-CTR)

(4) Transfer in case of Amalgamation / demerger [S. 22(4) of CGST Act, 2017 r/w R. 41 of CGST Rules]

When transfer is in **nature of amalgamation or demerger** pursuant to an order of High court or Tribunal, transferee shall be liable to be **registered w.e.f. date on which the Registrar of company issues certificate of registration** giving effect to such order of High Court or Tribunal.

To **transfer unutilised ITC, GST-ITC 02** to be filled & certified by CA, CMA. Further, ITC to be apportioned on the basis of value of assets in case of demerger.

(5) Person Exempt from taking Registration [S. 23 of CGST]

- Agriculturist**, to the extent of supply of produce out of cultivation of land. (Not to be included while computing threshold)
- Person making **exclusively exempt supplies** or not-taxable supplies.
- Inter-state service provider upto Rs. 20 lakhs** (Notification 10/2017 – CT)
- Exclusive supplier** of supplies taxable under **Reverse charge**
- Categories of **casual taxable persons** & other persons making inter-state taxable supplies of **handicraft goods and handmade shawls & stoles** etc. where the aggregate **turnover does not exceed Rs. 20 Lakhs in a year (Rs. 10 Lakhs in SCS)** (Mandatory e-way bill).
- Job-workers** engaged in **making inter-State supply** of services to a registered person **except** those who are **liable to be registered** under section 22(1) of the CGST Act, 2017 or persons opting for **voluntary registration** or persons engaged in making **supply of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles.** (NN 07/2017 – IT)
- Persons **providing services through an e-commerce** who is **required to collect tax at source**, provided their **aggregate turnover does not exceed Rs. 20 lakhs** (Rs. 10 lakhs in SCS) (for person supplying goods through ECO who is liable to collect TCS – compulsory registration)
- Commission Agent** making supplies on **behalf of agriculturist** (a non-taxable person)
- Exclusive supplier of goods** having **turnover not exceeding Rs. 40 lakhs** & complying with Part (2) of this chapter.

(6) Compulsory Registration [S. 24 of CGST Act]

- Interstate supplier of goods (of any amount) & inter-state supplier of service** having **ATO exceeding Rs. 20 lakhs / Rs. 10 Lakhs** in SCS are liable to take compulsory registration.
- Casual taxable person** not having fixed place of business in state. (**other than** casual taxable persons making taxable supplies of **handicraft goods** if the aggregate turnover does not exceed Rs. 20 lakhs (Notification No. 56/2018-Central Tax, dated 23.10.2018)
- Persons required to **pay tax under reverse charge (Specified recipient)**
- Persons who are required to pay tax u/s **9(5) of CGST Act / 5(5) of IGST Act, 2017 (i.e. electronic commerce operator)** (As per 9(5) of CGST Act/ 5(5) of IGST Act for specified services, viz. Passenger Transportation Service, Hotel Accommodation & Utility service provider where such supplier is unregistered, ECO shall be liable to pay tax as if he is the person supplying such services)
- Every **ECO** who is **required to collect tax at source under section 52**
- Non-resident taxable persons** making taxable supply
- Persons who are required to **deduct tax under section 51** (Tax Deduction at Source) i.e. Government Agencies etc. (to be learnt in Payment of Taxes chapter)
- Persons who supply goods or services or both on behalf of other registered taxable persons whether as an **agent** or otherwise **where tax invoice is issued by such agent** (S. 23 read with Circular 57/13/2018)
- Input Service Distributors**
- Persons supplying
 - Goods (of any amount) through ECO or**
 - Services of value more than Rs. 20 Lakhs through ECO** who is required to collect tax at source u/s 52 of CGST Act.
- Every person supplying online information and database access or retrieval services (**OIDAR**) from a place outside India to a person in India, other than a registered taxable person. (when provided to registered person RCM applies)

(7) Registration Procedure under GST (Rule 9 CGST Rules)

- Apply for registration within 30 days of becoming liable** to be registered (i.e. when Aggregate Turnover exceeds Rs. 20L or Rs. 10L in SCS (other than voluntary registration)
 - Declare PAN, Mobile No. & Email ID** (other than NR taxable person, TDS Deductor, TCS Collector, NR OIDAR Service Provider) (OTP will be received & verified)
 - Temporary reference number (TRN) will be generated & submit the application in GST REG -01. **Acknowledgment** will be received in **GST REG- 02**.
 - If **Application is proper**, P.O. grant Registration Certificate (RC) **within 3 working days from submission of application. RC is received in GST REG 06**
 - If **Application is deficient** E – notice will be sent to person **within 3 working days from submission of application**, (otherwise deemed registration) which has to be replied by tax payer within 7 working days from receipt of notice.
 - If **satisfactory reply is received** within time frame, **grant registration within 7 working days** from date of receipt of clarification.
 - If **un satisfactory reply or no reply** is received, **reject the application within 7 working days from receipt of clarification. (If no action is taken by officer within deemed to be regd.)**
 - Bank Account details to be furnished within 45 days of grant of registration or due date to furnish return u/s 39 whichever is earlier. (R. 10A)
- Important Points for CTP (Casual Taxable person) & Non-resident Taxable person)**
- CTP & NRTP does not have fixed place of business** & occasionally undertakes transaction. (CTP has PAN, NRTP does not have PAN)
 - Application for Registration for CTP – **GST REG 01 & NRTP – GST REG 09**
 - CTP** undertakes transactions for **furtherance in business, NRTP may or may not** do it for furtherance in business.
 - CTP can avail all ITC** on inward supplies. **NRTP can avail ITC only of Imports.**
 - CTP / NRTP shall apply for registration, 5 days prior to commencement of business.** Further, he can make taxable supply only after receipt of RC.
 - Advance Tax** shall be deposited by CTP / NRTP **equivalent to estimated liability**
 - Registration for CTP/NRTP is valid only for 90 days (extension of 90 days is possible only once by proper officer on sufficient cause).**
 - CTP shall file GSTR 1, 2, 3, 3B; NRTP shall file GSTR – 5.

(8) Amendment in GST Registration (S. 28 of CGST Act r/w Rule 19 of CGST Rules)

(A) Amendment in Core Fields (Legal Name, Address, etc)

- Apply for Amendment within 15 days of change** (GST REG – 14)
- Officer will approve** such change on common portal **within 15 working days** of receipt. **If not approved** within 15 days – **Deemed Approval** (order will be issued in GST REG 15)
- If **officer is of the opinion** that application shall be **rejected, SCN shall be issued seeking replies within 7 working days** of service of notice.
- If **Satisfactory reply is received** – Officer to **approve within next 7 days** otherwise, Deemed Approval.
- If **satisfactory reply is not received or no reply is received** – Officer will **reject** application in GST REG 05.

(B) Amendment in Non – Core Fields (Email ID, Mob No. etc)

- Can be amended **online without approval of officer.**

Notes: -

- Change will be effective on all registrations with Same PAN.**
- In case of **change of PAN – Fresh registration** to be obtained.

Retrospective amendment can only be made on commissioner's order

(9) Cancellation of GST Registration (S. 29 of CGST Act r/w Rule 21 of CGST Rules)

(A) Cancellation – Suo Motu by Proper officer or on application by Regd. Person

- Circumstances under which it can be cancelled – Business discontinued, transferred, death of proprietor, demerged, change in constitution, taxable person (other than voluntarily registered person) no longer liable to be regd.

(B) Cancellation – by proper officer (Circumstances)

- Does **not conduct business** from declared Place of business
- Issues Tax Invoice, BOS without supply** of goods / services, Indulges in **Anti-profiteering**,
- Composition person not filing returns for 3 consecutive tax periods.**
- Other than composition person not filing return for consecutive 6 months**
- Not commenced business within 6 months from date of registration.**
- Fraudulently obtained registration.**
- Not complied with Rule 10A (Submission of Bank Details)**

Notes: -

- When a person applies for cancellation of registration, he was still liable to file returns (NIL returns). However, w.e.f. **1st Feb 2019 vide CGST Amendment Act, 2018**, officer may **suspend the registration** if cancellation request is pending, meaning **thereby regd. Person would not be required to file returns for that period & shall not make any taxable supplies (Rule 21A)**, i.e. he shall not issue tax invoice & charge any tax
- Person would be **liable to tax (if due)** even he has applied for registration.
- A person while **cancelling GST registration shall reverse ITC on stock. For Capital goods ITC on CG shall be reversed on pro-rata basis for remaining useful life in months** taking useful life as 5 years or tax on transaction value w.e. is higher.
- Voluntary registration can be cancelled at any time even before expiry of one year from date of registration.**

Procedure for Cancellation of Registration [R. 20 & R. 22 of CGST Rules, 2017]

Cancellation by PO: - (R. 22)

1. Proper officer to issue SCN for cancellation of registration having reason to believe in form GST REG – 17.
2. Regd. person to reply to above SCN w/l 7 working days from service of notice.
3. If above reply is satisfactory, PO to drop proceedings and pass order in form GST REG – 20
4. If a person does not furnish any reply but furnishes all pending returns and make full payment of tax dues along with interest, PO shall drop the proceedings and pass order in form GST REG – 20

Cancellation by Regd. person: - [R. 20 & 22(3)]

1. A **registered person**, (other than a person to whom a registration has been granted under rule 12 or a person to whom a Unique Identity Number has been granted under rule 17), seeking cancellation of his registration u/s 29(1) of CGST Act, shall **electronically submit an application** in FORM GST REG-16, including therein the **details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock** on the date from which the cancellation of registration is sought, liability thereon, the details of the payment, if any, made against such liability and may furnish, along with the application, **relevant documents** in support thereof, at the common portal **within a period of 30 days of the occurrence of the event warranting the cancellation.** (R. 20)
2. If proper officer is satisfied with the submission he shall issue an order in FORM GST REG-19, within a period of 30 days from the date of application submitted, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid u/s 29(5) of CGST Act.

Revocation of Cancellation (S. 30 r/w R. 23)

Revocation means "taking back or withdrawing". Application for revocation means applying to PO to take back cancellation.

To be applied within 30 days of service of cancellation order

Registration cancelled from date of cancellation order

Registration cancelled from retrospective date

- If registration cancelled on A/c of failure to file returns, all such returns shall be filed & dues shall be paid before application.
- Returns from date of cancellation order till date of order of revocation of cancellation shall be filed within 30 days from such order of revocation

- Registered person shall furnish all returns relating to period from the effective date of cancellation of registration (retrospective date) till the date of order of revocation of cancellation of registration within a period of 30 days from the date of order of revocation of cancellation of registration.

Other points

- Opportunity of being heard shall be given by PO before rejecting application for revocation.
- Revocation of cancellation under CGST will be a deemed revocation under SGST and vice-versa.

Registration under GST (S. 22,23,24 of CGST Act, 2017 r/w Rules) (2/3)

Rule 12(1A) for Tax Deductors and Tax Collectors

In GST registration can be taken if a taxable person has place of business in certain state or is having fixed establishment. However, as per rule 12(1A) of CGST Rules, a person who has applies for registration for Tax Deductor or Tax Collector can obtain the same without having place of business / fixed establishment in that state.

He has to mention in **form GST REG 07**

PART A – Name of the State or Union territory where registration is sought (i.e. where there is no place of business).

PART B – Name of State / UT principal place of business is located.

Registration under GST (S. 22,23,24 of CGST Act, 2017 r/w Rules) (3/3)

Special provisions relating to Insolvency Bankruptcy Code

As per provisions of IBC, 2016; an IRP/RP is required to ensure the compliance of GST related provisions of deposit of GST dues & filing returns pertaining to Corporate insolvency resolution process (CIRP) and in respect of dues in arrears pertaining to pre-CIRP period if any. GST Authorities are required to submit the claim to NCLT as operational creditor.

Practically GST portal does not allow to deposit the GST dues and filing of current period pertaining to CIRP period if dues pertaining to pre-CIRP period is pending. There was no such mechanism under GST law where IRP or RP can file GST return and pay tax for CIRP period. With introduction of this procedure, IRP/RP can file GST returns for CIRP period.

Special Procedure under GST for entities undergoing CIRP [Circular 134/04/2020 – GST]

1) Treatment of Pre-CIRP dues: -

The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

2) Should the GST registration of corporate debtor be cancelled? –

It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked.

3) Is IRP/RP liable to file returns of pre-CIRP period? –

No. IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date

4) Should a new registration be taken by the corporate debtor during the CIRP period? - The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within 30 days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No. 11/2020- Central Tax, dated 21.03.2020, he shall take registration within 30 days of issuance of the said notification, with effect from date of his appointment as IRP/RP.

It is clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor.

5) How to file First Return after obtaining new registration? - The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the PERIOD BEGINNING THE DATE ON WHICH IT BECAME LIABLE TO TAKE REGISTRATION TILL THE DATE ON WHICH REGISTRATION HAS BEEN GRANTED.

6) How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020-Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP?

The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of 16(4) of CGST Act i.e. Time-limit to avail ITC and Rule 36(4) of CGST Rules i.e. 10% of eligible ITC for returns not filed by supplier on the basis of GSTR 2A. In terms of the special procedure under section 148 of the CGST Act issued vide notification No. 11/2020 – Central Tax, dated 21st March, 2020. This exception is made only for the first return filed under section 40 of the CGST Act.

7) How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the Notification No. 11/2020 – Central Tax, dated 21.03.2020?

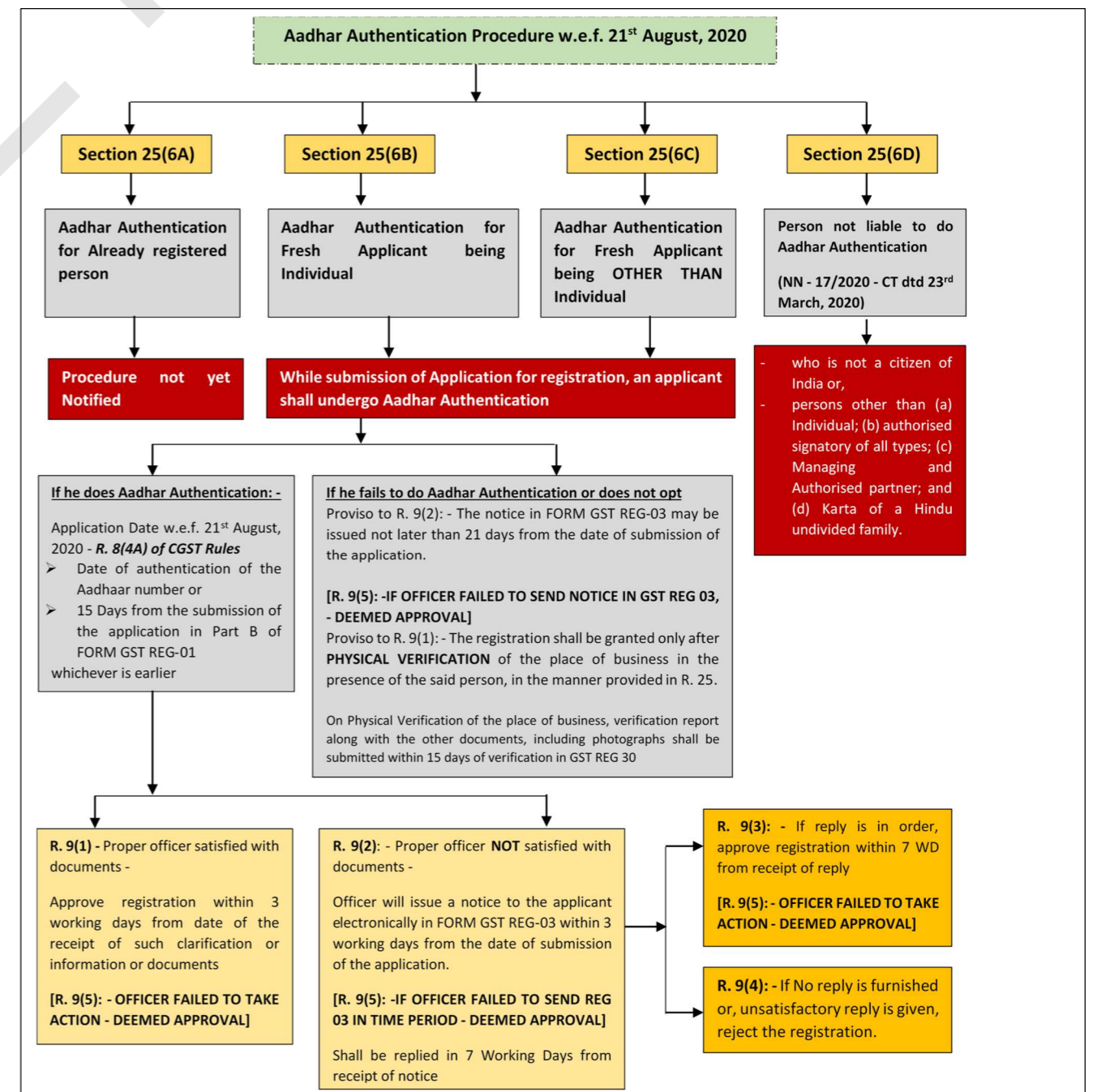
Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of Rule 36(4) of CGST Rules.

8) Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?

Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 i.e. Circular on electronic refund process, stands modified to this extent.

OUT OF BOX THINKING POINTS: -

- In GST regime, the ISD is required to obtain a separate GSTIN other than the ISD registration for discharging such taxes under reverse charge mechanism.
- Person whose entire turnover is comprised of exempt turnover; such person may still be liable to be registered if any of the situations listed in section 24 are applicable.
- Registration not required for inter-state exclusively exempt supplier:** - Section 24 requires persons making any inter-State taxable supply to be compulsorily registered under GST. However, person supplying fully exempt supplies is not liable to be registered under GST. The question here arises whether inter-state exempt supplier has to take registration under GST or not. The answer is NO because section 24 is "notwithstanding anything contained in section 22(1) (not section 23).



(1) Various Documents under GST

| Documents | Key Points |
|--|--|
| Tax Invoice (S. 31 of CGST Act r/w R. 46 of CGST Rules) | <ul style="list-style-type: none"> To be issued by taxable person making taxable supplies of goods & services It shall contain various contents such as name, address, GSTIN of supplier & recipients, consecutive serial no., date, on request of unregistered recipient tax invoice to be issued if value is less than Rs. 50,000 containing name, address & state code, HSN, Description, Quantity, Total value, taxable value, tax, tax rate, POS if inter-state supply, address of delivery if diff from POS, tax payable on reverse charge (Yes/No), & Sign or DSC. (If TO is upto Rs. 1.5 Cr then No HSN is required, TO is more than Rs. 1.5 Cr but upto Rs. 5 Cr – 2 Digit HSN required, More Than Rs. 5 Crores – 4 Digit HSN is required, For Import Exports 8 digits. Time-limit to issue tax invoice has been discussed in Time of supply. When goods are sent for reasons other than supply (Job-work etc.), delivery challan to be issued u/r 55 of CGST Rules Tax Invoice for goods to be issued in triplicate i.e. Original for recipient, duplicate for transporter, & Triplicate for supplier. Tax Invoice for services to be issued in duplicate i.e. Original for recipient, duplicate for supplier. Insurer, Banking Company, Financial Institution and NBFC can issue Consolidated tax invoice for the supply of services made during the month, at the end of the month (Serial No. & Address of recipient are optional particular) Banks, insurers, telecom operators etc. may issue tax invoice for inter-branch transaction before or at the time such supplies were recorded in books or before expiry of quarter during which supply was made. Goods transport agency (GTA) transporting goods by road shall ensure mandatory particulars in addition to rule 46 which are Gross weight of consignment; Name of the Consignor and Consignee; Regn. No. of Vehicle; Details of goods transported; Origin and destination; GSTIN of person liable to pay tax whether as consignor / consignee / GTA. Passenger transport agency – Tax Invoice issued is deemed to be ticket (Serial No. & Address of recipient are optional particular) Where the supply is made on payment of IGST: - “Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax” or; Where the supply is made without payment of IGST: “Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax”. Further, in lieu of the State name & State code, the details of the country of destination would have to be provided. No Tax Invoice / Bill of supply is required if value is below Rs. 200 and recipient is unregistered & do not requires such invoice. (However, he shall raise consolidated tax invoice at end of each day) (w.e.f. 1.09.2019, this benefit is not applicable to supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens. Further, such supplier shall issue electronic ticket which would be deemed to be a tax invoice.) |
| Revised Tax Invoice (S. 31(3)(a) Rule 53 of CGST) | <ul style="list-style-type: none"> A person should apply for registration & obtain registration within 30 days of becoming liable for registration, if he applies & obtains then effective date of registration is the date on which the person became liable for registration. Person can issue revised tax invoice for the period between the date of grant of certificate of registration and the effective date of registration within 1 month from date of registration. |
| Bill of Supply (BOS) (S. 31(3)(c) of CGST Act r/w R. 49 of CGST Rules) | <ul style="list-style-type: none"> To be issued by composition tax payer paying tax under section 10 of the Act or under presumptive levy u/NN 02/2019 – CTR (and shall not charge tax on the bill of supply); or To be issued when supplying exempt goods or services (<i>Exempt supply = Nil Rated + Non-GST + Wholly Exempted</i>) (<i>Amount in BOS is not taxable value</i>). |
| Refund Voucher [S. 31(3)(e) r/w R. 51 of CGST Rules] | <ul style="list-style-type: none"> To be issued while refunding the money which was received in advance for provision of supply but subsequently supply was not made. |
| Payment Voucher [S 31(3)(g) r/w R. 52 of CGST Rules] | <ul style="list-style-type: none"> To be issued while making payment to unregistered person for supplies taxable under u/s 9(4) of CGST / 5(4) of IGST or to person supplying specified service taxable under reverse charge u/s 9(3) of CGST Act or 5(3) of IGST Act. |
| Receipt Voucher (S. 31(3)(d) r/w R. 50 of CGST Rules) | <ul style="list-style-type: none"> To be issued while receipt of advance for supply of services (for receipt of advance for supply of goods GST is not payable on receipt of such advance accordingly refund voucher is not to be issued in this case). If at the time of supply rate of tax & nature of supply is not determinable it can be taken as 18% & Inter-state supply respectively. |
| Self-Invoice [S. 31(3)(f) r/w R. 46] | <ul style="list-style-type: none"> As per S. 31(3)(f) of CGST Act r/w R. 46 of CGST Rules, consolidated tax invoice for every month, to be issued at the end of the month, where the aggregate value of the supplies liable to tax RCM [9(3) / 9(4) of CGST Act & 5(3) / 5(4) of IGST Act] exceeds Rs.5,000. |
| Invoice-cum-Bill of Supply (Rule 46A) | <ul style="list-style-type: none"> 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. |
| ISD Invoice / Credit Note | Discussed in ITC Chapter |
| Tax Invoice / Bill of supply to accompany transport | The 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. |

Documentation & E – way Bill (S. 31 to S. 34, Rule 46 to 55A of CGST Rules, 2017) (1/2)

(2) Credit Note & Debit Note in GST

Credit Notes under GST (Section 34(1) of CGST r/w R. 53)

Meaning: -
(Whenever supplier wants to credit the account of recipient for certain reasons, he issues credit note)
Credit note will be issued by **SUPPLIER** in below cases: -

- Actual value of supply is lower than that stated in the original tax invoice;
- Tax charged in the original tax invoice is higher than that applicable on the supply;
- Goods supplied are returned by the recipient;
- Goods or services supplied are deficient.

Notes: -
Every credit note must be **linked to specific original tax invoice**;
In case of a credit note issued for a discount, the discount must be provided in terms of an agreement entered into before or at the time of supply, as provided in Section 15(2) of the CGST Act (*separately shown on invoice / conditions for post supply discounts shall be complied with*)

Time-limit to issue / declare Credit Note in Return: -
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 (not due date of return for the month of 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.

Manner of Issue of Credit Notes: - (3 Copies for Goods, 2 for Services): -
Earlier supplier has to issue one-to-one credit notes for each original tax invoice, however after CGST Amendment Act, 2018, Supplier can issue either one or more credit notes or debit notes against multiple supplies effected in a financial year (**Consolidated Credit Note, inserted vide CGST Amendment Act, 2018**).

It shall be noted that **if credit note is issued within time limit** as discussed above, **then only adjustment (reduction) of liability would be made**.

Debit Notes under GST (Section 34(3) of CGST r/w R. 53)

Meaning: -
(Whenever supplier wants to charge something from recipient for certain reasons, he issues debit note)
Debit Note will be issued by SUPPLIER in below scenarios: -

- Actual value of supply is higher than that stated in the original tax invoice;
- Tax charged in the original tax invoice is lower than that applicable on the supply
- The debit note needs to be linked to the original tax invoices;
- The debit note contains all the applicable particulars as specified in Rule 53 of the CGST Rules, 2017;
- A debit note issued under Section 74, 129 or 130 would not entitle the recipient to avail credit in respect thereof, and the supplier shall specify prominently, on such debit note the words “INPUT TAX CREDIT NOT ADMISSIBLE”

Time limit to issue Debit Note: -
A debit note may be raised and uploaded subsequently, with no restriction as to the time period for doing so.

Clarification in case of Pharma Sector (Expired Medicines) - Circular 72/46/2018 dated 26th October, 2018

A person returning the time expired goods may treat such returns as below: -

Option 1: - Person returning expired medicines treats as “Fresh Supply”

- Return of time expired drugs / medicines may be treated as **fresh supply** and accordingly, a **person returning** the goods, if registered may **issue tax invoice** for return of such drugs / medicines. Manufacturer accepting the time expired medicines / drugs is entitled to claim the input tax credit of GST mentioned on the tax invoice issued by the registered person returning such goods;
- In case if the **person returning** time expired drugs / medicines is a **composition tax payer, bill of supply may be issued** for supply-returns (*Accordingly no tax would be levied*)
- In case of **unregistered persons**, time expired drugs / medicines can be returned by way of issuing any commercial document **without charging any tax on the same**.
- Further, if such supplier (generally **manufacturer**) **destroys** expired medicine **then tax levied by person returning the goods (not ITC at the time of original procurement) shall be reversed by manufacturer** in accordance with Section 17(5)(h) of CGST Act

Option 2: - Person returning expired medicines treats as “Return of goods”: -

- In this case **person** who is **returning** such expired medicine **will receive a credit note from supplier** (he may be stockist/manufacturer). Further if such credit note is **issued within time-limit** then **supplier can adjust its output tax liability**. However, if **credit note is not issued within time-limit** still a credit note can be issued by supplier but **adjustment of liability cannot be done**.

- Further, if such supplier (generally **manufacturer**) **destroys** expired medicine **then ITC availed by him at the time of purchase shall be reversed by him** in accordance with Section 17(5)(h) of CGST Act (*irrespective of whether goods are received in time or not*)

(3) E – Way Bill under GST (S. 68 r/w Rule 138 of CGST Rules)

E – way bill is a document issued by carrier having **details of shipment of consignment** of goods and details of **consignor & consignee**. E – way Bill helps in monitoring and **tracking movement of goods**. **Section 68** of CGST Act, 2017 mandates to carry prescribed documents by person in charge of conveyance while transporting goods. As per **Rule 138 of CGST Rules** E – way bill is a prescribed document. E – way bill is not dependent on whether supply is inter-state / intra-state it depends on movement of goods.

Person in charge of conveyance shall **carry Tax Invoice / Bill of supply or delivery challan** as the case may be & E – way bill (subject to its applicability), in case of **imported goods copy of bill of entry shall be carried**. [R. 138A (1)] (*Note all the below provisions are of Rule 138 of CGST Rules, 2017 & Press releases, circulars wherever specified*)

1) Every registered person who causes movement of goods of consignment value exceeding Rs. 50,000/- in relation to a supply; or for reasons other than supply; or due to inward supply from an unregistered person shall generate E – way Bill.

Notes: -

- Consignment value** means value as declared u/s 15 of CGST Act i.e. Value of supply in invoice, bill of supply, delivery challan, **including GST component** and shall **exclude** the value of **exempt supply** of goods where the invoice is issued in respect of both exempt and taxable supply of goods. (*CA. Final May, 2019 Old Syllabus*)
- Examples of “reasons other than supply” can be goods sent to job-work.
- When goods are sent **inter-state** to a **job worker**, the **e-way bill shall be generated** under cover of delivery challan either by the principal or the job worker, if registered, **irrespective of the value of the consignment**.
- In case of **Inter-state** transport of **Handicraft goods by a person exempted from obtaining registration**, the **e-way bill shall be generated** by person **irrespective of the value of the consignment**. (*It does NOT mean that in case of intra-state movement for Job work & handicraft goods, EWB has to be generated only if consignment value exceeds Rs. 50,000; we need to check SGST rules for that. However, it is not in syllabus*)

- In case of transportation of goods by aircraft & railways, e-way bill has to be generated by supplier or recipient
- E – way bill generated in one state will be valid in other states as well.
- In “**Bill To - Ship To**” transactions (refer Place of supply chapter), only one E – way bill from supplier (not 3rd person) to recipient is required (*to signify movement of goods*) even if two invoices are involved.

2) E – way bill shall be generated in form **GST-EWB 01** electronically on portal www.ewaybillgst.gov.in. There are **two parts** of GST EWB 01, PART A & PART B. In **Part A recipient details** are to be filled & in **Part B vehicle details** are to be filled (certain exceptions are there).

Notes: -

- E – way bill can be **generated by supplier or recipient or transporter**. Where **multiple consignments** are intended to be transported in one conveyance, **transporter** may indicate the serial number of e-way bills generated and can generate consolidated E – way bill in form **GST EWB – 02**.
- Part A shall be always filled** (except where E – way bill is not required to be generated example – supply of exempt goods, supply of goods upto 20 kms from consignor to weighment bridge etc.) (*Part A details – GSTIN of supplier & recipient, Place of delivery, nature of document, HSN etc.*)
- Part B details (conveyance details) are not to be filled** in 2 cases: -
 - Place of business of the **consignor to transporter** for further transportation is **less than 50 kms**. [3rd Proviso to R. 138(3)] (*consignor to consignee distance shall NOT be seen*)
 - In case where **goods are transferred from one conveyance to another** and distance between place of business of the **transporter** finally to the place of business of the **consignee is less than 50 kms**.
- If consignor fails to generate e-way bill transporter can generate (other than Railways, air & vessel) consolidated E – way bill.

3) **Validity of E – way Bill:** -
(E – way bill is valid for the period from generation upto below specified validity periods. Validity begins when Part B is filled for first time)

| Distance | Validity |
|---|------------------|
| Upto 100 km (20 kms in case of over-dimensional cargo or multimodal shipment in which at least one leg involves transport by ship) | 1 day |
| For every 100 km or part thereof (20 kms in case of over-dimensional cargo or multimodal shipment in which at least one leg involves transport by ship) | 1 additional day |

(*Example if goods are to be moved from Mumbai to Delhi and distance between two is 1484 kms, then E – way bill shall be valid for 15 days meaning thereby in 15 days goods shall be transported otherwise generate again*)

4) 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 within 24 hours of generation**. (*E – way bill verified in transit cannot be cancelled*)

5) The details of e – way bill has to be made available to supplier (if recipient furnished details in E – way Bill), to recipient (if transporter or supplier has furnished details). These persons have to **communicate** their **acceptance or rejection within 72 hours of the details being made available or the time of delivery of goods whichever is earlier**, otherwise it shall be deemed that person has accepted the said details.

6) E – way bill cannot be generated if returns for 2 consecutive periods have not been filed.

7) A person other than a composition person who has not furnished the statement of outward supplies for any two months or quarters, as the case may be. [(c) has been inserted vide NN 75/2019 – CT dated 26th December, 2019] (By this notification, not only consecutive period defaulter but defaulter of any two tax periods would fall under ambit of blocking of E – way Bill.)

E – Invoicing Provisions under GSTPreface: -

The main objective of the step taken by the tax authorities is to enable interoperability across the entire GST ecosystem i.e. an e-invoice generated by one software should be capable of being read by any other software. Basically, through machine readability, an invoice can be uniformly interpreted.

Applicability: -

New sub-rule (4) has been inserted to Rule 48 of the CGST Rules, 2017 for compulsory issuance of e-invoice by REGISTERED PERSON HAVING ANNUAL TURNOVER *in preceding financial years from FY 2017-18 onwards* IN EXCESS OF ~~INR 100 CRORE~~ **500 Crores**. It has to be issued when supply has been made to registered persons *or for export of goods & services*.

It shall be effective from 1st October, 2020. [Notification number 68/2019 dated 13th December, 2019 r/w Notification No. 70/2019 dated 13th December, 2019 extended applicability vide Notification No. 13/2020– Central Tax dated 21st March, 2020]

Non-Applicability: -

- (i) A person who is supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company. [Supplier as per Rule 54(2) of CGST Rules]
- (ii) Goods Transportation Agencies [Supplier as per Rule 54(3) of CGST Rules]
- (iii) Passenger Transportation Service provider (ticket is deemed to be tax invoice) [Supplier as per Rule 54(4) of CGST Rules]
- (iv) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens and issuing an electronic ticket (deemed tax invoice invoice) [Supplier as per Rule 54(4A) of CGST Rules]
- (v) **SEZ units & SEZ developers,**

Provisions relating to QR Code on Tax Invoice [NN. 72/2019 – CT dated 13th December, 2019]

A registered person whose aggregate turnover in a financial year exceeds 500 crore rupees, shall have Quick Response (QR) code. Further, where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

Non-Applicability

- (i) A person who is supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company. [Supplier as per Rule 54(2) of CGST Rules]
- (ii) Goods Transportation Agencies [Supplier as per Rule 54(3) of CGST Rules]
- (iii) Passenger Transportation Service provider (ticket is deemed to be tax invoice) [Supplier as per Rule 54(4) of CGST Rules]
- (iv) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens and issuing an electronic ticket (deemed tax invoice invoice) [Supplier as per Rule 54(4A) of CGST Rules]
- (v) Person engaged in supply of online information and database access or retrieval services located in a non-taxable territory and received by a non-taxable online recipient. [Supplier as per Section 14 of IGST Act]

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GST is a self-assessment-based tax system. Due to this, taxpayer shall maintain various books of accounts & records so as to enable the proper officer to assess its Tax liability / Tax Refund and other aspects

Accounts & Records (S. 35,36 of CGST Act r/w R. 56, 57, 58 of CGST Rules)

By: CA Keval Mota
To Join Channel: - Search "IDT by CA. Keval Mota" or follow the link <https://t.me/idtbycakevalmota>

What to maintain as regards to Books of Accounts – Section 35(1) of CGST r/w R. 56)

- Records as per S. 35 of CGST Act: -**
- 1) Input:** - Inward Supplies, ITC availed
 - 2) Process:** - Production or manufacture of goods
 - 3) Storage** – Stock goods
 - 4) Output** – Outward Supplies, Output Tax Payable.

(Input, Process, Storage, Output is the key to remember the provision)

Records as per R. 56 of CGST Rules, 2017

- 1) Import & Export** of Goods/ Services
- Tax paid under **reverse charge mechanism**
- Advance** received & adjusted register.
- Commodity wise **stock details** (Opening Balance, receipt, issue, goods lost, stolen, destroyed, written off, given as free samples, etc.)
- Details of **tax payable** (including RCM Liability details), tax collected and paid, input tax, input tax credit claimed
- Name & address of supplier & recipient**
- Complete **address of premises** where goods have been stored
- Register** of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

Composition person not to maintain following two details: -

- Commodity wise Stock Details
- Tax Details

"Success comes to those who dedicate everything to their passion in life. To be successful, it is also very important to be humble & never let fame & money travel to your head."

Where to Maintain? [S. 35(1)]

- Principal place of business & Additional Place of Businesses.
- Unless otherwise proved, documents or any books of accounts found at any other place other than mentioned in certificate of registration are deemed to be books of accounts of registered person

Agents [R. 56(11)]

- Authorisation** received by Agent from each principal **to receive or supply** goods or services on behalf of such principal;
- Description, value and quantity (wherever applicable) of **goods or services received or supplied** on behalf of every principal;
- Details of **accounts furnished to every principal**; and
- Tax paid** on receipts or on supply of goods or services effected on behalf of every principal.

Clearing, Forwarding Agent [R. 56(17)]

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.

Manufacturers [R. 56(12)]

- 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.
- Service Provider to maintain (R. 56(13)):** - Accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.

Works Contractor [R. 56(14)]

- The **name and addresses** of the persons on whose behalf the works contract is executed;
- **Description, value and quantity** (wherever applicable) of **goods or services received & utilised** for 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.

Accounts to be maintained by Specific Persons

Owner or Operator of Warehouses & Transporter whether or not registered under GST. [S. 35(2)]

- Transporter to maintain records of **goods transported, delivered** and goods **stored** in transit by him.
- Owner or operator** of a warehouse or godown shall maintain books of accounts with respect to the period for which particular **goods remain in the warehouse**, including the particulars relating to **dispatch, movement, receipt and disposal** of such goods.
- The owner or the operator of the godown shall **store the goods** in such manner that they can be **identified item-wise and owner-wise** and shall facilitate any physical verification or inspection by the proper officer on demand.

Manner of Maintenance (R. 56 & 57) & Period of Maintenance (S. 36)

- Electronic Form – Authenticated by DSC [R. 56(15)]
- Accounts shall be maintained at all Place of Businesses [R. 56(7)]
- Not to be erased or overwritten [R. 56(8)]
- Books or Volumes shall be serially numbered [R. 56(9)]
- Adequate Backup shall be taken for Electronic records [R. 57]
- Audit Trial shall be produced when PO demands [R. 57]

Period of Maintenance (S. 36)

- (A) A/cs not a subject Matter of Appeal**
72 months from due date of annual return to which that accounts & records relate.
- (B) A/cs subject matter of Appeal or any proceedings**
72 months from due date of annual return
Or
1 year after final disposal of proceeding whichever is later.

Audit of Books of Accounts (S. 35(5), S. 44(2) of CGST Act, 2017, R. 80(3) of CGST Rules, 2017

As per S. 35(5) If the **aggregate turnover** of registered person during Financial Year **exceeds Rs. 2 crores** [R. 80(3)] **Audit shall be done by CA/CMA & reconciliation statement u/s 44(2)** to be submitted.

The above provision shall not apply to department of CG/SG/UT/LA whose books of accounts are audited by CAG of India.

Amendments & Circulars

- Clarified vide Circular No. 47/21/2018-GST dated 08.06.2018 that the persons involved in auction either as a **principal or auctioneer shall declare warehouse or other places as additional place of business in case such places are meant for storage of goods**. The principal and the auctioneer shall also maintain the **books of accounts in terms of Section 35(1)** at such places. However, it is clarified that the books of accounts may be maintained at the principal place of business in case of any **difficulties faced in maintaining the books of accounts at such additional place of business upon intimating the jurisdictional officer in writing**.
- If goods are **stored in godown of transporter**, then the transporter's **godown** has to be declared as an **additional place of business by the recipient**. (Circular No. 61/35/2018-GST)
- The **transporter having place of business in more than one State or Union Territory** and all such places of business are **registered** under the provisions of the GST law, shall **obtain the unique common enrolment number**. Such enrolment number shall be **used by the transporter for generating the e-way bills** and for undertaking the transport of goods.

Payment of Taxes (GST) can be done through utilising ITC (other than reverse charge liability) availed or through Cash (Bank).

Payment of Taxes, TDS, TCS (1/2)

(S. 49,49A,49B,51,52 of CGST Act; r/w R. 85,86,87,88A of CGST Rules)

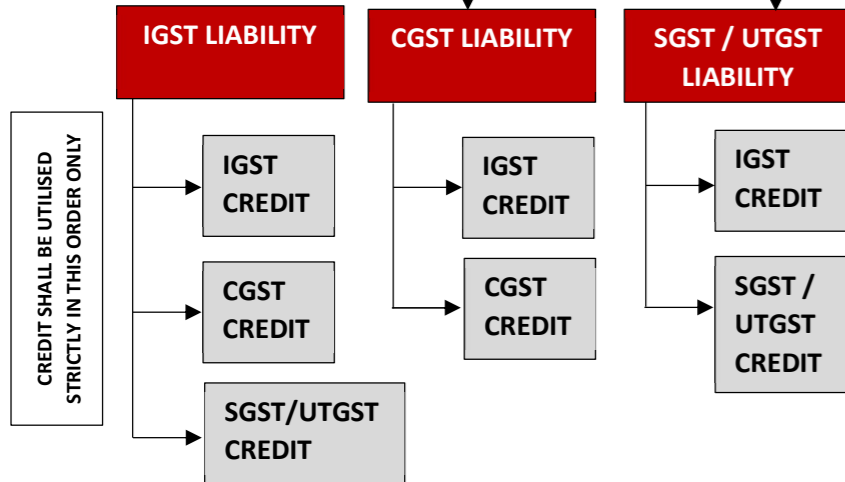
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1) Payment of Tax by ITC & Cash

Payment of Taxes through Input Tax Credit (Section 49B r/w Rule 88A) inserted vide CGST Amendment Act, 2018.
Electronic Credit Ledger (ECL) (Rule 86)

Liability to pay tax, interest, penalty etc. appears in electronic liability register

Registered person may pay SGST / UTGST Liability prior to CGST Liability or vice versa (any order)



- When a person files GSTR 3B (self-assesses its tax liability), it fills the columns of ITC availment it gives rise to credit to ECL which then is available for utilisation.
- IGST ITC shall first be utilised towards payment of IGST liability, and the remaining ITC, if any, may be utilised towards the payment of CGST and SGST or UTGST, as the case may be, in any order. (Rule 88A)
- CGST credit cannot be utilized for payment of SGST or UTGST and vice versa.
- CGST ITC, SGST ITC or UTGST ITC shall be utilised towards payment of IGST, CGST, SGST or UTGST Liabilities, as the case may be, only after the IGST ITC has first been utilized fully. (Proviso to rule 88A)
- CGST & SGST paid in state different from the state in which such person is registered, the credit of such ITC cannot be availed. (Example, Person registered in Maharashtra cannot avail credit of CGST, SGST / UTGST paid in Gujrat) (As per Act, CGST ITC paid in different state is available, however practically GST portal does not allow)
- Inter-Government Transfers (November, 2018 OLD Syllabus 9 marks):**
 - IGST paid to CG is apportioned to Place of supply state.
 - If registered person utilises credit of SGST to pay IGST, then SG will pay such amount to CG.
 - If registered person utilises credit of IGST to pay SGST, then CG will pay such amount to SG.
- Liability on account of reverse charge mechanism cannot be paid through input tax credit (only through E – Cash Ledger). Further, as per industry practice credit of tax paid under reverse charge can be availed as ITC in the same month itself.
- When a person claims refund of Tax, electronic credit ledger is debited & corresponding entry has to be passed in Books of Accounts (Refund A/c. Dr To ITC A/cs). If a refund claim is rejected, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to electronic credit ledger by the proper officer.
- ECL may include, ITC on inward supplies from registered taxpayers, ITC available based on distribution from input services distributor (ISD), ITC on input of stock held/semi-finished goods or finished goods held in stock on the day immediately preceding the date on which the taxpayer became liable to pay tax, provided he applies for registration within 30 days of becoming liable etc.
- Order for discharge of Liabilities through ECL can be self-assessed tax of previous periods, current period & then other dues including dues under Section 73 & Section 74 of CGST

Payment of Tax through Electronic Cash Ledger [S. 49(1) r/w R. 87 of CGST Rules]

- Any amount paid (by certain modes see point 4) by the taxpayer & TDS, TCS claimed will be reflected in the electronic cash ledger.
- Registered person first utilises its ITC to pay of tax liability, balance liability can be paid off through cash ledger.

| Major Heads | Minor Heads |
|--------------|---------------|
| IGST | Tax |
| CGST | Interest |
| SGST / UTGST | Penalty |
| Cess | Fees & Others |

New Rule 87(13) of CGST Rules, 2017 "A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09"

- Electronic Credit Ledger cannot be utilised for payment of interest, penalty or late fees. Interest and Penalty can be paid only through E – cash ledger.
- Taxpayers should generate a challan online using form GST PMT-06, which will be valid for a period of 15 days. Payment can then be remitted through any of the following modes:
 - Internet banking (authorized banks only)
 - Credit or debit card (authorized banks only)
 - National Electronic Fund Transfer (NEFT) or real-time gross settlement (RTGS) (any bank, authorized or unauthorized)
 - Over-the-counter (OTC) payment (authorized banks only) for deposits up to Rs. 10,000/- per challan and per tax period by cash, cheque or demand draft
- Unregistered taxpayers needing to make tax payment will still use the online GST portal but with a temporary identification number generated through the portal.
- Input tax credit can be availed on GST Cess paid on inward supplies (applicable on certain products). However, the credit of GST Cess paid can be utilized only towards payment of the GST Cess liability.
- Balance in electronic cash ledger can be claimed as refund.

Interest u/s 50 of CGST Act

Basic provision:-

- As per section 50 of the CGST Act, interest shall be levied on delayed payment of tax i.e. payment after due date.

Period of interest levy:-

- From 1st day after due date upto date on which payment has been made (both inclusive)

Rate (NN 13/2017 – CT dated 28/06/2017):-

- Normally, the interest rate is 18% (ON NET TAX LIABILITY) per annum.
- In the case of an undue or excess claim of ITC, or undue or excess reduction in output tax liability, interest shall be paid @ 24% (ON NET TAX LIABILITY) per annum.

2) Deduction of Tax at Source (S. 51 of CGST Act)

Who is liable to deduct tax at source while making payment of supplier? (NN 50/2018 CT dtd. 13/09/2018 w.e.f. 1/10/2018)

- A department or establishment of the Central or State Government,
- Local authority,
- Governmental agencies,
- An authority or a board or any other body, -
 - Set up by an Act of Parliament or a State Legislature; or
 - Established by any Government, with 51% or more participation by way of equity or control, to carry out any function;
- Society established by the CG / SG / LA under the Societies Registration Act, 1860
- Public sector undertakings (PSU).

When to deduct TDS & @ what Rate (%)

- TDS is required to be deducted on payment made to supplier of taxable goods and services where the total value (excluding taxes & cess) of such supply, under a contract, exceeds Rs. 2,50,000/- (contract value to be seen not per invoice value)
- Rate of TDS: 1% CGST + 1% SGST/ UTGST or 2% IGST (in case of Interstate supply [% of value of taxable supplies excluding GST & CESS])
- TDS would even be deductible on advance payments.

When not to deduct TDS? (A – State A, B – State B)

| Supplier | POS | Recipient | TDS Deduction |
|----------|-----|------------|---------------------|
| A | A | A | ✓ CGST & SGST/UTGST |
| A | B | (Anywhere) | ✓ IGST |
| A | A | B | X |

Other Important Points & Analysis

- TDS to be deposited by 10th of next month, Late payment attracts interest @ 18% p.a.
- Within 5 days of Crediting the amount so deducted to the Government, TDS certificate to be issued to deductee, otherwise late fees will be payable @ Rs. 100 per day (CGST – Rs. 100, SGST – Rs. 100) subject to Rs. 5,000 - CGST, Rs. 5,000 – SGST)
- TDS will be applicable on Taxable goods or services not exempt supplies
- No TDS is required to be deducted where the payment is made to an unregistered dealer. However, TDS would be deductible if paid to composition person.
- GTA services received by persons mentioned in (a) to (f) above shall be exempt. (Also refer exemptions chapter)
- No TDS would be attracted if supplies are between persons mentioned in (a) to (f).
- PSU giving services to PSU (even if not distinct) would not attract TDS under GST. (MCQ – November, 2019 – New Syllabus)

3) Tax Collection at Source (S. 52 of CGST Act)

Are you an E – commerce operator?

Yes

Whether Supplier makes taxable supplies through ECO [other than 9(5) of CGST / 5(5) of IGST Act]

Yes

Whether Consideration is collected by ECO?

Yes

LIABLE TO COLLECT TCS @ 1% of NET Value of Taxable supplies made during the relevant month. (0.5% CGST, 0.5% SGST/UTGST; 1% IGST) – vide NN No. 52/2018 – Central Tax dated 20th September, 2018

Notes & Interlinking of various chapters:-

- Net Value of taxable supplies = Total Supplies (-) Returns
- TCS to be deposited upto 10th of next month
- E – statement in GSTR - 8 to be filed upto 10th of Next month
- Annual statement by 31/12 of succeeding financial year
- Time-limit to rectify mistake in monthly statement – Due date to submit statement of September of succeeding financial year or, Actual date of furnishing Annual statement Whichever is earlier
- Any authority not ranking below Dy. Comm^r. may serve notice to ECO to furnish details of supplies effected by supplier through ECO.
- TCS under income tax act would not be included in Value of supply
- Tea Board to collect tax from sellers & auctioneers.
- ECO liable to collect TCS are compulsory liable to be registered (S.24 of CGST Act)
- Person supplying goods of any value & services (other than 9(5)) of value > Rs. 20L are liable to be compulsorily regd. (S. 24 of CGST)
- Persons who are required to pay tax u/s 9(5) of CGST Act / 5(5) of IGST Act, 2017 (i.e. ECO) – compulsory registration

4) Various Terms

- Common Portal Identification Number (CPIN) – 14 digits unique number, Valid for 15 days.** Important to identify challan number.
- CIN or Challan Identification Number – It is 17 digits number (14 digits CPIN + 3 digits Bank Code).**
- Bank Reference Number (BRN) – Transaction number given by bank for payment against challan.**
- E – FPB**
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 Transactions. The E-FPB will have to open accounts under each major head for all governments. Total 38 accounts (one each for CGST, IGST and one each for SGST for each State/UT Govt.) will have to be opened. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such EFPB.

For NEFT/RTGS Transactions, RBI will act as E-FPB.

5) Disallowance of ITC if availed fraudulently [R. 86A]

Officer not below the rank of an Assistant Commissioner may not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount ITC available in the electronic credit ledger if he has reason to believe that ITC available in the electronic credit ledger has been availed in fraudulent manner*.

*A person would be treated ITC as fraudulent manner in below cases: -

- Availed ITC on basis of invoice or debit note issued by regd. person who has not conducted any business from any place for which registration has been obtained or without receipt of goods or services.
- The credit of ITC has been availed on the basis of tax invoices or debit notes or any other prescribed document in respect of which has not been paid to the Government by supplier.
- The person who has availed ITC does not conduct any business from any place for which registration has been obtained.
- Registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other prescribed documents.

Other points: -

- 1) If commissioner is satisfied that above conditions does not exist then he may allow such debit [R. 86A(2)]
- 2) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction [R. 86A(3)]

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Return is the tool by which information is transferred to tax authorities for administration & compliance checking, assessments, departmental audits & other proceedings under Act.

Returns under GST (S. 35, 37, 39, 44, 52 of CGST Act, r/w R. 59 to 68, 80 & 82 of CGST Rules, 2017)
(1/2)

By: CA Keval Mota
To Join Channel: - Search "IDT by CA. Keval Mota" or follow the link <https://t.me/idtbycakevalmota>

| Form No. | Description | Due Date | Other Important Points |
|---|--|---|---|
| GSTR – 1 [S. 37(1) of CGST Act, 2017 r/w R. 59(2) of CGST Rules, 2017] Monthly / Quarterly <i>(Nil Return can be filed through SMS)</i> | Details of Outward supplies, (including debit notes, credit notes) made by registered person including Casual Taxable person but excluding – ISD, NRTP, Composition Person, Tax Deductors, Tax Collectors, OIDAR service provider | Aggregate Turnover in preceding financial year exceeding Rs. 1.5 Crore – 11th of Next Month. Aggregate Turnover in preceding financial year upto Rs. 1.5 Crore – 13th of month subsequent to the quarter. (For Q3 & Q4 of FY 20-21) | - B2B Supplies (i.e. Supplies to registered persons) shall be shown invoice wise. - Interstate B2C Supplies (i.e. Supplies to unregistered persons) shall be shown invoice wise if invoice value exceeds Rs. 2,50,000/- - Supplies to any person other than above shall be reported on consolidated basis (i.e. Total), not invoice wise. |
| GSTR 3B [S. 39(1) of CGST Act, 2017 r/w R. 61(5) & 61(6) of CGST Rules, 2017] Monthly <i>(Nil Return can be filed through SMS)</i> | Summary Return of Outward & Inward supplies, RCM Inward Supplies (for other than ISD, NRTP, Composition, Tax Deductor, Tax Collector, OIDAR Service provider) | <u>Due date to file return</u> On or before 20 th day of subsequent month <u>Due date of payment of tax</u> On or before 20 th day of subsequent month [S. 39(7) of CGST Act] | - GSTR 3B shall be filed to make payment of taxes through utilisation of ITC & E – cash ledger - CTP shall pay advance tax equivalent to estimated liability before effecting taxable supplies. Nil Returns shall be filed if no taxable supplies are made during the period. |
| GSTR 4 Annually [S. 39(2) of CGST Act r/w Rule 62(5) r/w NN 20/2019 – CT & 21/2019 – CT dated 23/04/2019] | Return for composition tax payer & person opting for presumptive levy u/NN 02/2019 – CTR | <u>Due date to file return</u> 30 th April of Succeeding Financial Year <u>Due date of payment of tax</u> On or before 18 th day of month subsequent to quarter | - GST CMP – 08 to be filed by composition taxable persons & those opting for presumptive levy scheme on quarterly basis & make payment of tax. [R. 62(6) of CGST Rules] (Nil return can be filed by SMS) In GSTR – 4 consolidated supplies & invoice wise purchase details shall be furnished. |
| GSTR – 5 [S. 39(5) of CGST Act r/w R. 63 of CGST Rules] Monthly / within 7 days after validity of registration is expired. | Non-Resident Taxable Person | <u>Due date to file return:-</u> Within 20 days from the end of the calendar month or within 7 days after the last day of the period of registration, whichever is earlier. <u>Due date to pay tax:-</u> Advance tax to be paid equivalent to estimated tax liability. | - NRTP shall apply for registration, 5 days prior to commencement of business. Further, he can make taxable supply only after receipt of Registration Certificate. - Registration for NRTP is valid only for 90 days (extension of 90 days is possible by proper officer on sufficient cause). |
| GSTR 5A Monthly | Non-resident OIDAR service provider providing services to non-taxable online recipient | <u>Due date to file return:-</u> On or before 20 th day of the succeeding month | - |
| GSTR-6 [S. 39(4) of CGST r/w 65 of CGST Rules] Monthly | Input Service Distributor (for distributing credits) | <u>Due date to file return:-</u> On or before 13 th day of the succeeding month (ISD is not liable to pay any Taxes) | It can be filed between 10 th & 13 th . Details are auto-populated in GSTR 6A when suppliers file GSTR – 1. ISD has to take compulsory registration under GST as per Section 24 of CGST Act. ISD cannot procure RCM Supplies |
| GSTR – 7 (Monthly) [S. 39(3) of CGST r/w R. 66 of CGST Rules] | Monthly Return for persons deducting Tax at source u/s 51 of CGST Act, 2017. | 10 th of Next Month | TDS certificate shall be issued within 5 days of crediting the amount to Govt. |

| Form No. | Description | Due Date | Other Important Points |
|--|---|---|---|
| GSTR – 8 (Monthly) [S. 52(4) of CGST r/w R. 67 of CGST Rules] | Monthly return for persons collecting tax at source | 10 th of next month | - |
| GSTR – 9 (Annually) (Section 44 of CGST Act, 2017 r/w Rule 80(1) of CGST Rules, 2017) | Annual Return (other than ISD, TDS, TCS, CTP, NRTP) It should be accompanied by Audited annual accounts & reconciliation statement if aggregate turnover is more than Rs. 5 crores . [R. 80(3) of CGST Rules, 2017]. | 31 st December of Succeeding Financial Year | |
| GSTR 9A (Annually) (Section 44 of CGST Act, 2017 r/w proviso to Rule 80(1) of CGST Rules, 2017) | Annual Return for composition taxable person | 31 st December of Succeeding Financial Year | |
| GSTR 9B (Annually) (Section 44 of CGST Act, 2017 r/w Rule 80(2) of CGST Rules) | Annual return for E – commerce operators liable to collect TCS | 31 st December of Succeeding Financial Year | |
| GSTR 9C (Annually) (Section 35(5) of CGST Act, r/w Rule 80(3) of CGST Rules) | A copy of audited annual accounts and a reconciliation statement certified by CA/CMA. | 31 st December of Succeeding Financial Year | Foreign Airlines – Not required to file GSTR 9C (Reconciliation Statement – GST Audit) if complied with Rule 4(2) of Companies (Registration of Foreign Companies) Rules, 2014 and submits statement of receipt & payment duly certified by Practising CA |
| GSTR 10 (Cancellation or surrender of Registration) [S. 45 of CGST Act r/w R. 81 of CGST Rules] | Final Return by Normal Tax payer other than ISD, TDS, TCS, NRTP, composition taxable person | Within 3 months of the date of cancellation or date of order of cancellation whichever is LATER | - |
| GSTR 11 (R. 82 of CGST Rules) (Monthly) | 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 having unique identity number claiming refund of tax on inward supplies shall file this return along with refund application. | <u>Due date to file return:-</u> 28 th of every month succeeding the month in which inward supply is received by the UIN holders. | - |

By: CA Keval Mota

Other Important points: -

- 1) It is very important to note that there is no concept of revised returns under GST, however the regd. person can rectify / amend the details in outward supplies upto the Date of filing monthly return u/s 39 for the month of September of succeeding F.Y or Actual date of filing annual return whichever is earlier.
- 2) Every registered person who has made outward supplies in period between the date on which he became liable to be registered under GST (i.e. turnover exceeded registration limit) & date of grant of registration, shall furnish the details of outward supplies made during this period in first return filed after date of grant of registration.
- 3) Each GSTIN under same PAN shall have to file different annual return for each such registration.
- 4) Where the person has failed to file return u/s 39 (Normal Return), 44 (Annual Return) or 45 (Final Return or Section 52 (TCS statement), a notice shall be issued to him requiring him to furnish the same within 15 days of receipt of such notice, failing which tax liability (along with Int & penalty) will be assessed u/s 62 of CGST Act on basis of material available with proper officer.
- 5) Delay in furnishing return (other than annual return) shall attract late filing fees of Rs. 25/ day CGST & Rs. 25/ day SGST. (Amended vide NN 04 / 2018 – CT dated 23rd January, 2018), for delayed filing of NIL return shall attract late filing fees of Rs. 10/ day CGST & Rs. 10/ day SGST subject to maximum Rs. 5,000 CGST & Rs. 5,000 SGST.
- 6) Delay in furnishing annual return shall attract late filing fees of Rs. 100 / day subject to maximum 0.25% of his turnover in state or union territory (not aggregate turnover).
- 7) The persons who are non-residents and are providing OIDAR service in India to unregistered persons have been exempted from submitting GSTR-9 and GSTR-9C. (Notification No. 30/2019 – CT dated 28th June, 2019)
- 8) GSTR – 9 & GSTR – 9C for FY 2017-18 & 18-19 shall not be required to be furnished for persons whose aggregate turnover does not exceed Rs. 2 crores in respective financial year ((Notification No. 47/2019 – Central Tax dated 9th October, 2019)
- 9) GSTR 3 shall not be required to file if furnished GSTR – 3B (w.r.e.f. 1st July, 2017 - Notification No. 49/2019 – Central Tax)

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In every law there shall be a mechanism to promote exporters. GST Law recognises the same & provides refund to exporters, SEZ & certain other persons. Further, GST law provides refund in certain circumstances as well.

Refund under GST (S. 54, 55 of CGST Act; r/w R. 89 to 97 of CGST Rules) (1/3)

By: CA Keval Mota

1) Circumstances in which refund arises

- Tax paid on zero rated supply** of goods or services or both i.e. against exports and supplies to SEZ (Export on payment of IGST i.e. without LUT). (Export of exempted goods is also zero-rated supply thus, eligible for refund.)
- Unutilized input tax credit (other than construction service providers)** [S. 54(3) r/w S. 54(8)(b) of CGST Act]:
 - Zero rated supplies (without payment of IGST) against LUT/Bond u/r 96A of CGST Rules r/w S.16(3)(a) of IGST (other than where goods are subjected to export duty or the supplier avails drawback of CGST or claims refund of IGST paid on such supplies)
 - Inverted Duty Structure (i.e. Input tax rate being higher than output tax rate, other than NIL rated or fully exempted) (*Merchant Exporters & Fabric processors are also covered here*)
(Notes: - In simple words Unutilized Input Tax Credit means Balance in Electronic credit ledger)
- Refund Voucher** - Supply which is not provided, either wholly or partially and for which invoice has not been issued or refund voucher has been issued. [S. 54(8)(c)]
- Refund of **Wrong Tax paid**: - CGST and SGST paid for Inter-state transaction or IGST paid for transaction HELD to be Intra state transaction. [S. 54(8)(d) of CGST r/w S. 77 of CGST]
- Refund to **CTP/NRTP** (subject to furnishing all returns for the period of currency of registration) [S.54(13) of CGST Act]
- Deemed Exports** (S. 147 of CGST r/w NN. 48/2017 – CT dated 18th October, 2017). Following are deemed export cases: -
 - Supply of goods by a registered person against Advance Authorisation (*Advance authorization is the scheme in FTP which allows a person to import goods without payment of customs duty on the basis of authorization subject to various conditions discussed in FTP chapter*)
 - Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation (EPCG) (*EPCG is a scheme wherein an exporter of goods may procure capital goods without payment of customs duty on fulfilment of certain conditions*)
 - Supply of goods by a registered person to an Export Oriented Unit (EOU), Electronic Hardware Technology Park Unit (EHTP) or Software Technology Park Unit (STP) or Bio-Technology Park Unit (BTP).
 - Supply of gold by Bank or Public Sector Undertaking against AA
(*Deemed exports means even if a domestic supplier sells goods to above mentioned persons it would be treated as exported, however not to be treated as Zero Rated because Zero rated has been specifically defined u/s 16(3) of IGST Act, 2017 – In case of deemed exports, recipient can claim refund of tax or supplier can also claim refund where recipient does not avail ITC of tax levied by supplier & gives undertaking to supplier to claim refund*)
- Refund of **Balance in Electronic Cash Ledger** after payment of tax, interest, fees, penalties or any other amount payable. [S. 49(6) of CGST Act] (It can be claimed in return u/s 39 i.e. GSTR 3B/4/7)
- IGST paid by tourist leaving India.**
- Tax becoming refundable on **consequence of any judgement, order or direction of appellate authority, appellate tribunal; or court** [S. 54(9) of CGST]
- On **finalization of provisional assessment** (contained in detail in Assessment Chapter) (i.e. tax payer had paid more at the time of provisional assessment & becoming refundable to him while final assessment)
- Refund of Tax paid on purchase made by **UN bodies or embassies.** [S. 54(2) of CGST r/w S. 55 of CGST] (Such persons have to claim refund once in every quarter but before expiry of 6 months from last day of quarter.) **They can also claim refund of IGST paid on Import of Goods (Amendment)**

2) Time-Limit to apply for Refund– 2 years from Relevant Date (S.54)

| Case | Relevant Date: - |
|---|---|
| 1) Export of Service | Date of receipt of forex / INR where permitted by RBI or Date of invoice whichever is later |
| 2) Export of Goods: - By Sea or Air | Let Export order |
| 3) Export of Goods: - By Land | When goods passed customs frontier |
| 4) Export of Goods: - By Post | Date of dispatch |
| 5) Refund on Account of inverted duty structure | Due date of return u/s 39 of CGST for the period in which such claim arises |
| 6) Refund on account of Deemed exports | Date of filing return |
| 7) Finalization of provisional assessment | Date of the adjustment of the tax after the final assessment. |
| 8) Claim of refund by a Casual/Non-resident taxable person | Relevant date is Date of payment of tax. But refund to be claimed in last return to be furnished by casual/non-resident taxable person. |
| 9) UIN Holder or recipient claiming refund for deemed exports | Date of receipt of goods or services by such person or UIN holder |

3) How to Compute Amount of Refund under various scenarios

(A) Refund of unutilized input tax credit on account of Zero-Rated Supply of Goods or Services under LUT [R. 89(4) of CGST Rules]

$$\text{Refund Amount} = \frac{\text{Turnover of Zero-Rated Goods \& Services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

Decoding the terms: -

1) Net ITC: -

Net ITC here means Input Tax credit on **Inputs & Input Services (Not Capital Goods), other than R. 89(4A) & 89(4B) of CGST Rules.**

89(4A) & 89(4B) are those rules, which provide for refund separately on account of deemed exports (*See Point 6 of First Part*) & Merchant Export transactions* respectively. Accordingly, where person is receiving refund claim on account of such supplies, he cannot avail refund of ITC in R. 89(4), thus excluded from Net ITC for purpose of computation of refund amount.

*Merchant Export Transactions: - Merchant Export transactions are those, wherein merchant exporter exports goods procured from local supplier (*Para 9.33 of FTP 2015 -20*) within 90 days from date of invoice of supplier. Supplier who is supplying goods to merchant exporter shall levy tax @ 0.1% (IGST in case of inter-state supplies) or @ 0.05% CGST & 0.05% SGST/UTGST in case of intra-state supplies. [NN. 40/2017-CGST (Rate), 41/2017 –Integrated Tax (Rate)]

Accordingly, in this case supplier might have procured / manufactured goods @ higher rate and selling it to merchant exporter @ concessional rates, which gives rise to inverted duty structure (i.e. Input tax rate being higher than output tax rate, other than NIL rated or fully exempted). Hence supplier can claim refund under "Inverted duty structure" case (Discussed in Part 3B below). Further, it is to be noted that refund of ITC on capital goods is not available, however, ITC can be taken

2) Turnover of Zero-Rated Supply of Goods (Numerator): -

"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 or letter of undertaking or,
- the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier.

whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both. (Refer Sum in Amendment Sheet for More Clarity)

3) Turnover of Zero-Rated Supply of Services (Numerator): -

Services are intangible thus it can only be proved as exported or supplied to SEZ on consideration basis. Thus, yardstick to figure out what had been exported as service is consideration.

Ergo,

Zero-Rated Supply of Service = **Payment Received during relevant period** for zero-rated supply of service + **Pre-received consideration of previous relevant period** whose service has been completed in current period (-) Pre-received consideration in current period for provision of service subsequently (i.e. **Advances received**)

(Note: - Zero Rated Supply is taxable supply & Export of Goods or service or supply to SEZ is an Inter-state supply)

4) Adjusted Total Turnover (Denominator) [R. 89(4) of CGST Rules]

| Include (+) | (-) or Exclude |
|---|---|
| Taxable Supplies of goods or services (i.e. within India supplies) (But Excl. Inward RCM) | ➤ CGST, SGST/UTGST, IGST & Cess. |
| Export of goods | ➤ Exempt Supplies |
| Zero rated supply of services without payment of GST [i.e. as per (2) above] | ➤ Turnover of R.89(4A) & 89(4B) of CGST Rules, 2017 |

5) **Relevant Period:** - Relevant period means the period for which the claim has been filed. CBIC vide Circular 37/11/2018-GST dated 15th March, 2018 has clarified that a person may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed

6) Where a person claims / applies for refund, he shall debit the corresponding amount in electronic credit ledger (i.e. reduces the availment amount). Further if refund is rejected, he shall re-credit.

4) How to Compute Amount of Refund under various scenarios (Contd.)

(B) Refund on Account of Inverted Duty Structure (i.e. Input Tax Rate is higher than Output Tax Rate) [R. 89(5) of CGST Rules]

$$\text{Maximum Amount of Refund} = \frac{\text{Turnover of Inverted rate of supply of goods \& services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC} \quad (-) \quad \text{Tax payable on such inverted rated supply of goods and services.}$$

Decoding the Terms: -

1) Net ITC: -

Net ITC shall mean input tax credit availed on "inputs" (only inputs not input services & capital goods) during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.

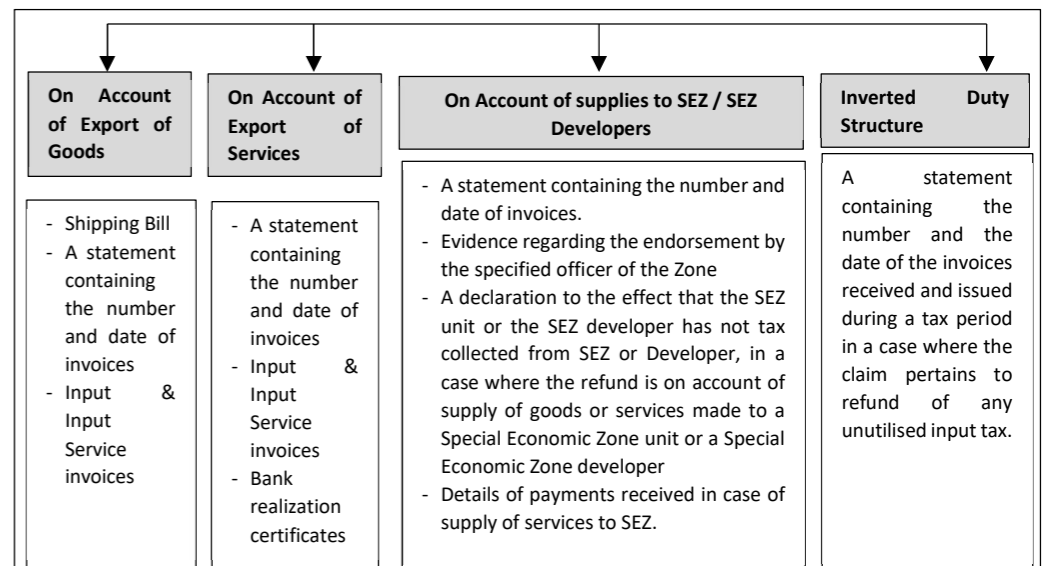
2) Adjusted Total Turnover & Relevant period definitions are same as in case of Part (3A) of this chapter.

3) Merchant exporters claim refund of tax under Rule 89(5) of CGST Rules, 2017.

4) Where a person claims / applies for refund, he shall debit the corresponding amount in electronic credit ledger (i.e. reduces the availment amount). Further if refund is rejected, he shall re-credit.)

5) **Refund of accumulated input tax credit (ITC) NOT ALLOWED on account of reduction in GST Rate as inverted duty structure. (Circular 135/05/2020 – GST)**

5) Documentation for Refund



- If refund claim exceeds Rs. 2,00,000/- CA / CMA. Certificate in annexure 2 of GST RFD – 01 shall be required to prove that incidence have not been passed on.

- No refund can be claimed if amount of refund is less than Rs. 1000.

- CA/CMA Certificate is not required when refund claim pertains to refund of tax paid on export of goods or services or on inputs or input services used in making such exports, Refund of unutilized ITC for zero rated supplies or inverted duty rate structure, Refund of tax paid on a supply which has not been provided, Refund of CGST and SGST HELD to be IGST or vice versa, Refund of Tax or Interest borne by notified applicants.

6) Time-lines for Refund

- File Application for Refund in RFD – 01 – Within 2 years from Relevant Date
- Receipt of Acknowledgment (other than refund of balance in electronic cash ledger) – Within 15 days from filing of refund claim in RFD-02
- Grant of provisional refund @ 90% of claimed amount shall be released within 7 days from (2) above (Deficiencies to be communicated in GST RFD – 03 by Proper officer)
- Refund order after proper checking & satisfaction shall be issued for balance 10% of claimed amount within 60 days from (1) above.

If refund is not granted within 60 days interest @ 6% p.a. shall be paid by CG from 61st Day till date on which refund is received. If refund is due on account of orders of Appellate Authority / Tribunal / Court & not paid within 60 days. Interest @ 9% p.a. shall be payable from 61st Day till date of actual refund.

6) Refund to a retail outlet established in the departure area of an international airport (R. 95A of CGST Rules, 2017 & Circular No. 106/25/2019-GST dated 29th June, 2019 (Amendment))

Retail outlets (i.e. Duty Paid Shops & Duty Free Shops) established in departure area of an international airport making tax free supply of indigenous goods to a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes (hereinafter referred to as eligible passenger) are entitled to claim refund of applicable CGST+SGST/UTGST or IGST paid on inward supply of such goods. Therefore, retail outlets will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund.

Thus, it would be appropriate to say here that the refund to be granted to retail outlets is not on account of the accumulated input tax credit but is refund based on the invoices of the inward supplies of indigenous goods received by them.

Application for refund: - Retail outlet shall furnish the application for refund claim in prescribed form on a monthly/quarterly basis along with self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice.

Conditions for claiming refund: -

The refund of tax paid by the said retail outlet shall be available if -

- The inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;
- The said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;
- Name and GSTIN of the retail outlet are mentioned in the tax invoice for the inward supply; and
- Such other restrictions or conditions, as may be specified, are satisfied.

The provisions of Rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this Rule.

Proportionate Refund Claim in certain cases [Rule 92(1A)]

In case of refund of tax paid falling in below categories: -

- a) Refund of excess payment of tax;
- b) Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;
- c) Refund on account of assessment/provisional assessment/appeal/any other order;
- d) Refund on account of "any other" ground or reason.

no separate debit of ITC from electronic credit ledger is required to be made by the applicant at the time of filing refund claim, being claim of tax already paid. However, the total tax would have been normally paid by the applicant by debiting tax amount from electronic credit ledger (ECrL) or electronic cash ledger or both in certain proportion (depending upon ECrL balance)

From now, refund of tax paid on such supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e. if payment is made fully through electronic credit ledger, entire refund amt would be credited to electronic credit ledger. If payment of tax is made through E – cash ledger, then refund would be credited to e – cash ledger. Further if tax is paid from both modes, the refund would be paid in proportion to mode of original payment.

Procedure to Claim Refund [Circular 125/44/2019-GST]

1) The said circular is applicable for refund claims filed w.e.f. 26th September, 2019. For refund claims filed before 26th September, 2019; circulars issued by CBIC previously from time to time will be applicable.

2) **Filing of Refund Application & Acknowledgement, Deficiency Memo:** - GST RFD 01 (instead of RFD 01A) shall be filed online along with supporting documents electronically. ARN will be generated on filing of application which shall be deemed to be the date of filing application. The time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the said date.

3) **Assignment of Application to Proper Officer:** - The application be forwarded to the jurisdictional officer of the registered person. However, if it has been assigned to wrong officer, such officer has right to assign it to proper officer (within 3 working days he has to assign).

4) **All returns be filed before application:** - Any refund claim for a tax period may be filed only after furnishing all the returns.

5) **Undertaking to pay back erroneous refund claim:** - Applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of Section 16(2)(c) read with Section 42(2) CGST Act have not been complied with subject to restriction imposed under sub-rule (4) in rule 36 of the CGST rules.

6) **Acknowledgement & Deficiency Memo:** - Once acknowledgement has been issued no deficiency memo can be issued for said application, further any amount of input tax credit/cash debited from electronic credit/ cash ledger would be re-credited automatically once the deficiency memo has been issued. Fresh Application has to be filed within 2 years from relevant date to clear deficiency memo & it will have distinct ARN.

7) **Provisional Refund Sanctioned (90%) > Final Amount of Refund:** - In case where the final refund amount to be sanctioned in FORM GST RFD-06 is less than the amount of refund sanctioned provisionally through FORM GST RFD-04, the proper officer shall have to issue a show cause notice in FORM GST RFD-08, under section 54 of the CGST Act, read with section 73 or 74 of the CGST Act, requiring the applicant to show cause as to why:

- a) The amount claimed should not be rejected as per the relevant provisions of the law; and
- b) The amount of erroneously refunded should not be recovered under section 73 or section 74 of the CGST Act, as the case may be, along with interest and penalty, if any.

Other points in this regard: -

- The amount of refund erroneously sanctioned shall be credited to electronic liability register of person through DRC – 07 by proper officer.
- The amount of rejected refund shall be recredited to Electronic credit ledger on undertaking by regd. person that he will not file an appeal or in case he files an appeal.
- In such cases, it may be noted that FORM GST RFD – 08 and FORM GST RFD – 06, are to be considered as show cause notice and adjudication order respectively.

8) Rejected Refund claim shall be re-credited to electronic credit ledger if appeal is not going to be filed against rejection or appeal has been decided against applicant.

In case for refund of unutilized ITC (except compensation cess) the following points shall be noted: -

- a) GSTR 2A relating to period for which Invoice carrying ITC pertain to be uploaded.
- b) 2A to be treated evidence of account of tax on invoices being claimed by recipient. Submission of invoices accounted in 2A not to be insisted.

Thus, refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

c) Formula under Rule 89(4) and 89(5) to be applied on consolidated amount of tax heads and not to be applied on each tax head separately.

d) Quantum of refund of Unutilized ITC = Minimum of [Refund as per Formula, Credit ledger Balance at the end of period after filing 3B for the period for which refund is claimed, Credit ledger Balance at the time of filing refund]

Procedure to Claim refund

9) Zero rated supply before furnishing LUT may be allowed on ex post facto basis. Exports after expiry of time limit under LUT may be allowed if goods have actually been exported after 3 months from the date of invoice. Asking for self-declaration for prosecution with every refund claim where the exports have been made under LUT is not warranted.

10) During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be taken into account while calculating the eligible amount of refund.

11) FIRC/BRC not required for refund application for export of goods

12) In case of zero-rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon.

13) NO refund for Inverted Duty on Input service and Capital goods. Stores and spares, for capital goods, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods and hence refund for unutilized ITC can be claimed in respect of such stores and spares

14) Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, some of which have rate lower or equal to rate of output supplies, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax

15) Tax Deductor/collector may claim refund of tax deposited in wrong head. After filing of GSTR-7/8, Deductee may claim refund of the TDS/TCS under the category "refund of excess balance in the electronic cash ledger

16) Refund on ITC @ 0.05%/0.1% on inward supplies received by merchant exporter can be claimed under Category "any other" instead of under the category "refund of unutilized ITC on account of exports without payment of tax". If the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the taxpayer, in writing, to debit the said amount from his electronic credit ledger through FORM GST DRC-03. However, exporter can export such goods only against LUT.

17) The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure.

18) Limit of rupees one thousand u/s 54(14) shall be applied for each tax head separately.

Refund under GST (S. 54, 55 of CGST Act; r/w R. 89 to 97 of CGST Rules) (3/3)

Realisation of Export Proceeds (Rule 96B)

As per Rule 96B(1) where any refund of UNUTILISED INPUT TAX CREDIT ON ACCOUNT OF EXPORT OF GOODS OR OF INTEGRATED TAX PAID ON EXPORT OF GOODS has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period. If such amount is not realised within time-limit the sanctioned refund shall be recovered u/s 73 / 74 of CGST Act along with interest u/s 50 of CGST Act.

However, where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (9 months from date of export, 15 months in case of goods exported to warehouse outside India), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

Subsequent Realisation of Foreign Exchange after recovery by Proper officer but within extended period by RBI [Rule 96B (2)]: -

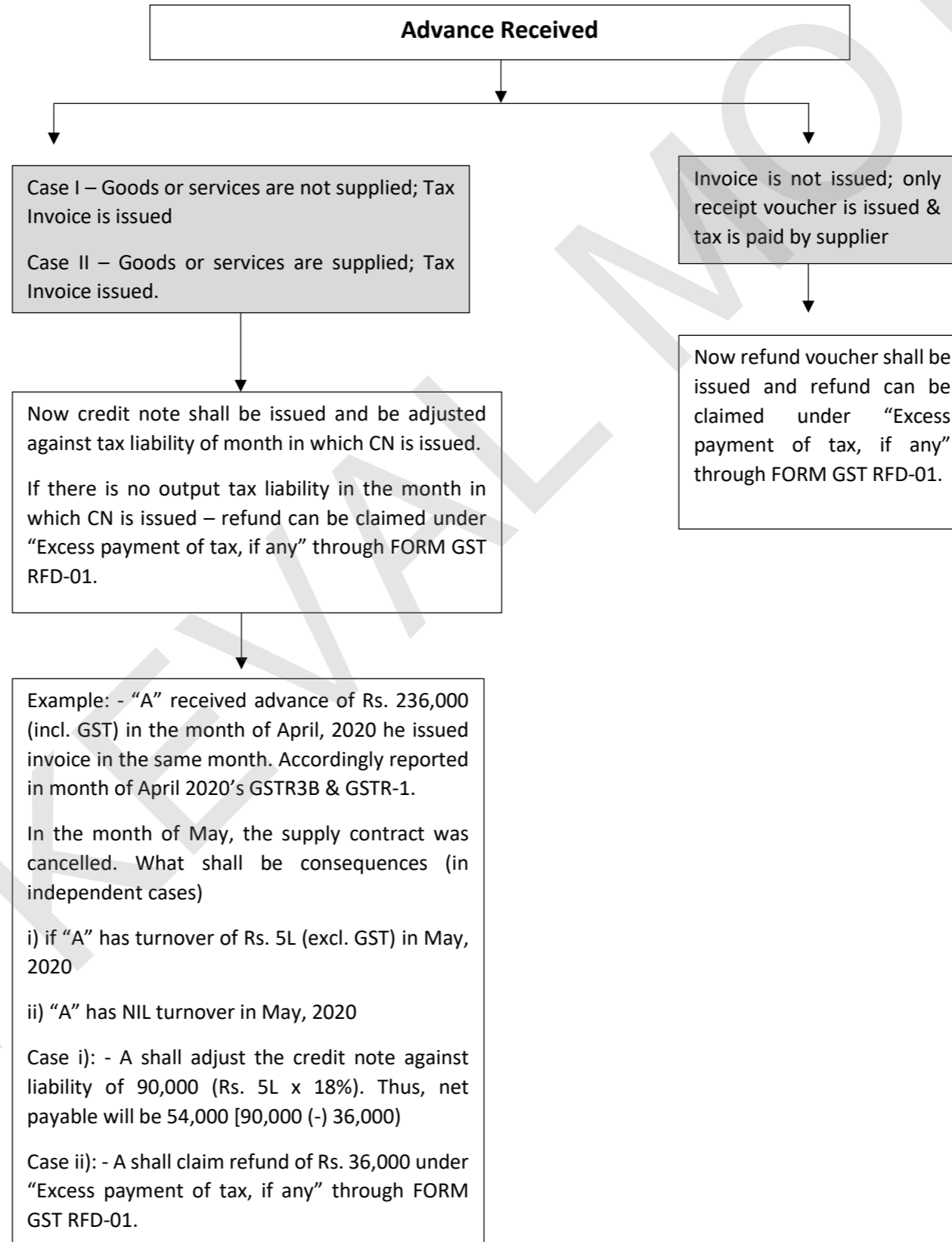
Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him by PO and the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

Notes: -

1) This rule is applicable only for export of goods under or without LUT as in case of services refund turnover is on the basis of consideration received.

2) In my opinion change in definition in turnover of goods in rule 89 was not required as the intention of govt. behind the same was to curb over-statement of exports which is taken care by Rule 96B itself.

Addressing the Challenges faced by various Taxpayers [Circular 137/07/2020]



Example: - "A" received advance of Rs. 236,000 (incl. GST) in the month of April, 2020 he issued invoice in the same month. Accordingly reported in month of April 2020's GSTR3B & GSTR-1.

In the month of May, the supply contract was cancelled. What shall be consequences (in independent cases)

- i) if "A" has turnover of Rs. 5L (excl. GST) in May, 2020
- ii) "A" has NIL turnover in May, 2020

Case i): - A shall adjust the credit note against liability of 90,000 (Rs. 5L x 18%). Thus, net payable will be 54,000 [90,000 (-) 36,000]

Case ii): - A shall claim refund of Rs. 36,000 under "Excess payment of tax, if any" through FORM GST RFD-01.

Refund issues in respect of Tax Invoices

In respect of Invoices uploaded by Supplier in its GSTR - 1

The refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

In respect of Invoices not required to be uploaded by Supplier in its GSTR - 1 i.e., ISD, RCM, Import of Goods & Services etc.

Refund shall not be restricted on account of invoices not being uploaded by supplier as these are the invoices which will not be reflected in 2A. Refund claim shall be supported by tax paying documents as per Rule 36.

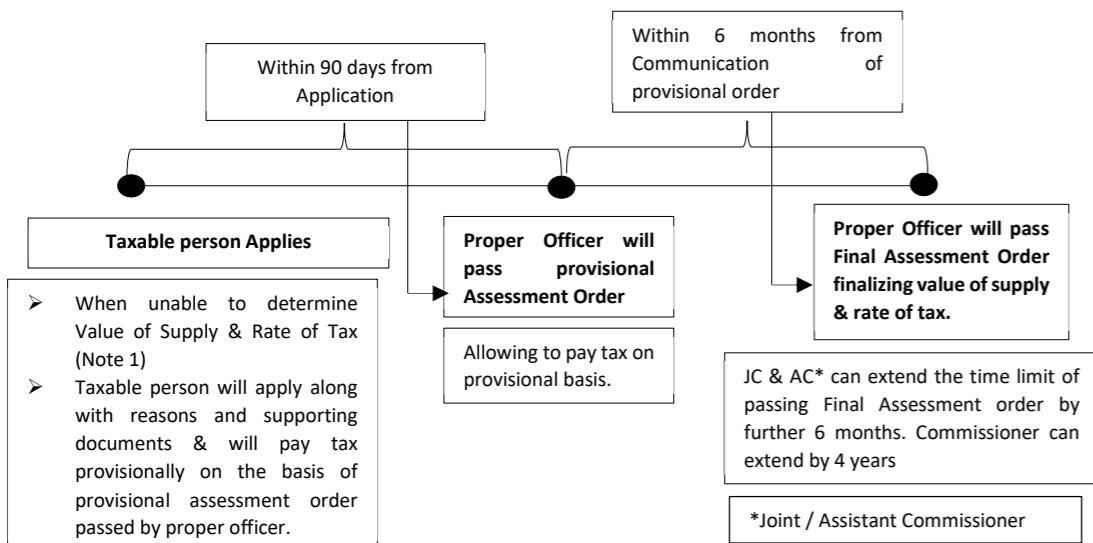
Your Career is an investment for your parents give them good returns in form of becoming CA

In terms of Section 2(11) of CGST Act, "assessment" means determination of tax liability under GST Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment. A registered person self-assesses its tax liability and maintains accounts & records which enables proper officer to perform Assessment & Audit (By Tax Authorities) to ensure proper compliance with laws & regulations framed therein.

Assessment under GST (S. 59 – 64 of CGST Act r/w R. 90, 100 of CGST Rules)

By: CA Keval Mota

Provisional Assessment (S. 60 of CGST Act r/w R. 98 of CGST Rules, 2017)



Interest Table (Interest on Difference between provisional assessment & final Assessment Order)

| Final Duty is: - | Interest Period | | Rate of Interest p.a. |
|---|--|--|-----------------------|
| | From | To | |
| Payable by Assessee [S. 60(4) of CGST Act] | First day after due date of payment of tax under provisional assessment. | Date on which tax was actually paid | 18% |
| Refundable to Assessee [S. 60(5) of CGST Act] | 61 st Day from date of application for refund | Date on which tax was actually refunded. | 6% |

- Notes: -**
- Determination of value of supply would here include transaction value for payment of tax, difficulty in applying valuation rules; further determination of rate of Tax would here also include the applicability of exemption notification, classification of goods or services.
 - Provisional assessment can only be done by proper officer for specified purposes therein and not for any other purposes such as time of supply / place of supply etc.
 - Provisional order so passed by proper officer would indicate the amount for which bond has to be executed in Form GST ASMT – 05 by the applicant. The security has to be furnished in the form of bank guarantee not exceeding 25% of the bond 'amount' which shall include IGST, CGST, SGST or UTGST and cess (if any) payable in respect of the transaction. [S. 60(2) of CGST Act]
 - On conclusion of the final assessment order the applicant can file an application under Rule 98(6) in FORM GST ASMT- 08 for release of security furnished. Security shall be released within 7 days from application date.

Self-Assessment (S. 59 of CGST Act)

- Every registered person would be required to assess his tax dues in accordance with the provisions of GST Act & pay the same by filing various returns u/s 39 as discussed in Chapter "Returns under GST" and report the basis of calculation of tax dues to government.
- Person can rectify outward supplies wrongly furnished in previous returns by due date for furnishing of return for the month of September of subsequent FY or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

Assessment of Non-Filers (S. 62 of CGST Act r/w R. 100)

- (SMS be sent to all regd. persons 3 days prior to return filing)** When a registered person **does not file its returns u/s 39 of CGST Act or final return** on cancellation of registration under section 45 of the CGST Act **(mail shall be sent) proper officer will issue a notice** to regd. Person u/s 46 of CGST Act **requiring him to file returns within 15 days** of issuance of notice
 - If a person does not file return even after issuance of notice u/s 46 **within 5 days from due date to furnish return**, proper officer will issue notice u/s 62 of CGST Act, 2017 & may assess the tax liability in accordance with the provisions of **Rule 100** i.e. to the best of his judgment, taking into account all the relevant material available on record, **and issue an assessment order**. This is also known as '**best judgment assessment order**' (BJAO).
 - BJAO shall be issued **within 5 years from due date filing of annual return** (i.e. 31st December of succeeding FY) to which such non-filing/payment relates.
 - If, however, a registered person **furnishes a 'valid return' within 30 days of the service of assessment order**, the said assessment order shall be deemed to be **withdrawn**.
- Notes: -
- Section 62 is notwithstanding anything contained in contrary to S. 73 & S. 74.
 - Section 73 and 74 mandates issue of SCN and providing opportunity of being heard before passing order for demanding tax. Accordingly, for the purpose of S. 62 of CGST Act, no SCN shall be issued for passing order for demanding tax. **(Italics & underlined are from Circular No. 129/48/2019 dtd 24th December, 2019)**

Assessment of Unregistered persons (S. 63 of CGST Act r/w R. 100)

- Applicable to those persons: -
- Failed to obtain registration u/s 22 of CGST Act.
 - Whose registration has been cancelled u/s 29(2) (Please refer Part 9(B) of Registration chapter)
 - Notice will be issued to defaulter seeking reply within 15 days.
 - Assessment order (even though no return would have actually been filed) be passed within 5 years from due date applicable for filing annual return for the financial year to which default relates.
- Opportunity of being heard shall be given before passing order.

Scrutiny of returns (S. 61 of CGST r/w R. 99 of CGST Rules)

- PO scrutinises the returns furnished to verify correctness of returns filed by regd. Person & informs the discrepancies if any by issuing notice u/r 99 of CGST Rules seeking explanation within 30 days from service of notice.
- If explanations provided by taxable persons are not acceptable then PO may resort to audits u/s 65, 66 (discussed in later part) or inspection, search & seizure proceedings, initiation of determination of tax & other dues u/s 73 or 74.

Summary Assessment (Protective Assessment) (S. 64 of CGST r/w R. 100(4) of CGST Rules)

- Summary Assessment can be initiated when proper officer has evidence that there might be tax liability & PO has obtained prior permission of Additional / Joint Commissioner to assess the tax liability summarily.
- The proper officer must have sufficient ground to believe that any delay in passing assessment order would adversely affect interest of revenue.
- If supplier of goods is not ascertainable, person-in-charge of goods would be deemed to be Assessee & summary assessment will be done on him.
- Assessment order can be withdrawn if found erroneous on application by person within a period of 30 days of receipt or on own motion.

Audits under GST (Provisions mentioned below)

"Audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance. [S. 2(13) of CGST Act].

Since GST is a trust-based system registered person pays tax as per his determination, thus there arises need of tax officials / CA & CMA to ensure check on compliance ensured by registered person in this behalf.

| Particulars | Audit by CA/CMA | Tax Authorities | Special Audits |
|----------------------------------|---|---|---|
| Sections | S. 35(5), 44(2) of CGST Act r/w R. 80(3) of CGST Rules | S. 65 of CGST Act r/w R. 101 of CGST Rules | S. 66 of CGST Act |
| Significance / Meaning of Audits | This Audit is popularly known as GST Audit which has to be done annually by every registered person whose aggregate turnover exceeds Rs. 2 crores | Conducted by department i.e. Commissioner at such frequency as may be prescribed. | Special Audit is ordered by officer not below Assistant Commissioner directing registered person to get his books audited by CA/CMA nominated by commissioner having regard to nature & complexity of case. |
| Who is the Auditor | CA/CMA appointed by management. | Commissioner or any officer authorised by him | CA/CMA Nominated by Commissioner |
| Outcome | Compliance, Tax Payable or refundable | If Tax is found payable adjudication would be done u/s 73/74 of CGST Act | If Tax is found payable adjudication would be done u/s 73/74 of CGST Act |
| Time-limit to complete Audit | 31 st December of succeeding FY | 3 months from commencement of Audit (6 months extension possible) (15 days prior notice to be given to assessee) | 90 days from commencement of Audit. (90 days extension is possible) |
| Other Points | - | Findings of Audit, (after considering reply submitted by registered person), shall be informed to taxable person within 30 days of conclusion of audit. | Expenses incurred for examination accounts & records shall be borne & paid by department. |

Inspection, Search & Seizure & Arrest under GST [S. 67, 69, 71 of CGST Act, 2017]

By: CA Keval Mota

Inspection [S. 67(1) of CGST]

What is Inspection: -

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.

A proper officer not below the rank of Joint Commissioner (JC), may issue an authorisation to any other officer subordinate to him to carry out an inspection, if such proper officer **'has reasons to believe'** that the

(A) Taxable person has: -

- **Suppressed** any transaction of supply of goods or services or both, information relating to **stock**, claimed **excess credit**, **contravened any provisions** of act with an intent to evade taxes;

(B) Any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place:

- is keeping goods which have escaped payment of tax; or
- has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable

Search & Seizure [S. 67(2) to S. 67(12) of CGST Act]

Search & Seizure: -

"Search" in plain language means **finding something concealed**. Whereas Seizure means taking possession of property forcibly by an officer under legal process.

A proper officer **not below the rank of JC**, may issue an authorisation to any other officer subordinate to him to (or may himself) search and seize any goods / documents / books / things which in his opinion would be useful for / relevant to proceedings under the GST Law, when he has reason to believe that: -

- **Goods** liable for confiscation are **secreted**.
- **Books of accounts/ Documents** liable to be seized are **secreted**. (*Seized books of accounts/ documents shall be returned within 30 days of issue of notice for search only if not relied upon*)

Powers & Duties of Officer during Search / Seizure: -

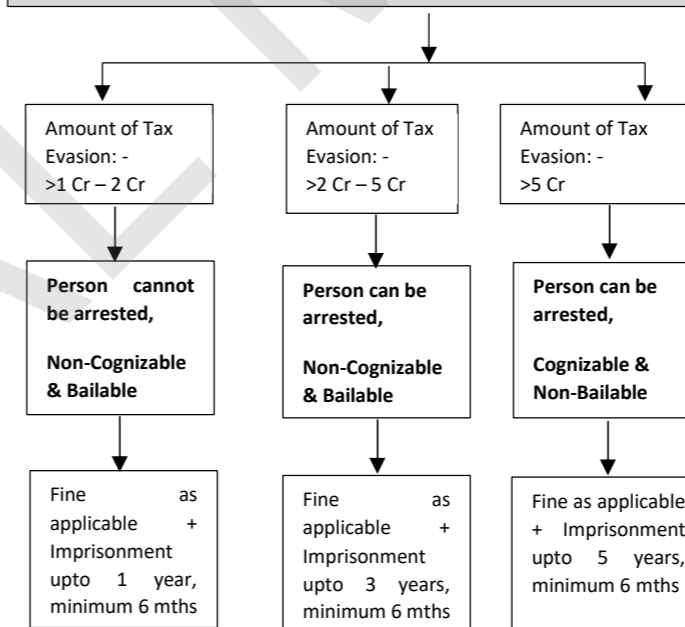
- 1) PO can seize goods, books of accounts or documents. Goods can be detained if seizure is not possible (E.g. Heavy machinery) (*PO shall prepare inventory of goods seized or detained*)
- 2) **Retained books** of accounts, **documents** or things **not relied upon** shall be **returned within 30 days** of issue of notice. If books are relied upon, they can be retained upto completion of inquiry or proceedings under Act.
- 3) Proper officer shall have the **power to seal, break or open the door of any premises** or to break open any almirah, electronic devices, box where any goods or documents are suspected to be concealed.
- 4) **Person** from whom books of accounts or documents are seized may **take photocopy or extract of such documents**.
- 5) **Provisional release of goods seized is possible** upon execution of **Bond** in Form GST INS -04 for the value of the goods and **furnishing of security in form of Bank Guarantee equal to amount of applicable tax (incl. SGST / UTGST / IGST / Cess) + Interest + Penalty**. It shall be noted that goods released provisionally shall be mandatorily taken by person within 1 month, failing which PO has power to dispose-off the same (NN 27/2018 – CT dated 13th June, 2018)
- 6) **Seized goods shall be returned if no notice** has been issued by PO **within 6 months** (or extended period of further 6 months)
- 7) **Perishable / Hazardous** natured goods **can be disposed-off by PO after seizure**.

Notes: -

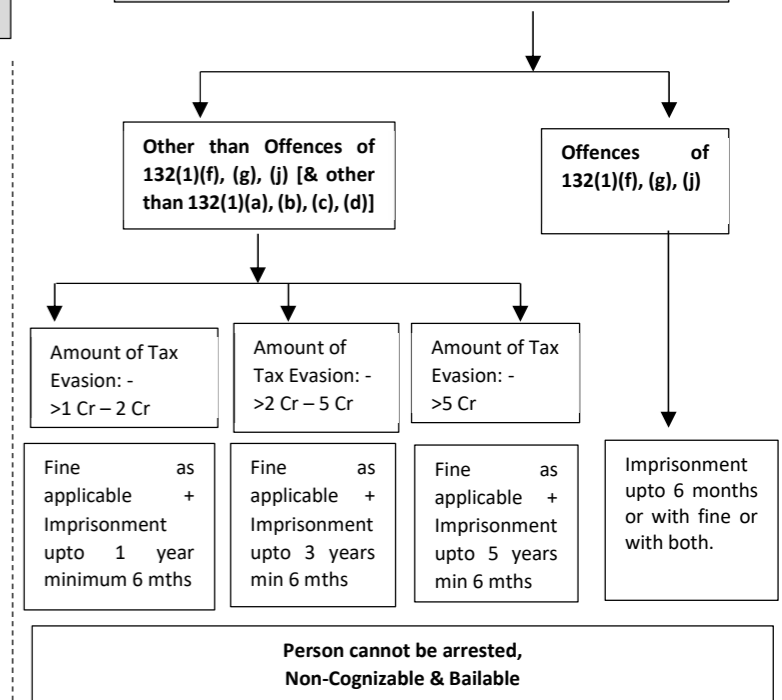
- The basic difference between seizure and confiscation is seizure can be of any goods but confiscation can be of offending goods, books of accounts can be seized not confiscated.

Arrest Provisions under GST (S. 69 of CGST Act)

(1) Offences of the kind specified in Section 132(1) (a), (b), (c) and (d) of CGST Act



(2) Offences – 132(1)(e) to 132(1)(l) of CGST Act



(2) Subsequent conviction for any offence under Section 132 [not just 132(1) (a), (b), (c) and (d)] he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine. (*Without Any Monetary Limit*)

Notes: -

- 1) Section 132(1) offences are outlined below: -
 - a) Supplies without issue of any invoice with the intention to evade tax;
 - b) Issues any invoice or bill without supply 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 above
 - d) Collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due. [S. 132(1)(d)].
 - 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
 - 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
 - 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 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
 - l) Attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section.

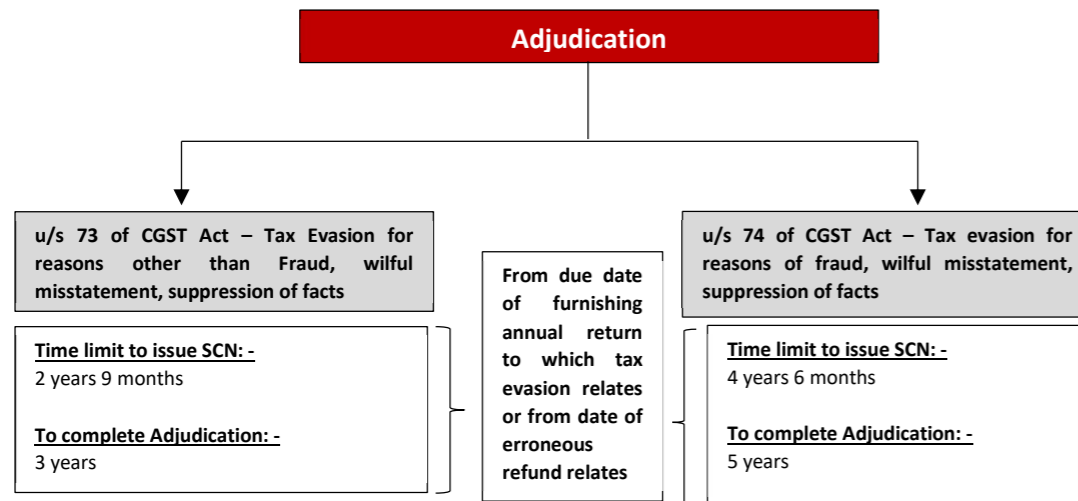
- 2) Cognizable-Non bailable offence means such an offence where a person can be arrested without arrest warrant & can be investigated without permission.
- 3) In respect of cognizable offences, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.
- 4) Commissioner (by an order) authorises CGST Officer to arrest a person.
- 5) In case of Non-cognizable-Bailable offence bail can be considered by Assistant Commissioner or Deputy Commissioner
- 6) Tax Evasion here includes "Amount of Tax Evaded or ITC wrongly availed utilized or the amount of refund wrongly taken in respect of above"

"Don't Watch the clock. Do what it does. Keep Going"

By: CA Keval Mota

Demand & Recovery under GST (S. 73 to 83 of CGST Act, R. 142, 158, 159 of CGST Rules & S. 19 of IGST Act)

Adjudication Authority means authority competent to pass order or decision under this act but not include CBIC, Revisional Authority, Authority for Advance ruling, Appellate Authority for Advance ruling, Appellate Authorities, GST Appellate Tribunal (GSTAT), National Anti-profiteering Authority.



Summary of Penalties: - (SCN – Show Cause Notice)

| Tax paid | Penalty u/s 73 | Penalty u/s 74 | Notes (R. 142 r/w NN 16/2019-CT) |
|----------------------------|---|--|---|
| 1) Before SCN | - (No SCN be issued if paid) | 15% of Tax (No SCN be issued if paid) | Person to inform PO in form DRC 03, PO to issue Ack in DRC 04 for (1) & (2) |
| 2) Within 30 days of SCN | - (Proceedings deemed to be Concluded) | 25% of Tax (Proceedings deemed to be Concluded) | |
| 3) Within 30 days of order | 10% of Tax or, Rs. 10,000 | 50% of Tax (Proceedings Concluded) | |
| 4) After 30 days of order | whichever is higher | 100% of Tax (i.e. Penalty = Tax) | |

Notes:-

- Show cause Notice (SCN) is given, to person before raising demand through issuance of order, to show cause as to why dues shall not be recovered from him. After receiving reply to SCN, proper officer issues an order.
- PO to issue notice & upload summary in DRC – 01 on portal.
- It is pertinent to note that if person has self-assessed its tax liability then he is required to pay the same within 30 days for becoming due, otherwise penalty will be levied even if paid before issuance of SCN or paid within 30 days of issuance of SCN. [S. 73(11) of CGST Act] (Frequently asked in ICAI exams).
- The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked. 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 but after the due date for payment of such tax. It is accordingly clarified by Circular No. 76/50/2018-GST that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. General penalty u/s 125 will be levied which is Rs. 25,000/-(CGST)+Rs. 25,000/-(SGST).
- If Demand raised is not paid within 3 months of order (Not SCN) then recovery proceedings will be initiated u/s 78 of CGST Act, 2017.
- Suppression means non-declaration of facts/information which is statutorily required to declare in the return,
- If the supplier is making payment of taxes under forward charge due to fraud/wilful misstatement/ suppression of facts, no input tax credit will be available to the recipient. (Refer S. 17(5)(j) of CGST Act in ITC Chapter)

| Forms* | Description of Forms (MCQ can be asked) |
|----------------------|--|
| GST DRC – 01 | Summary of <u>Notice</u> specifying details of amount payable |
| GST DRC – 01A | PO before serving SCN shall communicate details of dues payable u/s 73/74 in DRC – 01A Part A, Regd person to communicate payment details (if payment made) in DRC – 01A Part B. |
| GST DRC – 02 | Summary of <u>Statement</u> specifying details of amount payable (where the proper officer finds similar issues for any period, the proper officer may, instead of issuing a detailed notice for such period, serve a statement) |
| GST DRC – 03 | Intimation by person-Voluntary payment of tax & interest, before issue of Notice or statement/ within 30 days of Notice or statement. |
| GST DRC – 04 | Acknowledgement accepting payment |
| GST DRC – 05 | Order concluding the proceedings |
| GST DRC – 06 | Order to be issued by PO if person files a reply or representation. |
| GST DRC – 07 | A summary of such order shall be uploaded electronically |
| GST DRC – 08 | Any rectification of the order u/s 161 of CGST Act |

Who shall issue show cause notice & Adjudication order u/s 73 & 74 of CGST Act? (Circular 31/05/2018 dtd 9.02.2018)

| Officer to issue Show cause Notice | CGST evaded u/s 73 or 74 (Rs.) | IGST evaded u/s 73 or 74 (Rs.) | (CGST + IGST) evaded u/s 73 or 74 (Rs.) |
|---|--------------------------------|---------------------------------|---|
| Superintendent of Central Tax | Upto Rs. 10 lakhs | Upto Rs. 20 lakhs | Upto Rs. 20 lakhs |
| Deputy / Assistant Commissioner of Central Tax | >Rs. 10 lakhs upto Rs. 1 crore | >Rs. 20 lakhs upto Rs. 2 crores | >Rs. 20 lakhs upto Rs. 2 crores |
| Additional or Joint Commissioner of Central Tax | >Rs. 1 crore | >Rs. 2 crores | >Rs. 2 crores |

Note: - Proper officer of CGST acts as proper officer of SGST.

Tax Collected but Not paid to Government (S. 76 of CGST Act, 2017)

- Every person who has collected from any other person any amount representing "tax under this Act", to pay the said amount to the credit of the Central or State Government regardless of whether the supplies in respect of which the amount was collected are taxable or not.
 - Notice to be issued by PO along with summary in Form GST DRC – 01 requiring to show cause & opportunity of being heard shall be given.
 - Final Speaking Order shall be passed by PO within 1 year from the date of issue of notice.
 - Tax shall be payable along with Interest u/s 50 from the date of collection till the date of deposit.
 - The person who has borne the incidence of the amount, may apply for the refund u/s 54.
- (Please note Sec. 122 states to pay within 3 months otherwise penalty SHALL be levied however this section says to pay immediately otherwise officer MAY service SCN & recover penalty as per notice)*

Wrong Tax Collected & paid to Government (S. 77 of CGST r/w S. 19 of IGST Act)

- A) Actual Inter-State Transaction [CGST & SGST / UTGST collected & paid (considering it as Intra-state supply) instead of IGST] – S. 77 of CGST Act**
- Refund of Wrong Tax paid i.e. CGST & SGST / UTGST is available (S. 54 of CGST Act)
 - No Interest would be charged on late payment of IGST (S. 19 of IGST Act)
- B) Actual Intra-state Transaction [IGST collected & paid (considering it as Inter-state supply) instead of CGST & SGST/UTGST] – S. 19 of IGST Act**
- Refund of Wrong Tax paid i.e. IGST is available (S. 20(xiii) of IGST Act r/w S. 54 of CGST Act)
 - No Interest would be charged on late payment of CGST & SGST/UTGST (S. 77 of CGST Act)

Recovery Proceedings under GST (S. 78, S. 79 of CGST Act)

Power of Recovery (S. 78 of CGST)

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid within **3 months** from the date of service order otherwise, recovery proceedings shall be initiated.

However, If PO 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 period less than 3 months.

"Successful people do what unsuccessful people are not willing to do. Don't wish it were easier; wish you were better."

Summary of Modes of Recovery (S. 79 of CGST Act)

- Deduction out of any money owing to defaulter
- Detaining and selling the goods belonging to defaulter under control of PO
- Recovery from any other person who owes money to defaulter (Garnishee Proceedings) – Garnishee is such a person from whom money is due to defaulter. Garnishee will be deemed to be discharged [S. 79(1)(c) of CGST]
- Collection by detention of any movable or immovable property – Person shall pay dues within 30 days of distraint of property otherwise department will sell off the same & apply towards default in this order: - (1) Administrative Cost; (2) Recovery of Penalty, Interest & Tax Amount (3) Balance amount will be refunded to person.
- Recovery as arrears of Land Revenue
- Recovery as fine imposed by Magistrate
- Recovery through execution of a decree
- Recovery through surety (for amount due by defaulter), Recovery from company in liquidation (i.e. recovery from liquidator)

Payment of Tax in Installments S. 80 of CGST r/w R. 158 of CGST Rules

This section permits a taxable person to make payment of an amount due (demand raised) on instalment basis (not exceeding 24 instalments). Commissioner has the power to grant permission to avail instalment payment scheme.

Non-Applicability of Instalments Payment in below cases:-

- Self-assessed tax shown in Return (S. 80 of CGST Act)
- Already a defaulter under GST Act. (R. 158 of CGST Rules)
- Application for payment of tax has been rejected in PFY (R. 158 of CGST Rules)
- Amount payable is less than Rs. 25,000/- (R. 158 of CGST Rules)

Notes:-

- The taxable person shall be liable to pay interest u/s 50 of CGST on the amount due from the first day such tax was due to be payable till the date tax is paid.
- If default occurs in payment of any one instalment the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

Provisional Attachment (S. 83 of CGST r/w 159 of CGST Rules)

- Where during the pendency of any proceedings under section 62 (Assessment of Non-filers) or section 63 (Assessment of unregistered persons) or section 64 (Summary assessment) or section 67 (Inspection, search & seizure) or section 73 or section 74, for the purpose of protecting the interest of the Government revenue commissioner by order in writing attach provisionally any property, including bank account, belonging to the taxable person. (S. 83 of CGST)
- Provisional attachment shall cease to have effect after 1 year from date of provisional attachment order. (S. 83 of CGST)
- Objection can be filed within 7 days of attachment (R. 159(5) of CGST Rules)
- Perishable / hazardous property shall be released forthwith if market price of such property or the amount that is or may become payable by the taxable person, whichever is lower is paid by taxable person. (R. 159(3) of CGST Rule)
- Goods shall be disposed off if failed to make payment of specified amount.

Advance Ruling under GST (S. 97, 98, 100, 102, 103, 104)

(1) What is Advance Ruling under GST

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 Government authorities. Further, it helps in avoiding long drawn and expensive litigation at a later date.

Advance ruling can be taken in relation to supply of goods and/or supply of services **being undertaken or proposed to be undertaken** by the applicant. The phrase 'being undertaken' is a present continuous tense which refers to supply which is underway.

(2) Questions on which Advance Ruling can be sought (S. 97(2) of CGST Act)

- Classification of any goods or services or both;
(Classification is important as Place of supply; time of supply and other provisions depends upon whether it is a supply of goods or supply of service)
- Applicability of a notification issued under the provisions of CGST Act;
- Determination of time and value of supply of goods or services or both;
(Not Place of Supply, as AAR is State-wise thus, State's AAR may be biased with reference to Place of supply)
- Admissibility of input tax credit of tax paid or deemed to have been paid;
- Determination of the liability to pay tax on any goods or services or both;
(Determination of tax liability depends upon Location of Supplier & Place of supply, however for place of supply matters Advance ruling cannot be taken)
- Whether applicant is required to be registered; (Refer Note 1)
- Determination of any activity whether or not a supply
(GST will be levied on "supply" thus it is pertinent to determine whether an activity is a supply or not)

(3) Hierarchy & Procedure for Application to Authority for Advance Ruling (AAR) or Appellate AAR (AAAR)

Applicant Applies for Advance Ruling manually by complying rule 107A of CGST Rules

AAR to pronounce ruling w/i 90 days of receipt of Application (Fees Rs. 5,000). AAR shall not admit application if case is pending or decided in case of applicant under this Act [S. 98(6) + S. 97(1) + S. 98(2) of CGST Act]

Any person aggrieved with the order of AAR may apply to AAAR w/i 30 days from communication of ruling of AAR (30 days extension possible) (Fees Rs. 10,000) [S. 100 & 106 of CGST Act]

- AAR shall forward copy of application to concerned officer & call upon such records if necessary, AAR after examining the application & after giving opportunity of being heard to the applicant & concerned officer is empowered to either admit or reject the application (opportunity of being heard to be given before rejecting any application)
- Copy of final order to be given to Applicant, concerned officer & jurisdictional officer.
- Advance ruling is applicable only to applicant, concerned officer & jurisdictional officer.
- Advance ruling is not applicable if law or facts have been changed. [S. 103(1) of CGST Act]
- If obtained with fraud, suppression & misrepresentation of facts it would be treated as Void-ab-initio. [S. 104]

(4) Other Aspects of Advance Ruling

- The word "applicant" refers to any person **already registered** or one who **desires to get registered under the Act**.
- An application for obtaining an advance ruling shall be made in quadruplicate (4 copies), in FORM GST ARA-01.
- It is not mandatory to be registered at the time of making an application for advance ruling. However, in case of an unregistered person it is mandatory to quote his PAN unless he is a non-resident. The term 'Person' has been defined in section 2(84) of the CGST Act.
- 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. If rectification is having effect of enhancing liability of applicant, opportunity of being heard shall be given. (S. 102 of CGST Act)
- Application for advance ruling shall 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 CGST Act.
- If there is 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
- Recipient cannot apply for advance ruling when tax is payable by supplier & there is no reverse charge mechanism on such transaction
- Liability to deduct TDS cannot be decided by AAR

By: CA Keval Mota

Liability in Special Cases (S. 85 to 93 of CGST Act)

| Type of Liability | Person Responsible |
|--|---|
| 1) Transfer of Business (e.g. Sale, Gift, Lease, Leave and license, Hire etc.) (S. 85 of CGST Act) <i>Transfer of business as going concern is exempt (Unutilised credit can be transferred by filing GST ITC - 02)</i> | Liability arising prior to transfer (Liability relating to prior period):- ➤ Both transferor and transferee will be jointly and severally liable (even if amount determined after transfer) for payment of taxes, interest or penalty due upto the time of transfer of business. Liability arising after transfer:- ➤ Transferee shall be liable |
| 2) Liability of agent & principal (S. 86 of CGST Act) | When agent receives or supplies taxable goods on behalf of his principal, such agent & principal shall be jointly & severally, be liable to pay tax on such goods. |
| 3) Transfer as Amalgamation / Merger. (S. 87 of CGST Act) | Liability for period / transaction between effective date of Amalgamation or merger and date of order – Respective Companies be liable. Unutilised ITC shall be transferred by complying with Rule 41 of CGST Rules. |
| 4) Company in Liquidation (S. 88 of CGST Act) | ➤ Receiver / liquidator to give intimation of his appointment to the Commissioner within 30 days of his appointment. ➤ Within 3 months from the date of such intimation, the Commissioner will notify the liquidator to set apart a sum of money that would be sufficient to discharge, in his opinion, the amount of tax, interest and penalty payable by the company. ➤ When a private company is not able to clear its dues, then every director at any time during the period, for which tax is due, would be liable jointly and severally to pay the dues. ➤ However, if any director proves to the satisfaction of the Commissioner that such non-recovery is not due to his gross neglect, misfeasance or breach of duty, the liability would not arise in the hands of such director. |
| 5) Liability of directors of private companies (when unable to discharge tax, interest or penalty) (S. 89 of CGST Act) | ➤ Director of such private company during such period will be liable to pay such dues. The liability of the Director will be relaxed only when, he proves that such non-recovery of dues is not because of his gross negligence, misfeasance or breach of duty in relation to the affairs of the company. ➤ However, when a private company is converted to public company, then no such recovery of old dues can be made from the person(s) who were directors of the private limited company before such conversion. |
| 6) Liability of Partners of firm (including LLP) to pay tax (S. 90 of CGST Act) | ➤ Partners of the firm shall jointly and severally, be liable for such payment. In case of retirement of partner Intimation of retirement to be given to commissioner within one month of retirement. If Intimation given within one month: - Retiring partner shall be liable upto the date of his retirement If Intimation not given within one month: - Retiring partner shall be liable upto the date on which intimation is received by commissioner In case of Dissolution of Firm (incl. LLP) (S. 93(3) of CGST Act) Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty (whether determined or not till dissolution). |
| 7) Liability of Guardians, trustees or agents of a minor or any other incapacitated person (S. 91 of CGST Act) | If business has been carried on for minor or any other incapacitated person Guardian, trustee or agents of such persons shall be liable to pay tax, interest or penalty. |
| 8) Liability of Court of Ward (Administrator General, Official Trustee or any receiver or manager, who controls the estate) (S. 92 of CGST Act) | Any person whose business is controlled by Administrator general or Official trustee or Any receiver or manager shall be liable to pay tax, interest or penalty. |
| 9) Liability in case of Death of Individual, Partition of HUF/AOP, Dissolution of Firm, Termination of Guardianship or Trusteeship (S. 93 of CGST Act r/w S. 53 of Insolvency Bankruptcy Code, 2016) | It is imperative to note that this Section is subject to IBC provision. In IBC, there is mention of specific order for payment in case of liquidation / winding up / dissolution of entity which goes as follows: - ➤ IBC Cost ➤ Workmen's Dues of 24 months ➤ Wages & employee dues of 12 months ➤ Unsecured debts ➤ Amount payable to CG/SG in respect of 2 years preceding liquidation / winding up / dissolution of entity. Attention shall be inclined towards last entry mentioned above; meaning thereby Tax, interest & penalty shall be payable in specific cases as per above order. 1) Death of Proprietor (S. 93(1) of CGST Act):- Business is continued: - Legal heir / any other person shall be fully liable Business is discontinued: - Legal heir liable to the extent of estate inherited 2) Partition of HUF or AOP (S. 93(2) of CGST Act):- Each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act upto the time of the partition. 3) Dissolution of firm (S. 93(3) of CGST Act): - Discussed in Point (6) above 4) Termination of Guardianship (S. 93(4) of CGST Act):- In case the guardian is carrying on the business on behalf of a ward or the trustee who carries the business under the trust on behalf of beneficiary, then on the termination of guardianship or trusteeship, the ward or the beneficiary is liable to pay tax, interest or penalty upto the time of such termination. |

"Struggle for just few months & live rest of your life's 50 years like a champion."

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.

Appeal by Assessee

Supreme Court (S. 118 of CGST Act)

Assessee aggrieved by order of GSTAT – NB/RB or Order of HC (only if HC certifies it fit to be appealed before SC) may prefer an appeal to Supreme Court. [S. 118(1)]

Provisions of Code of Civil Procedure applies here.

All dues as per order of GSTAT (i.e. NB/RB) or HC shall be paid before preferring appeal to HC. [S. 119]

High Court (HC) (S. 117 of CGST Act)

Assessee aggrieved by order of GSTAT – SB/AB may prefer an appeal before HC within 180 days from the date of communication of order in GST APL-08. HC will admit only if case involves substantial question of law. [S. 117(2)]

Provisions of Code of Civil Procedure applies here

All dues as per order of GSTAT (i.e. SB/AB) shall be paid before preferring appeal to HC. [S. 119]

National Bench / Regional Bench (NB/RB) (One Matter of Place of Supply)

State Bench / Area Bench (SB/AB)

Assessee aggrieved by order of AA or Revisional Authority may prefer an appeal before GSTAT within 3 months (+ 3 months) from the date of communication of order or Date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later. in GST APL-05. [S. 112(1), (6), (7)]

Pay Amount of Tax, interest, fine, fee & penalty, as is admitted, in full; and pre-deposit of sum equal to 20% of remaining amount of tax in dispute (not interest & penalty) (in addition to amount deposited during filling appeal before Appellate Authority) (subj. to max Rs. CGST 50 crores, SGST 50 crores) before appeal to GSTAT. [S. 112(8)]

Appeal fees [S. 112(8)] or restoration of appeal fees [S. 112(10)] shall be Rs. 1,000 for every Rs. 1,00,000/- of tax or input tax credit involved or the difference in tax or input tax credit involved subject to maximum of Rs. 25,000/- [S. 112(7)]. GSTAT may reject to admit appeal if tax or ITC difference does not exceed Rs. 50,000/- [S. 112(8) & S. 112(10)]

GSTAT (S. 112 & 113)

Appellate Authority (AA) (S. 107)

GSTAT has to decide the appeal, wherever possible, within a period of 1 year (excl. stay period) from the date of filing (Advisory Time-limit) – S. 113(4)

The Appellate Tribunal also has power to remand the case back to the appellate authority or the Revisional authority or the original adjudicating authority. [S. 113(1)]

Memorandum of Cross objection to be filed in FORM GST APL-06 within 45 days (+45 days) from the receipt of notice of filing of such appeal. S. 112(5). (Refer Note 2)

Maximum 3 adjournments [S. 113(2)]

Person aggrieved due to order of Adjudicating authority may within 3 months (+1 month) from the date of communication of decision or order prefer an appeal before Appellate Authority in Form GST APL-01. Ack in GST APL – 02. [S. 107(3) r/w S. 107(4)]

Pay Amount of Tax, interest, fine, fee & penalty, as is admitted, in full; and pre-deposit of sum equal to 10% of remaining amount of tax in dispute (not interest & penalty) (subj. to max Rs. CGST 25 crores, SGST 25 crores) before appeal. [S. 107(6)]

Adjudicating Authority

AA has to decide the appeal, wherever possible, within a period of 1 year (excl. stay period) from the date of filing (Advisory Time-limit) [S. 107(13)]

AA has to pass the order confirming, modifying or annulling the decision or order appealed against, but shall not remand the case back to the adjudicating authority. [S. 107(11)]

AA may allow any additional grounds not specified in the grounds of appeal on being satisfied that the omission was not willful or unreasonable. [S. 107(10)]
Maximum 3 adjournments [S. 107(9)]

Additional evidence before AA or Tribunal can be admitted in following situations (R. 112 of CGST Rules):-

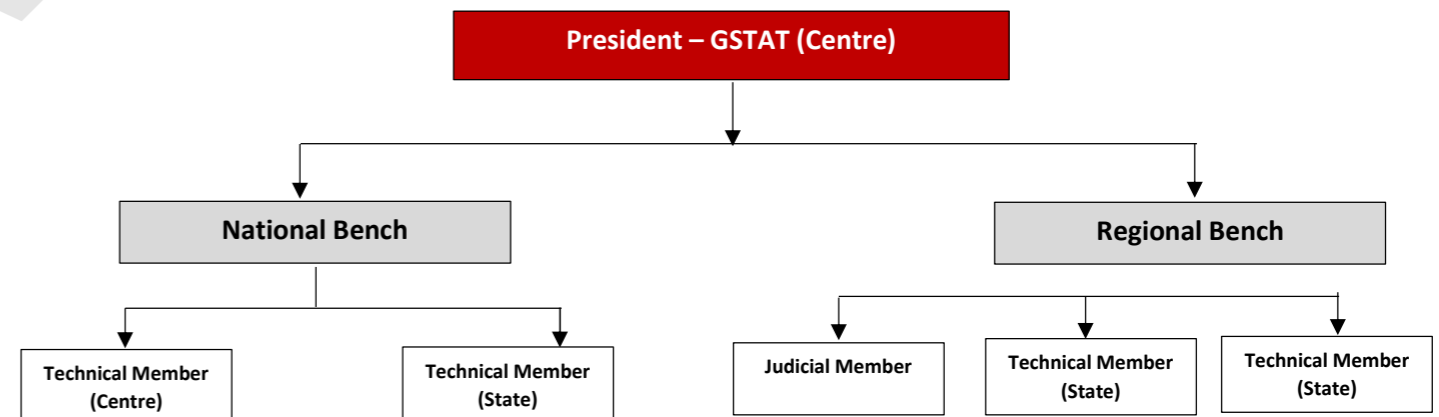
- Adjudicating Authority / AA refused to accept evidence
- Appellant was prevented by sufficient cause to produce evidence called by Adjudicating Authority / AA.
- Appellant was prevented by sufficient cause to produce evidence called by Adjudicating Authority / AA which is relevant to ground of appeal.
- Adjudicating Authority / AA passed appeal without giving sufficient opportunity to adduce evidence relevant to ground of appeal.

- 1) The Appeal has to be filed before the Commissioner (Appeals) where adjudicating authority is Additional or Joint Commissioner; and before Additional Commissioner (Appeals) adjudicating authority is Deputy or Assistant Commissioner or Superintendent (S. 107(1) r/w. R. 109A)
- 2) There are two parties before any court viz. Appellant & Respondent. Appeal is filed by Appellant whereas what a respondent files against the appeal by appellant is called as Memorandum of Cross Objection. [S. 112(5)]
- 3) Tribunal can correct mistake apparent from record within 3 months from date of order u/s 113(3), AA can rectify mistake apparent from record u/s 161 within 3 months (refer misc. Provisions chp)
- 4) If pre-deposit made by appellant is required to be refunded consequent to any order of AA/Tribunal, interest shall be payable from DATE OF PAYMENT OF PRE – DEPOSIT TILL DATE OF REFUND @ 6% p.a. (S. 115 r/w S. 56)
- 5) Where order is passed by proper officer of CGST Act any appeal review revision rectification shall lie with that officer only. Accordingly, a tax payer shall not approach towards SGST / UTGST & CGST authorities both for a single transaction attracting CGST & SGST / UTGST.
- 6) No fees to file application for rectification of errors [S. 112(10)]
- 7) No pre-deposit to be paid if appeal is filed against denial of refund.
- 8) SCN u/s 73 /74 to be given for enhancing tax liability of appellant [S. 107(11)]

Appeal by Department [S. 107(2) r/w S. 112(3) of CGST Act r/w R. 109A

- 1) At times, the Department itself is not in agreement with the decision or order passed by the (initial) adjudicating authority or the appellate authority. The GST Law provides that in such cases, the Department can file what is commonly known as a "Review Application / Appeal".
 - 2) No fees / pre-deposit to be paid if appeal is to be filed by department.
 - 3) The GST Law gives powers to the **Commissioner** to review any order passed by adjudicating authority, or the appellate authority or revisional authority.
 - 4) If the Commissioner is of the view that any order passed by such authorities are not in consonance with law, erroneous & pre-judicial to the interest of revenue, he can direct any officer subordinate to him to file appeal before competent authority within 6 months (+1 Month) from date of communication of order. (Note: - RA can revise only after the period of this 6 months is completed)
- For example, if the order of adjudicating authority is reviewed, he can order his subordinate to file an appeal before the appellate authority in form GST APL – 03 [S. 107(2)]. If the order of the appellate authority or the revisional authority is reviewed [S. 112(3)], he can direct his subordinate to file an appeal before the Tribunal in form GST APL – 07. The grounds for appeal will be mentioned in his order.
- 5) The Appeal has to be filed before the Commissioner (Appeals) where adjudicating authority is Additional or Joint Commissioner; and before Additional Commissioner (Appeals) adjudicating authority is Deputy or Assistant Commissioner or Superintendent (S. 107(1) r/w. R. 109A)
 - 6) **The resultant review application is required to be dealt with by the AA or the Tribunal as if it were an appeal made against the decision or order of the adjudicating authority and the statutory provisions relating to appeals shall, so far as may be, apply to such application.**

Constitution & Members of Appellate Tribunal [S. 109 & S. 110 of CGST Act]



Similar is the constitution of GSTAT at State Level i.e. State Bench & Area Bench

Other Imp Points (S. 109)

- 1) The **National Bench or Regional Benches** shall hear the appeals only where one of the **issues** involved relates to the **place of supply**.
- 2) The **State Bench or Area Benches** shall hear the appeals involving matters **other than** matters covering **place of supply**.
- 3) The President and the State President shall by general or special order distribute the business or transfer cases among Regional Benches or Area Benches in a State.
- 4) The State Bench and Area Branch of the Appellate Tribunal shall consist of a judicial member, one technical member (centre) and one technical member (state) and the state government may designate the senior most judicial member in a state as the State president.
- 5) In the absence of a member of any bench due to vacancy or otherwise, any appeal with the approval of President or State President be heard by a bench of two members.

- 6) Any matter (other than matter involving question of law) involving tax, input tax credit, fine, fee or penalty determined in any order appealed against, not exceeding Rs. 5 Lakhs may be heard by single member bench.
- 7) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely only on the ground of the existence of any vacancy or defect in the constitution of Appellate Tribunal.

Revisional Authority (S. 108 of CGST Act, 2017)

The Revisional Authority means an authority appointed or authorised for revision of decision or orders as referred to in this section.

Order passed by RA can be further appealed at Tribunal, HC, SC. [S 108(3)]

Can Revise [S. 108(1) of CGST Act, 2017]

Those decisions or orders passed by any officer subordinate to him is **erroneous** in so far as it is **prejudicial to the interest of the revenue** or **illegal or improper** or has not taken into account certain material facts.

| Authority Passing Order | Revisional Authority for said order |
|--|---|
| Additional or Joint Commissioner of Central Tax | The Principal Commissioner or Commissioner of Central Tax |
| Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax | Additional or Joint Commissioner of Central Tax |

Cannot Revise this [S. 108(2) of CGST Act, 2017]

1) Non-appealable orders u/s 121 of CGST Act – In these below mentioned cases appeals cannot be filed by Assessee.

[S. 108(1), this point is arrived by reading "Subject to S. 121...."]

Following are non-appealable orders u/s 121: -

- Transfer of proceeding from one officer to another officer;
- Seizure or retention of books of account, register and other documents;
- Order sanctioning prosecution under the Act
- Order passed U/s.80 related to payment of tax & other amount in instalments.

2) An order against which an appeal is filed before Appellate Authority u/s 107, Appellate Tribunal u/s 112, High Court u/s 117, Supreme Court u/s 118. However, the Revisional Authority may pass an order on any point which has not been raised & decided in an appeal either before the Appellate Authority, Appellate Tribunal, High Court or Supreme Court.: -

1 year from the Date of order in such appeal or;
before 3 years* from Date of initial order (i.e. adjudicating authorities' order) whichever is LATER.

*The time span between the date of decision of the Appellate Tribunal and the date of decision of the High Court or the date of decision of the High Court and the date of decision of Supreme Court should be excluded in computing the period of limitation of three years. Even the period of stay order is excluded in computing the period of limitation of three years. [S. 108(4)]

- 3) Period of 6 months (i.e. time-limit for department to file appeal before appellate authority or Appellate Tribunal) has not expired or more than 3 years have expired after passing the decision or order sought to be revised.**
- 4) The order has already been taken for revision at an earlier stage; or**
- 5) The order sought to be revised is a revisional order in the first place**

Other points [S. 109B]: -

Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.

The Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

Appeal not to be filed in certain cases (S. 120 of CGST Act, 2017)

(Difference between Section 120 & 121 is that, in case of Section 120 – CGST / SGST, UTGST officer cannot prefer appeal in certain cases, whereas in case of Section 121 i.e. Non-appealable orders, assessee cannot file appeal in certain cases)

- 1) This section provides for non-filing of appeal by CGST & SGST / UTGST Officer if it is below Monetary Limits specified by CBIC.
- 2) This provision shall not preclude such CGST & SGST / UTGST Officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
- 3) No person, being a party in appeal or application shall contend that the officer of central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
- 4) The Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by CGST officer on account of monetary limits fixed by Board.

"The best view comes after the hardest climb."

"No idleness, no delay, no procrastination, never put off till tomorrow what you can do today."

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Penalties are imposed by CG/SG on persons who are violating provisions of Law. Accordingly, in GST there is a list of penalties for certain offences. We will study the same in this chapter.

Offences & Penalties (S. 122, 125, 126, 129, 130 of CGST Act)

1) Section 122 (1) of CGST Act, 2017 – 21 Offences

Penalty for Below Offences made by Taxable Person: -

➤ **Rs. 10,000/- or Amount Equal to Tax evasion whichever is higher.**

(i.e. Rs. 10,000 or tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher)

Offences: -

(A) Outward Supply & Transportation: -

- Supplies without issue of any invoice or issues an incorrect or false invoice with regard to any such supply OR, issues invoice or bill of supply without supply [S. 122(1)(i) & (ii)]
- Transports any taxable goods without the cover of documents as may be specified in this behalf; [S. 122(1)(xiv)] – (E-way Bill, Delivery Challan / Tax Invoice / Bill of supply are specified documents)
- Supplies, transports or stores any goods which are liable to confiscation [S. 122(1)(xviii)]
- Disposes off or tampers with any goods that have been detained, seized, or attached [S. 122(1)(xxi)];
- Suppresses his turnover leading to Tax evasion [S. 122(1)(xv)];

(B) Registration related: -

- A person liable to be registered but fails to obtain registration [S. 122(1)(xi)];
(S. 22 & 24 shall be referred to understand liability of person to take registration)
- Issues any invoice or document by using the registration number of another registered person [S. 122(1)(xix)];
- Furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently [S. 122(1)(xii)]

(C) Tax-Related & Officers' Duty related: -

- Collects any amount as tax (whether or not in contravention of provisions) but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due [S. 122(1)(iii) & (iv)];
- Fails to deduct TDS u/s 51, or deducts lesser than TDS deductible, or where he fails to pay TDS to the Government [S. 122(1)(v)];
- Fails to collect Tax u/s 52, or collects lesser than TCS collectible, or where he fails to pay TCS to the Government [S. 122(1)(vi)];
- Obstructs or prevents any officer in discharge of his duties under this Act [S. 122(1)(xiii)];

(D) Purchase & Refunds: -

- Takes or utilizes 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 [S. 122(1)(vii)]; (Bill to Ship to Model is an exception to availing ITC without actual receipt of goods or services)
- Fraudulently obtains refund of tax under this Act [S. 122(1)(viii)];
- Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder; [S. 122(1)(ix)]

(E) Accounts, Records & Documentation: -

- Falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act [S. 122(1)(x)];
- Fails to keep, maintain or retain books of account and other documents in accordance provisions [S. 122(1)(xvi)];
- 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 [S. 122(1)(xvii)]
- Tampers with, or destroys any material evidence or document; [S. 122(1)(xx)]

2) Section 122 (2) of CGST Act, 2017

Registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised: -

Reasons other than fraud, wilful misstatement & suppression of facts: -

Rs. 10,000/- or,
10% of Tax Due whichever is higher.

Reasons of fraud, wilful misstatement & suppression of facts: -

Rs. 10,000/- or,
100% of Tax Due whichever is higher.

3) Section 122 (3) of CGST Act, 2017

Penalty shall be levied under this section to any person who (Thus includes unregistered persons)

- aids or abets any of the offences specified in Section 122(1) i.e. Part (1) of this chapter.
- 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 are liable to confiscation.
- Receives / Deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions;
- Fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
- Fails to issue invoice in accordance with the provisions or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to Rs. 25,000/-

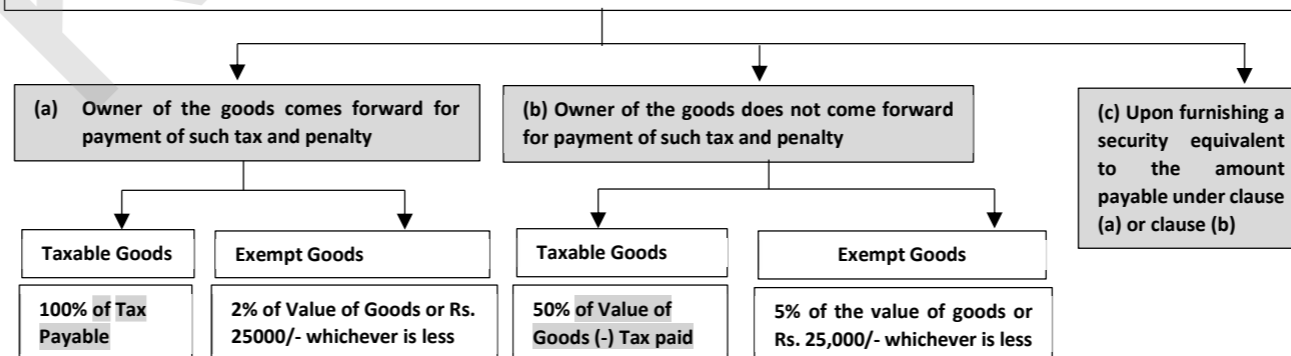
4) S. 125 – General Penalty Rs. 25,000/- (where no separate penalty has been mentioned in this Act)

5) S. 126 – Penalty not to be imposed for minor breaches

No penalty shall be imposed for “minor breaches” of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence. Minor Breach means breach which has amount of tax involved less than Rs. 5,000/- i.e. **“5000 is NOT A Minor Breach”**

6) S. 129 – Detention, seizure and release of goods and conveyances in transit.

If a person who has transport goods while in transit in contravention of provisions, such goods & conveyance in which goods were transported shall be liable for detention or seizure & shall be released on payment of below penalty or security: -



Notes: -

- If the person (either owner of the goods or any other person) fails to discharge the amount of tax and penalty under this section within 14 days, than the goods and/ or conveyance shall be liable for confiscation u/s 130 of CGST Act (Refer Part 7 of the Chapter). Perishable / hazardous goods may be disposed off before 14 days.
- No such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.
- 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. No tax, interest or penalty shall be determined without giving the person concerned an opportunity of being heard.

7) Confiscation of goods or conveyances and penalty (S. 130)

(A) Situations which lead to confiscation of goods or conveyance [S. 130(1) of CGST]

- Supplies or receives any goods (not services) in contravention of any of the provisions with intent to evade payment of tax;
- supplies any goods liable to tax under this Act without having applied for registration; or
- does not account for any goods on which he is liable to pay tax under this Act;
- Contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- Uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or 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.

(Penalty u/s 122 of CGST Act, 2017 shall be payable)

(B) Maximum fine for redemption (release) of Confiscated Goods [S. 130(2) of CGST]

- Market value of the confiscated goods (-) Tax chargeable thereon or0r,
- Penalty u/s 129(1) (i.e. discussed in Part 6 of Chapter),

whichever is higher.

(C) Maximum fine for redemption (release) of Confiscated Conveyance [S. 130(2) of CGST]

Tax payable on the goods being transported.

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.

Other Notes: -

- Opportunity of being heard shall be given before passing any order
- When goods or conveyance are confiscated, title shall pass on to CG.
- P.O. on satisfaction that the confiscated goods or conveyance are not required in any other proceedings under this Act, can give reasonable time to person not exceeding 3 months to pay fine in lieu of confiscation, otherwise can sell off such goods.

8) Compounding of Offences [S. 138 of CGST Act, 2017]

Compounding of an offence means payment of a sum of money in monetary terms instead of undergoing prosecution. Application for compounding of an offence can be either before or after institution of the prosecution proceedings.

In below cases, compounding of offences is not available: -

- Person had already allowed to compound once in respect of offence u/s 132(1)(a) to (f) or 132(1)(l) in respect of 132(1)(a).
- Person who had already compounded under GST Act in respect of supplies of value exceeding 1 crore.
- 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;
- a person who has been convicted for an offence under this Act by a court;
- Accused of committing crime u/s 132(1)(g), (j), (k)

(Series of Section 132(1) has been discussed in Chapter Inspection, Search, Seizure & Arrest)

Minimum Limit for compounding

50% of Tax or,
Rs. 10,000/-

Maximum Limit for compounding

150% of Tax or,
Rs. 30,000/-

Notes: -

- Compounding can be allowed by Commissioner
- As per Rule 162, application for compounding to be done in GST – CPD 01
- If person allowed to compound an offence, he shall pay dues within 30 days of order allowing to pay.

By: CA Keval Mota

Job-work means any treatment or process undertaken by a person on goods belonging to another registered person [Section 2(68) of CGST Act, 2017]. We will understand each & every aspect of Job-work in detail.

1) Analysis of All provisions of Job-work (S. 19 & S. 143 of CGST Act, 2017 r/w Rule 45 & 55 of CGST Rules & various circulars)

1) Analysis of Definition – S. 2(68) of CGST Act:-

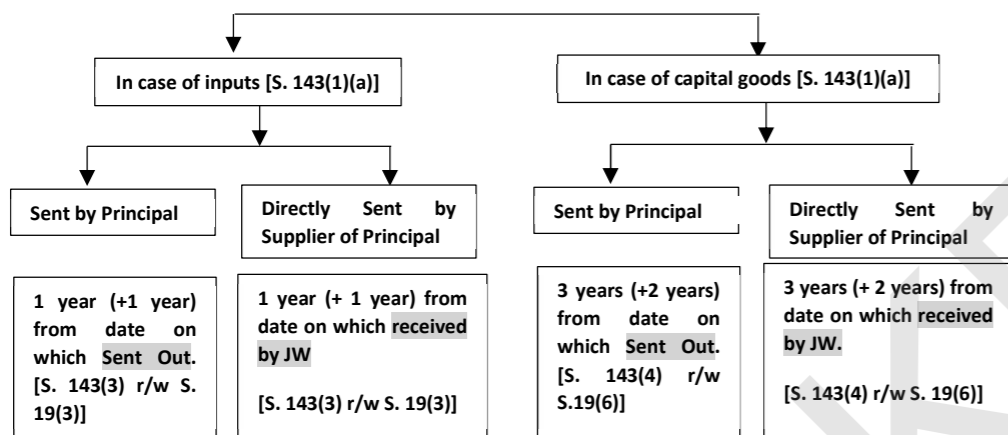
- **Treatment or process** - Whether or not treatment or process results in manufacture or not, the treatment or process would always be “treated as supply of services”. Further, job-working must not be confused with repair or maintenance. Job-working creates the functionality of an article but repair or maintenance restores or improves the functionality already created and possessed by that article or thing.
- **On goods belonging to another registered person:** - As per literal reading of definition, we understand that goods shall belong to registered principal. However, **job-worker can add his own goods as well in providing his services.**

2) Goods sent to Job-worker – Not a supply but ITC can be availed by Supplier: - Goods sent to job worker are not treated as supply and not taxed, except where not received within specified time limit (discussed in later part of chapter). [S. 143]

Principal can avail input tax credit on inputs [S. 19(1)]/ capital goods [S. 19(4)] sent to job-worker. Further, 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 (As per ITC provisions, to avail ITC goods shall be received by recipient, however in case of goods being directly delivered to job-worker’s location, principal can take ITC). [S. 19(5)]

It shall be noted that Job-work is a service, thus Job-work charges would be supply of service & GST shall be leviable by job-worker if he is registered under GST.

3) Time-limit for return of goods from Job – worker (JW) (other than moulds and dies, jigs and fixtures, or tools) Below Sections r/w CGST Amendment Act, 2018



4) Direct Supply from Place of business of Job-worker [S. 143(1)(b) r/w Proviso to S. 143]:-

A registered person may supply goods directly from job-worker’s place of business (PoB) to recipient in India on payment of tax / outside India without payment of tax within specified time-limit as above, if JW’s POB is shown as additional PoB. It shall be deemed that principal has supplied such goods. In case of goods exported outside India, LUT shall be executed by principal.

Illustration: 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.

(If inputs [S. 19(3)] or capital goods [S. 19(6)] are not received within the above specified period or are not supplied from Job-worker’s location within such period, it would be treated as supply by principal on the date on which it had been sent out/ received by job-worker as the case may be. Principal shall be liable to pay GST on same along interest chargeable thereon. Intimation of transfer shall be given in GST ITC – 04)

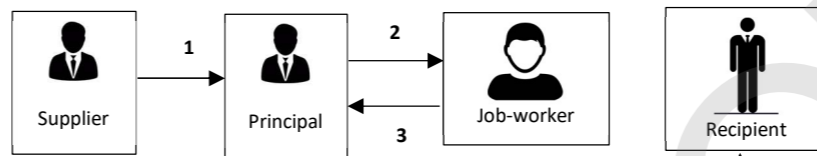
5) E – way Bill Provisions in relation to Job-work [3rd Proviso to Rule 138]: - Where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment.

6) Treatment of Waste & Scrap [S. 143(5)]: - Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

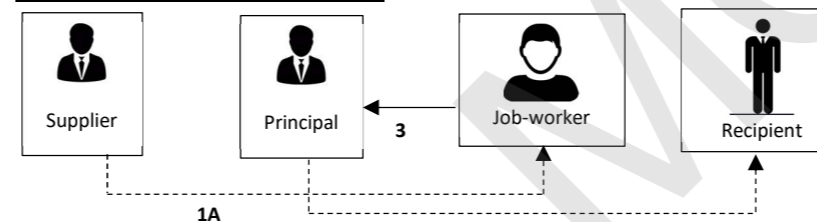
Job Work under GST [S. 143 r/w S. 19 of CGST Act]

7) Supply of Goods between Supplier, Principal, Job-worker & Customer of Principal –Circular No.38/12/2018 & r/w Circular 88/07/2019:- (Direction to Read – Refer Numbers simultaneously with Chart below Diagram)

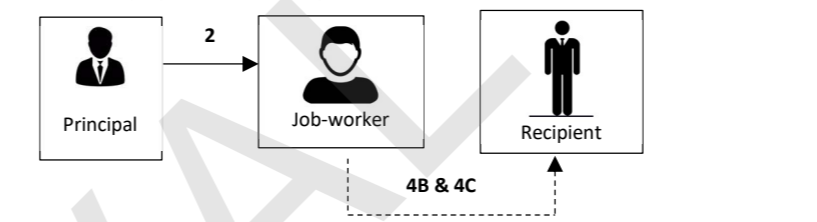
Case (1): - Normal Supply of Goods / Capital Goods:-



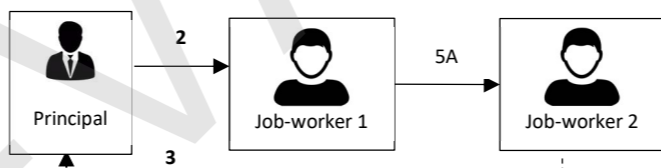
Case (2): - Supply directly to Job-worker:-



Case (3): - Supply of Goods Directly from Job-worker’s Place of Business:-



Case (4): - Supply of Goods from Job-worker to another Job-worker & then sent to principal or sold from place of business of job-worker



If goods 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.

Decoding Documentation of Above transactions:-

| Transaction Code | Documentation thereof |
|------------------|---|
| 1 | Supplier will supply goods along tax invoice (R. 46 r/w S. 31) / bill of supply (R. 49 r/w S. 31) and E-way bill (as per applicability) |
| 2 | Principal will send goods to Job worker under cover of delivery challan (2 copies) u/r 45 r/w R. 55 of CGST Rules. E – way bill has to be mandatorily issued irrespective of value of supply, & intimation shall be filed quarterly by principal in Form GST – ITC 04 |
| 3 | The job worker should send one copy of the delivery challan along with the goods, while returning them to the principal along with an E – way bill (if JW is regd. under GST). Further, if JW is Unregd., principal shall generate E – way bill as “Inward from Unregistered”. Further, Job-worker shall issue tax invoice u/s 31 for Job-work charges (if JW is regd.), value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker. |
| 1A | Supplier when sends goods directly to JW of principal, supplier prepares invoice by following bill to ship to model i.e. bill to principal & ship to Job-worker. 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 of the CGST Rules and send the same to the job worker directly. |
| 4B | A registered person may supply goods directly from job-worker’s place of business (PoB) to recipient in India, if such POB is shown as additional PoB. It shall be deemed that principal has supplied such goods & discharged by supplier itself. [S. 143(1)(b) of CGST Act] |
| 4C | A registered person may supply goods directly from job-worker’s place of business (PoB) to recipient in outside India, if such POB is shown as additional PoB. It shall be deemed that principal has exported such goods and LUT shall be executed by principal. [S. 143(1)(b) of CGST Act] |
| 5A | 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. |

Miscellaneous Provisions under GST (S. 144, 145, 160, 161, 171 of CGST Act, 2017)

1) S. 144 – Rebuttable Presumptions:-
Where any document is produced by any person, or any documents are seized from any person, or document has been received from any place outside India in the course of any proceedings, it shall be deemed that such person has signed, attested, executed the same. Further anything written on same is handwriting of that person.

2) S. 145 – Microfilms, facsimile copies of documents and computer printouts as documents are admissible as evidence.

3) S. 159 – Publishing Name & Particulars under GST Act:-
If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published.

No publication under this section shall be made in relation to any penalty imposed under this 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.

4) S. 160 – No Proceedings Invalid for reason of Mistake:-
No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported under this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such proceedings are in substance and effect in conformity with requirements of this Act or any erstwhile law. (CA. Final Old Syllabus Exam Question)

5) S. 161 – Rectification of Errors apparent from records:-
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 on its own motion or where such error is brought to its notice by any officer appointed under GST Act or by the affected person within 3 months from the date of issue of such order or decision etc.

No such rectification shall be done after 6 months from the date of issue of such order or decision etc.

The period of 6 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.

Where such rectification adversely affects any person, opportunity of being heard shall be given.

6) S. 171 – Anti-profiteering
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.

As per section 171(3A) where the anti-profiteering authority, after holding examination as required 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.

However, no penalty shall be leviable if the profiteered amount is deposited within 30 days of the date of passing of the order by the Authority.

7) As per section 25 of IGST Act / Section 172 of CGST Act, if any difficulty arises in giving effect to any provision of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three five years from the date of commencement of this Act.