



For CA (Final), CMA, CS & Other Professional Courses

*Bangar's*

# Indirect Tax Laws

A Quick Referencer cum

# Compiler

**GST, CUSTOMS & FTP**

**Dr. Yogendra Bangar**

FCA, FCS, FCMA, DISA (ICA), Ph.D.

**Dr. Vandana Bangar**

FCA, Ph.D.



© With the Authors

Printing and Publishing Rights of subsequent editions with the Publisher.

ISBN : 978-81-9050-271-9

Price ₹ 770/-

Law stated in this book is as amended upto October 31<sup>st</sup>, 2019.

Published by :

**Aadhya Prakashan**

**Sales & Marketing :**

"Kela Bhawan", 136, Vivekanand Marg,  
Allahabad - 211 003 (U.P.)

Phone: +91-532- 2564749 Mobile: +91-94152-67760

**Website : <http://www.aadhyas.com>**

**E-mail : [sales@aadhyas.com](mailto:sales@aadhyas.com)**

**Regd. Office :**

"Kela Bhawan", 136, Vivekanand Marg,  
Allahabad - 211 003 (U.P.)

Phone: +91-532- 2564749 Mobile: +91-94152-67760

Printed by :

**Indian Offset Printers**

"Kela Bhawan", 136, Vivekanand Marg,  
Allahabad - 211 003 (U.P.)

Phone: 0532 - 2564749

---

Every effort has been made to avoid errors or omissions in this publication. In spite of this, errors may creep in. Any mistake, error or discrepancy noted might be brought to our notice, which shall be taken care of in the next edition. It is notified that neither the publisher nor the author, or the seller will be responsible for any damage or loss of action to any one, of any kind, in any manner therefrom. It is suggested that to avoid any doubt the reader should cross check all the facts, common Law and contents of the publication with original Government publications or notifications.

No part of this book may be reproduced or copied in any form or by any means (graphics, electronic or mechanical, including photocopying, recording, taping, or other information storage device etc.), without the written permission of the publisher. Breach of this condition is liable for legal action.

For binding mistakes, misprints or missing pages etc., the publisher's liability is limited to the replacement within one month of purchase by similar edition. All expenses in this connection are to be borne by purchaser.

All disputes are subject to Allahabad jurisdiction.

# PREFACE TO THE FIFTEENTH EDITION

It is with great pride and pleasure that we bring to you our book on Indirect Taxes - "**Indirect Tax Laws - A Quick Referencer cum Compiler**" that has not only enjoyed great market success but has also received the appreciation of our dear readers.

Keeping into mind the feedback of the readers of the book, we have made necessary changes in the contents, outlook and overview of the book with a view to make it more precise and student-friendly.

The distinguishing features of this book are -

- ⇒ Coverage of summary of the important provisions of the **GST, Customs & FTP** along with **charts and tables**, under heading "**Summarized Points for Revision**";
- ⇒ **New and Unique 355 Illustrations (272 on GST and 83 on Customs & FTP) arranged Topic-wise/ Section-wise;**
- ⇒ Coverage of the past questions of CA Final Exams and select questions from CS and CMA Examinations;
- ⇒ Coverage of select question asked in **Revision Test Papers (RTP) of ICAI;**
- ⇒ Topic-wise arrangement of questions;
- ⇒ Answers as per the law as **amended upto October 31<sup>st</sup>, 2019;**
- ⇒ For ideal examination-oriented preparation, marks allotted to the question have been specified along with the past examination questions.
- ⇒ Coverage of **Solved Paper November 2019 (Old & New Scheme) Examination.**
- ⇒ **Excludes topics as per ICAI's Announcement dated 27<sup>th</sup> December 2019 which have become irrelevant for examination.**

Endeavour has been made to make this book error-free, yet mistakes might have crept in for which we are apologetic. We look forward to the readers for suggestions, criticism and feedback to improve the contents of the book. **The readers may post their suggestions, grievances, criticism and feedback at <http://aadhyas.com> or by E-mail to [editorial@aadhyas.com](mailto:editorial@aadhyas.com).**

## ACKNOWLEDGEMENT

"**Indirect Tax Laws - A Quick Referencer cum Compiler**" is a result of sincere efforts, persistence and perseverance of our family members, associates and students. Though words cannot express our heartfelt gratitude to them, we take this opportunity to acknowledge their co-operation.

Our children **Peeyush and Monisha** deserve special mention for the time (on which they had the first right) they allowed us for this book, without which it would not have been possible for us to complete it.

Apart from them, we place on record our sincere thanks to the following -

- (1) **Mrs. Mani Kela and other members of Kela Family** : For their intense efforts in printing and publication of the book. It is due to their selfless efforts that we have been able to present this book before the readers.
- (2) **Mr. Gordhan Jat** : Our associate whose dedication has given shape to this book. Apart from assisting in composing of the book, he has been a strong pillar of support to us motivating us from time to time in meeting all the challenges that came in the way of bringing this book.

We dedicate this book to our beloved Mother (late) **Smt. Sarla Bangur** and Father (late) **Shri N.M. Bangur** who would have been very happy to see this book.

**Dr. Vandana Bangar**  
B. Com., FCA

**Dr. Yogendra Bangar**  
B. Com (Hons.), FCA, FCS, FCMA, DISA (ICA)

# SUBJECT INDEX

No.	Chapter Name	Page Nos.	No. of Theory Questions	No. of Case Law Questions	No. of Solved Illustrations
<b>❖ SECTION A : GOODS AND SERVICES TAX (GST)</b>					
1	GST in India - A Brief Introduction	1.1 - 1.8	2	-	1
2	Supply under GST	2.1 - 2.18	1	-	22
3	Charge of GST	3.1 - 3.12	4	-	7
4	Composition Levy	4.1 - 4.12	3	-	12
5	Exemption from GST	5.1 - 5.58	1	-	49
6	Place of Supply, Export and Import	6.1 - 6.34	5	2	24
7	Time of Supply	7.1 - 7.12	-	-	17
8	Value of Supply	8.1 - 8.36	-	-	31
9	Input Tax Credit	9.1 - 9.68	5	1	55
10	Registration	10.1 - 10.18	12	-	10
11	Tax Invoice, Credit & Debit Notes and E-Way Bill	11.1 - 11.18	6	-	9
12	Accounts and Records	12.1 - 12.4	5	-	-
13	Payment of Tax, TDS & TCS	13.1 - 13.18	5	-	11
14	Returns	14.1 - 14.10	1	-	1
15	Refunds	15.1 - 15.14	4	2	4
16	Administration, Assessment and Audit	16.1 - 16.6	6	-	2
17	Inspection, Search, Seizure and Arrest	17.1 - 17.4	11	-	-
18	Demands, Recovery & Liability to Pay in Certain Cases	18.1 - 18.14	13	4	1
19	Advance Ruling, Appeals and Revision	19.1 - 19.18	8	4	7
20	Offences and Penalties	20.1 - 20.12	8	-	7
21	Job Work and Miscellaneous Provisions	21.1 - 21.14	10	2	2
<b>❖ SECTION B : CUSTOMS</b>					
22	Basic Concepts	22.1 - 22.16	1	2	14
23	Classification & Types of Customs Duties	23.1 - 23.8	4	1	2
24	Valuation	24.1 - 24.34	7	10	32
25	Importation and Exportation	25.1 - 25.10	-	4	1
26	Duty Drawback	26.1 - 26.10	2	5	12
27	Baggage, Postal Articles & Stores & Search	27.1 - 27.8	-	-	8
28	Exemptions and Refunds	28.1 - 28.6	-	9	2
<b>❖ SECTION C : FOREIGN TRADE POLICY</b>					
29	Foreign Trade Policy (2015-2020)	29.1 - 29.16	4	-	12
Appendix I : Solved Paper CA Final Nov. 2019 - Paper 8 'Indirect Tax Laws' (New & Old Scheme)		Ap.I 1 - Ap.I10	-	-	-
Appendix II : ICAI RTP & Additional Notifications & Circulars Applicable for May 2020 Exams		Ap.II 1 - Ap.II22	-	-	-
<b>TOTAL</b>		<b>548</b>	<b>128</b>	<b>46</b>	<b>355</b>



***SECTION : A***

***GOODS AND SERVICES TAX***

***(GST)***

# GST IN INDIA – A BRIEF INTRODUCTION

## SUMMARIZED POINTS FOR REVISION

### GENESIS OF GST IN INDIA AND CONCEPT OF GST

#### (1) Genesis of GST in India :

- (a) **Goods and Services Tax** : GST is levied on 'supply' of goods or services or both, in India including the State of Jammu and Kashmir. GST is a **destination based tax** on consumption of goods and services. It is levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as set-off. In a nutshell, **only value addition is taxed** and burden of tax is to be borne by the final consumer.
- (b) **Genesis of GST In India** :
- **Kelkar task force in 2004** : The GST was recommended by the **Kelkar Task Force** on implementation of the Fiscal Responsibility and Budget Management (FRBM) Act, 2003. The Task Force strongly recommended fully integrated 'GST' on national basis.
  - **GST proposed in 2007-08** : A proposal to introduce a National level Goods and Services Tax (GST) by April 1, 2010 was first mooted by the then Union Finance Minister, Shri P. Chidambaram, while presenting the Central Budget of 2007-2008.
  - **Constitution Amendment Act** : In 2014 the talks of ushering in GST, however, gained momentum when the NDA Government tabled the Constitution (122<sup>nd</sup> Amendment) Bill, 2014 on GST in the Parliament on 19<sup>th</sup> December, 2014. The Lok Sabha passed the Bill on 6<sup>th</sup> May, 2015 and Rajya Sabha on 3<sup>rd</sup> August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122<sup>nd</sup> Amendment) Bill, 2014 received the assent of the President on 8<sup>th</sup> September, 2016 and became **Constitution (101<sup>st</sup> Amendment) Act, 2016**, which paved the way for introduction of GST in India.
  - **GST Legislations** : The Central GST legislations – CGST Bill, 2017, IGST Bill, 2017, UTGST Bill, 2017 and GST (Compensation to States) Bill, 2017 were introduced in Lok Sabha on 27<sup>th</sup> March, 2017 and were passed on 29<sup>th</sup> March, 2017 and with the receipt of the President's assent on 12<sup>th</sup> April, 2017, the Bills were enacted. The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws.
  - **Roll out of GST** : Government rolled out GST w.e.f. 1<sup>st</sup> July, 2017. GST in the State of Jammu and Kashmir came into force with effect from 8<sup>th</sup> July, 2017.
  - The introduction of Goods and Services Tax (GST) is a very significant step in the field of indirect tax reforms in India. By amalgamating a large number of Central and State taxes into a single tax, **it will mitigate cascading or double taxation** in a major way and pave the way for a common national market.
  - GST is considered to be a major improvement over the pre-existing central excise duty at the national level and the sales tax system at the state level. The new tax is a further significant breakthrough and the next logical step towards a comprehensive indirect tax reform in the country.
  - **France** was the first country to implement GST in the year 1954.

#### (2) Concept of GST :

- (a) **Value Added Tax** : It is a **single tax on the supply of goods and services**, right from the manufacturer to the consumer with credit of taxes paid at previous stages available as set-off. In a nutshell, **only value addition is taxed**.
- (b) **Continuous flow of Tax Credits** : GST provides comprehensive and **continuous chain of tax credits** from the manufacturer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.
- (c) **Tax incidence is to be ultimately borne by Final Consumer** : GST paid on the procurement of goods and services can be set off against that payable on the supply of goods or services. 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.

- (d) **Mitigation of cascading/ double taxation** : GST is levied only on value addition. Thus, it prevents cascading effect of tax i.e. tax on tax. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.

### NEED FOR GST IN INDIA

- (3) **Deficiencies in the earlier value added taxation system** :
- (a) Non-inclusion of several local levies in State VAT such as luxury tax, entertainment tax, etc.
  - (b) Cascading effect of taxes on account of - (i) levy of Non-VATable CST, and (ii) inclusion of CENVAT in the value for imposing VAT.
  - (c) No CENVAT after manufacturing stage.
  - (d) Non-integration of VAT & service tax.
  - (e) Double taxation of a transaction as both goods and services.
- (4) **GST - A cure for ills of existing indirect tax regime** :
- (a) A comprehensive tax structure covering both goods and services viz. Goods and Service Tax (GST) addresses these problems. Simultaneous introduction of GST at both Centre and State levels has integrated taxes on goods and services for the purpose of set-off relief and ensures that both the cascading effects of CENVAT and service tax are removed and a continuous chain of set-off from the original producer's point/ service provider's point upto the retailer's level/ consumer's level is established.
  - (b) In the GST Regime, the major indirect taxes have been subsumed in the ambit of GST. The erstwhile concepts of manufacture or sale of goods or rendering of services are no longer applicable since the tax is now levied on "Supply of Goods and/or services".

### DUAL GST MODEL

- (5) **Dual GST Model** : India has adopted a Dual GST model in view of the **federal structure of the country**. Centre and States will simultaneously levy GST on taxable supply of goods or services or both which, takes place within a State or Union Territory. Thus, **tax is imposed concurrently** by the **Centre and States** on intra-State supply of goods and/or services called the Central Goods and Services Tax (CGST) and that levied by the States/ Union territory is called the State Goods and Services Tax (SGST)/ Union Territory Goods and Services Tax (UTGST). Similarly, **Integrated Goods and Services Tax (IGST)** is levied and administered by Centre on every **inter-state supply** of goods and services. IGST is approximately a sum total of CGST and SGST/UTGST and is to be levied by Centre on all inter-State supplies.

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

- (6) **Administration** : Centre levies and administer CGST & IGST while respective states/UTs levies and administer SGST/ UTGST.
- (7) **Legislative Framework** : There is single legislation - CGST Act, 2017 - for levying CGST. Similarly, Union Territories without State legislatures [Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Chandigarh] is governed by UTGST Act, 2017 for levying UTGST. States and Union territories with their own legislatures [Delhi and Puducherry] have enacted their own GST legislation for levying SGST.

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

- (8) **Classification of goods and services:**

Goods	Services
The goods are classified on the basis of HSN ( <b>Harmonised System of Nomenclature</b> ) under the GST. Chapters referred are the Chapters of the First Schedule to the Customs Tariff Act, 1975.	A new <b>Scheme of Classification of Services</b> has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff).

- (9) **Registration** : Every supplier of goods and/or services is required to obtain registration in the State/UT from where he makes the taxable supply if his **aggregate turnover exceeds ₹ 20 lakh** during a financial year.

The threshold limit of ₹ 10 lakhs is applicable for the State of Manipur, Mizoram, Nagaland, and Tripura.

However, the Central Government *vide* Notification No. 10/2019-CT dated 07-03-2019 w.e.f. 01-04-2019 has provided that any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 lakh, except the undermentioned persons, is exempt from obtaining registration :

- (a) persons required to take compulsory registration under section 24 of the CGST Act;
  - (b) persons engaged in making supplies of the goods being –
    - (i) Ice cream and other edible ice, whether or not containing cocoa,
    - (ii) Pan masala, and
    - (iii) Tobacco and manufactured tobacco substitutes.
  - (c) persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and
  - (d) persons exercising option of voluntary registration or such registered persons who intend to continue with their registration under the Act.
- (10) **Tax is paid by Taxable person :** In GST regime, tax (*i.e.* CGST and SGST/UTGST for intra-State supplies and IGST for inter-State supplies) is paid by every taxable person and in this regard provisions have been prescribed in the law.

**Composition Scheme and Exemption** for providing relief to small businesses, a simpler method of paying taxes and accounting thereof is also prescribed, known as Composition Scheme. W.e.f. 01-04-2019, on similar lines presumptive scheme has been introduced for service suppliers. 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.

- (11) **Compensation Cess :** A GST Compensation Cess at specified rate has been imposed under the Goods and Services Tax (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply. Compensation cess is leviable on intra-State supplies and inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST.
- (12) **Manner of utilisation of ITC :** Input Tax Credit (ITC) of CGST and SGST/UTGST is available throughout the supply chain, but **cross utilization of credit of CGST and SGST/UTGST is not possible**, *i.e.* CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment of CGST. However, **cross utilization is allowed between CGST/SGST/UTGST and IGST**, *i.e.* credit of IGST can be utilized for the payment of CGST/ SGST/ UTGST and vice versa.

**Summary Chart of flow of ITC under GST :**

Transaction within the states/ UT's (Intra-State Transactions)		Inter-State transactions
CGST	SGST/UTGST	IGST
<div style="border: 1px solid black; padding: 2px; display: inline-block;">CGST</div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 2px; display: inline-block;">CGST</div> <div style="font-size: 2em;">↓</div> </div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">IGST</div>	<div style="border: 1px solid black; padding: 2px; display: inline-block;">SGST/UTGST</div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 2px; display: inline-block;">SGST/UTGST</div> <div style="font-size: 2em;">↓</div> </div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">IGST</div>	<div style="border: 1px solid black; padding: 2px; display: inline-block;">IGST</div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 2px; display: inline-block;">IGST</div> <div style="font-size: 2em;">↓</div> </div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 2px; display: inline-block;">CGST</div> <div style="font-size: 2em;">↓</div> </div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 2px; display: inline-block;">SGST/UTGST</div> <div style="font-size: 2em;">↓</div> </div>
<p><b>Credit of CGST/SGST can be utilised only when credit of IGST has been completely utilised.</b>  <b>ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully.</b></p>		
<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 2px; display: inline-block;">CGST</div> <div style="font-size: 3em;">↔</div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">SGST/UTGST</div> </div> <p><b>No Cross utilisation permissible.</b></p>		

- (13) **Seamless flow of credit :** Since GST is a **destination based consumption tax**, revenue of SGST ordinarily accrues to the consuming States. The inter-State supplier in the exporting State is allowed to set off the available credit of IGST, CGST and SGST/UTGST (in that order) against the IGST payable on inter-State supply made by him. The buyer in the importing State is allowed to avail the credit of IGST paid on inter-State purchase made by him. Thus, unlike the earlier scenario where the credit chain used to break in case of inter-State sales on account of non-VATable CST, under GST regime there is a **seamless credit flow in case of inter-State supplies too**.



The revenue of inter-State sale does not accrue to the exporting State and the exporting State transfers to the Centre the credit of SGST/UTGST used in payment of IGST.

The Centre transfers to the importing State the credit of IGST used in payment of SGST/UTGST. Thus, the inter-State trade of goods and services (IGST) needed a **robust settlement mechanism** amongst the States and the Centre.

A Central Agency is needed which can act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This is possible only with the help of a strong IT Infrastructure. Thus, a **Special Purpose Vehicle called the GSTN has been set up** to cater to the needs of GST.

### GOODS AND SERVICE TAX PORTAL

#### (14) GSTN and its role in the GST regime :

GSTN stands for **Goods and Service Tax Network (GSTN)**. A Special Purpose Vehicle [a company incorporated under the provisions of section 8 of the Companies Act, 2013] called the GSTN has been set up to cater to the needs of GST. The **GSTN provides a shared IT infrastructure and services to Central and State Governments, tax payers and other stakeholders** for implementation of GST.

Resultantly, Common GST Electronic Portal - [www.gst.gov.in](http://www.gst.gov.in) - a website managed by GSTN has been set up by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.

**Functions of GSTN :** The functions of the GSTN include –

- (i) facilitating registration;
- (ii) forwarding the returns to Central and State authorities;
- (iii) computation and settlement of IGST;
- (iv) matching of tax payment details with banking network;
- (v) providing various MIS reports to the Central and the State Governments based on the tax payer return information;
- (vi) providing analysis of tax payers' profile; and
- (vii) running the matching engine for matching, reversal and reclaim of input tax credit.

However, it is important to note that the Common GST Electronic Portal for furnishing electronic way bill is [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in) [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods.

#### (15) List the Central and State levies subsumed in GST in India:

Central Taxes	State Taxes
➤ Central Excise duty	➤ State VAT
➤ Duties of Excise ( <i>Medicinal and Toilet Preparations</i> )	➤ Luxury Tax
➤ Additional Duties of Excise ( <i>Goods of Special Importance</i> )	➤ Entry Tax (all forms)
➤ Additional Duties of Excise ( <i>Textiles and Textile Products</i> )	➤ Entertainment and Amusement Tax (except when levied by the local bodies)
➤ Additional Duties of Customs ( <i>commonly known as CVD</i> )	➤ Taxes on advertisements
➤ Special Additional Duty of Customs (SAD)	➤ Purchase Tax
➤ Service Tax	➤ Taxes on lotteries, betting and gambling
➤ Central Sales Tax	➤ State Surcharges and Cesses so far as they relate to supply of goods and services.
➤ Central Surcharges and Cesses so far as they relate to supply of goods and services.	

#### (16) Significant benefits of GST :

- (a) **Benefits to economy :** (i) Creation of common national market, (ii) Boost to 'Make in India' initiative, (iii) Enhanced investment and employment.
- (b) **Simplified tax structure :** (i) Ease of doing business and (ii) Certainty in tax administration.
- (c) **Easy tax compliance :** (i) Automated procedures with greater use of IT (ii) Reduction in compliance costs,
- (d) **Advantages for trade and industry -** (i) Benefits to agriculture and Industry, (ii) Mitigation of ill effects of cascading (iii) Benefits to small traders and entrepreneurs.

### CONSTITUTIONAL PROVISIONS

**(17) Significant amendments made by the Constitution (101<sup>st</sup> Amendment) Act, 2016 :**

- Parliament and State Legislatures have been given **concurrent powers** to make laws governing taxes on goods and services.
- **Integrated goods and services tax** is to be levied on Inter-State transactions of goods and services. The same is collected by the **Central Government** and apportioned between the Union and the States in the manner provided by Parliament by Law as per the recommendation of the GST Council.
- **Principles for determining the place of supply and when a supply takes place in the course of inter-State trade or commerce** shall be formulated by the Parliament, by law.
- GST will be levied on all supply of goods and services **except alcoholic liquor for human consumption**.
- **GST shall not be levied** on the following products, till a date to be notified on the recommendations of the GST Council :
  - (a) **Petroleum Crude**
  - (b) **High-Speed Diesel**
  - (c) **Motor Spirit (commonly known as Petrol)**
  - (d) **Natural Gas**
  - (e) **Aviation Turbine Fuel**
- The Union Government shall retain the power to levy **duties of excise** on the aforesaid products besides **tobacco and tobacco products** manufactured or produced in India.
- **Article 279A** of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- Article 366(12A) defines "Goods and services tax" to mean any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;
- As per Article 366(26A) "Services" means anything other than goods.

### GOODS AND SERVICES TAX COUNCIL

**(18) Goods and Services Tax Council [Article 279A] :**

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

		<p>(f) any <b>special rate or rates</b> for a specified period, to raise additional resources during any natural calamity or disaster;</p> <p>(g) <b>special provision</b> with respect to the <b>States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand</b>; and</p> <p>(h) <b>any other matter relating to the GST</b>, as the Council may decide.</p>
5.	<b>Effective date of levy of GST on petroleum products</b>	The GST Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
6.	<b>Guiding principles for GST Council</b>	While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need – <p>(a) for a <b>harmonised structure</b> of goods and services tax, and</p> <p>(b) for the development of a <b>harmonised national market</b> for goods and services.</p>
7.	<b>Quorum</b>	<b>One-half of the total number of Members</b> of the Goods and Services Tax Council shall constitute the quorum at its meetings.
8.	<b>Procedure</b>	The Goods and Services Tax Council shall determine the procedure in the performance of its functions.
9.	<b>Decisions to be taken by GST Council</b>	Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than <b>3/4<sup>th</sup> of the weighted votes</b> of the members present and voting, in accordance with the following principles, namely: – <p>(a) the vote of the <b>Central Government</b> shall have a weightage of <b>1/3<sup>rd</sup> of the total votes cast</b>, and</p> <p>(b) the votes of all the <b>State Governments</b> taken together shall have a weightage of <b>2/3<sup>rd</sup> of the total votes cast</b>, in that meeting.</p>
10.	<b>Vacancy etc. not to invalidate proceedings</b>	No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of – <p>(a) any vacancy in, or any defect in, the constitution of the Council; or</p> <p>(b) any defect in the appointment of a person as a Member of the Council; or</p> <p>(c) any procedural irregularity of the Council not affecting the merits of the case.</p>
11.	<b>Settlement of disputes</b>	The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute – <p>(i) between the Government of India and one or more States; or</p> <p>(ii) between the Government of India and any State or States on one side and one or more other States on the other side; or</p> <p>(iii) between two or more States,</p> <p>arising out of the recommendations of the Council or implementation thereof.</p>

**(19) Body of GST law :**

1.	<b>Acts</b>	<ul style="list-style-type: none"> <li>➤ Central Goods and Services Tax Act, 2017.</li> <li>➤ Integrated Goods and Services Tax Act, 2017.</li> <li>➤ Union Territory Goods and Services Tax Act, 2017.</li> <li>➤ Goods and Services Tax (Compensation to States) Act, 2017.</li> <li>➤ State Goods and Services Tax Acts, 2017 [for 29 states and 2 Union Territories deemed to be States].</li> </ul>
2.	<b>Rules</b>	<ul style="list-style-type: none"> <li>➤ Central Goods and Services Tax Rules, 2017.</li> <li>➤ Integrated Goods and Services Tax Rules, 2017.</li> <li>➤ Union Territory Goods and Services Tax Rules, 2017.</li> <li>➤ State Goods and Services Tax Rules, 2017 [for 29 states and 2 Union Territories deemed to be States].</li> <li>➤ Goods and Services Tax (Compensation to States) Rules, 2017.</li> <li>➤ GST Settlement of Funds Rules, 2017.</li> </ul>

3.	Notifications	CGST	❖ Central Tax Notifications [CT] [Non-tariff] ❖ Central Tax (Rate) Notifications [CT (Rate)] [Tariff]
		IGST	❖ Integrated Tax Notifications [IT] [Non-tariff] ❖ Integrated Tax (Rate) Notifications [IT (Rate)] [Tariff]
		UTGST	❖ Union Territory Tax Notifications [UTT] [Non-tariff] ❖ Union Territory Tax (Rate) Notifications [UTT (Rate)] [Tariff]
		GST Cess	❖ Compensation Cess Notifications [GST Compensation Cess] [Non-tariff] ❖ Compensation Cess (Rate) Notifications [GST Compensation Cess (Rate)] [Tariff]
4.	Circulars	➤ CGST ➤ IGST ➤ UTGST ➤ SGST ➤ GST Compensation Cess	

**ADDITIONAL PRACTICE QUESTIONS**

**T.Q. 1 :** Explain the concept of 'Dual GST'. (2 Marks, Nov. 2017)

**Ans:** Under dual GST model, GST is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously levy tax on intra state supplies of goods and services. Centre has the power to levy GST on inter-State supplies of goods and/or services.

**T.Q. 2 :** Bring out the salient features of cross utilization of ITC under the GST Law ? (3 Marks, Nov. 2017)

**Ans:** The salient features of cross utilisation of ITC under GST law are as under –

- (i) IGST credit should first be utilized towards payment of IGST.
- (ii) Remaining IGST credit, if any, can be utilized towards payment of CGST and SGST/UTGST in any order and in any proportion.
- (iii) Entire ITC of IGST should be fully utilized before utilizing the ITC of CGST or SGST/UTGST.
- (iv) ITC of CGST should be utilized for payment of CGST and IGST in that order.
- (v) ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order. However, ITC of SGST/UTGST should be utilized for payment of IGST, only after ITC of CGST has been utilized fully.

CGST credit cannot be utilized for payment of SGST/UTGST and SGST/UTGST credit cannot be utilized for payment of CGST.

**Illustration 1 - GST liability and Government revenue:** A makes intrastate supply of goods valued at ₹ 50,000 to B within State of Karnataka. B makes inter-state supply to X Ltd. (located in Telangana) after adding 10% as his margin. Thereafter X Ltd. sells it to Y in Telangana (Intrastate sale) after adding 10% as its margin.

Assume that the rate of GST chargeable is 18% (CGST 9% plus SGST 9%) and IGST chargeable is 18%. Calculate tax payable at each stage of the transactions detailed above. Wherever input tax credit is available and can be utilized calculate the net tax payable in cash. At each stage of the transaction indicate which government will receive the tax paid and to what extent. (9 Marks, Nov. 2018-OS)

**Solution:** In case of inter-State supply of goods, the supplier would charge IGST at specified rates on the supply.

(i) **Supply of goods by A of Karnataka to B of Karnataka:** (amount in ₹)

Value charged for supply of goods	50,000
Add: CGST @ 9%	4,500
Add: SGST @ 9%	4,500
<b>Total price charged by A from B for intra-State supply of goods</b>	<b>59,000</b>

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

(ii) **Supply of goods by B of Karnataka to X Ltd. of Telangana - Value addition @ 10%:** (amount in ₹)

Value charged for supply of goods (₹ 50,000 × 110%)	55,000
Add: IGST @ 18%	9,900
<b>Total price charged by B from X Ltd. for inter-State supply of goods</b>	<b>64,900</b>

**Computation of IGST payable to Government:***(amount in ₹)*

IGST payable	9,900
Less: Credit of CGST	4,500
Less: Credit of SGST	4,500
<b>IGST payable to Central Government</b>	<b>900</b>

The IGST charged on X Ltd. of Telangana for supply of goods will be remitted by B of Karnataka to the appropriate account of the Central Government. Karnataka Government will transfer SGST credit of ₹ 4500 utilised in the payment of IGST to the Central Government.

- (iii) **Supply of goods by X Ltd. of Telangana to Y of Telangana - Value addition @ 10% :** X Ltd. will avail credit of IGST paid by him on the purchase of goods and will utilise such credit for being set off against the CGST and SGST payable on the local supply of goods made by him to Y.

*(amount in ₹)*

Value charged for supply of goods/ services (₹ 55,000 × 110%)	60,500
Add: CGST @ 9%	5,445
Add: SGST @ 9%	5,445
<b>Total price charged by X Ltd. from Y for local supply of goods</b>	<b>71,390</b>

**Computation of CGST, SGST payable to Government:***(amount in ₹)*








CGST payable	5,445
Less: Credit of IGST to the extent of CGST payable	5,445
<b>CGST payable to Central Government</b>	<b>Nil</b>
SGST payable	5,445
Less: Credit of IGST (₹ 9,900 - ₹ 5,445)	4,455
<b>SGST payable to State Government</b>	<b>990</b>

Central Government will transfer IGST credit of ₹ 4,455 utilised in the payment of SGST to Telangana (Importing State).

**Statement of revenue earned by Central and State Governments (amount in ₹):**

Transaction	Revenue to Central Government	Revenue to Government of Karnataka	Revenue to Government of Telangana
Supply of goods by A to B	4,500	4,500	
Supply of goods by B to X Ltd.	900		
Transfer by Karnataka State to Centre	4,500	-4,500	
Supply of goods by X Ltd. to Y	Nil	-	990
Transfer by Centre to Telangana State	-4,455		4,455
<b>Total</b>	<b>5,445</b>	<b>Nil</b>	<b>5,445</b>

■ ■ ■

<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>   <b>AADHYA'S</b> http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <p><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP) <input checked="" type="checkbox"/> Direct Tax &amp; International Taxation <input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</p> <p> You Tube Subscribe to our Channel CA. Yogendra Bangar</p>	<p> Online MCQ's</p> <p>Computer / EduApplet App</p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <p><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus <input checked="" type="checkbox"/> Practice, revision &amp; internal assessment <input checked="" type="checkbox"/> 24 x 7 Online Access <input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</p>	<p> SUBJECTIVE <b>Test Series</b></p> <p>More than 23 Years of Experience</p> <p><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty <input checked="" type="checkbox"/> Based on the Institute's Examination pattern <input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern <input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level <input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</p>
---	---	---	--

## SUPPLY UNDER GST

## SUMMARIZED POINTS FOR REVISION

## SCOPE OF SUPPLY

- ◆ **Taxable event in GST :** The GST laws provides for one comprehensive taxable event *i.e.* : "Supply" - Supply of goods or services or both.

Term	Definition
<b>Goods</b>	Means every kind of movable property – <ul style="list-style-type: none"> <li>➤ other than –               <ul style="list-style-type: none"> <li>- money, and</li> <li>- securities</li> </ul> </li> <li>➤ but <b>includes</b> –               <ul style="list-style-type: none"> <li>- actionable claim,</li> <li>- growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)]</li> </ul> </li> </ul>
<b>Person</b>	<b>Includes –</b> <ul style="list-style-type: none"> <li>(a) an individual;</li> <li>(b) a Hindu undivided family;</li> <li>(c) a company;</li> <li>(d) a firm;</li> <li>(e) a Limited Liability Partnership;</li> <li>(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;</li> <li>(g) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 2(45) of the Companies Act, 2013;</li> <li>(h) any body corporate incorporated by or under the laws of a country outside India;</li> <li>(i) a co-operative society registered under any law relating to cooperative societies;</li> <li>(j) a local authority;</li> <li>(k) Central or State Government</li> <li>(l) society as defined under the Societies Registration Act, 1860;</li> <li>(m) trust; and</li> <li>(n) every artificial juridical person, not falling within any of the above. [Section 2(84)]</li> </ul>
<b>Taxable supply</b>	Means a supply of goods or services or both which is leviable to tax under this Act. [Section 2(108)]
<b>Taxable territory</b>	Means the territory to which the provisions of this Act apply. [Section 2(109)] CGST Act, 2017 extends to the whole of India including the State of Jammu and Kashmir.
<b>Non-taxable territory</b>	Means the territory which is outside the taxable territory. [Section 2(79)]
<b>India</b>	<b>Means –</b> <ul style="list-style-type: none"> <li>➤ the territory of India as referred to in Article 1 of the Constitution,</li> <li>➤ its territorial waters,</li> <li>➤ seabed and sub-soil underlying such waters,</li> <li>➤ continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and</li> <li>➤ the air space above its territory and territorial waters. [Section 2(56)]</li> </ul>

<b>Manufacture</b>	<b>Means</b> processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly. [Section 2(72)]
<b>Supplier</b>	In relation to any goods or services or both, shall mean— <ul style="list-style-type: none"> <li>➤ the person supplying the said goods or services or both and shall include</li> <li>➤ an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. [Section 2(105)]</li> </ul>
<b>Recipient</b>	Of supply of goods or services or both, <b>means</b> — <p>(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;</p> <p>(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and</p> <p>(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,</p> <p>and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied. [Section 2(93)]</p>
<b>Money</b>	<b>Means</b> the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value. [Section 2(75)]
<b>Actionable claim</b>	Shall have the meaning assigned to it in Sec. 3 of the Transfer of Property Act, 1882. [Sec. 2(1)] According to Section 3 of Transfer of Property Act, 1882, 'Actionable claim' means a claim to— <p>(i) any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property; or</p> <p>(ii) any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief,</p> <p>whether such debt or beneficial interest be existent, accruing, conditional or contingent.</p> <p><b>Examples of actionable claims are—</b></p> <p>(a) Unsecured debts;</p> <p>(b) Right to participate in the draw to be held in a lottery.</p> <p><b>It must be noted that 'Actionable Claim' is specifically included in the definition of Goods. Transactions of Actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services as per Para 6 of Schedule III of CGST Act, 2017.</b></p>
<b>Services</b>	<b>Means</b> anything— <ul style="list-style-type: none"> <li>➤ other than— <ul style="list-style-type: none"> <li>- goods,</li> <li>- money, and</li> <li>- securities</li> </ul> </li> <li>➤ but includes activities relating to— <ul style="list-style-type: none"> <li>(a) the use of money, or</li> <li>(b) its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. [Section 2(102)]</li> </ul> </li> </ul> <p><b>Explanation :</b> For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.</p>

<p><b>Business</b></p>	<p><b>Includes—</b></p> <p>(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;</p> <p>(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);</p> <p>(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;</p> <p>(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;</p> <p>(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;</p> <p>(f) admission, for a consideration, of persons to any premises;</p> <p>(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;</p> <p>(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and</p> <p>(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. [Section 2(17)]</p>
<p><b>Consideration</b></p>	<p>In relation to the supply of goods or services or both includes -</p> <p>(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;</p> <p>(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government. [Section 2(31)]</p> <p><b>Deposit not a consideration unless appropriated by Supplier :</b> However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. [Proviso to Section 2(31)]</p>

◆ **Scope of supply [Section 7] :**

(1) **Supply includes—**

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
- (b) import of services for a consideration whether or not in the course or furtherance of business; and
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration.

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of Section 7(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

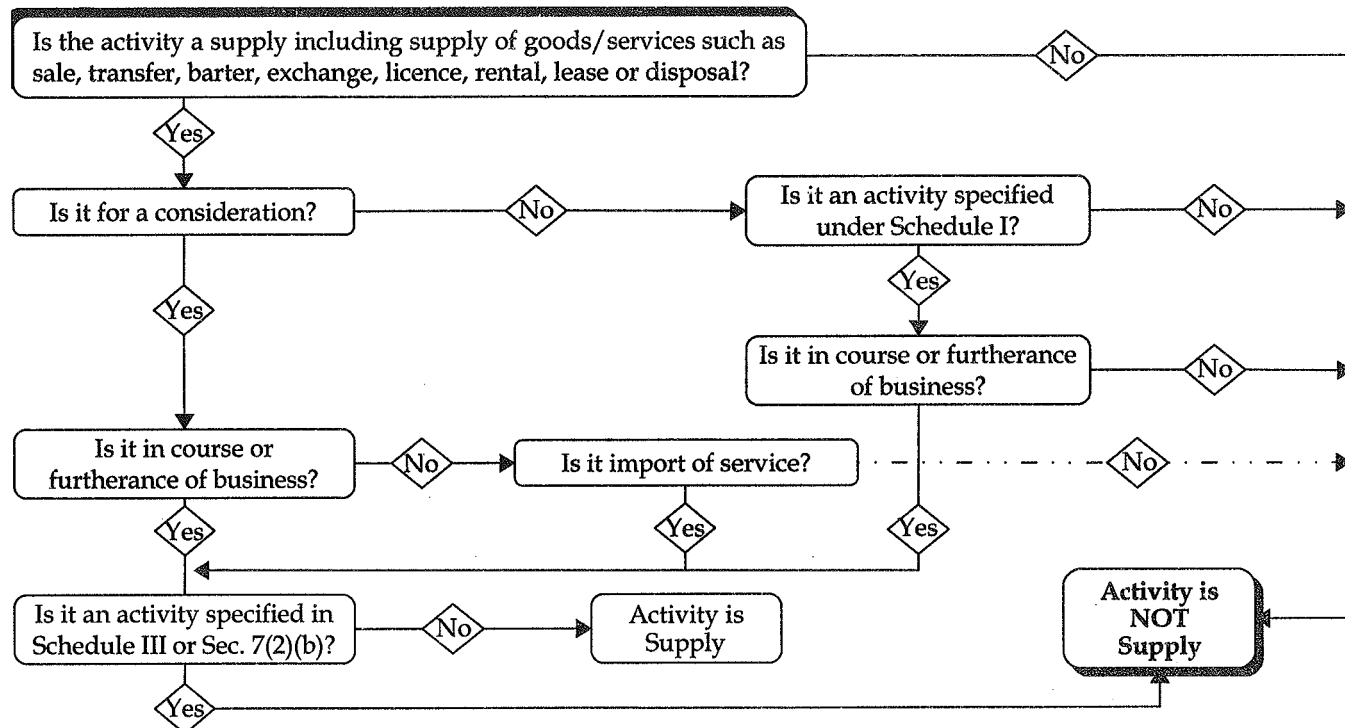
shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of Section 7(1), 7(1A) and 7(2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

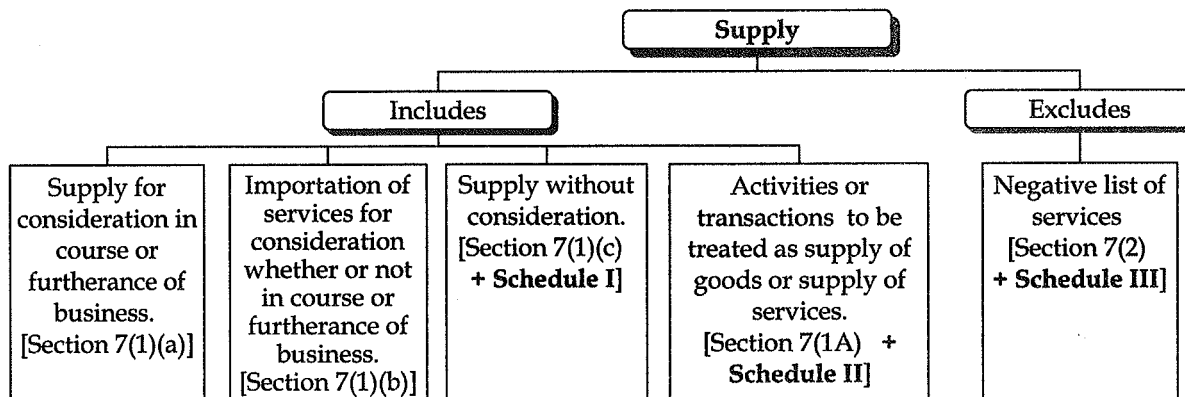
- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.



## (4) Diagram to determine whether an activity undertaken is Supply or not.



The discussion with respect to supply is broadly categorized into following:



## ANALYSIS OF SCOPE OF SUPPLY :

- [1] As per Section 7(1)(a) the following parameters, which can be adopted to characterize a transaction as supply:
- (1) Supply should be of **goods or services**. Supply of anything other than goods or services like money, securities etc. does not attract GST.
  - (2) Supply should be made **for a consideration**.
  - (3) Supply should be made **in the course or furtherance of business**.
  - (4) Supply should be made **by a taxable person**.
  - (5) Supply should be a **taxable supply**.
- [2] **Import of services covered in scope of supply [Section 7(1)(b)]** : Section 7(1)(b) has the following essential ingredients –
- (a) It is **applicable only for services** and not for goods.
  - (b) Services should be provided **for a consideration**.
  - (c) Services may be **in course or furtherance of business or not**. This implies that import of services even for personal consumption would qualify as 'supply' and therefore would be liable to tax.

[3] Activities specified in Schedule I, made or agreed to be made without a consideration covered in scope of supply [Section 7(1)(c)] : As per Schedule I, in the following four cases, supplies made without consideration will be treated as supply under section 7 of the CGST Act :

- (1) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- (2) Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.  
However, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- (3) Supply of goods—
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- (4) Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

(1) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

(2) Supply of goods or services or both between—

- related persons; or
- between distinct persons as specified in Section 25,

when made in the course or furtherance of business.

However, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

**Related persons [Explanation to Section 15] :** For the purposes of this Act,—

- (a) persons shall be deemed to be "related persons" if—
  - (i) such persons are officers or directors of one another's businesses;
  - (ii) such persons are legally recognised partners in business;
  - (iii) such persons are employer and employee;
  - (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
  - (v) one of them directly or indirectly controls the other;
  - (vi) both of them are directly or indirectly controlled by a third person;
  - (vii) together they directly or indirectly control a third person; or
  - (viii) they are members of the same family;
- (b) the term "person" also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

**"Family" means,—**

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

**Supply of goods or services or both between an employer and employee :** By virtue of aforesaid definition of related person, employer and employee are related persons. However, services provided by an employee to the employer in the course of or in relation to his employment shall not be treated as supply of services [Schedule III].

**Gifts by employer to employee :** Further, Schedule I provides that gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

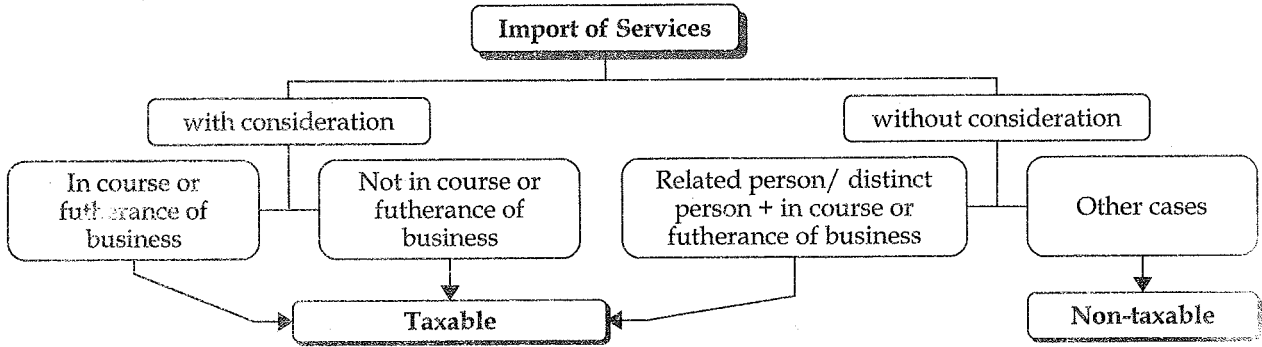
However, gifts of value more than ₹ 50,000 made without consideration are subject to GST, when made in the course or furtherance of business.

(3) Supply of goods –

- (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- Thus, supply of goods by principal to his agent or by agent to his principal even if made without consideration will be considered as supply.

(4) Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Taxability of import of services :



Circular No. 57/31/2018 GST dated 04-09-2018	Scope of Principal-agent relationship in the context of Schedule I of the CGST Act - Issuance of invoice by agent for the further supply of goods on behalf of the principal - Deciding Criteria
	<p>In order to determine whether a particular principal agent relationship falls within the ambit of the Para 3. of Schedule I as discussed above or not, the deciding factor is whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not? In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.</p> <ul style="list-style-type: none"> <li>➤ Where the <b>invoice for further supply is being issued by the agent in his name</b> then, any provision of goods from the principal to the agent would fall within the fold of Para 3. above. However, it may be noted that in cases where the <b>invoice is issued by the agent to the customer in the name of the principal</b>, such agent shall not fall within the ambit of Para 3. above.</li> <li>➤ Similarly, where the goods being procured by the agent on behalf of the principal are <b>invoiced in the name of the agent</b> then further provision of the said goods by the agent to the principal would be covered by Para 3. above.</li> </ul>

[4] Activities or Transactions to be treated as supply of goods or supply of services as referred to in Schedule II [Section 7(1A)] :

Section 7(1A) of the CGST Act stipulates that where certain activities or transactions, constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. Thus, it refers to Schedule II for determining whether a particular transaction is a supply of goods or supply of service. This helps in mitigating the ambiguities which existed in earlier laws.

Prior to introduction of GST, there was a lot of controversy that whether a transaction can be regarded as sale of goods or it will be regarded as provision of services. To remove such ambiguities, Section 7(1A) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or service.

The activities to be treated as supply of goods or supply of services are as under –

	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	<ul style="list-style-type: none"> <li>⇒ Transfer of the title in goods</li> <li>⇒ Transfer of right in goods or of undivided share in goods without the transfer of title thereof</li> <li>⇒ Transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed.</li> </ul>	<p>Supply of Goods Supply of Services</p> <p>Supply of Goods</p>

2.	Land and Building	⇒ Lease, tenancy, easement, licence to occupy land ⇒ Lease or letting out, either wholly or partly, of the building including a commercial, industrial or residential complex for business or commerce.	Supply of Services Supply of Services
3.	Treatment or Process	Treatment or process which is applied to another person's goods.	Supply of Services
4.	Transfer of Business Assets	⇒ Goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration. ⇒ Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business, whether or not for consideration. ⇒ Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless— (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person.	Supply of Goods Supply of Services Supply of Goods
5.	(a) Renting of immovable property; (b) 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, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. Explanation: (1) "Competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:— (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority; (2) "Construction" includes additions, alterations, replacements or remodelling of any existing civil structure; (c) Temporary transfer or permitting the use or enjoyment of any intellectual property right; (d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software; (e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and (f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.		Supply of Services
6.	Following composite supplies— (a) works contract as defined in Section 2(119); and (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.		Supply of Services

	<p><b>"Works contract"</b> means a contract for –</p> <ul style="list-style-type: none"> <li>⇒ building,</li> <li>⇒ construction,</li> <li>⇒ fabrication,</li> <li>⇒ completion,</li> <li>⇒ erection,</li> <li>⇒ installation,</li> <li>⇒ fitting out,</li> <li>⇒ improvement,</li> <li>⇒ modification,</li> <li>⇒ repair,</li> <li>⇒ maintenance,</li> <li>⇒ renovation,</li> <li>⇒ alteration or commissioning</li> </ul> <p>of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract. [Section 2(119)]</p>	
7.	Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Supply of Goods

#### ACTIVITIES WHICH ARE NEITHER SUPPLY OF GOODS NOR SUPPLY OF SERVICES

[5] **Activities which are neither supply of goods, nor supply of services [Section 7(2)]** : Section 7(2) lists down activities which shall not be considered as 'supply' for GST. The said activities can be termed as **Negative List under GST regime**. They are as under –

(a) **Activities or transactions specified in Schedule III** : The activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per schedule III are as follows :

- (1) Services by **an employee to the employer** in the course of or in relation to his employment.
- (2) Services by any court or Tribunal established under any law for the time being in force.  
**Explanation:** The term "court" includes District Court, High Court and Supreme Court.
- (3) (a) **The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;**  
(b) **The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or**  
(c) **the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.**
- (4) **Services of funeral, burial, crematorium or mortuary including transportation of the deceased.**
- (5) **Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.**
- (6) **Actionable claims, other than lottery, betting and gambling.**
- (7) **Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.**
- (8) (a) **Supply of warehoused goods to any person before clearance for home consumption;**  
(b) **Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.**

The term "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.

[Authors Note : The implication of the said amendments has been discussed in Chapter Import and Export.]

(b) **Notified activities or transactions undertaken by the Government or local authority in which they are engaged as public authorities** : Such activities or transactions undertaken by –

- the Central Government,

- a State Government; or
- any local authority

in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

“Local authority” means –

- (a) a “Panchayat” as defined in Article 243(d) of the Constitution;
- (b) a “Municipality” as defined in Article 243P(e) of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in Section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 and article 371J of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution. [Section 2(69)]

The Central Government *vide* Notification No. 14/2017-CT (Rate) dated 28-6-2017 w.e.f. 1-7-2017 as amended by Notification No. 16/2018-CT (Rate) dated 26-07-2018 w.e.f. 27-07-2018 has notified that Services by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution or to a Municipality under article 243W of the Constitution undertaken by the Central Government or State Government or Union Territory or any local authority in which they are engaged as public authority shall be treated neither as a supply of goods nor a supply of service.

The Central Government *vide* Notification No. 25/2019-CT(Rate) dated 30-09-2019 w.e.f. 30-09-2019 has notified that 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 when undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service.

The activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per Schedule III are explained as under –

- (1) **Services by an employee to the employer in the course of or in relation to his employment :** Paragraph I of Schedule III of the CGST Act, 2017 specifies that Services by an employee to the employer in the course of or in relation to his employment as neither supply of goods nor supply of services. Any service supplied by an employee to his employer in the course of or in relation to his employment is outside the ambit of GST.

Exclusions under this paragraph shall operate only if there exists an employer and employee relationship between the payer and payee and payment is made in the course of or in relation to his employment. Thus, the amount earned by the employees for supplying services in the course of or in relation to his employment will not be considered as supply, hence will not be liable for GST.

The following aspects are to be noted in this regard :

- (a) **Services supplied outside employment for a consideration – Taxable :** Services supplied outside employment for a consideration would be covered under the scope of supply'.

**Example :** If an employee supplies his service on contract basis to an associate of the employer, it would be covered under 'supply'.

- (b) **Services supplied on contract basis – Taxable :** Services supplied on contract basis *i.e.* principal to principal basis are not services in the course of employment and therefore are covered within the ambit of supply.

- (c) **Amounts received by an employee from the employer on premature termination of contract of employment – Not regarded as supply :** Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amount so paid would not be chargeable to GST.

- (d) **Non competing fees – Taxable :** Any amount paid for not joining a competing business would be liable to be taxed as it is paid for supplying the service of forbearance to act.

- (e) **Directors of the company** : A whole time director or an executive director is generally regarded as the employee of the company. However, independent directors, nominee directors or non executive directors cannot be regarded as the employees of the company. Hence, activities carried by them for consideration are not excluded from scope of supply.

Accordingly, remuneration paid to such directors shall be liable for GST. It must be noted that services provided by the directors to its company are chargeable to GST under reverse charge basis *i.e.* the company receiving the service is liable to pay GST thereon.

- (f) **Status of services supplied by casual workers or contract labour** :

If.....	Then.....
Services supplied by casual worker to employer who gives wages on daily basis to the worker	These are services supplied by the worker in the course of employment.
Casual workers are employed by a contractor, like a building contractor or a security services agency, who deploys them for execution of a contract or for provision of security services to a client	Services supplied by the workers to the contractor are services in the course of employment and hence not taxable. However, services supplied by the contractor to his client by deploying such workers would not be a service supplied by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.

- (2) **Services by any court or Tribunal established under any law for the time being in force** : Fees taken in any Court or tribunal established under any law for the time being in force is outside the scope of supply'. The Court or Tribunal supplies judicial services to the appellant who file appeals, petitions, special leave petitions. Fees is charged at the time of filing of appeal, petition etc. The quantum of fees is specified in the statutes. Thus, on such fees no GST will be payable.
- As per Explanation to **Schedule III**, "court" includes District Court, High Court and Supreme Court. Thus any amount collected by them under any law for the time being in force will not be subject to GST as it is neither supply of goods nor supply of services.
- (3) **Functions or duties performed by Constitutional Authorities** : As per Paragraph 3 of Schedule III the following transactions or activities shall be regarded neither as supply of goods nor supply of services.
- (a) **Functions performed by MP's, MLA's etc.** : The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- (b) **Duties performed by Constitutional Functionaries** : The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
- (c) **Duties performed by Chairperson/ Members of Government Bodies** : The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
- (4) **Services of funeral burial etc.** : Paragraph 4 of **Schedule III** specifies services of funeral, burial, crematorium or mortuary including transportation of the deceased shall not be regarded as supply of services, hence will be outside the purview of GST.
- (5) **Transactions of Sale of land and Sale of building** : As per paragraph 5 of **Schedule III** sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building is neither supply of goods nor a supply of service and thus not liable to GST.

As per paragraph 5(b) of **Schedule II**, 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, **except where the entire consideration** has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier shall be regarded as supply of service.

**Explanation** : For the purposes of this clause –

- (i) the expression "**competent authority**" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: –



- (ii) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- (iii) a chartered engineer registered with the Institution of Engineers (India); or
- (iv) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (v) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

When the premises are sold during construction of building, it is considered as a supply of service by builder to the prospective buyer and thus, will be liable to GST. However, if it is sold after obtaining Occupation Certificate, it is considered as a transaction in sale of immovable property which is not leviable to tax.

- (6) **Actionable claims** : As per paragraph 6 of Schedule III, Transactions in Actionable claims, other than lottery, betting and gambling shall be regarded neither as supply of goods nor supply of services.  
Actionable claims are covered in the ambit of goods. However, transactions in actionable claims other than lottery, betting and gambling shall not be liable for GST. Supply of lottery tickets will be liable for GST. Similarly GST will be payable on supply of betting and gambling.
- (7) **Merchant trading Transactions** : As per paragraph 7 of Schedule III, 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 shall be regarded neither as supply of goods nor supply of services.
- (8) (a) **Supply of warehoused goods before clearance for home consumption** : As per Paragraph 8(a) of Schedule III, Supply of warehoused goods to any person before clearance for home consumption shall be regarded neither as supply of goods nor supply of services.  
(b) **High sea sale transactions** : As per Paragraph 8(b) of Schedule III, supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be regarded neither as supply of goods nor supply of services.

[6] **Other transactions to be notified - which qualifies as 'Supply of goods' or as 'Supply of services' [Section 7(3)]** : The Central Government may notify such other transactions to either qualify as 'supply of goods' or as 'supply of services'. This notification must be issued only upon recommendations from the Council.

<i>Circular No. 22/22/2017- GST dated 21-12-2017</i>	<b>Supply of art work to galleries - Not regarded as supply and not liable to GST</b> : It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. <b>On selection by buyer - GST is leviable</b> : It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.
<i>Circular No. 47/21/2018 GST dated 08-06-2018</i>	Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer (the two not being related persons or distinct persons) does not constitute a supply as there is no consideration involved.
<i>Circular No. 44/18/2018 CGST dated 02-05-2018</i>	<b>Taxability of 'tenancy rights'/ pagadi under GST</b> : It is a form of lease or renting of property and thus is squarely covered under the scope of supply and taxable <i>per se</i> under the CGST Act, 2017. GST is attracted even though stamp duty and registration charges is levied on such premium. Transfer of tenancy rights cannot be regarded as sale of land or building. Grant of tenancy rights in a residential dwelling against tenancy premium is exempt from tax <i>vide</i> Entry No. 12 of Notification No. 12/2017-CT (R).
<i>Circular No. 32/06/2018- GST dated 12-02-2018</i>	GST is not leviable on the fee or penalty or pre-deposit amount charged by Consumer Disputes Redressal Commission office.
<i>Circular No. 1/1/2017 IGST dated 07-07-2017</i>	Inter-state movement of various modes of conveyance, carrying goods or passengers is not regarded as supply. However, if it is for repairs and maintenance, it shall be regarded as supply.
<i>Circular No. 16/16/2017- GST dated 15-11-2017</i>	Inter-State transfer of aircraft engines, parts and accessories for self use by airlines- liable to GST, however ITC admissible.



Circular No. 11/11/2017- GST dated 20-10-2017	Taxability of printing contracts. (i) Content owned by publisher/author - Paper and printing by printer - is supply of service. (ii) Supply of printed envelopes, letter cards etc using design supplied by recipient - is supply of goods.									
Circular No. 35/9/2018- GST 05-03-2018	<p><b>Joint Venture - taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and <i>inter se</i> between the members of the JV.</b></p> <p>(1) Supply of services by JV to members - regarded as supply. (2) Supplies between JV and members or members <i>Inter Se</i> - liable to GST. (3) Cash calls/ Capital - mere flow of money - Taxable if by way of advance towards supplies:</p> <ul style="list-style-type: none"> <li>➤ 'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Cash calls are capital contributions made by members to the Joint Venture. If cash calls are merely flow of money, it is not supply.</li> <li>➤ <b>Payments out of cash calls for supplies - Liable to GST :</b> Payments made out of cash calls pooled by a JV, towards taxable services received from a member or a third party is in the nature of consideration and hence attracts GST.</li> </ul> <p><b>Taxability of cash calls can be further explained by the following illustrations:</b></p> <table border="1" data-bbox="474 802 1459 1463"> <thead> <tr> <th>Illustration</th> <th>Particulars</th> <th>Supply whether liable to GST</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.</td> <td>It will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. The money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.</td> </tr> <tr> <td>B</td> <td>There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.</td> <td>The operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.</td> </tr> </tbody> </table>	Illustration	Particulars	Supply whether liable to GST	A	There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.	It will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. The money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.	B	There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.	The operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.
Illustration	Particulars	Supply whether liable to GST								
A	There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.	It will not be the subject matter of 'ST/GST' for the reason that the operating member is not carrying out an activity for another for consideration. The money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.								
B	There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.	The operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.								
Circular No. 34/8/2018- GST dated 01-03-2018 & Circular No. 93/12/2019- GST dated 8-3-2019	Priority Sector Lending Certificates (PSLCs) are in nature of goods and liable to GST. The nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce.									
Circular No. 76/50/2018- GST dated 31-12-2018	Supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government - falls under the ambit of taxable supply. Supply of the same to a registered person, Taxability will arise on the reverse charge basis. In case Supply is to unregistered person, Government will be liable to pay GST on forward charge basis.									
Circular No. 32/06/2018 GST dated 12-02-2018	<p><b>Taxability of Cost petroleum :</b></p> <ul style="list-style-type: none"> <li>➤ As per the Production Sharing Contract (PSC) between the Government and the oil exploration &amp; production contractors, 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</li> </ul>									

	<p>petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum". <b>Cost petroleum is not a consideration for service to GOI and not taxable :</b></p> <p>Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the <b>profit petroleum</b>.</p> <p>The Government's share of profit petroleum which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas is <b>exempt from GST vide Notification No. 5/2018-CT (Rate) dated 25-01-2018.</b></p> <p>➤ 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.</p>
<b>Circular No. 119/38/2019 -GST dated 11-10-2019</b>	<b>Supply of securities under Securities Lending Scheme, 1997 by the lender is taxable under GST as Lending of securities is not covered under disposal of securities, thus covered under the ambit of service. Lending fees charged by the lender from the borrower is liable to IGST under reverse charge mechanism.</b>

### TAXABILITY OF COMPOSITE SUPPLY AND MIXED SUPPLY

(1) "Composite supply" means a supply --

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

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

(2) "Principal supply" means the supply of goods or services --

- which constitutes the **predominant element of a composite supply**, and
- to which any other supply forming part of that composite supply is ancillary. [Section 2(90)]

(3) "Mixed supply" means --

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

Thus, the individual supplies are independent of each other and are not naturally bundled. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a mixed supply.

Once it is proved that the transaction is not a composite supply, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

(4) **Tax liability in case of Composite and Mixed Supply :** The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: --

- (a) a **composite supply** comprising two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply**; and
- (b) a **mixed supply** comprising two or more supplies shall be treated as a supply of that particular supply which attracts, **the highest rate of tax**. [Section 8]

<i>Circular No. 34/8/2018-GST dated 1-3-2018</i>	<b>Retreading of tyres is a supply of services. Supply of retreaded tyres is supply of goods.</b> In the case of bus body building there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.
<i>In Re : Switching Avo Electro Power Ltd. [2018] 92 taxmann.com 223 (AAR-West Bengal)</i>	Where UPS and battery are supplied as separate goods, but a single price is charged for combination of goods supplied as a single contract, supply of UPS and Battery is to be considered as mixed supply within meaning of Section 2(74), as they are supplied under a single contract at a combined single price.

**ADDITIONAL PRACTICE QUESTIONS**

**Illustration 1 - Scope of supply :** Decide whether the following activities constitute supply or not.

- (i) Services received from Government against taxes paid.
- (ii) Free seminar to educate about prudent investment indirectly promoting a mutual fund.
- (iii) Services received from a club against membership fees.
- (iv) Buying a new car in exchange of old car.

**Solution:** The solution is as follows -

- (i) **No.** A tax payer pays different types of taxes to the government treasury and government performs welfare activities out of such taxes. There should be a direct link and a not any casual link between activity and consideration. Therefore, such activities do not constitute service as **there is no direct link between such services and taxes, hence, such activities would not qualify as supply.**
- (ii) **No.** As per Section 7(1)(a) of CGST Act, 2017, supply includes supply of goods and services or a consideration by a person in the course or furtherance of business. In given case free seminar was organised to educate people, **no direct consideration was received by supplier, hence, such activity will not constitute supply.**
- (iii) **Yes.** Since there is a direct link between the facilities available for use at club, whether or not immediately used and membership fees, hence, it will constitute supply.
- (iv) **Yes.** As per Section 7(1)(a) of CGST Act, 2017, supply includes exchange of goods for a consideration by a person in the course or furtherance of business. Thus, buying a new car in exchange of old car will constitute supply and dealer of car will be liable to pay GST.

**Illustration 2 - Scope of Supply :** An electronics dealer sells a television for ₹ 70,000 to earn a profit. Does it qualify as a supply.

**Ans: Yes.** As per Section 7(1)(a) of CGST Act, 2017, Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Hence, in the above case it will be treated as supply and liable to GST.

**Illustration 3 - Scope of supply :** An individual buys a car for personal purpose and sells it to a car dealer. Does it qualify as a supply.

**Ans: No.** As per Section 7(1)(a) of CGST Act, 2017, Supply shall be made for a consideration by a person in the course or furtherance of business. When an individual who buys a car for personal use and after a year sells it to a car dealer, the transaction will not be supply, **because supply is not made by the individual in the course or furtherance of business.** Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use. Hence, in the above case it will not be treated as supply and hence not liable to GST.

**Illustration 4 - Scope of supply :** Sahab Sales, an air-conditioner dealer in Janakpuri, Delhi, needs 4 air-conditioners for his newly constructed house in Safdarjung Enclave. Therefore, he transfers 4 air-conditioners [on which ITC has already been availed by it] from its stock, for the said purpose. Examine whether the said activity amounts to supply under section 7 of the CGST Act, 2017.

Further, a Janakpuri resident, Aakash, approached Sahab Sales. He sold an air-conditioner to Sahab Sales for ₹ 5,000. Aakash had bought the said air-conditioner 6 months before, for his residence. Does sale of the air conditioner by Aakash to Sahab Sales amount to supply under section 7 of the CGST Act, 2017 ?

**Solution:** Section 7 of the CGST Act, 2017 stipulates that in order to qualify as supply :

- (a) Supply should be of goods and/or services.
- (b) Supply should be made for a consideration.
- (c) Supply should be made in the course or furtherance of business.

Further, Schedule I of the CGST Act, 2017 illustrates the activities to be treated as supply even if made without consideration. One such activity is permanent transfer or disposal of business assets where input tax credit has been availed on such assets, *i.e.* said activity is to be treated as supply even if made without consideration. In view of said provisions, permanent transfer of air conditioners by Sahab Sales from its stock for personal use at its residence, though without consideration, would amount to supply.

However, sale of air-conditioner by Aakash to Sahab Sales will not qualify as supply under section 7 of the CGST Act, 2017 as although it is made for a consideration, but its not in the course or furtherance of business.

**Illustration 5 – Scope of supply :** Arihant construction Ltd. (a registered taxable person) receives management consultancy services supplied by a foreign consultancy company located in London for a consideration of ₹ 20,00,000. Does it qualify as supply.

**Ans:** As per Section 7(1)(b) of CGST Act, 2017, Importation of services for a consideration whether or not in the course or furtherance of business is covered under supply. In the above case it will be treated as supply and will be liable to GST.

**Illustration 6 – Scope of supply :** ABC & Co. a manufacturer of goods donated old furniture to Charitable Schools on account of renovation of office. The company has taken input tax credit on the computers so donated. Does it qualify as a supply?

**Ans: Yes.** As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Permanent transfer or disposal of business assets where input tax credit has been availed shall be treated as supply even if made without consideration. Hence, donation of old furniture to charitable schools shall qualify as supply since input tax credit has been availed by ABC & Co.

**Illustration 7 – Scope of supply :** Mr. Gupta gives gift worth ₹ 2,00,000 to his spouse. Does it qualify as a supply? Would your answer be different if gifts of ₹ 47,000 has been given to spouse.

**Ans:** As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Supply of goods or services between related persons is treated as supply even if it is without consideration when made in course or furtherance of business. As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be “related persons” if such persons are member of same family.

As per Section 2(49) “Family” means, the spouse and children of the person, and the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

Gift to spouse worth ₹ 2,00,000 will not qualify as supply since it is not made in course or furtherance of business and such activity would not be leviable to GST.

If gift of ₹ 47,000 is given instead of ₹ 2,00,000, the same will also not qualify as supply.

**Illustration 8 – Scope of supply :** ABC Electronics Ltd. engages Sunshine computers Ltd. as an agent to sell laptops on its behalf. For the purpose, ABC Electronics Ltd. has supplied 500 laptops to the showroom of Sunshine Cars Ltd. located in Rajasthan. Does it qualify as supply?

**Ans:** As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal shall be treated as supply even if made without consideration. In view of the same supply of laptops by ABC Electronics Ltd. to Sunshine Computers Ltd. will qualify as supply.

**Illustration 9 – Scope of supply :** XYZ Associates received legal consultancy services from PQR Associates (unrelated person) located in Malaysia. PQR Associates has rendered such services free of cost to XYZ Associates. Does it qualify as supply.

**Ans:** As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be treated as supply even if made without consideration. Thus, legal consultancy services received by XYZ Associates will not qualify as supply as both are not related persons and PQR Associates has not charged anything from it and will not be liable to GST.

**Illustration 10 - Scope of supply :** Decide whether the following activities constitute supply or not.

- (1) Gifts received from friends at the time of wedding
- (2) Mr. A gave his residential house on lease to Mr. B for residential purpose.
- (3) A Chartered Accountant rendering services in Srinagar (Jammu & Kashmir).
- (4) A local club supplies snacks etc. to its members during its monthly meeting for a nominal payment.
- (5) Sum received from employer on premature termination.

**Ans:**

- (1) As per Section 7(1)(c) of CGST Act, 2017, Supply of goods or services or both between—related persons; or between distinct persons as specified in Section 25, when **made in the course or furtherance of business**. Gift received from friend at time of wedding is not between related persons and it is not made in the course or furtherance of business. So, it does not constitute supply.
- (2) As per Section 7(1)(d) of CGST Act, 2017, leasing or renting out building including commercial, industrial or residential complex for business or commerce would be treated as supply of service. In given case Mr. A gave his residential house on lease to Mr. B for residential purpose so it would constitute supply of service. However, leasing for residential purpose is exempt under Entry 12 of Notification No. 12/2017-CT (Rate).
- (3) CGST Act, 2017 is applicable to whole India including Jammu & Kashmir. So, services rendered by a Chartered Accountant in Srinagar (Jammu & Kashmir) would constitute supply of services.
- (4) As per Para 7 of Schedule II of CGST Act, 2017, Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. Thus, if a local club supplies snacks etc. to its members during its monthly meeting for a nominal payment would constitute supply of goods.
- (5) As per Section 7(2) read with Schedule III of CGST Act, 2017, Services by an employee to the employer in course of or in relation to his employment would not be regarded as supply. So sum received from employer on premature termination of a contract of employment are treated as amount paid in relation to services provided by employee to employer in the course of employment and thus, would not constitute supply.

**Illustration 11 - Scope of supply - Goods :** Mr. X sold shares of company AB Ltd. to Mr. Y for ₹ 20,000. Does it attract GST.

**Ans: No.** Since, as per Section 7 of CGST Act, 2017, Supply should be of goods or services to attract GST. Securities are neither goods nor services, hence supply of securities does not attract GST.

**Illustration 12 - Scope of supply - Job-work :** A manufacturer of garments sends his goods for further processing to a job-worker. Is such supply liable to GST.

**Ans: Yes.** It shall be regarded as supply as since it includes all forms of supply such as sale, transfer, etc. and also includes cases where the conditions as specified in section 143 of the CGST Act, 2017 are not met. However, it shall not be regarded as supply if the conditions as specified in section 143 of CGST Act, 2017 are satisfied. As the deeming provision contained in section 143(3) to treat the goods sent by the principal to job worker as supply is applicable only when the condition of section 143 with respect to receiving back the goods within the stipulated period is not satisfied.

It must also be noted that any treatment or process which is applied to the garments by the job-worker is a supply of services (as per Schedule III) and will be liable for GST.

**Illustration 13 - Consideration :** Mr. Ram takes a showroom on rent from Mr. Vikram. Mr. Ram agree to keep ₹ 1,00,000 as security deposit with Mr. Vikram. Will the security deposit is regarded as consideration for such supply.

**Ans: No.** Security deposit will not be regarded as consideration for supply. Security deposit will be regarded as consideration only when the supplier *i.e.* Mr. Vikram appropriates the same towards value of taxable supply.

**Illustration 14 - Business:** Ms. Sudha is a teacher. She bakes cake and sale during summer camps. Is the sale of cake qualifies supply.

**Ans: Yes,** the sale of cake by Ms. Sudha qualifies as supply even though it is a one time occurrences. Any activity undertaken in course or furtherance of business would constitute a supply. Since 'business' includes, vocation, sale of goods or service even as vocation is a supply under GST.

**Illustration 15 - Scope of supply - Taxable person :** Mr. Bhushan is not liable for registration, but has taken voluntary Registration. He supplies for a consideration. Will the supply of goods attracts GST.



**Ans:** Yes, Supply to attract GST should be made by a taxable person. A 'taxable person' is a person who is registered or liable to be registered under section 22 or section 24. Therefore, even a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person. Thus, supply of goods by Mr. Bhushan would be liable to GST.

**Illustration 16 – Import of services for consideration :** Mr. Rachit has received interior decoration services for Japanese Yen 1,00,000 from Mr. John, located in Japan for his new house which he purchased for his family. Will such services qualify as supply.

**Ans:** Yes. As per Section 7(1)(b), the connotation of supply gets expanded significantly as it brings within the ambit of supply, the importation of services for a consideration whether or not in the course or furtherance of business. Thus, import of interior decoration services will qualify as supply.

**Illustration 17 – Scope of supply – Deemed supply – Supply without consideration :** A proprietor gives computer from his business stock to his friend, as a gift on his birth day. He claimed input tax credit on the purchase. Will it be covered in the scope of supply.

**Ans:** Yes. As per Section 7(1)(c) read with Schedule I, permanent transfer or disposal of business assets where input tax credit has been availed on such assets qualifies as a supply even though made without consideration. Such transaction will be treated as supply as input tax credit has been availed on such computer business assets.

**Illustration 18 – Distinct persons :** ABC Ltd. Co. has a registered head office in Mumbai. It has also obtained registration for its branch situated in Jaipur, Rajasthan. If ABC Ltd. Co. transfers 1000 finished goods from Mumbai to Jaipur branch without consideration, does it qualify as supply.

**Ans:** Yes. As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, when a person who has obtained or is required to obtain registration in a State or Union Territory in respect of an establishment in another State or Union Territory, then such establishments shall be treated as establishments of distinct persons.

In view of the aforesaid statement, transactions between different establishments with separate GST registration, of same legal entity (eg. Stock transfers or branch transfers) will qualify as 'supply' under GST.

**Illustration 19 – Scope of supply – Gifts by employer to employee :** Mr. Ramesh gifts a Mobile phone to his employee because he won the title 'Best employer of the Year - 2019'. The value of Mobile was ₹ 65,000. Does it qualify as supply ? Are the services provided by the employee qualify as supply of services.

Would your answer be different if gift of ₹ 45,000 has been given to employee.

**Ans:** As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, supply of goods or services between related person is treated as supply even if its without consideration. As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be related persons if such persons are employer and employee. Thus, gift of a Mobile phone worth ₹ 65,000 will qualify as supply and such supply would be leviable to GST.

However, services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply of service. (Schedule III of CGST Act).

Gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. So, gift of ₹ 45,000 given by employer to employee would not be regarded as supply.

**Illustration 20 – Related persons :** A foreign holding company gives accounting services to its Indian subsidiary without any consideration. Is it a supply.

**Ans:** Yes. As per Explanation to Section 15, for the purpose of the Act, a person shall be deemed to be "related person" if one of them directly or indirectly controls the other.

As per Schedule I of CGST Act, 2017, Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business shall be treated as supply even if made without consideration.

Hence, Foreign holding company and Indian subsidiary company are related persons, therefore services received by the Indian subsidiary company without consideration will qualify as supply since the same has been received in course or furtherance of business.

**T.Q. 1: Supply of goods v. Supply of services :** "Diligent Force" a professional training institute gets its training material of "Aptitude Quotient" printed from "Durga printing House" a printing press. The content of the material is provided by the Diligent Force who owns the usage rights of the same while the physical inputs including paper used for printing belong to the Durga Printing House.

Ascertain whether supply of training material by the Durga Printing House constitutes supply of goods or supply of services.

**Ans:** Circular No. 11/11/2017-GST dated 20-10-2017 has clarified that supply of books printed with contents supplied by the recipient of such printed goods, is composite supply and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

Principal supply has been defined in section 2(90) of the CGST Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

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

Thus, in view of the above-mentioned provisions, the supply of training material by the Durga Printing House would constitute supply of services.

**Illustration 21 - Composite supply :** Determine whether the following supplies amount to composite supplies:

- (a) A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided alongwith the room accommodation.
- (b) A toothpaste company has offered the scheme of free toothbrush alongwith the toothpaste.

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

In view of the same, --

- (a) since, supply of breakfast and dinner with the accommodation in the hotel are naturally bundled, said supplies qualify as 'composite supply'.
- (b) since supply of toothbrush alongwith the toothpaste are not naturally bundled, said supplies do not qualify as 'composite supply'.

**Illustration 22 - Scope of supply :** A company has entered into an agreement with a customer for the manufacture and supply of cement pipes for their exclusive use. A company manufactured the product but before receiving the inspection certificate, their customer rejected some quantity of goods on the grounds of quality. As per agreement the rejected quantity will be destroyed in front of the customer and shall not be sold. Examine the issue in the light of statutory provisions and suggest future course of action to the assessee as to whether any liability arises as per the provisions of GST law. (4 Marks, Nov. 2018-OS)

**Ans:** The taxable event under GST is supply of goods. The scope of term supply has been given under Section 7 of the CGST Act, 2017. As per Section 7(1)(a), Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Transactions where goods are destroyed without a transfer of any kind taking place do not fall under the ambit of term supply. Thus, the company will not be liable to pay GST on the rejected quantity of the cement pipes which were destroyed in front of customer. However, the company will be required to reverse input tax credit so taken in respect of destroyed goods since the same fall under the ambit of blocked credit under Section 17(5)(h) of the CGST Act, 2017.

■ ■ ■

## CHARGE OF GST

## SUMMARIZED POINTS FOR REVISION

## EXTENT AND COMMENCEMENT

## (1) Extent and Commencement of CGST Act/ SGST Act/ UTGST Act/ IGST Act:

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
States of India	Yes	Yes		Yes
Union Territories with State Legislature ( <i>i.e.</i> Delhi & Puducherry)	Yes	Yes		Yes
Union Territories without State Legislature ( <i>i.e.</i> Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory)	Yes		Yes	Yes

## INTER STATE SUPPLY

## (2) Inter-State Supply [Section 7 of IGST Act, 2017] :

## (i) With reference to goods :

Where 'location of the supplier' and 'place of supply' are in different States/ Union territories - Inter-State supply : Supply of goods where –

- 'location of the supplier' and
- 'place of supply'

are in –

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

All imports shall be deemed as inter-State supplies and accordingly IGST shall be levied on the imported goods in addition to the applicable custom duties.

## (ii) With reference to services :

Where 'location of the supplier' and 'place of supply' are in different States/ Union territories - Inter-State supply : Supply of services where –

- the location of the supplier, and
- the place of supply

are in –

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

- (iii) If Supplier of goods/and or services located in India and the place of supply is outside India, it shall be deemed to be inter-state supply.
- (iv) Supply of goods/and or services to/by SEZ developer/ unit shall be deemed to be inter-state supply. As per Section 16 of IGST Act, 2017, Supply of goods or services or both to a SEZ developer/ Unit are zero-rated supplies.
- (v) Supply of goods/and or services which is not an intra-State supply shall be deemed to be inter-state supply.



**INTRA STATE SUPPLY**

**(3) Intra- State supply [Section 8 of IGST Act, 2017] :**

**(i) With reference to supply of goods :**

Where the 'location of the supplier' and the 'place of supply' are in the same State or Union territory -  
Intra-State supply : Supply of goods where—

- the location of the supplier, and
- the place of supply of goods are in the same State or same Union territory

shall be treated as intra-State supply.

Such supplies are exigible to CGST and SGST.

**Exceptions :** The following supply of goods shall not be treated as intra-State supply, namely:-

- (a) Supply of goods/services to or by SEZ Unit or SEZ Developer
- (b) Goods imported into India
- (c) Supplies made to a tourist

**(ii) With reference to supply of services :**

Where 'location of the supplier' and 'place of supply' are in same State/ Union territory - Intra-State supply : Supply of services where—

- the location of the supplier; and
- the place of supply of services

are in the same State or same Union territory shall be treated as intra-State supply.

**Exception :** The intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

**Deemed Distinct Persons [Explanation 1] :** Where a person has,-

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory,

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

As per Explanation 2, Branch or agency or representational office to be regarded as establishment.

<i>Circular No. 48/22/2018-GST dated 14-06-2018</i>	<b>Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/ SEZ unit will be treated as an inter-State supply.</b>
---	--

**(4) Supplies in territorial waters [Section 9 of IGST Act, 2017] :** Where the location of the supplier is in the territorial waters, the location of such supplier; or where the place of supply is in the territorial waters, the place of supply, shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

**LEVY AND COLLECTION OF CGST/IGST**

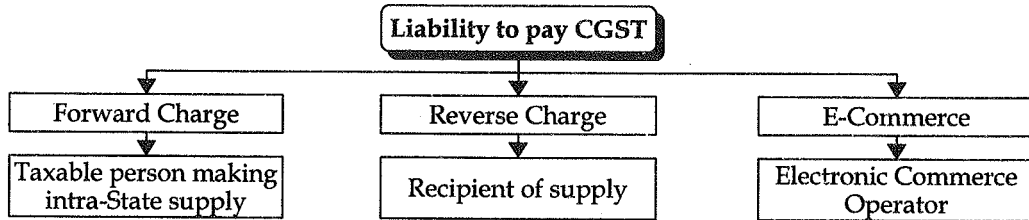
**(5) Levy and collection of CGST/IGST :**

Particulars	CGST	IGST
Statutory Provision	Section 9 of CGST Act	Section 5 of IGST Act
Levied on	Intra-State supplies of goods/ services/ both	Inter-State supplies of goods/ services/ both
Collected and paid by	Taxable person	
Supply outside purview of tax	Alcoholic liquor for human consumption	
Value for levy	Transaction value under section 15 of the CGST Act	

Rates	Rates as notified by Government. Maximum rate of CGST will be 20%. ⊗ CGST Rates - Goods : 0.05%, 0.125%, 1.5%, 2.5%, 6%, 9%, and 14%. ⊗ CGST Rates - Services: 2.5%, 6%, 9% and 14%.	IGST rate = CGST rate + SGST rate Maximum rate of IGST will be 40%. ⊗ IGST Rates - Goods : 0.1%, 0.25%, 3%, 5%, 12%, 18% and 28%. ⊗ IGST Rates - Services : 5%, 12%, 18% and 28%.
Supplies on which tax to be levied w.e.f. a notified date	<ul style="list-style-type: none"> <li>➤ Petroleum crude</li> <li>➤ High speed diesel</li> <li>➤ Motor spirit (commonly known as petrol)</li> <li>➤ Natural gas and</li> <li>➤ Aviation turbine fuel</li> </ul>	
Tax payable under reverse charge	Supply of goods or services or both, notified by the Government on the recommendations of the GST Council. The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.	
Tax payable by the electronic commerce operator	The Government may notify specific categories of services the tax on supplies of which shall be paid by electronic commerce operator (ECO) as if such services are supplied through it. [Refer Note 1 below]	
	If the ECO is located in taxable territory	Person liable to pay tax is the ECO
	If the ECO does not have physical presence in the taxable territory	Person liable to pay tax is the person representing the ECO
	If the ECO has neither the physical presence nor any representative in the taxable territory	Person liable to pay tax is the person appointed by the ECO for the purpose of paying the tax
Goods imported into India	No CGST and SGST/UTGST payable.	IGST shall be levied and collected on import of goods as per the Section 3 of the Custom Tariff Act, 1975. [Refer Note 2 below]

**Note:**

- (1) **Categories of services the tax on intra-State supplies of which shall be paid by the Electronic Commerce Operator :** In case of the following categories of services, the tax on intra-State/inter-state supplies shall be paid by the electronic commerce operator –
- (a) services by way of **transportation of passengers** by a radio-taxi, motorcab, maxicab and motor cycle;
  - (b) services by way of **providing accommodation in hotels, inns, guest houses, clubs, campsites** or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is *liable for registration u/s 22(1) of CGST Act, 2017.*
  - (c) **services by way of house-keeping**, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of CGST Act, 2017.
- (2) **IGST and GST Cess on import of goods :** As per proviso to Section 5(1), the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the Customs Tariff Act, 1975 at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.  
In addition, **GST compensation cess**, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.  
However, the credit of such levy be allowed under GST law and thus, it is inherently embedded in the GST mechanism.



<b>Circular No. 12/12/2017-GST dated 26-10-2017</b>	<b>Issue :</b> Whether GST is applicable on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]? The Board has clarified that in this transaction GST will be payable by the refinery on the value of net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB). Though, refinery would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person.
<b>Circular No. 29/3/2018-CST dated 25-01-2018</b>	GST is payable net quantity of Polybutylene feedstock and LPG retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol. Oil refineries liable to pay GST on such returned quantity when supplied to other customers.
<b>Circular No. 53/27/2018-GST dated 09-08-2018</b>	GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products.
<b>Circular No. 13/13/2017-GST dated 27-10-2017</b>	<b>Classification of cut pieces of fabrics under GST (Unstitched Salwar Suits):</b> Mere cutting and packing of fabrics into pieces of different lengths from bundles or thans, will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric.

#### REVERSE CHARGE MECHANISM

- (6) **Categories of services on which tax will be payable under reverse charge mechanism under CGST Act, 2017 [Notification No. 13/2017-CT (Rate) dated 28-06-2017 w.e.f. 01-07-2017] :** The Central Government has notified the following categories of supply of services wherein the whole of central tax leviable under section 9 of the said CGST Act, shall be paid on reverse charge basis by the recipient of the such services :-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
1.	Supply of Services by a <b>Goods Transport Agency (GTA)</b> in respect of transportation of goods by road to— (a) any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person.	Goods Transport Agency (GTA) <b>who has not paid CGST @ 6%</b>	(a) Any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person; located in the taxable territory.

	<p>RCM not applicable if recipient registered only for TDS : However, nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,—</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax u/s 51 and not for making a taxable supply of goods or services.</p>		
2.	<p>Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</p> <p>“Legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority. <i>[Explanation]</i></p>	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory. Business entity being Litigant, applicant or petitioner located in Taxable territory – Deemed Recipient : The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4.	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5.	<p>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding,—</p> <p>(1) renting of immovable property, and</p> <p>(2) services specified below—</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers.</p> <p>“Renting of immovable property” means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.</p>	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

5A.	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act, 2017.	Central Govt. State Govt. Union territory or local authority	Any person registered under the CGST Act, 2017.
5B.	Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter
5C.	Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.	Any person	Promoter
6.	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7.	Services supplied by an insurance agent to any person carrying on insurance business. "Insurance agent" means an insurance agent licensed u/s 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance [Section 2(10) of the Insurance Act, 1938].	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8.	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9.	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(1) (a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory. [Amended by Notification No. 22/2019-CT (Rate) w.e.f. 1-10-2019]
9A.	**Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under Section 13(1) (a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory: However, nothing contained in this entry shall apply where, - (i) the author has taken registration under the CGST Act, 2017, and filed a declaration, in the specified form before the commencement of financial year with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay central tax on such services in accordance with Section 9(1) of the CGST Act, 2017 under forward charge, and to comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the

			supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; (ii) the author makes a declaration regarding payment of tax on forward charge on the invoice issued by him in Form GST Inv-I to the publisher.
10.	Supply of services by the members of Overseeing Committee to RBI	Members of Overseeing Committee constituted by the RBI	RBI
11.	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs)	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or LLP firm.	A banking company or a non-banking financial company, located in the taxable territory.
12.	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory.
13.	Services provided by an agent of business correspondent (BC) to business correspondent (BC)	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. <b>RCM not applicable if recipient registered only for TDS and in case composition suppliers :</b> However, nothing contained in this entry shall apply to,— (i) (a) a Department or Establishment of the Central Government or State Government or UT; or (b) local authority; or (c) Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax u/s 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act.	Any person other than a body corporate	A registered person, located in the taxable territory.
15.	**Services provided by way of renting of a motor vehicle provided to a body corporate	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with ITC only of input service in the same line of business	Any body corporate located in the taxable territory



16.	<b>**Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of SEBI as amended.</b>	<b>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</b>	<b>Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.</b>
<b>**Inserted by Notification No. 22/2019-CT (Rate) w.e.f. 1-10-2019</b>			

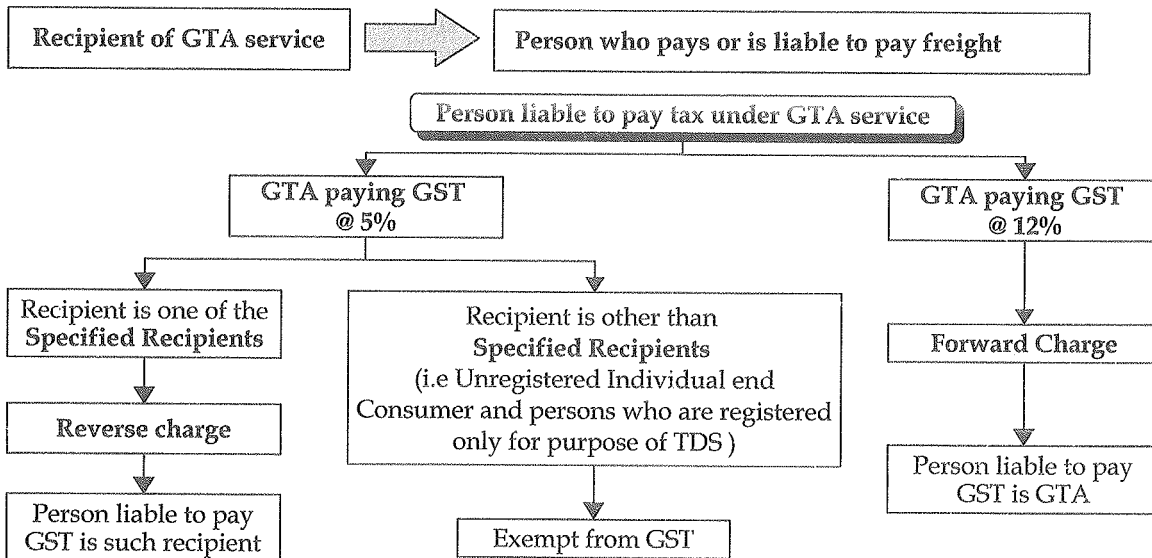
**Explanation :** For purpose of this notification, –

- (a) **Person liable to pay freight is Service Recipient :** The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
- (b) **"Body Corporate"** has the same meaning as assigned to it in Section 2(11) of the Companies Act, 2013. As per Section 2(11) of Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include –
- a co-operative society registered under any law relating to co-operative societies; and
  - any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.
- (c) The words and expressions used and not defined in this notification but defined in the CGST Act, the IGST Act, and the UTGST Act shall have the same meanings as assigned to them in those Acts.
- (d) A **"Limited Liability Partnership"** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.
- (e) Provisions of this notification, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament and State Legislatures.
- (7) **List of services taxable under reverse charge, i.e. the services where tax is payable by the recipient :** Following two services are additionally included for IGST purposes.

Sl. No.	Category of supply of service	Supplier of service	Recipient of Service
1.	Any service <b>supplied by any person who is located in a non-taxable territory</b> to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory <b>other than nontaxable online recipient.</b>
2.	Services <b>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.</b>	A person located in nontaxable territory	Importer, as defined in Section 2(26) of the Customs Act, 1962, located in the taxable territory. <b>Importer</b> , in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer. [Section 2(26) of the Customs Act, 1962]

**GTA services are taxable :**

- (i) @ 5% (2.5% CGST + 2.5% SGST/UTGST) provided GTA has not taken the Input tax credit (ITC) on goods and services used in supplying GTA service; or
- (ii) @ 12% (6% CGST + 6% SGST/UTGST) provided GTA pays GST under forward charge. There is no restriction on availing ITC on goods and services used in supplying GTA service by GTA.



**ADDITIONAL PRACTICE QUESTIONS**

**Illustration 1 – Sponsorship service – Reverse Charge :** Mr. Vivek sponsored a dance competition organized by ‘Taal Academy’, a dance school run by an individual. The dance competition was named as ‘Mr. Vivek’s Dance Show’ by ‘Taal Academy’. Who is liable to pay GST in this case? Will your answer be different if ‘Taal Academy’ is run by a partnership firm?

**Ans:** In case of taxable service provided or agreed to be provided by way of sponsorship to any body corporate or partnership firm located in the taxable territory, person liable to pay GST is the recipient of such service. However, since in the given case sponsorship service is provided to an individual, the person liable to pay GST will be supplier of service i.e., ‘Taal Academy’.

Further, since the status of recipient of service is relevant for determining as to who would pay GST, status of service supplier is immaterial. Therefore, as long as sponsorship service is rendered to an individual, GST will be payable by supplier of service i.e., ‘Taal Academy’ irrespective of whether the same is run by an individual or a partnership firm.

**Illustration 2 – Person liable to pay GST under reverse charge :** From the following information pertaining to month of December 2019, determine the person liable to pay GST and extent of GST payable (Rate of GST is 18% and in case of Goods transport agency is 5%), if all sums are exclusive of taxes and both service supplier and service recipient are located in India -

- (1) Mr. Kanha is an agent of General Insurance Co. The insurance company pays commission (excluding tax) ₹ 8 lakh to him. Mr. Kanha claims that no GST is leviable on services provided by him as his value of taxable service does not exceed ₹ 20 lakhs.
- (2) ABC Ltd. availed services of Kamal Goods transport agency for transportation of goods by road from factory located in New Delhi to its Jaipur depot and paid freight of ₹ 1,00,000.
- (3) PC Jewellers Ltd. paid ₹ 50 lakhs for sponsorship of Miss India beauty pageant for sponsorship services.
- (4) Legal services provided by PDS & Co., a partnership firm of New Delhi to Hindustan Unilever Ltd, Mumbai. : ₹ 75,00,000.

**Solution:** As per Notification No. 13/2017-CT (Rate) dated 28-6-2017 w.e.f 1-7-2017, the GST shall be payable as follows-

- (1) In this case General Insurance company will be liable to pay GST on reverse charge basis. It cannot claim threshold exemption as it is receiver of service.

Hence, GST shall be ₹ 8,00,000 × 18% = ₹ 144,000. The same shall be paid by the General Insurance Company.



- (2) In this case GST shall be paid by ABC Ltd. under reverse charge mechanism, since it is liable to pay freight for transportation of goods. The GST liability shall be ₹ 1,00,000 × 5% = ₹ 5,000.
- (3) In this case sponsorship services are received by PC Jewellers Ltd. Hence, it will be liable to pay GST under reverse charge mechanism. The GST liability shall be ₹ 50,00,000 × 18% = ₹ 9000000.
- (4) In this case GST shall be paid by Hindustan Unilever Ltd. under reverse charge mechanism. The GST liability shall be ₹ 75,00,000 × 18% = ₹ 13500000.

**Illustration 3 - Person liable to pay GST under RCM:** From the following information for the month of March 2020, determine the person liable to pay GST and extent of GST payable (applicable GST rate is 18%), if all sums are exclusive of GST and both service supplier and service recipient are located in India -

- (1) Services supplied by a director of a company (not in capacity of employee) to the company : ₹ 15 lakh ;
- (2) Business support services supplied by Government to a business entity : ₹ 12 lakh ;
- (3) Renting of immovable property services supplied by Government to XYZ Ltd. registered under CGST Act, 2017 : ₹ 18 lakh.

**Solution:** As per Notification No. 13/2017-CT (R) dated 28-6-2017 w.e.f 1-7-2017, the GST shall be payable as follows -

Particulars	Value ₹	GST Rate @ 18% ₹	Amount payable by supplier of service		Amount payable by recipient of service	
			%	₹	%	₹
(1) Services provided by Director to the company [GST payable by company under reverse charge mechanism]	15,00,000	2,70,000	-	-	100%	2,70,000
(2) Business support services by Government to Business entity [Person liable to pay GST is business entity]	12,00,000	2,16,000	-	-	100%	2,16,000
(3) Renting of immovable property by Government to XYZ Ltd. [Person liable to pay GST is recipient of service i.e. XYZ Ltd.] [Entry 5A]	18,00,000	3,24,000	-	-	100%	3,24,000

**Illustration 4 - Person liable to pay GST :** Determine the person liable to pay GST and extent of GST payable (applicable GST rate is 18%) in following cases (all sums are exclusive of taxes) (both service supplier and service recipient are located in India and service is provided during the month of February, 2020) -

- (1) Manpower supply services by partnership firm to business entity being a company : ₹ 12 lakh ;
- (2) Security service by an individual to business entity being a company : ₹ 11 lakh ;
- (3) Manpower Supply by a company to business entity being a company : ₹ 12 lakh ;
- (4) Works contract services provided by an individual to business entity being a company : ₹ 14 lakh.

**Solution:** As per Section 9 of CGST Act, 2017 read with Notification No. 13/2017-CT (Rate) dated 28-06-2017 w.e.f 01-07-2017, the GST shall be payable as follows -

Particulars	Value ₹	GST Rate @ 18% ₹	Amount payable by service supplier		Amount payable by service recipient	
			%	₹	%	₹
(1) Manpower supply services by partnership firm to business entity being a company [Entire GST is payable by service supplier]	12,00,000	2,16,000	100%	2,16,000	-	-
(2) Security services by an individual to business entity being a company [Entire GST is payable by service recipient][Entry 14]	11,00,000	1,98,000	-	-	100%	1,98,000
(3) Manpower Supply services provided by a company [Entire GST is payable by service supplier]	12,00,000	2,16,000	100%	2,16,000	-	-
(4) Works contract services provided by an individual to business entity being a company [Entire GST is payable by service supplier]	14,00,000	2,52,000	100%	2,52,000	-	-

**Illustration 5 - Person liable to pay GST :** ABC & Co., a goods transportation agency located in Delhi transports a consignment of new motorcycles from the factory of XYZ Ltd. in Gurgaon (Haryana), to the premises of a dealer in Jammu (taxable territory). As per mutually agreed terms between ABC & Co. and XYZ Ltd., the dealer in Jammu is the

person liable to pay freight. The amount of freight exclusive of taxes is ₹ 4,50,000. State the person liable to pay GST and amount of tax payable by him if the services are provided in December, 2019. Assume rate of GST 5% and ABC & Co. does not avail input tax credit.

**Solution:** As per Section 2(56) of CGST Act, 2017, goods and service tax extends to whole of India including Jammu and Kashmir. So, As per Notification No. 13/2017-CT (Rate) dated 28-06-2017 w.e.f. 01-07-2017, Supply of Service by Goods Transport Agency (GTA) in respect of transportation of goods by road to any person located in taxable territory recipient of service would be liable to pay GST under reverse charge mechanism. As premises of dealer is in taxable territory and he is liable to pay freight for transportation So, dealer in Jammu would be liable to pay GST. GST liability payable by dealer  $₹ 4,50,000 \times 5\% = ₹ 22,500$ .

**Illustration 6 – Person liable to pay GST under reverse charge :** From the following information pertaining to month of December 2019, determine the person liable to pay GST and extent of GST payable : Mr. Laxman is an author of book named "My Biography". Mr. Laxman transfer rights to use copyright of his book to M/s. APPL publisher, located in New Delhi for ₹ 10 lakh (excluding Taxes). Mr. Laxman claims that no GST is payable since his aggregate turnover does not exceed ₹ 20 lakhs. Rate of GST is 12%.

**Solution:** As per Notification No. 13/2017-CT (Rate) dated 28-06-2017 w.e.f. 1-07-2017, the GST shall be payable as follows - In this case publisher will be liable to pay GST on reverse charge basis irrespective of aggregate turnover of Mr. Laxman. Hence, GST shall be  $₹ 10,00,000 \times 12\% = ₹ 120,000$ . The same shall be paid M/s. APPL.

**Illustration 7 – Legal services :** Vakil & Vakil, a firm of lawyers rendered legal advice to Mr. B, an architect, and MNO Ltd., an advertising agency during December, 2019. Both Mr. B and MNO Ltd. aggregate turnover in financial year 2018-19 exceeded ₹ 20 lakhs. Who is liable to pay GST in this case? Will your answer be different if Mr. B and MNO Ltd. sought legal advice from Mr. A, a lawyer ?

**Ans:** In case of taxable services provided or agreed to be provided to any business entity located in the taxable territory by an individual advocate including a senior advocate or a firm of advocates by way of legal services, person liable to pay GST is the recipient of service.

Further, services provided by an individual advocate or a partnership firm of advocates by way of legal services to *inter alia* a business entity with a turnover up to ₹ 20 lakh (₹ 10 lakh in case of special category states) in the preceding financial year are exempt from GST *vide* Entry No. 45 Notification No. 12/2017-CT (Rate).

In the given case, turnover of services of both Mr. B and MNO Ltd. exceeded ₹ 20 lakh in the preceding financial year, hence, legal services provided by Vakil and Vakil (firm of advocates) or Mr. A (individual lawyer) during December, 2019 will not be exempt from GST.

Therefore, GST will be payable by service receiver, Mr. B and MNO Ltd. irrespective of whether the legal advice is sought from a firm of lawyers or from Mr. A, an individual lawyer.

**T.Q. 1 :** Can any person other than the supplier or recipient be liable to pay tax under GST?

**Ans:** Yes. As per provisions of Section 9(5) of CGST Act, 2017, the Government can specify categories of services the tax on which shall be paid by the Electronic Commerce Operator, if such services are supplied through it and all the provisions of the GST law shall apply to such electronic commerce operator as if he is the person liable to pay tax in relation to supply of such services.

For this purpose the following services have been notified:

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration u/s 22(1) of CGST Act, 2017.
- (iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of CGST Act, 2017.

**T.Q. 2 :** A hotel owner provided accommodation in Rajasthan, through an electronic commerce operator - MMT Trips. The hotel owner is not liable to get registered as per the provisions of Section 22(1) of the CGST Act. Who is the person liable to pay GST in this case? Would your answer be different if the Electronic Commerce Operator MMT Trips does not have a physical presence in India?

**Ans:** As per Section 9(5) of the CGST Act, 2017, Government may notify specific categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it. Services by way of providing accommodation in hotels through electronic commerce operator is a specified service for said purpose.

Thus, person liable to pay GST in this case is the Electronic Commerce Operator MMT Trips. All the provisions of the GST law shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

If MMT Trips does not have a physical presence in India, person liable to pay tax is the person representing the Electronic Commerce Operator – MMT Trips for any purpose in India.

**T.Q. 3: ECO - GST liability:** Mr. Sanjay of New Delhi made a request for a Motor cab to “Super ride” for travelling from New Delhi to Gurgaon (Haryana). After Mr. Sanjay pays the cab charges using his debit card, he gets details of the driver Mr. Jorawar Singh and the cab's registration number.

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

D.T. Ltd. claims that cab service is provided by Mr. Jorawar Singh and hence, he is liable to pay GST under the provisions of Goods and Services tax laws.

With reference to the provisions of IGST Act, 2017, determine who is liable to pay GST in this case ?

Would your answer be different, if D.T. Ltd. is located in New York (USA) ? Also briefly state the statutory provisions involved. (5 Marks, Nov. 2018-NS)

**Solution:** As per Section 5(5) of the IGST Act, 2017, the Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

As per Section 2(45) of the CGST Act, 2017, “Electronic commerce operator” (ECO) means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

The Central Government has notified services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle; the tax on inter-State supplies shall be paid by the electronic commerce operator.

Thus, in the above case D.T. Ltd. is liable to pay GST in respect of supply of the said service. Thus, the contention of D.T. Ltd. that Mr. Jorawar Singh should pay GST on the same as he is provider of service is not correct.

Further proviso to Section 5(5) of the IGST Act provides that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Thus, even if D.T. Ltd. is located in non taxable territory its liability to pay GST will not be extinguished. The representative of D.T. Ltd. or the person appointed by D.T. Ltd. will be required to discharge the GST liability on behalf of D.T. Ltd.

**T.Q. 4:** Define 'intra-State supply' and 'inter-state supply' under GST law. Is it correct to say that inter-State supply attracts both CGST and SGST ? (3 Marks, Nov. 2017)

**Ans:** The relevant provisions are discussed as under –

- (i) Where the **location of the supplier and the place of supply** of goods or services are in the same State/Union territory, it is treated as intra-State supply of goods or services respectively.
- (ii) Where the **location of the supplier and the place of supply** of goods or services are in –
  - (a) two different States; or
  - (b) two different Union Territories; or
  - (c) a State and a Union territory, it is treated as inter-State supply of goods or services respectively.

No it is not correct to say that inter-State supply attracts both CGST and SGST as inter-State supply attracts IGST. However, IGST is the sum total of CGST and SGST/ UTGST.

## COMPOSITION LEVY

## SUMMARIZED POINTS FOR REVISION

## COMPOSITION LEVY

## (1) Composition scheme under CGST Act, 2017 [Section 10] :

- (a) **Optional Scheme** : Tax payment under this scheme is an option available to the taxable person. This scheme would be available only to certain eligible taxable persons.
- (b) **Eligibility** : If aggregate turnover is upto ₹ 1.5 crore in the preceding financial year, such person will be eligible to opt for payment of tax under the composition scheme.

However, the aggregate turnover in the preceding financial year shall be ₹ 75 lakh in the case of an eligible registered person, registered under Section 25 of the said Act, in any of the following States, namely:-

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

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

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

Inclusions	Exclusions
Value of all outward supplies i.e.-	➤ CGST
➤ Taxable supplies	➤ SGST
➤ Exempt supplies	➤ UTGST
➤ Exports	➤ IGST
➤ Inter-State supplies	➤ Cess
of persons having same PAN to be computed on all India basis.	➤ Value of inward supplies on which tax is payable under reverse charge.

- (c) **Rates of composite tax** : As per Section 10(1), the rates of tax under composition scheme are as under a composition supplier may opt to pay, in lieu of the tax payable by him under section 9(1), an amount of tax calculated at under mentioned rates –

S. No.	Eligible Person	Rate of Tax cannot exceed (% of turnover)		Total rate of tax cannot exceed
		CGST	SGST	
(a)	Manufacturer	0.5% of the turnover in the State or Union territory	0.5% of the turnover in the State or Union territory	1% of the turnover in the State or Union territory
(b)	Restaurant service	2.5% of the turnover in the State or Union territory	2.5% of the turnover in the State or Union territory	5% of the turnover in the State or Union territory
(c)	Other Suppliers	0.5% of the turnover of taxable supplies of goods and services in the State or Union territory	0.5% of the turnover of taxable supplies of goods and services in the State or Union territory	1% of the turnover of taxable supplies of goods and services in the State or Union territory

**Services can be supplied by the composition suppliers [Second Proviso to Section 10(1)]** : A person who opts to pay tax under (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II i.e. restaurant services), of value –

- (a) not exceeding 10% of turnover in a State or Union territory in the preceding financial year; or  
 (b) ₹ 5,00,000,  
 whichever is higher.

“Turnover in State” or “turnover in Union territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess. [Section 2(112)]

- (d) **Persons not eligible to opt for composition scheme [Section 10(2)]** : Broadly, **five categories** of registered person are not eligible to opt for the composition scheme. These are :
- (i) supplier of services **other than those mentioned in point no. (c) above.**
  - (ii) supplier of **goods which are not taxable** under the CGST Act/SGST Act/UTGST Act;
  - (iii) an **inter-State supplier of goods**; (Note: There is no restriction on Composition Supplier to procure goods from inter-State suppliers.)
  - (iv) **person supplying goods through an electronic commerce operator** who is required to collect tax at source under section 52;
  - (v) **manufacturer of certain notified goods i.e. Ice cream and other edible ice**, whether or not containing cocoa, Pan masala, Aerated waters [w.e.f. 1-10-2019], and Tobacco and manufactured tobacco substitutes.
- (e) Composition scheme is **applicable for all transactions** of registered person **with same PAN**. [Section 10(2)]
- (f) Option to pay composition tax **lapses** if aggregate turnover exceeds ₹ 1.5 crore/₹ 75 lakh. [Section 10(3)]
- (g) Composition tax cannot be collected from recipients. [Section 10(4)]
- (h) **Input tax credit cannot be availed** by composition supplier. [Section 10(4)]
- (i) In case of irregular availment of the composition scheme, registered person shall be liable to pay tax and shall also be liable for penalty. [Section 10(5)]
- (j) **Composition scheme not applicable for tax payable under Reverse Charge Mechanism (RCM)**. Rate of tax payable on supplies taxable under RCM will be regular rates and not the composition rate.
- (k) Customer not entitled to take credit of composition tax.

<p><b>CGST (Removal of Difficulties Order), 2019</b> Order No. 01/2019-CT dated 01-02-2019</p>	<p>The value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account –</p> <ol style="list-style-type: none"> <li>(i) for determining the eligibility for composition scheme under second proviso to Section 10(1) [which allows provision of services upto 10% of turnover in a State or Union territory in the preceding financial year; or ₹ 5,00,000, whichever is higher];</li> <li>(ii) in computing aggregate turnover in order to determine eligibility for composition scheme.</li> </ol>
--	---

#### PRESUMPTIVE SCHEME FOR SERVICES SUPPLIERS AND MIXED SUPPLIERS

- (2) The provisions relating to composition scheme for suppliers of service and mixed suppliers is as under –
- (i) **Presumptive scheme for services suppliers - Introduction** : The CBIC has notified a New Scheme in GST vide Notification No. 2/2019-CT (Rate), dated 07-03-2019 in which a tax payer has been allowed to pay GST on a presumptive basis @ 6% (3% CGST and 3% SGST/UTGST).
  - (ii) **Effective date of applicability of Presumptive scheme for service suppliers and mixed suppliers** : The benefit of this scheme can be taken by eligible registered persons on or after 01-04-2019 only in respect of intra-State supplies of goods or services or both.  
This facility and composition scheme under section 10 operate as mutually exclusive. Thus, traders and manufacturers of goods and restaurant service providers who are eligible for composition scheme (even if not opted) will not enter this facility.
  - (iii) **Conditions** :  
A registered person can claim the benefit of this presumptive scheme provided he complies with the following conditions :
    - His aggregate turnover in the preceding financial year must not exceed ₹ 50 lakh.
    - In computing aggregate turnover in order to determine eligibility of a registered person to pay tax under this notification, value of supply of exempt services by way of extending deposits, loans or



advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account;

- He is not eligible to pay tax under composition scheme governed by Section 10 of the CGST Act, 2017;
- He is not engaged in the business of making any supplies on which GST is not leviable under this Act (*i.e.*, petroleum products or alcoholic liquor for human consumption);
- He is not engaged in making any inter-State outward supply;
- He is neither a casual taxable person nor a non-resident taxable person;
- He is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and
- He is not engaged in making supplies of goods being :
  - Ice cream and other edible ice, whether or not containing cocoa;
  - Pan masala;
  - Tobacco and manufactured tobacco substitutes.

(iv) Applicable for all transactions of registered person with same PAN.

(v) Presumptive tax not to be collected from recipients and ITC not admissible.

(vi) Bill of supply is to be issued instead of tax invoice by registered person.

(vii) The registered person shall mention the following words at the top of the bill of supply, namely:-

'taxable person paying tax in terms of notification No. 2/2019-CT (Rate) dated 07-03-2019, not eligible to collect tax on supplies'.

(viii) Presumptive scheme not applicable for tax payable under Reverse Charge Mechanism (RCM) - Tax payable at normal rates on such supplies.

(ix) ITC is to be reversed in accordance with provisions of Section 18(4) on switching to Presumptive scheme and after reversal, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(x) Rates of tax : The rate of tax under presumptive levy is as under –

Description of supply	Rate of Tax cannot exceed (% of turnover)		Total rate of tax cannot exceed
	CGST	SGST	
First supplies of goods or services or both upto an aggregate turnover of ₹ 50 lakh made on or after the 1 <sup>st</sup> day of April in any financial year, by a registered person.	3% of the aggregate turnover in the State or Union territory	3% of the aggregate turnover in the State or Union territory	6% of the aggregate turnover in the State or Union territory

(xi) Meaning of "First supplies of goods or services or both" :

(a) For the purpose of determining the eligibility of presumptive levy : "First supplies of goods or services or both" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act.

(b) For the purpose of payment of tax : "First supplies of goods or services or both" shall, for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

Thus, where supplier has taken the GST registration for the first time, the presumptive tax @ 6% shall be payable on the supplies made by him only after the date of registration.

(xii) Rules for composition scheme applicable : The CGST Rules, 2017, as applicable to a person paying tax under section 10 of the said Act shall, *mutatis mutandis*, apply to a person paying tax under this notification.

<p><i>Circular No. 97/16/2019-GST dated 05-04-2019</i></p>	<p>(1) <b>Option for Presumptive scheme to be exercised in registration application</b> : Any person who applies for registration and who wants to opt for payment of central tax @ 3% by availing the benefit of the said notification, if eligible, may do so by indicating the option at serial no. 5 and 6.1(iii) of FORM GST REG-01 at the time of filing of application for registration.</p> <p>(2) <b>Option applicable for all place of business under same PAN</b> : The option of payment of tax by availing the benefit of the said notification in respect of any place of business in any State or Union territory shall be deemed to be applicable in respect of all other places of business registered on the same Permanent Account Number.</p>
--	---

	<p>(3) <b>Effective date of applicability of Presumptive scheme</b> : The option to pay tax by availing the benefit of the said notification would be effective from the beginning of the financial year or from the date of registration in cases where new registration has been obtained during the financial year.</p> <p>(4) <b>Composition levy rules applicable</b> : It may be noted that the provisions contained in Chapter II of the said Rules <i>i.e.</i> Composition levy rules shall <i>mutatis mutandis</i> apply to persons paying tax by availing the benefit of the said notification, except to the extent specified as in the above points.</p>
--	--

(3) **Intimation and effective date for composition levy [Rule 3 and Rule 4] :**

- (i) Option to pay composite tax along with application for registration shall be deemed intimation for Composition Scheme. In such case composition levy shall be effective from the date from which registration is effective.
- (ii) In other cases intimation for option to avail composition scheme is to be filed before the beginning of Financial Year. In such case the option to pay tax under composition levy shall be effective from the beginning of the Financial Year.
- (iii) ITC declaration is to be furnished within 60 days from the commencement of the relevant financial year.
- (iv) Details of stock to be furnished within 90 days from the date of option
- (v) One intimation applicable for all places in case of same PAN.

(4) **Conditions and restrictions for composition levy [Rule 5] :**

- (i) The person exercising the option to pay tax u/s 10 shall comply with the following conditions, namely:-
  - (a) he is **neither a casual taxable person nor a non-resident taxable person;**
  - (b) the goods held in stock by him have **not been purchased from an unregistered supplier** and where purchased, he pays the tax under section 9(4);
  - (c) he shall **pay tax under section 9(3)/(4) (reverse charge)** on inward supply of goods or services or both;
  - (d) he was not engaged in the manufacture of goods as notified under section 10(2)(e) *i.e.* **ice cream, aerated waters [w.e.f. 1-10-2019], pan masala, and tobacco**, during the preceding financial year;
  - (e) he shall mention the words **"composition taxable person, not eligible to collect tax on supplies"** at the top of the bill of supply issued by him; and
  - (f) he shall mention the words **"composition taxable person"** on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.
- (ii) Composition supplier is not required to **file fresh intimation every year.**

(5) **Validity of composition levy [Rule 6] :**

- (a) **Mandatory cessation** of Composition levy will be there **on violation of conditions of Section 10** read with rules made there under.
- (b) Registered person can make application electronically on the common portal for withdrawal from scheme.
- (c) Issuance of SCN by Proper Officer for cessation of composition scheme on violation of conditions.
- (d) **Reply** is to be filed **within 15 days of receipt of SCN.**
- (e) The proper officer shall issue an order **within a period of 30 days** of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.
- (f) Details of stock is to be furnished on opting out of such scheme **within a period of 30 days** of withdrawal of composition scheme.

<b>Circular No.</b> 77/51/2018 <b>GST dated</b> 31-12-2018	<b>Effective date in case of denial of composition option by tax authorities.</b> In case of denial of option to pay tax under composition levy by the tax authorities, it has been clarified that the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules
---	---

- (6) Form and manner of submission of statement and return [Rule 62 of CGST Rules, 2017] :
- (i) Composition/Presumptive scheme taxpayers to file return annually and make payment quarterly : Every registered person paying tax under section 10 or paying tax by availing the benefit of Notification No. 02/2019-CT (R) dated 07-03-2019 shall electronically furnish -
- (a) a statement in the prescribed form *i.e.* GST CMP-08 containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18<sup>th</sup> day of the month succeeding such quarter; and
- (b) a return (GSTR 4) for every financial year (or part of the financial year), on or before 30<sup>th</sup> day of April following the end of such financial year.
- (ii) Payment of tax, interest, etc. by electronic cash ledger [Rule 62(2)] : Every registered person furnishing the statement under Rule 62(1) shall discharge his liability towards tax or interest payable by debiting the electronic cash ledger.
- (iii) Contents of information [Rule 62(3)] : The return furnished shall include the--
- (a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons; and
- (b) consolidated details of outward supplies made.
- (iv) Obligation to furnish additional returns by composition/presumptive scheme supplier who opts under the scheme from beginning of Financial Year [Rule 62(4)] : A registered person who has opted to pay tax u/s 10 or by availing the benefit of Notification No. 02/2019-CT (R) dated 07-03-2019 from the beginning of a financial year shall, where required, furnish the details of outward and inward supplies and return under rule 59, 60 and 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.
- ITC not available [Explanation] : Here, the person shall not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme or paying tax by availing the benefit of Notification No. 02/2019 CT (R) dated 07-03-2019.
- (v) Furnishing of details on opting out of composition scheme [Rule 62(5)] : A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax under the composition scheme till the 18<sup>th</sup> day of the month succeeding the quarter in which the date of withdrawal falls and furnish GSTR 4 for the said period till the 30<sup>th</sup> day of April following the end of the financial year during which such withdrawal falls.
- (vi) Furnishing of details on cessation of presumptive scheme [Rule 62(6)] : A registered person who ceases to avail the benefit of Notification No. 02/2019-CT (R) dated 07-03-2019, shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax by availing the benefit under the said notification till the 18<sup>th</sup> day of the month succeeding the quarter in which the date of cessation takes place and furnish GSTR 4 for the said period till the 30<sup>th</sup> day of April following the end of the financial year during which such cessation happens.

ADDITIONAL PRACTICE QUESTIONS

T.Q. 1: Determine whether the supplier in the following cases are eligible for composition levy provided their turnover in preceding year does not exceed ₹ 1.5 crore :

- (a) Rajeev is engaged in providing Chartered Accountancy services in Rajasthan and is registered in the same State.
- (b) Safal Manufacturers has registered offices in Rajasthan and supplies goods in neighbouring States.

Ans: Eligibility for composition levy of suppliers is as under --

- (a) A supplier of services is not eligible for composition scheme except :
- (i) supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (restaurant service supplier)
- (ii) other suppliers *i.e.* manufacturers, traders and restaurant service suppliers may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II *i.e.* restaurant services), of value -
- not exceeding 10% of turnover in a State or Union territory in the preceding financial year; or
  - ₹ 5,00,000,
- whichever is higher.



Since Rajeev provides only Chartered Accountancy services, he is not eligible for composition scheme.

However he can opt for the benefit of presumptive levy for service suppliers as given in Notification No. 2/2019 CT (R) dated 07-03-2019 applicable from 01-04-2019 provided his aggregate turnover in preceding financial year does not exceed ₹ 50 lakhs.

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

**T.Q. 2:** Sohan Enterprises has two registered business verticals in Rajasthan. Its aggregate turnover for the preceding year for both the business verticals was ₹ 148 lakh. It wishes to pay tax under composition levy for one of the vertical in the current year while under normal levy for other vertical. You are required to advise Sohan Enterprises whether he can do so? OR

MN Ltd. has two registered business verticals in the state of Haryana. Its aggregate turnover during the previous financial year for both the business verticals was ₹ 142 lakhs. It wishes to opt for composition levy for one of the verticals in the current year and wants to continue with registration and pay taxes at the merit rate for the second vertical. Can MN Ltd. do so? Explain with reason. (3 Marks, Nov. 2018-OS)

**Ans:** A registered person with an aggregate turnover in the preceding financial year up to ₹ 1.5 crore is eligible for composition levy. Since the aggregate turnover of Sohan Enterprises/MN Ltd. does not exceed ₹ 1.5 crore, it is eligible for composition levy in the current year.

However, it is applicable for all the transaction of a registered persons having the same **Permanent Account Number (PAN)**. If such registered person opts for normal scheme for one of its vertical, other verticals become ineligible for composition scheme. Thus, Sohan Enterprises/ MN Ltd. either have to opt for composition levy for both the verticals or under normal levy for both the verticals.

**T.Q. 3:** A person availing composition scheme in Rajasthan during a financial year crosses the turnover of ₹ 1.5 crore in December? Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31<sup>st</sup> March?

**Ans: No.** The option to pay tax under composition scheme lapses from the day on which the aggregate turnover of the person availing composition scheme during the financial year exceeds the specified limit (₹ 1.5 crore). He is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days from the day on which the threshold limit has been crossed.

**Illustration 1 - Eligibility under composition scheme :** A Ltd. is a manufacturing concern in Sikkim. In Financial Year 2019-20 total value of supplies including inward supplies taxed under reverse charge basis are ₹ 78,00,000. (exclusive of taxes). The break up of supplies are as follows -

Particulars	₹
(1) Intra State Supplies made under forward charge	30,00,000
(2) Intra State Supplies made which are which are chargeable to GST at Nil rate	25,00,000
(3) Intra state Supplies which are wholly exempt under section 11 of CGST Act, 2017	20,00,000
(4) Value of inward supplies on which tax payable under RCM	3,00,000

Briefly explain whether A Ltd. is eligible to opt for Composition scheme in Financial Year 2020-21.

**Solution:** A registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 75,00,000 (in state of Sikkim), may opt for payment of tax under Composition scheme.

As per Section 2(6) of the CGST Act, 2017, "Aggregate turnover" means the aggregate value of -

- all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- exempt supplies,
- exports of goods or services or both, and
- inter-State supplies

of persons having the same **Permanent Account Number**, to be computed on all India basis, but excludes -

- Central tax,
- State tax,
- Union territory tax,
- Integrated tax, and
- Cess.

Thus, aggregate turnover shall be computed as under—

**Computation of Aggregate Turnover (amount in ₹):**

(1) Supplies made under forward charge	30,00,000
(2) Supplies made which are which are chargeable to GST at Nil rate (covered under exempt supply)	25,00,000
(3) Supplies which are wholly exempt under section 11 of CGST Act, 2017	20,00,000
(4) Value of inward supplies on which tax payable under RCM (specifically excluded)	Nil
<b>Total</b>	<b>75,00,000</b>

Since, Aggregate turnover does not exceed ₹ 75,00,000 during the Financial Year 2019-20, So, A Ltd. is entitled for Composition Scheme for Financial Year 2020-21.

**Illustration 2 – Computation of composition tax liability:** XYZ Ltd. is a trader having one Unit A1 in Rajasthan and another Unit A2 in Madhya Pradesh. Total turnover of two units in financial year 2019-20 was ₹ 75 lakh (₹ 40 lakh + ₹ 35 lakh). Total turnover of two units in the first quarter and second quarter of this financial year was ₹ 25 lakh (Unit A1 : ₹ 10 lakh + Unit A2 : ₹ 15 lakh) and ₹ 30 lakhs (Unit A1 : ₹ 17 lakh + Unit A2 : ₹ 13 lakh). You are required to determine composition tax liability.

**Solution: Computation of Aggregate Turnover and composite tax (₹ in lakh):**

Unit	Turnover in 1 <sup>st</sup> Quarter	Turnover in 2 <sup>nd</sup> Quarter	Rate of composite tax	Total Composite tax	
				Quarter 1 <sup>st</sup>	Quarter 2 <sup>nd</sup>
A1	10	17	1%	0.10	0.17
A2	15	13	1%	0.15	0.13
<b>Total</b>	<b>25</b>	<b>30</b>		<b>0.25</b>	<b>0.30</b>

**Illustration 3 – Computation of composition tax liability:** A Ltd. a manufacturing concern in Rajasthan has opted for composition scheme furnishes you with the following information for Financial Year 2019-20. It requires you to determine its composition tax liability and total tax liability. The break up of supplies are as follows –

Particulars	₹
(1) Intra State Supplies of Goods X chargeable @ 5% GST	20,00,000
(2) Intra State Supplies made which are which are chargeable to GST at Nil rate	15,00,000
(3) Intra state supplies which are wholly exempt under section 11 of CGST Act, 2017	5,00,000
(4) Value of inward supplies on which tax payable under RCM (GST Rate 12%)	8,00,000
(5) Intra State Supplies of Goods Y chargeable @ 18% GST	15,00,000

**Solution:** The composite tax liability of A Ltd. shall be as under –

(1) **Computation of Aggregate Turnover and composite tax (amount in ₹):**

(1) Supplies made under forward charge	20,00,000
(2) Supplies made which are which are chargeable to GST at Nil rate	15,00,000
(3) Supplies which are wholly exempt under section 11 of CGST Act, 2017	5,00,000
(4) Value of inward supplies on which tax payable under RCM (GST Rate 12%) (not to be included)	Nil
(5) Intra State Supplies of Goods Y chargeable @ 18% GST	15,00,000
<b>Aggregate turnover</b>	<b>55,00,000</b>
<b>Rate of composite tax</b>	<b>1%</b>
<b>Total Composite tax</b>	<b>55,000</b>

(2) **Tax payable under reverse charge basis (amount in ₹):**

Value of inward supplies on which tax payable under RCM	8,00,000
Rate of GST	12%
<b>Tax payable under RCM</b>	<b>96,000</b>
<b>Total Tax liability</b>	<b>1,51,000</b>

**Illustration 4 – Option for Composition Scheme:** XYZ Ltd., a manufacturing concern had effected intra-state taxable supply of ₹ 20,00,000 and interstate taxable supply of ₹ 25,00,000 in Financial Year 2019-20. The company wants to opt for composition scheme under Section 10 of CGST Act, 2017. As a GST consultant advise XYZ Ltd. whether it can opt for composition scheme.

**Solution:** As per provisions of Section 10 of CGST Act, 2017, a manufacturer can opt for composition scheme if he is not engaged in making any inter-State outward supplies of goods. In this case since XYZ Ltd. has effected interstate taxable supply of goods, hence it cannot opt for composition scheme.

**Illustration 5 - Computation of Composition tax liability :** M/s. Heeralal and Sons registered in Karnataka has opted to avail the benefit of composition scheme. It has furnished the following details for the tax period ended on 30-06-2020.

S.No.	Items	₹
(i)	Taxable turnover of goods within the state	15,00,000
(ii)	Exempted turnover of goods within the state	17,00,000
	Total Turnover	32,00,000

Using the above information, calculate total GST (No need for bifurcation between CGST and SGST) to be paid by the firm for the tax period ended on 30-06-2020 in following independent situations :

- (i) M/s. Heeralal and Sons is a Manufacturer.  
(ii) M/s. Heeralal and Sons is a Trader. (3 Marks, Nov. 2018-NS)

**Solution:** In case of the manufacturer, composite tax will be leviable @ 1% of the turnover in the State. Thus exempted goods turnover will be included for determination of composition tax liability of the manufacturer.

In case of trader, composition tax shall be levied @ 1% of the turnover of taxable supplies of goods and services in the State. Thus, exempted goods turnover will not be included for determination of composition tax liability of the trader. The composite tax liability shall be determined as under :

**Computation of Turnover and composite tax (amount in ₹) :**

Particulars	Manufacturer	Trader
(1) Taxable turnover of goods within the state	15,00,000	15,00,000
(2) Exempted turnover of goods within the state	17,00,000	-
<b>Aggregate turnover</b>	<b>32,00,000</b>	<b>15,00,000</b>
<b>Rate of composite tax</b>	<b>1%</b>	<b>1%</b>
<b>Total Composite tax</b>	<b>32,000</b>	<b>15,000</b>

**Illustration 6 - Eligibility for Composition Levy :** Bansal and Chandiook is a partnership firm of Chartered Accountants in Jaipur (Rajasthan). The firm specialises in bank audits providing services to banks across India. It has an annual turnover of ₹ 110 lakh in the preceding financial year.

With reference to the provisions of the CGST Act, 2017, examine whether the firm can opt for the composition scheme. Will your answer change, if-

- (a) the turnover of the firm is ₹ 90 lakhs?  
(b) Bansal and Chandiook is not a partnership firm of Chartered Accountants but a partnership firm providing support services to restaurants like booking tables, advertisement etc.? (RTP May 2018)

**Solution:** As per Section 10(1) of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at composite rate as may be prescribed.

A supplier of services is not eligible for composition scheme except :

- (i) supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (restaurant service supplier)  
(ii) other suppliers i.e. manufacturers, traders and restaurant service suppliers may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II i.e. restaurant services), of value -  
(a) not exceeding 10% of turnover in a State or Union territory in the preceding financial year; or  
(b) ₹ 5,00,000,  
whichever is higher.

On the basis of above provisions, a firm of Chartered Accountants, being a supplier of professional services having aggregate turnover of ₹ 110 lakh (other than restaurant services) is not eligible to apply for composition scheme. Therefore, it has to discharge its tax liability under regular provisions at the applicable rates.

- (a) The answer will not change even if the turnover of the firm had been ₹ 90 lakh since the ineligibility of the firm to opt for composition scheme is not linked with the turnover of the firm, but with the nature of the services supplied by the firm.

Therefore, since even with turnover of ₹ 90 lakh the ineligibility in respect of nature of services supplied by firm exists i.e., the firm provides professional services only; it will not be eligible for composition scheme.

- (b) The answer will not change even if the firm is providing support services to restaurants as only the supplier providing restaurant services *per se* are eligible for composition scheme.

**Illustration 7 - Eligibility for Composition Levy :** Prem is running a consulting firm and also a fancy store, registered under the same PAN number. Turnover of the fancy store is ₹ 65,00,000 and receipt of consultancy firm is ₹ 10,00,000 in the preceding financial year.

You are required to provide answers with supporting explanatory note for each answer to the following questions :

- (i) Is Prem eligible for composition scheme under CGST Act ?
- (ii) Whether it is possible for Prem to opt for composition scheme only for fancy store ?
- (iii) If Prem is running a restaurant with turnover of ₹ 95,00,000 instead of consultancy firm as well as a fancy store, would he be eligible for composition scheme ? (3 Marks, May 2018-NS)

**Ans:**

- (i) Yes. A registered person can opt for composition scheme if, *inter alia*, he is engaged in the supply of services other than restaurant services if his turnover of services is upto 10% of aggregate turnover in preceding financial year or ₹ 5,00,000 whichever is higher. Thus, in this case the value of consulting services in the current financial year must not exceed ₹ 7,50,000 i.e. 10% of ₹ 75,00,000.
- (ii) No. All the registrations under the same PAN have to opt for composition scheme and if the supply of consultancy service is ineligible for composition scheme, supply of goods in fancy store too becomes ineligible for composition scheme.
- (iii) No. Even though Prem provides restaurant service, which is an eligible service for composition levy, his aggregate turnover (₹ 65 lakh for fancy store + ₹ 95 lakh for restaurant service) in the preceding financial year exceeds ₹ 1.5 crore.

**Illustration 8 - Wrong availment of Composition levy :** M/s. Ranveer Industries, registered in Himachal Pradesh, is engaged in making Interstate supplies of readymade garments. The aggregate turnover of M/s. Ranveer Industries in the financial year 2018-19 is ₹ 70 lakhs. It opted for composition levy in the year 2019-20 and paid tax for the quarter ending September 2019 under composition levy.

The proper officer has levied penalty for wrongly availing the scheme on M/s. Ranveer Industries in addition to the tax payable by it.

Examine the validity of the action taken by proper officer. (4 Marks, Nov. 2018-OS)

**Solution:** The action taken by the proper officer is correct in law. According to Section 10(2) of the CGST Act, 2017, interstate suppliers of goods are not eligible to opt for composition scheme. In this case since Ranveer Industries is engaged in making interstate supplies of readymade garments, it is not eligible to opt for composition scheme.

According to Section 10(5) of the Act, If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of section 73 or 74 of the CGST Act shall be applicable for determination of tax and penalty.

**Illustration 9 - Eligibility under composition levy :** Shubhlaxmi traders is engaged in trading of goods within the state of Maharashtra. In the preceding financial year, it has a turnover of ₹ 140 lakh from the trading of goods. Further, it has also earned a bank interest of ₹ 20 lakh from the fixed deposits. Shubhlaxmi traders wishes to opt for composition scheme in the current year. You are required to advise Shubhlaxmi traders on the same. Would your answer be different if Shubhlaxmi traders is also engaged in supply of farm labour and the turnover from the said activity is ₹ 14 lakh?

**Ans:** The eligibility of Shubhlaxmi traders under composition scheme is discussed as under -

- **Eligibility under Composition scheme :** As per Section 10(1) of the CGST Act, 2017, a registered person, engaged in trading of goods and supplier of services whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates. CGST (Removal of Difficulties Order), 2019 Order No. 1/2019-CT dated 01-02-2019 has been issued to provide that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account -
  - (a) for determining the eligibility for composition scheme under second proviso to Section 10(1) [which allows provision of services upto 10% of turnover in a State or Union territory in the preceding financial year; or ₹ 5,00,000, whichever is higher];
  - (b) in computing aggregate turnover in order to determine eligibility for composition scheme.

Thus, in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.



- **Subhlaxmi traders is eligible for composition scheme :** In the given case, the services provided by Shubhlaxmi traders apart from trading of goods, viz. services by way of extending deposits where the consideration is represented by way of interest shall not be taken into account for computation of aggregate turnover for determination of eligibility of composition scheme. Since the aggregate turnover of Shubhlaxmi traders do not exceed ₹ 1.5 crores in preceding financial year, it shall be eligible to opt for composition scheme.
- **Subhlaxmi traders is not eligible for composition scheme :** However, if Shubhlaxmi traders is also engaged in supply of farm labour, it will not be eligible for composition levy since as per Order No. 01/2019-CT only value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account. Other exempt services shall be taken into account. Since its aggregate turnover is ₹ 1.54 crores in preceding financial year it will not be eligible to opt for composition scheme.

**Illustration 10 – Computation of tax liability under Presumptive levy :** Mr. X started profession of Architect w.e.f. 01-04-2020. His value of intra-state taxable supplies upto 30<sup>th</sup> September 2020 was ₹ 20 lakh. He applied for registration on 1<sup>st</sup> October 2020 and opted for Presumptive scheme for service suppliers in registration application and was granted registration as per provisions of GST law. He made intra-state taxable supplies of ₹ 35 lakhs for the quarter ending 31-12-2020. You are required to determine his Presumptive tax liability under Notification No. 2/2019-CT (R) for the period 01-04-2020 to 31-12-2020.

**Solution:** As per Notification No. 02/2019-CT (R) dated 07-03-2019, if registered person is eligible to take the benefit of this notification, he shall pay GST at the rate of 6% (3% CGST and 3% SGST/UTGST) on his aggregate turnover i.e. "First supplies of goods or services or both" upto ₹ 50 lakhs.

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

Thus, where supplier has taken the GST registration for the first time, the presumptive tax at the rate of 6% shall be payable on the supplies made by him only after the date of registration. Thus, the amount of composition tax liability under Notification No. 2/2019-CT (R) will be ₹ 35,00,000 × 6% = ₹ 210,000.

**Illustration 11 – Presumptive scheme for service supplier :** Mr. Ajay has a registered repair centre where electronic goods are repaired/serviced. His repair centre is located in State of Rajasthan and he is not engaged in making any inter-State supply of services. His aggregate turnover in the preceding financial year (FY) is ₹ 45 lakh.

With reference to the provisions of the CGST Act, 2017, examine whether Mr. Ajay can opt for the composition scheme in the current financial year (FY)? Is he eligible to avail benefit of concessional payment of tax under Notification No. 2/2019 CT (R) dated 07-03-2019? Considering the option of payment of tax available to Mr. Ajay, compute the amount of tax payable by him assuming that his aggregate turnover in the current financial year is ₹ 35 lakh.

Will your answer be different if Mr. Ajay procures few items required for providing repair services from neighbouring State of Madhya Pradesh?

**Solution:** Section 10 of the CGST Act, 2017 provides that a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore (₹ 75 lakh in Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir), may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates. However, if, inter alia, such registered person is engaged in the supply of services other than restaurant services, he shall not be eligible to opt for composition levy.

In the given case, since Mr. Ajay is a supplier of repair services, he is not eligible for composition scheme even though his aggregate turnover in the preceding FY does not exceed ₹ 1.5 crore. Therefore, he has to discharge his tax liability under regular provisions at the applicable rates. However, with effect from 01-04-2019, Notification No. 2/2019-CT (R) dated 07-03-2019 has provided an option to a registered person whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)] on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on/after 1<sup>st</sup> April in any FY, subject to specified conditions.

Thus, in view of the above-mentioned provisions, Mr. Ajay is eligible to avail the benefit of concessional payment of tax under Notification No. 2/2019-CT (R) dated 07.03.2019 as his aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh and he is not eligible to opt for the composition scheme.

Thus, the amount of tax payable by him under Notification No. 2/2019-CT (R) dated 07-03-2019 is ₹ 2,10,000 [6% of ₹ 35 lakh].

A registered person cannot opt for Notification No. 2/2019 CT (R) dated 07.03.2019, if *inter alia*, he is engaged in making any inter-State outward supplies. However, there is no restriction on inter-State procurement of goods. Hence, answer will remain the same even if Mr. Ajay procures few items from neighbouring State of Madhya Pradesh.

**Illustration 12 – Composition Scheme and Presumptive scheme for service supplier :** Examine whether the suppliers are eligible for composition scheme in the following independent cases. Is there any other option available for concessional tax payment with any of these suppliers, wherever composition scheme cannot be availed?

- (a) M/s Devlok, a registered dealer, is dealing in intra-State trading of electronic appliances in Jaipur (Rajasthan). It has turnover of ₹ 130 lakh in the preceding financial year. In the current financial year, it has also started providing repairing services of electronic appliances.
- (b) M/s Narayan & Sons, a registered dealer, is running a “Khana Khazana” Restaurant near City Palace in Jaipur. It has turnover of ₹ 140 lakh in the preceding financial year. In the current financial year, it has also started dealing in intra-State trading of beverages in Jaipur (Rajasthan).
- (c) M/s Indra & bro, a registered dealer, is providing restaurant services in Uttarakhand. It has turnover of ₹ 70 lakh in the preceding financial year. It has started providing intra-State interior designing services in the current financial year and discontinued rendering restaurant services.
- (d) M/s Him Naresh, a registered dealer, is exclusively providing intra-state architect services in Uttarakhand. It has turnover of ₹ 40 lakh in the preceding financial year.

**Ans: Eligibility under Composition scheme :** As per section 10 of the CGST Act, 2017, the following registered persons, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay tax under composition levy.

- (a) Manufacturer,
- (b) Persons engaged in making supplies referred to paragraph 6(b) of Schedule II (restaurant services), and
- (c) Any other supplier eligible for composition levy.

Thus, essentially, the composition scheme can be availed in respect of goods and only one service namely, restaurant service. However, the scheme permits supply of other marginal services for a specified value along with the supply of goods and restaurant service, as the case may be. Such marginal services can be supplied for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher.

Further, the registered person should not be engaged in making any inter-State outward supplies of goods.

**Presumptive scheme for service suppliers :** Furthermore, an option of availing benefit of concessional payment of tax has been provided to a registered person whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme. Said person can pay tax @ 3% [Effective rate 6% (CGST+SGST/UTGST)] on first supplies of goods and/or services up to an aggregate turnover of ₹ 50 lakh made on/after 1<sup>st</sup> April in any financial year (FY), subject to specified conditions *vide* Notification No. 2/2019-CT (R) dated 07-03-2019 as amended. One of such condition is that the registered person should not be engaged in making any inter-state outward taxable supplies.

In view of the above-mentioned provisions, the answer to the given independent cases is as under:-

- (a) **Composition suppliers can supply services for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher :** The turnover limit for composition scheme in case of Jaipur (Rajasthan) is ₹ 1.5 crore. Thus, M/s Devlok can opt for composition scheme as its aggregate turnover is does not exceed ₹ 1.5 crore. Further, since the registered person opting for composition scheme can also supply services (other than restaurant services) for a value up to 10% of the turnover in the preceding year or ₹ 5 lakh, whichever is higher, in the current financial year, M/s Devlok can supply repair services up to a value of ₹ 13 lakh [10% of ₹ 130 lakh or ₹ 5 lakh, whichever is higher] in the current financial year.
- (b) **Restaurant service suppliers engaged in trading of goods – Eligible under composition scheme :** In the given case:-
  - (i) the turnover in the preceding year is less than the eligible turnover limit, *i.e.* ₹ 1.5 crore.
  - (ii) the supplier is engaged in providing restaurant service which is an eligible supply under composition scheme.
  - (iii) the supplier wants to engage in trading of goods which is also an eligible supply under composition scheme.

Thus, M/s Narayan & Sons is eligible for composition scheme.

- (c) **Service suppliers not eligible for composition scheme** : The turnover limit for composition scheme in case of Uttarakhand is ₹ 75 lakh. Further, a registered person who is exclusively engaged in supplying services other than restaurant services are not eligible for composition scheme. Thus, M/s. Indra & bro cannot opt for composition scheme.

Further, the benefit of concessional tax payment under Notification No. 2/2019-CT (R) dated 07-03-2019 is available in case of a registered person whose aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh.






Thus, in view of the above- mentioned provisions, M/s. Indra & bro cannot avail the benefit of concessional tax payment as its aggregate turnover in the preceding financial year is more than ₹ 50 lakh.

- (d) **Presumptive scheme for service suppliers** : An exclusive service provider can opt for the composition scheme only if he is engaged in supply of restaurant services. The composition scheme permits supply of marginal services for a specified value, but only when the same are supplied along with goods and/or restaurant service.

Since M/s. Him Naresh is exclusively engaged in supply of services other than restaurant services, it is not eligible for composition scheme even though its turnover in the preceding year is less than ₹ 75 lakh, the eligible turnover limit for Uttarakhand.

However, since M/s. Him Naresh is not eligible to opt for composition scheme, its aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh and it is exclusively engaged in supply of services other than restaurant services, M/s. Him Naresh is entitled to avail benefit of concessional payment of tax under Notification No. 2/2019-CT (R) dated 07-03-2019.



<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>   <b>AADHYA'S</b> edu.com   http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> You Tube Subscribe to our channel CA.Yogendra Bangar</p>	<p> Online MCQ's</p> <p>Computer / EduApplet App</p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p> <b>SUBJECTIVE Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
---	---	---	---

## EXEMPTIONS FROM GST

### SUMMARIZED POINTS FOR REVISION

#### EXEMPTION FROM TAX

**Power to grant exemption from tax [Section 11] :**

- (1) **General Exemption [Section 11(1)] :** Where the Government is satisfied that it is necessary in the public interest so to do, it may, –
- on the recommendations of the Council,
  - by notification,
  - exempt generally,–
    - either absolutely; or
    - subject to such conditions as may be specified therein,
  - goods or services or both of any specified description
  - from the whole or any part of the tax leviable thereon
  - with effect from such date as may be specified in such notification.
- It must be noted that the exemption would be in respect of goods or services or both, and not specifically for any classes of persons.
- (2) **Special exemption or Adhoc Exemption [Section 11(2)] :** Where the Government is satisfied that it is necessary in the public interest so to do, it may, –
- on the recommendations of the Council,
  - by special order in each case,
  - under circumstances of an exceptional nature to be stated in such order,
  - exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) **Power to clarify scope of exemption - Within a period of 1 year from date of issue of exemption notification [Section 11(3)] :** The Government may, if it considers necessary or expedient so to do –
- for the purpose of clarifying the scope or applicability of any notification issued under Section 11(1) or order issued under Section 11(2),
  - insert an explanation in such notification or order, as the case may be,
  - by notification at any time within one year of issue of the notification under Section 11(1) or order under Section 11(2), and
  - every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.
- (4) **Unconditional Exemption - Mandatory [Explanation] :** Where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both. Thus, the person supplying exempted goods or services or both shall not collect the tax in excess of the effective rate.

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

#### LIST OF SERVICES EXEMPT FROM CGST

Notification No. 12/2017-CT (R) dated 28-06-2017/ Notification No. 9/2017-IT (R) dated 28-06-2017 unless otherwise specified, has exempted the following services wholly from CGST/IGST respectively :

#### SERVICES BY CHARITABLE INSTITUTION

- (1) **Services by charitable entity [Entry 1 of Notification No. 12/2017-CT (Rate)] :**

Services by an entity registered u/s 12AA of the Income-tax Act, 1961 by way of **charitable activities** are exempt.



- ❖ "Charitable activities" means activities relating to—
- (i) public health by way of,—
    - (A) care or counseling of—
      - (I) terminally ill persons or persons with severe physical or mental disability;
      - (II) persons afflicted with HIV or AIDS;
      - (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or
    - (B) public awareness of preventive health, family planning or prevention of HIV infection;
  - (ii) advancement of religion, spirituality or yoga;
  - (iii) advancement of educational programmes or skill development relating to,—
    - (A) abandoned, orphaned or homeless children;
    - (B) physically or mentally abused and traumatized persons;
    - (C) prisoners; or
    - (D) persons over the age of 65 years residing in a rural area;
  - (iv) preservation of environment including watershed, forests and wildlife. [Para 2(r) of Notification No. 12/2017-CT (Rate)]

#### Other Aspects:

##### (i) Conditions to be satisfied for exemption :

- (a) The entity is registered under section 12AA of the Income tax Act, 1961, and
- (b) The entity carries out one or more of the specified charitable activities.

##### (ii) Advancement of any other object of general public utility - Not charitable purpose

- (iii) Arranging yoga and meditation camp by charitable trusts- Exempt. Activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable. Similarly if charitable trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. - *Circular No. 66/40/2018-GST dated 26-09-2018*

However, Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable.

##### (iv) Hospitals managed by charitable trusts - Exempt *vide* Entry 74 of the Notification.

- (v) **Hostel accommodation** - accommodation service in hostels including by Trusts having value of supply is upto ₹ 1,000 per day is exempt. - *Circular No. 32/06/2018-GST dated 12-02-2018*

##### (vi) GST is leviable on services provided TO charitable trusts.

- (vii) **Service of display of name or placing of name plates of the donor in the premises of charitable organizations receiving donation or gifts from individual donors - If the same is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, it will not be leviable to GST.** [*Circular No. 116/35/2019-GST dated 11-10-2019*]

#### (2) **Recreational training or coaching [Entry 80 of Notification No. 12/2017-CT (Rate)] :**

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

- (a) arts or culture, or
- (b) sports by **charitable entities** registered under Section 12AA of the Income-tax Act are exempt.

#### (3) **Import of services by charitable entity [Entry 10 of Notification No. 9/2017-IT (R)] :**

Services received from a provider of service located in a non-taxable territory by an entity registered under Section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities are exempt. However, exemption shall not apply to OIDAR services and import sea freight.

#### (4) **Services by an old age home [Entry 9D of Notification No. 12/2017-CT (Rate)] :**

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

**Illustration 1 - Services by Charitable Institutions :** MTCT, an entity registered under section 12AA of the Income-tax Act, 1961, has furnished you the following details with respect to the activities undertaken by it. You are required to compute its GST liability from the information given below :

Particulars	₹
Fees charged for yoga camp conducted by the trust	6,00,000
Amount received for advancement of educational programmes relating to abandoned, orphaned or homeless children	10,50,000
Amount received for renting of commercial property owned by the trust	35,00,000
Payment made for the services received from a service provider located in England, for the purposes of providing 'charitable activities'	10,00,000
Amount received for activities relating to preservation of forests and wildlife	12,35,000

Note: GST have been charged separately wherever applicable. Rate of GST is 18%.

Solution: Computation of GST liability of MTCT (amount in ₹)–

(A)	Fees charged for yoga camp conducted by the trust	[WN-1]	Nil
	Amount received for advancement of educational programmes relating to abandoned, orphaned or homeless children	[WN-1]	Nil
	Amount received for activities relating to preservation of forests and wildlife	[WN-1]	Nil
	Amount received for renting of commercial property owned by the trust	[WN-3]	35,00,000
	<b>Value of Taxable supply</b>		<b>35,00,000</b>
	<b>GST payable @ 18%</b>		<b>6,30,000</b>
(B)	<b>Services to be taxed on reverse charge basis :</b>		
	Payment made for the services received from a service provider located in England for the purposes of providing 'charitable activities'	[WN-2]	Nil
	<b>GST liability [(A) + (B)]</b>		<b>6,30,000</b>

Working Notes :

- (1) Services provided by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST *vide* Entry 1 of Exemption Notification No. 12/2017-CT (Rate) dated 28-06-2017. The definition of term charitable activities, *inter alia*, means activities relating to :
  - (a) advancement of yoga;
  - (b) advancement of educational programmes relating to abandoned, orphaned or homeless children
  - (c) preservation of environment including watershed, forests and wildlife.
- (2) Service recipient is liable to pay GST in case of a taxable service provided by any person located in a non-taxable territory and received by any person located in the taxable territory. However, services received from a provider of service located in a non-taxable territory by an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities are exempt from GST *vide* Entry 10 of Notification No. 9/2017-IT (Rate) dated 28-06-2017.
- (3) Renting of commercial property owned by the trust is liable to GST.

### RELIGIOUS SERVICES

(5) **Religious services [Entry 13 of Notification No. 12/2017-CT (Rate)] :**

Services by a person by way of –

- (a) **conduct of any religious ceremony;**
- (b) **renting of precincts of a religious place** meant for general public, owned or managed by –
  - (i) an entity registered as a charitable or religious trust u/s 12AA of the Income-tax Act, 1961; or
  - (ii) a trust or an institution registered under Section 10(23C)(v) of the Income-tax Act; or
  - (iii) a body or an authority covered under Section 10(23BBA) of the said Income-tax Act,
 are exempt.

However, nothing contained in entry (b) of this exemption shall apply to, –

- (i) renting of rooms where charges are ₹ 1,000 or more per day;
- (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day;
- (iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.

- ⊙ "General public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature. [Para 2(zc) of Notification No. 12/2017-CT (Rate)]
- ⊙ "Religious place" means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality. [Para 2(zy) of Notification No. 12/2017-CT (Rate)]

**(6) Services by a specified organisation in respect of a religious pilgrimage [Entry 60 of Notification No. 12/2017-CT (Rate)] :**

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

❶ "Specified organisation" shall mean, –

- (i) Kumaon Mandal Vikas Nigam Limited, a Government of Uttarakhand Undertaking; or
- (ii) 'Committee' or 'State Committee' as defined in Section 2 of the Haj Committee Act, 2002. [Para 2(zzg) of Notification No. 12/2017-CT (Rate)]

**Illustration 2 – Religious services :** Sarva Sugam Charitable Trust, a trust registered u/s 12AA of the Income-tax Act, 1961 provides the following information relating to supply of its services for the month of August, 2019.

	₹
Renting of residential dwelling for use as a residence	18,00,000
Renting of rooms for Pilgrims (Charges per day ₹ 1,200)	8,00,000
Renting of rooms for devotees (Charges per day ₹ 750)	6,00,000
Renting of Kalyana Mandapam (Charges per day ₹ 15,000)	12,00,000
Renting of Halls and open space (Charges per day ₹ 7,500)	10,75,000
Renting of Shops for business (Charges per month ₹ 9,500)	4,75,000
Renting of Shops for business (Charges per month ₹ 12,000)	7,50,000

Compute the total taxable value of supply for the month of August 2019 assuming that the above amounts are exclusive of GST. (5 Marks, May 2018)

**Solution: Computation of GST liability (amount in ₹) –**

Renting of residential dwelling for use as a residence	[WN-1]	Nil
Renting of rooms for Pilgrims (Liable to GST)	[WN-2]	8,00,000
Renting of rooms for devotees (Exempt)	[WN-2]	Nil
Renting of Kalyana Mandapam (Liable to GST)	[WN-2]	12,00,000
Renting of Halls and open space (Exempt)	[WN-2]	Nil
Renting of Shops for business (Exempt)	[WN-2]	Nil
Renting of Shops for business (Liable to GST)	[WN-2]	7,50,000
<b>Value of Taxable supply</b>		<b>27,50,000</b>

**Working Note:**

- (1) Renting of residential dwelling for use as residence is exempt from tax *vide* Entry No. 12 of Exemption Notification No. 12/2017-CT (R).
- (2) Services by a person by way of renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under Section 12AA of the Income-tax Act, 1961 are exempt. However, this exemption shall not apply to, –
  - (a) renting of rooms where charges are ₹ 1,000 or more per day;
  - (b) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day;
  - (c) renting of shops or other spaces for business/commerce where charges are ₹ 10,000 or more per month.

**SERVICE RELATING TO AGRICULTURE OR AGRICULTURAL PRODUCE**

**(7) Services relating to agriculture or agricultural produce [Entry 54 of Notification No. 12/2017-CT (Rate)] :**

Services relating to cultivation of plants and rearing of all life forms of animals, **except the rearing of horses**, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of –

- (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
- (b) supply of farm labour;
- (c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

- (e) loading, unloading, packing, storage or warehousing of agricultural produce;
  - (f) agricultural extension services;
  - (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce,
  - (h) services by way of fumigation in a warehouse of agricultural produce
- are exempt.

- ⊛ **"Agricultural extension"** means application of scientific research and knowledge to agricultural practices through farmer education or training. [Para 2(c) of Notification No. 12/2017-CT (Rate)]
- ⊛ **"Agricultural Produce Marketing Committee or Board"** means any committee or board constituted under a State law for the time being in force for the purpose of regulating the marketing of agricultural produce. [Para 2(e) of Notification No. 2/2017-CT (Rate)]
- ⊛ **"Agricultural produce"** means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market. [Para 2(d) of Notification No. 2/2017-CT (Rate)]

**Other Aspects :**

- (a) Plantation crops are agricultural produce.
  - (b) Pisciculture, Sericulture, floriculture etc. covered in the ambit of agriculture.
  - (c) Potato chips or tomato ketchup etc. do not qualify as agricultural produce.
  - (d) Cleaning of wheat carried outside the farm - Not liable for GST.
  - (e) Leasing of vacant land with a green house or a storage shed meant for agricultural produce is covered under exemption.
  - (f) Services covered by Agricultural Produce Marketing Committees (APMC) or Boards - Exempt.
  - (g) Testing activities - Covered in exemption.
  - (h) Processed tea, coffee, jaggery and pulses - Not Agricultural produce - Not eligible for exemption.
- (8) **Carrying out an intermediate production process in relation to cultivation of plants and rearing of all life forms of animals [Entry 55 of Notification No. 12/2017-CT (Rate)] :**  
Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt.  
Other Aspect : Milling of paddy into rice - Not eligible for exemption - Liable to GST @ 5%.
- (9) **Fumigation services [Entry 53A of Notification No. 12/2017-CT (Rate)] :**  
Services by way of fumigation in a warehouse of agricultural produce are exempt.
- (10) **Artificial insemination of livestock (other than horses) [Entry 55A of Notification No. 12/2017-CT (Rate)] :**  
Services by way of artificial insemination of livestock (other than horses) are exempt.
- (11) **Loading, unloading, packing, storage or warehousing of rice [Entry 24 of Notification No. 12/2017-CT (Rate)] :**  
Services by way of loading, unloading, packing, storage or warehousing of rice are exempt.
- (12) **Warehousing of minor forest produce [Entry 24A of Notification No. 12/2017-CT (Rate)] :**  
Services by way of warehousing of minor forest produce are exempt.
- (13) **Storage or warehousing of cereals, pulses etc. [Entry 24B of Notification No. 12/2017-CT (Rate)] [Inserted vide Notification No. 21/2019-CT(Rate) w.e.f. 01-10-2019] :**  
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.
- (14) **Services in relation to fruits and vegetables [Entry 57 of Notification No. 12/2017-CT (Rate)] :**  
Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables are exempt.

- (15) Services provided by NCCD by way of cold chain knowledge dissemination [Entry 58 of Notification No. 12/2017-CT (Rate)] :

Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination are exempt.

**Illustration 3 - Agricultural related services :** You are required to compute the value of taxable supply and GST payable thereon from the gross amount charged in respect of the following transactions made available by A. Ltd. dealing in agriculture related services in the month of December 2019 :

Particulars	₹
(i) Renting of Agro-machinery	5,00,000
(ii) Cultivation of Ornamental flowers	2,50,000
(iii) Processing of Tomato ketchup	3,00,000
(iv) Plantation of Rubber	3,50,000
(v) Processing of Potato chips	1,50,000

Rate of CGST is 9% and SGST is 9%. (Modified 5 Marks, Nov. 2016)

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹)–**

Renting of Agro-machinery [Exempt vide Entry 54 of Notification No. 12/2017-CT (Rate)]	Exempt
Cultivation of Ornamental flowers [Exempt vide Entry 54 of Notification No. 12/2017-CT (Rate)]	Exempt
Processing of Tomato ketchup [WN]	3,00,000
Plantation of Rubber [Exempt vide Entry 54 of Notification No. 12/2017-CT (Rate)]	Exempt
Processing of Potato chips [WN]	1,50,000
<b>Value of taxable supply</b>	<b>4,50,000</b>
CGST payable @ 9 %	40,500
SGST payable @ 9 %	40,500
<b>Total GST payable</b>	<b>81,000</b>

**Working Note :** In terms of the definition of agricultural produce, only such processing should be carried out as is usually done by cultivator or producers which does not alter its essential characteristics but makes it marketable for primary market. Potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce.

Hence, the same are not agricultural produce and not covered in exemption. It falls under service of job work when carried out for others and thus liable to GST.

**Illustration 4 - Agricultural related services :** Mark Agro Products Ltd. furnishes the following details of various services provided by it in the month of December, 2019 :

Sr. No.	Particulars	Amount (₹)
(1)	Rearing of silkworm and horticulture	2,50,000
(2)	Plantation of tea and coffee	2,00,000
(3)	Renting of vacant land for performing marriage ceremony	4,50,000
(4)	Sale of wheat on commission basis	50,000
(5)	Sale of rice on commission basis	2,00,000

Compute the value of taxable supply and the GST liability of Mark Agro Products Ltd. for the month of December, 2019. Rate of CGST is 9% and SGST is 9%. (Modified 4 Marks, May 2015)

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹)–**

(1) Rearing of silkworm and horticulture [Exempt vide Entry 54 of Notification No. 12/2017-CT (Rate)]	Exempt
(2) Plantation of tea and coffee [Exempt vide Entry 54 of Notification No. 12/2017-CT (Rate)]	Exempt
(3) Renting of vacant land for performing marriage ceremony [Liable to GST]	4,50,000
(4) Sale of wheat on commission basis [Exempt vide Entry 54 of Notification No. 12/2017-CT (Rate)]	Exempt
(5) Sale of rice on commission basis [Since rice is not an agricultural produce, its sale on commission basis would be taxable.]	2,00,000
<b>Value of taxable supply</b>	<b>6,50,000</b>
CGST payable @ 9%	58,500
SGST payable @ 9%	58,500
<b>Total GST payable</b>	<b>1,17,000</b>



EDUCATION SERVICES

(16) Services to or by Educational Institution [Entry 66 of Notification No. 12/2017-CT (Rate)] :

Services provided—

- (a) by an educational institution to its students, faculty and staff;
- (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;
- (b) to an educational institution, by way of,—
  - (i) transportation of students, faculty and staff;
  - (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
  - (iii) security or cleaning or house-keeping services performed in such educational institution;
  - (iv) services relating to admission to, or conduct of examination by, such institution;
  - (v) supply of online educational journals or periodicals,

are exempt.

However, nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Besides this nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,—

- (i) pre-school education and education up to higher secondary school or equivalent; or
- (ii) education as a part of an approved vocational education course.

- ⊛ **“Educational institution”** means an institution providing services by way of,—
  - (i) pre-school education and education up to higher secondary school or equivalent;
  - (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
  - (iii) education as a part of an approved vocational education course. [Para 2(y) of Notification No. 12/2017-CT (Rate)]
- ⊛ **“Approved vocational education course”** means,—
  - (i) a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training or State Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961; or
  - (ii) a Modular Employable Skill Course, approved by the National Council of Vocational Training, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. [Para 2(h) of Notification No. 12/2017-CT (Rate)]

**CBSE and SEB's to be treated as Educational Institutions :** For removal of doubts, it is clarified that the Central and State Educational Boards shall be treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students.

**Other aspects :**

- (a) Services provided by boarding schools - Exempt
- (b) Services provided by International schools - Exempt
- (c) Educational Institutions providing non-recognized qualification with recognized qualification courses - Separate services to be assessed separately. In case of artificial bundling to be treated as mixed supply and attracts highest liability of GST.
- (d) Private tuition is liable to GST
- (e) Placement services provided to educational institutions - Taxable
- (f) Campus Recruitment fees - Taxable
- (g) Institutes preparing students for Competitive Exams - Taxable
- (h) Postal coaching covered - Taxable
- (i) Foreign Courses conducted by private institutes - Taxable
- (j) Personality Development Institutes - Liable to GST
- (k) **DG Shipping approved maritime courses conducted by Maritime Training Institutes of India - Exempt from GST - Circular No. 117/36/2019-GST dated 11-10-2019**

- (l) College Hostel Mess - Taxability -
- (i) Catering services provided by educational institutions - Exempt
  - (ii) Catering services provided by third person in hostel mess of colleges - Liable to GST
- (m) Taxability of services provided by Industrial Training Institutes (ITI)
- (i) Private ITI's qualifies to be educational institutions
  - (ii) Services in respect of designated trades - Exempt, Other Services - Taxable
  - (iii) Conduct of entrance exams of designated trades - Exempt
  - (iv) Services provided by Government ITI's - Exempt
- (n) Input Services - Credit not admissible where the educational services are exempt from GST.
- (o) Services provided by **Indian Institutes of Management-**
- (i) 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**
  - (ii) All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law- **Taxable**

**Illustration 5 - Services to an educational institution :** XYZ Ltd. is engaged in providing various services to educational institutions and furnishes you with the following information for the month of July 2019. You are required to determine the value of taxable supply and GST payable if all charges are exclusive of GST.

- (1) Renting of immovable property to higher secondary school : ₹ 12,00,000
- (2) Renting of immovable property to Commercial coaching centre : ₹ 2,00,000
- (3) Transportation services provided to students of higher secondary school : ₹ 5,00,000
- (4) Out door catering services provided to educational institutions running approved vocational courses : ₹ 5,00,000
- (5) Security Services provided to pre-nursery school : ₹ 1,25,000
- (6) House keeping and cleaning services in college providing recognised graduation degree : ₹ 5,12,500
- (7) Conduct of examination of ICAI : ₹ 10,00,000
- (8) Placement services provided to ICSI : ₹ 12,00,000
- (9) Development of course content of ICMA institute : ₹ 2,00,000
- (10) Training of Staff of Higher Secondary School : ₹ 1,50,000

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹) -**

(1) Renting of immovable property to higher secondary school ( <i>Liable for GST</i> )	12,00,000
(2) Renting of immovable property to Commercial coaching centre ( <i>Liable for GST</i> )	2,00,000
(3) Transportation services provided to students of higher secondary school [ <i>Exempt vide Entry 66 of Notification No. 12/2017-CT (Rate)</i> ]	Exempt
(4) Out door catering services provided to educational institutions running approved vocational courses ( <i>Liable for GST</i> )	5,00,000
(5) Security Services provided to pre-nursery school [ <i>Exempt vide Entry 66 of Notification No. 12/2017-CT (Rate)</i> ]	Exempt
(6) House keeping and cleaning services in college providing recognised graduation degree ( <i>Liable for GST</i> )	5,12,500
(7) Conduct of examination of ICAI [ <i>Exempt vide Entry 66 of Notification No. 12/2017-CT (Rate)</i> ]	Exempt
(8) Placement services provided to ICSI ( <i>Liable for GST</i> )	12,00,000
(9) Development of course content of ICMA institute ( <i>Liable for GST</i> )	2,00,000
(10) Training of Staff of Higher Secondary School ( <i>Liable for GST</i> )	1,50,000
<b>Total Value of taxable supply</b>	<b>39,62,500</b>
<b>Total GST payable @ 18%</b>	<b>7,13,250</b>

**Illustration 6 - Educational service :** RSU Trainers Ltd., a commercial training or coaching centre, provides the various services as follows :

- (1) Training and coaching of Hockey : ₹ 7 lakhs
- (2) Coaching to students for preparation of IIT exams : ₹ 25 lakhs
- (3) Conduct admission test for admission to ICG college providing qualification recognised by foreign law : ₹ 5 lakhs
- (4) Training in recreational activities relating to culture : ₹ 10 lakhs

- (5) Receipt from sale of prospectus/ application forms to trainees : ₹ 10 lakhs  
 (6) A building which was let out to school providing pre-school education : ₹ 2 lakhs  
 (7) Postal coaching receipts : ₹ 7 lakhs  
 (8) Placement services provided to MNC College, providing qualification recognised by Indian law : ₹ 10 lakhs  
 (9) Receipts from running training centre in relation to art classes : ₹ 17 lakhs.  
 Compute the GST payable thereon if all charges are exclusive of GST.

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹) :**

(1) Training and coaching in field of sports [Liabie to GST since exemption in respect of sports training is available to charitable institution only vide Entry 80 of Notification No. 12/2017-CT (Rate)]	7,00,000
(2) Coaching for preparation of IIT - Taxable	25,00,000
(3) Conduct admission test - Taxable since such qualification is not recognised by Indian law	5,00,000
(4) Training in recreational activities relating to culture [Exempt vide Entry 80 of Notification No. 12/2017-CT (Rate)]	Exempt
(5) Receipts from sale of prospectus/application form to trainees - Taxable	10,00,000
(6) Building let out to school - Taxable	2,00,000
(7) Postal coaching receipts - Taxable	7,00,000
(8) Placement services - Taxable	10,00,000
(9) Receipts from running training centre in relation to art classes [Exempt vide Entry 80 of Notification No. 12/2017-CT (Rate)]	Exempt
<b>Value of taxable supply</b>	<b>66,00,000</b>
<b>Total GST payable @ 18%</b>	<b>11,88,000</b>

**Illustration 7 - Educational services :** 'Sarvshiksha Trust' is a charitable trust registered under section 12AA of the Income-tax Act, 1961. The trust is registered under GST in the State of Uttar Pradesh. The trust runs the following educational institutions:

- (1) 'Kaypee Institute of Technology' (KIT), a private engineering college in Ghaziabad. KIT also runs distance learning post graduate engineering programmes. Exams for such programmes are conducted in select cities at centres appointed by the KIT. All the engineering courses including the distance learning post graduate engineering programme run by KIT are approved by The All India Council for Technical Education (AICTE).
- (2) 'Nanhi Mutthi', a pre-school in Lucknow.
- (3) 'Bright Minds', a coaching institute in Kanpur. The Institute provides coaching for Institute of Banking Personnel Selection (IBPS) Probationary Officers Exam.
- (4) 'Gyan Vaibhav' a higher secondary school affiliated to CBSE Board.

The trust provides the following details relating to the goods and services received by the various institutions run by it during the period April 2019 to September 2019 :

**Table 1**

S. No.	Particulars	KIT	Nanhi Mutthi	Bright Minds	Gyan Vaibhav
		(₹)	(₹)	(₹)	(₹)
(i)	Printing services for printing the question papers (paper and content are provided by the Institutions)	2,50,000		1,50,000	2,00,000
(ii)	Paper procured for printing the question papers	4,30,000		2,58,000	3,44,000
(iii)	Courier services for sending the admit cards for the examination, to the students	50,000			
(iv)	Honorarium to paper setters and examiners (not on the rolls of the Institution)	5,00,000			
(v)	Rent for exam centers taken on rent like schools etc, for conducting examination	8,00,000		1,00,000	
(vi)	Subscription for online educational journals [Nanhi Mutthi has taken the subscription for online periodicals on child development and experiential learning]	4,00,000	80,000	2,20,000	2,40,000
(vii)	Hire charges for buses used to transport students and faculty from their residence to college and back	4,80,000	5,50,000	1,30,000	75,000



(viii)	Catering services for running a canteen in the campus for students (Catering services for KIT include a sum of ₹ 60,000 for catering at a student event organised in a banquet hall outside the campus)	3,20,000	2,60,000	1,80,000	5,00,000
(ix)	Security and housekeeping services for the institution(s) received from body corporate (Security and housekeeping services for Gyan Vaibhav include a sum of ₹ 80,000 payable for security and housekeeping at the student event organised in a banquet hall outside the campus)	6,00,000	4,00,000	3,75,000	4,65,000

The trust further provides the following details relating to the output services provided to the students by the various institutions run by it during the period April 2019 to September 2019 :

S. No.	Particulars	KIT	Nanhi Mutthi	Bright Minds	Gyan Vaibhav
		(₹)	(₹)	(₹)	(₹)
(i)	Tuition fee	35,00,000	15,00,000	20,00,000	25,00,000
(ii)	Transport fee charged from students	5,00,000	6,00,000	1,30,000	8,50,000
(iii)	Charges for food supplied in canteen (located in the premises of the Institutions) The canteen facility being provided by Bright Minds is not compulsory and is open to general public as well. However, canteen facility being provided by KIT and Gyan Vaibhav is only for students and staff of such educational institutions.	4,60,000		2,40,000	6,10,000

With the help of the above details -

- determine the amount of GST payable, if any, on goods and services received during April 2019- September 2019 by the various educational institutions run by the 'Sarvshiksha Trust';
- compute net GST liability of the 'Sarvshiksha Trust' payable from the Electronic Cash Ledger, for the period April 2019 to September 2019.

All the amounts given above are exclusive of taxes, wherever applicable.

**Notes:**

- Rate of GST on catering service is 5%. No ITC has been availed on inputs and input services used in the supply of catering service. Assume that while providing the catering service in the canteen, the educational institutions have not used any inputs and input services except the catering service (mentioned at Entry No. VIII of Table 1) availed from third parties.
- Rate of GST on goods is 12%. Rate of GST on printing services is 12% and on other services is 18%.
- Except catering service, wherever relevant, all the conditions necessary for availing the ITC have been complied with. (MTP May 2019)

**Solution:**

- The following services provided to educational institutions are exempt *vide* Entry No. 66 of Notification No. 12/2017-CT (R) dated 28-06-2017 :
  - transportation of students, faculty and staff;
  - catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
  - security or cleaning or house-keeping services performed in such educational institution;
  - services relating to admission to, or conduct of examination by, such institution;
  - supply of online educational journals or periodicals

However, the services mentioned in point (i), (ii) and (iii) are exempt only when the same are provided to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Also, the supply of online educational journals or periodicals are not exempt from GST when provided to—

- pre-school education and education up to higher secondary school or equivalent; or
- education as a part of an approved vocational education course.

Here, the “educational institution” means an institution providing services by way of, –

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course;

**KIT, Nanhi Mutthi and Gyan Vaibhav – Covered under the ambit to Educational Institution :** In the given case, all the engineering courses including the distance learning post graduate engineering programme run by KIT are approved by The All India Council for Technical Education (AICTE). Therefore, since KIT imparts education as a part of a curriculum for obtaining a qualification recognised by the Indian law, the same is an educational institution in terms of the exemption notification.

Similarly, Nanhi Mutthi and Gyan Vaibhav, being a pre-school and a higher secondary school respectively are also educational institutions in terms of the exemption notification.

**Bright Minds – Not educational institution :** However, Bright Minds, being a coaching centre, training candidates to secure a banking job, is not an educational institution in terms of the exemption notification. Hence, none of the select services (mentioned above) will be exempt when provided to Bright Minds.

In the light of the foregoing provisions, the amount of GST payable on goods and services received by these educational institutions during April 2019- September 2019 is computed as under:

Particulars	KIT	Nanhi Mutthi	Bright Minds	Gyan Vaibhav
	(₹)	(₹)	(₹)	(₹)
Printing services for printing the question papers (paper and content are provided by the Institutions)	Exempt	-	18,000 [1,50,000 × 12%]	Exempt
Paper procured for printing the question papers [It comes under the ambit of supply of goods – Not eligible for exemption as same is eligible for services]	51,600 [4,30,000 × 12%]	-	30,960 [2,58,000 × 12%]	41,280 [3,44,000 × 12%]
Courier services for sending the admit-cards for the examination, to the students	Exempt	-	-	-
Honorarium to paper setters and examiners (not on the rolls of the educational institution)	Exempt	-	-	-
Rent for exam centers taken on rent like schools etc, for conducting examination	Exempt	-	18,000 [1,00,000 × 18%]	-
Subscription for online educational journals	Exempt	14,400 [80,000 × 18%]	39,600 [2,20,000 × 18%]	43200 [2,40,000 × 18%]
Hire charges for buses used to transport students and faculty from their residence to college and back	86,400 [4,80,000 × 18%]	Exempt	23,400 [1,30,000 × 18%]	Exempt
Catering services for running a canteen in the campus for students [Catering service provided to pre-school and the higher secondary school is exempt irrespective of whether the same is provided within or outside the premises of the pre-school and the higher secondary school]	16,000 [3,20,000 × 5%]	Exempt	9,000 [1,80,000 × 5%]	Exempt
Security and housekeeping services for the institution(s)	1,08,000 [6,00,000 × 18%]	Exempt	67,500 [3,75,000 × 18%]	14,400 [80,000 × 18%]

[Security and housekeeping service provided to pre-school and the higher secondary school for the student event organised in a banquet hall will be taxable as only the security and housekeeping service provided within the premises of the pre-school and the higher secondary school are exempt.]				
<b>Total GST payable on goods and services received by the educational institutions</b>	<b>2,62,000</b>	<b>14,400</b>	<b>2,06,460</b>	<b>98,880</b>

## (2) Exemption in respect of services provided by Educational Institutions :

(i) **Sarvshiksha Trust - Not eligible for exemption in respect of services by way of charitable activities :** Entry No. 1 of Notification No. 12/2017-CT (R) dated 28-06-2017 exempts services provided by an entity registered u/s 12AA of the Income-tax Act, 1961 by way of charitable activities. Here, "charitable activities" means activities relating to *inter alia* advancement of educational programmes or skill development relating to, –

- abandoned, orphaned or homeless children;
- physically or mentally abused and traumatized persons;
- prisoners; or
- persons over the age of 65 years residing in a rural area;

In the given case, though Sarvshiksha Trust is registered under section 12AA of the Income-tax Act, 1961, none of the educational institutions run by it are providing services by way of charitable activities. As is seen from the relevant extract of the definition of the charitable activities given above, only when the education is provided relating to the persons mentioned therein, it becomes charitable activity under GST laws. However, in the given case, education is not provided to any specific group or category of persons as specified above, but to all the categories of children/candidates approaching the college/pre-school/coaching institute/ higher secondary school. Therefore, the education services provided by the Sarvshiksha Trust is not exempt under Entry No. 1 of the exemption notification.

(ii) **Services provided by KIT, Nanhi-Mutthi and GyanVaibhav - Eligible for exemption :** Entry No. 66 of Notification No. 12/2017-CT(R) dated 28-06-2017 also exempts services provided by an educational institution to its students, faculty and staff. All the educational institutions run by the Sarvshiksha Trust except Bright Minds are educational institutions. Therefore, the education services, transport services and catering services provided by KIT, Nanhi Mutthi, and Gyan Vaibhav to its students will all be exempt from GST under Entry No. 66 of the exemption notification. Thus, only the educational services provided by Bright Minds will be liable to GST @ 18%. The catering services provided by Bright Minds will be liable to GST @ 5%.

(iii) **Input tax credit :** No input tax credit (ITC) will be availed on inputs and input services used in providing exempt education services, *i.e.* education services by KIT, Nanhi Mutthi, and Gyan Vaibhav. Only Bright Minds will be entitled to avail ITC on inputs and input services used in providing taxable education services. However, as per the information given in the question, while providing the catering service, Bright Minds has not availed any ITC of catering service received by it from third parties.

(iv) Since there are no common inputs and input services being used for providing taxable and exempt services, the need for reversal of ITC attributable to exempt supplies will not arise.

In the light of the foregoing provisions, the net GST liability of Sarvshiksha Trust, which will comprise of only the tax liability of Bright Minds, is computed as under :

Particulars	₹
Tuition fee	20,00,000
Transport fee charged from students	1,30,000
<b>Value of output supply taxable @ 18%</b>	<b>21,30,000</b>
<b>GST liability @ 18%</b>	<b>3,83,400</b>
Value of output supply taxable @ 5% [Charges for food]	2,40,000
<b>GST liability @ 5%</b>	<b>12,000</b>
<b>Total GST liability [A] + [B]</b>	<b>3,95,400</b>

<b>Less:</b> ITC [Total tax payable by Bright Minds on the service received by it as computed in point (i) above less the tax payable on catering charges (₹ 2,06,460 – ₹ 9,000)]	1,97,460
<b>Net GST payable from Electronic Cash Ledger</b>	<b>1,97,940</b>

**Illustration 8 – Educational service :** Determine taxable value of supply under GST law with respect to each of the following independent services provided by the registered person : (4 Marks, May 2019-NS)

1.	Fees charged from office staff for in-house personality development course conducted by M.V. College ₹ 10,000.	<b>Ans:</b> As per Entry 66(a) of Notification No. 12/2017-CT (R), Services provided by an educational institution to its students, faculty and staff are exempt from tax. Educational Institution has been defined to mean, <i>inter alia</i> , an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force. Assuming that M. V. College provides education as a part of a curriculum for obtaining a qualification recognised by a law, the services provided by it to its staff by way of conducting personality development course would be exempt from GST.
2.	Bus fees collected from students by M.V. College ₹ 2,500 per month.	<b>Ans:</b> As per Entry 66(a) of Notification No. 12/2017-CT (R), Services provided by an educational institution to its students, faculty and staff are exempt from tax. Hence, bus fees collected from students by M.V. College is exempt from tax.
3.	Housekeeping service provided by M/s. Clean well to Himavarsha Montessori school, a play school ₹ 25,000 per month.	<b>Ans:</b> As per Entry 66(a) of Notification No. 12/2017-CT (R), Services provided to an educational institution, by way of house-keeping performed in such educational institution are exempt from tax. Therefore, house-keeping services provided to Himavarsha Montessori Play School would be exempt from GST on the presumption that housekeeping services have been performed in such play school itself.
4.	Info link applied “Tracing Alphabets” an online educational journal to students of UKG class of Sydney Montessori School ₹ 2,000.	<b>Ans:</b> Services provided by way of supply of online educational journals or periodicals shall not be exempt from tax if it is provided to pre-school education and education up to higher secondary school or equivalent. Thus, services provided by Info link by way of supply of an online educational journal to students of UKG class of Sydney Montessori School shall be liable to tax and the taxable value of supply shall be ₹ 2,000.

**HEALTH CARE SERVICES**

(17) Health care services [Entry 74 of Notification No. 12/2017-CT (Rate)] :

Services by way of—

- (a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;
  - (b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above
- are exempt.

<p>⊙ “Clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. [Para 2(s) of Notification No. 12/2017-CT (Rate)]</p> <p>⊙ “Authorised medical practitioner” means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force. [Para 2(k) of Notification No. 12/2017-CT (Rate)]</p> <p>⊙ “Health care services” --</p> <ul style="list-style-type: none"> <li>➤ means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and</li> <li>➤ includes services by way of transportation of the patient to and from a clinical establishment, but</li> <li>➤ does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma. [Para 2(zg) of Notification No. 12/2017-CT (Rate)]</li> </ul>
---



**Other aspects:**

- (i) Recognized Systems of Medicines :
- Allopathy                      ➤ Yoga                      ➤ Naturopathy                      ➤ Ayurveda
  - Homeopathy                      ➤ Siddha                      ➤ Unani
  - Any other system of medicine that may be recognized by Central Government.
- (ii) **Paramedics** : Paramedics are trained health care professionals, for example nursing staff, physiotherapists, technicians, lab assistants etc.
- (iii) Room rent in hospitals exempt
- (iv) Services other than health care services such as renting of shops, auditoriums in clinical establishment's premises will be subject to GST.
- (v) GST is not leviable on consultancy charges payable to doctors, consultants etc., retention money and food supplies to patients as advised by doctors. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are liable to GST. [Circular No. 32/06/2018-GST dated 12-2-2018]

**Ambulance services provided National Health Mission (NHM) [Circular No. 51/25/2018-GST dated 31-7-2018]:**

- Services provided by State Governments and Private Service Providers (PSPs) by way of transportation of patients in ambulance are exempt under Entry 74 above.
- As regards ambulance services provided by PSPs [under NHM] on behalf of State Governments against consideration in the form of fee or otherwise charged from State Government, since ambulance services are an activity in relation to functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the Constitution of India, same would be exempt as under:
  - (i) Entry 3 if it is a pure service and not a composite supply involving supply of any goods, and
  - (ii) Entry 3A if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply.

**(18) Services by Recognised Rehabilitation Professionals [Entry 74A of Notification No. 12/2017-CT (Rate)] :**

Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered u/s 12AA of the Income-tax Act, 1961 are exempt.

**(19) Cord blood bank services [Entry 73 of Notification No. 12/2017-CT (Rate)] :**

Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt.

**(20) Veterinary services [Entry 46 of Notification No. 12/2017-CT (Rate)] :**

Services by a veterinary clinic in relation to **health care of animals or birds** are exempt.

**(21) Common bio-medical waste treatment facility [Entry 75 of Notification No. 12/2017-CT (Rate)] :**

Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of **treatment or disposal of bio-medical waste** or the processes incidental thereto are exempt.

**Illustration 9 - Health care services** : Ayushman Medical Centre, a clinical establishment, offers the following services:

	Particulars	₹*
1.	Reiki healing treatments. Such therapy is not a recognized system of medicine in terms of Section 2(h) of Clinical Establishments Act, 2010.	10,00,000
2.	Plastic surgeries. [One such surgery was conducted to repair cleft lip of a new born baby. Consideration of ₹ 1,00,000 was charged for the same.]	20,00,000
3.	Air ambulance services to transport critically ill patients from distant locations to Ayushman Medical Centre.	1,00,000
4.	Naturopathy services provided to ill patients	2,50,000

\*excluding GST

Ayushman Medical Centre also operates a cord blood bank which provides services in relation to preservation of stem cells. You are required to compute the value of supply and GST liability [CGST & SGST or IGST] of Ayushman Medical Centre, if any, in the light of relevant GST provisions.

**Note:** All the services provided by Ayushman Medical Centre are intra-State supplies. Assume the rates of CGST, SGST and IGST to be 9%, 9% and 18% respectively. (MTP, May 2018)

**Solution:** Health care services provided by, *inter alia*, a clinical establishment in India are exempt from GST *vide* Notification No. 12/2017-CT (R) dated 28-06-2017. The definition of 'health care services' stipulates that such services must be provided in any recognized system of medicines.

As per Section 2(h) of Clinical Establishments Act, 2010, recognised system of medicine means allopathy, yoga, naturopathy, ayurveda, homeopathy, siddha and unani system of medicines or any other system of medicines as may be recognised by the Central Government. Accordingly, value of supply and GST liability of Ayushman Medical Centre will be computed as follows (*amount in ₹*) :

Reiki healing treatments [Not a recognized system of medicines]	10,00,000
Plastic surgeries [₹ 20,00,000 - ₹ 1,00,000] [ <i>Health care services' specifically excludes, inter alia, cosmetic or plastic surgery except when undertaken to restore/reconstruct anatomy/functions of body affected due to congenital defects, developmental abnormalities, injury or trauma</i> ]	19,00,000
Air ambulance services to transport critically ill patients from distant locations to the Medical Centre [ <i>Health care services' specifically includes services by way of transportation of the patient to and from a clinical establishment</i> ]	Nil
Naturopathy services provided to ill patients [ <i>Being a recognized system of medicines</i> ]	Nil
<b>Value of supply</b>	<b>29,00,000</b>
<b>CGST @ 9%</b>	<b>2,61,000</b>
<b>SGST @ 9%</b>	<b>2,61,000</b>

**Note:** Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from GST. Therefore, services provided in relation to preservation of stem cells by the cord blood bank operated by Ayushman Medical Centre will be exempt from GST.

**Illustration 10 - Health care services :** Compute value of taxable supply and GST payable from following sums received by Kan Scan Diagnostic Centre Ltd. All amounts are exclusive of GST :

- (1) Receipts of Diagnostic Centre : ₹ 50 lakhs;
- (2) Receipts on account of transportation of patients of clinical establishment : ₹ 5 lakhs;
- (3) Hair transplant services provided to bald persons : ₹ 8 lakhs;
- (4) Cosmetic surgery of patients on account of injury suffered during accidents : ₹ 12 lakhs;
- (5) Medical treatment receipts : ₹ 25 lakhs. (*It includes ₹ 2 lakhs on account of medicines consumed during course of provision of service*)
- (6) Cord Blood bank services : ₹ 15 lakhs

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹) -**

(1) Receipts of Diagnostic Centre	Exempt
(2) Receipts on account of transportation of patients of clinical establishment	Exempt
(3) Hair transplant services provided to bald persons ( <i>Liable to GST</i> )	8,00,000
(4) Cosmetic surgery of patients on account of injury suffered during accidents	Exempt
(5) Medical treatment receipts [ <i>This is a composite supply, thus, no GST will be leviable</i> ]	Exempt
(6) Cord Blood bank services [ <i>The same is exempt from tax by virtue of Entry 73 of Notification No. 12/2017-CT (Rate)</i> ]	Exempt
<b>Value of taxable supply</b>	<b>8,00,000</b>
<b>GST payable @ 18%</b>	<b>1,44,000</b>

### SERVICES PROVIDED BY GOVERNMENT

(22) Sovereign services by the Central Government, State Government, Union Territory or Local Authority [Entry 6 of Notification No. 12/2017-CT (Rate)]:

Services by the Central Government, State Government, Union territory or local authority **excluding** the following services -

- (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;
- (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (c) transport of goods or passengers; or
- (d) any service, other than services covered under entries (a) to (c) above, provided to business entities, are exempt.

**Other Aspects :****(i) Services provided by Department of Post :****(i) Exempt Services :**

- Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations.
- Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

**(ii) Speed post etc. - Taxable :**

**(iii) Agency services** ike distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills on commission basis. - **Taxable**

**(j) Services provided by Police or security agencies of Governmen to PSU/private business entities are not exempt from GST.****(23) Services provided by Government/ UT or a Local Authority to a Business entity - Exempt if having aggregate turnover below threshold limit in preceding Financial Year [Entry 7 of Notification No. 12/2017-CT (Rate)] [Amended by Notification No. 21/2019-CT(Rate) w.e.f. 01-10-2019]:**

Services provided by the Central Government, State Government, Union territory or local authority **to a business entity with an aggregate turnover of up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017** are exempt.

**Explanation:** The provisions of this entry shall not be applicable to—

**(a) services,—**

- (i)** by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;
- (ii)** in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii)** of transport of goods or passengers; and

**(b) services by way of renting of immovable property.****(24) Services provided by Government or a Local Authority to another Government or a Local Authority [Entry 8 of Notification No. 12/2017-CT (Rate)] :**

Services provided by the Central Government, State Government, Union territory or local authority **to another Central Government, State Government, Union territory or local authority** are exempt.

However, nothing contained in this entry shall apply to services—

- (i)** by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;
- (ii)** in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii)** of transport of goods or passengers.

**(25) Services provided by Government or UT or a Local Authority where the consideration for such services does not exceed ₹ 5,000 [Entry 9 of Notification No. 12/2017-CT (Rate)] :**

Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services **does not exceed ₹ 5,000** are exempt.

However, nothing contained in this entry shall apply to—

- (i)** services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;
- (ii)** services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- (iii)** transport of goods or passengers.

**Continuous supply of service :** In case where continuous supply of service, as defined in Section 2(33) of the CGST Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only **where the consideration charged for such service does not exceed ₹ 5,000 in a financial year.**

**(26) Services by an Old Age Home [Entry 9D of Notification No. 12/2017-CT (Rate)] :**

Services by an old age home run by :

- Central Government, State Government or
- an entity registered under section 12AA of the Income-tax Act, 1961



to its residents (aged 60 years or more) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.

**(27) Services by way of guaranteeing of loans taken by Government undertakings or PSU's from the financial institutions [Entry 34A of Notification No. 12/2017-CT (Rate)]:**

Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions are exempt.

⊙ "Financial institution" has the same meaning as assigned to it in section 45-I(c) of the Reserve Bank of India Act, 1934. [Para 2(zaa) of Notification No. 12/2017-CT (Rate)]

**(28) Service provided by Government or UT or local authority by way of registration etc. [Entry 47 of Notification No. 12/2017-CT (Rate)]:**

Services provided by the Central Government, State Government, Union territory or local authority by way of—

- (a) registration required under any law for the time being in force;
  - (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force
- are exempt.

**(29) Services provided to individuals - Issuance of passport etc. [Entry 61 of Notification No. 12/2017-CT (Rate)]:**

Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate are exempt.

**(30) Service by way of tolerating non-performance of a contract [Entry 62 of Notification No. 12/2017-CT (Rate)]:**

Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract are exempt.

**Other Aspects :**

No GST on fines and penalties payable under any law.

**(31) Service by way of assignment of right to use natural resources to an individual farmer for the purposes of agriculture [Entry 63 of Notification No. 12/2017-CT (Rate)]:**

Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products are exempt.

**Other Aspects :**

Royalty payable to the Government for assignment of rights to use natural resources is liable to GST

**(32) Merchant overtime charges [Entry 65 of Notification No. 12/2017-CT (Rate)]:**

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

**(33) State government's services to excess royalty collection contractor [Entry 65B of Notif. No. 12/2017-CT (Rate)]:**

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.

**Conditions :** At the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of GST deposited by mining lease holders on royalty is more than the GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and the ERCC shall pay the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty.

**Explanation:** "Mining lease holder" means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957, the rules made thereunder or the rules made by a State Government under Section 15(1) of the Mines and Minerals (Development and Regulation) Act, 1957.

**SERVICES PROVIDED TO GOVERNMENT**

**(34) Services by Governmental authority in relation to Municipality Functions [Entry 4 of Notification No. 12/2017-CT (Rate)] :**

Services by Governmental Authority by way of any activity in relation to any function entrusted to a **municipality under article 243W** of the Constitution are exempt.

**(35) Services by Governmental authority in relation to Panchayat Functions [Entry 5 of Notif. No.12/2017-CT (Rate)]:**

Services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution are exempt.

**(36) Pure services to Government/ UT/ Local authority or governmental authority/ entity in relation to Panchayat functions/ Municipal functions [Entry 3 of Notification No. 12/2017-CT (Rate)] :**

Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a **Government Entity** by way of any activity –

- (a) in relation to **any function entrusted to a Panchayat** under article 243G of the Constitution or
  - (b) in relation to **any function entrusted to a Municipality** under article 243W of the Constitution,
- are exempt.

⊛ **"Governmental Authority"** means an authority or a board or any other body, –

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with **90% or more participation by way of equity or control**, to carry out any function entrusted to a **Municipality under article 243W** of the Constitution or to a **Panchayat under article 243G** of the Constitution. [Para 2(zf) of Notification No. 12/2017-CT (Rate)]

⊛ **"Government Entity"** means an authority or a board or any other body including a society, trust, corporation, –

- (i) set up by an Act of Parliament or State Legislature; or
- (ii) established by any Government,

with **90% or more participation by way of equity or control**, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority. [Para 2(zfa) of Notif. No. 12/2017-CT (R)]

**(37) Composite supply to Government/ UT/ Local authority or governmental authority/ entity in relation to Panchayat functions/ Municipal functions - Exempt if value of goods is not more than 25% of total value [Entry 3A of Notification No. 12/2017-CT (Rate)] :**

Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a **Government Entity** by way of any activity -

- (a) in relation to any function entrusted to a Panchayat under article 243G of the Constitution; or
  - (b) in relation to any function entrusted to a Municipality under article 243W of the Constitution,
- is exempt.

**(38) Supply of service by a government entity to Government, UT, Local authority in form of grants [Entry 9C of Notification No. 12/2017-CT (Rate)] :**

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

**(39) Service provided by fair price shops to Government/UT's [Entry 11A of Notification No. 12/2017-CT (Rate)] :**

Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin is exempt.

**(40) Services provided to Government/UT's under any insurance scheme for which total premium is paid by the Government or UT's [Entry 40 of Notification No. 12/2017-CT (Rate)] :**

Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt.

**(41) Services provided by the Goods and Services Tax Network [Entry 51 of Notification No. 12/2017-CT (Rate)] :**

Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax are exempt.

**(42) Services provided to Government/UT's under any training programme for which total expenditure is borne by the Government/UT's [Entry 72 of Notification No. 12/2017-CT (Rate)] :**

Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration are exempt.

**CONSTRUCTION SERVICES**

**(43) Pure labour contracts pertaining to the beneficiary-led individual house construction or enhancement under the housing for all (Urban) mission or PMAY [Entry 10 of Notification No. 12/2017-CT (Rate)] :**

Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the **Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana** are exempt.

- ⊗ "Original works" means—
- (i) all new constructions;
  - (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
  - (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise. [Para 2(zs) of Notification No. 12/2017-CT (Rate)]

**(44) Services supplied by electricity distribution utilities for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use [Entry 10A of Notification No. 12/2017-CT (Rate)] :**

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

**(45) Pure labour contract pertaining to a single residential unit [Entry 11 of Notification No. 12/2017-CT (Rate)] :**

Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a **single residential unit otherwise than as a part of a residential complex** are exempt.

- ⊗ "Residential complex" means any complex comprising of a building or buildings, having more than one single residential unit. [Para 2(zzb) of Notification No. 12/2017-CT (Rate)]
- ⊗ "Single residential unit" means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family. [Para 2(zze) of Notification No. 12/2017-CT (Rate)]

**(46) Transfer of Development rights and FSI for Construction of Residential Apartments [Entry 41A of Notification No. 12/2017-CT (Rate)] :**

Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 01-04-2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

**Computation of amount of exemption :** The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under :

$$\left( \text{GST payable on TDR or FSI (including additional FSI) or both for construction of the project} \times \frac{\text{Carpet area of the residential apartments in the project}}{\text{Total carpet area of the residential and commercial apartments in the project}} \right)$$

**Conditions :**

**Promoter liable to pay tax on RCM basis on unsold flats :** The promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner –

$$\left( \text{GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein} \times \frac{\text{Carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation}}{\text{Total carpet area of the residential apartments in the project}} \right)$$

**Maximum amount of tax payable :** The tax payable as above shall not exceed 0.5% of the value in case of affordable residential apartments and 2.5% of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation.

**When tax payable :** The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.

**(47) Long term lease for construction of residential apartments [Entry 41B of Notification No. 12/2017-CT (Rate)] :**

Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of 30 years, or more, on or after 01-04-2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

**Computation of amount of exemption :** The amount of GST exemption available for construction of residential apartments in the project shall be calculated as under –

$$\left( \text{GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project} \times \frac{\text{Carpet area of the residential apartments in the project}}{\text{Total carpet area of the residential and commercial apartments in the project}} \right)$$

**Conditions :**

**Promoter liable to pay tax on RCM basis on unsold flats :** The promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner –

$$\left( \text{GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein} \times \frac{\text{Carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation}}{\text{Total carpet area of the residential apartments in the project}} \right)$$

**Maximum amount of tax payable :** The tax payable shall not exceed 0.5% of the value in case of affordable residential apartments and 2.5% of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation.

**When tax payable :** The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.

**Illustration 11 – Construction services :** A builder has entered into agreement to sell a flat (carpet area 1800 sq ft) out of 50 flats to a customer. The breakup of his charges are as follows :

- (1) Price of flat (including apportioned value of cost of land) : ₹ 42,00,000
- (2) Prime Location Charges (PLC) (extra charges for getting sea view) : ₹ 2,00,000
- (3) Charges for providing space for covered parking : ₹ 1,25,000
- (4) Club membership fee (for club to be formed after construction is complete) : ₹ 2,00,000



- (5) Charges for carrying out modifications as required by customer : ₹ 2,00,000
- (6) Stamp duty for executing sale deed on actual basis : ₹ 4,00,000
- (7) Documentation Charges : ₹ 75,000
- (8) Maintenance charges to maintain building till the residential complex is handed over to Housing Society of members : ₹ 4,00,000.

The builder received payment of ₹ 15,00,000 before construction was complete and balance amount was received after obtaining completion certificate from the Corporation. The value of land is 1/3<sup>rd</sup> of the total consideration for the supply. Compute the value of taxable supply.

**Solution: Computation of Value of taxable supply (amount in ₹):**

(1) Price of flat (including apportioned value of cost of land)	42,00,000
(2) Prime Location Charges (PLC) (extra charges for getting sea view) (These charges are part of construction service of flat. These are part of 'naturally bundled services'.)	2,00,000
(3) Charges for providing space for covered parking (These charges are part of construction service of flat.)	1,25,000
(4) Club membership fee (for club to be formed after construction is complete). These are not part of construction service of flat. This is not a part of composite supply.	Nil
(5) Charges for carrying out modifications as required by customer (These charges are part of construction service of flat.)	2,00,000
(6) Stamp duty for executing sale deed on actual basis (Stamp duty shall not form part of value of service. It is only reimbursement of expenses incurred on behalf of the customer)	Nil
(7) Documentation Charges (These charges are part of construction service of flat.)	75,000
(8) Maintenance charges to maintain building till the residential complex is handed over to Housing Society of members. (These are not part of construction service of flat. These are not part of 'naturally bundled services').	Nil
<b>Total Consideration charged for supply</b>	<b>48,00,000</b>
<b>Less: The value of land or undivided share of land i.e. 1/3<sup>rd</sup> of the total amount charged</b>	<b>16,00,000</b>
<b>Taxable Value of supply</b>	<b>32,00,000</b>

**Illustration 12 - Tolerating an act or situation :** A customer 'A' who had booked the flat and paid ₹ 15 lakhs, subsequently cancelled his booking. The builder refunded ₹ 14.50 lakhs and kept ₹ 0.50 lakh as cancellation charges. Another customer who had booked a flat sold the flat to a third person and requested builder to transfer the flat in name of the new buyer. The builder charged ₹ 50,000 as transfer charges. Is tax payable on these amounts? Compute tax liability, if any.

**Solution:** Both the charges fall within the definition of 'tolerating an act or situation', which is defined as a 'deemed service'. Hence, these charges will be subject to tax at general rate i.e. @ 18%. The tax liability will be determined as under-

**Computation of value of taxable supply and GST liability:**

(amount in ₹)

(i) Cancellation charges received from customer on cancellation of flat booking	50,000
(ii) Transfer charges received from customer	50,000
<b>Total Value of taxable supply</b>	<b>1,00,000</b>
<b>GST payable @ 18%</b>	<b>18,000</b>

**Illustration 13 - Works Contract Service :** Y Ltd. provided works contract services in Dec., 2019 as per following details:

Particulars	₹
(i) Installation of machinery	2,00,000
(ii) Completion and finishing service plastering (of a building)	1,00,000
(iii) Repairs of machinery	50,000
(iv) Additions to damaged structure	2,50,000
(v) Installation of electrical fittings of immovable property	75,000

You are required to compute the taxable value of services and GST payable thereon for the month of December, 2019 assuming rate of GST is 18%. (Modified 4 Marks, Nov. 2016)

**Solution: Computation of value of taxable supply of services and GST payable (amount in ₹):**

(i) Installation of machinery	2,00,000
(ii) Completion and finishing service plastering (of a building)	1,00,000

(iii) Repairs of machinery	50,000
(iv) Additions to damaged structure	2,50,000
(v) Installation of electrical fittings of immovable property	75,000
<b>Total Value of taxable supply</b>	<b>6,75,000</b>
<b>GST payable @ 18%</b>	<b>1,21,500</b>

### PASSENGER TRANSPORTATION SERVICES

#### (48) Transport of passengers by different modes [Entry 15 of Notification No. 12/2017-CT (Rate)] :

Transport of passengers, with or without accompanied belongings, by –

- (a) air, embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;
- (b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or
- (c) stage carriage other than air-conditioned stage carriage are exempt.

#### (49) VG Funding amount received by airline operators under RCS [Entry 16 of Notification No. 12/2017-CT (Rate)] :

Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme (RCS) airport, against consideration in the form of viability gap funding are exempt.

However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.

#### (50) Transport of passengers by different modes [Entry 17 of Notification No. 12/2017-CT (Rate)] :

Service of transportation of passengers, with or without accompanied belongings, by –

- (a) railways in a class other than –
    - (i) first class; or
    - (ii) an air-conditioned coach;
  - (b) metro, monorail or tramway;
  - (c) inland waterways;
  - (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and
  - (e) metered cabs or auto rickshaws (including e-rickshaws)
- are exempt.

- ⊛ "E-rickshaw" means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf. [Para 2(za) of Notification No. 12/2017-CT (Rate)]
- ⊛ "Metered cab" means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder (but does not include radio taxi). [Para 2(zp) of Notification No. 12/2017-CT (Rate)]

#### Other Aspects:

- (a) Public transport by vessels other than predominantly for tourism purpose - Not Taxable
- (b) Services provided by leisure or charter vessels or a cruise ship - Taxable
- (c) Passenger taxes shall form part of taxable value of supply. [Section 15(2) of CGST Act, 2017]
- (d) Transport of passengers by : (i) ropeway; (ii) cable car; or (iii) aerial tramway is liable to GST.
- (e) PSF and UDF charged by airport operators are consideration for providing services to passengers and therefore liable to GST. PSF and UDF charges collected by the airlines as an agent - airlines not responsible for payment of GST. The airport operators shall pay GST on the PSF and UDF collected by them from the passengers through the airlines. - Circular No. 115/34/2019-GST dated 11-10-2019

**Illustration 14 – Transport of passengers by air :** Compute value of taxable supply of transport of passengers by air from the following data relating to sums received exclusive of GST for the month ending 30-09-2019 :

- (1) Passengers embarking at Arunachal Pradesh : ₹ 55 lakh (out of the said sum ₹ 15 lakh relates to other than economy class);
- (2) Passengers where journey terminated at Assam : ₹ 45 lakh (out of the said sum ₹ 5 lakh relates to other than economy class);
- (3) Amount charged from passengers for flights starting from Sydney to Delhi : ₹ 25 lakh (out of the said sum ₹ 15 lakh relates to other than economy class);
- (4) Amount charged from passengers for flights starting from Delhi to Sydney (economy class) : ₹ 34 lakh (including passenger taxes levied by government and shown separately on ticket : ₹ 10 lakh).
- (5) Amount charged from passengers for flights starting from Delhi to Sydney (business class) : ₹ 10 lakh (including passenger taxes levied by government and shown separately on ticket : ₹ 3 lakh).

Compute value of taxable supply and GST thereon if rate of GST is 12% in case of business class and 5% in other class.

**Solution: Computation of taxable value of supply and GST payable (amount in ₹) :**

Particulars	Taxable Value	Rate	GST
(1) Passengers embarking at Arunachal Pradesh. [The same is exempt vide Entry 15 of Notification No. 12/2017-CT (Rate)]	55,00,000	Exempt	Exempt
(2) Passengers where journey terminated at Assam. [The same is exempt vide Entry 15 of Notification No. 12/2017-CT (Rate)]	45,00,000	Exempt	Exempt
(3) Amount charged from passengers for flights starting from Sydney to Delhi (Place of embarkation is Sydney viz. outside India; hence, place of supply of service is Sydney viz. outside India, therefore, it is not chargeable to tax in India)	25,00,000	-	Not taxable
(4) Amount charged from passengers for flights starting from Delhi to Sydney (Passenger taxes levied by government even if shown separately on ticket shall form part of taxable value of supply as per provisions of Section 15 of the CGST Act, 2017)	34,00,000	5%	1,70,000
(5) Amount charged from passengers for flights starting from Delhi to Sydney (business class) (Passenger taxes levied by government even if shown separately on ticket shall form part of taxable value of supply as per provisions of Section 15 of the CGST Act, 2017)	10,00,000	12%	1,20,000
<b>Total GST payable</b>			<b>2,90,000</b>

**Illustration 15 – Transportation of passengers by air :** M/s. ABC Airlines furnishes you the following information for computation of its GST liability (all amounts exclusive of GST) for the month of September 2019 :

- (1) Passengers travelling from Jaipur to Delhi – 100 passengers (other than economy class), Gross Value per ticket : ₹ 8,000;
- (2) Passengers travelling from Jaipur to Delhi - 20 passengers (economy class), Gross Value per ticket : ₹ 4,000;
- (3) Passengers travelling from Mumbai to London (economy class) - 300 passengers, Gross Value per ticket : ₹ 20,000;
- (4) Passengers travelling from Mumbai to London (other than economy class) - 150 passengers, Gross Value per ticket : ₹ 40,000;
- (5) Transport of passengers, with accompanied belongings from Jaipur to Jodhpur in Regional Connectivity Scheme Airport – No of passengers 1,000. Gross value per ticket ₹ 2,500.

The applicable rate of IGST for business class is 12% and other class is 5%.

**Solution: Computation of GST payable by M/s. ABC Airlines (amount in ₹) :**

Particulars	Economy Class	Business class	Regional Connectivity Scheme
(1) Passengers travelling from Jaipur to Delhi [100 passengers (other than economy class), Gross Value per ticket : ₹ 8,000]	-	8,00,000	-
(2) Passengers travelling from Jaipur to Delhi [20 passengers (economy class), Gross Value per ticket : ₹ 4,000]	80,000	-	-
(3) Passengers travelling from Mumbai to London [300 passengers (economy class), Gross Value per ticket : ₹ 20,000]	60,00,000	-	-



(4) Passengers travelling from Mumbai to London [150 passengers (other than economy class), Gross Value per ticket : ₹ 40,000]	-	60,00,000	-
(5) Transport of passengers, with accompanied belongings from Jaipur to Jodhpur in Regional Connectivity Scheme Airport [No. of passengers 1,000. Gross value per ticket ₹ 2,500]	-	-	25,00,000
<b>Total Value of supply</b>	<b>60,80,000</b>	<b>68,00,000</b>	<b>25,00,000</b>
Rate of GST	5%	12%	5%
<b>Total GST payable</b>	<b>3,04,000</b>	<b>8,16,000</b>	<b>1,25,000</b>

**Illustration 16 - Rail transport of passengers :** Indian railways has provided following services -

- (1) Transport of passengers by general class : ₹ 15 billion;
- (2) Transport of passengers by sleeper class : ₹ 10 billion;
- (3) Transport of passengers by 1<sup>st</sup> Class air conditioned coach : ₹ 2 billion;
- (4) Transport of passengers by 2<sup>nd</sup> tier air conditioned coach : ₹ 4 billion ;
- (5) Transport of passengers by 3<sup>rd</sup> tier air conditioned coach : ₹ 8 billion.

Compute taxable value of supply and GST liability if rate of GST is 5%.

**Solution: Computation of taxable value of supply and GST payable (₹ in billion) :**

Transport of passengers by general class [Exempt vide Entry 17 of Notification No. 12/2017-CT (Rate)]	Exempt
Transport of passengers by sleeper class [Exempt vide Entry 17 of Notification No. 12/2017-CT (Rate)]	Exempt
Transport of passengers by 1 <sup>st</sup> Class air conditioned coach (Liable for GST)	2
Transport of passengers by 2 <sup>nd</sup> tier air conditioned coach (Liable for GST)	4
Transport of passengers by 3 <sup>rd</sup> tier air conditioned coach (Liable for GST)	8
<b>Taxable Value of Supply</b>	<b>14</b>
<b>Total GST payable @ 5%</b>	<b>0.7</b>

**Illustration 17 - Transportation of passengers:** M/s. PQR Ltd. is engaged in providing service of transportation of passengers by following modes in the month of July, 2019 :

- (1) Service of transportation of passengers by National Waterways : ₹ 30,00,000;
- (2) Service of transportation of passengers by Air conditioned Stage carriage : ₹ 25,00,000;
- (3) Service of transportation of passenger by non air conditioned Stage carriage : ₹ 25,00,000;
- (4) Service of transportation of passengers by contract carriage for tourism : ₹ 20,00,000;
- (5) Service of transportation of passenger for Mumbai to Chennai port in a vessel and such service is not for tourism purpose : ₹ 10,00,000;
- (6) Service of transportation of passenger in Metered Cab : ₹ 35,00,000;
- (7) Service of transportation of passengers in Radio Taxis : ₹ 10,00,000;
- (8) Service of transportation of passengers in Non air-conditioned contract carriages : ₹ 10,00,000;
- (9) Service of transportation of passengers in air-conditioned contract carriages : ₹ 15,00,000;

Compute GST liability if applicable rate of GST is 5%.

**Solution: Computation of GST liability (amount in ₹) :**

Particulars	Taxable Value	Rate	GST
(1) Transportation of passengers by National Waterways [Exempt vide Entry 17 of Notification No. 12/2017-CT (Rate)]	30,00,000	Exempt	Nil
(2) Transportation of passenger by Air conditioned Stage Carriage (Liable to GST)	25,00,000	5%	1,25,000
(3) Transportation of passenger by non air conditioned Stage carriage [Exempt vide Entry 15 of Notification No. 12/2017-CT (Rate)]	25,00,000	Exempt	Nil
(4) Transportation of passengers by contract carriage for tourism - Taxable	20,00,000	5%	1,00,000
(5) Transportation of passenger from Mumbai to Chennai port in a vessel [Being a public transport in a vessel sailing in India and not for tourism - is exempt vide Entry 17 of Notification No. 12/2017-CT (Rate)]	10,00,000	Exempt	Nil
(6) Transportation of passenger in Metered Cab [Exempt vide Entry 17 of Notification No. 12/2017-CT (Rate)]	35,00,000	Exempt	Nil
(7) Service of transportation of passengers in Radio Taxis (Liable to GST)	10,00,000	5%	50,000

(8) Service of transportation of passengers in non air-conditioned contract carriages [Exempt vide Entry 15 of Notification No. 12/2017-CT (Rate)]	10,00,000	Exempt	Nil
(9) Service of transportation of passengers in air-conditioned contract carriages (Liable to GST)	15,00,000	5%	75,000
<b>Total GST payable</b>			<b>3,50,000</b>

**GOODS TRANSPORTATION SERVICES**

(51) Transportation of goods by different modes [Entry 18 of Notification No. 12/2017-CT (Rate)] :

Services by way of transportation of goods –

- (a) by road except the services of –
  - (i) a goods transportation agency;
  - (ii) a courier agency;
- (b) by inland waterways

are exempt.

<p>⊗ "Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. [Para 2(ze) of Notif. No. 12/2017-CT (Rate)]</p> <p>⊗ "Courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles. [Para 2(u) of Notification No. 12/2017-CT (Rate)]</p>
---

**Other Aspects:**

- (a) 'Express Cargo Service' - 'Courier Agency' - Taxable.
- (b) "Angadia" liable under Courier service.

**Illustration 18 - Courier Services :** M/s. Madhur Couriers (in India) furnishes you the following information of services provided by it for the quarter ended 30-09-2019 (all information are separate and in addition to each other) :

- (1) Amounts charged from corporate customers : ₹ 55 lakhs (including ₹ 5 lakhs towards packing of goods and documents in boxes and envelopes) ;
- (2) Charges for Express Cargo Service : ₹ 25 lakhs (consignment note is not issued) ;
- (3) Charges for documents destined to Western States : ₹ 40 lakhs (for documents destined to western states, the delivery is carried out by M/s. West Express who is paid 50%) ;
- (4) Charges for services where the customers came to the office of M/s. Madhur Couriers : ₹ 4 lakhs

Required to compute :

- (i) The value of taxable supply ; and
- (ii) The net amount of GST, if any, payable thereon by M/s. Madhur Couriers.
- (iii) Rate of GST - 18%.

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹)-**

Amounts charged from corporate customers (Charges towards packing of goods in boxes and envelopes will form part of value of taxable supply, since most of the courier agencies carry out such activities and the same fall under natural bundle of service.)	55,00,000
Charges for Express Cargo Service (Since consignment note is not issued, the service will fall under courier service)	25,00,000
Charges for documents destined to Western States (M/s. Madhur Courier will be liable to pay GST on full amount charged. The amount paid to co-loader M/s. West Express will be eligible as 'input service' on which ITC credit will be available)	40,00,000
Charges for services where the customers came to the office of M/s. Madhur Couriers (Even if the customers come to the office of courier agency, the same would amount of 'door-to-door transportation' and will be covered by courier agency)	4,00,000
<b>Taxable Value</b>	<b>1,24,00,000</b>
GST thereon @ 18%	<b>22,32,000</b>
Less: ITC on charges of co-loaders M/s. West Express [₹ 40 lakhs × 50% × 18%]	<b>3,60,000</b>
<b>Net GST payable in cash</b>	<b>18,72,000</b>

**(52) Services by way of transportation of goods by an aircraft [Entry 19 of Notification No. 12/2017-CT (Rate)] :**

Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India are exempt.

**(53) Air freight for export goods [Entry 19A of Notification No. 12/2017-CT (Rate)] [Amended by Notification No. 21/2019-CT (Rate) w.e.f. 01-10-2019] :**

Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India are exempt.

However, nothing contained in this entry shall apply after 30-09-2020.

**(54) Sea freight for export goods [Entry 19B of Notification No. 12/2017-CT (Rate)] [Amended by Notification No. 21/2019-CT (Rate) w.e.f. 01-10-2019] :**

Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India are exempt.

However, nothing contained in this entry shall apply after 30-09-2020.

**Analysis:**

As per Section 12(8) of IGST Act, 2017, the place of supply of services by way of transportation of goods, including by mail or courier to,-

- (a) a registered person, shall be the location of such person;
- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

However, where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.

**(55) Transportation of certain goods by rail or vessel [Entry 20 of Notification No. 12/2017-CT (Rate)] :**

Services by way of transportation by rail or a vessel from one place in India to another of the following goods -

- (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (b) defence or military equipments;
- (c) newspaper or magazines registered with the Registrar of Newspapers;
- (d) railway equipments or materials;
- (e) agricultural produce;
- (f) milk, salt and food grain including flours, pulses and rice; and
- (g) organic manure

are exempt.

**(56) Services provided by a goods transport agency [Entry 21 of Notification No. 12/2017-CT (Rate)] :**

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

- (a) agricultural produce;
- (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500;
- (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750;
- (d) milk, salt and food grain including flour, pulses and rice;
- (e) organic manure;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- (h) defence or military equipments

are exempt.

**Other aspects:**

- (i) Individual truck/ tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA.
- (ii) Significance of the term 'in relation to' in the definition of GTA : If any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as

separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

(iii) Reverse charge:

Category of Supply of Services	Supplier of Service	Recipient of Service
<p>Supply of Services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to—</p> <p>(a) any factory registered under or governed by the Factories Act, 1948; or</p> <p>(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.</p> <p>RCM not applicable if recipient registered only for TDS : However, nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,—</p> <p>(a) a Department or Establishment of the Central Government or State Government or Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax u/s 51 and not for making a taxable supply of goods or services.</p> <p>It may be noted that the said services have been simultaneously exempted from payment of tax vide Entry 21B Notification No. 28/2018-CT (R) dated 31-12-2018. Thus, there will be no tax liability in this case.</p>	<p>Goods Transport Agency (GTA) who has not paid                      CGST @ 6% &amp;                      SGST @ 6% or                      IGST @ 12%</p>	<p>(a) Any factory registered under or governed by the Factories Act, 1948; or</p> <p>(b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p>
<p><b>Note:</b> Forward charge in case of GTA paying 12% GST : GTA has been given an option to pay GST @ 12% and avail full ITC admissible under law. If GTA charges GST @ 12% in his tax invoice, the recipient is not liable to pay GST under reverse charge. The option once exercised cannot be withdrawn during the remaining part of financial year.</p>		

(iv) Time-sensitive Transportation - GTA v. Courier Agency : Time sensitive transportation of goods by road in a goods carriage by a GTA shall be classified as GTA service and not under courier service so long as—

- (a) the entire transportation of goods is by road; and
- (b) the person transporting the goods issues a consignment note.

**(57) Services provided by a goods transport agency to an unregistered person [Entry 21A of Notification No. 12/2017-CT (Rate)] :**

Services provided by a goods transport agency to an unregistered person, including an unregistered casual taxable person, other than the following recipients, namely:-

- (a) any factory registered under or governed by the Factories Act, 1948; or
- (b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or
- (c) any Co-operative Society established by or under any law for the time being in force; or
- (d) any body corporate established, by or under any law for the time being in force; or
- (e) any partnership firm whether registered or not under any law including association of persons;
- (f) any casual taxable person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act are exempt.

**(58) Services provided by a GTA to persons registered for TDS [Entry 21B of Notification No. 12/2017-CT (Rate)] :**

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

- (a) a Department or Establishment of the Central Government or State Government or Union territory; or
- (b) local authority; or
- (c) Governmental agencies,

which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax under Section 51 and not for making a taxable supply of goods or services.

**Illustration 19 – Composite Supply :** Sharma Carriers is a Goods transport Agency engaged in transportation of goods by road. As per the general business practice, Sharma carriers also provides intermediary and ancillary services like loading/unloading, packing/unpacking, transshipment and temporary warehousing in relation to transportation of goods by road.

With reference to the provisions of GST Law, analyse whether such services are to be treated as part of the GTA Services, being a composite supply or as mixed supply. (5 Marks, Nov. 2018-OS)

**Solution :** As per Section 2(30) of CGST Act, 2017, Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

The GTA provides various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

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

**Illustration 20 – Computation of GST liability :** XYZ Ltd., New Delhi, manufactures biscuits under the brand name 'Tastypicks'. Biscuits are supplied to wholesalers and distributors located across India on FOR basis from the warehouse of the company located at New Delhi. The company uses multiple modes of transport for supplying the biscuits to its customers spread across the country. The transportation cost is shown as a line item in the invoice and is billed to the customers with a mark-up of 2% on total amount of freight paid (inclusive of taxes). Flour used for the production process is procured from vendors located in Madhya Pradesh on ex-factory basis. The company engages goods transport agencies (GTA) to transport the flour from the factories of the vendors to its factory located in New Delhi.

The company has provided the following data relating to transportation of biscuits and flour in the month of April 2020:

- For sales within the NCR region (₹ 20,00,000), the company arranged a local mini-van belonging to an individual and paid him ₹ 54,000.
- For sales to locations in distant States (₹ 1,78,00,000), the company booked the goods by Indian Railways and paid rail freight of ₹ 3,17,000.



- For sales to locations in neighbouring States (₹ 55,00,000), the company booked the goods by road carriers (GTAs) and paid road freight of ₹ 3,73,000. Out of the total sales to neighbouring States, goods worth ₹ 10,00,000 were booked through a GTA which paid tax @ 12%. Freight of ₹ 73,000 was paid to such GTA.
  - For purchase of flour from Madhya Pradesh (₹ 25,00,000), the company booked the goods by a GTA and paid road freight of ₹ 55,000.
  - For purchase of butter from Punjab (₹ 15,00,000), the company booked the goods by a GTA and paid road freight of ₹ 35,000.
  - For local purchase of baking powder, the company booked the goods by a GTA in a single carriage and paid road freight of ₹ 1,500.
  - For transferring the biscuits (open market value - ₹ 4,00,000) to one of its sister concern in Rajasthan, the company booked the goods by a GTA and paid road freight of ₹ 40,000.
- (i) Based on the particulars given above, compute the GST payable on the amount paid for transportation by XYZ Ltd. when it avails the services of different transporters.
- (ii) Compute the GST charged on transportation cost billed by the company to its customers.

Note: Assume the rate of GST on transportation of goods and biscuits to be 5% and 12% respectively [except where any other rate is specified in the question].

**Solution:**

- (i) **Computation of GST payable on amount paid for transportation by XYZ Ltd. when it avails the services of different transporters (amount in ₹) :**

Particulars	Freight	GST Payable		Total GST payable
		Forward Charge by Supplier	Reverse charge by XYZ Ltd.	
Transportation of biscuits in a local mini van belonging to an individual [WN-1]	54,000	Nil	Nil	Nil
Transportation of biscuits by Indian Railways [WN-2]	3,17,000	15,850	-	15,850
Transportation of biscuits by GTA [WN-3]	3,00,000	-	15,000	15,000
Transportation of biscuits by GTA @ 12% [WN-4]	73,000	8,760	-	8,760
Transportation of flour by GTA [WN-5]	55,000	Nil	Nil	Nil
Transportation of butter by GTA [WN-6]	35,000	-	1,750	1,750
Transportation of baking powder by GTA [WN-7]	1,500	Nil	Nil	Nil
Transportation of biscuits by GTA to sister concern [WN-8]	40,000	-	2,000	2,000
<b>Total tax payable by XYZ Ltd. on availing services of different transporters</b>				<b>43,360</b>

**Working Note :**

- (1) Transportation of goods by road by a GTA is liable to GST. Therefore, transportation of goods by road otherwise than by a GTA is exempt from GST - Notification No. 12/2017-CT (R) & 9/2017-IT (R) both dated 28-06-2017.
- (2) Transportation of goods by Indian Railways is liable to GST and is taxed on forward charge basis.
- (3) GST is payable by XYZ Ltd. under reverse charge in terms of Section 5(3) of the IGST Act, 2017 read with Notification No. 10/2017-IT (R) dated 28-06-2017.
- (4) When the GTA pays tax @ 12%, tax is payable by the GTA under forward charge and not by the recipient under reverse charge - Notification No. 10/2017-IT (R) dated 28-06-2017.
- (5) Services provided by GTA by way of transport (in a goods carriage) of, *inter alia*, flour are exempt from GST *vide* Notification No. 9/2017-IT (R) dated 28-06-2017.
- (6) Services provided by GTA by way of transport (in a goods carriage) of milk is exempt from GST *vide* Notification No. 9/2017 IT (R) dated 28-06-2017. However, the said exemption is not available in respect of butter as butter is milk product and not milk.  
GST is payable by XYZ Ltd. under reverse charge in terms of Section 5(3) of the IGST Act, 2017 read with Notification No. 10/2017-IT (R) dated 28-06-2017.
- (7) Services provided by a GTA by way of transport in a goods carriage of goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500, are exempt from GST *vide* Notification No. 9/2017-IT (R) dated 28-06-2017.
- (8) GST is payable by XYZ Ltd. under reverse charge in terms of Section 5(3) of the IGST Act, 2017 read with Notification No. 10/2017-IT (R) dated 28-06-2017.



## (ii) Computation of GST charged on transportation cost billed by XYZ Ltd. to its customers :

Supply of biscuits and transportation service - Principal Supply is transportation of Biscuits, hence GST rate of biscuits is applicable : Since XYZ Ltd. is supplying biscuits on FOR basis, the service of transportation of biscuits gets bundled with the supply of biscuits. Thus, the supply of biscuits and transportation service is a composite supply, chargeable to tax at the rate applicable to the principal supply (biscuits) i.e., 12% [Section 8(a) of the CGST Act, 2017 read with the definition of 'composite supply' under section 2(30) of the CGST Act, 2017 and 'principal supply' under section 2(90) of the CGST Act, 2017].

Particulars	Freight paid (₹) [A]	GST paid on freight (₹) [B]	Freight billed (with mark-up @ 2% on [A])	GST charged @ 12% (₹)
Transportation of biscuits in a local mini van belonging to an individual	54,000	-	55,080	6,610
Transportation of biscuits by Indian Railways	3,17,000	15,850	3,39,507	40,741
Transportation of biscuits by GTA	3,00,000	15,000	3,21,300	38,556
Transportation of biscuits by GTA @ 12%	73,000	8,760	83,395	10,007
<b>Total tax charged by XYZ Ltd. on transportation cost billed to the customers*</b>				<b>95,914</b>

\*Note: It has been assumed that there is no mark-up on transportation cost billed to sister concern (non-customer).

**Illustration 21 - GTA Service :** M/s. Commercial Goods Services, a goods transport agency furnishes the following information in respect of services provided for the month ending 31<sup>st</sup> March, 2020. Determine the value of taxable supply and tax thereon.

Particulars	₹
(i) Service provided to M/s. XYZ Co. Ltd.	30,00,000
(ii) Freight for transport of food grains and pulses	1,50,000
(iii) Service to an unregistered firm	6,00,000
(iv) Service provided as a 'clearing and forwarding agent'	2,00,000
(v) Composite service provided to Mr. X which include packing/unpacking, loading, unloading of used household goods in the course of transportation by road	2,00,000
(vi) GST paid on input services used for providing goods transport agency services	72,000

(Provide suitable explanations where required) (Modified 5 Marks, May 2011)

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹) -**

(A) Services provided as Goods Transport Agency :	
Service provided to M/s. XYZ Co. Ltd. [Since the person liable to pay GST is M/s. XYZ Co. Ltd under reverse charge, hence the same shall not be taxable in the hands of M/s. Commercial Goods Services.]	-
Freight for transport of food grains and pulses [Exempt vide Entry 21 of Notification No. 12/2017-CT (Rate)]	Exempt
Service to an unregistered firm (Since the person liable to pay GST is unregistered firm under reverse charge, hence the same shall not be taxable in the hands of M/s. Commercial Goods Services.)	-
Composite service provided which include packing/unpacking, loading, unloading in the course of transportation by road [The service will be GTA Service since consignment note is issued and principal supply is transport of goods. Since it is provided to unregistered person, it will be exempt from tax vide. Entry 21A of Notification No. 12/2017-CT (Rate)]	Exempt
<b>Taxable Value of supply</b>	Nil
<b>GST payable</b>	Nil
(B) Service provided as a "Clearing and Forwarding Agent"	2,00,000
GST payable @ 18%	36,000
<b>GST payable [(A) + (B)]</b>	<b>36,000</b>

**Illustration 22 - GTA Services:** Calculate the value of taxable supply of XYZ Transport Company engaged in the business of transport of goods by road for the month of April 2020. Give reasons for taxability or exemption of each item. Suitable assumptions may be made wherever required. XYZ transport company avails ITC. GST is leviable @ 12% :

(1) Total freight charges received by 'XYZ' transport company	25,00,000
---	-----------

(2) Freight charges received from Government department registered only for the purpose of tax deduction at source	2,00,000
(3) Freight charges received from unregistered persons for transportation of their household goods	50,000
(4) Freight collected for transporting goods in small vehicles for persons who paid less than ₹ 1,500/- per trip	1,50,000

**Solution: Computation of Value of taxable supply and GST leviable thereon (amount in ₹)–**

Total freight received	25,00,000
Less: Freight charges received from Government department registered only for the purpose of tax deduction at source [Exempt vide Entry 21B of Notification No. 12/2017-CT (Rate)]	2,00,000
Less: Freight charges received from unregistered persons for transportation of their household goods [Exempt vide Entry 21A of Notification No. 12/2017-CT (Rate)]	50,000
Less: Freight collected for transporting goods in small vehicles for persons who paid less than ₹ 1,500 per trip (Exempt, since the freight on all consignments transported into a goods carriage doesn't exceed ₹ 1,500) [Exempt vide Entry 21 of Notification No. 12/2017-CT (Rate)]	1,50,000
<b>Total value of taxable supply</b>	<b>21,00,000</b>
<b>GST payable @ 12%</b>	<b>2,52,000</b>

### BANKING AND FINANCIAL SERVICES

**(59) Services by the Reserve Bank of India [Entry 26 of Notification No. 12/2017-CT (Rate)] :**

Services by the Reserve Bank of India are exempt.

**Other Aspects :** Services provided TO the Reserve Bank of India are not covered under said entry and would be taxable unless otherwise covered in any other entry of the Notification.

**(60) Services by way of extending deposits, loans or advances/ inter se sale or purchase of foreign currency amongst banks or authorized dealers [Entry 27 of Notification No. 12/2017-CT (Rate)] :**

Services by way of—

- (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);
- (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers

are exempt.

⊕ **"Interest"** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. [Para 2(zk) of Notification No. 12/2017-CT (Rate)]

<b>Circular No.</b> 83/02/2019-GST dated 01-01-2019	Services provided by International Finance Corporation (IFC) and Asian Development Bank (ADB) are exempt from GST in terms of provisions of IFC Act, 1958 and ADB Act, 1966. The exemption will be available only to the services provided by ADB and IFC and not to any entity appointed by or working on behalf of ADB or IFC.
---	--

**Other Aspects :**

- (a) Transactions only in money - Not liable to GST
- (b) Forward/future contracts in commodities or money are not taxable, as they are securities (contract in commodities) or transaction in money (in case of currency).
- (c) Transactions in instruments like interest rate swaps and foreign exchange swaps would be excluded from the definition of 'service' as such instruments are derivatives, being securities, based on contracts of difference. However, any attendant service charges or fees would be chargeable to GST.
- (d) Preparation of a draft or a pay order by a bank for which commission is charged - Taxable
- (e) Investment of funds by a person with another for which the return on such investment is returned to investors without retaining any portion of the return on such investment of funds is a transaction only in money.

However, if a commission is charged or a portion of the return is retained as service charges, then such commission or portion of return so retained is liable for GST.

- (f) Debt collection services or credit control services - Taxable
- (g) Subscription to or trading in Commercial Paper (CP) or Certificates of Deposit (CD) is transaction in money, therefore, they are excluded from definition of service.

However, if some service charges or service fees or documentation fees or broking charges etc. are charged, the same would be considerations for provision of service and chargeable to GST.

- (h) **Value of supply of services in relation to purchase or sale of foreign currency, including money changing [Rule 32(2)(a)]** : The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-

- (i) For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the,-

Case	Value of supply
Purchase of foreign currency by service supplier	(RBI reference rate at that time - Buying rate) × Total units of currency.
Sale of foreign currency by service supplier	(Selling rate - RBI reference rate at that time) × Total units of currency.

- (ii) If RBI reference rate is not available In case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.

- (iii) In case where neither of the currencies exchanged is Indian Rupee (INR) In case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

*i.e.*

Amount 1 = Foreign Currency sold × RBI Reference Rate of that currency to INR	xxx
Amount 2 = Foreign Currency Bought × RBI Reference Rate of that currency to INR	xxx
Gross Indian Rupees = Amount 1 or Amount 2, whichever is less	xxx
Value = 1% of the Gross Indian Rupees	xxx

- (i) **Option to determine value in relation to supply of foreign currency, including money changing [Rule 32(2)(b)]** : At the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be--

	For an amount -	Value of supply shall be calculated at the rate of -
(1)	Upto ₹ 1,00,000	➤ 1% of the gross amount of currency exchanged; or ➤ ₹ 250, whichever is higher.
(2)	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.5 % of the gross amount of currency exchanged.
(3)	Exceeding ₹ 10,00,000	➤ ₹ 5,500 + 0.1% of the gross amount of currency exchanged; or ➤ ₹ 60,000, whichever is lower.

Such option shall not be withdrawn during the remaining part of that financial year.

**(61) Services Provided to BSBD A/c Holders Under PMJDY [Entry 27A of Notification No. 12/2017-CT (Rate)]**

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

**(62) Credit card, debit card, charge card or other payment card service - Exempt upto ₹ 2,000 per transaction [Entry 34 of Notification No. 12/2017-CT (Rate)] :**

Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service are exempt.

❖ "Acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card. [Explanation]

**(63) Services provided by financial intermediaries located in IFSC SEZ [Entry 39A of Notif. No. 12/2017-CT (Rate)]:**

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.

**Explanation:** The intermediary of financial services in IFSC is a person,-

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

**Illustration 23 - Financial Services :** New Bank of India Ltd. provides the following information for the month of July, 2019. Compute the value of taxable supply and GST payable. (Rate of GST 18%)

Particulars	₹ in lakhs
(1) Interest Received on various loans including home loan	2,000
(2) Administrative charges and folio charges collected	120
(3) Value of sale and purchase of forward contract	100
(4) Charges for credit card and debit card facilities extended	200
(5) Charges for ATM card transaction	200
(6) Commission received for DD, transfer and cheque collection	200
(7) Margin earned on reverse repo transactions	400

(Modified 5 Marks, Nov. 2016)

**Solution: Computation of value of taxable supply and GST payable (amount in ₹) -**

(1) Interest Received on various loans including home loan [Exempt vide Entry 27 of Notification No. 12/2017-CT (Rate)]	Exempt
(2) Administrative charges and folio charges collected (Liable to GST)	1,20,00,000
(3) Value of sale and purchase of forward contract (Forward contracts are 'securities' - Not covered in goods as well as services, hence not liable to GST)	-
(4) Charges for credit card and debit card facilities extended (Liable to GST)	2,00,00,000
(5) Charges for ATM card transaction (Liable to GST)	2,00,00,000
(6) Commission received for DD, transfer and cheque collection (Liable to GST)	2,00,00,000
(7) Margin earned on reverse repo transactions (Reverse repo are 'securities' - Not covered in goods as well as services, hence not liable to GST)	-
<b>Value of taxable supply</b>	<b>7,20,00,000</b>
<b>GST payable @ 18%</b>	<b>1,29,60,000</b>

**Illustration 24 - Financial Services :** X Bank Ltd., furnishes the following information relating to services provided and the gross amount received :

	₹
Merchant Banking Services	8,00,000
Asset Management (including portfolio management)	3,00,000
Service charges for services to the Government of India	1,50,000
Interest on overdraft and cash credits	2,00,000
Banker to the issue	5,00,000
Locker rent	2,00,000

Compute the value of taxable supply and the GST liability of X Bank Ltd., considering the rate of GST 18%. (Modified 5 Marks, Nov. 2010-NS)

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹) -**

Merchant banking services - Taxable	8,00,000
Amount received for asset management (Including portfolio management) services - Taxable	3,00,000
Service charges for services provided to Government of India	1,50,000
Interest received on overdraft and cash credits [Exempt vide Entry 27 of Notif. No. 12/2017-CT (Rate)]	Exempt
Amount received for acting as banker to an issue - Taxable	5,00,000
Amount received as locker rent	2,00,000
<b>Value of taxable supply</b>	<b>19,50,000</b>
<b>GST payable @ 18%</b>	<b>3,51,000</b>

**Illustration 25 – Financial Services :** Robinson Bank Ltd. furnishes the following information relating to services provided and the gross amount received during the month of December. Compute the value of taxable supply and GST payable. Rate of GST is 18%:

Particulars	(₹ in lakhs)
(i) Amount of commission received for debt collection service	10
(ii) Discount earned on bills discounted	4.5
(iii) Dealing in sale and purchase of forward contract	5.7
(iv) Charges received on credit card and debit card facilities extended	3.8
(v) Penal interest recovered from the customers for the delay in repayment of loan	2.6
(vi) Commission received for service rendered to Government for tax collection	6.0
(vii) Interest earned on reverse repo transaction	25.0
(viii) Service to merchants accepting credit/debit card payments using point of sale machine of Robinson Bank Ltd. (in 30% cases, the amount per transaction was upto ₹ 1,800; while, in other case, the amount was exceeding ₹ 2,000)	10

(Modified 5 Marks, May 2013)

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹)–**

Commission received on debt collection service (Liable to GST)	10,00,000
Discount earned on Bills Discount [Exempt vide Entry 27 of Notification No. 12/2017-CT (Rate)]	Exempt
Dealing in sale and purchase of forward contract [Forward contracts are 'securities' - Not covered in goods as well as services, hence not liable to GST]	Not taxable
Charges received on credit card and debit card facilities extended [Processing and other related charges for extending credit card and debit card facilities are liable to GST, as it is activity carried out for consideration.]	3,80,000
Penal interest charged for delay in repayment [Includible in value as per Section 15(2)(e) of the Central Goods and Services Tax Act]	2,60,000
Commission received for services rendered to Government for collection of taxes [Since it is on activity carried out for consideration and there is no exemption in force, it is liable to GST]	6,00,000
Interest earned on Reverse repo transaction [Reverse repo are 'securities' - Not covered in goods as well as services, hence not liable to GST]	Not taxable
Service to merchants accepting credit/debit card payments using point of sale machine of Robinson Bank Ltd. [in 30% cases, the amount per transaction was upto ₹ 1,800 hence exempt vide Entry 34 of Notif. No. 12/2017-CT (R)]; while, in other cases, the amount was exceeding ₹ 2,000, hence liable to GST]	7,00,000
<b>Value of taxable supply</b>	<b>29,40,000</b>
<b>Total GST payable @ 18%</b>	<b>5,29,200</b>

**Illustration 26 – Determination of value of service in relation to money changing :** Mr. Ram who has entered into a roll over contract approached NDBC Bank for selling US \$ 35,000 at the rate of ₹ 75 per US \$. RBI reference rate for US \$ is ₹ 75.50 per US \$ at that time. However, rate of exchange declared by CBIC for the day is ₹ 76.50 per US \$. Calculate the value of taxable supply.

**Solution:** Rule 32(2)(a) of CGST Rules, 2017, provides the manner of determination of the value of taxable supply so far as it pertains to purchase or sale of foreign currency, including money changing. The value of service for a currency, when exchanged from, or to, Indian Rupees (INR), shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. CBIC rate has no relevance for determining the value of taxable supply of service.

$$\begin{aligned} \text{Hence, the value of taxable supply} &= (\text{RBI reference rate for \$} - \text{Buying rate for \$}) \times \text{Total units of US \$} \\ &= ₹ (75.50 - 75) \times 35,000 \\ &= ₹ 0.50 \times 35,000 \end{aligned}$$

The taxable value shall be ₹ 17,500.

**Illustration 27 – Determination of value of service in relation to money changing :** Compute independently in each of the following cases the taxable value of services provided by an authorized dealer in foreign exchange to its customers. Show working notes as required.

- (i) 2500 US \$ are sold by Mr. Adani to the 'Sewak Cook' an authorized dealer @ ₹ 72.50 per US \$. The RBI reference rate is ₹ 73.00 for that day.



- (ii) ₹ 80,00,000 is changed into Canadian \$ and the exchange rate offered is ₹ 50 per Canadian \$. RBI reference rate for conversion of INR into Canadian \$ is not available.
- (iii) On 01-05-2019 Mr. Exchange gets 1,00,000 Euro converted into 5,00,000 Dirham. As on 01-05-2019 RBI reference rate is 1 Euro = ₹ 78, 1 Dirham = ₹ 16. *(Modified 5 Marks, May 2015)*

**Solution:** As per Rule 32(2)(a) of CGST Rules, 2017 :

- (i) Value of taxable supply = (RBI reference rate for \$ - Buying rate for \$) × Total units of US \$  
= ₹ (63 - 62.50) × 2,500  
= ₹ 1,250
- (ii) If the RBI reference rate for a currency is not available :  
Value of taxable supply = 1% of the gross amount of Indian Rupees provided/received by money changer  
= 1% of ₹ 80,00,000  
= ₹ 80,000
- (iii) In case neither of the currencies exchanged is Indian Rupee :  
Value of taxable supply = 1% of the lower of the two amounts the money changer would have received by converting any of the two currencies into Indian Rupee at that time at the reference rate provided by RBI.  
Hence, in the given case, value of taxable supply would be 1% of the lower of the following :  
➤ Euro 1,00,000 × ₹ 78 = ₹ 78,00,000  
➤ Dirham 5,00,000 × ₹ 16 = ₹ 80,00,000  
Value of taxable supply = 1% of ₹ 78,00,000 = ₹ 78,000

#### LIFE INSURANCE BUSINESS SERVICES

- (64) **Life insurance services under NPS [Entry 28 of Notification No. 12/2017-CT (Rate)] :**  
Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 are exempt.
- (65) **Life insurance services to members of the Army, Navy and Air Force [Entry 29 of Notification No. 12/2017-CT (Rate)] :**  
Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government are exempt.
- (66) **Life insurance services to Coast Guard Personnel [Entry 29A of Notification No. 12/2017-CT (Rate)] :**  
Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government are exempt.
- (67) **Life insurance services to Central Armed Police Force [Entry 29B of Notification No. 12/2017-CT (Rate)] [Inserted vide Notification No. 21/2019-CT(Rate) w.e.f. 01-10-2019] :**  
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.
- (68) **Life insurance services [Entry 36 of Notification No. 12/2017-CT (Rate)] :**  
Services of life insurance business provided under following schemes--
- (a) Janashree Bima Yojana;
  - (b) Aam Aadmi Bima Yojana;
  - (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of ₹ 2,00,000.
  - (d) Varishtha Pension Bima Yojana;
  - (e) Pradhan Mantri Jeevan Jyoti Bima Yojana;
  - (f) Pradhan Mantri Jan Dhan Yojana;
  - (g) Pradhan Mantri Vaya Vandana Yojana
- are exempt.



**SERVICES PROVIDED BY SPECIFIED BODIES**

**(69) ESI Services [Entry 30 of Notification No. 12/2017-CT (Rate)]:**

Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 are exempt.

**(70) EPF Services [Entry 31 of Notification No. 12/2017-CT (Rate)]:**

Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 are exempt.

**(71) Services by Coal Mines Provident Fund Organisation [Entry 31A of Notification No. 12/2017-CT (Rate)]:**

Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 are exempt.

**(72) Services by National Pension system (NPS) Trust [Entry 31B of Notification No. 12/2017-CT (Rate)]:**

Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee are exempt.

**(73) IRDA Services [Entry 32 of Notification No. 12/2017-CT (Rate)]:**

Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 are exempt.

**(74) Investor protection services by SEBI [Entry 33 of Notification No. 12/2017-CT (Rate)]:**

Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market are exempt.

**GENERAL INSURANCE BUSINESS SERVICES**

**(75) General Insurance Services [Entry 35 of Notification No. 12/2017-CT (Rate)]:**

Services of general insurance business provided under following schemes -

- (a) Hut Insurance Scheme;
- (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme);
- (c) Scheme for Insurance of Tribals;
- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) Premia collected on export credit insurance;
- (h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) Pradhan Mantri Fasal Bima Yojana (PMFBY);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana;
- (o) Coconut Palm Insurance Scheme;
- (p) Pradhan Mantri Suraksha Bima Yojana;
- (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

**(r) Bangla Shasya Bima [Amended vide Notification No. 21/2019-CT (Rate) w.e.f. 01-10-2019]**  
are exempt.

**(76) Re-Insurance services [Entry 36A of Notification No. 12/2017-CT (Rate)]:**

Services by way of reinsurance of the insurance schemes specified in Entry No. 35 or 36 or 40 are exempt.

**PENSION SCHEMES**

- (77) **Collection of contribution under Atal Pension Yojana (APY) [Entry 37 of Notification No. 12/2017-CT (Rate)] :**  
 Services by way of collection of contribution under the Atal Pension Yojana are exempt.
- (78) **Collection of contribution under pension schemes of State Government [Entry 38 of Notification No. 12/2017-CT (Rate)] :**  
 Services by way of collection of contribution under any pension scheme of the State Governments are exempt.

**BUSINESS FACILITATOR / CORRESPONDENT**

- (79) **Business facilitator/correspondent [Entry 39 of Notification No. 12/2017-CT (Rate)] :**  
 Services by the following persons in respective capacities—
- business facilitator or a business correspondent** to a banking company with respect to accounts in its rural area branch;
  - 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 are exempt.

**LEASING SERVICES**

- (80) **Upfront amount payable in respect of service by way of granting of long term lease of industrial plots or plots for development of infrastructure for financial business [Entry 41 of Notification No. 12/2017-CT (Rate)] :**  
 Upfront amount (*called as premium, salami, cost, price, development charges or by any other name*) payable in respect of service by way of granting of **long term lease of 30 years, or more** of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having **50% or more ownership** of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area is exempt.  
**Explanation:** The Central Government, State Government or Union territory shall have 50% or more ownership in the entity directly or through an entity which is wholly owned by the CG, SG/UT.

<i>Circular No. 101/20/2019-GST dated 30-04-2019</i>	Upfront amount payable in installments for long term lease of plots – exempt from GST.
--	--

- (81) **Services of leasing of assets by the IRFC to Indian railways [Entry 43 of Notification No. 12/2017-CT (Rate)] :**  
 Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways are exempt.

**LEGAL SERVICES**

- (82) **Legal Services [Entry 45 of Notification No. 12/2017-CT (Rate)] [Amended by Notification No. 21/2019-CT (Rate) w.e.f. 01-10-2019] :**  
 Services provided by—

(a)	an <b>arbitral tribunal</b> to –	(i) any person other than a business entity; or (ii) a business entity with an <b>aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017</b> ; or (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;
(b)	a <b>partnership firm</b> of advocates or an individual as an advocate other than a senior advocate, by way of legal services to—	(i) an advocate or partnership firm of advocates providing legal services; (ii) any person other than a business entity; or (iii) a business entity with an <b>aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017</b> ; or (iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;

(c)	a senior advocate by way of legal services to-	(i) any person other than a business entity; or (ii) a business entity with an <b>aggregate turnover up to such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST Act, 2017;</b> (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity;
are exempt.		

* "Arbitral tribunal" means a sole arbitrator or a panel of arbitrators. [Section 2(d) of the Arbitration and Conciliation Act, 1996]
* "Advocate" means an advocate entered in any roll under the provisions of the Advocates Act, 1961. [Section 2(1)(a) of the Advocates Act, 1961]
* <b>Senior Advocate</b> : Section 16 of the Advocates Act, 1961 provides that an advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.
* "Legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority. [Para 2(zm) of Notification No. 12/2017-CT (Rate)]

**Other Aspects :****(a) Reverse charge:**

	Category of Supply of Services	Supplier of service	Recipient of Service (Liable to pay GST)
1.	Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.	An individual advocate including a senior advocate or firm of advocates.	Any business entity located in the taxable territory. Business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services.
2.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.

**(b) Circular No. 27/01/2018-GST dated 04-01-2018 - Reverse charge :**

Questions/ Clarifications sought	Clarifications
Whether legal services other than representational services provided by an individual advocate or a senior advocate to a business entity are liable for GST under reverse charge mechanism?	<b>Yes.</b> In case of legal services including representational services provided by an advocate including a senior advocate to a business entity, GST is required to be paid by the recipient of the service under reverse charge mechanism, i.e. the business entity.

**Illustration 28 - Legal Service:** X & Co. a partnership firm of Advocates, is providing legal consultancy services, for the second consecutive year. The firm furnishes the following information relating to the services rendered, bills raised, amounts received relating to this service, for the month ending 31-1-2020 :

	₹
(1) Free services rendered to poor people (Value of the services computed on comparative basis)	40,000
(2) Advances received from business clients for which no service has been rendered so far	5,00,000
(3) Services supplied to individuals who were not carrying on business	2,00,000

Compute tax liability if rate of GST is 18%.

**Solution:**

- (1) No GST will be payable on free services rendered to poor people.
- (2) Tax payable on advance received of ₹ 5,00,000. [However, GST @ 18% is payable by business clients (i.e. service receiver) under reverse charge and not by X & Co.]
- (3) Services supplied to individuals who were not carrying on business - Since services are provided to non-business entity, the same is exempt vide Entry 45 of Notification No. 12/2017-CT (Rate).

**SPONSORSHIP OF SPORTS**

**(83) Sponsorship of sporting events [Entry 53 of Notification No. 12/2017-CT (Rate)] :**

Services by way of sponsorship of sporting events organised –

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
  - (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
  - (c) by the Central Civil Services Cultural and Sports Board;
  - (d) as part of national games, by the Indian Olympic Association; or
  - (e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme
- are exempt.

**SKILL DEVELOPMENT SERVICES**

**(84) Services provided by National Skill Development Corporation/ Sector Skill Council/ Assessment Agency/ Training Partner [Entry 69 of Notification No. 12/2017-CT (Rate)] :**

Any services provided by, –

- (a) the National Skill Development Corporation set up by the Government of India;
  - (b) a Sector Skill Council approved by the National Skill Development Corporation;
  - (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;
  - (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council in relation to –
    - (i) the National Skill Development Programme implemented by the National Skill Development Corporation; or
    - (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
  - (iii) any other Scheme implemented by the National Skill Development Corporation
- are exempt.

**(85) Services of assessing bodies by way of assessments under the Skill Development Initiative Scheme [Entry 70 of Notification No. 12/2017-CT (Rate)]:**

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

**(86) Services provided by training providers under Deen Dayal Upadhyaya Grameen Kaushalya Yojana [Entry 71 of Notification No. 12/2017-CT (Rate)] :**

Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training are exempt.

**Illustration 29 – Educational services :** Educators Ltd., providing educational services, furnishes you with the following information for the various services provided by it. It has collected an aggregate sum of ₹ 25 lakhs during the month ended 30-09-2019 as under –

- (1) Receipts of 'Gyan sagar' an industrial training institute (ITI) affiliated to the National Council for Vocational Training (NCVT) : ₹ 1.2 lakhs
- (2) Receipts of 'Edu care' a vocational education provider affiliated to Sector Skill Council formed under National Skill Development Corporation (NSDC) : ₹ 1.8 lakhs
- (3) Receipts of 'Abhigyan Skill Centre' an industrial training centre (ITC) affiliated to the State Council for Vocational Training, Rajasthan : ₹ 2 lakhs
- (4) Receipts of 'Mission', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESK) approved by the National Council of Vocational Training : ₹ 1 lakhs
- (5) Receipts of 'Scinart' a Commercial coaching institute providing commercial coaching in the field of arts and science : ₹ 0.8 lakhs (no certificate was issued on completion of the training)

- (6) Receipts of 'Commerce concepts' a Commercial coaching institute providing coaching in the field of commerce : ₹ 1.2 lakhs (a certificate was awarded to each trainee after completion of the training)
- (7) Receipts of Gurukul school providing education upto higher secondary : ₹ 6 lakhs
- (8) Receipts of 'Play Kids' school providing education upto primary level : ₹ 11 lakhs (such receipts includes receipts from renting of premises to commercial coaching centre : ₹ 3 lakhs)

Compute the value of taxable supply and GST payable thereon. All the amounts are exclusive of GST. Rate of GST-18%.

**Solution: Computation of Value of taxable supply and GST liability (amount in ₹)–**

Total Receipts	25,00,000
<b>Less:</b> Receipts of 'Gyan sagar' an industrial training institute (ITI) affiliated to the National Council for Vocational Training (NCVT), are not liable to GST, since the same are exempt <i>vide</i> Entry 66 of Notification No. 12/2017-CT (Rate).	-1,20,000
<b>Less:</b> Receipts of 'Edu-care' a vocational education provider affiliated to Sector Skill Council formed under National Skill Development Corporation (NSDC) are exempt <i>vide</i> Entry 69 of Notification No. 12/2017-CT (Rate).	-1,80,000
<b>Less:</b> Receipts of 'Abhigyan Skill Centre' an industrial training centre (ITC) affiliated to the State Council for Vocational Training, Rajasthan, not liable to GST, since the same are exempt <i>vide</i> Entry 66 of Notification No. 12/2017-CT (Rate).	-2,00,000
<b>Less:</b> Receipts of 'Mission', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESK) approved by the National Council of Vocational Training - Not liable to GST, since the same is exempt <i>vide</i> Entry 66 of Notif. No. 12/2017-CT (Rate).	-1,00,000
<b>Less:</b> Receipts of 'Scinart' a Commercial coaching institute providing commercial coaching in the field of arts and science shall be liable for GST.	Taxable
<b>Less:</b> Receipts of 'Commerce concepts' a Commercial coaching institute providing coaching in the field of commerce shall be liable for GST irrespective of the fact that a certificate was awarded to each trainee after completion of the training.	Taxable
<b>Less:</b> Receipts of Gurukul school providing education upto higher secondary shall are exempt <i>vide</i> Entry 66 of Notification No. 12/2017-CT (Rate)].	-6,00,000
<b>Less:</b> Receipts of 'Play Kids' school providing education upto primary level <i>i.e.</i> ₹ 8 lakhs are exempt <i>vide</i> Entry 66 of Notification No. 12/2017-CT (Rate). However, receipts from renting of premises by the school to commercial coaching centre shall be liable for GST.	-8,00,000
<b>Value of taxable supply</b>	<b>5,00,000</b>
<b>GST payable @ 18%</b>	<b>90,000</b>

#### PERFORMANCE BY ARTIST

#### (87) Art related services [Entry 78 of Notification No. 12/2017-CT (Rate)] :

Services by an artist by way of a performance in folk or classical art forms of— (a) music, or (b) dance, or (c) theatre, if the consideration charged for such performance is **not more than ₹ 1,50,000** are exempt.

However, the exemption shall not apply to service provided by such artist as a **brand ambassador**.

⊕ "Brand ambassador" means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person. [Para 2(m) of Notification No. 12/2017-CT (Rate)]

**Other Aspects :** All other activities by an artist in other art forms *e.g.* western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly activities of artists in still art forms *e.g.* painting, sculpture making etc. are taxable.

**Illustration 30 – Art related service :** Kesar Maharaj, a registered supplier, gave a classical dance performance in an auditorium. The consideration charged for the said performance is ₹ 1,48,500. Is Kesar Maharaj liable to pay GST on the consideration received for the said performance if such performance is not for promotion of any product/ services? If yes, determine his GST liability (CGST and SGST or IGST, as the case may be). Will your answer be different if:

- (i) Kesar Maharaj is a brand ambassador of a food product and aforesaid performance is for the promotion of such food product?



- (ii) the dance performance given by Kesar Maharaj is not a classical dance performance, but a contemporary Bollywood style dance performance?
- (iii) consideration charged by Kesar Maharaj for the classical dance performance is ₹ 1,60,000?

Notes:

- (1) Services provided by Kesar Maharaj are intra-State supplies.
- (2) Wherever applicable, GST has been charged separately.
- (3) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively. (MTP, May 2018)

**Solution:** Notification No. 12/2017-CT (R) dated 28-06-2017 exempts services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre, if the consideration charged for such performance is not more than ₹ 1,50,000. However, exemption will not apply to service provided by such artist as a brand ambassador.

In view of the aforesaid provisions, services provided by Kesar Maharaj are exempt from GST as consideration for the classical dance performance has not exceeded ₹ 1,50,000. Therefore, his GST liability is nil.

- (i) If Kesar Maharaj is a brand ambassador of a food product and aforesaid performance is for the promotion of such food product, he will be liable to pay GST as aforesaid exemption is not applicable to service provided by an artist as a brand ambassador. His CGST and SGST liability would, therefore, be ₹ 13,365 (₹ 1,48,500 × 9%) and ₹ 13,365 (₹ 1,48,500 × 9%) respectively.
- (ii) If Kesar Maharaj gives a contemporary Bollywood style dance performance, such performance will not be eligible for aforesaid exemption. The reason for the same is that although the consideration charged does not exceed ₹ 1,50,000, said performance is not in folk or classical art forms of dance. Hence, GST would be payable on the same. His CGST and SGST liability would, therefore, be ₹ 13,365 (₹ 1,48,500 × 9%) and ₹ 13,365 (₹ 1,48,500 × 9%) respectively.
- (iii) If the consideration charged for the classical dance performance by Kesar Maharaj is ₹ 1,60,000, he will be liable to pay GST on the same as although the performance is by way of classical art form of dance, consideration charged for such performance has exceeded ₹ 1,50,000. His CGST and SGST liability would, therefore, be ₹ 14,400 (₹ 1,60,000 × 9%) and ₹ 14,400 (₹ 1,60,000 × 9%) respectively.

#### RIGHT TO ADMISSION TO VARIOUS EVENTS

- (88) **Services by way of admission to museum, national park etc. [Entry 79 of Notification No. 12/2017-CT (Rate)] :**  
Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo are exempt.
- (89) **Services by way of admission to protected monument [Entry 79A of Notification No. 12/2017-CT (Rate)] :**  
Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or any of the State Acts, for the time being in force are exempt.
- (90) **Admission to entertainment events or access to amusement facilities [Entry 81 of Notification No. 12/2017-CT (Rate)] :**  
Services by way of right to admission to—
- (a) circus, dance, or theatrical performance including drama or ballet;
  - (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;
  - (c) recognised sporting event;
  - (d) planetarium,

where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is **not more than ₹ 500 per person** are exempt.

⊙ "Recognised sporting event" means any sporting event,—

- (i) organised by a recognised sports body where the participating team or individual represent any district, state, zone or country;
- (ii) organised—
  - (A) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, state or zone;
  - (B) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;



- (C) by Central Civil Services Cultural and Sports Board;  
 (D) as part of national games, by Indian Olympic Association; or  
 (E) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme. [Para 2(zw) of Notification No. 12/2017-CT (Rate)]

**Other Aspects:**

- (i) Total bet value is the value of taxable supply in case of Entry to casinos and Gambling Services [Circular No. 27/01/2018-GST dated 04-01-2018]  
 (ii) Elephant/camel joy rides - Not covered under Passenger Transportation Services

**Illustration 31 - Entertainment/ Amusement:** Compute value and GST from following sums received by M/s. A Ltd. (exclusive of GST) -

- (1) Holding a dance programme, entry tickets whereof were sold for ₹ 1,000 per person : ₹ 75 lakh;
- (2) Holding a dance programme, entry tickets whereof were sold for ₹ 100 per person : ₹ 10 lakh;
- (3) Admission to Planetarium, entry tickets whereof were sold for ₹ 1,000 per person : ₹ 1 lakh;
- (4) Holding a cricket match between India and South Africa organized by BCCI, entry tickets whereof were sold for ₹ 100 per person : ₹ 50 lakh;
- (5) Holding an Indian Premier League (IPL), entry tickets whereof were sold for ₹ 750 per person : ₹ 60 lakh;
- (6) Holding an award function, entry tickets whereof were sold for ₹ 250 per person : ₹ 25 lakh;
- (7) Collections from a joy-rides : ₹ 10 lakh;
- (8) Running a video-parlour showing cinematographic films (ticket is ₹ 150 per person) : ₹ 1.5 lakh;
- (9) Acting as an event manager for organisation of an entertainment event : ₹ 6 lakh;
- (10) Receipts from running a circus (Ticket is ₹ 1,000 per person) : ₹ 2 lakhs;
- (11) Ballet, with ticket prices of ₹ 1,200 per person : ₹ 12 lakh;
- (12) Gambling Services and Casinos : Bet Value ₹ 50 lakh, Earning ₹ 5 lakh.

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹) -**

(1)	Holding a dance programme, entry tickets whereof were sold for ₹ 1,000 per person	75,00,000
(2)	Holding a dance programme, entry tickets whereof were sold for ₹ 100 per person [Exempt vide Entry 81 of Notification No. 12/2017-CT (Rate)]	Exempt
(3)	Admission to Planetarium, entry tickets whereof were sold for ₹ 1,000 per person [Liable to GST]	1,00,000
(4)	Holding a cricket match between India and South Africa organized by BCCI, entry tickets whereof were sold for ₹ 100 per person [Exempt vide Entry 81 of Notification No. 12/2017-CT (Rate), as price is upto ₹ 500 per person]	Exempt
(5)	Holding an Indian Premier League (IPL), entry tickets whereof were sold for ₹ 750 per person	60,00,000
(6)	Holding an award function, entry tickets whereof were sold for ₹ 250 per person [Exempt, as price is upto ₹ 500 per person]	Exempt
(7)	Collections from a joy-rides	10,00,000
(8)	Running a video-parlour showing cinematographic films [Ticket is ₹ 150 per person]	1,50,000
(9)	Acting as an event manager for organisation of an entertainment event	6,00,000
(10)	Receipts from running a circus	2,00,000
(11)	Ballet, with ticket prices of ₹ 1,200 per person	12,00,000
(12)	Gambling Services and Casinos Bet Value	50,00,000
<b>Value of taxable supply</b>		<b>2,17,50,000</b>

**SERVICES BY UNINCORPORATED BODY OR NON PROFIT ENTITY**

(91) **Service by an unincorporated body or a non-profit entity to members [Entry 77 of Notif. No. 12/2017-CT (Rate)]:**

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 goods and service tax; or
- (c) up to an amount of ₹ 7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex, are exempt.

Other Aspects :

Clarification on issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members. [Circular No.109/28/2019-GST dated 22-07-2019]																
	Issue	Clarification														
1.	Are the maintenance charges paid by residents to the Resident Welfare Association (RWA) in a housing society exempt from GST and if yes, is there an upper limit on the amount of such charges for the exemption to be available?	Supply of service by RWA (unincorporated body or a non-profit entity registered under any law) to its own members by way of reimbursement of charges or share of contribution up to an amount of ₹ 7,500 per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.														
2.	A RWA has aggregate turnover of ₹ 20 lakh or less in a financial year. Is it required to take registration and pay GST on maintenance charges if the amount of such charges is more than ₹ 7,500/- per month per member?	<p>No. If aggregate turnover of an RWA does not exceed ₹ 20 lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds ₹ 7,500/- per month per member.</p> <p>RWA shall be required to pay GST on monthly subscription/contribution charged from its members, only if such subscription is more than ₹ 7,500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also ₹ 20 lakhs or more.</p> <table border="1"> <thead> <tr> <th>Annual turnover of RWA</th> <th>Monthly maintenance charge</th> <th>Whether exempt?</th> </tr> </thead> <tbody> <tr> <td rowspan="2">More than ₹ 20 lakhs</td> <td>More than ₹ 7,500/-</td> <td>No</td> </tr> <tr> <td>₹ 7,500/- or less</td> <td>Yes</td> </tr> <tr> <td rowspan="2">₹ 20 lakhs or less</td> <td>More than ₹ 7,500/-</td> <td>Yes</td> </tr> <tr> <td>₹ 7,500/- or less</td> <td>Yes</td> </tr> </tbody> </table>		Annual turnover of RWA	Monthly maintenance charge	Whether exempt?	More than ₹ 20 lakhs	More than ₹ 7,500/-	No	₹ 7,500/- or less	Yes	₹ 20 lakhs or less	More than ₹ 7,500/-	Yes	₹ 7,500/- or less	Yes
Annual turnover of RWA	Monthly maintenance charge	Whether exempt?														
More than ₹ 20 lakhs	More than ₹ 7,500/-	No														
	₹ 7,500/- or less	Yes														
₹ 20 lakhs or less	More than ₹ 7,500/-	Yes														
	₹ 7,500/- or less	Yes														
3.	Is the RWA entitled to take input tax credit of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than ₹ 7,500/- per month per member?	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.														
4.	Where a person owns two or more flats in the housing society or residential complex, whether the ceiling of ₹ 7,500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or per person.	<p>As per general business sense, a person who owns two or more residential apartments in a housing society or a residential complex shall normally be a member of the RWA for each residential apartment owned by him separately. The ceiling of ₹ 7,500/- per month per member shall be applied separately for each residential apartment owned by him</p> <p><i>For example</i>, if a person owns two residential apartments in a residential complex and pays ₹ 15,000/- per month as maintenance charges towards maintenance of each apartment to the RWA (₹ 7,500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment.</p>														
5.	How should the RWA calculate GST payable where the maintenance charges exceed ₹ 7,500/- per month per member? Is the GST payable only on the amount exceeding ₹ 7,500/- or on the entire amount of maintenance charges?	<p>The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed ₹ 7,500/- per month per member. In case the charges exceed ₹ 7,500/- per month per member, the entire amount is taxable.</p> <p><i>For example</i>, if the maintenance charges are ₹ 9,000/- per month per member, GST @ 18% shall be payable on the entire amount of ₹ 9,000/- and not on [₹ 9,000 - ₹ 7,500] = ₹ 1,500/-</p>														

**(92) Service by an unincorporated body or a non-profit entity to members [Entry 77A of Notification No. 12/2017-CT (Rate)] :**

Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,-

- (i) activities relating to the welfare of industrial or agricultural labour or farmers; or
- (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,

to its own members against consideration in the form of membership fee upto an amount of ₹ 1,000 per member per year are exempt.

**Illustration 32 – Services provided by Resident Welfare Association :** The Resident Welfare Association (RWA) of Blue Heaven Housing Society in Delhi provides the following information with respect to the various amounts received by it in the month of November, 2019.

Particulars	₹
(1) Monthly subscription collected from member families (₹ 10,000 each from 100 families)	10,00,000
(2) Electricity charges levied by State Electricity Board on the members of RWA [The same was collected from members and remitted to the Board on behalf of members.]	3,50,000
(3) Electricity charges levied by State Electricity Board on the RWA in respect of electricity consumed for common use of lifts and lights in common area. [Bill was raised in the name of RWA. RWA collected the said charges by apportioning them equally among 100 families and then, remitted the same to the Board.]	4,32,400
(4) Proceeds from sale of entry tickets to a musical performance conducted by the RWA in the park of Blue Heaven Housing Society [Where the consideration for admission is not more than ₹ 500 per person.]	40,000
(5) Other Services to non-members	2,92,000

Compute the value of taxable supply and GST liability of RWA of Blue Heaven Housing Society for the month of November, 2019. It does not avail threshold exemption.

**Notes:** (i) Wherever applicable, GST is leviable separately and not included in the receipts of RWA. (ii) Wherever applicable, the time of supply falls in the month of November, 2019. (iii) Rate of GST - 18%.

**Solution: Computation of Value of taxable supply and GST liability (amount in ₹) –**

Monthly subscription charges	[WN 1]	10,00,000
Amount collected towards electricity charges levied by State Electricity Board on the members of RWA	[WN 2]	-
Amount collected towards electricity charges levied by State Electricity Board on the RWA in respect of electricity consumed for common use of lifts and lights in common area	[WN 3]	4,32,400
Proceeds from sale of entry tickets to musical performance held in the park of the Housing Society	[WN 4]	-
Other Services to non members [Liable for GST]		2,92,000
<b>Value of taxable supply</b>		<b>17,24,400</b>
<b>GST payable @ 18%</b>		<b>3,10,392</b>

**Working Notes:**

- (1) If per month per member contribution of any or some members of a RWA exceeds ₹ 7,500, entire contribution of such members whose per month contribution exceeds ₹ 7,500 would be ineligible for the exemption under the said notification. GST would then be leviable on the aggregate amount of monthly contribution of such members. [Circular No.109/28/2019-GST dated 22-07-2019]
- (2) Services provided by a RWA in the name of its members, acting as a “pure agent” of its members, are excluded from value of taxable supply available for the purposes of exemption provided under mega exemption notification.
- (3) In the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts and lights in common area, etc., the exclusion from the value of taxable supply would not be available, since there is no agent involved in these transactions.
- (4) Entry to entertainment events where the consideration for admission is not more than ₹ 500 per person is exempt vide Entry 81 of Notification No. 12/2017-CT (Rate).

OTHER EXEMPT SERVICES

- (93) **Transfer of going concern [Entry 2 of Notification No. 12/2017-CT (Rate)] :**  
Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt.
- (94) **Supply of services associated with transit cargo to Nepal and Bhutan (Landlocked Countries) [Entry 9B of Notification No. 12/2017-CT (Rate)] :**  
Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) are exempt.
- (95) **Renting of residential dwelling for use as residence [Entry 12 of Notification No. 12/2017-CT (Rate)]:**  
Services by way of renting of residential dwelling for use as residence are exempt.
- (96) **Services by hotels etc. having value not exceeding ₹ 1,000 or equivalent [Entry 14 of Notification No. 12/2017-CT (Rate)] [Amended by Notification No. 21/2019-CT (Rate) w.e.f. 01-10-2019] :**  
Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below or equal to ₹ 1,000 per day or equivalent are exempt.

**Illustration 33 - Accommodation services :** M/s. XYZ Ltd. owns hotel, other immovable properties and is engaged in letting of the same.

- (1) Hotel rooms are let out at declared tariff of ₹ 1,100 per room day but actual room rent charged is ₹ 1,000 per room day. Number of days for which it is let out - 50 days;
- (2) Guest house is let out at declared tariff of ₹ 1,900 per room day and actual room rent charged is ₹ 1,700 per room day. Number of days for which it is let out - 60 days;
- (3) Dharmashala rooms (non-commercial) is given on rent. Declared tariff being ₹ 800 per room day but actual room rent charged ₹ 1,200 per room day. Number of days for which it is let out - 60 days;

Compute the amount of GST payable if all charges are exclusive of GST. Rate of CGST is 6% and SGST is 6%. The information pertains to quarter ending 30-09-2019.

**Solution: Computation of the Value of taxable supply & GST payable (amount in ₹):**

(1) Hotel rooms let out [Exempt vide. Entry 14 of Notification No. 12/2017-CT (Rate), since the value of supply is upto ₹1,000 even if the declared tariff is ₹ 1,100]	Exempt
(2) Guest house let out [Taxable since the value of accommodation exceeds ₹ 1,000] [Gross amount charged (₹1,700 × 60) = ₹ 36,000]	102000
(3) Dharmashala rooms given on rent. [Taxable even if it is non commercial since value of supply is not less than ₹ 1,000] [Gross amount charged (₹ 1,200 × 60) = ₹ 72,000]	72,000
<b>Total Value of taxable supply</b>	<b>1,74,000</b>
CGST payable @ 6%	10,440
SGST payable @ 6%	10,440
<b>Total GST payable</b>	<b>20,880</b>

**Illustration 34 - Renting of immovable property :** ABC Ltd. is engaged in business of renting of immovable property. During the month of March, its receipts are as follows -

Receipts	Amount (₹)
(1) Rent of the commercial building (including property tax of ₹ 2,00,000)	11,00,000
(2) Vacant land, given on lease for construction of building at a later stage (such building would be used for commercial purposes)	8,00,000
(3) Let out vacant land for agricultural purposes	10,00,000
(4) A land was let out to Bombay circus	3,25,000

Compute the amount of GST payable by ABC Ltd. assuming the rent is exclusive of GST in each case. Rate of CGST is 9% and SGST is 9%. Make suitable assumptions.

**Solution: Computation of GST payable by ABC Ltd. for the month of March (amount in ₹) -**

(1) Rent of the commercial building [No deduction will be allowed of property tax]	11,00,000
(2) Vacant land, given on lease for construction of building at a later stage to be used for commercial purpose - Taxable	8,00,000
(3) Let out vacant land for agricultural purposes [Exempt vide Entry 54 of Notif. No. 12/2017-CT (R)]	Exempt

(4) Land let out to Bombay circus - Taxable	3,25,000
<b>Value of taxable supply</b>	<b>22,25,000</b>
CGST payable @ 9%	2,00,250
SGST payable @ 9%	2,00,250
<b>Total GST payable</b>	<b>4,00,500</b>

**Illustration 35 - Renting of immovable property:** M/s. LST Ltd. registered in New Delhi is engaged in the business of renting of immovable properties owned by it. During the month ended on 30-09-2019, it has collected a rent of ₹ 200 lakhs. The said sum includes rent from,-

- (1) Vacant land used for horticulture : ₹ 10 lakhs
- (2) Land used for Bombay Circus : ₹ 16 lakhs
- (3) Residential Houses are let out to individuals for residential purpose : ₹ 7 lakhs
- (4) A building let out to RBI : ₹ 12 lakhs
- (5) A temple hall was let out for religious purpose for general public : ₹ 15 lakhs
- (6) A building was let out to A Ltd. to be used as corporate office : ₹ 30 lakhs (includes ₹ 4 lakhs on account of municipal tax)
- (7) Allowed B Ltd. to use space of building for placing vending machines : ₹ 9 lakhs
- (8) A building located in Nepal was let to Mr. Y (registered in New Delhi) to be used as hotel : ₹ 21 lakhs
- (9) A building was let out to Seedling Public School : ₹ 25 lakhs
- (10) A building was let out to Bansal Classes for providing coaching classes of CA : ₹ 5 lakhs
- (11) Residential houses let out to individuals for commercial use : ₹ 10 lakhs.

Compute the amount of GST payable by M/s. LST Ltd. assuming the rent is exclusive of GST in each case. Rate of CGST is 9% and SGST is 9%.

**Solution: Computation of Value of taxable supply and GST payable (₹ in lakhs) :**

Total rent	200
<b>Less: Amounts that do not form part of the taxable supply -</b>	
(1) Vacant land used for Horticulture [Exempt vide Entry 54 of of Notification No. 12/2017-CT (Rate)]	10
(2) Land used for Bombay Circus [Liable to GST]	Taxable
(3) Residential House let out for residential purpose. [Exempt vide Entry 12 of Notification No. 12/2017-CT (Rate)]	7
(4) Building let out to RBI [Liable to GST]	Taxable
(5) Temple hall let out for religious purpose meant for general public [Liable to GST] [Since LST Ltd. is not a charitable or religious trust u/s 12AA; or a trust or an institution registered u/s 10(23C) (v); or a body or an authority covered u/s 10(23BBA) of the Income-tax Act, 1961. it will not be entitled Exemption given vide Entry 13 of Notification No. 12/2017-CT (Rate)]	Taxable
(6) Building let out to A Ltd. to be used as corporate office [Liable to GST] [No deduction shall be allowed of municipal tax]	Taxable
(7) Allowing of space for placing vending machines [Since allowing the space to use is also covered under definition of renting]	Taxable
(8) Building located in Nepal was let out to Mr. Y registered in New Delhi [Since both service supplier and recipient are in India and immovable property is outside India, the place of supply shall be the location of the recipient of service i.e. New Delhi - hence taxable]	Taxable
(9) Building let out to Seedling Public School [Liable to GST]	Taxable
(10) Building let out to Bansal classes [Liable to GST]	Taxable
(11) Residential houses let out to individuals for commercial use [Not exempt since the said houses are used for commercial purposes.]	Taxable
<b>Value of taxable supply</b>	<b>183</b>
CGST payable @ 9%	16.47
SGST payable @ 9%	16.47
<b>Total GST payable</b>	<b>32.94</b>

(97) Hiring of means of transport of passengers and goods [Entry 22 of Notification No. 12/2017-CT (Rate)] [Amended by Notification No.13/2019-CT (Rate) w.e.f. 1-8-2019]:

Services by way of giving on hire -

- (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- (aa) to a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; or

- (b) to a goods transport agency, 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.  
are exempt.

**Illustration 36 – Hiring services :** From the following information pertaining to month ending 30-09-2019, compute the value of taxable supply if all charges are exclusive of GST–

- (1) Renting of bus to state transport undertaking : ₹ 15 lakh
- (2) Renting of goods vehicle to a goods transport agency : ₹ 25 lakh
- (3) Renting of cars designed to carry passengers to a goods transport agency : ₹ 20 lakh
- (4) Renting of dumpers : ₹ 15 lakh
- (5) Hiring of audio visual equipments for an event : ₹ 15 lakhs
- (6) Hiring of pandal or shamiana for organizing functions/events : ₹ 20 lakh
- (7) Hiring of a machinery with transfer of right to use : ₹ 60 lakh [The rate of tax on sale of such machinery (with transfer of title) is 12%]
- (8) Renting of Electrically operated vehicle to a local authority : ₹ 25 lakh
- (9) Hiring of agro machinery for use in agriculture : ₹ 15 lakh

**Solution: Computation of Value of taxable supply (amount in ₹) –**

(1) Renting of bus to state transport undertaking [Exempt vide Entry 22 of Notification No. 12/2017-CT (Rate)]	Exempt
(2) Renting of goods vehicle to a goods transport agency [Exempt vide Entry 22 of Notification No. 12/2017-CT (Rate)]	Exempt
(3) Renting of cars designed to carry passengers to a goods transport agency – Not exempt	20,00,000
(4) Renting of dumpers – Taxable	15,00,000
(5) Hiring of audio visual equipments for an event – Taxable	15,00,000
(6) Hiring of pandal or shamiana for organizing functions/events – Taxable	20,00,000
(7) Hiring of a machinery with transfer of right to use.	60,00,000
(8) Renting of Electrically operated vehicle to a local authority [Exempt vide Entry 22 of Notification No. 12/2017-CT (Rate)]	Exempt
(9) Hiring of agro machinery for use in agriculture [Exempt vide Entry 54 of Notification No. 12/2017-CT (Rate)]	Exempt
<b>Total Value of taxable supply</b>	<b>1,30,00,000</b>

- (98) **Access to a road or a bridge on payment of toll charges [Entry 23 of Notification No. 12/2017-CT (Rate)] :**  
Service by way of access to a road or a bridge on payment of toll charges is exempt.
- (99) **Service by way of access to a road or a bridge on payment of annuity [Entry 23A of Notification No. 12/2017-CT (Rate)]:**  
Service by way of access to a road or a bridge on payment of annuity is exempt.
- (100) **Transmission or distribution of electricity by an electricity transmission or distribution utility [Entry 25 of Notification No. 12/2017-CT (Rate)] :**  
Transmission or distribution of electricity by an electricity transmission or distribution utility is exempt.

**Other Aspects: Circular No. 34/8/2018-GST dated 1-3-2018 :**

Issue	Clarification
Whether the activities carried by DISCOMS against recovery of charges from consumers under State Electricity Act are exempt from GST?	Services other than service by way of transmission or distribution of electricity by an electricity transmission or distribution utility such as, - (i) Application fee for releasing connection of electricity; (ii) Rental Charges against metering equipment; (iii) Testing fee for meters/ transformers, capacitors etc.; (iv) Labour charges from customers for shifting of meters or shifting of service lines; (v) Charges for duplicate bill; provided by DISCOMS to consumer are taxable.



**(101) Technology business incubatee services [Entry 44 of Notification No. 12/2017-CT (Rate)] :**

Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a financial year are exempt subject to the following conditions, namely:

- (a) the total turnover had not exceeded ₹ 50 lakh during the preceding financial year; and
- (b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.

⊛ "Incubatee" means an entrepreneur located within the premises of a Technology Business Incubator or Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board (NSTEDB) of the Department of Science and Technology, Government of India and who has entered into an agreement with the Technology Business Incubator or the Science and Technology Entrepreneurship Park to enable himself to develop and produce hi-tech and innovative products. [Para 2(zh) of Notification No. 12/2017-CT (Rate)]

**(102) FSSAI services to Food Business Operators [Entry 47A of Notification No. 12/2017-CT (Rate)] :**

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.

**(103) Services by TBI/ Step/ Bio-incubator [Entry 48 of Notification No. 12/2017-CT (Rate)] :**

Taxable services, provided or to be provided, by a Technology Business Incubator or a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or bio-incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India are exempt.

**(104) News Agency Services [Entry 49 of Notification No. 12/2017-CT (Rate)] :**

Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India are exempt.

**(105) Services of public libraries [Entry 50 of Notification No. 12/2017-CT (Rate)] :**

Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material are exempt.

**(106) Organising business exhibition outside India [Entry 52 of Notification No. 12/2017-CT (Rate)] :**

Services by an organiser to any person in respect of a business exhibition held outside India are exempt.

**(107) Slaughtering of animals [Entry 56 of Notification No. 12/2017-CT (Rate)] :**

Services by way of slaughtering of animals are exempt.

**(108) Services by foreign diplomatic mission [Entry 59 of Notification No. 12/2017-CT (Rate)] :**

Services by a foreign diplomatic mission located in India are exempt.

**(109) Information under RTI Act [Entry 65A of Notification No. 12/2017-CT (Rate)] :**

Services by way of providing information under the Right to Information Act, 2005 are exempt.

**(110) Sports related services [Entry 68 of Notification No. 12/2017-CT (Rate)] :**

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 recognised sports body;
  - (b) another recognised sports body
- are exempt.

⊛ "Recognised sports body" means –

- (i) the Indian Olympic Association;
- (ii) Sports Authority of India;
- (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations;
- (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government;
- (v) the International Olympic Association or a federation recognised by the International Olympic Association; or

- (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India. [Para 2(zx) of Notification No. 12/2017-CT (Rate)]

**Illustration 37 – Sports related services:** Mr. X a famous cricketer furnishes you with the following information of the various receipts for the month ended 30-09-2019. You are required to determine his GST liability if all the amounts are exclusive of GST.

- (1) Receipts from Sports Authority of India for participation in recognised sport : ₹ 50 lakh ;
- (2) Receipts from franchisee of Indian Premier league (not a recognised sports body) : ₹ 75 lakh ;
- (3) Receipts from acting as brand ambassador for corporate client : ₹ 22 lakh ;
- (4) Receipts of sports training academy to coach young players : ₹ 15 lakh.

Rate of GST - 18%.

**Solution: Computation of Value of taxable supply and GST liability (amount in ₹)---**

(1)	Receipts from sports authority of India for participation in recognised sports [Exempt vide Entry No. 68 of Exemption Notification No. 12/2017-CT (Rate)]	Exempt
(2)	Receipts from franchisee of Indian Premier league (not a recognised sports body) [Liable for GST]	75,00,000
(3)	Receipts from acting as brand ambassador for corporate client [Liable for GST]	22,00,000
(4)	Receipts of sports training academy to coach young players [Liable for GST since sports training by charitable entities registered under Section 12AA of the Income-tax Act is exempt vide Entry No. 80 of Exemption Notification No. 12/2017-CT (Rate)]	15,00,000
	<b>Value of Taxable Supply</b>	<b>1,12,00,000</b>
	<b>GST payable @ 18%</b>	<b>20,16,000</b>

- (111) FIFA U-17 Women's World Cup 2020 related services [Entry 9AA of Notification No. 12/2017-CT (Rate)] [Inserted vide Notification No. 21/2019-CT(Rate) w.e.f. 01-10-2019]:

Services provided by and to Fédération Internationale de Football Association (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 are exempt.

**Condition :** Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020.

- (112) Admission to FIFA U-17 Women's world cup 2020 [Entry 82A of Notification No. 12/2017-CT (Rate)] [Inserted vide Notification No. 21/2019-CT(Rate) w.e.f. 01-10-2019]:

Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020 are exempt.

- (113) Public conveniences [Entry 76 of Notification No. 12/2017-CT (Rate)]:

Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets are exempt.

#### LIST OF SERVICES EXEMPT FROM IGST

Apart from the above services, list of services exempt from IGST by Notification No. 9/2017-IT (Rate) dated 28-06-2017 also include following three services –

- (1) Import of services [Entry 10 of Notification No. 9/2017-IT (Rate)] :

Services received from a provider of service located in a non- taxable territory by –

- (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
  - (b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or
  - (ba) way of supply of online educational journals or periodicals to an educational institution other than an institution providing services by way of –
    - (i) pre-school education and education up to higher secondary school or equivalent; or
    - (ii) education as a part of an approved vocational education course;
  - (c) a person located in a non-taxable territory
- are exempt.

However, the exemption shall not apply to –

- (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or
- (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

❖ **“Online information and database access or retrieval services”** shall have the same meaning as assigned to it in clause (17) of the section 2 of the Integrated goods and Services Tax Act, 2017. [Para 2(zr) of Notification No. 12/2017-CT (Rate)]

**(2) Services received by RBI from outside India in relation to management of foreign exchange reserves [Entry 42 of Notification No. 9/2017-IT (Rate)]:**

Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves are exempt.

**(3) Services provided by a tour operator to a foreign tourist [Entry 54 of Notification No. 9/2017-IT (Rate)]:**

Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India are exempt.

❖ **“Tour operator”** means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours. [Para 2(zzm) of Notification No. 12/2017-CT (Rate)]

**(4) Export of services to own establishment outside India provided place of supply is outside India [Entry 10F of Notification No. 9/2017-IT (Rate)]:**

Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in section 8 of the Integrated Goods and Services Tax Act, 2017.

**Condition:** Place of supply of the service is outside India in accordance with section 13 of Integrated Goods and Services Tax Act, 2017.

**(5) Import of services by UN or specified international organisation [Entry 10G of Notification No. 9/2017-IT (Rate)]:**

Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation.

Specified international organisation means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply.

**(6) Import of services by foreign diplomatic mission or consular post in India [Entry 10H of Notification No. 9/2017-IT (Rate)]:**

Import of services by Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein shall be exempt from IGST, subject to the conditions, –

- (i) that the foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein, are entitled to exemption from integrated tax, as stipulated in the certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity;
- (ii) that the services imported are for official purpose of the said foreign diplomatic mission or consular post; or for personal use of the said diplomatic agent or career consular officer or members of his or her family;
- (iii) that in case the Protocol Division of the Ministry of External Affairs, after having issued a certificate to any foreign diplomatic mission or consular post in India, decides to withdraw the same subsequently, it shall communicate the withdrawal of such certificate to the foreign diplomatic mission or consular post;
- (iv) that the exemption from the whole of the integrated tax granted to the foreign diplomatic mission or consular post in India for official purpose or for the personal use or use of their family members shall not be available from the date of withdrawal of such certificate.

- (7) **Intermediaries Services** [Entry 12AA of Notification No. 9/2017-IT (Rate)] [Inserted by Notification No. 20 / 2019-IT (Rate) w.e.f. 1-10-2019]
- Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory are exempt.
- Documentation requirement:** Following documents shall be maintained for a minimum duration of 5 years:
- Copy of Bill of Lading
  - Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods
  - Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in nontaxable territory
  - Copy of certificate of origin issued by service recipient located in nontaxable territory
  - Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory.

#### OTHER EXEMPTIONS

- (8) **Intra-state supplies received by a TDS deductor from any unregistered supplier exempt from CGST** [Notification No. 9/2017-CT (Rate) dated 28-06-2017]:
- Intra-State supplies of goods or services or both received by a deductor under Section 51, from any unregistered supplier, is exempt from the whole of the central tax leviable thereon under Section 9(4), subject to the condition that the deductor is not liable to be registered otherwise than under Section 24(vi).
- (9) **Services imported by Unit/ Developer in SEZ exempt from IGST** [Notification No. 18/2017-IT (Rate) dated 05-07-2017] :
- All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under Section 3(7) of the Customs Tariff Act, 1975 read with Section 5 of the IGST Act, 2017.
- (10) **Government's share of profit from grant of licence/ lease to explore or mine petroleum crude or natural gas - Exemption from Tax** [Notification No. 5/2018-CT (Rate) dated 25-01-2018] :
- The Central Government has exempted the intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, from so much of the central tax as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf.
- Parallel exemption from IGST has been extended to inter-State supply of such services *vide* Notification No. 5/2018-IT (R) dated 25-01-2018.
- (11) **Royalty and licence fee included in transaction value under rule 10(1)(c) of customs valuation rules - exemption from IGST** [Notification No. 6/2018-IT (Rate) dated 25-01-2018] :
- The Central Government has exempted the integrated tax on the supply of services, imported into the territory of India, covered by sub-item (c) of item 5 of Schedule II to the CGST Act, 2017 (*i.e.* temporary transfer or permitting the use or enjoyment of any intellectual property right), to the extent of the aggregate of the duties of Customs leviable under section 3(7) of the Customs Tariff Act, 1975, on the consideration declared under section 14(1) of the Customs Act, 1962 towards royalties and license fees included in the transaction value as specified under Rule 10(1)(c) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on which the appropriate duties of Customs have been paid.

**T.Q. 1:** An individual acts as a referee in a football match organized by Sports Authority of India. He has also acted as a referee in another charity football match organized by a local sports club, in lieu of a lump sum payment. Discuss whether he is required to pay any GST?

**Ans:** Services provided to a recognized sports body by an individual *inter alia* as a referee in a sporting event organized by a recognized sports body is exempt from GST.

Since in the first case, the football match is organized by Sports Authority of India, which is a recognized sports body, services provided by the individual as a referee in such football match will be exempt.

However, when he acts as a referee in a charity football match organized by a local sports club, he would not be entitled to afore-mentioned exemption as a local sports club is not a recognized sports body and thus, GST will be payable in this case.

**Illustration 38 – Distributive Trade Services:** M/s. XYZ Ltd. a registered person, received the following sums (exclusive of taxes). Compute its GST liability if rate of CGST is 9% and SGST is 9% (Ignore threshold exemption) –

- (1) Commission for acting as Clearing and Forwarding Agent : ₹ 3 lakhs ;
- (2) Commission for acting as Commission agent of agricultural produce : ₹ 14 lakhs ;
- (3) Commission for acting as Commission agent of consumers goods : ₹ 10 lakhs ;
- (4) Margin earned from trading in derivatives : ₹ 3 lakhs ;
- (5) Margin from trading in commodity futures : ₹ 4 lakhs.

**Solution: Computation of Value of taxable supply and GST liability (amount in ₹):**

(1) Commission for acting as Clearing and Forwarding Agent – Taxable	3,00,000
(2) Commission for acting as Commission agent of agricultural produce [Exempt vide Entry No. 54 of Exemption Notification No. 12/2017-CT (Rate)]	Nil
(3) Commission for acting as Commission agent of consumers goods – Taxable	10,00,000
(4) Margin earned from trading in derivatives [Derivatives are covered in securities and are neither goods nor services and hence not taxable]	Nil
(5) Margin from trading in commodity futures [Commodity futures are covered in securities and are neither goods nor services and hence not taxable]	Nil
<b>Total Value of taxable supply</b>	<b>13,00,000</b>
CGST payable @ 9%	1,17,000
SGST payable @ 9%	1,17,000
<b>Total GST payable</b>	<b>2,34,000</b>

**Illustration 39 – Distributive Trade Services:** Raj & Co. provide the following details in respect of the services provided and the payments there against received by them for the month of April. Compute the value of taxable supply and the GST payable if rate of CGST is 9% and SGST is 9% thereon :

Particulars	₹ in lakhs
(i) Commission for procurement of services for their client M/s. Shraddha & Co.	10
(ii) Commission on distribution of UTI Mutual Fund products	16
(iii) Customer care service provided on behalf of M/s. Sweta & Co. Ltd.	8
(iv) Commission on purchase and sale of food grains	20
(v) Commission on procurement of advertisements for publications company (No other service is provided)	4
(vi) Charges for processing parts and accessories in the manufacture of cycles for use by the client	10

Make assumptions where required and provide suitable explanations. (Modified 5 Marks, Nov. 2011)

**Solution: Computation of Value of taxable supply and GST payable thereon (amount in ₹)–**

(i) Commission for procurement of services for their client M/s. Shraddha & Co.	10,00,000
(ii) Commission on distribution of Mutual Fund Units UTI [The same will be taxed under forward charge]	16,00,000
(iii) Customer Care services provided on behalf of M/s. Sweta & Co. Ltd.	8,00,000
(iv) Commission on purchase and sale of food grains [Exempt vide Entry No. 54 of Exemption Notification No. 12/2017-CT (Rate)]	-
(v) Commission on canvassing/procuring advertisements for publishing	4,00,000
(vi) Charges for production/processing of parts, used in manufacture of cycles, for the client (Liable to GST)	10,00,000
<b>Total Value of taxable supply</b>	<b>48,00,000</b>
CGST payable @ 9%	4,32,000
SGST payable @ 9%	4,32,000
<b>Total GST payable</b>	<b>8,64,000</b>

**Illustration 40 – Food & Beverage Services:** An air conditioned restaurant made a bill dated 01-10-2019 as follows – Charges for food – ₹ 3,700. Cold drinks – ₹ 300. Service charges @ 10% of food charges – ₹ 400. Calculate GST payable if rate of CGST is 2.5% and SGST is 2.5%.

**Solution: Computation of the value of taxable supply & GST payable (amount in ₹):**

Charges for food	3,700
Cold drinks [Tax will be charged at the rate applicable to the restaurant]	300
Service charges [10% of ₹ (3,700 + 300)]	400
<b>Total Value of taxable supply</b>	<b>4,400</b>



CGST payable @ 2.5%	110
SGST payable @ 2.5%	110
<b>Total GST payable</b>	<b>220</b>

**Illustration 41 – Restaurant v. Outdoor catering :** Kalyani Hotels (P) Ltd. of the opinion that value of service provided in restaurants and those provided in outdoor catering should be the same and therefore, if outdoor caterers do not serve liquor and do not supply in AC environment, they should be eligible for rate of 12%, as applicable to Non-AC restaurants. Discuss with an appropriate case law. (Modified 4 Marks, Nov. 2015)

**Ans:** Restaurant services and Outdoor catering services are altogether different. The Supreme Court in Tamil Nadu Kalyana Mandapam Assn. v. UOI [2004] 167 ELT 3 (SC) distinguished between outdoor catering service and restaurant service. The court observed that in case of outdoor catering service :

- (i) **Choice of food:** Customer is free to choose the kind, quantum and manner in which the food is to be served but in the case of restaurant, the customer's choice of foods is limited to the menu card.
- (ii) **Choice of time and place:** Customer is at liberty to choose the time and place where the food is to be served.
- (iii) **Negotiation with respect to food and price:** Customer negotiates each element of the catering service, including the price to be paid to the caterer.
- (iv) **Personalized service :** An element of personalized service is provided to the customer.

Since the two services viz. 'restaurant services' and 'outdoor catering services' are different and outdoor catering services has more service element, hence, outright levy of GST on outdoor caterers at 18% is justified.

The assessee's contention is therefore, incorrect.

**Illustration 42 – Food related service :** AQ Pvt. Ltd. a registered supplier, has provided following outdoor catering services in the month of September, 2019. Compute the value of taxable supply and GST payable thereon if all charges are exclusive of GST. Rate of CGST is 9% and SGST is 9%.

- (1) Outdoor Catering Service to Higher Secondary School within the premises of school : ₹ 5 lakhs
- (2) Providing food to the students under mid day meals scheme sponsored by Government : ₹ 10 lakhs
- (3) Provides catering services along with supply of food and drinks in marriage functions : ₹ 50 lakhs
  - Fair market value of goods supplied by receiver : ₹ 20 lakhs
  - No amount was charged for the goods supplied.
- (4) Provides catering service to PQR Pvt. Ltd. where food & drinks are not supplied : ₹ 25 lakhs.

**Solution: Computation of the value of taxable supply & GST payable (amount in ₹):**

Outdoor Catering Service to Higher Secondary School within the premises of school [Exempt vide Entry 66 of Notification No. 12/2017-CT (Rate)]	Nil
Provision of food under Mid Day meal Scheme sponsored by Government [Exempt vide Entry 66 of Notification No. 12/2017-CT (Rate)]	Nil
Provision of catering service along with supply of food and drinks - FMV of the goods supplied by the receiver is not to be included in the value of taxable supply	50,00,000
Provision of catering services to PQR Pvt. Ltd. where foods and drinks are not supplied	25,00,000
<b>Value of taxable supply</b>	<b>75,00,000</b>
CGST payable @ 9%	6,75,000
SGST payable @ 9%	6,75,000
<b>Total GST payable</b>	<b>13,50,000</b>

**Illustration 43 – Exemptions :** HLL Pvt. Ltd. manufactures cosmetic products with the brand name 'Forever Young'. HLL Pvt. Ltd. has organized a concert to promote its brand. Ms. Aalia Sharma, its brand ambassador, who is a leading film actress, has given a classical dance performance in the said concert. The proceeds of the concert worth ₹ 1,00,000 will be donated to a charitable organization. Whether Ms. Aalia Sharma will be required to pay any GST?

**Ans:** Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre are exempt from GST, if the consideration charged for such performance is not more than ₹ 1,50,000.

However, such exemption is not available in respect of service provided by such artist as a brand ambassador.

Since Ms. Aalia Sharma is the brand ambassador of 'Forever Young' soap manufactured by HLL Pvt. Ltd., the services rendered by her by way of a classical dance performance in the concert organized by HLL Pvt. Ltd. to promote its brand will not be eligible for the above-mentioned exemption and thus, be liable to GST. The fact that the proceeds of the concert will be donated to a charitable organization will not have any bearing on the eligibility or otherwise to the above-mentioned exemption.



**Illustration 44 – Exemptions :** Determine taxable value of supply under GST law with respect to each of the following independent services provided by the registered persons :

Particulars	Gross amount charged (₹)
Fees charged for yoga camp conducted by a charitable trust	2,25,000
Amount charged by business correspondent for the services provided to the rural branch of a bank with respect to Savings Bank Accounts	1,25,000
Amount charged by cord blood bank for preservation of stem cells	4,50,000
Amount charged for service provided by commentator to a recognized sports body	4,25,000

**Solution: Determination of taxable value of supply (amount in ₹) –**

Fees charged for yoga camp conducted by a charitable trust	[WN-1]	Nil
Amount charged by business correspondent for the services provided to the rural branch of a bank with respect to Savings Bank Accounts	[WN-2]	Nil
Amount charged by cord blood bank for preservation of stem cells	[WN-3]	Nil
Amount charged for service provided by commentator to a recognized sports body	[WN-4]	4,25,000
<b>Value of taxable supply</b>		<b>4,25,000</b>

**Working Notes :**

- (1) Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. The activities relating to advancement of yoga are included in the definition of charitable activities. So, such activities are exempt from GST.
- (2) Services by business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch have been exempted from GST.
- (3) Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from GST.
- (4) Services provided to a recognized sports body only by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST. Thus, services provided by commentators are liable to GST.

### LICENSING SERVICES FOR THE RIGHT TO USE INTELLECTUAL PROPERTY AND SIMILAR PRODUCTS

- (1) **Deemed Supply of Service:** Temporary transfer or permitting the use or enjoyment of any intellectual property right shall be treated as supply of services. [Para 5(c) of Schedule II]
- (2) **Intellectual Property Right:** The term intellectual property right has not been defined in the Act. As per normal trade parlance, intellectual property right includes the following,-
  - (a) Copyright
  - (b) Patents
  - (c) Trademarks
  - (d) Designs
  - (e) Any other similar right to an Intangible Property.

**Registration of IPR outside India also covered :** Temporary transfer of a IPR registered in a country outside India will also be liable for GST since there is no condition of registration of IPR under Indian law for taxability. Thus, even if IPR are registered under any foreign law, the same shall be taxable if place of supply of IPR is in taxable territory.

- (3) **Reverse charge :** Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under Section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like, the recipient of service being publisher, music company, producer or the like, located in the taxable territory shall be liable to pay GST under reverse charge basis.

**However, forward charge mechanism shall apply where, -**

- (i) the author has taken registration under the CGST Act, 2017, and filed a declaration, in the specified form before the commencement of financial year with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay central tax on such services in accordance with Section 9(1)

of the CGST Act, 2017 under forward charge, and to comply with all the provisions of CGST Act, 2017 as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;

- (ii) the author makes a declaration regarding payment of tax on forward charge on the invoice issued by him in Form GST Inv-I to the publisher. [Amended by Notification No. 22/2019-CT (Rate) w.e.f. 1-10-2019]

**Other aspects:**

- (b) **Meaning of Original :** The word “original” would refer to the creator. Hence, royalty earned by the original creator of—
  - (i) literary works (books, write-ups, etc.);
  - (ii) dramatic works (viz. Drama, plays and their manuscript);
  - (iii) musical works (songs, etc.); and
  - (iv) artistic works (drawings, sculpture, paintings, etc.), would fall under reverse charge mechanism.
- (c) **Distribution of music by music company having the copyright of sound recording:** A music company would be required to pay GST as the copyright relating to sound recording falls under section 13(1)(c) of the Indian Copyright Act, 1957 which is not under reverse charge mechanism.
- (d) **Royalty for allowing the recording of song for further distribution by the composer:** The same will be liable for GST as the copyright relating to original work of composing song falls u/s 13(1)(a) of the Indian Copyright Act, 1957. The same shall be taxable under reverse charge mechanism.

**Illustration 45 – IPR Services:** Compute value of taxable supply under “intellectual property service” using the details given below : (Modified 2 Marks, Nov. 2010)

	₹
(a) Royalty for providing designs and patents @ 5%	20,00,000
(b) Lumpsum royalty for permanent transfer of trademark	25,00,000
(c) Royalty under brand licensing arrangement for use of brand name	15,00,000

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹) –**

(a) Royalty for providing designs and patents – Taxable	20,00,000
(b) Lumpsum royalty for permanent transfer of trademark [Permanent transfer of IPR is liable to GST, though permanent transfer is not a deemed supply of service, but it is sale of goods.]	25,00,000
(c) Royalty under brand licensing arrangement for use of brand name – Taxable	15,00,000
<b>Total Value of taxable supply</b>	<b>60,00,000</b>

**Illustration 46 – Intellectual Property Service:** Madhuban Services (P) Ltd. is engaged in dealing and providing services on intellectual properties. During the month ended 31-03-2020, the company transacted with the following activities for consideration at arm's-length with its customers :

Particulars	₹
Permanent transfer of designs to XYZ manufacturers	1,20,000
Allowing Srikant to use patents (for 6 months) that are registered in Indonesia	60,000
It also temporarily transfers original dramatic works covered u/s 13(1)(a) of the Indian Copyright Act, 1957	10,00,000

Determine the GST payable on the above transactions, with appropriate notes to substantiate your stand. Rate of ICGST is 12%. (Modified 4 Marks, Nov. 2015)

**Solution: Computation of GST payable under normal charge (amount in ₹) –**

Permanent transfer of designs [Permanent transfer of IPR is liable to GST, though permanent transfer is not a deemed supply of service, but it is sale of goods.]	1,20,000
Allowing the use of patents registered in Indonesia [Temporary transfer of an IPR registered in a country outside India will also be liable for GST since there is no condition of registration of IPR under Indian law for taxability. Thus, even if IPR is registered under any foreign law, the same shall be taxable.]	60,000
Temporary transfer of original dramatic works covered under Section 13(1)(a) of the Indian Copyright Act, 1957 [Reverse charge is not applicable since service supplier is a company]	10,00,000
<b>Value of taxable supply</b>	<b>11,80,000</b>
<b>Total GST payable @ 12%</b>	<b>1,41,600</b>

**INFORMATION TECHNOLOGY SOFTWARE SERVICES**

- (1) "Information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.
- (2) **Deemed Supply of service** : Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software shall be treated as supply of services. [Para 5(d) of Schedule II]
- (3) **Other Aspects:**
- Sale of pre-packaged or canned software - Supply of goods liable to GST
  - On-site development of software - Taxable as service
  - Advice, consultancy and assistance on matters relating to information technology software - Taxable as service
  - Pre-packaged software is goods and liable to GST
  - Customized development of software and delivered to the client on media like a CD is service and is liable to GST
  - Software given on hire - taxable as service

**Illustration 47 - Information technology software service** : M/s. Auriga Pvt. Ltd. provides the following information relating to information technology software for the month of September, 2019. Compute the value of taxable supply and GST payable thereon if all charges are exclusive of GST Rate of CGST is 9% and SGST is 9%.

- Development of information technology software : ₹ 18 lakhs
- On-site development of software : ₹ 5 lakhs
- Sale of pre packaged software which is put on media : ₹ 22 lakhs
- Advice and consultancy on matters relating to information technology software : ₹ 8 lakhs
- License to use software was given to different clients : ₹ 28 lakhs
- On the basis of specification of P Ltd., a software was developed and delivered to it on media i.e. CD : ₹ 7 lakhs
- Up-gradation of information technology software : ₹ 9 lakhs
- Programming of software : ₹ 1 lakhs
- Enhancement and implementation of information technology software : ₹ 5 lakhs.

**Solution: Computations of Value of taxable supply and GST payable (amount in ₹) –**

(1) Development of information technology software (Taxable - Deemed supply of service)	18,00,000
(2) On site development of software (Taxable - Deemed supply of service)	5,00,000
(3) Sale of Pre packaged software which is put on media is supply of goods and liable to GST	22,00,000
(4) Advice and consultancy on matters relating to information technology software (Taxable service)	8,00,000
(5) License to use software was given to different clients (Taxable - Deemed supply of service)	28,00,000
(6) A customised software was developed and delivered to it on media i.e. CD (Taxable - Deemed supply of service)	7,00,000
(7) Upgradation of information technology software (Taxable - Deemed supply of service)	9,00,000
(8) Programming of software (Taxable - Deemed supply of service)	1,00,000
(9) Enhancement and implementation of information technology software (Taxable - Deemed supply of service)	5,00,000
<b>Total Value of taxable supply</b>	<b>1,03,00,000</b>
CGST payable @ 9%	9,27,000
SGST payable @ 9%	9,27,000
<b>Total GST payable</b>	<b>18,54,000</b>



### TOUR OPERATOR

(1) "Tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours. [Para 2(zzm) of Notification No. 12/2017-CT (Rate)]

(2) Exemption :

Tour operators services to foreign tourist for foreign tour - Exempt [Entry 54 of Notification No. 9/2017-IT (Rate)] : Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.









**Illustration 49 - Exemption :** Examine whether GST is exempted on the following independent supply of services :

- (a) Teja & Co., a tour operator, provides services to a foreign tourist for tour conducted to Jammu Kashmir and receives a sum of ₹ 3,00,000.
- (b) Ms. Poorva acts as a Team Manager for Indian Sports League (ISL), a recognised sports body, for a Tennis tournament organised by Multi brand retail company and received a remuneration of ₹ 2,00,000.

**Ans: (a) Liable to GST : Yes,** Tejas and Co. will be liable to pay GST. Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India are exempt *vide* Entry 54 of Notification No. 9/2017-IT (Rate)]. In this case tour is conducted in Jammu and Kashmir and the IGST Act applies to whole of India including Jammu and Kashmir, hence exemption will not operate.

**(b) Liable to GST :** Services provided to a recognised sports body by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body are exempt *vide* Entry 68 of Notification No. 12/2017-CT (Rate)]. Since multi brand retail company is not a recognized sports body hence exemption will not be available. Thus, the said services will be liable to GST.



<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> Video Lecture</div> <div style="text-align: center;"> Online MCQ's</div> <div style="text-align: center;"> SUBJECTIVE Test Series</div> </div> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>  <b>AADHYA'S</b> <small>edu.com</small> <a href="http://www.aadhyas.com">http://www.aadhyas.com</a></p> <p>Contact/Whatsapp - 9602066653</p>	<div style="text-align: center;"> Video Lecture</div> <p style="text-align: center;">Inter/ Executive/ Final/ Professional</p> <p style="text-align: center;"><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <div style="text-align: center;">         Subscribe to our Channel  <b>CA. Yogendra Bangar</b> </div>	<div style="text-align: center;"> Online MCQ's</div> <p style="text-align: center;"><b>Computer / EduApplet App</b></p> <p style="text-align: center;">Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p style="text-align: center; background-color: #333; color: white; padding: 2px;"><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<div style="text-align: center;"> Globe</div> <p style="text-align: center;"><b>SUBJECTIVE Test Series</b></p> <p style="text-align: center;">More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
---	--	--	--

# PLACE OF SUPPLY, EXPORT AND IMPORT

## PLACE OF SUPPLY

### SUMMARIZED POINTS FOR REVISION

#### NEED FOR DETERMINATION OF PLACE OF SUPPLY

- (1) **Need for determination of place of supply under GST :**
- (a) **Determination of tax to be levied** *i.e.* which tax is to be levied (IGST or CGST and SGST/UTGST) will depend on whether a particular transaction is an Inter-state supply or Intra-state supply.
  - (b) **Purpose of place of supply provision -**
    - (i) In case of cross-border transactions, to determine whether tax is to be levied or not on a particular transaction.
    - (ii) In the case of domestic transactions, to determine whether a particular transaction is an inter-state supply or an intra-state supply.
  - (c) Place of supply provisions are based on destination/ Consumption principle.
  - (d) Different principles are applicable in respect of goods and services.
  - (e) **Proxies to determine place of supply of services:**
    - (i) location of service supplier;
    - (ii) location of service receiver;
    - (iii) place where the activity takes place/ place of performance;
    - (iv) place where the service is consumed; and
    - (v) place/person to which/whom actual benefit flows

**Proxy which gives more appropriate result than others is used for determining the place of supply :** An assumption or proxy which gives more appropriate result than others for determining the place of supply, can be used for determining the place of supply.
  - (f) **Distinction between B2B and B2C transactions :** B2B transactions are wash transactions since the recipient, also being a registered person, avails ITC and no real revenue accrues to the Government.  
 For **B2B transactions** the location of recipient determines the place of supply in almost all situations as further credit is to be taken by recipient. The recipient usually further supplies to another customer.  
 In respect of **B2C transactions**, the supply is made to an unregistered person who consumes the same and cannot avail ITC, therefore, the taxes paid actually reach the Government.

## PLACE OF SUPPLY OF GOODS

- (2) **Place of supply of goods other than supply of goods imported into, or exported from India [Section 10] :**

Section	Nature of Transaction	Place of Supply
<b>Place of supply of goods in domestic transactions <i>i.e.</i>, within India :</b> The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,-		
10(1)(a)	Where the supply involves <b>MOVEMENT OF GOODS</b> , whether by the supplier or by the recipient or by any other person,	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient.  <b>Note :</b> Thus, irrespective of the number of states the goods pass through during the course of its journey, the state in which the movement of goods terminates for delivery to the recipient is the place of supply of goods.



10(1)(b)	Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise,	⇒ It shall be deemed that the said third person has received the goods; and ⇒ The place of supply of such goods shall be the principal place of business of such person. These transactions are also known as Bill to Ship transactions.
10(1)(c)	Where the supply does not involve movement of goods, whether by the supplier or the recipient,	Location of such goods at the time of delivery to the recipient.
10(1)(d)	Where the goods are assembled or installed at site,	Place of such installation or assembly.
10(1)(e)	Where the 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.
10(2)	Where the place of supply of goods cannot be determined,	Shall be determined in such manner as may be prescribed.

“Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India. [Section 2(10) of IGST Act, 2017]

All imports are deemed as inter- State supplies and accordingly IGST is levied in addition to the applicable custom duties.

“Export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. [Section 2(5) of IGST Act, 2017]

Under the GST Law, export of goods has been treated as :

- inter-State supply
- ‘zero rated supply’ i.e., the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

(3) Place of supply of goods imported into, or exported from India [Section 11 of IGST Act, 2017] :

Section	Nature of Transaction	Place of Supply
The place of supply of goods imported into, or exported from India, shall be as under,-		
11(a)	Goods imported into India	Location of the importer.
11(b)	Goods exported from India	Location outside India.

**PLACE OF SUPPLY OF SERVICES**

(4) Place of supply of services where location of supplier and recipient is in India [Section 12 of the IGST Act, 2017]:

Section	Nature of Transaction	Place of Supply
12(1)	Determination of the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.	
12(2)	<b>General provisions :</b> The place of supply of services,-	
	(a) made to a registered person	location of such person;
	(b) made to any person other than a registered person-	
	(i) where the address on record exists;	the location of the recipient
	(ii) in other cases.	the location of the supplier of services
12(3)	Services provided in relation to immovable property –	
	<b>Services,-</b>	
	(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or	⇒ Location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.

<p>(b) by way of lodging accommodation by a <b>hotel, inn, guest house, home stay, club or campsite</b>, by whatever name called, and including a <b>house boat or any other vessel</b>; or</p> <p>(c) by way of <b>accommodation in any immovable property</b> for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or</p> <p>(d) any <b>services ancillary</b> to the services referred to in clauses (a), (b) and (c),</p>										
<p>If the <b>location of the immovable property</b> or boat or vessel is located or intended to be located <b>outside India</b>,</p>	<p>Location of the recipient.</p>									
<p><b>Explanation :</b> Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</p> <p>For this purpose Rule 4 of IGST Rules, 2017 has been inserted <i>vide</i> Notification No. 4/2018-IT w.e.f. 01-01-2019 which provides that the place of supply of services shall be determined in the following manner namely:-</p>										
<table border="1"> <thead> <tr> <th data-bbox="170 828 371 883"></th> <th data-bbox="371 828 848 883">Nature of Transaction</th> <th data-bbox="848 828 1481 883">Place of Supply</th> </tr> </thead> <tbody> <tr> <td data-bbox="170 883 371 1211">(i)</td> <td data-bbox="371 883 848 1211"> <p>Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called and services ancillary to such services :</p> <p>Where such property is a single property located in two or more contiguous States or Union territories or both.</p> <p>Cases except where such property is a single property located in two or more contiguous States or Union territories or both.</p> </td> <td data-bbox="848 883 1481 1211"> <p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.</p> <p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property.</p> </td> </tr> <tr> <td data-bbox="170 1211 371 1574">(ii)</td> <td data-bbox="371 1211 848 1574"> <p>All other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc.</p> <p>Services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services.</p> </td> <td data-bbox="848 1211 1481 1574"> <p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.</p> <p>The supply shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, determined on the basis of a declaration made to the effect by the service provider.</p> </td> </tr> </tbody> </table>			Nature of Transaction	Place of Supply	(i)	<p>Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called and services ancillary to such services :</p> <p>Where such property is a single property located in two or more contiguous States or Union territories or both.</p> <p>Cases except where such property is a single property located in two or more contiguous States or Union territories or both.</p>	<p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.</p> <p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property.</p>	(ii)	<p>All other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc.</p> <p>Services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services.</p>	<p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.</p> <p>The supply shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, determined on the basis of a declaration made to the effect by the service provider.</p>
	Nature of Transaction	Place of Supply								
(i)	<p>Services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called and services ancillary to such services :</p> <p>Where such property is a single property located in two or more contiguous States or Union territories or both.</p> <p>Cases except where such property is a single property located in two or more contiguous States or Union territories or both.</p>	<p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.</p> <p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property.</p>								
(ii)	<p>All other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc.</p> <p>Services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services.</p>	<p>The supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory.</p> <p>The supply shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, determined on the basis of a declaration made to the effect by the service provider.</p>								
<p><b>Illustrations:</b></p>										
<p>1.</p>	<p>A hotel chain X charges a consolidated sum of ₹ 30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as ₹ 20,000/- in the Union territory of Delhi and ₹ 10,000/- in the State of Uttar Pradesh.</p>									
<p>2.</p>	<p>There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T.</p>									

		The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.
	3.	A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.
12(4)	<b>Personalized Services :</b> Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Location where the services are actually performed.
12(5)	Services in relation to <b>training and performance appraisal to,-</b>	
	(a) a registered person,	Location of such person;
	(b) a person other than a registered person,	Location where the services are actually performed.
12(6)	Services provided by way of admission to a <b>cultural, artistic, sporting, scientific, educational, entertainment</b> event or amusement park or any other place and services ancillary thereto,	Place where the event is actually held or where the park or such other place is located.
12(7)	Services provided by way of , -	
	(a) <b>organisation</b> of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or	
	(b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,-	
	(i) to a registered person,	Location of such person;
	(ii) to a person other than a registered person,	Place where event is actually held
	➤ If event is held in India	Location of the recipient.
	➤ If event is held outside India	
	<b>Event held in more than one State or Union Territory [Explanation] :</b> Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to -	
	➤ the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or,	
	➤ in the absence of such contract or agreement, on such other basis as may be prescribed <i>i.e.</i> by application of the generally accepted accounting principles. - Rule 5 of IGST Rules, 2017 inserted <i>vide</i> Notification No. 4/2018-IT w.e.f. 01-01-2019.	
	<b>Illustration:</b> An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidated amount of ₹ 10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as ₹ 6,00,000/- in S1 and ₹ 4,00,000/- in S2 .	
12(8)	Services by way of <b>transportation of goods</b> , including by mail or courier to,-	
	(a) a registered person,	Location of such person;

	(b) a person other than a registered person,  However, where the transportation of goods is to a place outside India,	Location at which such goods are handed over for their transportation. Place of destination of such goods.
12(9)	<b>Passenger transportation service to, –</b>  (a) a registered person, (b) a person other than a registered person,  Where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, (a) made to a registered person (b) made to any person other than a registered person- (i) where the address on record exists; (ii) in other cases.	Location of such person; Place where the passenger embarks on the conveyance for a continuous journey.  location of such person;  the location of the recipient the location of the supplier of services
	<ul style="list-style-type: none"> <li>➤ <b>Return Journey to be treated as a Separate Journey :</b> The return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time. [Explanation]</li> <li>➤ <b>“Continuous journey”</b> means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and <b>which involves no stopover between</b> any of the legs of the journey for which one or more separate tickets or invoices are issued. [Section 2(3) of IGST Act, 2017]</li> <li>➤ <b>“Stopover”</b> means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. [Explanation]</li> </ul>	
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)	<b>Telecommunication services</b> including data transfer, broadcasting, cable and direct to home television services to any person shall, –  (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna,	Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
	<p><b>Explanation :</b> Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</p>	
	<p>For this purpose <b>Rule 6 of IGST Rules, 2017</b> has been inserted <i>vide</i> Notification No. 4/2018-IT w.e.f. 01-01-2019 which provides that the place of supply of services shall be determined in the following manner namely:-</p> <p>(a) The number of points in a circuit shall be determined in the following manner:</p> <ul style="list-style-type: none"> <li>➤ 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;</li> <li>➤ 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;</li> </ul> <p>(b) the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.</p>	

<i>Illustration:</i>		
1.	A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.	
2.	A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.	
3.	A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.	
	(b) in case of <b>mobile</b> connection for telecommunication and <b>internet services provided on post-paid basis,</b>	Location of billing address of the recipient of services on the record of the supplier of services;
	(c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,- (i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, (ii) by any person to the final subscriber,  If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment,	Address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or Location where such prepayment is received or such vouchers are sold; Location of the recipient of services on the record of the supplier of services.
	(d) in other cases,	
	(i) If address of the recipient as per the records of the supplier of services is available (ii) Where such address is not available,	Address of the recipient as per the records of the supplier of services, and Place of supply shall be location of the supplier of services.
	Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be the location of the supplier of services.	
	<b>"Telecommunication service"</b> means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means. [Section 2(110) of CGST Act, 2017]	
12(12)	<b>Banking and other financial services, including stock broking services to any person</b>	Location of the recipient of services on the records of the supplier of services:
	If the location of recipient of services is not on the records of the supplier,	Location of the supplier of services.

12(13)	Insurance services,-	
	(a) to a registered person,	Location of such person;
	(b) to a person other than a registered person,	Location of the recipient of services on the records of the supplier of services.
12(14)	Advertisement service to the Central Government/ State Government/ Statutory body/ Local authority meant for the State/ Union Territory identified in contract or agreement	
	Each of such States/ Union territories where the advertisement is broadcasted/ run/ played/ dissemination.	
	The value of such supplies is in proportion to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard. However, in the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of advertisement services attributable to different States/Union territories will be computed in accordance with rule 3 of IGST Rules, 2017. The provisions of the said rule are tabulated below :	
	<b>Sl. No.</b>	<b>Type of advertisement</b>
		<b>Factor which determines the proportionate value of service attributable to the dissemination in each State/Union territory</b>
	1.	Advertisements in newspapers and publications
		Amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in each State/Union territory
	2.	Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc.
		Amount payable for the distribution of a specific number of such material in each State/Union territory
	3.	Advertisements in hoardings (other than those on trains)
		Amount payable for the hoardings located in each State/ Union territory
	4.	Advertisements on trains
		Length of the railway track in each State/Union Territory, for that train
	5.	Advertisements on the back of utility bills of oil and gas companies, etc.
		Amount payable for the advertisements on bills pertaining to consumers having billing addresses in each State/Union territory
	6.	Advertisements on railway tickets
		Number of Railway Stations in each State/Union territory
	7.	Advertisements on radio stations
		Amount payable to such radio station, which by virtue of its name is part of each State/Union territory
	8.	Advertisement on television channels
		Number of viewers of such channel in each State/ union Territory. Viewership can be ascertained from the channel viewership figures published by the Broadcast Audience Research Council. Figures for the last week of a given quarter will be used for calculating viewership for the succeeding quarter. Where the channel viewership figures relate to a region comprising of more than one State/Union territory, the viewership figures for a State/ Union territory of that region, will be calculated in ratio of the populations of that State/Union territory, as determined in the latest Census.
	9.	Advertisements in cinema halls
		Amount payable to a cinema hall or screens in a multiplex in each State/ Union territory.
	10.	Advertisements on internet [the service shall be deemed to have been provided all over India]
		<b>Number of internet subscribers in each State/Union Territory</b> Internet subscribers can be ascertained from the internet subscriber figures published by the Telecom Regulatory Authority of India (TRAI). Figures for the last quarter of a given financial year will be used for calculating the number of internet subscribers for the succeeding financial year.



		Where the internet subscriber figures relate to a region comprising of more than one State/Union territory, the subscriber figures for a State/Union territory of that region shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census.
	11. Advertisements through SMS	<p><b>Number of telecom subscribers in each State/Union Territory</b></p> <p>Telecom subscribers in a telecom circle can be ascertained from the telecom subscribers figures published by the TRAI. Figures for a given quarter will be used for calculating the subscribers for the succeeding quarter.</p> <p>Where such figures relate to a telecom circle comprising of more than one State/Union territory, the subscriber figures for that State/Union territory shall be calculated in the ratio of the populations of that State/Union territory, as determined in the latest census.</p>

(5) **Place of supply of services where location of supplier or location of recipient is outside India [Section 13 of IGST Act, 2017]:**

Section	Nature of Transaction	Place of Supply
13(1)	<b>Applicability :</b> The provisions of this section shall apply to determine the place of supply of services where the <b>location of the supplier of services or the location of the recipient of services is outside India.</b>	
13(2)	<b>General Provisions :</b>	
	Services not covered in Section 13(3) to 13(13)	Location of the recipient of services.
	If in above case where the location of the recipient of services is not available in the ordinary course of business	Location of the supplier of services.
13(3)	<b>Performance Based Services :</b>	
	<p>(a) <b>Services supplied in respect of goods which are required to be made physically available</b> by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services.</p> <p>When such services are provided from a <b>remote location by way of electronic means,</b></p> <p>Services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.</p> <p>(b) <b>Services supplied to an individual,</b> represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.</p>	<p>Location where the services are actually performed.</p> <p>Location where goods are situated at the time of supply of services.</p> <p>Provisions of Section 13(3)(a) will not be applicable and place of supply shall be determined as per Section 13(2).</p> <p>Location where the services are actually performed.</p>
13(4)	<b>Services relating to Immovable property :</b>	
	<b>Services supplied directly in relation to an immovable property,</b> including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators,	Place where the immovable property is located or intended to be located.

13(5)	<b>Services relating to events :</b> Services supplied by way of <b>admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event</b> , or a celebration, conference, fair, exhibition or similar events, and of <b>services ancillary to such admission or organisation</b> ,	Place where the event is actually held.
13(6)	<b>Services provided at more than one location :</b> Where any services referred to in,- ⇒ Section 13(3) [i.e. <i>Performance Based Services</i> ]; or ⇒ Section 13(4) [i.e. <i>Services relating to Immovable property</i> ]; or ⇒ Section 13(5) [i.e. <i>Services relating to events</i> ], is supplied at <b>more than one location, including a location in the taxable territory</b> .	Location in the taxable territory.
13(7)	Where any services referred to in,- ⇒ Section 13(3) [i.e. <i>Performance Based Services</i> ]; or ⇒ Section 13(4) [i.e. <i>Services relating to Immovable property</i> ]; or ⇒ Section 13(5) [i.e. <i>Services relating to events</i> ], are supplied in more than one State or Union territory,	⇒ Place of supply of such services shall be taken as being in each of the respective States or Union territories; and ⇒ Value of such supplies specific to each State or Union territory shall be in proportion to - > Value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, > In the absence of such contract or agreement, on such other basis as may be prescribed.
<b>Performance based services :</b> For this purpose Rule 7 has been inserted in IGST Rules, 2017 vide Notification No. 4/2018 w.e.f. 01-01-2019 which provides that -		
	<b>In the case of --</b>	<b>Illustrations</b>
1.	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;	A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.
2.	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;	A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.
3.	Services supplied to individuals, by applying the generally accepted accounting principles.	A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of

		the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.
	<p><b>Services relating to Immovable property</b> : For this purpose Rule 8 has been inserted in IGST Rules, 2017 <i>vide</i> Notification No. 4/2018 w.e.f. 01-01-2019 which provides that value of supply shall be determined in accordance with the provisions of rule 4 of the IGST Rules, 2017.</p> <p><b>Services relating to Events</b> : For this purpose Rule 9 has been inserted in IGST Rules, 2017 <i>vide</i> Notification No. 4/2018 w.e.f. 01-01-2019 which provides that value of supply shall be determined in accordance with the provisions of rule 5 of the IGST Rules, 2017.</p>	
13(8)	<b>Specified Services :</b>	
	<p>(a) Services supplied by a <b>banking company</b>, or a <b>financial institution</b>, or a <b>non-banking financial company</b>, to account holders</p> <p><b>Explanation :</b></p> <p>⇒ <b>"Account"</b> means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;</p> <p>⇒ <b>"Banking company"</b> shall have the same meaning as assigned to it under section 45A(a) of the Reserve Bank of India Act, 1934;</p> <p>⇒ <b>"Financial institution"</b> shall have the same meaning as assigned to it in section 45-I(c) of the Reserve Bank of India Act, 1934;</p> <p>⇒ <b>"Non-banking financial company"</b> means,-</p> <p>(i) a financial institution which is a company;</p> <p>(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or</p> <p>(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.</p>	Location of the supplier of services.
	<p>(b) Intermediary services</p> <p><b>"Intermediary"</b> means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, <b>but does not include</b> a person who supplies such goods or services or both or securities on his own account; [Section 2(13) of IGST Act, 2017]</p>	Location of the supplier of services.
	<p>(c) <b>Services consisting of hiring of means of transport</b>, including yachts but excluding aircrafts and vessels, <b>up to a period of one month</b></p>	Location of the supplier of services.
13(9)	<b>Services of transportation of goods</b> , other than by way of mail or courier,	Place of destination of such goods.
13(10)	<b>Passenger transportation services</b>	Place where the passenger embarks on the conveyance for a continuous journey.
13(11)	<b>Services provided on board a conveyance</b> during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board,	First scheduled point of departure of that conveyance for the journey.

13(12)	The place of supply of <b>online information and database access or retrieval services.</b>	Location of the recipient of services.
13(13)	In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.	

**Satellite launch services provided to international customers - Place of supply is to be determined as per destination of goods - Export Incentives available [Circular No. 2/1/2017-IGST dated 27-09-2017]:**

Issue	Clarification
<p><b>How is the taxability of satellite launch services provided to both international and domestic customers by ANTRIX Corporation Limited, which is a wholly owned Government of India Company under the administrative control of Department of Space (DOS), determined?</b></p>	<ul style="list-style-type: none"> <li>➤ <b>Customers located outside India :</b> Place of supply of satellite launch services supplied by ANTRIX Corporation Limited to international customers would be outside India in terms of Section 13(9) of IGST Act, 2017 and such supply which meets the requirements of Section 2(6) of IGST Act, thus constitutes export of service and shall be zero rated in accordance with Section 16 of the IGST Act.</li> <li>➤ <b>Customers located in India :</b> Where satellite launch service is provided by ANTRIX Corporation Limited to a person located in India, the place of supply of satellite launch service would be governed by Section 12(8) of the IGST Act and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.</li> </ul>

**Supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits is a composite supply, where such testing is an ancillary supply. The place of supply of such service is the location of the service recipient as per Section 13(2) of the IGST Act. [Circular No. 118/37/2019-GST dated 11-10-2019]**

Issue	Clarification
<ul style="list-style-type: none"> <li>➤ <b>Issue under consideration :</b> The issue is with regard to determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in nontaxable territory by using the sample hardware kits provided by the service recipient.</li> <li>➤ <b>Nature of service :</b> A number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks ("IP blocks", reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.</li> </ul> <p>In addition, the software developed is also integrated upon or customized to this hardware.</p>	<ul style="list-style-type: none"> <li>➤ <b>Composite supply of chip design/software development along with software testing cannot be vivisected - Principal supply being chip design/software development, testing service is ancillary :</b> In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.</li> <li>➤ <b>Place of supply is location of recipient of service :</b> Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using</li> </ul>

<p>On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.</p>	<p>sample prototype hardware/test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.</p>
--	--

**Clarification regarding determination of place of supply in respect of services provided by Ports and Services rendered on goods temporarily imported in India [Circular No. 103/22/2019-GST dated 28-06-2019] :**  
The clarification relating to determination of place of supply is as under –

	Nature of services	Place of supply
(1)	<p><b>Services provided by Ports - Cargo handling :</b> Various services are being provided by the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/ loading on vessel etc.</p> <p>Doubts have been raised about determination of place of supply for such services <i>i.e.</i> whether the same would be determined in terms of the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be or the same shall be determined in terms of the provisions contained in Section 12(3) of the IGST Act.</p>	<p><b>Place of supply is to be determined as per Section 12(2)/ Section 13(2) of the IGST Act, 2017 :</b> It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.</p>
(2)	<p><b>Services rendered on goods temporarily imported in India :</b> Doubts have been raised about the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?</p>	<p><b>Place of supply to be determined as per Section 13(2) of the IGST Act, 2017 :</b> Place of supply in case of performance based services is to be determined as per the provisions contained in Section 13(3)(a) of the IGST Act and generally the place of services is where the services are actually performed. But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.</p> <p>In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in Section 13(2) of the IGST Act.</p>

**ONLINE INFORMATION DATABASE ACCESS AND  
RETRIEVAL SERVICES (OIDAR)**

**(6) Online information and database access or retrieval services [Section 2(17) of IGST Act, 2017] :**

“Online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and **involving minimal human intervention** and impossible to ensure in the absence of information technology **and includes electronic services such as,-**

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

**Indicative List of OIDAR services :**

- (a) Website supply, web-hosting, distance maintenance of programmes and equipment;
  - (b) Supply of software and updating thereof;
  - (c) Supply of images, text and information and making available of databases;
  - (d) Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events;
  - (e) Supply of distance teaching.
- (7) **Place of supply of OIDAR services :** As per provisions of Section 13(12), the place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

**Recipient deemed to be located in India if any 2 non-contradictory conditions out of such 7 conditions fulfilled [Explanation] :** Person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:-

- (a) the location of address presented by the recipient of services through internet is in the taxable territory;
  - (b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
  - (c) the billing address of the recipient of services is in the taxable territory;
  - (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
  - (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
  - (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
  - (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.
- (8) **Special provision for payment of tax by a supplier of online information and database access or retrieval services [Section 14] :**

- (i) **Applicability :** This Section is applicable in case of—
  - supply of online information and database access or retrieval services
  - by any person located in a non-taxable territory, and
  - received by a non-taxable online recipient.

**“Non-taxable online recipient”** means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory. [Section 2(16)]

- (ii) **In case of OIDAR Services, the supplier of services liable to pay IGST.** If an intermediary located outside India arranges or facilitates supply of such service to a non-taxable online recipient in India, the intermediary would be deemed to be the supplier of the said service, except when the intermediary satisfies the following conditions namely:-
  - (a) the invoice or customer’s bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
  - (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge. This means that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;



- (c) the intermediary involved in the supply does not authorise delivery; and
  - (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.
- (iii) **Registration Scheme in respect of OIDAR Services** : The supplier of OIDAR services referred shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government. [Section 14(3)]

Any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier.

If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

### ADDITIONAL PRACTICE QUESTIONS

**Illustration 1 - Determination of Place of supply - Bill to Ship to model** : Raman Row, a registered supplier under GST in Mumbai, is directed by Nero Enterprises, Kolkata to deliver goods valued at ₹ 12,00,000 to Fabricana of Aurangabad in Maharashtra. Raman Row makes out an invoice at 9% tax rate under CGST and SGST respectively (scheduled rate) and delivers it locally in Maharashtra. Discuss and comment on the above levy of tax and determine the tax liability of goods in the above circumstances. (4 Marks, May 2018) (Similar RTP Nov., 2019)

**Solution:** Where three parties are involved i.e. to say a supplier, a buyer who is not the recipient of goods (referred as third person) and the recipient who actually receives the goods on the directions of the buyer, a fiction is introduced by Section 10(1)(b) of IGST Act, 2017, whereby the third person on whose direction the goods are delivered will be considered the recipient of the goods and the place of supply is deemed to be the principal place of business of the said third person (being the first buyer).

**There are two parts to this transaction :**

- (i) **First part of the transaction - between Raman Row and Nero Enterprises Raman Row Mumbai** is the supplier of goods, and Nero Enterprises, Kolkatta is the buyer. Accordingly, Raman Row bills the transaction to Nero Enterprises, and as per the instruction, delivers the goods to Fabricana in Maharashtra.

Over here, on the instruction from Nero Enterprises, Kolkatta, Raman Row delivers the goods to Fabricana located in Maharashtra. Here, Nero Enterprises is deemed as the third person. Therefore, the place of supply will be the principal place of business of the Nero Enterprises, i.e., Kolkatta. Since the location of supplier is in Maharashtra and place of supply is in West Bengal, the supply is interstate supply. Accordingly, Raman Row will have to charge IGST on billing to Nero Enterprises. Since in Raman Row has charged CGST and SGST treating the supply as intra State supply, it has to claim refund of CGST and SGST and deposit IGST as the supply is Inter State supply. Thus, IGST liability of Raman Row will be 18% of ₹ 12,00,000 = ₹ 216000.

- (ii) **The second part of the transaction - between Nero Enterprises, Kolkata and Fabricana, Maharashtra** : Nero Enterprises, Kolkata is the supplier, and Fabricana, Maharashtra is the buyer. Nero Enterprises, Kolkata bills the transaction to Fabricana, Maharashtra, and endorses the lorry receipt (goods shipped in a lorry by Raman Row) in favour of Fabricana, Maharashtra. This lorry receipt (LR) will enable Fabricana, Maharashtra to take the delivery of the goods. The second part of the transaction between Nero Enterprises, Kolkata and Fabricana, Maharashtra will also be interstate, and IGST will be charged.

**Illustration 2 - Determination of Place of supply - Bill to Ship to model** : Asha Enterprises supplier of sewing machines, is located in Kota (Rajasthan) and registered for purpose of GST in the said State. It receives an order from Deep Traders, located in Jalandhar (Punjab) and registered for purpose of GST in the said State. The order is for the supply of 100 sewing machines, with an instruction to ship the sewing machines to Jyoti Sons, located in Patiala (Punjab) and registered in the said State for purpose of GST. Jyoti Sons is a customer of Deep Traders. Sewing machines are shipped in a lorry by Asha Enterprises.

Briefly explain the following :

- (i) the place of supply under IGST Act, 2017;
- (ii) the nature of supply : whether inter-state or intra-state and
- (iii) whether CGST/SGST or IGST as would be applicable in this case. (4 Marks, May 2019-NS)

**Solution:** Where three parties are involved *i.e.* to say a supplier, a buyer who is not the recipient of goods (referred as third person) and the recipient who actually receives the goods on the directions of the buyer, a fiction is introduced by Section 10(1)(b) of IGST Act, 2017, whereby the third person on whose direction the goods are delivered will be considered the recipient of the goods and the place of supply is deemed to be the principal place of business of the said third person (being the first buyer).

**There are two parts to this transaction :**

(1) **First part of the transaction – between Asha Enterprises and Deep Traders :** Asha Enterprises is the supplier of sewing machine, and Deep Traders is the buyer. Accordingly, Asha Enterprises bills the transaction to Deep Traders, and as per the instruction, ships the goods to Jyoti Sons in Patiala (Punjab).

Over here, on the instruction from Deep Traders, Asha Enterprises ships the sewing machine to Jyoti Sons located in Patiala (Punjab). Here, Deep Traders is deemed as the third person. Therefore, the place of supply will be the principal place of business of the third person, *i.e.*, Jalandhar (Punjab). Since the location of supplier is in Kota (Rajasthan) and Place of supply Jalandhar (Punjab), the supply is an interstate supply. Accordingly, Asha Enterprises will charge IGST on billing to Deep Traders.

(2) **The second part of the transaction – between Deep Traders and Jyoti Sons :** Deep Traders is the supplier, and Jyoti Sons is the buyer. Deep Traders bills the transaction to Jyoti Sons, and endorses the lorry receipt (goods shipped in a lorry by Asha Enterprises) in favour of Jyoti Sons. This lorry receipt (LR) will enable Jyoti Sons to take the delivery of the goods. The second part of the transaction between Deep Traders Jalandhar (Punjab) and Jyoti Sons Patiala (Punjab) will be intra-state supply, CGST and SGST will be charged.

**Illustration 3 – Determination of Place of supply :** Determine the Place of supply for the following independent cases under the IGST Act, 2017 :

(i) Grand Gala Events, an event management company at Kolkata, organises two award functions for Kalyan Jewellers of Chennai (Registered in Chennai) at New Delhi and at Singapur. (2½ Marks, May 2018)

(ii) Perfect Planners (Bengaluru) is hired by Dr. Kelvin (unregistered person based in Kochi) to plan and organise his son's wedding at Mumbai.

Will your answer be different if the wedding is to take place at Malaysia ? (2½ Marks, May 2018)

**Ans:**

(i) As per Section 12(7) of IGST Act, 2017, the place of supply of services provided by way of 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 to a registered person, shall be the location of such person.

Thus, the place of supply of services shall be Chennai where Kalyan Jewellers is registered. Even if event is held in Singapur, since service recipient is registered person, the place of supply shall be the location of the recipient, here Chennai.

(ii) As per Section 12(7) of IGST Act, 2017, the place of supply of services provided by way of 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 to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Since Dr. Kelvin is not a registered person, the place of supply shall be the place where the event is held, here as the wedding is organised in Mumbai, therefore, place of supply shall be Mumbai. The location of the supplier and the location of the recipient is irrelevant.

If the wedding is organised in Malaysia, then the place of supply would have been the location of the recipient. Since Dr. Kelvin resides in Kochi, therefore, the place of supply shall be Kochi.

**Illustration 4 – Determination of Place of supply :** Mr. Murthy, an unregistered person and a resident of Pune, hires the services of M/s. Sun Ltd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru.

(i) Determine the place of supply of services provided by M/s. Sun Ltd.

(ii) What would your answer be in case the product launch takes place in Bangkok ?

(iii) What would your answer be in case Mr. Murthy is a registered person and product launches take place in Bengaluru and Bangkok ? (5 Marks, May 2018)

Ans:

- (i) When service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient (Mr. Murthy) is unregistered and event is held in India, place of supply is the location where the event is actually held *i.e.*, Bengaluru.

- (ii) However, if product launch takes place outside India (Bangkok), the place of supply will be the location of recipient *i.e.*, Pune.

- (iii) When service by way of organization of an event is provided to a registered person, place of supply is the location of recipient.

Therefore, if Mr. Murthy is a registered person, then in both the cases *i.e.*, either when product launch takes place in Bengaluru or Bangkok, the place of supply will be the location of recipient *i.e.*, Pune.

**Illustration 5 - Determination of Place of supply :** Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties.

Determine the place of supply in the transaction below as per provisions of GST law in the following independent situations :

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Properties situated at
I	Delhi	Mumbai	New York (USA)
II	Delhi	New York	Paris (France)

Explain the relevant provisions of law to support your conclusions. (5 Marks, May 2018-NS)

**Solution: Case I :** In a case where both the service provider and the service recipient are located in India, the place of supply of services directly in relation to an immovable property is the location of the immovable property. However, if the immovable property is located outside India, the place of supply is the location of the recipient.

Since in the given case, both the service provider (Mr. Mahendra Goyal) and the service recipient (Mr. Harish Jain) are located in India and the immovable property is located outside India (New York), the place of supply will be the location of recipient *i.e.*, Mumbai.

**Case II :** In a case where either the service provider or the service recipient is located outside India, the place of supply of services directly in relation to an immovable property is the location of the immovable property.

Since in the given case, service recipient (Mr. Harish Jain) is located outside India (New York), the place of supply will be the location of immovable property *i.e.*, Paris (France).

**Illustration 6 - Determination of Place of supply of services :** XYZ Ltd. of Delhi, engaged in various business has provided the following services in the month of March 2020, whose values are listed below. Compute its taxable value for the purpose of GST liability :

- (1) Service of interior decoration in respect of immovable property located in Jammu : ₹ 5 lakh;
- (2) Service of renting of commercial buildings in Delhi : ₹ 10 lakh;
- (3) Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney : ₹ 15 lakh;
- (4) Services provided as an Indian agent undertaking marketing in India of goods of a foreign seller : ₹ 15 lakh;
- (5) Beautification and fashion designing services to a pageant based at Mumbai. The services are in nature of personalized services (Value : ₹ 15 lakh).
- (6) Freight-forwarding services : ₹ 12 lakh profit earned on buying and selling cargo space on airlines for export of goods. In some other cases, commission of ₹ 3 lakh earned from airlines on acting as intermediary in arranging cargo space on airlines for export of goods.
- (7) Online information and database access and retrieval services provided to clients in UK : ₹ 5 lakhs
- (8) Other services provided : ₹ 4 lakh to persons located in Srinagar, ₹ 2 lakh to persons located in US and ₹ 15 lakh to persons located in Delhi.

**Solution:** The Value of taxable supply –

(amount in ₹)

(1)	<b>Service of interior decoration in respect of immovable property located in Jammu :</b> As per Section 12(3) of CGST Act, 2017 in respect of services provided directly in relation to immovable property, the place of supply shall be the location of immovable property. Therefore, in the given case, the place of supply of service shall be in Jammu.	5,00,000
-----	---	----------

(2)	<b>Service of renting of commercial buildings in Delhi</b> : As per Section 12(3) of CGST Act, 2017, in respect of services provided directly in relation to immovable property, the place of supply shall be location of immovable property. Therefore, in the given case, the place of supply of service shall be Delhi.	10,00,000
(3)	<b>Architectural services to an Indian Hotel Chain which has business establishment in Mumbai for its newly acquired property in Sydney</b> : As per Section 12(3), If the location of the immovable property is outside India, the place of supply shall be the location of recipient - in this case Mumbai. If property in Sydney amounts to a fixed establishment of service recipient, then location of service recipient would be Sydney <i>i.e.</i> non taxable territory. As per Section 13(4), in that case place of supply shall be in Sydney.	15,00,000
(4)	<b>Services provided as an Indian agent undertaking marketing in India of goods of a foreign seller</b> : As per Section 13(8), the place of supply of intermediaries of goods is the place of location of service supplier. Since service supplier XYZ Ltd. is located in Delhi (taxable territory), hence, these services shall be taxable.	15,00,000
(5)	<b>Beautification and Fashion designing</b> : The place of supply of service shall be the place where the services are actually performed <i>i.e.</i> Mumbai. Hence, it is chargeable to tax.	15,00,000
(6)	<b>Freight Forwarding</b> : According to Section 12(8), Where the transportation of goods is to a place outside India, the place of supply shall be destination of such goods. The said services have been exempt <i>vide</i> Entry 19A of Notification No. 12/2017 w.e.f. 25-01-2018 till 30-06-2019. As per Section 12(2), the place of supply of intermediary services shall be the location of registered person, assuming that services are provided to registered person. Hence it shall be taxable.	Nil 3,00,000
(7)	<b>Online information database access and retrieval services</b> : As per provisions of Section 13(12), the place of supply of service shall be the location of the recipient of services <i>i.e.</i> UK. Since it is outside taxable territory, hence it shall not be taxable.	Nil
(8)	<b>Other services provided</b> : For other services, As per Section 12(3) services in India (including Srinagar are taxable) based on location of the recipient of services. For services provided in US, Section 13(2) shall be applicable, the place of supply of service shall be the location of the recipient of services <i>i.e.</i> US, hence it shall not be taxable.	19,00,000
<b>Total Value of taxable Supply</b>		<b>82,00,000</b>

**Illustration 7 – Place of supply** : Answer the following questions in the light of the place of supply provisions contained in the IGST Act, 2017 :

- (1) Quickdeal Enterprises (Ahmednagar, Gujarat) opens a new branch office at Hissar, Haryana. It purchases a building for office from Ruhani Builders (Hissar) along with pre-installed office furniture and fixtures. Determine place of supply of the pre-installed office furniture and fixtures. *(MTP May, 2018 Marks)*
- (2) Supra Events, an event management company at New Delhi, organizes an award function for Chirag Diamond Merchants of Varanasi (registered in U.P.), at Mumbai. Determine place of supply of the service supplied by Supra Events. Will your answer be different, if the award function is organised at Mauritius instead of Mumbai? *(MTP May, 2018 Marks)*

**Solution:** The place of supply shall be as under :

- (1) As per Section 10(1)(c) of the IGST Act, **if the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient.** Since there is no movement of office furniture and fixtures in the given case, the place of supply of such goods is their location at the time of delivery to the recipient (Quickdeal Enterprises) *i.e.*, Hissar, Haryana.
- (2) Section 12(7) of the IGST Act stipulates that the **place of supply of services** provided by way of 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 **is the location of recipient in a case where such service is provided to a registered person.** In the given case, since the recipient (Chirag Diamond Merchants) is a registered person, the place of supply is the location of the recipient, *i.e.*, Varanasi, U.P.  
Further, the place of supply will not change even if the award function is organised at Mauritius instead of Mumbai as the location of recipient remains unchanged. Thus, in that case also, the place of supply is the location of the recipient, *i.e.*, Varanasi, U.P.

**Illustration 8 – Determination of Place of supply of service** : Swamy Ltd. of Chennai acquires the business of SA Ltd. at Johansberg, South Africa. Swamy Ltd. entered into a contract with M/s. Krish & Krish Architects, Chennai to do the interiors of the building of new business at South Africa. The GST department issued a notice demanding GST based on the Place of Supply. Discuss. *(Modified 4 Marks, Nov. 2016)*

**Ans:** As per Section 12(3) of the IGST Act, 2017, in respect of services provided directly in relation to immovable property, the **place of supply shall be the location at which the immovable property is located**. However, **if the location of the immovable property is outside India, the place of supply shall be the location of recipient**. In this case the place of supply shall be the location of the recipient *i.e.* Chennai.

However, since branch in South Africa is a separate person and if order is placed by branch in South Africa, then provisions of Section 13(4) of the IGST Act shall apply and the place of supply shall be location of immovable property *i.e.* South Africa.

**Illustration 9 - Determination of Place of supply of service :** Musicera Pvt. Ltd., owned by Nitish Daani - a famous classical singer - wishes to organise a 'Nitish Daani Music Concert' in Gurugram (Haryana). Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising the said music concert at an agreed consideration of ₹ 10,00,000. Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of ₹ 4,00,000. Musicera Pvt. Ltd. fixes the entry fee to the music concert at ₹ 5,000. 400 tickets for 'Nitish Daani Music Concert' are sold.

You are required to determine the CGST and SGST or IGST liability, as the case may be, in respect of the supply(ies) involved in the given scenario.

Will your answer be different if the price per ticket is fixed at ₹ 450?

**Note:** Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable. (RTP May 2019)

**Solution:** In the given situation, three supplies are involved:

- (i) **Admission to events:** Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert.
- (ii) **Organization of event :** Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by way of organising the music concert.
- (iii) **Accommodation services :** Services provided by Hotel Dumdum to Supriya (P) Ltd. by way of accommodation in the Hotel lawns for organising the music concert.

The CGST and SGST or IGST liability in respect of each of the above supplies is determined as under:

- (i) **Admission to event - POS - Place where event is held :** As per the provisions of section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to, *inter alia*, a cultural event shall be the place where the event is actually held.

Therefore, the place of supply of services supplied by Musicera Pvt. Ltd. to audiences by way of admission to the music concert is the location of the Hotel Dumdum, *i.e.* Gurugram, Haryana.

Since the location of the supplier (Ludhiana, Punjab) and the place of supply (Gurugram, Haryana) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows :

Consideration for supply (400 tickets @ ₹ 5,000 per ticket) = ₹ 20,00,000

**IGST @ 18% on value of supply = ₹ 20,00,000 × 18% = ₹ 3,60,000.**

- (ii) **Organization of event - POS - Location of registered person :** Section 12(7)(a)(i) of IGST Act, 2017 stipulates that the place of supply of services provided by way of organization of, *inter alia*, a cultural event to a registered person is the location of such person.

Therefore, the place of supply of services supplied by Supriya (P) Ltd. to Musicera Pvt. Ltd. (Ludhiana, Punjab) by way of organising the music concert is the location of the recipient, *i.e.* Ludhiana (Punjab).

Since the location of the supplier (Delhi) and the place of supply (Ludhiana, Punjab) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

Consideration for supply = ₹ 10,00,000

**IGST @ 18% on value of supply = ₹ 10,00,000 × 18% = ₹ 1,80,000**

- (iii) **Accommodation service - POS - place where immovable property is located :** As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, *inter alia*, any cultural function shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Hotel Dumdum (Gurugram, Haryana) to Supriya (P) Ltd. by way of accommodation in Hotel lawns for organising the music concert shall be the location of the Hotel Dumdum, *i.e.* Gurugram, Haryana.



Since the location of the supplier (Gurugram, Haryana) and the place of supply (Gurugram, Haryana) are in the same State, CGST and SGST will be leviable. Therefore, CGST and SGST leviable will be computed as follows :

Consideration for supply = ₹ 4,00,000

CGST @ 9% on value of supply = ₹ 4,00,000 × 9% = ₹ 36,000

SGST @ 9% on value of supply = ₹ 4,00,000 × 9% = ₹ 36,000

If the price for the entry ticket is fixed at ₹ 450, answer will change in respect of supply of service provided by way of admission to music concert, as mentioned in point (i) above. There will be no IGST liability if the consideration for the ticket is ₹ 450 as the inter-State services by way of right to admission to, inter alia, musical performance are exempt from IGST *vide* Notification No. 9/2017-IT (R) dated 28-06-2017, if the consideration for right to admission to the event is not more than ₹ 500 per person. However, there will be no change in the answer in respect of supplies mentioned in point (ii) and (iii) above.

**Illustration 10 - Determination of Place of supply of service :** Mr. Sumit has a permanent residence at Ahmedabad. He has a savings bank account with Ahmedabad Branch of Safe and Sound Bank. On April 1, 2019, Mr. Sumit opened a safe deposit locker with the Ahmedabad Branch of Safe and Sound Bank. Mr. Sumit went to USA for official work in December, 2019 and has been residing there since then. Mr. Sumit contends that since he is a non-resident during the year 2020-21 in terms of the Income-tax Act, GST cannot be levied on the locker fee charged by Safe and Sound Bank for the year 2020-21. Examine the correctness of the contention of Mr. Sumit. (*Modified RTP, Nov. 2014*)

**Ans: The contention of Mr. Sumit is not correct.** Under GST law the taxability of any service depends upon the provisions of Section 9 of the CGST Act, 2017 and not in terms of Income-tax Act, 1961. The fact that Mr. Sumit is a non-resident is irrelevant for determining the taxability of services received by him.

As per Section 12(12), the place of supply of banking and other financial services to any person shall be the location of the recipient of services on the records of the supplier of services. In this case the location of recipient as per the records of banking company is in Ahmedabad, the place of supply of service would be Ahmedabad and since Ahmedabad falls in taxable territory, locker fee would be liable to GST.

**Illustration 11 - Determination of Place of supply of services :** What would be the place of supply of service in the following independent cases?

- (i) MN Trade Links of New Delhi are appointed as commission agent by a foreign company for sale of its goods to Indian customers. In lieu of their services, MN Trade Links receive a fixed percentage of commission from the concerned foreign company.
- (ii) OP Fabricators of Mumbai has temporarily imported certain goods from its customer located in Hongkong for repairs. The said goods have been re-exported to Hongkong after carrying out the necessary repairs without being put to any use in Mumbai.
- (iii) UV Airlines, an airlines located in New Delhi, has hired aircrafts from a foreign Airlines for a period of 15 days.

**Ans:**

- (i) As per Section 13(8) of IGST Act, 2017, the place of supply of intermediaries of goods is the place of location of service supplier. Thus, the place of supply of services provided or agreed to be provided by MN Trade Links (as commission agent of goods) to foreign company shall be the location of service supplier *i.e.*, New Delhi and shall be liable to GST.
- (ii) Section 13(3)(a) of IGST Act, 2017 provides that the place of supply of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services, is the location where the services are actually performed.

However, services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process, the above provision shall not apply and place of supply shall be determined as per general rule *i.e.* Section 13(2) *i.e.* location of the recipient of service.

In the given case, goods have been temporarily imported by OP Fabricators and have been re-exported after the repairs without being put to any use in Mumbai. Therefore, place of supply of repair services carried out by OP Fabricators shall be the location of service recipient *i.e.* Hongkong and the same shall not be taxable.



- (iii) As per Section 13(8)(c), place of supply of services consisting of **hiring of means of transport**, including yachts but excluding aircrafts and vessels, **up to a period of one month is the location of the service supplier**. Therefore, services of hiring of aircraft and vessel (except yachts), irrespective of the period of hire, shall be covered under Section 13(2) of the IGST Act, 2017 and place of supply shall be location of the recipient of service. Thus, the place of supply of aforesaid hiring services shall be New Delhi (location of service recipient).

**Illustration 12 – Determination of Place of supply of services :** Determine the place of supply of services as well as their taxability in each of the following independent cases :

- (i) Mr. A, the owner of an immovable property located in New Delhi gives on rent the said property to Mr. B of U.P. for commercial purposes.
- (ii) Mr. Rahul, a Delhi based Interior Decorator provides his professional services in respect of property which is intended to be located in Punjab.
- (iii) A U.S.A. based company possessing specialization in mineral exploration has been awarded a contract for mineral exploration in respect of specific sites in Canada by Mumbai based Mr. Ram Kapoor.
- (iv) Rohit, a Consulting Engineer provides his professional consultancy services to a U. K. based company in respect of its three properties located in U. K., USA and Dubai.
- (v) Yogesh, Chennai based Professional valuer provides his professional services of valuation of immovable properties [vide a single contract for a consolidated consideration] to Mumbai based Reliance Industries Ltd. in respect of its four properties located in Delhi, Kashmir, Kolkata and London. It is assumed that Yogesh performed 20%, 30% 15% and 35% of his total services in foregoing four cities respectively.
- (vi) A Delhi based builder provides construction services to Punjab based company in respect of construction of its new building in Bangladesh.

**Ans:** The aforesaid cases have been discussed herein below,—

- (i) As per Section 12(3) of IGST Act, 2017 in respect of **services provided directly in relation to immovable property, the place of supply shall be place where immovable property is located or intended to be located**. Therefore, in the given case, the place of supply of service shall be New Delhi which falls within the ambit of taxable territory and shall be liable to GST.
- (ii) As per Section 12(3) of IGST Act, 2017 in respect of **services provided directly in relation to immovable property, the place of supply shall be place where immovable property is located or intended to be located**. In this case, it is assumed that location of service recipient is in India. The place of supply of services shall be Punjab as the concerned property is intended to be located in Punjab which falls within the ambit of 'Taxable Territory' and thus this service shall be liable to GST.
- (iii) As per Section 13(4) of IGST Act, 2017 in respect of **services provided directly in relation to immovable property, the place of supply shall be place where the immovable property is located or intended to be located**. In this case, since specific sites in respect of which mineral exploration is to be carried out are located in Canada, the place of supply of service shall be Canada which does not fall within the ambit of taxable territory and resultantly, this service will not be liable to GST.
- (iv) As per Section 13(4) of IGST Act, 2017 in respect of **services provided directly in relation to immovable property, the place of supply shall be place where the immovable property is located or intended to be located**. Since, in this case, consulting engineer's services provided by Mr. Rohit are in respect of property which falls within non-taxable territory, hence no GST is payable by Mr. Rohit.
- (v) As per Section 12(3) of IGST Act, 2017, in respect of services provided directly in relation to immovable property, the place of supply shall be place where the immovable property is located or intended to be located.

Where the immovable property is located in more than one State or Union territory, the supply of service shall be treated as made in each of the respective States or Union territory, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard.

Here, place of supply for services provided in three properties located in Delhi (20%), Kashmir (30%) and Kolkata (15%) shall be in each of the states where the service is supplied.

**If the immovable property is located or intended to be located outside India , the place of supply shall be location of the recipient.** In this case services provided in relation to immovable property located in London (35%), Place of supply shall be location of the recipient *i.e.* Mumbai which falls within the ambit of taxable territory, thus Yogesh shall be liable to pay GST.

- (vi) As per Section 12(3) of IGST Act, 2017, in respect of services provided directly in relation to immovable property, the place of supply shall be place where the immovable property is located or intended to be located. If the immovable property is located or intended to be located outside India, the place of supply shall be location of the recipient.

In this case services provided in relation to immovable property located in Bangladesh, the place of supply shall be location of the recipient *i.e.* Punjab which falls within the ambit of 'Taxable Territory' and thus this service shall be liable to GST.

**Illustration 13 – Determination of Place of supply of services :** Determine the place of provision of services as well as their taxability in each of the following cases with brief reasons :

- (i) XY Ltd. agrees to provide 'technical inspection and certification service' in respect of a newly developed product of an overseas firm (for a newly launched motorbike which has to meet emission standards in different states or countries). The overseas firm has provided its newly developed product to XY Ltd. for the purpose of testing. The testing is carried out in Delhi (15%), Assam (35%) and Sweden (50%). (2 Marks, May 2015)
- (ii) A movie on demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi Flight. (Modified 2 Marks, May 2015)

**Ans:** The place of supply of services as well as their taxability is as under –

- (1) As per Section 13(3) of IGST Act, 2017, where any service supplied in respect of goods which are required to be made physically available by the recipient of services to supplier of services, **the place of supply of services shall be the location where the service is actually performed.**

As per Section 13(7) of IGST Act 2017, where any such services are supplied in more than one state or Union territory, place of supply of such services shall be taken as being in each of the respective states or Union territories.

Thus, place of supply of testing services (including that of Sweden) shall be in proportion of 15 and 35 in Delhi and Assam respectively and would be liable to GST.

- (2) As per Section 12(10) of IGST Act, 2017, **the place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board shall be location of the first scheduled point of departure of that conveyance for the journey.** The first scheduled departure of the conveyance is Bangkok. Hence, the place of supply of service shall be in Bangkok *i.e.* in the non taxable territory. Hence, GST liability shall not arise.

**Illustration 14 – Place of Supply of services :** Whether Goods and Service tax is leviable on the following services: An interior decorator provides service of beautification of spaces in Srinagar. (Modified 2 Marks, May 2005)

**Ans:** Yes. As per Section 12(3) of IGST Act, 2017, in respect of services provided directly in relation to immovable property, the Place of Supply shall be the place where immovable property is located or intended to be located. Therefore, in the given case, the place of supply of service shall be Srinagar (GST applies to whole of India including the state of Jammu and Kashmir) which falls within the ambit of taxable territory and thus this services shall be liable to GST.

**Illustration 15 – Determination of Place of Supply of services :** The supplier of service is abroad. He renders service to a subsidiary of an Indian Company located abroad. Payment to him is done by holding Indian Company. Does it attract GST? (Modified 2 Marks, May 2007)

**Ans:** GST is levied on 'supply' of goods or services or both, in India including the state of Jammu and Kashmir. GST is a destination based tax on consumption of goods and services. In this case, GST will not be attracted as location of supplier of service is abroad and place of supply of service is outside India. It is irrelevant that the payment for service is made from India.

**Illustration 16 – Determination of Place of Supply of services :** Determine the place of supply of service as well as their taxability in each of the following independent cases:

- (1) A Mumbai based builder provides construction services to Gujarat based company in respect of construction of its new building in Afghanistan.
- (2) A UK based company has been awarded mineral exploration contract in respect of specific sites in ZIMBABWE by a Chennai based corporation. (Modified 3 Marks, Nov. 2013)

**Ans:**

- (1) As per Section 12(3) of IGST Act, 2017, in respect of services provided directly in relation to immovable property, the place of supply shall be the place where the immovable property is located or intended to be located. If the immovable property is located or intended to be located outside India, the place of supply shall be location of the recipient.
- In this case services provided in relation to immovable property located in Afghanistan, Place of supply shall be location of the recipient *i.e.* Gujarat which falls within the ambit of 'Taxable Territory' and thus this service shall be liable to GST.
- (2) As per Section 13(4) of IGST Act, 2017, in respect of services provided directly in relation to immovable property, the place of supply shall be the place where the immovable property is located or intended to be located. In this case, since specific sites in respect of which mineral exploration is to be carried out are located in ZIMBABWE, the place of supply of service shall be ZIMBABWE which does not fall within the ambit of taxable territory and resultantly, this service will not be liable to GST.

**Illustration 17 - Determination of Place of supply of services :** Determine the place of supply of service in each of the following independent cases and state whether GST is payable in each of these cases :

- (1) Mr. A (an unregistered person) travelled on a Bagdogra - Dibrugarh - Singapore - Dibrugarh - Bagdogra flight where a single ticket with no stopover has been issued by Parkinson Airlines.
- (2) Mr. B (an unregistered person), a well-known comedian from Delhi, organises a stage-show in Japan. For organising the stage-show, he takes the services from a Mumbai based event organiser.

**Ans:** The place of supply of service as well as their taxability is as under -

- (1) As per Section 12(9) of IGST Act, 2017, the place of supply in respect of a passenger transportation service supplied to unregistered person is the place where the passenger embarks on the conveyance for a continuous journey. The journey in the given case is a continuous journey as a single ticket has been issued for the entire journey [Section 2(3) of IGST Act, 2017].

On application of Section 12(9) in the given case, the place of supply of service is Bagdogra and resultantly, the service is taxable in India.

However, no GST would be payable as there is an exemption for air transportation of passengers embarking from Bagdogra airport located in West Bengal [Entry 15 of Notification No. 12/2017-CT (Rate)].

- (2) As per Section 12(7)(a) of IGST Act, 2017, the place of supply of services provided by way of organization of an entertainment event in India supplied to an unregistered person is the place where event is actually held. If event is held outside India then the place of supply is location of the recipient. Thus, in the given case since the event is held in Japan (outside India), the place of supply of service is Delhi, thus the service is taxable in India.

**Illustration 18 - Place of supply of services :** Write a brief note on the applicability of GST in the following cases :

- (i) Whether the representation service provided by an Indian bank to a foreign MTSO (Money Transfer Service Operator) in relation to money transfer to a beneficiary in India falls in the category of intermediary service.
- (ii) Whether GST is leviable on the services provided as mentioned in (i) above by a intermediary/agent located in India (in taxable territory) to MTSO's located outside in India. (*Modified 4 Marks, Nov. 2016*)

**Ans:**

- (i) In terms of Section 2(13) of IGST Act 2017, intermediary means a broker, an agent or any other person who arranges/facilitates the supply of a service (hereinafter called the 'main service') between two/more persons, but does not include a person who supplies such service on his own account.

An Indian bank, acting as an agent to foreign MTSO, facilitates the provision of money transfer service by the foreign MTSO to a beneficiary in India and receives commission or fee in return.

Hence, the Indian Bank falls in the category of intermediary and representation service provided by such Bank is intermediary service. Hence, the said service is liable to GST.

- (ii) Yes, GST is leviable on the said service. Section 13(8) of IGST Act, 2017 provides that the place of supply of intermediary service is the location of supplier of service. Since the intermediary is located in taxable territory, the said service is liable to GST.

**Illustration 19 - OIDAR Services :** From the following information determine GST liability, if any; and person liable to pay GST in context of "Online information and database access or retrieval services" (OIDAR) Services.

Mr. X of Rajasthan provides online gaming services across India. He earns ₹ 12,00,000 from user of India (including ₹ 2,00,000 from Jammu & Kashmir users), and ₹ 5,00,000 from foreign users. (Rate of GST - 18%)

**Solution:** The place of supply and GST liability is as under—

(amount in ₹)

<b>OIDAR Services:</b>	
(a) Services provided to users in India (including Jammu & Kashmir users) shall be taxable in India	12,00,000
(b) Services provided to Foreign users - The place of supply shall be outside India, hence, not taxable	Nil
<b>Total Value of taxable supply</b>	<b>12,00,000</b>
<b>GST payable @ 18%</b>	<b>2,16,000</b>
Since Mr. X is located in taxable territory, he shall be liable to pay GST	

**Illustration 20 – OIDAR Services :** From the following information determine GST liability, if any; and person liable to pay GST in context of "Online information and database access or retrieval services" (OIDAR) Services. Mr. X of Dubai provides cloud services. He earns ₹ 10 lakhs from users in India (including ₹ 2 lakh from Jammu and Kashmir (personal users) ₹ 5 lakhs from Dubai users and ₹ 50,00,000 from companies in India, being business users (who further sell such services). GST is 18%.

**Solution:** The position of law is explained by way of table below –

(amount in ₹)

<b>OIDAR Services provided by Mr. X of Dubai i.e., person in non-taxable territory:</b>	
(a) <b>Place of supply - For users in India (including Jammu &amp; Kashmir users) (Personal use) i.e. Non Taxable on line recipient :</b> As per Section 13(13), the place of supply shall be the location of recipient of services i.e. India, hence taxable. <b>Person liable to pay tax -</b> The person liable to pay GST shall be Mr. X or his agent in India.	10,00,000
(b) <b>Place of supply - For Dubai users :</b> The place of supply shall be outside India. The same shall not be taxable. Otherwise also, the sale is exempt under Entry 10(c) of Notification No. 9/2017-IT (Rate), as both Service supplier and Service recipient are located in non Taxable territory.	Nil
(c) <b>Place of supply - For business users in India :</b> As per Section 13(13), the place of supply shall be the location of recipient of services i.e. India, hence taxable. <b>Person liable to pay tax :</b> The company located in India shall be liable to pay GST on reverse charge basis.	50,00,000
<b>Total Value of taxable Supply</b>	<b>60,00,000</b>
<b>GST payable @ 18%</b>	<b>10,80,000</b>

**T.Q. 1 :** What would be the place of supply of services provided by an event management company for organizing a sporting event for a Sports Federation which is held in multiple States?

**Ans:** As per Section 12(7) of the IGST Act, in case of an event, if the recipient of service is registered, the place of supply of services for organizing the event is the location of such person.

However, if the recipient is not registered, the place of supply is the place where event is held. Since the event is being held in multiple states and a consolidated amount is charged for such services, the place of supply shall be taken as being in each state in proportion to the value of services so provided in each state.

**T.Q. 2 :** What shall be the place of supply of passenger transportation service, if a person travels from Jaipur to Delhi and back to Jaipur?

**Ans:** As per Section 12(9) of the IGST Act, 2017, if the person is registered, the place of supply shall be the location of recipient. If the person is not registered, the place of supply for the forward journey from Jaipur to Delhi shall be Jaipur, the place where he embarks. However, for the return journey, the place of supply shall be Delhi as the return journey has to be treated as separate journey.

**T.Q. 3 :** A person from Mumbai goes to Kullu-Manali and takes some services from HDFC Bank in Manali. What is the place of supply?

**Ans:** If the service is not linked to the account of person, place of supply shall be Kullu i.e., the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply shall be Mumbai, the location of recipient on the records of the supplier.

**T.Q. 4 :** An unregistered person from Gurugram travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What is the place of supply of insurance services?

**Ans:** As per Section 12(13) of IGST Act, when insurance service is provided to an unregistered person, the location of the recipient of services on the records of the supplier of insurance services is the place of supply. So Gurugram is the place of supply.

## EXPORT AND IMPORT

## SUMMARIZED POINTS FOR REVISION

## EXPORT OF GOODS

- (1) **“Export of goods”** means taking goods out of India to a place outside India. [Section 2(5) of IGST Act, 2017]  
**Supply of goods where supplier located in India and the place of supply outside India – Deemed to be inter-state Supply :** Supply of goods, when the supplier is located in India and the place of supply is outside India, shall be deemed to be supply of goods in the course of inter-State trade or commerce. [Section 7(5)(a)]
- (2) **Promotion of exports under GST :**
- (a) **Exports are Zero rated i.e.** No tax would be payable on such supplies, the exporter shall be eligible to claim the corresponding input tax credits.
- (b) **Refund of taxes :** The exporter shall be eligible to claim refund under the following situations :
- (i) He may export the goods upon payment of IGST and claim refund of such tax paid; or
- (ii) He may export the goods under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit.
- However, refund is not eligible in the following cases –
- If the goods exported out of India are subjected to export duty; or
  - If the supplier of goods or services or both avails of drawback in respect of central tax.
- “Drawback”** in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods. [Section 2(42)]
- (3) **Refund of integrated tax paid on goods exported out of India [Rule 96]:**
- (a) **Shipping bill – Deemed to be refund application :** It shall be deemed to be filed only when –
- (i) the person in charge files a departure manifest or export manifest/report covering the number and the date of shipping bills or bills of export; and
- (ii) the applicant has furnished a valid return in **FORM GSTR-3** or **FORM GSTR-3B**, as the case may be. [Rule 96(1)]
- (b) Export invoices shall be Transmitted to customs portal and confirmation of export is received from customs portal to common portal. [Rule 96(2)]
- (c) Refund claim will be processed and crediting in bank account of applicant. [Rule 96(3)]
- (d) **Cases where refund can be withheld :** The claim for refund shall be withheld where, –
- (i) a request has been received from the jurisdictional Commissioner to withhold the refund; or
- (ii) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962. [Rule 96(4)]
- (e) Intimation of withholding of refund by proper officer to the applicant and jurisdictional Commissioner and transmission of copy of intimation to the common portal. [Rule 96(5)]
- (f) Order for withholding of refund shall be passed by proper officer upon transmission of said intimation. [Rule 96(6)]
- (g) Sanction of withheld refund and passing of refund order if applicant is entitled to refund.
- (h) In case of Bhutan Exports, Refund will be granted to Bhutan Government. [Rule 96(8)]
- (i) **Refund form in respect of Services :** The application for refund of integrated tax paid on the services exported out of India shall be filed in **FORM GST RFD-01** and shall be dealt with in accordance with the provisions of Rule 89. [Rule 96(9)]
- (j) **Ineligible Supplies :** The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of Notification No. 48/2017-CT dated 18-10-2017 or Notification No. 40/2017-CT (R) dated 23-10-2017 or Notification No. 41/2017-IT (R) dated 23-10-2017 or Notification No. 78/2017-Cus. dated 13-10-2017 or Notification No. 79/2017-Cus. dated 13-10-2017. [Rule 96(10)]

**(4) Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking [Rule 96A] :**

- (a) Registered person is required to Furnish bond or Letter of Undertaking for export of goods or services in **FORM GST RFD-11** to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under section 50(1) within a period of –

Goods	Services
⇒ 15 days after the expiry of 3 months, or ⇒ such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India.	⇒ 15 days after the expiry of 1 year, or ⇒ such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

- (b) The details of the relevant export invoices shall be transmitted electronically by common portal to the Customs system and the said system shall transmit to the common portal, a confirmation of export of goods.
- (c) On receipt of information the refund amount shall be credited to the exporters account.
- (d) The bond amount shall be recovered in accordance with the provisions of Section 79 in case of failure to export goods within specified time limit.
- (e) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.
- (f) The above provisions shall apply in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

**Export of goods and/ or services without payment of tax on furnishing of LUT instead of bond – Conditions [Notification No. 37/2017-CT dated 04-10-2017 w.e.f. 04-10-2017:**

- (i) The registered person (except those who have been prosecuted for any offence where the amount of tax evaded exceeds ₹ 250 lakh) can furnish LUT instead of bond.
- (ii) LUT to be furnished in duplicate on the letterhead of registered person and it shall be executed by the working partner, the MD or the CS or the proprietor or by a person duly authorised by them.
- (iii) The facility shall stand withdrawn if the registered person fails to pay the tax due along with interest, within specified time and after such payment the facility of export without payment of integrated tax shall be restored.

<b>Circular No. 45/19/2018-GST dated 30-05-2018</b>	Furnishing of bond or Letter of Undertaking (LUT) is not required in the case of zero rated supply of exempted or non-GST goods. Refund of unutilised ITC can be claimed by the exporter of exempted or non-GST goods.
---	---

**(5) Integrated Tax to be levied @ 0.1% on inter-State supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions [Notification No. 41/2017-IT (R) dtd 23-10-2017]:**  
The following conditions must be satisfied –

- (i) **Tax Invoice :** The registered supplier shall supply the goods to the registered recipient on a tax invoice;
- (ii) Export within 90 days from the date of issue of a tax invoice by the registered supplier;
- (iii) GSTIN of supplier in Export Documents;
- (iv) Recipient must be registered with EPC;
- (v) Copy of purchase order to be submitted to the Jurisdictional Officer of Supplier;
- (vi) **Movement of Goods :** The registered recipient shall move the said goods from place of registered supplier-  
 > directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or  
 > directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- (vii) **Aggregation of supplies at registered warehouse** and then Export;
- (viii) Endorsement of tax invoice and acknowledgment from Warehouse-Keeper;
- (ix) Proof of export to be given to the supplier and his Jurisdictional Officer;



- (x) **Full rate applicable if goods not exported within 90 days from Tax Invoice** The registered supplier shall not be eligible for the above mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

Similar Exemption Notification No. 40/2017-CT (Rate) dated 23-10-2017 seeks to prescribe Central Tax rate of 0.05% on intra-State supply of taxable goods by a registered supplier to a registered recipient for export subject to conditions as specified above.

**Circular No. 37/11/2018 GST dated 15-03-2018** has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him. The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act. However, it may be noted that the exporter of such goods can export the goods only under LUT/bond and cannot export on payment of IGST.

**Circular No. 08/08/2017 dated 04-10-2017** has clarified that there is no provision for issuance of CT-1 Form - which enables merchant exporters to purchase goods from a manufacturer without payment of tax - under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

- (6) **Deemed Exports [Section 2(39) read with Section 147]** : The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India. The following supplies have been notified –

- (a) Supply of goods by a registered person against **Advance Authorisation**.

However, goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply,

No such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.

- (b) Supply of capital goods by a registered person against **Export Promotion Capital Goods Authorisation**.

- (c) Supply of goods by a registered person to **Export Oriented Unit**.

- (d) **Supply of gold** by a bank or Public Sector Undertaking specified in the Notification No. 50/2017-Customs, dated 30-06-2017 (as amended) against Advance Authorisation.

Deemed exports are not zero rated supplies by default, unlike the regular exports. Hence, all supplies notified as supply for deemed export are subject to levy of taxes, i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient. Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be.

**Refund of taxes in case of deemed exports** : As per Explanation 1 to Section 54 of CGST Act, 2017, "Refund" includes refund of tax on the supply of goods regarded as deemed exports.

As per **Explanation 2(b) to Section 54 of CGST Act, 2017**, the relevant date for filing refund claim in the case of supply of goods regarded as deemed exports, where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished.

- (7) **"Tourist"** means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes. [Explanation to Section 15 of IGST Act, 2017]

**Refund of integrated tax paid on supply of goods to tourist leaving India [Section 15 of IGST Act, 2017]** : The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

- (8) **Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist [Rule 95A] [Inserted by Notification No. 31/2019-CT dated 28-6-2019 w.e.f. 1-7-2019]** :

- (a) **Retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.**

- (b) Retail outlet claiming refund of the taxes paid on his inward supplies, shall furnish the application for refund claim in FORM GST RFD- 10B on a monthly or quarterly basis, as the case may be, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.
- (c) The 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 shall be submitted along with the refund application.
- (d) The refund of tax paid by the said retail outlet shall be available if-
- (i) the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;
  - (ii) the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;
  - (iii) name and GSTIN of the retail outlet is mentioned in the tax invoice for the inward supply; and
  - (iv) such other restrictions or conditions, as may be specified, are satisfied.
- (e) The provisions of rule 92 shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.

### EXPORT OF SERVICES

- (9) "Export of services" means the supply of any service when,-
- (i) the supplier of service is located in India;
  - (ii) the recipient of service is located outside India;
  - (iii) the place of supply of service is outside India;
  - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
  - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8. [Section 2(6) of IGST Act, 2017]

**Deemed Distinct Persons :** According to the Explanation 1 to Section 8 of the IGST Act, where a person has,-

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory,

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

**Branch or agency or representational office to be regarded as establishment :** A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory. [Explanation 2]

**Service supplied by establishment of person in India to own establishment out of India exempt [Entry No. 10E of Notification No. 9/2017-IT (Rate) both dated 28-6-2017] :** Service supplied by establishment of person in India to own establishment out of India is exempt, if place of supply is out of India.

- (10) As per Section 7(5)(a), Supply of services where supplier is located in India and the place of supply is outside India shall be deemed to be inter-state supply. Export of services are Zero rated.

**Circular No. 78/52/2018-GST dated 31-12-2018 :**

**Issue :** In case of an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter? There may be instances where the full consideration for the outsourced services is not received by the exporter in India.

**Clarification :** Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place: -

- (a) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value;
- (b) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the IGST Act, 2017 read with section 13(2) of the IGST Act are satisfied.

**Supplier liable to pay IGST on import of services under RCM and entitled for ITC :** It is clarified that the supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking ITC of the IGST so paid.

**Consideration of service paid outside India to supplier of outsourced services - its deemed receipt in India for purpose of export of service :** Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

- (a) IGST has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India; and
- (b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.

**Illustration:** ABC Ltd. India has received an order for supply of services amounting to \$ 500,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value).

ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay IGST on the same under reverse charge and also be eligible to take ITC of the IGST so paid.

Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided IGST on import of services has been paid on the part of services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

### ZERO RATED SUPPLY

**(11) Zero rated supply [Section 2(23) read with Section 16 of IGST Act, 2017] :**

- (i) "Zero rated supply" means any of the following supplies of goods or services or both, namely:-
  - (a) export of goods or services or both; or
  - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit. [Section 16(1)]
- (ii) **Credit of input tax** may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. [Section 16(2)]
- (iii) **Refund of taxes :** As per Section 16(3) A registered person making zero rated supply shall be eligible to claim refund under **either of the following options**, namely:-
  - (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
  - (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the CGST Act or the rules made thereunder.

<b>Notification No. 64/2017-Cus dated 5-7-2017</b>	In exercise of the powers conferred by Section 25(1) of the Customs Act, 1962, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts all goods imported by a unit or a developer in the Special Economic Zone for authorised operations, from the whole of the integrated tax leviable thereon u/s 3(7) of the Customs Tariff Act, 1975 read with Section 5 of the IGST Act, 2017.
--	--

- (12) **Refund in case of Zero rated supplies [Rule 89(4) of CGST Rules, 2017]** : In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of Section 16(3) of the Integrated Goods and Services Tax Act, 2017, refund of input tax credit shall be granted as per the following formula—

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

Where,—

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under **Rule 89(4A) or (4B) or both**;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under **Rule 89(4A) or (4B) or both**;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-  
Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;
- (E) "Adjusted Total Turnover" means the sum total of the value of –
- (a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
  - (b) the turnover of zero-rated supply of services determined in terms of (D) above and non-zero-rated supply of services,  
excluding –
    - (i) the value of exempt supplies other than zero-rated supplies; and
    - (ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A)/(4B) or both, if any, during the relevant period.
- (F) "Relevant period" means the period for which the claim has been filed.

**Circular No. 37/11/2018-GST dated 15-03-2018** has clarified that the relevant period has been defined in the context of the refund claim and is not linked to a tax period. The exporter, at his option, 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, however, cannot spread across different financial years.

**Refund of ITC on inputs and input services other than those for which benefit of Deemed Exports Claimed [Rule 89(4A)]** : In the case of supplies received on which the supplier has availed the benefit of Notification No. 48/2017-CT dated 18-10-2017 i.e. deemed exports, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

**Refund of Input tax credit in Specified Situations [Rule 89(4B)]** : In the case of supplies received on which the supplier has availed the benefit of Notification No. 40/2017-CT (R) dated 23-10-2017 or Notification No. 41/2017-IT (R) dated 23-10-2017 or Notification No. 78/2017-Cus. dated 13-10-2017 or Notification No. 79/2017-Cus. dated 13-10-2017, or all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

Amount refunded as ITC to be debited in Electronic Credit Ledger [Rule 89(3)] : Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

### IMPORT OF GOODS

- (13) "Import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India. [Section 2(10) of IGST Act, 2017]
- (14) Import of goods - Deemed to be inter-state supply : Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be supply of goods in the course of inter-State trade or commerce. [Section 7(2)]
- (15) Place of supply of goods imported into India [Section 11 of IGST Act, 2017] : The place of supply of goods, imported into India shall be the location of the importer.
- (16) IGST on import of goods [Section 5 of IGST Act, 2017] : The integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the Customs Tariff Act, 1975 at the point when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962. **Integrated tax to be levied shall be in addition to other duties of Customs. The point of levy and collection of IGST will also be the point when the bill of entry for home consumption is filed.**

Value for purpose of levy of Integrated tax : The computation of Integrated Tax on imports of goods shall be determined as under -

Particulars	₹
Assessable Value	[A] xxx
Add: Basic Customs duty @ 10% of [A]	[B] xxx
Add: Social Welfare Surcharge @ 10% of BCD i.e. 10% of [B]	[C] xxx
<b>Total value for levy of Integrated Tax u/s 3(7) of CTA, 1975</b>	<b>[D] xxx</b>
Add: Integrated tax under Section 3(7) @ 12% of [D]	[E] xxx
<b>Total cost of imported goods</b>	<b>xxx</b>
<b>Total Customs duty [B + C + E]</b>	<b>xxx</b>

- (17) 'Out and out supplies/ Third Country shipments/ Merchant Trading transactions not liable to GST if goods never enter India : : Merchant Trading Transactions (MTT) i.e. where the supplier of goods will be resident in one foreign country, the buyer of goods will be resident in another foreign country and the merchant or intermediary will be resident in India, would primarily not come under the ambit of GST since they do not involve entry of goods into India.

As per Para 7 in Schedule-III which provides that the supply of goods from place in the non-taxable territory to another person in the nontaxable territory, without such goods entering into the taxable territory, shall not be considered as supply of goods or supply of services.

- (18) High sea sale Transactions - Not subject to IGST as IGST is to be paid at the time of presentation of bill of entry : 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.

As per Para 8(b) in Schedule-III which provides that the Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall not be regarded as supply of goods or supply of services.

- (19) Integrated tax on warehoused goods : The Customs Act, 1962 provides for removal of goods from a customs station to a warehouse without payment of duty. The said Act has been amended to include 'warehouse' in the definition of "customs area" in order to ensure that an importer would not be required to pay the Integrated tax at the time of removal of goods from a customs station to a warehouse.

- (20) Last buyer before clearance to pay IGST as part of customs on final purchase value : As per Para 8(a) in Schedule-III which deals with a scenario where the supplier (i.e. original importer) of warehoused goods supplies such goods to any person (i.e. consignee) before the clearance for home consumption. Hence, such transaction shall not be regarded as either supply of goods or supply of services.

In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of IGST and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

<p>Value for levying IGST in case of supply of warehoused goods</p>	=	<p>(a) Transaction value (Sale value) OR (b) Value determined at the time of filing into-bond bill of entry u/s 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess</p>
<p><b>WHICHEVER IS HIGHER</b></p>		

If goods are sold more than once while being deposited in the warehouse, the last transaction value is taken as the transaction value for the purpose of determining the value for levying IGST in the manner given above.

If only a part of the goods are sold, the two values that are to be compared are -

- (i) transaction value of the goods sold and
- (ii) proportionate value (of the goods sold) determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

The remaining goods (which are not sold) are assessed on the value determined under section 14 of the Customs Act plus basic customs duty and any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

One more issue connected with the above point is that whether such sale of warehoused goods can be considered as an "exempt supply" so as to trigger input tax credit reversal u/s 17(2) of CGST Act, 2017.

It may also be noted that an amendment has also been made under Section 17(3) of CGST Act, 2017 to the effect that the transactions specified in Schedule-III (which includes the newly inserted entries) except sale of land and sale of building post completion shall not be included for the purpose of input tax credit reversal.

- (21) **Taxability of goods imported by SEZ :** Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are exempted from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 *vide* Notification No. 64/2017-Cus dated 05-07-2017.

<p><i>Circular No. 48/22/2018-GST dated 14-06-2018</i></p>	<p>Subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.</p>
--	--

- (22) **Taxability of goods imported by EOU :** Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOU's are governed by Notification No. 52/2003-Cus as amended by Notification No. 65/2018-Cus dated 24-09-2018. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. **However, exemption from IGST is available only till 31-03-2020.**

- (23) **Input tax credit of integrated tax** shall be available to the importer and the same can be utilized by him as Input Tax credit for payment of taxes on his outward supplies.

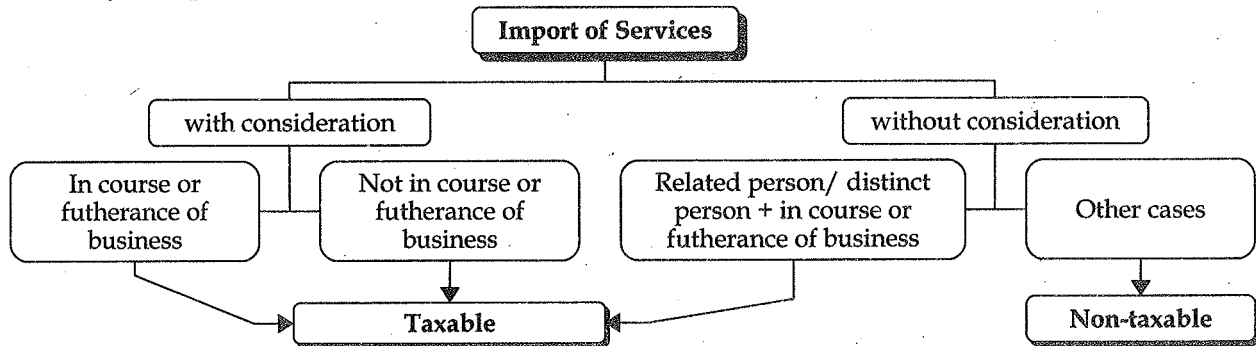
**IMPORT OF SERVICES**

- (24) **"Import of services"** means the supply of any service, where-
  - (i) the supplier of service is located outside India;
  - (ii) the recipient of service is located in India; and
  - (iii) the place of supply of service is in India.

Thus, only where the location of supplier is outside India but the location of recipient and the place of supply\* is in India, it shall qualify as import of services. [Section 2(11) of IGST Act, 2017]



(25) Taxability of importation of services is arrived as under :



(26) **Import of service - Deemed to be inter-state supply [Section 7(4)]** : Supply of services imported into the territory of India shall be treated as supply of services in the course of inter-State trade or commerce.

**ADDITIONAL PRACTICE QUESTIONS**

**T.Q. 5 :** How soon will refund in respect of export of goods or services be granted during the GST regime?

**Ans:** (a) **In case of refund of tax on inputs used in exports :** (i) Refund of 90% will be granted provisionally within 7 days of acknowledgment of refund application. (ii) Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects. (iii) Interest @ 6% is payable if full refund is not granted within 60 days.

(b) **In the case of refund of IGST paid on exports :** Upon receipt of information regarding furnishing of valid return in Form GSTR-3B by the exporter from the common portal, the Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of the exporter.

**Illustration 21 - Refund on account of zero rated supplies :** M/s. Kalaji Manufacturers & Exporters Pvt. Ltd. furnishes following information and requests you to compute the maximum refund eligible in respect of Zero-rated supplies for the relevant period :

Particulars	₹
(i) Input tax credit availed on inputs	2,50,000
(ii) Input tax credit availed on input services	50,000
(iii) Input tax credit availed on capital goods	2,00,000
(iv) Taxable value of goods exported without payment of tax	15,00,000
(v) Taxable value of goods supplied within India	35,00,000
(vi) Payments received towards services supplied for exports (includes ₹ 50,000 of advance towards services to be supplied/exported after the current relevant period)	5,50,000
(vii) Taxable value of services supplied within India	5,00,000

**Solution: Computation of maximum refund admissible in respect of Zero-rated supplies (amount in ₹):**

(i) Net ITC i.e. input tax credit availed on inputs and input services during the relevant period [₹ 2,50,000 + ₹ 50,000]	3,00,000
(ii) Turnover of zero-rated supply of goods i.e. value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking	15,00,000
(iii) Turnover of zero-rated supply of services (advance received towards services to be supplied/exported after the current relevant period shall not be included, hence : ₹ 5,50,000 - ₹ 50,000)	5,00,000
(iv) <b>Adjusted Total Turnover:</b>	
Turnover of goods and services within India [₹ 35,00,000 + ₹ 5,00,000]	₹ 40,00,000
Value of Zero rated supplies of goods and services (as computed above)	₹ 20,00,000
(v) <b>Maximum refund = [(Item (ii) + Item (iii)) ÷ Item (iv)] × Item (i)</b>	1,00,000

**Illustration 22 - Refund on account of zero rated supplies :** Wye Ltd. provides the following details of September, 2019, for computation of refund claim under rule 89(4) of the CGST Rules, 2017. Compute the eligible claim under the said rule assuming that other conditions are fulfilled.

Particulars	Amount (₹)
Opening balance of ITC	5,00,000
ITC availed during the period which include the claim for refund made of ₹ 5,00,000 eligible under Rule 89(4A)/89(4B)	25,00,000
Zero rated supply of goods made during the period without payment of tax under bond/LUT, which include the supply of ₹ 1,00,00,000 made for which refund claim made under rule 89(4A)/89(4B)	6,00,00,000
Supply of goods made other than zero rated supply	3,00,00,000

(5 Marks, May 2019-NS)

**Solution:** Computation of maximum refund admissible in respect of Zero-rated supplies (amount in ₹):

(i) Net ITC i.e. input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under Rule 89(4A) or (4B) or both	20,00,000
(ii) Turnover of zero-rated supply of goods i.e. the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both;	5,00,00,000
(iii) Adjusted Total Turnover i.e. the turnover in a State or a Union territory, as defined u/s 2(112) excluding the turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both;	8,00,00,000
(iv) Maximum refund = [(Item (ii) ÷ Item (iii)) × Item (i)]	12,50,000

**Illustration 23 – Refund on account of zero rated supplies :** A manufacturer manufactures 100 units of a product [value is ₹ 20,000 per piece]. SGST and CGST payable is 9% each. Input tax credit is ₹ 1,00,000 each of CGST and SGST. The manufacturer sells 70 pieces in export under bond and 30 pieces in India. Determine refund.

**Solution:** The refund is a computed below (amount in ₹) –

Particulars	SGST	CGST
Tax on 30 pieces (30 × ₹ 20,000 = ₹ 6 lakh × 9% each)	54,000	54,000
Tax on export under bond (Turnover = 70 × ₹ 20,000 = ₹ 14 lakh)	Nil	Nil
Input tax credit	1,00,000	1,00,000
<b>Net balance</b>	<b>46,000</b>	<b>46,000</b>
Refund eligible for ITC = ₹ 1,00,000 × 14 lakh export turnover/₹ 20 lakh total turnover	70,000	70,000
Since balance lying is lower, hence, refund =	46,000	46,000
After this refund, balance of credit	Nil	Nil

**CASE 1: Goods procured from outside India and supplied outside India – IGST not payable :** (i) Mr. Z, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the said activity of supply of goods by Mr. Z to customer in US is taxable under GST. If yes, determine the place of supply of the same. (RTP May, 2018) (RTP Nov., 2018)

**Ans:** Schedule III to the CGST Act specifies transactions/ activities which shall be neither treated as supply of goods nor supply of services. A new activity has been added in the said Schedule III vide the CGST (Amendment) Act, 2018 namely, 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. Thus, it seeks to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non-taxable territory.

Therefore, in view of the above-mentioned provisions, the said activity is not a supply. Hence, it is not leviable to GST since “supply” is the taxable event for chargeability of GST. Therefore, since the transaction is not leviable to GST, the question of place of supply does not arise in the given case.

**CASE 2: Determination of POS and Export of service :** RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service? (RTP May, 2018)

**Ans:** As per Section 13(2) of the IGST Act, 2017, in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in Section 13(3) to Section 13(13) shall be the location of the recipient of services. Section 13(3) to Section 13(13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined u/s 13(2). Thus, the place of supply of services in this case is the location of recipient of services *i.e.*, USA.

As per Section 2(6) of the IGST Act, 2017, export of services means the supply of any service when, - (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India; and (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8.

Since all the above 5 conditions are fulfilled in the given case, the same will be considered as an export of service.

**Illustration 24 - Determination of POS :** ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.

The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

For the month of December, 2019, the company has charged US \$ 1,00,000 (exclusive of GST) to its foreign customer. With reference to the provisions of GST law, examine whether the company is liable to pay IGST or CGST and SGST.

**Note:** GST @ 18% is applicable on supply of the support services provided by ABC Pvt. Ltd. Rate of exchange is ₹ 65 per US \$. (RTP May, 2018)

**Ans:**

➤ **Service Supplier is an Intermediary :** Section 2(13) of the IGST Act, 2017 defines "intermediary" to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services.

➤ **Place of Supply is Location of Intermediary :** If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of Section 13 of the IGST Act, 2017. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of Section 13 of the IGST Act, 2017.

➤ **Supply is intra-State supply :** As per Section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier *i.e.*, the location of ABC Pvt. Ltd. which is New Delhi. Further, as per Section 8(2) of the IGST Act, 2017, supply of services where the location of the supplier and the place of supply of services are in the same State is treated as intra-State supply.

Therefore, since in the given case, both the location of ABC Pvt. Ltd. and the place of supply of the service provided by it are in New Delhi, the supply of service shall be an intra-State supply leviable to CGST & SGST.

➤ **Computation of GST payable :** Assuming that the given rate of exchange is prevailing on the date of time of supply of services, the CGST and SGST liability will be worked out as under :

Particulars	Amount	
Value of taxable Supply	\$	1,00,000
Exchange rate	₹	65
<b>Value of taxable Supply in India Rupees</b>	₹	<b>65,00,000</b>
CGST @ 9%	₹	5,85,000
SGST @ 9%	₹	5,85,000
<b>Total GST Payable</b>	₹	<b>11,70,000</b>

## TIME OF SUPPLY

### SUMMARIZED POINTS FOR REVISION

#### NEED FOR DETERMINATION OF TIME OF SUPPLY

- (1) **Need for determination of time of supply** : The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made. The CGST/SGST Act provides separate time of supply for goods and services.

#### INVOICE PROVISIONS IN RESPECT OF GOODS

- (2) **Time limit for issuance of invoice in case of supplier of goods [Section 31(1)]** : A registered person supplying taxable goods shall issue invoice before or at the time of, –
- removal of goods for supply to the recipient, where the supply involves movement of goods; or
  - delivery of goods or making available thereof to the recipient, in any other case.
- (3) **Issuance of invoice in case of continuous supply of goods [Section 31(4)]** : In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

“Continuous supply of goods” means a supply of goods –

- which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis, and
- includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify. [Section 2(32)]

- (4) **Goods sent on approval - Invoice requirements [Section 31(7)]** : Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued –
- before or at the time of supply, or
  - 6 months from the date of removal,
- whichever is earlier.

#### TIME OF SUPPLY OF GOODS UNDER FORWARD CHARGE

- (5) **Time of supply of goods [Section 12]** :
- Liability for payment of tax arises at TOS [Section 12(1)]** : The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.
  - Time of Supply of goods - Forward Charge i.e. normal supply of goods [Section 12(2)]**: The time of supply of goods shall be the earliest of the following dates :
    - the date of issue of invoice by the supplier; or
    - the last date on which he is required, under Section 31, to issue the invoice with respect to the supply; or
    - the date on which the supplier receives the payment with respect to the supply i.e. earlier of date on which the payment is recorded in the books of account of the supplier or date on which the payment is credited to the supplier's bank account.

Small advance upto ₹ 1,000 - date of invoice to be time of Supply.

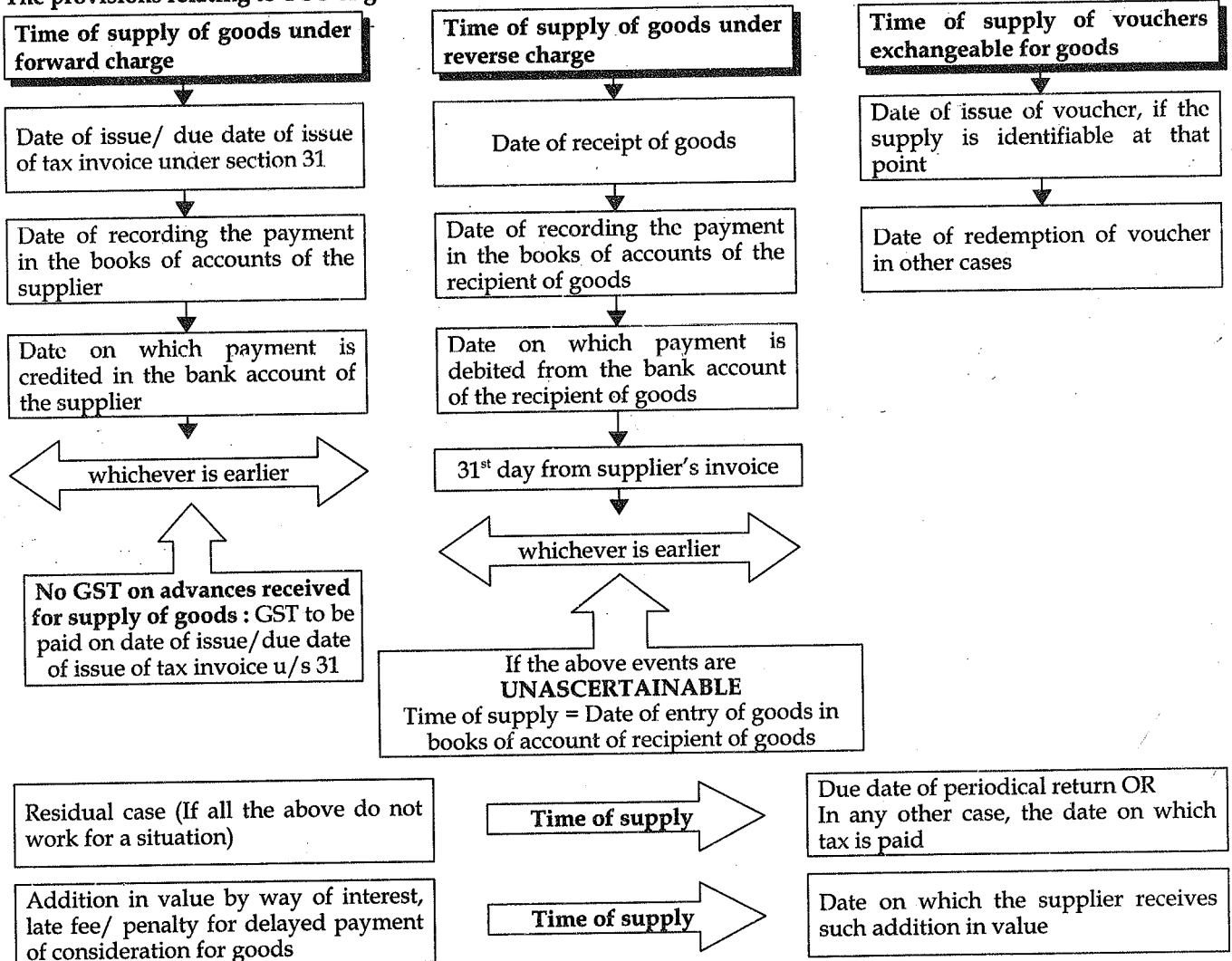
Exemption to all taxpayers from payment of tax on advances received in case of supply of goods - Tax on 'supply of goods' is to be paid on 'invoice basis' and receipt basis is not applicable [Notification No. 66/2017-CT dated 15-11-2017].

A composition supplier has to pay, in lieu of tax payable by him, an amount calculated at the prescribed rate applied on his 'turnover in the State/Union Territory' for a quarter. Therefore, the composition

supplier is not required to pay any tax on advance received as the same does not form part of taxable supplies and, in turn, also does not form part of the 'turnover in a State/Union Territory' at the end of the quarter (tax period).

- (c) **Time of supply in case of supplies taxed under reverse charge mechanism [Section 12(3)]** : The time of supply shall be the earliest of the following dates, namely: –
- (a) the date of the receipt of goods; or
  - (b) (i) the date of payment as entered in the books of account of the recipient; or  
(ii) the date on which the payment is debited in his bank account, whichever is earlier; or
  - (c) the date immediately following 30 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.
- If TOS cannot be determined as above - TOS is date of entry in the books of account of the recipient of supply.
- (d) **Time of supply in case of supply of vouchers in respect of goods [Sec. 12(4)]**: The time of supply shall be –
- (i) the date of issue of voucher, if the supply is identifiable at that point; or
  - (ii) the date of redemption of voucher, in all other cases.
- (e) **TOS in residuary cases - due date of return or date of payment of tax [Section 12(5)]** : Where it is not possible to determine the time of supply as per above provisions, the time of supply shall –
- (i) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
  - (ii) in any other case, be the date on which the tax is paid.
- (f) **Special charges like interest, late fees etc. - TOS is date of receipt of additional amount [Section 12(6)]**

The provisions relating to TOS of goods as contained in Section 12 are summarised in the diagram given below :





**TIME OF SUPPLY OF SERVICES**

**(6) Time limit for issuing tax invoice [Rule 47] :**

- (a) **Taxable supply of services - Time limit - 30 days from the date of supply of service :** The invoice in case of taxable supply of services shall be issued within a period of 30 days from the date of supply of service.
- **Insurers, banks etc. - Time limit - 45 days :** Where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the invoice or any document in lieu thereof is to be issued within 45 days from the date of supply of service.
  - **Cessation of supply of services - Invoice to be issued at the time when supply ceases :** In case of cessation of supply of services before completion of supply, the invoice (to the extent of the supply made before such cessation) should be issued at the time when the supply ceases.
- (b) **Issuance of invoice in case of continuous supply of services [Section 31(5)] :** In case of continuous supply of services, -

(i)	where the due date of payment is ascertainable from the contract	the invoice shall be issued on or before the due date of payment.
(ii)	where the due date of payment is not ascertainable from the contract	the invoice shall be issued before or at the time when the supplier of service receives the payment.
(iii)	where the payment is linked to the completion of an event	the invoice shall be issued on or before the date of completion of that event.

“Continuous supply of services” means -

- a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding 3 months with periodic payment obligations, and
- includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify. [Section 2(33)]

**TIME OF SUPPLY OF SERVICES UNDER FORWARD CHARGE**

**(7) Time of supply of services [Section 13] :**

- (i) **Liability for payment of tax arises at TOS [Section 13(1)] :** The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (ii) **Determination of Time of supply [Section 13(2)] :** The time of supply of services shall be the earliest of the following dates, namely: -
- (a) (i) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31; or
  - (ii) the date of receipt of payment, whichever is earlier; or
  - (b) (i) the date of provision of service, if the invoice is not issued within the period prescribed under Section 31; or
  - (ii) the date of receipt of payment, whichever is earlier; or
  - (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.

**Explanation:**

- (a) **Deemed supply - To the extent covered by invoice or payment :** The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
- (b) **“Date of receipt of payment” shall be -**
  - the date on which the payment is entered in the books of account of the supplier; or
  - the date on which the payment is credited to his bank account, whichever is earlier.
- (iii) **Small advance upto ₹ 1,000 - Option not to change TOS i.e. TOS may be opted to be date of invoice :** Where the supplier of taxable service receives an amount upto ₹ 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 relating to such excess amount.



- (8) **Time of supply of Services when supplies are taxed on reverse charge basis [Section 13(3)] :**
- (i) **Time of Supply - Date of payment or the date immediately following 60 days from the date of issue of invoice, whichever is earlier :** In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely :-
- (a) (i) the date of payment as entered in the books of account of the recipient; or  
(ii) the date on which the payment is debited in his bank account,  
whichever is earlier; or
- (b) the date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.
- (ii) **Time of supply in other cases - TOS - Date of entry in the books of account of the recipient of supply :** Where it is not possible to determine the time of supply as per above provisions, the time of supply shall be the date of entry in the books of account of the recipient of supply.
- (iii) **Time of supply in case of associated enterprises :** In case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be—
- (a) the date of entry in the books of account of the recipient of supply; or  
(b) the date of payment,  
whichever is earlier.
- “Associated enterprises” shall have the same meaning as assigned to it in Section 92A of the Income-tax Act, 1961. [Section 2(12)]
- (iv) **Time of supply in case of supply of vouchers in respect of services [Section 13(4)] :** In case of supply of vouchers by a supplier, the time of supply shall be -
- (a) the date of issue of voucher, if the supply is identifiable at that point; or  
(b) the date of redemption of voucher, in all other cases.
- (v) **Determination of time of supply in residuary cases [Section 13(5)] :** Where it is not possible to determine the time of supply as per above provisions, the time of supply shall—
- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or  
(b) in any other case, be the date on which the tax is paid.
- (vi) **Special Charges - TOS is date of receipt of additional amount [Section 13(6)] :** The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Notification No. 06/2019-CT (R) dated 29-03-2019 w.e.f. 01-04-2019	TOS in case of TDR, FSI and long term lease for construction of residential/commercial apartments - TOS shall arise on shall arise on the date of issuance of completion certificate or on its first occupation, whichever is earlier.
--	--

#### CHANGE IN RATE OF TAX IN RESPECT OF SUPPLY OF GOODS OR SERVICES

- (9) **Determination of time of supply in case of change in rate of tax [Section 14] :**
- (i) Notwithstanding anything contained in Section 12 or 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely :-
- (a) In case the goods or services or both have been supplied **BEFORE** the change in rate of tax,-

Condition	Time of Supply	Applicable Rate
(i) Where the invoice for the same has been issued and the payment is also received after the change in rate of tax.	Earlier of - ⇒ Date of receipt of payment, or ⇒ Date of issue of invoice.	New Rate
(ii) Where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax.	⇒ Date of issue of invoice.	Old Rate
(iii) Where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax.	⇒ Date of receipt of payment.	Old Rate

(b) In case the goods or services or both have been supplied AFTER the change in rate of tax, —

Condition	Time of Supply	Applicable Rate
(i) Where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax.	⇒ Date of receipt of payment	New Rate
(ii) Where the invoice has been issued and payment is received before the change in rate of tax.	Earlier of — ⇒ Date of receipt of payment, or ⇒ Date of issue of invoice	Old Rate
(iii) Where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax.	⇒ Date of issue of invoice	New Rate

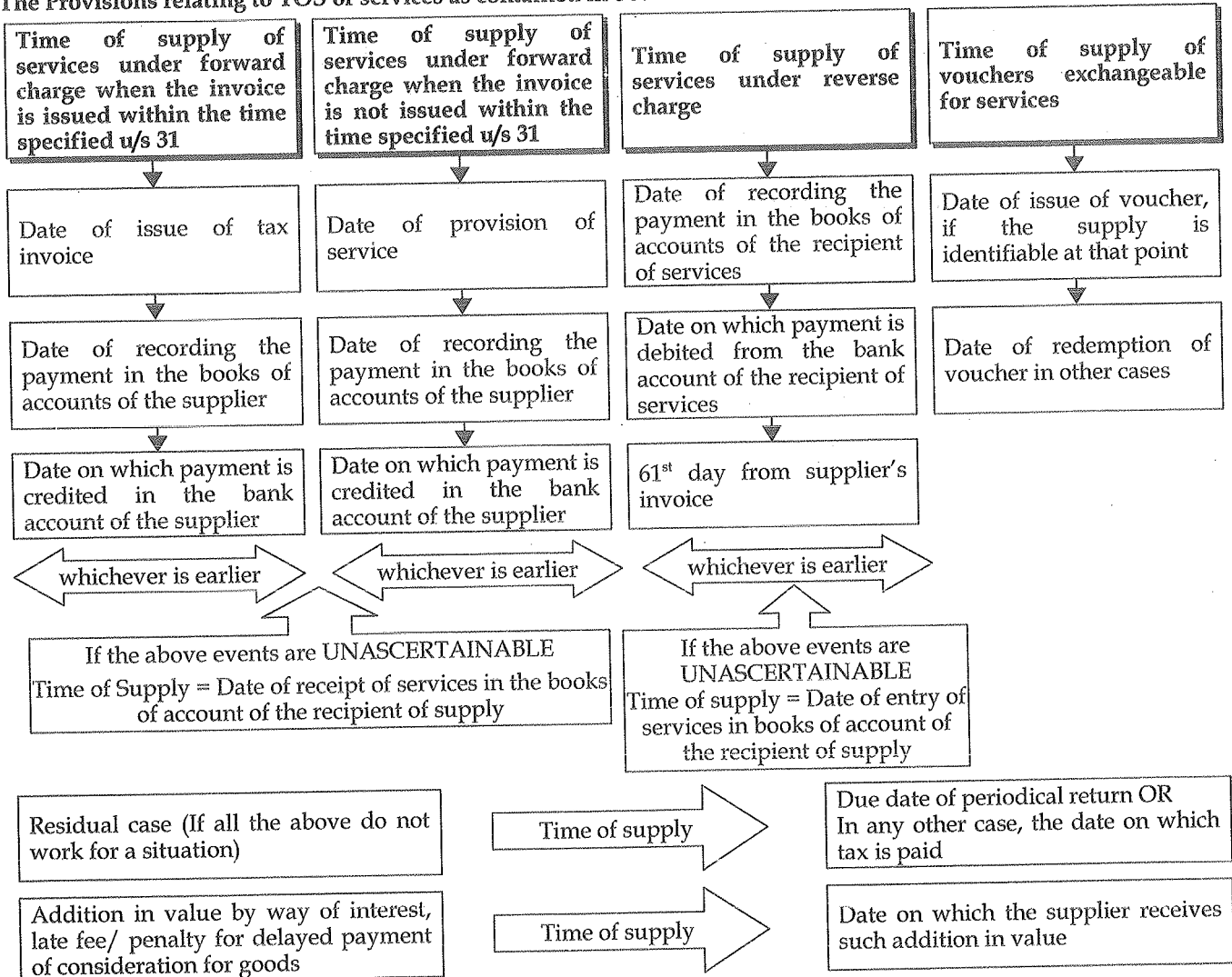
(ii) "Date of receipt of payment" shall be—

- (a) the date on which the payment is entered in the books of account of the supplier; or
  - (b) the date on which the payment is credited to his bank account,
- whichever is earlier. [Explanation]

However, the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after 4 working days from the date of change in the rate of tax.

For non-composition dealers, GST is to be paid on invoice basis even in case of change in rate of tax vide Notification No. 66/2017-CT dated 15-11-2017.

The Provisions relating to TOS of services as contained in Section 13 are summarised in the diagram given below:



<b>ADDITIONAL PRACTICE QUESTIONS</b>
--------------------------------------

**Illustration 1 - TOS of Goods - Supply involves movement of goods :** Chiku Traders is a registered supplier of plastic goods, On 10<sup>th</sup> April, 2019, Chiku Traders received an order from Neelu Traders for supply of a consignment of plastic goods. Chiku Traders gets the consignment ready by 15<sup>th</sup> April, 2019. The invoice for the consignment was issued the next day, 15<sup>th</sup> April, 2019. Neelu Traders collects the consignment from the godown of Chiku Traders on 25<sup>th</sup> April, 2019 and hands over the cheque towards payment on the same date. The said payment is entered in the books of accounts of Chiku Traders on 26<sup>th</sup> April, 2019 and amount is credited in their bank account on 27<sup>th</sup> April, 2019.

Determine the time of supply of the plastic goods supplied by Chiku Traders to Neelu Traders as per the provisions of CGST Act, 2017. (5 Marks, Nov. 2018-NS)

**Solution:** As per Section 12(2) of the CGST Act, 2017, the time of supply of goods shall be the earlier of the following dates, namely: –

- (a) (i) the date of issue of invoice by the supplier; or  
(ii) the last date on which he is required, u/s 31, to issue the invoice with respect to the supply; or  
(b) the date on which the supplier receives the payment with respect to the supply (i.e. the date on which the payment is entered in his books of account; or the date on which the payment is credited to his bank account, whichever is earlier.)

As per Notification No. 66/2017-CT dated 15-11-2017, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e., date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31. Therefore, time of supply is the date of issue of invoice, which is 16<sup>th</sup> April 2019.

**Illustration 2 - TOS of Goods - Supply involves movement of goods :** From the following information determine the time of supply of goods where supply involves movement of goods :

S. No.	Invoice/ document date	Removal of goods	Delivery of goods	Receipt of payment	Other information
1.	16-11-2019	10-11-2019	16-11-2019	16-11-2019	-
2.	01-11-2019	10-11-2019	16-11-2019	-	Supply is on account of Inter-State stock transfer. ₹ 5,00,000 is received as advance and invoice for the whole amount is issued on the same day. Balance payment ₹ 6,20,000 is received on 10-12-2019.
3.	20-11-2019	01-12-2019	04-12-2019	20-11-2019 10-12-2019	

**Solution:** Time of supply of goods in each of the above cases has been given in following table –

S. No.	Invoice/ document date	Removal of goods	Delivery of goods	Receipt of payment	Time of supply	Reasons
1.	16-11-2019	10-11-2019	16-11-2019	16-11-2019	10-11-2019	Since invoice is not issued on or before removal of goods and payment is received after the date of removal.
2.	01-11-2019	10-11-2019	16-11-2019	-	01-11-2019	Since invoice date is prior to the date of removal of goods.
3.	20-11-2019	01-12-2019	04-12-2019	20-11-2019	20-11-2019	For advance payment to the extent of ₹ 5,00,000 the TOS will be date of invoice as per Notification No. 66/2017-CT dated 15-11-2017.
				10-12-2019	20-11-2019	For balance amount also, the time of supply shall be the date of Invoice.

**Illustration 3 - TOS of Goods - Supply does not involve movement of goods :** Determine the Time of supply in each of following independent cases in accordance with provisions of Section 12 of the CGST Act, 2017 in case supply does not involve movement of goods.

Sl. No.	Date of invoice	Date when goods made available to recipient	Date of receipt of payment
1.	02-10-2020	03-10-2020	15-11-2020
2.	04-10-2020	01-10-2020	25-11-2020
3.	04-11-2020	06-11-2020	01-10-2020

**Solution:** Time of supply of goods in each of the above cases has been given in following table--

Sl. No.	Date of invoice	Date when goods made available to recipient	Date of receipt of payment	Time of supply	Reason
1.	02-10-2020	03-10-2020	15-11-2020	02-10-2020	TOS is date of issuance of invoice since invoice is issued prior to date when goods are made available to recipient.
2.	04-10-2020	01-10-2020	25-11-2020	01-10-2020	TOS is date when goods are made available to the recipient and date of issuance of invoice is after that date.
3.	04-11-2020	06-11-2020	01-10-2020	04-11-2020	TOS is date of invoice since advance received is not liable at the time of receipt <i>vide</i> Notification No. 66/2017 -CT dated 15-11-2017.

**Illustration 4 - TOS - Goods :** Mehra Sons, a registered supplier, is a wholesale supplier of ready-made garments located in Bandra, Mumbai. On 5<sup>th</sup> September, 2020, Subhadra, owner of Aura Boutique located in Dadar, Mumbai, approached Mehra Sons for supply of a consignment of customised dresses for ladies and kids.

Mehra Sons gets the consignment ready by 2<sup>nd</sup> December, 2020 and informs Subhadra about the same. The invoice for the consignment was issued the next day, 3<sup>rd</sup> December, 2020.

Due to some reasons, Subhadra could not collect the consignment immediately. So, she collects the consignment from the premises of Mehra Sons on 18<sup>th</sup> December, 2020 and hands over the cheque for payment on the same date. The said payment is entered in the accounts on 20<sup>th</sup> December, 2020 and amount is credited in the bank account on 21<sup>st</sup> December, 2020.

You are required to determine the time of supply of the readymade garments supplied by Mehra Sons to Subhadra elaborating the relevant provisions under the GST law. (MTP, May 2018)

**Solution:** Time of supply of goods is the earlier of the following two dates :

- Date of issue of invoice/last date on which the invoice is required to be issued
- Date of receipt of payment.

Further, date of receipt of payment is earlier of date of recording the payment in books of account and date of crediting of payment in bank account [Section 12(2) of the CGST Act, 2017].

However *vide* Notification No. 66/2017 dated 15-11-2017, exemption to all taxpayers from payment of tax on advances received in case of supply of goods. Tax on 'supply of goods' is to be paid on 'invoice basis' and receipt basis is not applicable.

In the given case, --

- Date of invoice: 3<sup>rd</sup> December, 2020
- Date of recording payment in books of account: 20<sup>th</sup> December, 2020
- Date of crediting in the bank account: 21<sup>st</sup> December, 2020

Therefore, the date of receipt of payment will be 20<sup>th</sup> December, 2020 (earlier of two dates namely, date of recording the payment in books of account and date of crediting of payment in bank account). The time of supply shall be 3-12-2020 *i.e.* date of issuance of invoice irrespective of the date of receipt of payment.

**Illustration 5 - Time of Supply of service:** Determine the time of supply from the following particulars:

8 <sup>th</sup> September	Community hall booked for a marriage, Sum agreed ₹ 1,20,000, Advance ₹ 20,000 recorded in the books of account.
10 <sup>th</sup> September	Advance amount credited in bank account.
2 <sup>nd</sup> November	Marriage held in the Community hall.
18 <sup>th</sup> December	Invoice issued for ₹ 1,20,000 indicating the balance of ₹ 1,00,000 payable.
22 <sup>nd</sup> December	Balance ₹ 1,00,000 recorded in the books of account.
24 <sup>th</sup> December	Payable ₹ 1,00,000 credited to the bank account.

(4 Marks, May 2018)

**Solution:** As per Section 31 read with Rule 47 of CGST Rules, the tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit. As per Section 13(2)(b), in a case where the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Therefore, the time of supply of service to the extent of ₹ 20,000 is 8<sup>th</sup> September as the date of payment of ₹ 20,000 is earlier than the date of provision of service. The time of supply of service to the extent of the balance ₹ 1,00,000 is 2<sup>nd</sup> November which is the date of provision of service.

**Illustration 6 - Time of Supply of service :** Determine the time of supply in the following cases with reference to GST Act, 2017:-

- (i) Montlanc Private Limited is engaged in supplying taxable services. It receives advances of ₹ 1,00,000 from clients on 23<sup>rd</sup> August, 2019 for the service to be rendered in the month of December, 2019.
- (ii) Rohan & Co. supplied management consultancy services to M/s. Bhagat & Sons on 5<sup>th</sup> September, 2019 and billed it for ₹ 1,20,000 on 10<sup>th</sup> October, 2019. It received the payment for the same on 14<sup>th</sup> October, 2019.

**Solution:** The time of supply will be -

- (i) In this case advance received on 23<sup>rd</sup> August, 2019 for services to be rendered in the month of December 2019. Since, advance is received prior to completion of services, the time of supply of service shall be the date of receipt of advance i.e. 23-08-2019.
- (ii) As per Section 13(2)(b) of CGST Act, 2017, if invoice is not issued within 30 days from date of supply of service, time of supply will be date of provision of service or date of receipt of payment, whichever is earlier. In this invoice is not issued within 30 days of completion of service and payment is received after that date, therefore time of supply in given case would be date of completion of service i.e. 5-09-2019.

**Illustration 7 - Time of Supply of service :** Determine the time of supply in the following cases with reference to GST Act :

- (i) Raghu & Co. received advance of ₹ 1,18,000 from a client on 30-07-2019, for supplying advertising services in the month of August, 2019. However, due to some unavoidable reasons, said services could not be provided and the advance money (including GST) was returned to the client on 12-09-2019.
- (ii) Suraksha Security Services Ltd. supplied security services to M/s. RZ & Sons for the month of July, 2019 and billed it for ₹ 1,50,000 on 10<sup>th</sup> August, 2019. It received the payment for the same on 4<sup>th</sup> August, 2019.

**Solution:** The time of supply will be -

- (i) As per Section 13(2) of CGST Act, 2017, advances received are taxable at the time of their receipt itself. Thus, the time of supply of the advance received by Raghu & Co. from the client is 30-07-2019. It is immaterial that services have not been provided subsequently and the money was returned on 12-09-2019.  
Further, the amount of GST included in the amount refunded (₹ 18,000) in the next month i.e. September, 2019 would be adjusted against GST liability of subsequent periods.
- (ii) As per Section 13(2)(a) of CGST Act, 2017, if invoice is issued within 30 days from date of supply of service, time of supply will be date of issue of invoice by the supplier or date of receipt of payment, whichever is earlier. In this case since invoice is issued within time limit and payment received prior to the date of invoice, therefore time of supply in given case would be date of receipt of payment i.e. 4-08-2019.

**Illustration 8 - Time of supply of service - Reverse charge basis :** Mr. Foster who is the author and owner of the copyright of a book "Way to heaven" has entered into an agreement with "Sure Publishers" on 15-07-2019 for its publication. In terms of the agreement the copyright is transferred to "Sure publishers" for a lump sum amount of ₹ 5 lakh. An invoice was issued by Mr. Foster on 15-07-2019 and payment was received on 27-12-2019. Determine with reasons by way of a brief note on the time of supply for purpose of goods and service tax.

Ignore any exemptions available in respect of the service and assume that the transaction is liable to Goods and Service tax. (Modified 4 Marks, Nov. 2016)

**Solution:** Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under Section 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher is chargeable to tax on reverse charge basis and publisher is liable to pay GST.

As per Section 13(3) of CGST Act, in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely :-

- (a) (i) the date of payment as entered in the books of account of the recipient; or



- (ii) the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

Since in this case the payment is not made within 60 days from the date of invoice, the time of supply shall be 61<sup>st</sup> day from the date of invoice i.e. 14<sup>th</sup> September, 2019.

**Illustration 9 - Time of supply of service - Reverse charge basis :** XYZ Industries Ltd engaged the services of a transporter for road transport of a consignment on 17-09-2019 and made advance payment for the transport on the same date, i.e., 17-09-2019. However, the consignment could not be sent immediately on account of a strike in the factory, and instead was sent on 20-09-2019. Invoice was received from the transporter on 22-09-2019. What is the time of supply of the transporter's service?

**Note:** Transporter's service is taxed on reverse charge basis.

**Solution:** As per Section 13(3)(a) of CGST Act, 2017, Time of supply of service taxable under reverse charge is the earlier of the following two dates in terms of section 13(3) :

- Date of payment
- 61<sup>st</sup> day from the date of issue of invoice

In this case, the date of payment precedes 61<sup>st</sup> day from the date of issue of invoice by the supplier of service. Hence, the date of payment, that is 17-09-2019, will be treated as the time of supply of service.

**Illustration 10 - Time of Supply of service :** Sahu Ltd. provided taxable services to ABC Ltd. on 11-11-2019 and issued invoice for the same on 21-11-2019. ABC Ltd. made the payment for said services on 16-11-2019 by cheque which was entered in the books of accounts of Sahu Ltd. same day. However, the amount was credited in the bank account of Sahu Ltd. on 26-11-2019. You are required to determine the time of supply in the given case. (Modified RTP Nov. 2015)

**Solution:** In the given case, since the invoice is issued within the prescribed period of 30 days from the date of completion of service, the time of supply, as per Section 13(2) of CGST Act, 2017, shall be :

- (1) Date of issuance of invoice (i.e. 21-11-2019); or
- (2) Date of receipt of payment (i.e. 16-11-2019), whichever is earlier, i.e. 16-11-2019.

**Note:** As per Explanation of Section 13, date of payment is -

- (a) date on which the payment is entered in the books of account (i.e. 16-11-2019) or
- (b) date on which the payment is credited to the bank account of the person liable to pay tax (i.e. 26-11-2019) whichever is earlier, i.e. 16-11-2019.

**Illustration 11 - Time of Supply of service :** Determine the time of supply in each of following independent cases in accordance with the GST Act, 2017:

S. No.	Date of completion of service	Date of invoice	Date of receipt of payment
(1)	16-07-2019	11-08-2019	26-08-2019
(2)	16-07-2019	11-08-2019	01-08-2019
(3)	16-07-2019	11-08-2019	Part payment on 01-08-2019. Remaining payment on 26-08-2019.
(4)	16-07-2019	11-08-2019	Part payment on 12-07-2019. Remaining payment on 15-07-2019.

**Solution:** The time of supply in each of the cases is as follows --

S. No.	Date of completion of service	Date of invoice	Date on which payment is received	Time of Supply
(1)	16-07-2019	11-08-2019	26-08-2019	11-08-2019, since invoice issued within 30 days of completion of service, time of supply will be date of invoice or payment, whichever is earlier.
(2)	16-07-2019	11-08-2019	01-08-2019	01-08-2019, since invoice issued within 30 days of completion of service, time of supply will be date of invoice or payment, whichever is earlier.



(3)	16-07-2019	11-08-2019	Part payment on 01-08-2019. Remaining payment on 26-08-2019.	01-08-2019 for the part payment and 11-08-2019 for the remaining payment.
(4)	16-07-2019	11-08-2019	Part payment on 12-07-2019. Remaining payment on 15-07-2019.	12-07-2019 for the part payment and 15-07-2019 for the remaining payment.

**Illustration 12 - Time of supply of service :** On the basis of following information, determine the "Time of Supply" as per Section 13 of Goods and Services Tax, 2017 : *(Modified 3 Marks, May 2014)*

(1)	Commencement of supplying of service on	05-07-2019
(2)	Completion of service on	10-10-2019
(3)	Invoice issued on	20-10-2019
(4)	Payment received by cheque and entered in the books on	15-10-2019
(5)	Amount credited in Bank A/c on	25-10-2019
(6)	Service became taxable for the first time on	01-08-2019

**Ans:** As per Section 13(2) of CGST Act, 2017, time of supply of service shall be,-

- (i) the date of issue of invoice by supplier, if such invoice is issued within 30 days of completion of service;
  - (ii) the date of provision of service, if such invoice is not issued within 30 days as aforesaid;
  - (iii) the date of payment,
- whichever is the earliest.

As per Explanation of Section 13, the date of payment shall be the earlier of the following dates,-

- (i) Date on which the payment is entered in the books of accounts of the supplier (*i.e. payment accounted for in books*); or
- (ii) Date on which the same is credited to his bank account (*i.e. actually received in bank account of the person*).

Hence, in this case the time of supply shall be the date of receipt of payment *i.e.* 15-10-2019 since invoice is issued within time limit and payment is received prior to the date of invoice.

**Illustration 13 - TOS in case of continuous supply of service :** Surbhi Limited entered into a contract with Meena Limited for construction of a new building to be used primarily for the purpose of commerce or industry for a total consideration of ₹ 500 lakh on 01<sup>st</sup> October, 2019. The initial booking amount of ₹ 100 lakh was billed and received on the date of contract itself. It was further agreed that ₹ 170 lakh, ₹ 140 lakh, ₹ 90 lakh respectively would be received on completion of 50%, 75% and 100% of the construction work of the building. Determine the time of supply in respect of each of following stages of completion with the help of relevant details furnished as under :

Stage	% of completion of the building	Date of completion	Date of issuance of invoice	Date of payment of stipulated amount
I	50%	November 20, 2019	November 30, 2019	January 25, 2020
II	75%	December 30, 2019	February 25, 2020	January 30, 2020
III	100%	February 25, 2020	March 03, 2020	February 24, 2020

A certificate from Chartered Engineer registered with Institution of Engineers has been obtained for each stage of completion of the building. Give brief reasons for your answer. *(Modified 4 Marks, May 2015)*

**Solution:** The above service falls within continuous supply of service as per Section 2(33) of CGST Act, 2017. In case of continuous supply of service, the date of issuance of invoice would be computed according to Section 31(5) of CGST Act, 2017. As per the provisions, where payment is linked to the completion of an event the invoice shall be issued on or before the date of completion of that event. The time of supply will be determined accordingly in terms of provisions of Section 13(2) of CGST Act, 2017.

Therefore, in the given case, the date of completion of various stages of construction which require payment to be made (including initial booking) - will be considered as dates of completion of service and time of supply will be determined in accordance with Section 13(2) as under:

Stage of Completion	Deemed date of completion of provision of service	Time of Supply	Reason/Remarks
Initial booking	01-10-2019	01-10-2019	01-10-2019 as the date of completion of service, date of issuance of invoice and date of payment are the same.
50%	20-11-2019	20-11-2019	Since invoice has been not been issued on or before the date of completion of event and payment is also received after that date, TOS is date of completion of event.

75%	30-12-2019	30-12-2019	Since invoice has not been issued on or before the completion of event as per contract and payment is also received after that date, TOS is date of completion of event.
100%	25-02-2020	24-02-2020	Since payment has been received prior to completion of event.

**Illustration 14 - Time of Supply of service :** Major Ltd. imports business support services from Wilfred Ltd. of USA on 18-8-2019. The relevant invoice for \$ 1,50,000 is raised by Wilfred Ltd., on 20-9-2019. Assuming that Major Ltd. makes the above mentioned payment on the dates as indicated in the following table, determine the time of supply under the Central Goods and Services Tax Act, 2017 in each case giving reasons for your answer:

CASE 1	10-11-2019	
CASE 2	12-12-2019	(Modified 4 Marks, May 2012)

**Solution:** According to Section 13(3) of CGST Act, 2017, the time of supply in respect of persons who are required to pay tax as recipients of service under the Reverse Charge Mechanism shall be the date on which payment is made or the date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.

**CASE I :** The time of supply is date of payment i.e. 10-11-2019, since payment is made within 60 days from the date of invoice.

**CASE II :** The time of supply is date immediately following 60 days from the date of issue of invoice i.e. 20-11-2019, since payment is not made within 60 days from the date of invoice.

**Illustration 15 - TOS in case of Associated Enterprises :** Apte & Apte Ltd. is located in India and holding 51% of shares of Wilson Ltd., a USA based company. Wilson Ltd. provides Business Auxiliary Services to Apte & Apte Ltd.

From the following details, determine the time of supply of Apte & Apte Ltd. : (Modified 3 × 2 = 6 Marks, May 2013)

Agreed consideration	US \$ 1,00,000
Date on which services are provided by Wilson Ltd.	16-09-2019
Date on which invoice is sent by Wilson Ltd.	19-09-2019
Date of debit in the books of account of Apte & Apte Ltd.	30-09-2019
Date on which payment is made by Apte & Apte Ltd.	23-12-2019

**Solution:** Apte & Apte Ltd. of India and Wilson Ltd. of US are "associated enterprises" as per Section 92A of Income-tax Act, 1961, since Indian Company holds 51% shareholding of US based company. As per Section 13(3) of CGST Act, 2017, in case of 'Associated Enterprises' where the person providing service is located outside India, time of supply shall be -

- (i) the date of entry in the books of account of the recipient of supply (i.e. 30-09-2019); or
- (ii) date of payment (i.e. 23-12-2019),

whichever is earlier.

Therefore, the time of supply will be 30-09-2019.

**Illustration 16 - TOS in case of change in rate of tax :** Determine the time of supply in the following cases. The rate of CGST has been increased to 12% w.e.f. 01-12-2019, before the said date, the rate of tax was 5%.

S. No.	Date of supply of Service	Date of Invoice	Date of Payment	Value of Service (₹)
1.	25-11-2019	05-12-2019	08-12-2019	12,50,000
2.	25-11-2019	25-11-2019	08-12-2019	18,80,000
3.	25-11-2019	08-12-2019	30-11-2019	17,60,000
4.	04-12-2019	28-11-2019	30-11-2019	19,50,000
5.	04-12-2019	04-12-2019	30-11-2019	14,50,000
6.	04-12-2019	30-11-2019	08-12-2018	10,00,000

**Solution:** The time of supply shall be determined as under -

Sl. No.	Value of Service (₹)	Reason / Remarks	Time of Supply	Rate of tax	GST (₹)
1.	12,50,000	<ul style="list-style-type: none"> <li>➤ Service is supplied before change in rate of tax,</li> <li>➤ invoice issued after change in rate of tax,</li> <li>➤ the payment has been received after change in rate of tax,</li> </ul> TOS shall be earlier of date of issue of invoice or date of receipt payment.	05-12-2019	12%	1,50,000

2.	18,80,000	<ul style="list-style-type: none"> <li>➤ Service is supplied before change in rate of tax,</li> <li>➤ invoice issued prior to such change in rate of tax,</li> <li>➤ the payment is received after change in rate of tax,</li> </ul> TOS shall be date of issue of invoice.	25-11-2019	5%	94,000	
3.	17,60,000	<ul style="list-style-type: none"> <li>➤ Service is supplied before change in rate of tax,</li> <li>➤ the payment is received before change in rate of tax,</li> <li>➤ invoice issued after change in rate of tax,</li> </ul> TOS shall be date of receipt of payment.	30-11-2019	5%	88,000	
4.	19,50,000	<ul style="list-style-type: none"> <li>➤ Service is supplied after change in rate of tax,</li> <li>➤ invoice is issued before change in rate of tax,</li> <li>➤ the payment is also received before change in rate of tax,</li> </ul> TOS shall be earlier of date of issue of invoice or date of receipt of payment.	28-11-2019	5%	97,500	
5.	14,50,000	<ul style="list-style-type: none"> <li>➤ Service is supplied after change in rate of tax,</li> <li>➤ invoice is issued after change in rate of tax,</li> <li>➤ the payment is received before change in rate of tax,</li> </ul> TOS shall be the date of issue of invoice.	04-12-2019	12%	1,74,000	
6.	10,00,000	<ul style="list-style-type: none"> <li>➤ Service is supplied after change in rate of tax,</li> <li>➤ the payment is received after change in rate of tax,</li> <li>➤ invoice is issued before change in rate of tax,</li> </ul> TOS shall be date of receipt of payment.	08-12-2019	12%	1,20,000	
<b>Total CGST</b>						<b>7,23,500</b>

**Illustration 17 - TOS in case of change in rate of tax :** Mr. Mahendra Sharma, an interior decorator registered at Ahmedabad (Gujarat), provided service to one of his clients XYZ Company Ltd., registered at Pune (Maharashtra). The provision of service was completed on 10-08-2020 and payment received was entered in the books of Mr. Mahendra Sharma on 11-08-2020.

With effect from 16-08-2020, applicable GST rate was increased from 5% to 12%. However, payment for the service received was credited in his bank account on 17-08-2020 and invoice for the same was raised on 23-08-2020.

Mr. Mahendra Sharma claimed that he is liable to pay IGST @ 5%. But the department took the view that he is liable to pay IGST @ 12%. Examine the correctness of Mr. Mahendra Sharma's contention and determine the time of supply and applicable rate of tax as per the statutory provisions.

Would your answer undergo any change in the above case if the payment was credited to the bank account on 14-08-2020 instead of 17-08-2020 ?

**Note :** You may assume that all days are working days. (5 Marks, Nov. 2018-NS)

**Solution:** In case of change in rate of tax, determination of rate of tax depends upon three events namely,-

- Date of supply of services,
- Date of invoice; and
- Date of receipt of payment

If any two of the above events occur before the change of rate, the time of supply is before the change of rate. If any two of them occur after the change of rate, the time of supply is after the change of rate and the new rate becomes applicable to the supply.

Here, "date of receipt of payment" refers to the date on which the payment is entered in the books of accounts of the supplier, or the date on which the payment is credited in his bank account, whichever is earlier. However, where the payment is credited in the bank account after 4 working days from the date of change in the rate of tax, the date of receipt of payment will be the date of credit in the bank account.

In the instant case the date of payment will be 11-08-2020, since the payment is credited in bank account within 4 working days from the date of change in effective rate of tax. Thus, provision of service has been completed on 10-08-2020 and payment has also been received on 11-08-2020 prior to change in effective rate of tax thus the time of supply shall be 11-08-2020. At that time rate of tax was 5%, the same shall be applicable. Thus, the contention of Mr. Mahendra Sharma is correct.

Even if the payment is credited in the bank account on 14-08-2020, the answer will remain same since the date of payment in this case also will be the date when such payment is entered in the books *i.e.* 11-08-2020. Time of supply will be 11-08-2020 and GST rate of 5% will be applicable.

## VALUE OF SUPPLY

### SUMMARIZED POINTS FOR REVISION

#### VALUE OF TAXABLE SUPPLY

(1) Value of taxable supply [Section 15] :

(i) Value of taxable supply to be transaction value [Section 15(1)] : The value of a supply of goods or services or both shall be the transaction value,-

- which is the price actually paid or payable for the said supply of goods or services or both
- where the supplier and the recipient of the supply are not related; and
- the price is the sole consideration for the supply.

(ii) Inclusions in value of supply [Section 15(2)] : The value of supply shall include -

	Items	Includibility in transaction value or otherwise
(a)	Taxes, duties, cesses, fees and charges except CGST, SGST, UTGST & GST compensation cess	<p>Any --</p> <ul style="list-style-type: none"> <li>➤ taxes,</li> <li>➤ duties,</li> <li>➤ cesses,</li> <li>➤ fees, and</li> <li>➤ charges</li> </ul> <p>levied under any law for the time being in force, other than --</p> <ul style="list-style-type: none"> <li>➤ this Act i.e. CGST Act,</li> <li>➤ the State Goods and Services Tax Act,</li> <li>➤ the Union Territory Goods and Services Tax Act, and</li> <li>➤ the Goods and Services Tax (Compensation to States) Act,</li> </ul> <p><b>if charged separately by the supplier.</b></p> <p>It has been clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act, 1961 would not be includible as it is an interim levy not having the character of tax. [Circular No. 76/50/2018 GST dated 31-12-2018 amended vide corrigendum dated 7-03-2019]</p> <p><b>Note:</b> Transaction value under IGST will include taxes other than IGST and the compensation cess in terms of third proviso to Section 20 of IGST Act.</p>
(b)	Amount incurred by recipient on behalf of the supplier	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 and amount charged for activities done before delivery	<ul style="list-style-type: none"> <li>➤ Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply, and</li> <li>➤ Any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services.</li> </ul>
(d)	Charges for delayed payment of consideration	Interest or late fee or penalty for delayed payment of any consideration for any supply.
(e)	Subsidies	<p>Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.</p> <p><b>Explanation :</b> The amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.</p>

## (iii) Exclusion in value of supply [Section 15(3)] :

Items	Excludibility in transaction value
Discounts	<b>Discounts given on or before supply</b> : Any discount which is— <ul style="list-style-type: none"> <li>➤ given before or at the time of the supply,</li> <li>➤ if such discount has been duly recorded in the invoice issued in respect of such supply;</li> </ul>
Discounts	<b>Post supply discount</b> : Any discount which is given after the supply has been effected, if— <ul style="list-style-type: none"> <li>➤ such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and</li> <li>➤ input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.</li> </ul> <b>Non deductible discount</b> : A company announces year end discounts after reviewing dealer performance during the year. The year end discounts are based on performance slabs and are given as cash-back. As these discounts were not known at the time of supply of the goods, they will not be deducted from taxable value of those goods.

## (iv) Value cannot be determined as per above provisions - To be determined as per Rules [Section 15(4)] :

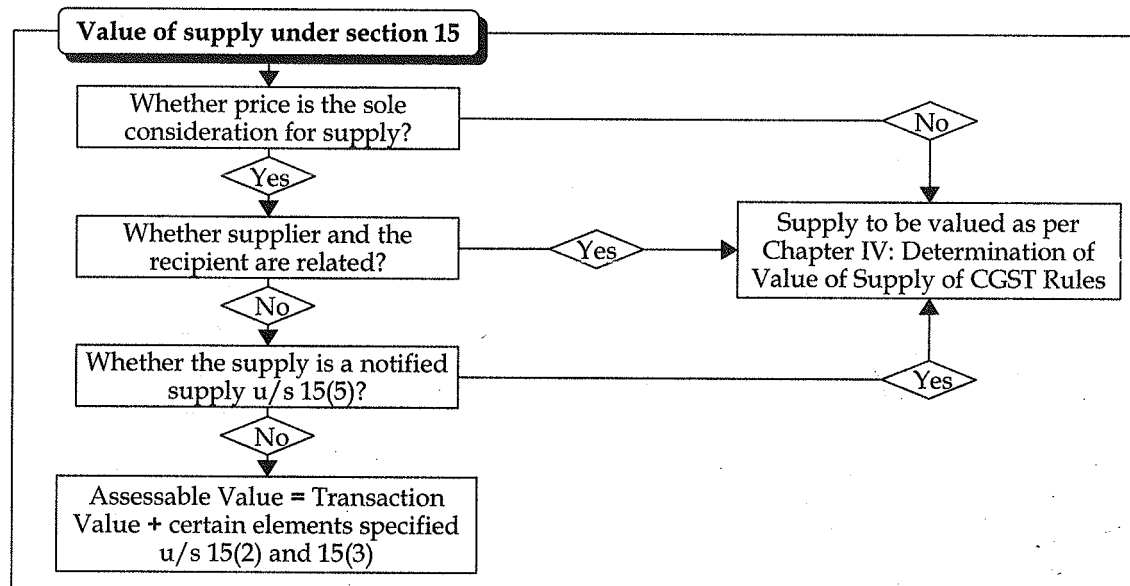
Where the value of the supply of goods or services or both cannot be determined under section 15(1), the same shall be determined in such manner as may be prescribed.

Chapter IV of CGST Rules, 2017 contains rules for determination of value of supply.

**Note** : Reference to Chapter IV of CGST Rules, 2017 is required only in case where value cannot be determined under Section 15(1) of the Act.

## (v) Value of notified supplies - To be determined in prescribed manner [Section 15(5)] :

Notwithstanding anything contained in Section 15(1)/(4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.



## (2) Related persons [Explanation to Section 15] :

## (a) Persons shall be deemed to be "related persons" if—

- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;

- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

(b) **Legal persons included** : The term "person" also includes legal persons.

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

(d) "Family" means,—

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

(3) **Applicability of Valuation Rules** : Valuation Rules are applicable when—

- (i) consideration either wholly or in part is not in money terms;
- (ii) parties are related or it involves supply by any specified category of supplier; and
- (iii) transaction value declared is not reliable.

<b>Circular No. 47/21/2018-GST dated 08-06-2018</b>	Valuation of supply made by a component manufacturer using moulds and dies owned by Original Equipment Manufacturers (OEM) sent free of cost to him - Value of such moulds and dies not to be added to the value of supply made by component manufacturer. If under obligation of component manufacturer such moulds and dies are supplied by OEM, then amortised value to be added in value of components.
---	--

<b>Circular No. 102/21/2019-GST dated 28-06-2019</b>	<b>Clarification regarding applicability of GST on additional/ penal interest</b>	
(1)	<b>EMI</b> : An EMI is a fixed amount paid by a borrower to a lender at a specified date every calendar month. EMIs are used to pay off both interest and principal every month, so that over a specified period, the loan is fully paid off along with interest. In cases where the EMI is not paid at the scheduled time, there is a levy of additional/penal interest on account of delay in payment of EMI.	
(2)	<b>Issue under Consideration</b> : Whether GST on additional/penal interest on the overdue loan would be exempt from GST in terms of Sl. No. 27 of notification No. 12/2017-CT (Rate) dated 28-6-2017 or such penal interest would be treated as consideration for liquidated damages [amounting to a separate taxable supply of services under GST covered under entry 5(e) of Schedule II of the CGST Act] i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act".	
(3)	<b>Generally, following two transaction options involving EMI are prevalent in the trade:-</b>	
	<b>Case</b>	<b>Nature of Transaction</b>
	1.	X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. However, X gives Y an option to pay in installments, ₹ 11,000 every month before 10 <sup>th</sup> day of the following month, over next four months (₹ 11,000 × 4 = ₹ 44,000). Further, as per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to ₹ 500 per month for the delay. In some instances, X is charging Y ₹ 40,000 for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/penal interest amounting to ₹ 500 per month for each delay in payment.
		<b>Clarification</b>
		As per the provisions of Section 15(2)(d) of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.



2.	<p><b>Case 2 :</b> X sells a mobile phone to Y. The cost of mobile phone is ₹ 40,000. Y has the option to avail a loan at interest of 2.5% per month for purchasing the mobile from M/s. ABC Ltd. The terms of the loan from M/s. ABC Ltd. allows Y a period of four months to repay the loan and an additional/penal interest @ 1.25% per month for any delay in payment.</p>	<p>The additional/ penal interest is charged for a transaction between Y and M/s. ABC Ltd., and the same is getting covered under Sl. No. 27 of Notification No. 12/2017-CT (Rate) dated 28-06-2017. Accordingly, in this case the 'penal interest' charged thereon on a transaction between Y and M/s. ABC Ltd. would not be subject to GST, as the same would be covered under Notification No. 12/2017-CT (Rate) dated 28-06-2017. The value of supply of mobile by X to Y would be ₹ 40,000 for the purpose of levy of GST.</p>
----	--	---

(4) **Additional/Penal Interest not a consideration for liquidated damages :** It is further clarified that the transaction of levy of additional/penal interest does not fall within the ambit of entry 5(e) of Schedule II of the CGST Act *i.e.* "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act", as this levy of additional/penal interest satisfies the definition of "interest" as contained in notification No. 12/2017-CT (Rate) dated 28-06-2017.

**Service charges - leviable to GST :** It is further clarified that any service fee/charge or any other charges that are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in notification No. 12/2017-CT (Rate) dated 28-06-2017, and accordingly will not be exempt.

#### CGST RULES, 2017 - CHAPTER IV - DETERMINATION OF VALUE OF SUPPLY

- (4) **"Open market value"** of a supply of goods or services or both means -
- the full value in money to obtain such supply at the same time when the supply being valued is made.
  - excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction,
  - where the supplier and the recipient of the supply are not related; and
  - price is the sole consideration.
- (5) **"Supply of goods or services or both of like kind and quality"** means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.
- (6) **Value of supply of goods or services where the consideration is not wholly in money [Rule 27] :** Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall be determined in the following order, -
- (a) open market value of such supply;
  - (b) total of consideration in money + amount equal to the consideration not in money
  - (c) value of supplies of like kind and quality
  - (d) consideration in money + money value of consideration as per Rule 30 or 31 in that order *i.e.* the consideration in money plus the money equivalent of the non-money consideration, as worked out based on **cost of the supply plus 10% mark-up** [Rule 30 regarding cost-based valuation] or by other reasonable means [Best Judgment Method], in that sequence [Rule 31 regarding Residual Method].
- (7) **Value of supply of goods or services or both between distinct or related persons, other than through an agent [Rule 28] :**
- (i) **General Provisions :** The value of the supply of goods or services or both -
    - between distinct persons as specified in Section 25(4) and (5), or
    - where the supplier and recipient are related,**other than** where the supply is made through an agent, shall be determined in the following order -
    - (a) open market value
    - (b) value of supplies of like kind and quality

- (c) value as per Rule 30 or 31 in that order *i.e.* it must be worked out based on the cost of the supply plus 10% mark-up [Rule 30] or by other reasonable means, in that sequence [Rule 31].
- (ii) If goods are supplied as such by recipient, **the supplier has an option to take 90% of price charged by recipient from his unrelated customer** as value of goods.
- (iii) **If recipient is eligible for ITC, then Invoice value charged by supplier shall be acceptable.**

**Note :**

- (1) **Applicability :** This rule does not provide the value of the supply made through an agent.
- (2) The provisions of Section 25(4) and Section 25(5) are as under—
  - (a) As per Section 25(4), person having more than one registration, each such registration to be treated as distinct persons for the purposes of this Act.
  - (b) As per Section 25(5), where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.
- (3) Rule 28 provides the value of such kind of supplies when the same are made for a consideration as well as when the same are made without consideration.
- (4) It is important to note that as per valuation rule 32(7), the value of taxable services provided by notified class of service providers, without any consideration, between distinct persons is NIL, if ITC thereon is available.

**(8) Value of supply of goods made or received through an agent [Rule 29] :**

- (i) **General Provisions :** The value of supply of goods between the principal and his agent shall—
  - (a) be the open market value of the goods being supplied, or
  - (b) **at the option of the supplier, be 90% of the price charged for the supply of goods of like kind and quality** by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.
- (ii) **If value cannot be determined as above - Value to be determined as per Rule 30/31 :** Where the value of a supply is not determinable as per the above provision, the same shall be determined by the application of Rule 30 or Rule 31 in that order.  
Thus, the following values have to be considered sequentially to determine the taxable value :
  - (a) Value of supply based on cost *i.e.* cost of supply plus 10% mark-up
  - (b) Value of supply determined by using reasonable means consistent with principles & general provisions of GST law (Best Judgment Method).

**(9) Value of supply of goods or services or both based on cost [Rule 30] :** Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be 110% of the—

- cost of production or manufacture; or
- cost of acquisition of such goods; or
- cost of provision of such services.

**Note :** Service providers have the option to directly move to rule 31 bypassing rule 30.

**(10) Residual method for determination of value of supply of goods or services or both [Rule 31] :**

- (a) **Residual method :** Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter.
- (b) **Service supplier can opt for Rule 31 disregarding Rule 30 :** In the case of supply of services, the supplier may opt for this Rule, ignoring Rule 30.

**(11) Value of supply in case of lottery, betting, gambling and horse racing [Rule 31A] :**

(i) **Value of supply of lottery :**

- (a) **Lottery run by State Government :** The value of supply of lottery run by State Governments shall be deemed to be 100/112—
  - of the face value of ticket or
  - of the price as notified in the Official Gazette by the organising State,  
**whichever is higher.**

- (b) **Lottery authorised by State Government** : The value of supply of lottery authorised by State Governments shall be deemed to be 100/128—
- of the face value of ticket, or
  - of the price as notified in the Official Gazette by the organising State, whichever is higher.

**Explanation** : The expressions—

- (a) **“lottery run by State Governments”** means a lottery not allowed to be sold in any State other than the organizing State;
- (b) **“lottery authorised by State Governments”** means a lottery which is authorised to be sold in State(s) other than the organising State also; and
- (c) **“Organising State”** has the same meaning as assigned to it in Rule 2(1)(f) of the Lotteries (Regulation) Rules, 2010.

- (ii) **Betting, Gambling or Horse Racing** : The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

**(12) Determination of value in respect of certain supplies [Rule 32] :**

- This rule provides the valuation methods for five specific supplies which are as under—
    - (a) Purchase or sale of foreign currency including money changing.
    - (b) Booking of tickets for air travel by an air travel agent.
    - (c) Life insurance business.
    - (d) Supply of second hand goods.
    - (e) Redeemable vouchers/ stamps/ coupons/ tokens.
  - This rule overrides other rules of valuation. Thus, the supplies prescribed in this rule need not be valued by sequentially following Rules 27 to 31.
  - The valuation methods prescribed under this rule are optional; the supplier can use them if he so desires. He can also opt to value his supplies in accordance with other valuation rules.
- (a) **Value of supply of services in relation to purchase or sale of foreign currency, including money changing [Rule 32(2)(a)]** : The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-

- (i) **For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the,-**

Case	Value of supply
Purchase of foreign currency by service supplier	(RBI reference rate at that time - Buying rate) × Total units of currency.
Sale of foreign currency by service supplier	(Selling rate - RBI reference rate at that time) × Total units of currency.

- (ii) **If RBI reference rate is not available** : In case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money.
- (iii) **In case where neither of the currencies exchanged is Indian Rupee** : In case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

*i.e.*

Amount 1 = Foreign Currency sold × RBI Reference Rate of that currency to Indian rupees	xxx
Amount 2 = Foreign Currency Bought × RBI Reference Rate of that currency to Indian rupees	xxx
Gross Indian Rupees = Amount 1 or Amount 2, whichever is less	xxx
Value = 1% of the Gross Indian Rupees	xxx

- (b) **Option to determine value in relation to supply of foreign currency, including money changing [Rule 32(2) (b)]** : At the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be—

	For an amount -	Value of supply shall be calculated at the rate of -
(1)	Upto ₹ 1,00,000	<ul style="list-style-type: none"> <li>➤ 1% of the gross amount of currency exchanged; or</li> <li>➤ ₹ 250,</li> </ul> <b>whichever is higher.</b>
(2)	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.5 % of the gross amount of currency exchanged.
(3)	Exceeding ₹ 10,00,000	<ul style="list-style-type: none"> <li>➤ ₹ 5,500 + 0.1% of the gross amount of currency exchanged; or</li> <li>➤ ₹ 60,000,</li> </ul> <b>whichever is lower.</b>

Such option shall not be withdrawn during the remaining part of that financial year.

(c) **Value of supply of services in relation to booking of tickets for travel by air provided by an air travel agent [Rule 32(3)] :** The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated –

(i) @ 5% of the basic fare in the case of domestic bookings, and

(ii) @ 10% of the basic fare in the case of international bookings of passage for travel by air.

“Basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airline. [Explanation]

(d) **Value of supply of services in relation to life insurance business [Rule 32(4)] :**

Case	Taxable Value
<b>Policy with dual benefits of risk coverage and investment :</b> If the amount allocated for investment/savings is intimated to the policy holder	⇒ Gross premium less amount allocated for investment
Single premium annuity policies where amount allocated for investment is not intimated	⇒ 10% of single premium
Other cases	<ul style="list-style-type: none"> <li>⇒ 25% of premium in 1<sup>st</sup> year; and</li> <li>⇒ 12.5% of premium in subsequent years</li> </ul>
Policy only towards risk cover	⇒ Entire premium

**Non applicability in case of Risk Premium only :** Nothing contained above shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

(e) **Special provision relating to determination of value of second hand goods - Margin Scheme [Rule 32(5)] :**

When ITC is not availed [Margin Scheme]	When ITC is availed
<ul style="list-style-type: none"> <li>➤ Value = Selling price - Purchase price</li> <li>Where Selling price is less than Purchase price then ignore negative value</li> <li>➤ CGST on second hand goods received from unregistered supplier is exempt</li> </ul>	<ul style="list-style-type: none"> <li>➤ Normal valuation as per other applicable provisions</li> </ul>

(f) **Purchase value of goods repossessed from defaulting borrower :**

If the defaulting borrower is un-registered	If the defaulting borrower is registered
Purchase value = Purchase price in the hands of such borrower reduced by 5% for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession	The repossessing lender agency will discharge GST at the supply value without any reduction from actual/ notional purchase value

(g) **Value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) [Rule 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.

(h) **Value of supply of notified services between distinct persons [Rule 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.

**(13) Value of supply of services in case of pure agent [Rule 33] :****(a) "Pure agent" means a person who—**

- (i) 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;
- (ii) 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;
- (iii) does not use for his own interest such goods or services so procured; and
- (iv) 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.

**(b) Expenditure or costs incurred by supplier as 'pure agent' of recipient of supply to be excluded :** The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,—

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

**(14) Rate of exchange of currency, other than Indian rupees, for determination of value [Rule 34] :****(a) Exchange rate notified by CBIC applicable in case of goods :** The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of Section 12 of the Act.**(b) Exchange rate determined as per GAAP applicable in case of services :** The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of Section 13 of the Act.**(15) Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax [Rule 35] :** Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,—

$$\text{Tax amount} = \frac{\text{Value inclusive of taxes} \times \text{tax rate in \% of IGST or as the case may be CGST, SGST or UTGST}}{(100 + \text{sum of tax rates, as applicable, in \%})}$$

<i>Circular No. 92/11/2019-GST, dated 7-3-2019</i>	<b>Tax treatment of sales promotion schemes under GST - Free samples and gifts, Buy one get one free offer, Discounts including 'Buy more, save more' offers and Secondary Discounts.</b>
--	---

**(1) Free samples and gifts :****(i)** It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.**(ii) Not regarded as supply :** The goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in **Schedule I** of the said Act).Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as 'supply' under GST, except where the activity falls within the ambit of **Schedule I** of the said Act.**(iii) ITC not admissible, if activity not regarded as supply :** Further, Section 17(5)(h) of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.

However, where the activity of distribution of gifts or free samples falls within the scope of 'supply' on account of the provisions contained in **Schedule I** of the said Act, the supplier would be eligible to avail of the ITC.

**(2) Buy one get one free offer :**

- (i) Sometimes, companies announce offers like 'Buy One, Get One free' For example, 'buy one soap and get one soap free' or 'Get one tooth brush free along with the purchase of tooth paste'.

As per Section 7(1)(a) of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said Act).

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

- (ii) **Taxability to be determined as per section 8 :** Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.
- (iii) **ITC admissible :** It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

**(3) Discounts including 'Buy more, save more' offers :**

- (i) **Staggered discount :** Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume).

*For example* - Get 10% discount for purchases above ₹ 5,000/-, 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-.

Such discounts are shown on the invoice itself.

- (ii) **Periodic/ year ending discounts i.e. Volume discounts :** Some suppliers also offer periodic/year ending discounts to their stockists, etc.

*For example* - Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year.

Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end.

In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

- (iii) **Staggered discount/ Volume discounts - deductible as per Section 15(3) :** It is clarified that discounts offered by the suppliers to customers (including staggered discount under 'Buy more, save more' scheme and post supply/volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in Section 15(3) of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.
- (iv) **Supplier entitled to avail ITC :** It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

**(4) Secondary Discounts :**

- (i) These are the discounts which are not known at the time of supply or are offered after the supply is already over.

*For example*, M/s. A supplies 10000 packets of biscuits to M/s. B at ₹ 10/- per packet. Afterwards M/s. A re-values it at ₹ 9/- per packet. Subsequently, M/s. A issues credit note to M/s. B for ₹ 1/- per packet.

- (ii) Representations have been received from the trade and industry that whether credit notes(s) u/s 34(1) of the said Act can be issued in such cases even if the conditions laid Section 15(3)(b) of the said Act are not satisfied.

It is hereby clarified that financial/commercial credit note(s) can be issued by the supplier even if the conditions mentioned in Section 15(3)(b) of the said Act are not satisfied.

In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.



- (iii) **Secondary discounts not deductible** : It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in Section 15(3)(b) of the said Act are not satisfied.
- (iv) In other words, value of supply shall not include any discount by way of issuance of credit note(s) as explained above or by any other means, except in cases where the provisions contained in Section 15(3)(b) of the said Act are satisfied.
- (v) There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

**Circular No. 73/47/2018-GST dated 05-11-2018**

**Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credre agent.**

**Meaning of del-credere agent (DCA)** : 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 and guarantees the payment to the supplier. For guarantying the payment to the supplier, the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. The CBIC *vide* this have clarified the issues regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself.

	Issue	Clarification
(1)	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	It depends on the following possible scenarios: <ul style="list-style-type: none"> <li>➤ In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.</li> <li>➤ In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.</li> </ul>
(2)	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?	<p><b>Where DCA is not agent of the supplier - Interest charged on short term loans provided by DCA to recipient of goods not to be included in the value of supply of goods.</b></p> <p>In such a scenario following activities are taking place:</p> <ol style="list-style-type: none"> <li>(1) Supply of goods from supplier (principal) to recipient;</li> <li>(2) Supply of agency services from DCA to the supplier or the recipient or both;</li> <li>(3) Supply of extension of loan services by the DCA to the recipient.</li> </ol> <p>It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.</p> <p>It may be noted that <i>vide</i> notification No. 12/2017-CT (Rate) dated 28-06-2017 (S. No. 27), 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) has been exempted.</p>
(3)	Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value	<p><b>When DCA is agent of the supplier and makes payment to the supplier and charges interest from the buyer - interest to be included in the value of supply of the goods charged by DCA to the buyer :</b></p> <p>In such a scenario following activities are taking place :</p> <ol style="list-style-type: none"> <li>(1) Supply of goods by the supplier (principal) to the DCA;</li> <li>(2) Further supply of goods by the DCA to the recipient;</li> </ol>

<p>of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?</p>	<p>(3) Supply of agency services by the DCA to the supplier or the recipient or both;</p> <p>(4) Extension of credit by the DCA to the recipient.</p> <p>It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient.</p> <p>It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.</p> <p>It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per Section 15(2)(d) of the CGST Act.</p>
--	---

### ADDITIONAL PRACTICE QUESTIONS

**Illustration 1 - Computation of GST liability :** Determine GST liability (rate of GST is 18% in all cases) if the services have been supplied in the month of July 2019 :

- (a) Mr. X provides taxable services to Mr. Y valuing ₹ 20,00,000.
- (b) Mr. A provides taxable services to Mr. B for which he charges ₹ 11,80,000 (inclusive of GST).
- (c) Mr. A provides taxable services to Mr. B valuing ₹ 15,00,000. He has also incurred travelling expenses of ₹ 1,00,000 for supply of service and the same are also reimbursed by Mr. B (amount exclusive GST).

**Solution:** GST liability in the following cases will be -

- (a) GST payable = ₹ 20,00,000 × 18% = ₹ 360000.
- (b) GST payable = ₹ 11,80,000 × 18 ÷ 118 = ₹ 180,000
- (c) The total value of taxable supply would include expenditure incurred on travelling since reimbursable expenditure shall also form the part of consideration. Hence, GST payable = ₹ 16,00,000 × 18% = ₹ 288000.

**Illustration 2 - Value of taxable supply - Pure agent :** Answer the following -

- (a) X contracts with Y, a real estate agent to sell his house. Thereupon, Y gives an advertisement in television which costed him ₹ 1 lakh. Y billed X for ₹ 5 lakhs. The invoice showed ₹ 4 lakhs as consideration for his services and ₹ 1 lakh for the television advertisement. Y paid GST only on ₹ 4 lakhs, claiming that ₹ 1 lakh was paid as a 'pure agent'. Decide.

**Ans:** Here, Y does not act as 'pure agent' while giving the television advertisement, though it is separately shown in the invoice. Advertising services is an input service for the estate agent in order to enable or facilitate him to perform his services as an estate agent. Therefore, GST is payable on ₹ 5 lakhs.

- (b) In the course of providing a taxable service, X, a service provider incurs costs such as travelling expenses, postage, telephone, etc. totalling to ₹ 50,000. Showing this separately in the bill, he claimed an exclusion of same from the value of the taxable service under the pretext that he was acting as a 'pure agent' of the service recipient. Decide.

**Ans:** Here the expenditure incurred by X in course of providing taxable service is input/ input service procured by X on his own account for providing the taxable service. Hence, by merely indicating such expenditure separately in the bill, the same cannot be excluded from the value of service.

- (c) A contracts with B, an architect for building a house, the consideration for his service being fixed at ₹ 5,00,000. In course of providing service, B incurred expenses such as telephone charges, air travel tickets, accommodation etc. totalling to ₹ 1,00,000. B recovered the same from A. He paid GST only on ₹ 5,00,000, claiming ₹ 1,00,000 as reimbursable expenditure incurred as 'pure agent' of A. Decide.

**Ans:** B is liable to GST on the entire ₹ 6,00,000, the expenditure incurred by him during the course of business was to enable him to effectively perform his services and not as a 'pure agent'. These are input/ input services for B.

- (d) A Customs House Agent paid custom duty of ₹ 3,00,000 on behalf of his client and the same was included in his fees 10,00,000. What is the taxable value of his service?

**Ans:** The value of taxable service is ₹ 7,00,000 as he acts as a pure agent with respect to custom duty.

**Illustration 3 - Computation of Value of Taxable supply and GST liability:** Vayu Ltd. provides you the following particulars relating to goods supplied by it to Agni Ltd.

Particulars	₹
List price of the goods (Exclusive of Taxes and discounts)	76,000
Special packing at the request of customer to be charged to the customer	5,000
Duty levied by local authority on the sale of such goods	4,000
CGST and SGST charged in invoice	14,400
Subsidy received from a NGO (The price of ₹ 76,000 given above is after considering the subsidy)	5,000

Vayu Ltd. offers 3% discount of the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supplies made by Vayu Ltd. (5 Marks, May 2018)

**Solution: Computation of value of taxable supply (amount in ₹) :**

List price of the goods (exclusive of taxes and discounts)		76,000
<b>Add:</b> Duty levied by Municipal Authority on the sale of such goods	[WN-1]	4,000
CGST and SGST chargeable on the goods	[WN-1]	-
Special packing at the request of customer to be charged to the customer	[WN-2]	5,000
Subsidy received from a NGO	[WN-4]	5,000
<b>Total</b>		<b>90,000</b>
<b>Less:</b> Discount @ 3% on ₹ 76,000	[WN-3]	2,280
<b>Value of taxable supply</b>		<b>87,720</b>

**Working Notes:**

- (1) The value of supply shall include any taxes, duties, cess, fees and charges levied under any law for the time being in force other than the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier. [Section 15(2)(a) of CGST Act, 2017]
- (2) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of taxable supply. Hence, special packing at the request of customer shall form a part of the value of taxable supply. [Section 15(2)(c) of CGST Act, 2017]
- (3) The value of supply shall not include any discount which is given before or at the time of supply. [Section 15(3)(a) of CGST Act, 2017]
- (4) The value of supply shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. [Section 15(2)(e) of CGST Act, 2017]

**Illustration 4 - Computation of Value of Taxable supply and GST liability :** Raman Ltd., a registered supplier in Mumbai (Maharashtra), has supplied goods to Sahil Traders and Jaggi Motors Ltd. located in Ahmedabad (Gujarat) and Pune (Maharashtra) respectively. Raman Ltd. has furnished the following details for the current month :

S. No.	Particulars	Sahil Traders (₹)	Jaggi Motors Ltd. (₹)
(i)	Price of the goods (excluding GST)	20,000	15,000
(ii)	Packing charges	600	
(iii)	Commission	400	
(iv)	Weighment charges		1,000
(v)	Discount for prompt payment (recorded in the invoice)		500

Items given in points (ii) to (v) have not been considered while arriving at price of the goods given in point (i) above.

Compute the GST liability [CGST & SGST or IGST, as the case may be] of Raman Ltd. for the given month. Assume the rates of taxes to be as under :

Particulars	Rate of tax
Central tax (CGST)	9%
State tax (SGST)	9%
Integrated tax	18%

Make suitable assumptions, wherever necessary.

**Note:** The supply made to Sahil Traders is an inter-State supply. (RTP May, 2018)

**Solution: Computation of GST liability :**

Particulars	Sahil Traders (₹)	Jaggi Motors Ltd. (₹)
Price of the goods	20,000	15,000
<i>Add:</i> Packing charges [WN-1]	600	
<i>Add:</i> Commission [WN-1]	400	
<i>Add:</i> Weighment charges [WN-1]	-	1,000
<i>Less:</i> Discount for prompt payment (recorded in the invoice) [WN-2]	-	500
<b>Value of taxable supply</b>	<b>21,000</b>	<b>15,500</b>
IGST payable @ 18% [WN-3]	3,780	
CGST payable @ 9% [WN-4]		1,395
SGST payable @ 9% [WN-4]		1,395

**Working Notes :**

- (1) Incidental expenses, including commission and packing, charged by supplier to recipient of supply is includible in the value of supply. Weighment charges are also incidental expenses, hence includible in the value of supply [Section 15 of the CGST Act, 2017].
- (2) Since discount is known at the time of supply, it is deductible from the value in terms of section 15 of the CGST Act, 2017.
- (3) Since supply made to Sahil Traders is an inter-State supply, IGST is payable in terms of section 5 of the IGST Act, 2017.
- (4) Since supply made to Jaggi Motors Ltd. is an intra-State supply, CGST & SGST is payable on the same.

**Illustration 5 - Post supply discounts :** Kaya Trade Links Pvt. Ltd. is a registered manufacturer of premium ceiling fans. It sells its fans exclusively through distributors appointed across the country. The maximum retail price (MRP) printed on the package of a fan is ₹ 10,000. The company sells the ceiling fans to distributors at ₹ 7,000 per fan (exclusive of applicable taxes). The applicable rate of GST on ceiling fans is 18%.

The stock is dispatched to the distributors on quarterly basis - stock for a quarter being dispatched in the second week of the month preceding the relevant quarter. However, additional stock is dispatched at any point of the year if the company receives a requisition of that effect from any of its distributors. The company charges ₹ 1,000 per fan from distributors towards packing expenses.

The company has a policy of offer a discount of 10% (per fan) on fans supplied to the distributors for a quarter, if the distributors sell 500 fans in the preceding quarter. The discounts is offered on the price at which the fans are sold to the distributors (excluding all charges and taxes).

The company appoints Prakash Sales as a distributor on 1<sup>st</sup> April and dispatches 750 fans on 8<sup>th</sup> April as stock for the quarter April-June. Prakash Sales places a purchase order of 1,000 fans with the company for the quarter July-September. The order is dispatched by the company on 10<sup>th</sup> June and the same is received by the distributor on 18<sup>th</sup> June. The distributor makes the payment for the fans on 26<sup>th</sup> June and avails applicable input tax credit. The distributor reports sales of 700 fans for the quarter April-June and 850 fans for the quarter July-September.

Examine the scenario with reference to Section 15 of the CGST Act, 2017 and compute the taxable value of fans supplied by Kaya Trade Links Pvt. Ltd. to Prakash Sales during the quarter July-September.

**Note :** Make suitable assumptions, wherever necessary. (MTP May, 2018)

**Solution:** As per Section 15(3) of CGST Act, 2017, the value of the supply shall not include any discount which is given-

- (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- (b) after the supply has been effected, if--
  - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
  - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

**Nature of discount - Post Supply Discount :** In the given case, Prakash Sales is entitled for 10% discount on fans supplied by Kaya Trade Links Pvt. Ltd. for the quarter July-September as it has sold more than 500 fans in the preceding quarter April-June. However, since the entire stock for the quarter July-September has already been despatched by Kaya Trade Links Pvt. Ltd. in the month of June, the discounts on the fans supplied to Prakash Sales for the quarter July-September will be a post-supply discount.

**Allowability of discount on assumption of reversal of ITC by Recipient :** Such post-supply discount will be allowed as a deduction from the value of supply since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices (invoices pertaining to fans supplied to Prakash Sales for the quarter July-September) provided Prakash Sales reverses the input tax credit attributable to the discount on the basis of document issued by Kaya Trade Links Pvt. Ltd.

**The value of supply will thus, be computed as under (amount in ₹) :**

Price at which the fans are supplied to Prakash Sales	[WN-1]	7,000
<i>Add:</i> Packing expenses	[WN-2]	1,000
<i>Less:</i> Discount	[WN-3]	-700
<b>Value of taxable supply of one unit of fan</b>		<b>7,300</b>
<b>Value of taxable supply of fans for the quarter July-September [₹ 7,300 × 1,000]</b>		<b>73,00,000</b>

**Working Notes:**

- Value of supply - Transaction Value :** The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of Section 15(1) of the CGST Act presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply.
- Packing Charges :** The value of supply includes incidental expenses like packing charges in terms of Section 15(2) (c) of the CGST Act.
- Post Supply Discount :** Since all the conditions specified in Section 15(3)(b) of the CGST Act have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply presuming that Prakash Sales has reversed the input tax credit attributable to such discount on the basis of document issued by Kaya Trade Links Pvt. Ltd.

**The amount of input tax credit to be reversed shall be arrived as under (amount in ₹):**

No. of fans supplied	1,000
Amount of discount per fan	700
<b>Total Discount</b>	<b>7,00,000</b>
Rate of GST	18%
<b>Amount of ITC to be reversed</b>	<b>1,26,000</b>

**Illustration 6 - Computation of Value of taxable supply and GST Liability :** Quantum Plast Private Limited, Delhi supplies plastic granulation machine to Capscom Ltd., Delhi. It furnishes the following details in respect of such supply:

Particulars	₹
List price of the machine (exclusive of taxes and discounts)	1,00,000
Corrugated Boxes used for packing the machine (not included in price above)	1,000
Subsidy received from Delhi Government on sale of such machine (considered in price above)	5,000
Discount @ 2% is offered on list price of the machine (recorded in the invoice for the machine)	-

Determine the value of taxable supply made by Quantum Plast Private Limited. (MTP, May 2018)

**Solution: Computation of value of taxable supply (amount in ₹):**

List price of the goods (exclusive of taxes and discounts)	1,00,000
<i>Add:</i> Corrugated Boxes used for packing the machine [Includible in the value as per Section 15(2)(c)]	1,000
<i>Add:</i> Subsidy received from Delhi Government on sale of such machine [Subsidy received from State Government is not included the value in terms of Section 15(2)(e)]	-
<b>Total</b>	<b>1,01,000</b>
<i>Less:</i> Discount @ 2% on ₹ 1,00,000 [Since discount is known at the time of supply, it is deductible from the value in terms of Section 15(3)(a)]	2,000
<b>Value of taxable supply</b>	<b>99,000</b>

**Illustration 7 - Value of taxable supply and GST liability :** Rosserie Private Limited, a registered supplier, is engaged in supplying the taxable service leviable to GST @ 18%. Compute the value of taxable supply and the GST payable by it in the month of July, 2019 from the information furnished below:



Receipts	₹
Advances received from clients for which no service has been rendered so far	8,00,000
Demurrage charges recovered for use of the services beyond the agreed period	89,000
Security deposits forfeited for damages done by service receiver owing to his negligence in the course of receiving a service. (Not due to unforeseen actions)	5,00,000

Besides, the above receipts, one of the clients – SBS Ltd. made a payment of ₹ 1,45,000 (out of which ₹ 25,000 were paid extra by mistake). However, Rosserie Private Limited refused to return the excess payment received.

**Solution: Computation of Value of taxable supply and the GST payable (amount in ₹) –**

Advances received from clients for which no service has been rendered so far	[WN-1]	8,00,000
Demurrage charges recovered for use of the services beyond the agreed period	[WN-2]	89,000
Security deposits forfeited for damages done by service receiver owing to his negligence in the course of receiving a service.	[WN-2]	5,00,000
Payment received from SBS Ltd.	[WN-3]	1,45,000
<b>Total</b>		<b>15,34,000</b>
Value of taxable supply (₹ 15,34,000 × 100/118)		13,00,000
<b>Total GST payable</b>		<b>2,34,000</b>

**Working Notes:**

- (1) Advances received in July, 2019 shall be taxable in the month of receipt of advance only.
- (2) As per provisions of Section 15 read with Valuation Rules, 2017, following charges are includible in the value of taxable supply :
  - (a) Demurrage charges recovered for use of the services beyond the period agreed upon. It is a service of tolerating an Act.
  - (b) Security deposits forfeited for damages done by service receiver since it is in the nature of extra consideration.
- (3) Excess payment made as a result of a mistake, if not returned and retained by the service provider, becomes a part of the taxable value. Hence, entire ₹ 1,45,000 would form part of taxable value.

**Illustration 8 - Computation of GST payable :** Q Ltd., a registered supplier, is engaged in supplying the taxable services leviable to GST @ 18%. Ascertain the amount of GST payable by it in the month of December, 2019 from the information given below :

Particulars	₹
Supply of farm labour for agriculture purpose.	1,00,000
Service to people free of cost.	60,000
Advance received in December, 2019 from clients for which no service has been rendered till date.	85,000
Amount received for the services rendered in July, 2019 (bills for the same were issued on 25-7-2019)	90,000
Bill raised for the services rendered in the month of December, 2019 against which no amount is received so far.	75,000

The above amounts are exclusive of GST.

**Solution: Computation of GST liability of Q Ltd. for the month of December, 2019 (amount in ₹) –**

Supply of farm labour for agriculture purpose.	[WN-1]	—
Service to people free of cost.	[WN-2]	—
Advance received in December, 2019 from clients for which no service has been rendered till date.	[WN-3]	85,000
Amount received for the services rendered in July, 2019, bills for the same were issued on 25-7-2019	[WN-4]	—
Bill raised for the services rendered in the month of December, 2019 against which no amount is received so far.	[WN-5]	75,000
<b>Value of taxable supply</b>		<b>1,60,000</b>
<b>Total GST payable @ 18%</b>		<b>28,800</b>

**Working Notes :**

- (1) The same will not be liable to GST as it is Exempt vide Entry No. 54 of Exemption Notification No. 12/2017-CT (R).
- (2) Service rendered free of cost will not be taxable as no consideration is received for supplying such service.
- (3) As per Section 13 of CGST Act, 2017, time of supply shall be "date of receipt or date of invoice, whichever is earlier". Hence, Advance received for services to be provided in future the same shall be liable to GST in the month of December, 2019.



- (4) As per Section 13 of CGST Act, 2017, time of supply shall be "date of receipt or date of invoice, whichever is earlier". The same is taxable in month of July, 2019, hence, no tax liability shall arise in month of December, 2019.
- (5) As per Section 13 of CGST Act, 2017, time of supply shall be "date of receipt or date of invoice, whichever is earlier". Hence, GST liability shall arise in month of December, 2019.

**Illustration 9 – Scope of taxable value of supply :** Hotel Marudhar Palace charges 10% of the bill amount as service charges and Department has asked them to pay GST on it. The assessee has submitted that the amount @ 10% collected from customers is subsequently disbursed among the staff, therefore it is not part of their income and cannot be included in the gross amount charged by them. Examine the case and advise suitably. (Modified 3 Marks, Nov. 2005)

**Ans:** According to Section 15, the value of taxable supply of services is the transaction value, which is the price actually paid or payable for the said supply of services, where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. Here, the assessee has charged 10% of the bill amount as service charges from its customers, therefore it will form part of the value of taxable supply. Thus, such service charges will be included in value of taxable supply and will be liable to GST @ 18%.

**Illustration 10 – GST not charged in the bill :** Mr. X, a service supplier who pays GST regularly, was of the opinion that a particular service rendered by him was not liable to GST. He, therefore, did not charge GST in his bill. He received the payment for the bill amount without GST. However, it was later confirmed that GST is payable @ 18% on said service. How will GST liability of Mr. X be determined in such a case?

**Ans:** Section 9 of the CGST Act, 2017 casts the liability to pay GST upon the service supplier. This liability is not contingent upon the service supplier realizing or charging GST at the prevailing rate. Statutory liability does not get extinguished if service supplier fails to realize or charge GST from service recipient.

Thus, in this case, the amount received from the service recipient will be taken to be inclusive of GST. Accordingly, GST payable by the service supplier shall be ascertained by making back calculations in the following manner :

$$\text{GST payable} = \frac{\text{Amount received} \times \text{GST rate}}{[100 + \text{GST rate}]}$$

**Illustration 11 – Computation of GST liability :** Sincere Coaching Classes Ltd. a coaching centre is registered under GST. The details pertaining to the month of July, 2019 are as under :

Particulars	₹
Free coaching rendered to a batch of 100 students (Value of similar services is ₹ 20,000)	
Coaching fees collected from students for the classes to be held in July, 2019	17,70,000
Advance received from a college for teaching their students, on 30-07-2019. However, due to some unavoidable reasons, no coaching was conducted and the advance money (including GST) was returned on 18-10-2019	3,54,000

Determine the GST liability for the month of July, 2019 and indicate the date by which GST has to be deposited by the assessee.

**Solution: Computation of GST liability of Sincere Coaching Classes Ltd. (amount in ₹) :**

Free coaching rendered	[WN-1]	Nil
Coaching fees collected from students [₹ 17,70,000 × 18/118]	[WN-2] [A]	2,70,000
Advance received from a college [₹ 3,54,000 × 18/118]	[WN-2 & 3] [B]	54,000
<b>Total GST liability (A + B)</b>		<b>3,24,000</b>

**Working Notes:**

- As per Section 7(1)(a), Supply should be made for a consideration. Therefore, since no consideration is involved in case of free services, GST is not payable thereon.
- Since, services agreed to be provided are also chargeable to GST, advance received will also be liable to GST. Advance received is taxable at the time when such advance is received [Section 13 of CGST Act, 2017].
- Advance received from a college for teaching their students will also be chargeable to GST. It is immaterial that no coaching was conducted and the money was returned on 18-10-2019. The amount of GST included in the amount refunded (₹ 54,000) in the month of *i.e.* October, 2019 would be adjusted against GST liability of subsequent periods.

The last date for making the payment of GST by Sincere Coaching Classes Ltd. for the month of July, 2019 is 20<sup>th</sup> August, 2019.

**Illustration 12 – Reimbursable expenditure – shall form part of value of taxable services :** Whether expenditure like travel, hotel stay, transportation and the like incurred by the service supplier in the course of supplying taxable supply of service may be treated as consideration for taxable supply of service and included in value for charging GST ? Explain briefly with reference to decided case law. (Modified 4 Marks, May 2015)

**Ans:** As per Rule 33 of CGST Rules, 2017, 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 subject to fulfillment of specified conditions otherwise expenditure incurred will form value of taxable supply. Thus, expenditure like travel, hotel stay, transportation and the like incurred by the service supplier in the course of supplying taxable supply of service will be treated as consideration for taxable supply and included in value for charging GST.

**Illustration 13 – Computation of Value of supply :** XYZ sells its products through unrelated wholesale dealers. The wholesale price is ₹ 1,00,000 (inclusive of GST). Cash discount of ₹ 3,000 is allowed if the payment is made within 7 days. Charges for normal packing ₹ 1,000 which is included in the price. The supplier has paid turnover tax ₹ 1,000 and but the same is not recoverable from the recipient. What is the value of supply and what is the GST payable, if the product is liable for GST @ 18% and recipient has made payment within 7 days of such supply?

**Solution: Computation of value of taxable supply and GST payable (amount in ₹) –**

Cum-tax price			1,00,000
<b>Add: Inclusions</b>			
Normal packing	[WN-1]	-	
Turnover tax	[WN-2]	-	
<b>Less: Exclusions</b>			
Cash discount	[WN-3]	3,000	3,000
	<b>Cum tax value</b>		<b>97,000</b>
<b>Less: GST @ 18% i.e. 97,000 × 18 ÷ 118</b>			<b>14,797</b>
	<b>Value of taxable supply</b>		<b>82,203</b>

**Working Notes:**

- As per Section 15(2)(c) of CGST Act, 2017, if packing charges charged by supplier to the recipient would be included for computation of value of taxable supply. As already included in price so no adjustment is required.
- As per Section 15(2)(a) of CGST Act, 2017, any taxes, duties, cesses, fees, and charges levied under any law for the time being in force, if charged separately by the supplier will form part of taxable supply. In given case as turnover tax is not charged from recipient so it would not form part of value of taxable supply.
- As per Section 15(3) of CGST Act, 2017, if any discount which is given after the supply has been effected and is established in terms of an agreement then it is excluded in computing the value of taxable supply.

**Illustration 14 – Value of supply & GST :** Machine India Ltd. is engaged in the manufacture of machines. It has supplied one machine to M/s. Z & Co. with the following details. Determine the total amount of GST payable thereon.

Particulars	Amount in ₹
(i) Price of machines excluding taxes and undermentioned charges	8,50,000
(ii) Installation and erection expenses	30,000
(iii) Packing charges	12,500
(iv) Design and engineering charges	4,000
(v) Pre-delivery inspection charges	1,000

Other necessary information is as under :

- Cash discount @ 2% on price of machinery is allowed as per terms of contract because buyer made full payment in advance.
- Bought out accessories worth ₹ 8,000 supplied free of cost with machine.
- Machine is supplied in durable and returnable packing worth ₹ 50,000.
- The rate of GST is 18%.

**Solution: Computation of Value of taxable supply and GST payable (amount in ₹) –**

Price of machines excluding taxes and duties		8,50,000
Installation and erection expenses	[WN-1]	30,000
Packing charges	[WN-2]	12,500
Design and engineering charges	[WN-3]	4,000

Pre-delivery inspection charges	[WN-5]	1,000
Bought out accessories	[WN-6]	-
Durable and returnable packing	[WN-4]	-
Total		8,97,500
Less: 2% cash discount on price of machinery = ₹ 8,50,000 × 2%	[WN-7]	17,000
<b>Value of taxable supply</b>		<b>8,80,500</b>
<b>GST payable @ 18%</b>		<b>1,58,490</b>

**Working Notes :** While computing the value of supply -

- (1) As per Section 15(2)(c) of CGST Act, 2017, if Installation and erection expenses at the recipient's site will also be added, being an amount charged for something done by the supplier in respect of the supply at the time of making the supply.
- (2) As per Section 15(2)(c) of CGST Act, 2017, packing charges charged by supplier to the recipient will be included for computation of value of supply.
- (3) As per Section 15(2)(c) of CGST Act, 2017, any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of taxable supply. Hence, design and engineering charges shall also be included in the value of taxable supply.
- (4) The value of durable and returnable packing will not be included, since no amount is charged for such supply.
- (5) Any incidental expenses and amount charged from recipient for activities done before delivery would be included in value of supply.
- (6) Value of bought out accessories supplied free of cost along with the machinery will not be included since no amount is charged for supply of accessories.
- (7) As per Section 15(3) of CGST Act 2017, if any discount which is given before or after the supply has been effected and is established in terms of an agreement or contract then it is excluded from the calculation of value of supply.

**Illustration 15 - Computation of value of supply :** Compute value of supply of goods supplied by Bharat Enterprises, u/s 15 of the CGST Act, 2017, with the help of the following particulars -

Particulars	Amount in (₹)
Sale price for delivery at buyers premises	2,42,000
Contracted sale price includes the following elements of cost -	
(i) Cost of containers supplied by the buyer	15,200
(ii) Design and engineering charges	22,400
(iii) Loading and handling charges incurred after removal from the factory	6,000
(iv) Cost of after sale service	10,000
(v) Dharmada charges	2,100

Cash discount @ 2% on Sale Price is allowed as per terms of contract because buyer made full payment in advance. Give reasons with suitable assumptions wherever necessary.

**Solution: Computation of Value of taxable supply (amount in ₹) -**

Sale price for delivery at buyers premises		2,42,000
Less: The following -		
(i) Cost of containers supplied by the buyer	[WN-1]	-15,200
(ii) Design and engineering charges	[WN-2]	Includible
(iii) Loading and handling charges incurred after removal from the factory	[WN-3]	Includible
(iv) Cost of after sale service	[WN-4]	Includible
(v) Dharmada charges	[WN-5]	Includible
Total		<b>2,26,800</b>
Less: Cash discount 2% of Sale Price = 2% × ₹ 2,42,000		4,840
<b>Total Value of taxable supply</b>		<b>2,21,960</b>

**Working Notes :** While computing the assessable value,-

- (1) Cost of containers supplied by the buyer is not includible. As per Section 15(1) of CGST Act, 2017, value of supply of goods shall be inclusive of goods which are supplied by supplier to recipient, in given case containers are supplied by recipient so value of container would not be included.

- (2) As per Section 15(2)(c) of CGST Act, 2017, any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of taxable supply. Hence, design and engineering charges shall also be included in the value of taxable supply. As already included no adjustment required.
- (3) Loading and handling charges incurred after removal from the factory are includible according to Section 15(2)(a).
- (4) Cost of after sale service is includible according to Section 15(2)(c).
- (5) Dharmada charges charged from recipient would form part of value of taxable supply.

**Illustration 16 - Computation of value from cum-tax price - Rule 35 :** Determine the value of supply for purpose of GST under the CGST Act, 2017 in the following cases :

- (i) A supplier supplied his goods for ₹ 118 per piece and does not charge any GST in his invoice. Subsequently it was found that the goods were not exempted from but were liable at 18% advalorem.
- (ii) Certain goods were supplied for ₹ 118 per piece and 18% advalorem is the rate of GST. Subsequently it was found that the price cum tax was in fact ₹ 138 per piece as the supplier had collected ₹ 20 per piece separately.
- (iii) The cum tax price per piece was ₹ 118 and the supplier had paid tax at 18% advalorem. Subsequently it was found that the rate of tax was 28% advalorem and the supplier had not collected anything over and above ₹ 118 per piece. (Modified 6 Marks, Nov. 2010-NS)

**Solution:** The Value of taxable supply shall be calculated as under -

$$\text{Tax amount} = \frac{\text{Value inclusive of taxes} \times \text{tax rate in \% of IGST or as the case may be CGST, SGST or UTGST}}{(100 + \text{sum of tax rates, as applicable, in \%})}$$

It is assumed that all the prices given in question excludes permissible exclusions i.e. discounts.

- (i) Value of supply =  $\frac{\text{Price cum tax} - \text{Permissible exclusions}}{100 + \text{Rate of GST}} \times 100$  i.e.  $\frac{118}{100+18} \times 100 = ₹ 100$
- (ii) Value of supply =  $\frac{\text{Price cum tax} + \text{Inclusions} - \text{Permissible exclusions}}{100 + \text{Rate of GST}} \times 100$  i.e.  $\frac{118+20}{100+18} \times 100 = ₹ 116.95$
- (iii) Value of supply =  $\frac{\text{Price cum tax} - \text{Permissible exclusions}}{100 + \text{Rate of GST}} \times 100$  i.e.  $\frac{118}{100+28} \times 100 = ₹ 92.19$

**Illustration 17 - Computation of value of supply :** Having regard to the provisions of Section 15 of the CGST Act, 2017, compute/derive the value of supply of goods, for levy of duty of GST, given the following information :

	(₹)
Cum-tax wholesale price	15,000
Normal secondary packing cost	1,000
Cost of special secondary packing	1,500
Cost of durable and returnable packing	1,500
Freight	750
Insurance on freight	200
Trade discount (normal practice)	1,000
Rate of GST	18%

State the reasons for the admissibility or otherwise of the deductions. (8 Marks, Nov. 1996)

**Solution: Computation of Value of taxable supply (amount in ₹) -**

Cum-duty price			15,000
<b>Add: Inclusions -</b>			
Normal secondary packing cost	[WN-1]	1,000	
Cost of special secondary packing	[WN-1]	1,500	
Cost of durable and returnable packing	[WN-1]	-	
- Freight	[WN-2]	750	
- Insurance on freight	[WN-2]	200	3,450
<b>Less: Exclusions -</b>			
- Trade Discount	[WN-3]	1,000	1,000
<b>Cum tax value</b>			<b>17,450</b>

Less: GST thereon @ 18% [₹ 17,450 × 18 ÷ 118]		2,662
<b>Value of taxable supply</b>		<b>14,788</b>

**Working Notes:**

- (1) With regards to packing, all kinds of packing is included in the value of supply if the same is charged from the recipient by the supplier. It is assumed that cost of durable and returnable packing is not charged by the supplier from the recipient, hence the same is not includible.
- (2) Freight and insurance on freight will form part of value of taxable supply be allowed as deduction as per Section 15(2)(c) of CGST Act, 2017.
- (3) The GST is to be charged on the net price, hence trade discount is allowed as deduction.

**Illustration 18 - Computation of Value of taxable supply - Rule 27 :** Dev Enterprises is the supplier of water coolers. Dev Enterprises supplied water coolers to Vimal Traders for consideration of ₹ 2,95,000 (inclusive of GST @ 18%). Vimal Traders also gave some materials to Dev Enterprises as consideration for such supply whose value was ₹ 10,000 (exclusive of GST).

Dev Enterprises has supplied the same goods to another person at price of ₹ 2,97,360 (inclusive of GST @ 18%).

You are required to :

- (1) Determine the value of goods supplied by Dev Enterprises to Vimal Traders as per the provisions of the CGST Act, 2017.
- (2) What would your answer be if price of ₹ 2,97,360 is not available at the time of supply of goods of Vimal Traders? Explain briefly. (4 Marks, May 2019)

**Solution:** As per Rule 27 of CGST Rules, 2017, where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,—

- (a) be the open market value of such supply;
- (b) if open market value is not available, be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

“Open market value” of a supply of goods or services or both means—

- the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction,
- where the supplier and the recipient of the supply are not related and
- price is the sole consideration
- to obtain such supply at the same time when the supply being valued is made.

**Determination of value of taxable supply in different situations :***(amount in ₹)*

- (1) The value of taxable supply shall be the open market value. The open market value shall be determined as under:

Price charged from independent recipient	2,97,360
Less: GST included in the above price [₹ 2,97,360 × 18 ÷ 118]	45,360
<b>Open market value of supply of goods under consideration</b>	<b>2,52,000</b>

Thus, the value of taxable supply shall be ₹ 2,52,000.

- (2) If open market value is not available, the value of taxable supply shall be determined as under:

Consideration in Money [₹ 2,95,000 × 18 ÷ 118]	2,50,000
Value of Non monetary Consideration - Value of Goods known at time of supply	10,000
<b>Value of taxable supply</b>	<b>2,60,000</b>

**Illustration 19 - Value in case of supply to related person - Rule 28 :** A Supplier sold certain goods to AB Ltd. for ₹ 50,000 (excluding taxes) on 02-10-2019. AB Ltd. is a related person as defined under, Explanation to Section 15. It did not sell the goods but used for consumption in manufacture of other articles. The cost of goods was ₹ 60,000. Determine the value of supply in the given case. What will be the value of supply if in the aforesaid case AB Ltd. is not related to the supplier? (Modified 2 Marks, May 2016)

**Solution:** As per Rule 28 of CGST Rules, 2017, the value of the supply of goods or services or both—

- (i) between distinct persons as specified in Section 25(4) and (5), or
- (ii) where the supplier and recipient are related,

other than where the supply is made through an agent, shall –

- be the open market value of such supply;
- if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- if the value is not determinable under clause (a) or (b), be the value as determined by the application of Rule 30 or Rule 31, in that order *i.e.* it must be worked out based on the cost of the supply plus 10% mark-up (Rule 30) or by other reasonable means, in that sequence (Rule 31).

In given case as supplier and recipient are related so value of supply should be computed as cost of supply plus 10% mark up *i.e.* ₹ 60,000 × 110% = ₹ 66,000.

If AB Ltd. is not related to the supplier then value of supply would be transaction value *i.e.* ₹ 50,000 according to Section 15 of CGST Act, 2017.

**Illustration 20 – Value in case of supply to related person - Rule 28 read with Rule 30:** From the following particulars, compute the value of supply for GST purposes. Out of 1,000 units manufactured, 800 units have been cleared to a sister unit for further production of goods on assessee's behalf, the balance 200 units are lying in the stock :

Particulars	₹
Direct material consumed (inclusive of GST @ 18%)	2,36,000
Direct labour and direct expenses	1,60,000
Works overheads	40,000
Research and development costs	25,000
Administration overheads (75% related to production)	80,000
Inputs received free of cost from sister units (to be used only in goods manufactured for sister units)	35,000
Abnormal losses (not included above)	24,000
Advertisement and selling costs	36,000
VRS compensation to employees (not included above)	1,20,000
Realisable value of scrap/wastage	20,000

(Modified RTP Nov. 2014) (5 Marks, CS Final Dec. 2012)

**Solution: Calculation of cost of production (amount in ₹) –**

Direct material consumed (exclusive of GST) [₹ 2,36,000 × 100 ÷ 118]	[WN-1]	2,00,000
Direct labour & expenses		1,60,000
Works Overheads		40,000
Research and development costs - Includible		25,000
Administrative Overheads (₹ 80,000 × 75%)	[WN-2]	60,000
Abnormal losses – Not includible	[WN-4]	Nil
Advertisement and selling costs	[WN-5]	Nil
VRS compensation to labour/employees	[WN-4]	Nil
Realisable value of Scrap/Wastage - Deductible from cost		-20,000
<b>Cost of production of 1,000 units</b>		<b>4,65,000</b>
<b>Cost per unit</b>		<b>465</b>
Cost of production of 800 units transferred to sister units [800 × 465]		3,72,000
Inputs received free of cost from sister unit	[WN-3]	35,000
<b>Total Cost of production of 800 units transferred to sister unit</b>		<b>4,07,000</b>
<b>Add: 10% mark up as per Rule 28</b>		<b>40,700</b>
<b>Value of supply of 800 units cleared to sister under Rule 28</b>		<b>4,47,700</b>

**Working Notes:**

- Direct material cost shall be taken as net of GST since input tax credit availed cannot form part of cost of production.
- Administrative overheads relatable to production only shall form part of cost of production.
- Inputs received free of cost from sister unit form part of cost of production as per CAS-4 issued by ICMA.
- Abnormal losses and VRS compensation shall also not form part of 'cost' as it is non-recurring cost arising due to unusual or unexpected occurrence of events.
- Advertisement and selling costs shall not form part of cost of production.
- As per Rule 28 of CGST Rules, 2017, the value of the supply of goods or services or both where the supplier and recipient are related shall –
  - be the open market value of such supply;



- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of Rule 30 or Rule 31, in that order *i.e.* it must be worked out based on the cost of the supply plus 10% mark-up (Rule 30) or by other reasonable means, in that sequence (Rule 31).

**Illustration 21 – Value of taxable supply – Foreign exchange broking :** Prada Forex Private Limited, registered in Delhi, is a money changer. It has undertaken the following purchase and sale of foreign currency:

- (i) 1,000 US \$ are purchased from Nandi Enterprises at the rate of ₹ 68 per US \$. RBI reference rate for US \$ on that day is ₹ 68.60.
- (ii) 2,000 US \$ are sold to Menavati at the rate of ₹ 67.50 per US\$. RBI reference rate for US \$ for that day is not available.

Determine the value of supply in each of the above cases in terms of : (A) rule 32(2)(a) of the CGST Rules, 2017

(B) rule 32(2)(b) of the CGST Rules, 2017. (RTP Nov., 2019)

**Solution:** Rule 32(2) of the CGST Rules, 2017 prescribes the provisions for determining the value of supply of services in relation to the purchase or sale of foreign currency, including money changing.

**(A) Determination of value under rule 32(2)(a) of the CGST Rules, 2017**

- (a) Rule 32(2)(a) of the CGST Rules, 2017 provides that the value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Thus, value of supply is :

$$= (\text{RBI reference for US \$} - \text{Buying rate of US \$}) \times \text{Total number of units of US \$ bought}$$

$$= (\text{₹ } 68.60 - \text{₹ } 68) \times 1,000$$

$$= \text{₹ } 600$$

- (b) First proviso to rule 32(2)(a) of the CGST Act, 2017 lays down that when the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. Thus, value of supply is :

$$= 1\% \text{ of the gross amount of Indian Rupees received}$$

$$= 1\% \text{ of } (\text{₹ } 67.50 \times 2,000)$$

$$= \text{₹ } 1,350$$

**(B) Determination of value under rule 32(2)(b) of the CGST Rules, 2017**

Rule 32(2)(b) provides that value in relation to the supply of foreign currency, including money changing shall be deemed to be -

S.No.	Currency exchanged	Value of supply
1	Upto ₹ 1,00,000	1% of the gross amount of currency exchanged <b>OR</b> ₹ 250 whichever is higher
2	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - ₹ 1,00,000)
3	Exceeding ₹ 10,00,000	₹ 5,500 + 0.1% of the (gross amount of currency exchanged - ₹ 10,00,000) <b>OR</b> ₹ 60,000 whichever is lower

Thus, the value of supply in the given cases would be computed as under:

- (a) Gross amount of currency exchanged = ₹ 68 × 1,000 = ₹ 68,000. Since the gross amount of currency exchanged is less than ₹ 1,00,000, value of supply is 1% of the gross amount of currency exchanged [1% of ₹ 68,000] or ₹ 250, whichever is higher.
- $$= \text{₹ } 680$$
- (b) Gross amount of currency exchanged = ₹ 67.50 × 2,000 = ₹ 1,35,000. Since the gross amount of currency exchanged exceeds ₹ 1,00,000 but is less than ₹ 10,00,000, value of supply is ₹ 1,000 + 0.50% of (₹ 1,35,000 - ₹ 1,00,000).
- $$= \text{₹ } 1,175$$

**Illustration 22 – Value of supply and GST :** Arvin Ltd., sold a machine to Isha Ltd., for ₹ 4,00,000 (excluding taxes). A cash discount of 3% was allowed since Isha Ltd., had made full payment in advance. The following additional details are given below :

Sr. No.	Particulars	Amount (₹)
(1)	Expenses pertaining to installation and erection of the machine at Isha Ltd.'s premises (machine was permanently fixed to earth)	20,000
(2)	Cost of durable and returnable packing (such cost has been amortised and included in the cost of the machine)	5,000
(3)	Actual freight and insurance from factory to buyer's premises	25,000
(4)	Subsidies (not received from Central Government)	15,000
(5)	Transportation cost paid by recipient on behalf of supplier	10,000

Determine the total amount of GST payable on the machine. Assume transaction is on principal to principal basis. Assume GST at 18% and show working notes. (Modified 5 Marks, May 2015)

**Solution: Computation of Value of taxable supply of GST payable by Arvin Ltd. (amount in ₹)–**

Price of machine excluding taxes		4,00,000
<b>Add: Inclusions</b>		
– Installation and erection of machine	[WN-1]	20,000
– Durable and returnable packing	[WN-2]	-
– Freight and Insurance	[WN-1]	25,000
– Subsidies received from persons other than Central government	[WN-3]	15,000
– Transportation cost	[WN-4]	10,000
<b>Total</b>		<b>4,70,000</b>
<b>Less: 3% cash discount of price of machinery = ₹ 4,00,000 × 3%</b>	[WN-5]	12,000
<b>Value of taxable supply</b>		<b>4,58,000</b>
<b>GST payable @ 18%</b>		<b>82,440</b>

**Working Notes:** While computing assessable value–

- (1) As per Section 15(2)(c) of CGST Act, 2017, if installation and erection charges and freight and insurance are charged by supplier to the recipient, then it would be included for computation of value of supply.
- (2) Cost of durable and returnable packing shall not be included in taxable value of supply since the same is amortised and not separately charged from the recipient.
- (3) As per Section 15(2)(e) of CGST Act, 2017, if Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments would be included in computation in value of supply.
- (4) As per Section 15(2)(b) of CGST Act, 2017, any amount that the supplier is liable to pay in relation to such supply but amount incurred by recipient on behalf of the supplier, that amount would be included in value of supply.
- (5) As per Section 15(3) of CGST Act 2017, if any discount which is given before or after the supply has been effected and is established in terms of an agreement or contract then it is excluded from the calculation of value of supply.

**Illustration 23 – Computation of taxable value and GST Liability :** ABC Ltd., Noida (Uttar Pradesh) is a supplier of machinery used for making bottle caps. The supply of machinery is effected as under:

- (1) The wholesale price of the machinery (excluding all taxes and other expenses) at which it is supplied in the ordinary course of the business to various customers is ₹ 42,00,000. However, the actual price at which the machinery is supplied to an individual customer varies within a range of ± 10% depending upon the terms of contract of supply with the particular customer.
- (2) Apart from the price of the machinery, ABC Ltd. charges from the customer the following incidental expenses:
  - (a) associated handling and loading charges of ₹ 10,000
  - (b) installation and commissioning charges of ₹ 1,00,000

The machinery can be dismantled and erected at another site, if required. The above charges are compulsorily levied in every case of supply of machinery.

- (3) Transportation of machinery to the customer's premises is arranged by ABC Ltd. through a third-party service provider [Goods Transport Agency (GTA)]. The customer enters into a separate service contract with the GTA and pays the freight directly to it.
- (4) The company provides one year free warranty for the machinery. However, the company also provides an extended two-year warranty on payment of additional charge of ₹ 3,00,000.

- (5) A cash discount of 2% on the price of the machinery is offered at the time of supply, if the customer agrees to make the payment within 15 days of the receipt of the machinery at his premises. In the event of failure to make the payment within the stipulated time, the company –
- recovers the discount given; and
  - charges interest @ 1% per month or part of the month on the total amount due from the customer (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is charged on the tax dues.
- (6) For every machinery supplied, ABC Ltd. receives a grant of ₹ 2,00,000 from its holding company DEF Ltd.

ABC Ltd. has supplied a machinery to D Pvt. Ltd. on August 1, 2019 at a price of ₹ 40,00,000 (excluding all taxes). D Pvt. Ltd. has its corporate office in New Delhi. However, the machinery has been installed at its manufacturing unit located in Gurugram (Haryana). D Pvt. Ltd. has paid the freight directly to the GTA and opted for two year warranty. Discount @ 2% was given to D Pvt. Ltd. as it agreed to make the payment within 15 days. However, D Pvt. Ltd. paid the consideration on 31<sup>st</sup> October, 2019.

Assume the rates of taxes to be as under:

Goods/services supplied	CGST	SGST	IGST
(i) Bottle cap making machine	6%	6%	12%
(ii) Service of transportation of goods	2.5%	2.5%	5%
(iii) Other services involved in the above supply	9%	9%	18%

You are required to make suitable assumptions, wherever necessary.

Calculate the GST payable [CGST & SGST or IGST, as the case may be] on the machinery and support your conclusions with legal provisions in the form of explanatory notes.

Make suitable assumptions, wherever needed. (RTP May, 2018)

**Solution: Computation of GST liability of ABC Ltd. (amount in ₹):**

Price of machine	[WN 1]	40,00,000
Handling and loading charges	[WN 2(a)]	10,000
Installation and commissioning charges	[WN 2(b)]	1,00,000
Transportation cost	[WN 3]	Nil
Additional warranty cost	[WN 4]	3,00,000
Grant from DEF Ltd.	[WN 5]	2,00,000
<b>Total price of the machine</b>		<b>46,10,000</b>
Less: 2% cash discount on price of machinery = ₹ 40,00,000 × 2%	[Note 6]	80,000
<b>Taxable value of supply</b>		<b>45,30,000</b>
Tax liability for the month of August 2019	[WN 7]	
<b>IGST @ 12% [A]</b>	<b>[WN 8 and WN 9]</b>	<b>5,43,600</b>
Tax liability for the month of October 2019	[WN 11]	
Interest collected @ 3% on ₹ 44,10,000	[WN 10]	1,32,300
Cash discount recovered	[WN 10]	80,000
Cum-tax value of interest and cash discount		2,12,300
<b>IGST = (₹ 2,12,300/112) × 12% [B]</b>		<b>22,746</b>
<b>Total IGST payable on the machinery [A + B]</b>		<b>5,66,346</b>

**Working Notes:**

- Value - Transaction value :** The value of a supply is the transaction value *i.e.*, the price actually paid or payable assuming ABC Ltd. and D Pvt. Ltd. are not related and the price is the sole consideration for the supply.
- Handling, Installation and Commissioning charges :** As per Section 15(2)(c)-
  - All incidental expenses charged by the supplier to the recipient of a supply are includible in the value of supply.
  - Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply.
- Transportation Cost :** Transportation cost shall not form part of value of supply of the machinery as there is a separate service contract between the customer and the third-party service provider in relation to such transportation. The customer pays the freight directly to the service provider.  
The supplier (ABC Ltd.), in this case, merely arranges for the transport and does not provide the transport service on its own account. Tax will be separately levied on the supply of service of transportation of goods under reverse charge.

- (4) **Warranty Cost** : Warranty cost is includible in the value of the supply since transaction value includes all elements of the price excluding those that can be specifically excluded as per Section 15 of the CGST Act.
- (5) **Grants** : As per Section 15(2)(e), Subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments are includible in the value of supply.
- (6) **Cash Discount** : It was deducted by ABC Ltd. upfront at the time of supply on 1<sup>st</sup> August, 2019 and hence, the same is excluded from the value of supply as it did not form part of the transaction value.
- (7) **Month for which Tax Payable** : It has been assumed that the invoice for the supply has been issued on 1<sup>st</sup> August, 2019, the date on which the supply is made. Thus, the time of supply of goods is 1<sup>st</sup> August, 2019 in terms of Section 12(1)(a) of the CGST Act, 2017.
- (8) **Place of supply and Nature of Tax** : In the given case-
- (i) the location of the supplier is in Noida (UP); and
  - (ii) the place of supply of machinery is the place of installation of the machinery *i.e.*, Gurugram (Haryana) in terms of Section 10(1)(d) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017].

Thus, the supply will be leviable to IGST in terms of Section 5(1) of the IGST Act, 2017.

- (9) **Rate of Tax** : The given supply is a composite supply involving supply of goods (machinery) and services (*handling and loading and installation and commissioning*) where the principal supply is the supply of goods. As per Section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (machinery) has been considered.

- (10) **Interest and Cash Discount** : Interest for the delayed payment of any consideration for any supply is includible in the value of supply in terms of Section 15(2)(d) of the CGST Act, 2017.

Interest is charged for 3 months @ 1% p.m. as the consideration was paid on 31-10-2019. Interest is charged on the amount to be recovered from the recipient *i.e.* ₹ [40,00,000 + 10,000 + 1,00,000 + 3,00,000].

Further, cash discount recovered will also be includible in the value of supply as now the transaction value *i.e.*, the price actually paid for the machinery is devoid of any discount.

**Cum Tax value of interest and Cash Discount** : The cash discount not allowed and interest have to be considered as cum tax value and tax payable thereon has to be computed by making back calculations in terms of Rule 35 of CGST Rules, 2017.

- (11) **Month for which Tax Liability Arises** : As per Section 12(6) of the CGST Act, 2017, the time of supply in case of addition in value by way of interest, late fee, penalty etc. for delayed payment of consideration for goods is the date on which the supplier receives such addition in value.

Thus, the time of supply of interest received and cash discount recovered on account of delayed payment of consideration is 31<sup>st</sup> October, 2019, the date when the full payment was made. The supplier may issue a debit note for such interest and cash discount recovered.

**Illustration 24 - Valuation of taxable supply and GST liability** : Laxmi Ltd. of Bhopal (Madhya Pradesh) is a supplier of machinery. Laxmi Ltd. has supplied machinery to PQR Enterprises in Indore (Madhya Pradesh) on 1<sup>st</sup> October, 2019. The invoice for supply has been issued on 1<sup>st</sup> October, 2019. Thus, the time of supply of machinery is 1<sup>st</sup> October, 2019. Laxmi Ltd. and PQR Enterprises are not related. Following information is provided.

Basic price of machinery excluding all taxes but including design and engineering charges of ₹ 10,000 and loading charges of ₹ 20,000 - ₹ 20,00,000.

Laxmi Ltd. provides 2 years free warranty for the machinery. Laxmi Ltd. also provides an extended one year warranty on payment of additional charges of ₹ 1,00,000. PQR Enterprises opted for one year warranty.

Laxmi Ltd. has collected consultancy charges in relation to pre-installation planning of ₹ 10,000 and freight and insurance charges from place of removal to buyer's premises of ₹ 20,000.

Laxmi Ltd. received subsidy of ₹ 50,000 from Central Government for supplying the machinery to backward region since receiver was located in a backward region. Laxmi Ltd. also received ₹ 50,000 from the joint venture partner of PQR Enterprises for making timely supply of machinery to the recipient.

A cash discount of 1% on the basic price of the machinery is offered at the time of supply, if PQR Enterprises agrees to make the payment within 30 days of the receipt of the machinery at his premises. Discount @ 1% was given to PQR Enterprises as it agreed to make the payment within 30 days.

The machinery attracts CGST and SGST @ 18% (9% + 9%) and IGST @ 18%.

Compute the CGST and SGST or IGST payable, as the case may be on the machinery. (10 Marks, May 2018)

**Solution: Computation of GST payable (amount in ₹):**

Price of the machinery	[WN-1]	20,00,000
<b>Add:</b> Extended warranty cost	[WN-2]	1,00,000
Consultancy charges in relation to pre-installation planning	[WN-3]	10,000
Freight and insurance charges	[WN-4]	20,000
Subsidy received from Central Government	[WN-5]	Nil
Receipts from Joint Venture of PQR Enterprises	[WN-5]	50,000
		<b>21,80,000</b>
<b>Less:</b> 1% discount on basic price = ₹ 20,00,000 × 1%	[WN-6]	20,000
<b>Value of supply</b>		<b>21,60,000</b>
<b>CGST @ 9%</b>	[WN-7]	<b>1,94,400</b>
<b>SGST @ 9%</b>	[WN-7]	<b>1,94,400</b>

**Working Notes:**

- (1) The value of a supply is the transaction value *i.e.*, the price actually paid or payable assuming Laxmi Ltd. and PQR Enterprises Ltd. are not related and the price is the sole consideration for the supply.  
Design and engineering charges are includible in the value of supply as any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is so includible in terms of Section 15 of CGST Act, 2017.  
Further, loading charges being incidental expenses charged by the supplier to the recipient of supply, are includible in the value as per Section 15 of the CGST Act, 2017.
- (2) Warranty cost is includible in the value of the supply since transaction value includes all elements of the price excluding those that can be specifically excluded as per Section 15 of the CGST Act.
- (3) As per Section 15(2)(c), Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply.
- (4) Supply of machinery (goods) with supply of ancillary services like freight and insurance is a composite supply, the principle supply of which is the supply of machinery. Thus, value of such ancillary supply is includible in the value of composite supply.
- (5) Subsidies provided by the Central Government and State Governments are not includible in the value of supply in terms of Section 15 of the CGST Act, 2017. However, subsidy directly linked to the price received from a non-Government body is includible in the value in terms of Section 15.
- (6) Cash discount has been given to PQR Enterprises upfront at the time of supply and thus would have been recorded in the invoice and hence, the same is excluded from the value of supply in terms of Section 15 of the CGST Act, 2017.
- (7) In the given case –
  - (a) the location of the supplier is in Bhopal (Madhya Pradesh); and
  - (b) the place of supply of machinery is the location of the machinery at the time at which the movement of the same terminates for delivery to the recipient *i.e.*, Indore (Madhya Pradesh).

Therefore, the given supply is an intra-State supply as the location of the supplier and the place of supply are in the same State. Thus, the supply will be leviable to CGST and SGST.

**Illustration 25 – Valuation of taxable supply :** Kamal & Co. manufactures customized products at its unit situated in Rajasthan. Cost of production for Kamal & Co. for 1000 products is ₹ 20,00,000. These products require further processing before sale, and for this purpose products are transferred from its Rajasthan unit to its another unit in Punjab. The Punjab unit, apart from processing its own products, engages in processing of similar products of other persons who supply the products of the same kind and quality and thereafter sells these processed products to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Punjab unit. Products of the same kind and quality are supplied in lots of 1000 each time by another manufacturer located in Punjab. The price of such goods is ₹ 19,00,000. Determine the value of 1000 products supplied by Kamal & Co. to its Punjab unit as per the provisions of CGST Act, 2017. (5 Marks, May 2018-NS)

**Solution:** As per section 25(4) of the CGST Act, 2017, a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act. Therefore, units of Kamal & Co. in Rajasthan and Punjab are distinct persons.

As per rule 28 of CGST Rules, 2017, the value of the supply of goods between distinct persons, other than where the supply is made through an agent, shall –

- be the open market value of such supply;
- if open market value is not available, be the value of supply of goods of like kind and quality;
- if value cannot be determined under the above methods, be cost of the supply plus 10% mark-up or be determined by other reasonable means, in that sequence.

In the given case, open market value of the 1000 products being supplied to Punjab unit is not available since the supplier manufactures customised products. Therefore, value of 1000 products supplied by Rajasthan unit of Kamal & Co. to Punjab unit will be the value of the goods of like kind and quality supplied to Punjab unit by other customers which is ₹ 19,00,000.

Since goods are not supplied as such by the Punjab unit, goods cannot be valued @ 90% of the price charged for the supply of like goods by the Punjab unit to its unrelated customers in terms of first proviso to rule 28 of CGST Rules, 2017.

Further, if Punjab unit is entitled for full ITC, the value declared in the invoice of Rajasthan unit will be deemed to be the open market value of the goods *vide* second proviso to rule 28 of CGST Rules, 2017.

**Illustration 26 – Valuation of taxable supply and GST liability :** M/s. Jonty India Ltd. A manufacturer of heavy machines registered at Jaipur (Rajasthan) supplied on machine to M/s. Dhanuka Ltd. of Udaipur (Rajasthan) on 05-02-2020 under an invoice of the same date. Using the information given below, compute the value of the machine and the GST payable (CGST & SGST or IGST as the case may be) in cash for the month of February, 2020 by M/s. Jonty India Ltd. with appropriate working notes.

Assume Rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18% respectively.

S.No.	Particulars	(₹)
(i)	The Basic price of the machine (exclusive of taxes and discount).	28,50,000
(ii)	Trade discount is allowed at 3% on the basic price and is shown in the invoice.	85,500
(iii)	Secondary packing (in iron sheets) charges for safe transportation of the machine on the request of buyer.	30,000
(iv)	Design and engineering charges of the machine.	90,000
(v)	Tax levied by Municipal Authority on the sale on the machine.	25,000
(vi)	Subsidy received by the supplier from the State Government to encourage manufacture of the machine.	80,000
(vii)	Pre-delivery inspection charges paid to an independent agency in terms of the agreement for supply. The amount was paid by M/s. Dhanuka Ltd.	22,000
(viii)	Interest amount paid by M/s Dhanuka Ltd. for delay in payment for the machine.	12,000
<b>Inward Supplies</b>		
(i)	IGST paid on food items for consumption by employees working in the factory.	8,000
(ii)	SGST and CGST (₹ 15,000 each) paid on Electrical transformer used in the manufacturing process.	30,000

**Note :** (i) M/s. Jonty India Ltd. has no input tax credit balance at the beginning of February, 2020. All the other conditions necessary for availing the eligible input tax credit have been fulfilled.

(ii) There are no other transaction of supplies during the month of February, 2020.

(iii) M/s. Jonty India Ltd. and M/s. Dhanuka Ltd. are not related persons. (10 Marks, Nov. 2018-NS)

**Solution: Computation of GST liability of M/s Jonty India Ltd. (amount in ₹):**

Price of machine	[WN.1]	28,50,000
Secondary packing charges	[WN 2]	30,000
Design and engineering charges of the machine	[WN 2]	90,000
Tax levied by Municipal Authority on the sale on the machine.	[WN 3]	25,000
Subsidy received by the supplier from the State Government to encourage manufacture of the machine	[WN 4]	Nil
Pre-delivery inspection charges paid to an independent agency in terms of the agreement for supply	[WN 5]	22,000



Interest amount paid by M/s. Dhanuka Ltd. for delay in payment for the machine. [₹ 12,000 × 100 ÷ 118] [WN 9]	10,169
<b>Total price of the machine</b>	<b>30,27,169</b>
Less: 3% trade discount on price of machinery = ₹ 28,50,000 × 3% [Note 6]	85,500
<b>Taxable value of supply</b>	<b>29,41,669</b>
<b>Tax liability for the month of February 2019</b> Add: CGST @ 9% Add: SGST @ 9%	[WN 7] [WN 8] 2,64,750 2,64,750
<b>Total GST payable on the machinery</b>	<b>5,29,501</b>

**Computation of GST to be deposited through electronic cash ledger :**

Particulars	Value of taxable supply	Eligible input tax credit			
		CGST* (₹)	SGST* (₹)	IGST* (₹)	Total (₹)
On Intra-state sales in Rajasthan (Total output tax liability)	29,41,669	2,64,750	2,64,750	-	5,29,501
Less: Input tax credit—					
IGST paid on food items for consumption by employees [WN-10]		-	-	-	-
Electrical transformer used in the manufacturing process.		15,000	15,000	-	30,000
<b>Net GST payable</b>		<b>2,49,750</b>	<b>2,49,750</b>	<b>-</b>	<b>4,99,501</b>

**Working Notes:**

- (1) **Value – Transaction value :** The value of a supply is the transaction value *i.e.*, the price actually paid or payable since M/s. Jonty India Ltd. and M/s. Dhanuka Ltd. are not related and the price is the sole consideration for the supply.
- (2) **Secondary packing charges and design and Engineering charges [Section 15(2)(c)] :** Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply.
- (3) The value of supply shall include any taxes, duties, cess, fees and charges levied under any law for the time being in force other than the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier. [Section 15(2)(a) of CGST Act, 2017]
- (4) The value of supply shall include subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments. [Section 15(2)(e) of CGST Act, 2017]
- (5) 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. [Section 15(2)(b) of CGST Act, 2017]
- (6) **Trade discount :** It was deducted by M/s. Jonty India Ltd. upfront at the time of supply and hence, the same is excluded from the value of supply as it did not form part of the transaction value. [Section 15(3)(a) of CGST Act, 2017]
- (7) **Month for which tax payable :** The time of supply of goods is 05-02-2020 in terms of Section 12(1)(a) of the CGST Act, 2017.
- (8) **Place of supply and nature of tax :** In the given case—
  - (i) the location of the supplier is in Jaipur (Rajasthan); and
  - (ii) the place of supply of machinery is *i.e.*, Udaipur (Rajasthan).

Therefore, the given supply is an intra-State supply as the location of the supplier and the place of supply are in same State [Section 8(1)(a) of IGST Act, 2017].

Thus, the supply will be leviable to CGST and SGST in terms of Section 9(1) of the CGST Act, 2017.
- (9) **Interest :** Interest for the delayed payment of any consideration for any supply is includible in the value of supply in terms of Section 15(2)(d) of the CGST Act, 2017. As per Section 12(6) of the CGST Act, 2017, the time of supply in case of addition in value by way of interest, late fee, penalty etc. for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Further, it is assumed that such interest is inclusive of tax and that the same has been received by M/s. Jonty India Ltd. in the month of February itself. Thus, the time of supply of interest received on account of delayed payment of consideration is February 2020, the date when the full payment was made.

- (10) As per Section 17(5)(b), no Input tax credit is available in respect of food items primarily used for personal use of the employees working in factory except where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

**Illustration 27 - Value of supply of services in case of pure agent :** Rolly Polly Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of footwear. It imports a footwear making machine from USA. Rolly Polly Manufacturers Ltd. avails the services of Rudra Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), in meeting all the legal formalities for getting the said machine cleared from the customs station.

Rolly Polly Manufacturers Ltd. also authorises Rudra Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to its warehouse at Mumbai. These expenses would be reimbursed by Rolly Polly Manufacturers Ltd. to Rudra Logistics on actual basis. In addition, Rolly Polly Manufacturers Ltd. will also pay the agency charges to Rudra Logistics for the services rendered by it.

Rudra Logistics raised an invoice in July, 2019 as follows:

	Particulars	(₹)*
(i)	Agency charges	5,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	50,000
(iii)	Charges for transport of machine from Kandla port, Gujarat to Rudra Logistics' godown in Ahmedabad, Gujarat	25,000
(iv)	Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	28,000
(v)	Customs duty on machine	5,00,000
(vi)	Dock dues	50,000
(vii)	Port charges	50,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

\*exclusive of GST wherever applicable

(MTP May 2019)

Compute the value of supply made by Rudra Logistics with the help of given information. Would your answer be different if Rudra Logistics charges ₹ 13,00,000 as a lump sum consideration for clearing the imported machine from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd.?

**Solution:** As per explanation to rule 33 of the CGST Rules, 2017, a "pure agent" means a person who—

- 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;
- 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;
- does not use for his own interest such goods or services so procured; and
- receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The supplier needs to fulfil ALL the above conditions in order to qualify as a pure agent.

In the given case, Rudra Logistics has been authorised by the recipient of supply - Rolly Polly Manufacturers Ltd. - to incur, on its behalf, the expenses incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient, i.e. expenses mentioned in S.No. (ii) to (vii). Further, Rudra Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Rudra Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Rudra Logistics qualifies as a pure agent.

Further, rule 33 of the CGST Rules, 2017 stipulates that notwithstanding anything contained in the provisions of Chapter IV - Determination of Value of Supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely—

- 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;
- 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
- the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Rudra Logistics as a pure agent of Rolly Polly Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Rudra Logistics will be computed as under (*amount in ₹*):

Agency charges	5,00,000
<i>Add:</i> Unloading of machine at Kandla port, Gujarat	Nil
<i>Add:</i> Charges for transport of machine from Kandla port, Gujarat to Rudra Logistics' godown in Ahmedabad, Gujarat	Nil
<i>Add:</i> Charges for transport of machine from Rudra Logistics' Ahmedabad godown to the warehouse of Rolly Polly Export Import House in Mumbai, Maharashtra	Nil
<i>Add:</i> Customs duty on machine	Nil
<i>Add:</i> Dock dues	Nil
<i>Add:</i> Port charges	Nil
<i>Add:</i> Hotel expenses	45,000
<i>Add:</i> Travelling expenses	50,000
<i>Add:</i> Telephone expenses	2,000
<b>Value of supply</b>	<b>5,97,000</b>

However, if Rudra Logistics charges ₹ 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Rolly Polly Manufacturers Ltd., Rudra Logistics would incur expenses (ii) to (vii) for its own interest (as the agreement requires it to get the imported machine cleared from the customs station and bring the same to the Rolly Polly Manufacturers Ltd.'s warehouse). Thus, Rudra Logistics would not be considered as a pure agent of Rolly Polly Manufacturers Ltd. for said services.

**Illustration 28 - Computation of Value of taxable supply and GST liability:** Jaskaran, a registered supplier of Delhi, has made the following supplies in the month of January, 2020:

	Particulars	(₹)*
(i)	Supply of 20,000 packages at ₹ 30 each to Sukhija Gift Shop in Punjab [Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons]	6,00,000
(ii)	10 generators hired out to Morarji Banquet Halls, Chandigarh [including cost of transporting the generators (₹ 1,000 for each generator) from Jaskaran's warehouse to the Morarji Banquet Halls]	2,50,000
(iii)	500 packages each consisting of 1 chocolate and 1 fruit juice bottle given as free gift to Delhi customers on the occasion of Diwali [Cost of each package is ₹ 12, but the open market value of such package of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the items contained in the package]	
(iv)	Catering services provided free of cost for elder son's business inaugural function in Delhi [Cost of providing said services is ₹ 55,000, but the open market value of such services and of services of like kind and quality is not available.]	

\*excluding GST

You are required to determine the GST liability [CGST & SGST and/or IGST, as the case may be] of Jaskaran for the month of January, 2020 with the help of the following additional information furnished by him for the said period:

- Penalty of ₹ 10,000 was collected from Sukhija Gift Shop for the payment received with a delay of 10 days.
- The transportation of the generators from Jaskaran's warehouse to the customer's premises is arranged by Jaskaran through a Goods Transport Agency (GTA) who pays tax @ 12%.
- Assume the rates of GST to be as under:

Goods/ Services supplied	CGST	SGST	IGST
Chocolates	9%	9%	18%
Fruit juice bottles	6%	6%	12%
Toy balloons	2.5%	2.5%	5%
Service of renting of generators	9%	9%	18%
Catering service	9%	9%	18%

**Solution: Computation of GST liability of Jaskaran for the month of January, 2020 (amount in ₹) :**

Particulars	CGST	SGST	IGST
Supply of 20,000 packages to Sukhija Gift Shop, Punjab [₹ 6,08,475 × 18%] [WN-1]	-	-	1,09,525
Renting of 10 generators to Morarji Banquet Halls, Chandigarh (₹ 2,50,000 × 18%) [WN-2]	-	-	45,000
500 packages given as free gift to the customers [WN-3]	Nil	Nil	Nil
Catering services provided free of cost for elder son's business inaugural function in Delhi (CGST: 60,500 × 9%) (SGST: 60,500 × 9%) [WN-3]	5,445	5,445	-
<b>Total GST liability (rounded off)</b>	<b>5,445</b>	<b>5,445</b>	<b>1,54,525</b>

**Working Notes :**

(1) **Nature of supply - Mixed supply - Highest rate of tax applicable :** As per Section 2(74) of the CGST Act, 2017, mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Supply of a package containing chocolates, fruit juice bottles and a packet of toy balloons is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per Section 8(b) of the CGST Act, 2017, the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of packages is treated as supply of chocolates [since it attracts the highest rate of tax]. Consequently, being an inter-State supply of goods, supply of packages to Sukhija Gift Shop of Punjab is subject to IGST @ 18% each.

**Penalty to be included in value of supply :** Further, value of supply includes interest or late fee or penalty charged for delayed payment of any consideration for any supply in terms of Section 15(2)(d) of the CGST Act, 2017. Thus, penalty of ₹ 10,000 [considered as inclusive of GST] collected from Sukhija Gift Shop for the delayed payment will be included in the value of supply. The total value of supply is ₹ 6,08,475 [₹ 6,00,000 + (₹ 10,000 × 100/118)]

(2) **Renting of generators along with their transportation - Principal supply is the renting of generator :** Services by way of transportation of goods by road except the services of a Goods Transportation Agency (GTA) are exempt vide Notification No. 9/2017-IT (R) dated 28-06-2017. Since Jaskaran is not a GTA, transportation services provided by him are exempt from GST. However, since the generators are invariably hired out along with their transportation till customer's premises, it is a case of composite supply under section 2(30) of the CGST Act, 2017 wherein the principal supply is the renting of generator.

As per Section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the service of transportation of generators will also be taxed at the rate applicable for renting of the generator (principal supply).

**Nature of supply - Inter-state supply :** Consequently, being an inter-State supply of service, service of hiring out the generators to Morarji Banquet Halls of Chandigarh is subject to IGST @ 18% each.

(3) **Supply without consideration :** As per Section 7(1)(c) of the CGST Act, 2017, an activity made without consideration can be treated as supply only when it is specified in Schedule I of the CGST Act, 2017. Para 2. of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business, are to be treated as supply even if made without consideration.

**Free gifts to unrelated customers - Not regarded as supply :** However, since the question does not provide that customers are related to Jaskaran, free gifts given to the customers cannot be considered as a supply u/s 7. Consequently, no tax is leviable on the same.

**Catering services to related person - Treated as supply :** Further, the catering services provided by Jaskaran to his elder son without consideration will be treated as supply as Jaskaran and his elder son, being members of same family, are related persons in terms of explanation (a)(viii) to Section 15 of the CGST Act, 2017 and said services have been provided in course/furtherance of business.

**Value of supply - 110% of cost :** Value of supply of services between related persons, other than through an agent is determined as per Rule 28 of the CGST Rules, 2017. Accordingly, the value of supply is the open market value of such supply; if open market value is not available, the value of supply of goods or services of like kind and quality. However, if value cannot be determined under said methods, it must be worked out based on the cost of the supply plus 10% mark-up. Thus, in the given case, value of catering services provided to the elder son of Jaskaran is ₹ 60,500 [₹ 55,000 × 110%]. Further, being an intra-State supply of services, catering services are subject to CGST and SGST @ 9% each.

- (4) **GTA paying tax @ 12% - RCM not applicable** : As per Notification No. 13/2017-CT (R) dated 28-06-2017, GST is payable by the recipient on reverse charge basis on the receipt of services of transportation of goods by road from a goods transport agency (GTA) provided such GTA has not paid GST @ 12%. Since in the given case, Jaskaran has received services from a GTA who has paid GST @ 12%, reverse charge provisions will not be applicable.

**Illustration 29 - Computation of Value of taxable supply and GST liability** : Mrs. Kajal a registered supplier of Jaipur (Rajasthan) has made the following supplies in the month of January, 2020 :

- (i) Supply of a laptop bag along with the laptop to a customer of Mumbai for ₹ 55,000 (exclusive of GST).
- (ii) Supply of 10000 kits (at ₹ 50 each) amounting ₹ 5,00,000 (exclusive of GST) to Ram Fancy Store in Kota (Rajasthan). Each kit consists of 1 hair oil, 1 beauty soap and 1 hair comb.
- (iii) 100 kits given as free gift to Jaipur customers on the occasion of Mrs. Kajal's birthday. Each kit consists of 1 hair oil and 1 beauty soap. Cost of each kit ₹ 35, but the open market value of such kit of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the goods contained in the kit.
- (iv) Event management services provided free of cost for brother's son marriage function in Indore (Madhya Pradesh). Cost of providing said services is ₹ 80,000, but the open market value of such services and of services of like kind and quality is not available.
- (v) 1400 chairs and 100 coolers hired out to Function Garden, Ajmer (Rajasthan) for ₹ 3,30,000 (exclusive of GST) including cost of transporting the chairs and coolers [₹ 20 (exclusive of GST) for each chair and each cooler] from Mrs. Kajal's godown at Jaipur to the Function Garden Ajmer. The cost of transportation of chairs and coolers is paid by Mrs. Kajal to an unregistered Goods Transport Agency (GTA).

Interest of ₹ 6,400 (inclusive of GST) was collected by Mrs. Kajal from Ram Fancy Store, Kota for the payment received with a delay of 30 days.

Assume rates of GST to be as under :-

S. No.	Particulars	Rate of CGST (%)	Rate of SGST (%)	Rate of IGST (%)
1.	Laptop	9	9	18
2.	Laptop Bag	14	14	28
3.	Hair Oil	9	9	18
4.	Beauty soap	14	14	28
5.	Hair Comb	6	6	12
6.	Event Management Service	2.5	2.5	5
7.	Service of Renting of Chairs and Coolers	6	6	12
8.	Transportation Service	2.5	2.5	5

From the above information compute the GST liability (CGST and SGST and/or IGST, as the case may be) of Mrs. Kajal for the month of January, 2020. (9 Marks, May 2019)

**Solution: Computation of GST liability of Mrs. Kajal for the month of January, 2020 (amount in ₹) :**

Particulars	CGST	SGST	IGST
Supply of a laptop bag along with the laptop to a customer of Mumbai [₹ 55,000 × 18%] [WN-1]	-	-	9,900
Supply of 10000 kits (at ₹ 50 each) to Ram Fancy Store in Kota (Rajasthan) (CGST: ₹ 5,05,000 × 14%) (SGST: ₹ 5,05,000 × 14%) [WN-2]	70,700	70,700	-
100 Kits given as free gift to the customers on occasion of Mrs. Kajal birthday [WN-3]	Nil	Nil	Nil
Event Management services provided free of cost for brother's son marriage function in Indore (Madhya Pradesh) [₹ 88,000 × 5%] [WN-4]	Nil	Nil	Nil
Renting of 1400 chairs and 100 coolers to Function Garden, Ajmer (Rajasthan) (CGST: ₹ 3,30,000 × 6%) (SGST: ₹ 3,30,000 × 6%) [WN-5]	19,800	19,800	-
<b>GST liability under Reverse Charge :</b>			
Cost of transportation paid by Mrs. Kajal to unregistered GTA (CGST: ₹ 30,000 × 2.5%) (SGST: ₹ 30,000 × 2.5%) [WN-6]	750	750	
<b>Total GST liability</b>	<b>91,250</b>	<b>91,250</b>	<b>9,900</b>
<b>Less: Input tax credit of tax paid on GTA services under reverse charge mechanism</b>	<b>750</b>	<b>750</b>	<b>-</b>
<b>Net GST Liability</b>	<b>90,500</b>	<b>90,500</b>	<b>9,900</b>

## Working Notes :

- (1) **Nature of supply - Composite supply - Rate of tax of principal supply shall be applicable :** As per Section 2(30) of the CGST Act, 2017, composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled, and supplied in conjunction with each other in the ordinary course of business, one of which is a **principal supply**. Supply of a laptop bag along with the laptop to a customer is a composite supply where the principal supply is supply of laptop and supply of laptop bag is incident or ancillary services. Laptop bags are generally supplied with laptops for safety of laptop. Further, as per Section 8(a) of the CGST Act, 2017, a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply**. Thus, in the given case, supply of a laptop bag along with the laptop treated as supply of laptop. Consequently, being an inter-State supply of goods, supply of a laptop bag along with the laptop to a customer of Mumbai is subject to IGST @ 18%.
- (2) **Nature of supply - Mixed supply - Highest rate of tax applicable :** As per Section 2(74) of the CGST Act, 2017, mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. Supply of a kits containing 1 hair oil, 1 beauty soap and 1 hair comb is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per Section 8(b) of the CGST Act, 2017, the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of kits is treated as supply of beauty soap [since it attracts the highest rate of tax]. Since the location of supplier and place of supply is in Rajasthan, being an intra-State supply of goods, supply of kits to Ram Fancy Store of Kota (Rajasthan) is subject to CGST and SGST @ 14% each. **Interest to be included in value of supply :** Further, value of supply includes interest or late fee or penalty charged for delayed payment of any consideration for any supply in terms of Section 15(2)(d) of the CGST Act, 2017. Thus, interest of ₹ 6,400 [inclusive of GST] collected from Ram Fancy Store for the delayed payment will be included in the value of supply. The total value of supply is ₹ 5,05,000 [₹ 5,00,000 + (₹ 6,400 × 100/128)]
- (3) **Supply without consideration :** As per Section 7(1)(c) of the CGST Act, 2017, an activity made without consideration can be treated as supply only when it is specified in Schedule I of the CGST Act, 2017. Para 2. of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business, are to be treated as supply even if made without consideration. **Free gifts to unrelated customers - Not regarded as supply :** However, since the question does not provide that customers are related to Mrs. Kajal, free gifts given to the customers cannot be considered as a supply under section 7. Consequently, no tax is leviable on the same.
- (4) **Event Management services free of cost for brother's son marriage - not to be regarded as supply :** Further, the event management services provided by Mrs. Kajal for her brother's son without consideration cannot be considered as supply under section 7 read with Schedule I of the CGST Act as the service is provided to unrelated person without consideration.
- (5) **Renting of 1400 chairs and 100 coolers along with their transportation - Principal supply is the renting of chairs and coolers :** Services by way of transportation of goods by road except the services of a Goods Transportation Agency (GTA) are exempt *vide* Notification No. 9/2017-IT (R) dated 28-06-2017. Since Mrs. Kajal is not a GTA, transportation services provided by her are exempt from GST. However, since the chairs and coolers are invariably hired out along with their transportation till customer's premises, it is a case of composite supply under section 2(30) of the CGST Act, 2017 wherein the principal supply is the renting of chairs and coolers. As per Section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the service of transportation of generators will also be taxed at the rate applicable for renting of the chairs and coolers (principal supply). **Nature of supply - Intra-state supply :** Consequently, being an intra-State supply of service, service of hiring out the chairs and coolers to Function Garden of Ajmer (Rajasthan) is subject to CGST and SGST @ 6% each.
- (6) **Unregistered GTA - RCM applicable :** As per Notification No. 13/2017-CT (R) dated 28-06-2017, GST is payable by the recipient on reverse charge basis on the receipt of services of transportation of goods by road from a goods transport agency (GTA) provided such GTA has not paid GST @ 12%. Since in the given case, Mrs. Kajal has received services from a Unregistered GTA, reverse charge provisions will be applicable.



**Illustration 30 - Computation of Value of taxable supply and GST liability :** Flowchem Palanpur (Gujarat) has made contract with R refinery Abu Road (Rajasthan) on 1<sup>st</sup> July, 2019 to supply 10 valves on FOR basis for its project, with following terms and conditions :

- (1) List price per valve ₹ 1,00,000, exclusive of taxes.
- (2) The valves are of two stage third party inspection while manufacturing as required by R Refinery, and cost of inspection, of ₹ 15,000 is directly paid by R Refinery to testing agency.
- (3) As per the terms the special packing is to be done as required by R Refinery, the cost of which is ₹ 10,000.
- (4) After making supply of valves, Flowchem has to arrange for erection and testing at site for commissioning. Cost of erection etc. is of ₹ 15,000.
- (5) The supply was dispatched with Tax invoice on 20<sup>th</sup> July, 2019, which has reached the destination Abu-Road on 21<sup>st</sup> July, 2019. The lorry-freight ₹ 5,000 has been paid by R Refinery directly to lorry driver.

Assume the CGST and SGST rates to be 9% each and IGST rate to be 18%. There are opening ITC of CGST ₹ 20,000 and SGST ₹ 20,000. All given amounts are exclusive of GST, wherever applicable.

It has also done the following local transactions during the month of July, 2019 on which it has paid CGST and SGST as under :

Sr. No.	Particulars	Amt paid CGST (₹)	Amt paid SGST (₹)
1.	It has acquired services of works contractor to erect foundation for fixing the machinery to earth in the factory	5,000	5,000
2.	It has laid pipe line upto the gate of its factory to bring the water to the factory for the purpose of production facility.	10,000	10,000
3.	For the smooth and convenient communication purpose in its factory, it has installed telecommunication tower of a mobile company (with due permission) which have been provided to staff for factory work.	5,000	5,000
4.	Company has entered into an agreement with travel company to provide travel facility to its employees for providing home travel facility when they are on leave.	2,500	2,500
5.	It has entered into an agreement with fitness centre for providing its services for its employees for their wellness after office hours	2,000	2,000

Work out the GST liability [CGST, SGST or IGST, as the case may be] of Flowchem Palanpur (Gujarat), for July, 2019 after making suitable assumptions, if any. (9 Marks, May 2019-NS)

**Solution: Computation of GST liability of M/s Flowchem Palanpur. (amount in ₹) :**

List Price of Value [₹ 1,00,000 × 10]	[WN-1]	10,00,000
Third party inspection charges paid directly by R Refinery to testing agency	[WN-2]	15,000
Special packing charges	[WN-3]	10,000
Erection and testing at site for commissioning.	[WN-4]	15,000
Transportation charges	[WN-5]	5,000
<b>Taxable value of supply of valves</b>		<b>10,45,000</b>
<b>Tax liability in respect of valves [IGST @ 18%]</b>		<b>1,88,100</b>

**Computation of GST to be deposited through electronic cash ledger :**

Particulars	Value of taxable supply	Eligible input tax credit			
		CGST* (₹)	SGST* (₹)	IGST* (₹)	Total (₹)
<b>Inter-State sales in Rajasthan (Total output tax liability)</b>	<b>10,45,000</b>			<b>1,88,100</b>	<b>1,88,100</b>
<b>Less: Input tax credit—</b>					
Opening balance		20,000	20,000		
Works contractor to erect foundation for fixing the machinery to earth in the factory [Works contract services when supplied for construction of plant and machinery is eligible for input tax credit. For this purpose "Plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports]		5,000	5,000		

## GST : VALUE OF SUPPLY

© CA. Yogendra Bangar &amp; CA. Vandana Bangar

Pipe line upto the gate of its factory to bring the water to the factory for the purpose of production facility. [Pipelines laid within the factory premises are covered in the meaning of plant and machinery and eligible for credit] [Pipe line is laid outside the factory premises are not covered in the meaning of plant and machinery.] [It is assumed that pipeline is laid outside the factory upto the factory gate, hence credit is not admissible.]		-	-		
Installation of telecommunication tower for staff. [Telecommunication towers are not covered in the meaning of plant and machinery, thus credit is not available in respect of the same]		-	-		
Leave travel facility to employees [Travel benefits extended to employees on vacation such as leave or home travel concession are blocked under Section 17(5)].		-	-		
Health and fitness services to employees [Same is blocked under Section 17(5)]		-	-		
Less: Credit of CGST to be used for payment of IGST		-25,000		25,000	25,000
Less: Credit of SGST to be used for payment of IGST			-25,000	25,000	25,000
<b>Net GST payable</b>				<b>1,38,100</b>	<b>1,38,100</b>

**Working Notes:**

- (1) **Value - Transaction value :** The value of a supply is the transaction value *i.e.*, the price actually paid or payable since M/s. Flowchem and M/s. R refinery are not related and the price is the sole consideration for the supply.
- (2) **Third party inspection charges :** Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both is included in the value of supply. Assuming that in the given case, arranging inspection was the liability of the supplier, the same should be included in the value of supply.
- (3) **Special packing charges [Section 15(2)(c)] :** Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply.
- (4) Erection, Commissioning and installation services is composite supply along with valves and taxable at same rate as valves. The supply of valves is complete after erection, hence it is an act prior to delivery and value thereof is included in the value of valves. Thus the same is includible as per the provisions of Section 15(2)(c) of the Act.
- (5) Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport (FOR contract), the contract of supply becomes a composite supply, the principal supply being the supply of goods. Outward freight becomes part of the value of the composite supply and GST is payable thereon at the same rate as applicable for the relevant goods. In this case the lorry freight paid directly by R refinery shall be included in the value of supply, since the contract for delivery is on FOR basis.
- (6) **Month for which tax payable :** The time of supply of goods is 20-07-2019 in terms of Section 12(1)(a) of the CGST Act, 2017.
- (7) **Place of supply and nature of tax :** In the given case—
  - (i) the location of the supplier is in Palanpur (Gujarat); and
  - (ii) the place of supply of valves is *i.e.*, Abu road (Rajasthan).

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in different States [Section 8(1)(a) of IGST Act, 2017].

Thus, the supply will be leviable to IGST in terms of Section 5(1) of the IGST Act, 2017.

**Illustration 31 - Computation of Value of supply - Insurance Service :** Zindagi Life Insurance Company Limited (ZLICL) has collected premium from subscribers and it intimates the amount allocated for investment to subscribers at the time of collection of premium. During the month of September 2019, it has collected the following receipts. All amounts are exclusive of tax. You are required to compute the value of supply by M/s. Zindagi in accordance with GST laws. (4 Marks, May 2019-NS)

Sl. No.	Particulars	Amount (₹)
1.	Premium for only risk cover	25,00,000
2.	Premium from new subscribers	40,00,000
3.	Renewal Premium	80,00,000
4.	Single premium on annuity policy	1,00,00,000

Solution: Computation of Value of Taxable Supply of services (amount in ₹) :

Particulars	Amount	Rate	Taxable Value
<b>General policies :</b>			
Premium for only risk cover	25,00,000	-	25,00,000
Premium from new subscribers	40,00,000	25%	10,00,000
Renewal Premium	80,00,000	12.5%	10,00,000
Single premium annuity policy	1,00,00,000	10%	10,00,000
<b>Value of supply</b>			<b>55,00,000</b>

■ ■ ■

**CA | CS | CMA**  
Direct Tax Laws & Indirect Tax Laws  
Intermediate/ Final/ Professional

**Also Available Now !!**

**Bangar's** | **AADHYA'S**  
http://www.aadhyas.com

Contact/Whatsapp - 9602066653

**Video Lecture**

Inter/ Executive/ Final/ Professional

**Regular / Fast Track Course**

- Indirect Tax (GST, Customs & FTP)
- Direct Tax & International Taxation
- Taxation (Income Tax & GST)

Latest recorded video lectures available in Pendrive

**You Tube**  
Subscribe to our Channel  
CA. Yogendra Bangar

**Online MCQ's**

Computer / EduApplet App

Quality Question Bank of  
**2000 MCQ's**  
for each Subject (DT/IDT)

**Test yourself - Anytime - Anywhere**

- Chapter wise coverage of entire syllabus
- Practice, revision & internal assessment
- 24 × 7 Online Access
- Available on Computer, Android Smartphone or Tablet

**SUBJECTIVE Test Series**

More than 23 Years of Experience

- Test Series by Nationally Renowned Faculty
- Based on the Institute's Examination pattern
- Evaluation as per Institute's marking pattern
- Ideal for increasing the writing abilities which is must for expert level
- Pass CA/CSCMA Exams with Flying Colours

## INPUT TAX CREDIT

## SUMMARIZED POINTS FOR REVISION

## DEFINITIONS

## (1) Definitions:

Term	Definitions
<b>Capital Goods</b>	Means goods,— ⇒ the value of which is capitalised in the books of account of the person claiming the input tax credit, and ⇒ which are used or intended to be used in the course or furtherance of business. [S 2(19)]
<b>Input</b>	Means any goods— ⇒ other than capital goods ⇒ used or intended to be used by a supplier in the course or furtherance of business. [Section 2(59)]
<b>Input service</b>	Means any service used or intended to be used by a supplier in the course or furtherance of business. [Section 2(60)]
<b>Input tax</b>	In relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes— (a) the integrated goods and services tax charged on import of goods; (b) the tax payable under the provisions of Section 9(3) and Section 9(4); (c) the tax payable under the provisions of Section 5(3) and Section 5(4) of the Integrated Goods and Services Tax Act; (d) the tax payable under the provisions of Section 9(3) and Section 9(4) of the respective State Goods and Services Tax Act; or (e) the tax payable under the provisions of Section 7(3) and Section 7(4) of the Union Territory Goods and Services Tax Act, <b>but does not include</b> the tax paid under the composition levy. [Section 2(62)]
<b>Input tax credit</b>	Means the credit of input tax. [Section 2(63)]
<b>Output tax</b>	In relation to a taxable person, means— ⇒ the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent ⇒ but excludes tax payable by him on reverse charge basis. [Section 2(82)]
<b>Taxable supply</b>	Means a supply of goods or services or both which is leviable to tax under this Act. [S 2(108)]
<b>Exempt supply</b>	Means— ⇒ supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and ⇒ includes non-taxable supply. [Section 2(47)]
<b>Non-taxable supply</b>	Means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.
<b>Inward Supply</b>	In relation to a person, shall mean— ⇒ receipt of goods or services or both ⇒ whether by purchase, acquisition or any other means ⇒ with or without consideration. [Section 2(67)]
<b>Outward Supply</b>	In relation to a taxable person, means— ⇒ supply of goods or services or both, ⇒ whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode,

	⇒ made or agreed to be made by such person in the course or furtherance of business. [Section 2(83)]
<b>Input Service Distributor</b>	Means an office of the supplier of goods or services or both which – ⇒ receives tax invoices issued under section 31 towards the receipt of input services, and ⇒ issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services ⇒ to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office. [Section 2(61)]
<b>Aggregate Turnover</b>	Means the aggregate value of – ➤ all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), ➤ exempt supplies, ➤ exports of goods or services or both, and ➤ inter-State supplies of persons having the same PAN, to be computed on all India basis, – <b>but excludes –</b> ➤ Central tax, ➤ State tax, ➤ Union territory tax, ➤ Integrated tax, and ➤ Cess. [Section 2(6)]
<b>Electronic Credit Ledger</b>	Means the electronic credit ledger referred to in Section 49(2). [Section 2(46)]
<b>Taxable person</b>	Means a person who is registered or liable to be registered u/s 22 or Sec. 24. [Section 2(107)]
<b>Registered person</b>	Means a person who is registered under section 25 but does not include a person having a Unique Identity Number. [Section 2(94)]
<b>Quarter</b>	Shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year. [Section 2(92)]

### ELIGIBILITY AND CONDITIONS FOR TAKING ITC

#### (2) Eligibility and conditions for taking input tax credit [Section 16] :

- (a) **Eligibility** : Registered person is entitled to take credit of tax paid on inward supplies of goods and/or services used/ intended to be used in the course or furtherance of business.
- (b) **Conditions to be satisfied for taking ITC [Section 16(2)]** :
- (i) He has valid tax invoice/debit note/prescribed tax paying document.
  - (ii) He has received goods and/or services. If goods delivered to third person on the direction of the registered person deemed to be received by the registered person and ITC will be available to registered person [Bill to Ship to Model].  
Similarly where the services are provided by the supplier to any person on the direction of and on account of such registered person, it shall be deemed that registered person has received the services.
  - (iii) Tax paid on such supply is actually paid to Government either in cash or through utilisation of input tax credit admissible in respect of the said supply.
  - (iv) He has furnished the return under section 39 *i.e.* GSTR-3B.
  - (v) If goods are received in lots or installments, then ITC can be taken upon receipt of the last lot or instalment.
- (c) ITC is not admissible if depreciation claimed on tax component.
- (d) As per Section 155 of CGST Act, 2017, where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

**(3) Documentary requirements and conditions for claiming input tax credit [Rule 36] :**

- (i) **Documents on basis of which Input tax credit can be availed [Rule 36(1)] :** The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,—
- an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
  - Invoice issued by recipient (receiving goods and/or services from unregistered supplier) along with proof of payment of tax (in case of reverse charge) ;
  - a debit note issued by a supplier in accordance with the provisions of Section 34;
  - a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
  - an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor.

- (ii) Documents must contain prescribed particulars and relevant information is to be furnished by registered person in **FORM GSTR-2<sup>1</sup>**.

However, if the said document does not contain all the specified particulars but contains the details of—

- the amount of tax charged,
  - description of goods or services,
  - total value of supply of goods or services or both,
  - GSTIN of the supplier and recipient and
  - place of supply in case of inter-State supply,
- input tax credit may be availed by such registered person.

- (iii) ITC cannot be availed on tax demands on account of fraud, willful misstatement or suppression of facts.

- (iv) *Unmatched credit cannot exceed 20% of ITC available in GSTR-2A [Rule 36(4)] :* Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers u/s 37(1) i.e. in GSTR-1 and not reflected in GSTR-2A of the recipient, shall not exceed 20% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under Section 37(1) i.e. in GSTR-1 and reflected in GSTR-2A of the recipient. [Inserted vide Notification No. 49/2019-CT w.e.f. 09-10-2019]

- (4) **Time Limit for availing ITC [Section 16(4)] :** A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after—

- the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains, or
- furnishing of the relevant annual return,

**whichever is earlier.**

**(5) Provisions of reversal of input tax credit in case of non-payment of consideration :**

- If payment is not made to the supplier **within 180 days** from date of invoice, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.
- The recipient shall be entitled to avail of the credit of input tax on subsequent payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon. **In case part payment has been made, proportionate credit would be allowed.**

**Exceptions:** This condition of payment of value of supply plus tax **within 180 days** does not apply in the following situations :

- Supplies on which tax is payable under reverse charge;
- Deemed supplies without consideration i.e. value of supplies made without consideration as specified in Schedule I of the said Act.
- The value of supplies on account of any amount added in accordance with the provisions Section 15(2)(b) shall be deemed to have been paid for the purposes of the second proviso to Section 16(2), i.e. additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply.

<sup>1</sup> Since GSTR-2 is not operational, reporting is done in GSTR-3B.



**APPORTIONMENT OF CREDIT AND BLOCKED CREDITS**

(6) Apportionment of credit and blocked credits [Section 17] :

(i) **Ineligible Inputs/ Capital goods/ Input services - Blocked Credits [Section 17(5)]** : ITC shall not be available in respect of the following, namely:-

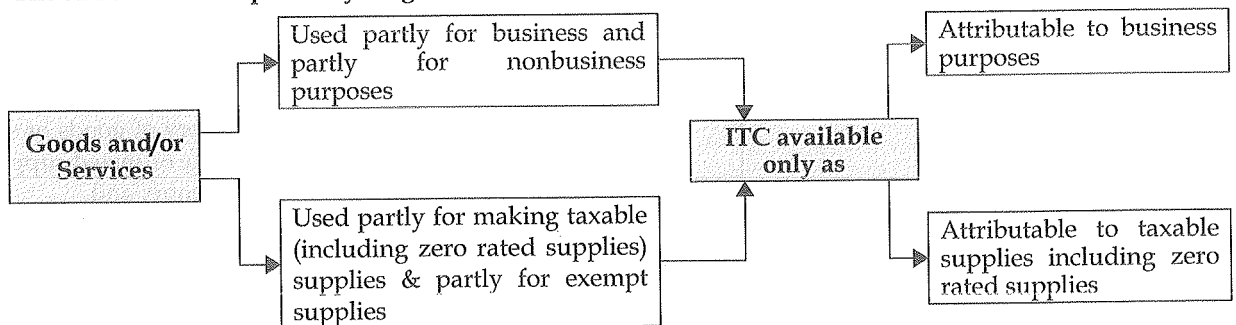
(a)	Motor vehicles for transportation of persons	Motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), However, credit will be available when they are used for making the following taxable supplies, namely:— (A) further supply of such motor vehicles; or (B) transportation of passengers; or (C) imparting training on driving such motor vehicles.
(aa)	Vessels and Aircraft	<b>Vessels and aircraft</b> However, credit will be available when they are used— (i) for making the following taxable supplies, namely:— (A) further supply of such vessels or aircraft; or (B) transportation of passengers; or (C) imparting training on navigating such vessels; or (D) imparting training on flying such aircraft; (ii) for transportation of goods.
(ab)	Insurance, Repairs and Maintenance of Motor Vehicles, vessels and aircraft	Services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa). However, the input tax credit in respect of such services shall be available— (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein; (ii) where received by a taxable person engaged— (I) in the manufacture of such motor vehicles, vessels or aircraft; or (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;
(b)	Food and beverages, Outdoor Catering, Beauty Treatment etc.	(i) the following supply of goods or services or both— ➤ food and beverages, ➤ outdoor catering, ➤ beauty treatment, ➤ health services, ➤ cosmetic and plastic surgery, ➤ leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) above except when used for the purposes specified therein, ➤ life insurance, and ➤ health insurance. However, the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply; (ii) membership of a club, health and fitness centre; and (iii) travel benefits extended to employees on vacation such as leave or home travel concession. However, the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.
(c)	Works contract services	Works contract services when supplied for construction of an immovable property.

		<p><i>However</i>, credit is allowed –</p> <p>(i) Where it is an input service for further supply of works contract service.</p> <p>(ii) Where it is supplied for construction of plant and machinery.</p> <p><b>Explanation :</b></p> <p>(1) “Plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes –</p> <p>(i) land, building or any other civil structures;</p> <p>(ii) telecommunication towers; and</p> <p>(iii) pipelines laid outside the factory premises.</p> <p>(2) “Construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property.</p>
(d)	Goods & services for construction of immovable property	Goods or services or both received by a taxable person for construction of an immovable property on his own account including when such goods or services or both are used in the course or furtherance of business. <i>However</i> , credit is allowed if they are is supplied for construction of plant and machinery.
(e)	Goods & Services under Composition scheme	Goods or services or both on which tax has been paid under section 10.
(f)	Goods and Services by NRTP	Goods or services or both received by a non-resident taxable person except on goods imported by him.
(g)	Personal consumption	Goods or services or both used for personal consumption.
(h)	Lost, stolen goods etc.	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
(i)	Evasion, confiscation etc.	Any tax paid in accordance with the provisions of sections 74, 129 and 130. (These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.)

(ii) Apportionment of credit :

- (a) In case goods/ services partly used for business and partly for other use, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- (b) ITC shall be restricted to goods/ services used for taxable supplies if the same are used for effecting taxable as well as exempt supplies. ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply.

The same can be depicted by diagram as under -



Exempt supplies include supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received post completion certificate

- (iii) **Inclusions in exempt supplies and valuation [Section 17(3)]** : The value of exempt supply u/s 17(2) shall be such as may be prescribed, and shall include –
- supplies on which the recipient is liable to pay tax on reverse charge basis,
  - transactions in securities,
  - sale of land and subject to Paragraph 5(b) of Schedule II, sale of building *i.e.* sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority.

**Value of exempt supply not to include Schedule III activities except sale of land/ building [Explanation]** : "Value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

Therefore, while in all other items of Schedule III, ITC will not be required to be reversed; in case of sale of land and sale of building, ITC will need to be reversed.

**Note** : The value of exempt supply in respect of land and building is the **value adopted for paying stamp duty** and for security is **1% of the sale value of such security**.

- (iv) **Exempt supply – Exclusions [Explanation]** : For the purposes of Rule 42 and Rule 43, it is hereby clarified that the aggregate value of exempt supplies shall exclude :-
- (a) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and
  - (b) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

- (v) **ITC treatment where inputs/ input services are used for taxable as well as exempt supplies [Rule 42(1)]** :

The input tax credit in respect of inputs or input services, which are –

- (a) being –
  - (i) partly used for the purposes of business; and
  - (ii) partly for other purposes,

**OR**
- (b) being –
  - (i) partly used for effecting taxable supplies including zero rated supplies; and
  - (ii) partly for effecting exempt supplies,

shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely; -

**STEP 1 – Compute common credit :**

Total input tax involved on inputs & input services in a tax period	T
<i>Less:</i> Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T <sub>1</sub> )
<i>Less:</i> Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T <sub>2</sub> )
<i>Less:</i> Input tax on inputs & input services which are ineligible for credit [ <i>Blocked credits u/s 17(5)</i> ]	(T <sub>3</sub> )
<b>ITC credited to Electronic Credit Ledger</b>	C <sub>1</sub>
<i>Less:</i> ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T <sub>4</sub> )
<b>Common ITC available for apportionment</b>	C <sub>2</sub>
<ul style="list-style-type: none"> <li>➤ 'T<sub>1</sub>', 'T<sub>2</sub>', 'T<sub>3</sub>' and 'T<sub>4</sub>' shall be determined and declared by the registered person at the invoice level in <b>FORM GSTR-2</b> and at summary level in <b>FORM GSTR-3B</b>.</li> <li>➤ Where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T<sub>1</sub>' and 'T<sub>2</sub>' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T<sub>4</sub>'.</li> <li>➤ The portion identified as pertaining to taxable supplies in 'C<sub>2</sub>' will be allowed as ITC.</li> </ul>	

**STEP 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit :**

- The amount of ITC attributable towards exempt supplies, be denoted as 'D<sub>1</sub>' and calculated as—

$$D_1 = (E \div F) \times C_2 \text{ i.e.,}$$

<p>The amount of input tax credit attributable towards exempt supplies, be denoted as "D<sub>1</sub>"</p>	=	<p>The aggregate value of exempt supplies during the tax period i.e. "E"  <hr style="width: 100%;"/> The total turnover in the State of the registered person during the tax period i.e. "F"</p>	×	<p>Common credit i.e. "C<sub>2</sub>"</p>
---	---	--	---	---

**Turnover details not available - Values for the last tax period may be used :** Where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

**Duties and taxes to be excluded [Explanation] :** The aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution (i.e. *Central Excise duty*), entry 92A of List I of the Seventh Schedule to the Constitution (i.e. *Central Sales Tax*) and entry 51 (i.e. *State Excise duty*) and 54 of List II of the said Schedule i.e. (*State VAT*);

**Thus, value of exempt supplies and total turnover for the purpose of reversal of ITC under rules 42 and 43 to exclude central sales tax also.**

- The amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes—

$$D_2 = 5\% \text{ of } C_2$$

**STEP 3 – Compute eligible credits :**

The remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C<sub>3</sub>', where, —

$$C_3 = C_2 - (D_1 + D_2);$$

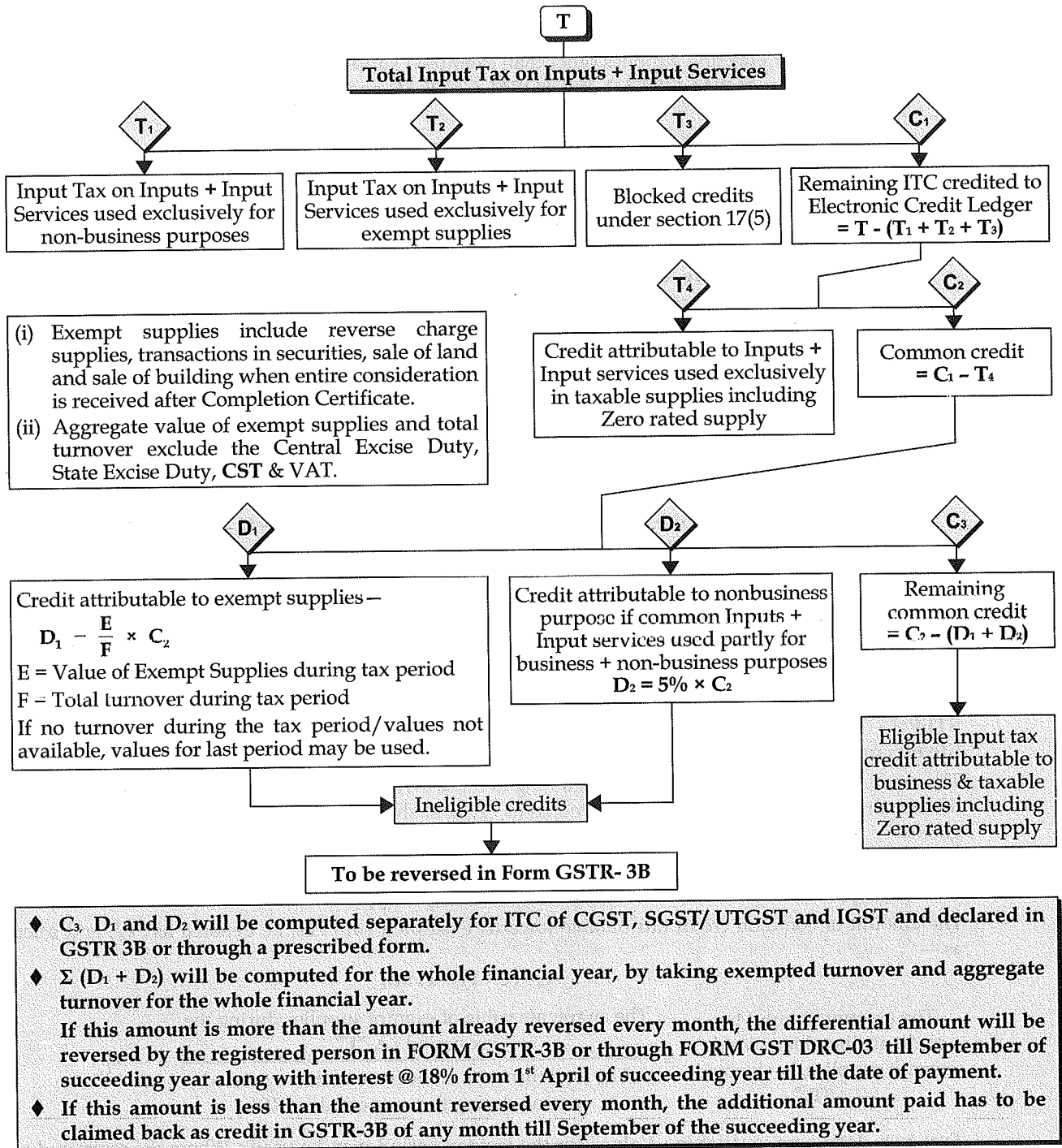
**Note :** The amount 'C<sub>3</sub>', 'D<sub>1</sub>' and 'D<sub>2</sub>' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B** or through **FORM GST DRC-03**.

**STEP 4 – Restrict ineligible credits :**

The amount equal to aggregate of 'D<sub>1</sub>' and 'D<sub>2</sub>' shall be [reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**].

- (vi) **Final calculation of ITC [Rule 42(2)] :** Compute  $\Sigma (D_1 + D_2)$  for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following financial year.

- If  $\Sigma (D_1 + D_2) >$  the amount already reversed every month, the differential amount shall be **reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 not later than the month of September** in the following financial year and interest @ 18% should be paid on such differential amount from 1<sup>st</sup> April of succeeding year till the date of payment.
- If the amount reversed every month  $> \Sigma (D_1 + D_2)$ , the additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year.



(7) Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases [Rule 43] :

- (i) Attribution of credit of capital goods used partly for business and partly for non business purposes/partly for effecting taxable supply and partly for effecting exempt supplies [Rule 43(1)]:

STEP 1 - Determination of common credit 'Tc' on capital goods as under:

- (a) Capital goods exclusively used for non-business purposes/for effecting exempt supplies - ITC shall not be taken : The amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall not be credited to his electronic credit ledger;

- (b) **Capital goods exclusively used for effecting taxable supplies including zero rated supplies - ITC shall be taken** : The amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall be credited to the electronic credit ledger;
- (c) **Other capital goods ITC to be credited in electronic ledger** : The amount of input tax in respect of capital goods not covered under (a) and (b) above (*i.e.*, the capital goods which are used/intended to be used commonly for making taxable as well as exempt supplies & business & non-business purposes), denoted as 'A', shall be credited to the electronic credit ledger. **The useful life of such capital goods will be taken as 5 years from the date of invoice.**

**Change from exclusive use for non-business purpose/exempt supplies to common use** : Where capital goods which were initially covered under (a) above get subsequently covered under clause (c), compute 'A' by reducing ITC @ 5% per quarter or part thereof. Such reduced amount will be credited to electronic credit ledger.

**Explanation** : An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of Section 18(4), if it is subsequently covered under this clause.

- (d) **Common credit of capital goods** : The aggregate of the amounts of 'A' credited to the electronic credit ledger under (c) above, to be denoted as 'T<sub>c</sub>', shall be the common credit in respect of capital goods for a tax period.

**Change from exclusive use for taxable including zero rated supplies to common use** : Where capital goods which were initially covered under (b) above get subsequently covered under clause (c), compute 'A' by reducing ITC @ 5% per quarter or part thereof and add such value to T<sub>c</sub>;

**STEP 2 - Determination of common credit during the useful life of capital goods for a tax period :**

The amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T<sub>m</sub>' and calculated as—

$$T_m = T_c \div 60$$

**STEP 3 - Determine common credit at the beginning of a tax period for all capital goods whose useful life remains during the tax period as under :**

The amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T<sub>r</sub>' and shall be the aggregate of 'T<sub>m</sub>' for all such capital goods;

$$i.e. 'T_r' = 'T_m' \text{ for such capital goods}$$

**STEP 4 - Apportion common credit attributable to exempt supplies as under :**

The amount of common credit attributable towards exempted supplies, be denoted as 'T<sub>e</sub>', and calculated as —

$$T_e = (E \div F) \times T_r \text{ i.e.,}$$

$$\begin{array}{l} \text{The amount of input tax credit attributable towards exempt supplies, be denoted as "T}_e\text{"} \\ \text{The aggregate value of exempt supplies during the tax period i.e. "E"} \\ \text{The total turnover in the State of the registered person during the tax period i.e. "F"} \end{array} = \frac{\quad}{\quad} \times 'T_r'$$

**Turnover details not available - Values for the last tax period may be used** : Where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

**Duties and taxes to be excluded [Explanation]** : The aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution (*i.e.* Central Excise duty), entry 92A of List I of the Seventh Schedule to the Constitution (*i.e.* Central Sales Tax) and entry 51 (*i.e.* State Excise duty) and 54 of List II of the said Schedule *i.e.* (State VAT);

**STEP 5 - Restrict ineligible credit :**

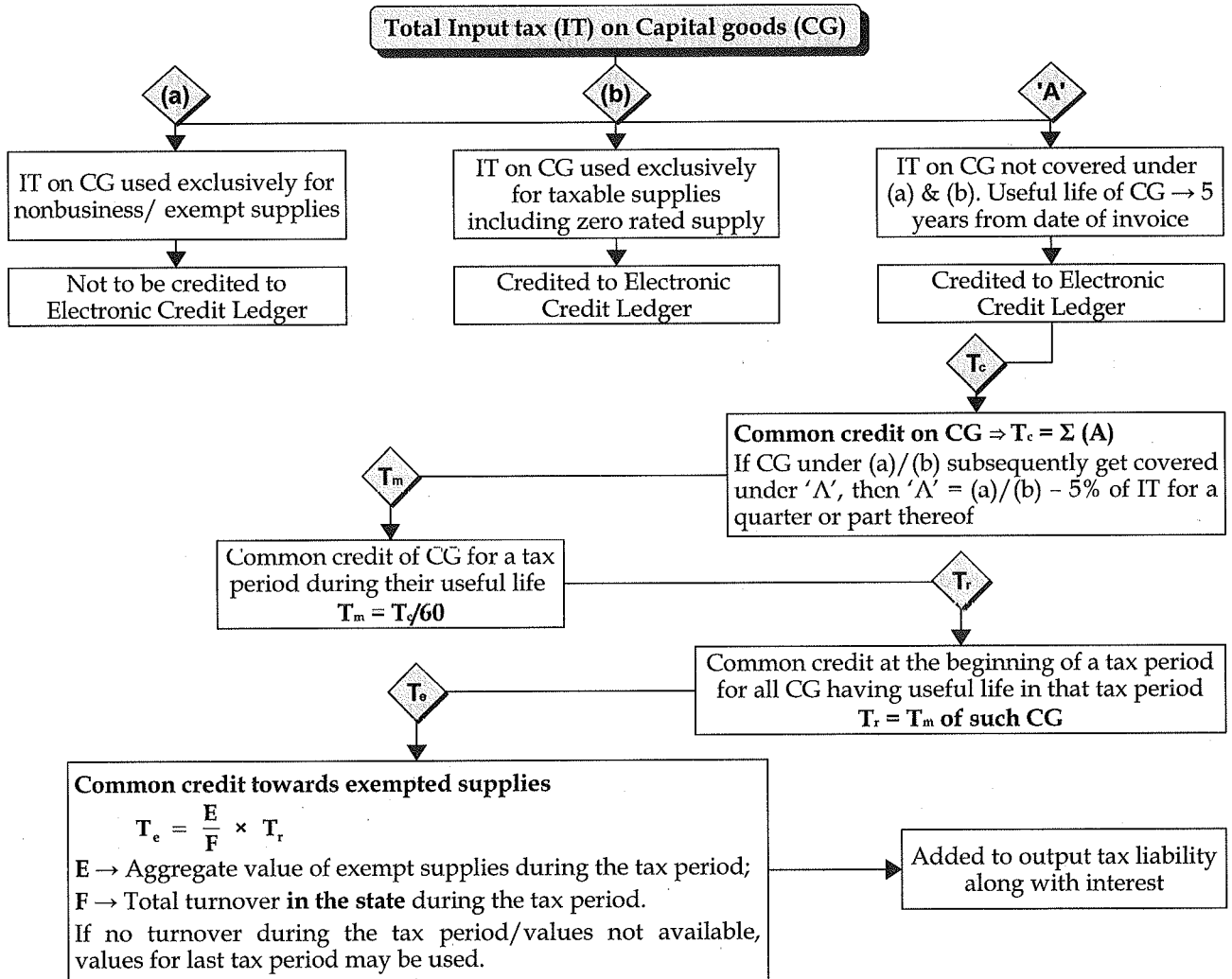
The amount T<sub>e</sub> along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.



(ii) **Separate computation for CGST/ SGST/ UTGST and IGST** : The amount  $T_e$  shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**.

**Exempt supply - Exclusions [Explanation 1]** : For the purposes of Rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:-

- (a) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and
- (b) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.



**$T_e$  will be computed separately for ITC of CGST, SGST/ UTGST & IGST and declared in FORM GSTR-3B.**

- ◆ Exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate.
- ◆ Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty CST & VAT.

(8) **Special provisions for ITC in case of banking company and financial institution including NBFC [Section 17(4) read with Rule 38]** :

- (a) **50% of ITC can be availed** : A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to -

- either comply with the provisions of Section 17(2); or
  - avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.
- (b) 50% restriction shall not be applicable in case of supplies made to its own establishment and in such cases 100% tax credit shall be availed.
- (c) Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned u/s section 17(5) [blocked credits] cannot be availed.
- (d) The option once exercised shall not be withdrawn during the remaining part of the financial year.

**AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES**

(9) Availability of Credit in Special Circumstances [Section 18] :

- (a) Entitlement of ITC at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Section 18(1) & (2) read with Rule 40 of CGST Rules] :

S. No.	Persons eligible to take credit	Goods entitled to ITC		Restriction/ conditions
		Inputs held in stock/ capital goods	As on	
1.	Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax	ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.
2.	Person who is not required to register, but obtains voluntary registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration	
3.	Registered person who ceases to pay composition tax and switches to regular scheme	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	⚠ ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice. ⚠ ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier. ⚠ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.
4.	Registered person whose exempt supplies become taxable supplies	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and capital goods exclusively used for such exempt supply	The day immediately preceding the date from which such supply becomes taxable	

- (b) **Procedural Compliances** : In all the above cases the following procedural compliances are required to be followed as per provisions of Rule 40 of CGST Rules, 2017.

- (i) **Filing of electronic declaration of stock** : The registered person has to make an electronic declaration in the FORM GST ITC-01 on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above.

- (ii) **Time limit of filing declaration** : The declaration is to be filed **within 30 days** (extendable by Commissioner/ Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC.
- (iii) **Certification by CA/CMA** : If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing CA/Cost Accountant.

(c) **Special circumstances leading to reversal of credit / payment of amount [Section 18(4),(5) & (6)] :**

Circumstances		Provisions	
(i)	Registered person (who has availed ITC) switching from regular scheme of payment of tax to composition levy/presumptive scheme for service suppliers	Amount to be reversed is equivalent to ITC on : ➤ Inputs held in stock/ inputs contained in semi-finished or finished goods held in stock ➤ Capital goods on the day immediately preceding the date of switch over/ date of exemption/ date of cancellation of registration. <b>Manner of reversal of credit on inputs and capital goods &amp; other conditions :</b>	
(ii)	Supplies of registered person getting wholly exempted from tax	(i)	Inputs Proportionate reversal based on corresponding invoices. If such invoices are not available, prevailing market price on the effective date of switch over/ exemption/cancellation of registration should be used with due certification by a practicing CA/ Cost Accountant.
		(ii)	Capital goods Reversal on <i>pro rata</i> basis pertaining to remaining useful life (in months), <b>taking useful life as 5 years.</b>
(iii)	Cancellation of registration	(iii)	ITC to be reversed will be calculated separately for ITC of CGST, SGST/UTGST and IGST.
		(iv)	Reversal amount will be added to output tax liability of the registered person.
		(v)	Electronic credit/cash ledger will be debited with such amount. Balance ITC if any will lapse.
(iv)	Supply of capital goods (CG)/ plant and machinery (P&M) on which ITC has been taken	<b>Amount to be paid is equivalent to higher of the following :</b> (i) ITC on CG or P&M less 5% per quarter or part thereof from the date of invoice; (ii) Tax on transaction value of such CG or P&M. ➤ If amount at (i) exceeds (ii), then reversal amount will be added to output tax liability. ➤ Separate ITC reversal is to be done for CGST, SGST/ UTGST and IGST. ➤ Tax to be paid on transaction value when refractory bricks, moulds, dies, jigs & fixtures are supplied as scrap.	

**Transfer of unutilised ITC on account of change in constitution of registered person [Section 18(3)] :**

- In case of sale, merger, amalgamation, lease or transfer of business, unutilised ITC can be transferred to the new entity if there is a specific provision for transfer of liabilities to the new entity. The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of accounts.
- In case of **demerger**, ITC will be apportioned in the **ratio of value of assets** of new unit as per the demerger scheme. **Value of assets for the purpose of apportionment of ITC in case of demerger to include value of entire assets of the business, whether or not ITC has been availed thereon**
- Details of change in constitution will have to be furnished on common portal along with request to transfer unutilised ITC.
- **CA/Cost Accountant certificate** will have to be submitted certifying that change in constitution has been done with specific provision for transfer of liabilities.
- Upon acceptance of such details by the transferee on the common portal, the unutilized ITC will be credited to his Electronic Credit Ledger.

**Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory [Rule 41A] :**

- A registered person (transferor) who has obtained separate registration for multiple places of business and who intends to transfer, either wholly or partly, the unutilised ITC lying in his electronic credit ledger to any or all of the newly registered place of business, should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations.
- Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC would get credited to his electronic credit ledger.

**Circular No. 96/15/2019 GST dated 28-03-2019**

Issue	Clarification
Whether section 18(3) of the CGST Act provides for transfer of ITC which remains unutilized to the transferee in case of death of the sole proprietor?	For the purpose of section 18(3) of the CGST Act and rule 41(1) of the CGST Rules, transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.

**ITC AND JOB-WORK PROVISIONS**

**(10) ITC and Job-work Provisions [Section 19] :**

- (a) Provisions relating to taking input tax credit in respect of inputs and capital goods sent for job work :**
- Principal can take credit on goods sent for job work.
  - Credit can be taken even inputs/ capital goods are directly sent to the job worker without being first brought to Principal's place of business.
- (b) Time limit for return of goods sent for job work/supply from job worker's place of business :**
- **Inputs - 1 year**
  - **Capital goods - 3 years**
- from the date of sending the same for job work or from the date of receipt of the same by the job worker in case of direct dispatch to job worker.
- Non applicability of Time Limit :** Time-limit for return of goods do not apply to moulds and dies, jigs and fixtures or tools sent out for job work.
- (c) Inputs/Capital goods not received back by principal within ONE/THREE Years - Deemed supply of inputs to job-worker :**
- On failing to comply with the timelines for return of goods, the goods will be deemed to be supplied to the job worker on the day they were sent out.
  - Principal is liable to pay tax along with applicable interest on such supply.

**Circular No. 47/21/2018-GST dated 08-06-2018**

Issue	Clarification
Where moulds and dies owned by Original Equipment Manufacturers (OEM) are sent free of cost (FOC) to a component manufacturer, whether OEMs are required to reverse input tax credit in this case?	In such cases, the OEM will be required to reverse the credit availed on such moulds/dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.

**MANNER OF DISTRIBUTION OF CREDIT BY ISD**

**(11) Manner of distribution of credit by Input Service Distributor (ISD) [Section 20] :**

- (i) Meaning :** ISD is basically an office meant to receive tax invoices towards receipt of input services and distribute the credit of taxes paid on such input services to supplier units (having the same PAN) proportionately.
- (ii) Conditions (4 Marks, Nov. 2018-OS) :** The Input Service Distributor may distribute the credit subject to the following conditions, —

- (a) ISD should issue an ISD invoice for distributing ITC. It should be clearly indicated in such invoice that it is issued only for distribution of ITC.
- (b) Distributed ITC should not exceed the credit available for distribution.
- (c) ITC of input services is distributed only amongst those recipients to whom the input services are attributable.
- (d) ITC is distributed amongst the operational units only and in the ratio of turnover in a State/UT of the recipient during the relevant period to the aggregate of turnover of all recipients during the relevant period to whom input service being distributed is attributable.  
Relevant period is previous financial year or last quarter prior to the month of distribution for which turnover of all recipients is available.
- (e) An ISD is required to obtain a separate registration even though it may be separately registered. The threshold limit of registration is not applicable to ISD.

**(12) Manner and conditions for distribution of ITC [Rule 39(1)] :**

- (a) **Monthly distribution of ITC :** The ITC available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR-6**.
- (b) Ineligible and eligible ITC is to be distributed separately.
- (c) CGST/ SGST/ UTGST/ IGST credit is to be distributed separately.
- (d) **Distribution of credit on the basis of turnover :** The input tax credit that is required to be distributed to one of the recipients 'R<sub>1</sub>', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C<sub>1</sub>", to be calculated by applying the following formula-

$$C_1 = (t_1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t<sub>1</sub>" is the turnover, as referred to in Section 20, of person R<sub>1</sub> during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20;

"C<sub>1</sub>" i.e. ITC to be distributed to one of the recipient "R<sub>1</sub>" =  $\frac{\text{Turnover of person "R}_1\text{" during the relevant period i.e. "t}_1\text{"}}{\text{Aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20 i.e. "T"}}$  × Amount of credit to be distributed i.e. "C"

- (e) ITC of IGST to be distributed as IGST.
- (f) The input tax credit on account of central tax and State tax or Union territory tax shall—
  - (i) ITC of CGST and SGST/UTGST is to be distributed as CGST and SGST/ UTGST respectively if recipient is in same state.
  - (ii) ITC of CGST and SGST/ UTGST is to be distributed as IGST if recipient is in different state.
- (g) The ISD shall issue an ISD invoice clearly indicating in such invoice that it is issued only for distribution of input tax credit;
- (h) Credit note is to be issued by ISD on reduction of credit distributed.
- (i) Additional ITC is to be distributed in above manner.
- (j) Reduction of ITC distributed on account of credit note received from supplier is to be apportioned to recipient in the same ratio as of original distribution.
- (k) **Transfer of credit on common input services to ISD by holder of same PAN and State code - Documentary requirements [Rule 54(1A)] :**
  - (i) A registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the Input Service Distributor, which shall contain the following details :-
    - name, address and GSTIN of the registered person having the same PAN and same State code as the ISD;

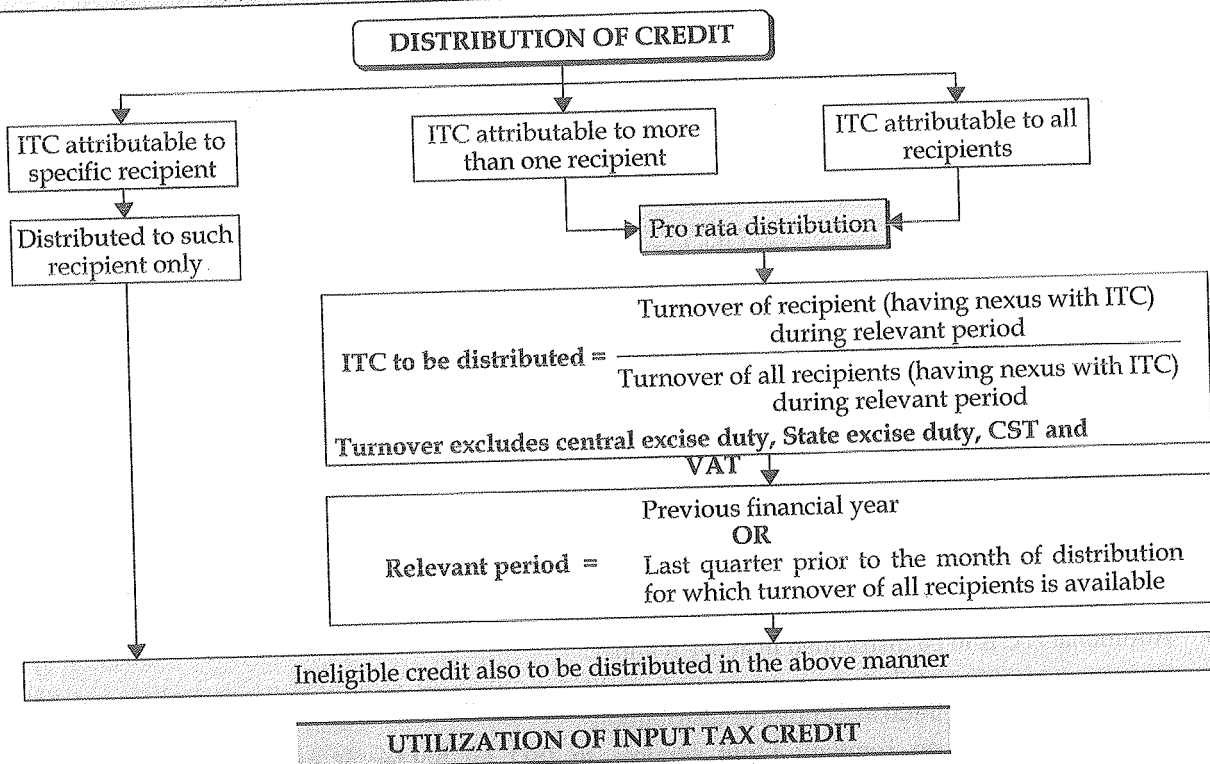
- a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- date of its issue;
- GSTIN of supplier of common service and original invoice number whose credit is sought to be transferred to the ISD;
- name, address and GSTIN of the ISD;
- taxable value, rate and amount of the credit to be transferred; and
- signature or digital signature of the registered person or his authorised representative.

(ii) The taxable value in the invoice issued above shall be the same as the value of the common services.

(13) **Manner of recovery of credit distributed in excess [Section 21]** : Where the ISD distributes the credit in contravention of the provisions contained in Section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of Section 73 or Section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of amount to be recovered.

**ISD - Manner of recovery of excess credit [Circular No. 71/45/2018-GST dated 26-10-2018]** : The CBIC has clarified the following in respect of recovery of credit distributed in excess :

- The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any by using **FORM GST DRC-03**.
- If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of section 73 or 74 of the CGST Act as the case may be. **FORM GST DRC-07** can be used by the tax authorities in such cases.
- It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in section 122(1)(ix) of the CGST Act.



(14) **Claim of ITC on provisional basis [Section 41(1)]** : Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a **provisional basis to his electronic credit ledger**.

**Utilization of ITC - For payment of output tax** : ITC is credited to a registered person's electronic credit ledger. The person may use this to pay his output tax liability. The use of ITC for payment of tax on inter-state supplies is the point in which GST differs sharply from the previous system of central and state taxation.



- (15) **Manner of utilisation of amount in Electronic Credit Ledger [Section 49(5)]** : The amount of input tax credit available in the electronic credit ledger of the registered person on account of –
- Credit of IGST - to be utilised for payment of IGST, CGST, SGST and UTGST sequentially** : Integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
  - Credit of CGST - to be utilised for payment of CGST and IGST sequentially** : The central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
  - Credit of SGST - to be utilised for payment of SGST and IGST sequentially** : The State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;  
However, the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;
  - Credit of UTGST - to be utilised for payment of UTGST and IGST sequentially** : The Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;  
However, the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;
  - Credit of CGST - Cannot be utilised for payment of SGST and UTGST** : The central tax shall not be utilised towards payment of State tax or Union territory tax; and
  - Credit of SGST/ UTGST - Cannot be utilised for payment of CGST** : The State tax or Union territory tax shall not be utilised towards payment of central tax.
- (16) **Utilisation of input tax credit subject to certain conditions [Section 49A]** : Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.
- (17) **Order of utilisation of input tax credit [Section 49B]** : Notwithstanding anything contained in this Chapter and subject to the provisions of Section 49(5)(e)&(f), the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

**For this purpose Rule 88A of the CGST Rules, 2017 has been inserted vide Notification No. 16/2019-CT dated 29-03-2019 which reads as under :**

**Order of utilization of input tax credit [Rule 88A]** : Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order.

However, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

- (18) **Sequence of utilisation of ITC at a glance** : The sequence of utilisation of ITC has been specified in sections 49, 49A and 49B of CGST Act and Rule 88A of CGST Rules. The provisions as applicable are summarised below :

Input Tax Credit	First to be utilised for payment of	If balance, can be utilised for	Remarks
IGST	IGST	CGST or SGST/ UTGST at option of taxable person	CGST or SGST/UTGST credit can be utilised only after credit of IGST is fully utilised
CGST	CGST	IGST	CGST credit can be utilised only after all credit of IGST is utilised
SGST/UTGST	SGST/ UTGST	IGST	SGST/UTGST credit can be utilised only after all credit of IGST is utilised

		Besides this SGST/UTGST credit can be utilised for payment of IGST only after the ITC of CGST has been utilized fully.
--	--	--

<i>Circular No.</i> <b>98/17/2019-GST</b> <i>dated 23-04-2019</i>	<b>Clarification in respect of utilization of input tax credit under GST :</b> ITC of Integrated tax can be utilised towards the payment of Central tax and State tax/ Union territory tax, in any order subject to the condition that the entire ITC on account of Integrated tax is completely exhausted first before the input tax credit on account of Central tax or State tax/ Union territory tax can be utilized.
---	---

### ADDITIONAL PRACTICE QUESTIONS

**T.Q. 1:** What are the conditions necessary for obtaining ITC?

**Ans:** Conditions to be satisfied for taking ITC [Section 16(2)] : Following four conditions are to be satisfied by the registered taxable person for obtaining ITC :

- (a) He is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.
- (b) He has received the goods or services or both.
- (c) The tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.
- (d) He has furnished the return under section 39.

**T.Q. 2:** Can a person take ITC without payment of consideration for the supply along with tax to the supplier?

**Ans:** Yes, the recipient can take ITC without payment of consideration for the supply along with tax to the supplier. However, he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis, deemed supplies without consideration *i.e.* value of supplies made without consideration as specified in Schedule I of the said Act and the value of supplies on account of any amount added in accordance with the provisions Section 15(2)(b) shall be deemed to have been paid for the purposes of the second proviso to Section 16(2).

**T.Q. 3:** What is the time limit for taking ITC and reasons therefor?

**Ans:** Time Limit for availing ITC [Section 16(4)] : A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after –

- the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains, or
- furnishing of the relevant annual return,

**whichever is earlier.**

**Illustration 1 – Time Limit for taking ITC :** HM Ltd. delivered a machine to ABC Ltd. in January 2020 under Invoice No. 50 dated 28<sup>th</sup> January, 2020 for ₹ 5,00,000 plus GST @ 12%, and undertook trial runs and calibration of the machine as per the requirements of ABC & Co.. The amount chargeable for the post-delivery activities was covered in a debit note raised in April 2020 for ₹ 50,000 plus GST @ 12%. The company has filed its annual return for Financial Year on 15-12-2020. Determine the time limit for taking Input tax credit for the amount of tax covered in debit note as well as original invoice.

**Ans:** As per Section 16(4) of CGST Act, 2017, a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after –

- the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains, or
- furnishing of the relevant annual return,

**whichever is earlier.**

Though the debit note was received in the next financial year, it relates to an invoice received in the financial year ending March 2020. Therefore, the time limit for taking ITC of ₹ 6,000 (12% of ₹ 50,000) as well as on ₹ 60,000 ( 12% of ₹ 5,00,000) is 20<sup>th</sup> October, 2020; being earlier of the date of filing the annual return for 2019-20 or the return for September 2020.

**Illustration 2 – Eligibility of Input tax credit – Where recipient fails to make payment to supplier :** A registered supplier of taxable goods supplied goods valued at ₹ 2,24,000 (inclusive of CGST ₹ 12,000 and SGST ₹ 12,000) to Mohan Ltd. under the forward charge on 15-08-2019 for which tax invoice was also issued on the same date. The inputs were received by Mohan Ltd. on 15-08-2019. Mohan Ltd. availed credit of ₹ 24,000 on 18-08-2019. But Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier. Is Mohan Ltd. eligible to avail input tax credit on such supply ? What are the consequences of such non-payment by Mohan Ltd.

Discuss Input Tax Credit provisions if Mohan Ltd. makes the payment of ₹ 2,24,000 to the supplier on 18-03-2020. (5 Marks, Nov. 2018-OS)

**Solution:** Yes, Mohan Ltd. can avail input tax credit on receipt of taxable supply of goods. But it is required to pay the consideration along with tax within 180 days from the date of issue of invoice.

(i) **If Mohan Ltd. do not make payment within 180 days from the date of invoice :** As per Rule 37 of CGST Rules, 2017, a registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to make payment to the supplier within 180 days from the date of issue of invoice shall furnish the details of such supply and the amount of input tax credit proportionate to such unpaid amount, availed of, in **FORM GSTR-2** in succeeding month after expiry of 180 days. [Since GSTR-2 is not operational, reporting is done in GSTR-3B] In this case since Mohan Ltd. does not make any payment within 180 days from date of invoice i.e. upto 11<sup>th</sup> February 2020, therefore amount equal to input tax credit availed by Mohan Ltd. shall be added towards its output tax liability along with interest for the month of February, 2020 in which details of such supplies are required to be furnished.

Interest shall be calculated @ 18% [as given u/s 50(1)] for the period starting from date of availing credit till the date when input tax credit added to the output tax liability is paid. (amount in ₹)

Amount of Input tax	[A]	24,000
Date of availing credit	[B]	18-08-2019
Date of payment of ITC added to output tax liability	[C]	20-03-2020
No. of days for which interest to be paid	[D] = [B] - [C]	215
<b>Interest @ 18% to be paid on 20-03-2020 (₹ 24,000 × 18% × 215/366)[Since leap year]</b>		<b>2,538</b>

- (ii) **Mohan Ltd liable to general penalty not exceeding ₹ 25,000 :** If Mohan Ltd. does not pay the supplier as mentioned above, subject to the provisions of section 126 of the CGST Act, 2017, a general penalty which may extend to ₹ 25,000 may also be levied for such contravention by Mohan Ltd. u/s 125 of the CGST Act, 2017].
- (iii) **Re-credit of Input tax if payment made after 180 days :** If Mohan Ltd. makes payment on 18-03-2020 that is after 180 days from date of issue of invoice, then, it shall be entitled to avail the credit of input tax.

**T.Q. 4 :** A flying school imports an aircraft for use in its training activity, and takes ITC of the IGST paid on the import. The departmental audit raises an objection that aircrafts fall within the definition of “conveyance” in section 2(34) of the Act and that ITC is not allowed on conveyances. Offer your comments.

**Ans:** The objection raised by the departmental audit is not valid in law. As per Section 17(5)(aa) of the CGST Act, ITC is allowed on aircraft if they are used to make the taxable supply of imparting training on flying an aircraft. Therefore, flying school has validly taken the credit of IGST paid on import of aircraft.

**Illustration 3 – Eligibility of ITC :** Advise regarding availability of input tax credit (ITC) under the CGST Act, 2017 in the following independent cases:-

- (i) AMT Co. Ltd. purchased a mini bus having seating capacity of 16 persons for transportation of its employees from their residence to office and back.
- (ii) Bangur Ceramics Ltd., a manufacturing company purchased two trucks for transportation of its finished goods from the factory to dealers located in various locations within the country.
- (iii) “Hans premium” dealing in luxury cars in Chankyapuri, Delhi purchased five Skoda VRS cars for sale to customers.
- (iv) Sun & Moon Packers Pvt. Ltd. availed outdoor catering service to run a canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory.

**Solution :**

- (i) Section 17(5) of the CGST Act, 2017, *inter alia*, blocks input tax credit in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for certain specified purposes.

Since in the given case, the mini bus has a seating capacity of 16 persons, the ITC thereon will not be blocked.

(ii) Section 17(5) of the CGST Act, 2017, *inter alia*, blocks input tax credit in respect of motor vehicles for transportation of persons with certain exceptions. Thus, ITC on motor vehicles for transportation of goods is allowed unconditionally.

Therefore, ITC on trucks purchased by Bangur Ceramics Ltd for transportation of its finished goods from the factory to dealers located in various locations within the country is allowed.

(iii) Section 17(5) of the CGST Act, 2017, *inter alia*, blocks input tax credit in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making further supply of such motor vehicles.

Being a dealer of cars, "Hans Premium" has purchased the cars for further supply. Therefore, ITC on such cars is allowed even though seating capacity is less than 13.

(iv) Section 17(5) of the CGST Act, 2017 *inter alia*, blocks input tax credit in respect of outdoor catering services. However, ITC is available on such services, when the same are provided by an employer to its employees under a statutory obligation.

Thus, in view of the above- mentioned provisions, Sun & Moon packers Pvt. Ltd. can avail ITC in respect of outdoor catering services availed by it as the same is being provided under a statutory obligation.

**Illustration 4 – Eligibility of ITC :** Krishna Motors is a car dealer selling cars of an international car company. It also provides maintenance and repair services of the cars sold by it as also of other cars. It seeks your advice on availability of input tax credit in respect of the following expenses incurred by it during the course of its business operations:

- (i) Cars purchased from the manufacturer for making further supply of such cars. Two of such cars are destroyed in accidents while being used for test drive by potential customers.
- (ii) Works contract services availed for constructing a car washing shed in its premises. (RTP May, 2018)

**Solution:** As per section 16(1) of the CGST Act, 2017, every registered person can take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. However, section 17(5) of CGST Act, 2017 specifies certain goods and services on which the input tax credit is not available. Thus, the admissibility of ITC is discussed as under :

(i) As per Section 17(5)(a), no input tax credit is allowed on motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) except when the motor vehicles are used, *inter alia*, for further supply of such vehicles. Thus, ITC on cars purchased from the manufacturer for making further supply of such cars will be allowed.

However, ITC on the cars destroyed in accident will not be allowed as the ITC on goods destroyed for whichever reason is specifically blocked under section 17(5)(h) of CGST Act.

(ii) Section 17(5)(c) specifically blocks ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service. Since, in this case the car washing shed is not a plant and machinery and the works contract service is not used for further supply of works contract service, ITC thereon will not be allowed.

**Illustration 5 – Computation of admissible ITC :** Ramoplast Soap Factory, a registered supplier, is engaged in manufacturing beauty soaps – 'Forever Glow' in Mumbai. It has provided the following information pertaining to purchases made/services availed in the month of March, 2020:

Particulars	₹
Soap making machine	50,000
Motor vehicles for transportation of inputs	70,000
Membership of 'Fit and Fine' health and fitness centre for its employees	25,000
Inputs purchased, but stolen from the factory	40,000

You are required to compute the input tax credit (ITC) available with Ramoplast Soap Factory for the month of March, 2020 assuming that all the other conditions for availing ITC, wherever applicable, have been fulfilled. (MTP, May 2018)

**Solution: Computation of ITC available with Ramoplast Soap Factory (amount in ₹):**

Soap making machine [ITC in respect of goods used in course/ furtherance of business is available in terms of section 16 of the CGST Act]	50,000
Motor vehicles for transportation of inputs [ITC in respect of motor vehicles is blocked, except when used, <i>inter alia</i> , for transportation of goods, in terms of section 17(5) of the CGST Act]	70,000
Membership of 'Fit and Fine' health and fitness centre for its employees [ITC in respect of membership of a club, health and fitness centre is blocked in terms of section 17(5) of the CGST Act, except where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]	Nil

Inputs purchased, but stolen from the factory [ITC in respect of goods stolen is blocked in terms of section 17(5) of the CGST Act]	Nil
<b>Total ITC available</b>	<b>1,20,000</b>

**Illustration 6 - Computation of admissible ITC :** Hero Automobiles is engaged in the manufacture of motor cars. Compute the amount of ITC admissible from the following particulars with suitable explanation where required:

Goods Purchased	GST paid at the time of purchase of the goods (₹)
(i) Raw Steel	5,00,000
(ii) Batteries	2,00,000
(iii) Cutting oil	70,000
(iv) Electric lamps for lighting manufacturing area	80,000

*(Modified 4 Marks, May 2010)*

**Solution:** The amount of ITC available in the current year is computed as follows (amount in ₹) -

(i) Raw Steel (Eligible as 'input')	5,00,000
(ii) Batteries (Eligible as 'input')	2,00,000
(iii) Cutting Oil (Eligible as 'input')	70,000
(iv) Electric Lamps for lighting manufacturing area (Eligible as 'input')	80,000
<b>Total ITC admissible</b>	<b>8,50,000</b>

**Illustration 7 - Computation of admissible ITC :** Z Ltd. is a manufacturer registered under GST laws. From the following information made available regarding GST paid on procurement of inputs etc., during March 2020, you are required to determine the amount of ITC available to this company giving explanations for the treatment of the given items :

Particulars	GST (₹)
(i) Inputs used in factory of manufacture	1,00,000
(ii) Goods for use in generation of electricity for captive consumption	50,000
(iii) Cement for construction of a godown in the factory	15,000
(iv) Goods for laying of foundation for support of plant and machinery	25,000
(v) Food and beverages primarily for personal use of employees	20,000
(vi) Consumable stores for use in manufacture of goods	15,000

*(Modified 4 Marks, Nov. 2016)*

**Solution: Computation of ITC available with Z Ltd. (amount in ₹) -**

Inputs used in factory of manufacture [Eligible as Input]		1,00,000
Goods for use in generation of electricity for captive consumption [Eligible as Input]		50,000
Cement for construction of a godown in the factory	[WN-1]	-
Goods for laying of foundation for support of plant and machinery	[WN-2]	25,000
Food and beverages primarily for personal use of employees	[WN-3]	-
Consumable stores for use in manufacture of goods [Eligible as Input]		15,000
<b>Total ITC available</b>		<b>1,90,000</b>

**Working Note :**

- As per Section 17(5)(d), input tax credit shall not be available in respect of 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 cases when such goods or services or both are used in the course or furtherance of business. Hence, input tax credit shall not be available in respect of goods used in construction of godown in the factory.
- Input tax credit is admissible in respect of goods or services or both received by a taxable person for construction of plant or machinery. Hence, tax paid on cement shall not be available for input tax credit.
- As per Section 17(5)(b), no Input tax credit is available in respect of food and beverages primarily used for personal use of the employees except where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

**Illustration 8 - Computation of admissible ITC :** Based on the following information of July 2019, determine the ITC available for use in the current year as per CGST Act, 2017 -

Particulars	GST (₹)	Excise duty (₹)
(a) Pollution Control Equipment (value is capitalized in books of account)	25,000	-
(b) Spares for pollution control equipment	5,000	-



(c) Equipments used in office within factory	12,000	-
(d) Cement used for construction of storage Tank	10,000	-
(e) Paints used for painting machinery used	6,000	-
(f) Packing Material	4,000	-
(g) Lubricating oils	8,000	-
(h) High Speed Diesel Oil	-	7,000

**Solution: Computation of eligible ITC (amount in ₹) -**

(a) Pollution control equipment (Eligible as 'Capital goods')	25,000
(b) Spares for pollution control equipment (Eligible as 'Input')	5,000
(c) Equipments used in office within factory (Eligible as Inputs, since their value has not been capitalised in books of accounts)	12,000
(d) Cement used for construction of Storage Tank (Not Eligible) [WN]	Nil
(e) Paints used for painting machinery (Eligible as 'input')	6,000
(f) Packing Material (Eligible as 'input')	4,000
(g) Lubricating oils (Eligible as 'input')	8,000
(h) High Speed Diesel Oil (Excise duty paid on HSD cannot be availed as ITC for payment of GST on outward Supplies)	Nil
<b>Total ITC available</b>	<b>60,000</b>

As per Section 17(5)(d), input tax credit shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property.

**Illustration 9 - Input tax credit - Input services :** MNO Ltd. engaged in supplying outward taxable goods has availed various inward supplies in month of April, 2020. Compute the ITC admissible on such inward supplies.

S. No.	Inward supplies	GST (₹)
1.	Engaged in imparting Motor vehicle training on driving services	90,000
2.	Outdoor catering services availed on the occasion of Board Meeting of Company	72,000
3.	Works contract service availed for repair/alterations of plant and machinery installed	1,02,000

**Note:** (i) All the conditions necessary for availing the ITC have been fulfilled. (ii) Registered Person is not eligible for any threshold exemption.

**Solution: Computation of Input tax credit available with XYZ Ltd. (amount in ₹) :**

Engaged in imparting Motor vehicle training on driving services	[WN-1]	90,000
Outdoor catering services availed on the occasion of Board Meeting of Company	[WN-2]	-
Works contract service availed for repair/alterations of plant and machinery installed	[WN-3]	1,02,000
<b>Total ITC available</b>		<b>1,92,000</b>

**Working Notes:**

- ITC will be available when motor vehicles are used for imparting training on driving of such conveyance.
- No, ITC shall be allowed on services of outdoor catering for Board Meeting, as it is blocked under Section 17(5)(b).
- Input tax credit will be allowed for the works contract service availed for reconstruction, renovation, addition or alteration or repairs of plant and machinery.

**Illustration 10 - Computation of admissible ITC :** Determine amount of ITC available to Gangotri Manufacturing Ltd. in respect of the following items procured by them in the month of October, 2019 -

Items	GST (₹)	Excise duty (₹)
Raw materials	52,000	-
Capital goods used for generation of electricity for captive use within the factory	1,00,000	-
Motor spirit	-	40,000
Inputs used for construction of a building	1,00,000	-
Dairy and bakery products consumed by the employees	5,000	-
Motor vehicle for transportation of goods [Value is capitalised in books]	4,50,000	-

(Modified RTP Nov. 2011)

**Solution: Computation of the eligible ITC (amount in ₹) -**

Raw materials (Eligible as Input)		52,000
Capital goods used for generation of electricity for captive use	[WN-1]	1,00,000
Motor spirit	[WN-2]	Nil



Inputs used for construction of a building	[WN-3]	Nil
Dairy and bakery products consumed by the employees	[WN-4]	Nil
Motor vehicle for transportation of goods (ITC is admissible as Capital goods)		4,50,000
<b>Total ITC available</b>		<b>6,02,000</b>

**Working Notes:**

- (1) Capital goods used for generation of electricity for captive use within the factory are eligible capital goods.
- (2) Excise duty paid on motor spirit is not eligible as Input tax credit.
- (3) As per Section 17(5)(d), input tax credit shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property.
- (4) As per Section 17(5)(b), no input tax credit is available in respect of dairy and bakery products consumed by employees except where it is obligatory for an employer to provide the same to its employees under any law for the time being in force..

**Illustration 11 - ITC admissible - Input Services :** Compute the ITC available with Ram Services Ltd. a service provider in respect of the following services billed to it in the month of August, 2019 :

	Services billed	GST paid (₹)
(i)	Accounting and auditing services	1,80,000
(ii)	Legal services	18,000
(iii)	Security services	1,80,000
(iv)	Rent-a-cab services	1,20,000

**Solution: Computation of ITC available with Ram Services Ltd. (amount in ₹) –**

Accounting and auditing services [Eligible as Input Services]	1,80,000
Legal services [Eligible as Input Services]	18,000
Security services [Eligible as Input Services]	1,80,000
Rent-a-cab services [Ineligible as specifically excluded under Section 17(5)(b)]	Nil
<b>Total ITC available</b>	<b>3,78,000</b>

**Illustration 12 - Input tax credit - Input Services :** XYZ Ltd., is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 2020 from the following particulars :

S.No.	Inward supplies	GST (₹)	Remarks
(i)	Inputs 'A'	2,00,000	One invoice on which GST payable was ₹ 20,000, is missing
(ii)	Inputs 'B'	2,50,000	Inputs are to be received in two instalments. First instalment has been received in October, 2020.
(iii)	Capital goods	3,00,000	XYZ Ltd. has capitalised the capital goods at full invoice value inclusive of GST and availed depreciation on the full invoice value.
(iv)	Input services	4,00,000	One invoice dated 20-01-2020 on which GST payable was ₹ 54,000 has been received in October, 2020.

**Note :**

- (i) All the conditions necessary for availing the ITC have been fulfilled.
- (ii) XYZ Co. Ltd. is not eligible for any threshold exemption.
- (iii) The annual return for the financial year 2019-20 was filed on 15<sup>th</sup> September, 2020.

**Solution: Computation of ITC available with XYZ Ltd. for the month of October, 2020 :**

S.No.	Inward supplies	GST (₹)
(i)	Inputs 'X' [WN-1]	1,80,000
(ii)	Inputs 'Y'	Nil
(iii)	Capital goods	Nil
(iv)	Input services	3,46,000
<b>Total</b>		<b>5,26,000</b>

**Working Notes :**

- (1) ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC - Section 16(2)(a).
- (2) When inputs are received in instalments, ITC can be availed only on receipt of last instalment - First proviso to Section 16(2).

- (3) Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component - Section 16(3).
- (4) As per section 16(4), ITC on an invoice cannot be availed after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains or the date of filing annual return, whichever is earlier.

Since the annual return for the FY 2019-20 has been filed on 15<sup>th</sup> September, 2020 (prior to due date of filing the return for September, 2020 i.e., 20<sup>th</sup> October, 2020), ITC on the invoice pertaining to FY 2019-20 cannot be availed after 15<sup>th</sup> September, 2020.

**Illustration 13 - Credit admissible on Jigs, fixtures, moulds and dies sent to another manufacturer :** Ashish and Sons, a sole proprietorship firm (registered under GST) is engaged in the manufacture of final products. It purchased following items during the month of September 2019 :

Jigs	₹ 1,00,000
Fixtures	₹ 1,50,000
Moulds and dies	₹ 2,00,000
GST paid on above	₹ 81,000

It sent above-mentioned Jigs, Fixtures, Moulds and dies to jobworker for the production of goods according to his specification. Will Ashish and Sons get Input tax Credit in respect of aforementioned Jigs, Fixtures, Moulds and dies?

**Solution:** According to Section 19 of CGST Act, 2017, the Input tax credit shall be allowed in respect of jigs, fixtures, moulds, dies and tools sent by a manufacturer of final products to a job worker for the production of goods on his behalf according to his specification. The time limit of bringing inputs/capital goods back within 1/ 3 years of their being sent to job-workers premises shall not apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Since in the given case Ashish & Sons has sent Jigs, Fixtures, Moulds and dies to job-worker for the production of goods according to its specification, it is entitled to get Input tax credit in respect of GST of ₹ 81,000 in accordance with the provisions of Section 19 of CGST Act, 2017.

**Illustration 14 - Computation of amount of ITC available :** PQR Company Ltd., a registered supplier of Bengaluru (Karnataka), is a manufacturer of goods. The company provides the following information pertaining to GST paid on input supplies during the month of April, 2020 :

Sl. No.	Particulars	GST paid in (₹)
(i)	Life Insurance premium paid by the company on the life of factory employees as per the policy of the company	1,50,000
(ii)	Raw materials purchased for which invoice is missing but delivery challan is available.	38,000
(iii)	Raw material purchased which are used for zero rated outward supply.	50,000
(iv)	Works contractor's service used for repair of factory building which is debited in the profits and loss account of company.	30,000
(v)	Company purchased the capital goods for ₹ 4,00,000 and claimed depreciation of ₹ 44,800 (@ 10%) on the full amount of ₹ 4,48,000 under Income-tax Act, 1961.	48,000

**Other Information :**

- (i) In the month of September, 2019, PQR Company Ltd. availed input tax credit of ₹ 2,40,000 on purchase of raw material which was directly sent to job worker's premises under a challan on 25-09-2019. The said raw material has not been received back from the Job worker up to 30-04-2020.
- (ii) All the above input supplies except (iii) above have been used in the manufacture of taxable goods.

Compute the amount of net Input Tax Credit available for the month of April, 2020 with necessary explanation for your conclusion for each item. You may assume that all the other conditions necessary for availing the eligible input tax credits have been fulfilled. (7 Marks, Nov. 2018-NS)

**Solution: Computation of ITC available with XYZ Ltd. for the month of April, 2020 :**

	Inward supplies	GST (₹)
(i)	Life Insurance premium paid by the company on the life of factory employees as per the policy of the company	Nil
(ii)	Raw materials purchased for which invoice is missing but delivery challan is available.	Nil
(iii)	Raw material purchased which are used for zero rated outward supply	50,000

(iv)	Works contractor's service used for repair of factory building which is debited in the profits and loss account of company.	[WN-4]	30,000
(v)	Capital goods on which depreciation is claimed on full value inclusive of GST	[WN-5]	Nil
<b>Total</b>			<b>80,000</b>

**Working Notes :**

- (1) Input tax credit on supply of life insurance service is not blocked if it is obligatory for an employer to provide the same to its employees under any law for the time being in force. [Section 17(5)(b) of the CGST Act]. In this case the life insurance service is provided as per the policy of the company and not as per the statutory obligation, hence no input tax credit shall be admissible.
- (2) ITC cannot be taken on missing invoice. The registered person should have the tax invoice or any other prescribed document in its possession to claim ITC. Delivery challan is not a prescribed document, hence input tax credit cannot be availed on basis of delivery challan- Section 16(2)(a).
- (3) Section 16(2) of the IGST Act specifies that ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero rated supply. Thus, Raw materials purchased for making zero rated supplies are eligible for input tax credit.
- (4) As per Section 17(5)(c) ITC cannot be taken on works contract services when supplied for construction of an immovable property. As per explanation thereto "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. In this case since the cost of repairs is not capitalised in the accounts, hence the same do not fall under construction. Thus, ITC can be availed on such works contract services.
- (5) Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component - Section 16(3).

Notwithstanding anything contained in Section 16(2)(b), the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business. Where the inputs sent for job work are not received back by the principal after completion of job-work or otherwise or are not supplied from the place of business of the job worker in accordance with Section 143(1)(a)/(b) within **one year** of from the date of receipt of inputs by the job worker, then it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

Hence, the ITC taken by PQR Company Ltd. in September, 2019 is valid and since 1 year period has yet not lapsed in April, 2020, there will be no tax liability on such inputs.

**Illustration 15 - ITC Eligibility :** With reference to the provisions of section 17 of the CGST Act, 2017, examine the availability of input tax credit under the CGST Act, 2017 in the following independent cases:-

- (i) MBF Ltd., an automobile company, has availed works contract service for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently.
- (ii) Shah & Constructions procured cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients.
- (iii) ABC Ltd. availed maintenance & repair services from "Jaggi Motors" for a truck used for transporting its finished goods. (RTP Nov., 2019)

**Solution:**

- (i) **ITC is admissible in respect of works contract service availed for construction of plant and machinery :** Section 17(5)(c) of the CGST Act, 2017 blocks input tax credit in respect of works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Further, the term "plant and machinery" means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods and/or services and includes such foundation or structural support but excludes land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Thus, in view of the above-mentioned provisions, ITC is available in respect of works contract service availed by MBF Ltd. as the same is used for construction of plant and machinery which is not blocked under section 17(5)(c) of the CGST Act, 2017.

- (ii) ITC is admissible in respect of goods and services used for providing construction services : Section 17(5)(d) of the CGST Act, 2017 blocks ITC on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account even though such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the immovable property being constructed is used in the course or furtherance of his business.

In the given case, taxable person has used the goods and services for construction of immovable property for some other person and not on its own account. Hence, ITC in this case will be allowed.

- (iii) ITC is admissible on maintenance & repair services availed for trucks used for transporting of finished goods: As per section 17(5) of the CGST Act, 2017, ITC is allowed on repair and maintenance services relating to motor vehicles, which are eligible for input tax credit. Further, as per section 17(5)(a) ITC is allowed on motor vehicles which are used for transportation of goods.

Thus, ITC on maintenance & repair services availed from from "Jaggi Motors" for a truck used for transporting its finished goods is allowed to ABC Ltd.

**Illustration 16 - Computation of amount of ITC available :** Siddhi Ltd. is a registered manufacturer engaged in taxable supply of goods. Siddhi Ltd. purchased the following goods during the month of January, 2020. The following particulars are provided :

Sr. No.	Particulars	Input Tax (₹)
1.	Capital goods purchased on which depreciation has been taken on full value including input tax thereon	15,000
2.	Goods purchased from Ravi Traders (invoice of Ravi Traders is received in month of January, 2020, but goods were received in month of March, 2020)	20,000
3.	Car purchased for making further supply of such car. Such car destroyed in accident while being used for test drive by potential customers	30,000
4.	Goods used for setting up Telecommunication Towers being immovable property	50,000
5.	Goods purchase from Pooja Ltd. (full payment is made by Siddhi Ltd. to Pooja Ltd. against such supply but tax has not been deposited by Pooja Ltd.)	10,000
6.	Truck purchased for delivery of output goods	80,000

Determine the amount of input tax credit (ITC) available by giving necessary explanations for treatment of various items as per the provisions of the CGST Act, 2017. You may assume that all the necessary conditions for availing the ITC have been complied with by Siddhi Ltd. (5 Marks, May 2019)

**Solution: Computation of admissible ITC to Siddhi Ltd. for the month of January, 2020 (amount in ₹):**

(1)	Capital goods purchased on which depreciation has been taken on full value including input tax thereon	[WN-1]	-
(2)	Goods purchased from Ravi Traders (invoice of Ravi Traders is received in month of January, 2020, but goods were received in month of March, 2020)	[WN-2]	-
(3)	Car purchased for making further supply of such car. Such car destroyed in accident while being used for test drive by potential customers	[WN-3]	-
(4)	Goods used for setting up Telecommunication Towers being immovable property	[WN-4]	-
(5)	Goods purchase from Pooja Ltd. (full payment is made by Siddhi Ltd. to Pooja Ltd. against such supply but tax has not been deposited by Pooja Ltd.)	[WN-5]	-
(6)	Truck purchased for delivery of output goods	[WN-6]	80,000
<b>Total admissible Input Tax credit for the month of January 2020</b>			<b>80,000</b>

**Working Note:**

- Where the registered person has claimed depreciation on the tax component of the cost of capital goods purchased under the provisions of the Income-tax Act, 1961, the ITC on the said tax component shall not be allowed. [Section 16(3)]
- Input tax credit is admissible only when registered person has received such goods. Since the goods are received in the month of March, 2020, input tax credit cannot be taken in the month of January, 2020. [Section 16(2)(b)]
- Input tax credit is admissible on Motor Vehicle if it is purchased for further supply of such Motor Vehicle. But However, since car destroyed in accident while being used for test drive by potential customers, hence ITC is not admissible. [Section 17(5)(h)]

- (4) Goods received by taxable person for construction of an immovable property (other than Plant and Machinery) on his own account including when such goods used in course or furtherance of business shall be considered as ineligible input and no credit shall be allowed of tax paid on such goods. Since Telecommunication tower is an immovable property, hence, no input tax credit shall be allowed in respect of goods used for setting it up. [Section 17(5)(d)]
- (5) No registered person shall be entitled to the credit of any input tax in respect of any supply of goods unless the tax charged in respect of such supply has been actually paid to the Government. Since Pooja Ltd. has not deposited the tax to the credit of Government, no ITC can be claimed by Siddhi Ltd. [Section 16(2)(c)]
- (6) As per Section 17(5) (a), Input tax credit is not admissible for passenger transportation vehicle. Since Truck purchased for delivery of output goods, hence credit shall be admissible [Section 17(5)(a)]

**Illustration 17 - Computation of amount of ITC available :** M/s. AJ imported some inputs and paid basic customs duty ₹ 5 lakhs, IGST ₹ 1 lakh under section 3(7) of Customs Tariff Act, 1975. Calculate the amount that he can claim as ITC admissible. Would it make any difference, if the assessee is not a manufacturer, but a service provider? (Modified 3 Marks, May 2006)

**Solution:** If M/s. AJ is a manufacturer, it will be entitled to Input tax credit of ₹ 1 lakh i.e. IGST paid under Section 3(7) of the Customs tariff Act, 1975. It will not make any difference if M/s. AJ is service provider.

**Illustration 18 - Input written off before being put to use - Not eligible :** PQR Ltd, a manufacturer, purchased in the month of September, 2019 inputs of ₹ 1,00,000 on which it pays GST of ₹ 12,000. The company availed the aforementioned ITC of ₹ 12,000 while discharging its GST liability for the month of September, 2019. In December, 2019 before the said inputs are put into use, the company has written off such inputs in books of accounts. Discuss GST treatment.

**Solution:** According to Section 17(5)(h) of the CGST Act, 2017, Goods written off are considered as ineligible input and credit of GST paid on such goods cannot be taken. Since PQR Ltd. has already availed ITC on such inputs, the amount so availed will be added to the output tax liability of PQR Ltd.

**Illustration 19 - Admissibility of ITC :** Dev Ltd., a manufacturer registered under GST, has furnished the following information regarding inputs received in the factory and input service used for manufacture :

Sr. No.	Particulars	GST (₹)	Excise duty(₹)	
(1)	Raw material	Invoice dated 14-09-2019	31,500	-
(2)	Consumables	Invoice dated 10-10-2020	5,000	-
(3)	Input Service	Invoice dated 22-10-2020	19,500	-
(4)	Office Equipment	Invoice dated 01-10-2020	7,250	-
(5)	Motor Spirit	Invoice dated 02-10-2020	-	22,000
(6)	Paints	Invoice is missing	3,000	-

Determine the total Input tax credit that can be availed during the month of October, 2020. The annual return for the financial year 2019-20 was filed on 15<sup>th</sup> September, 2020. (Modified 4 Marks, May 2015)

**Solution: Computation of Input tax credit that can be availed by Dev Ltd. during the month of October, 2020 (amt. ₹):**

Raw material	[WN-1]	-
Consumable [Credit eligible as Input]		5,000
Input service [Credit eligible as Input Service]		19,500
Office Equipment		7,250
Motor Spirit	[WN-2]	-
Paints	[WN-3]	-
<b>Total ITC that can be availed</b>		<b>31,750</b>

**Working Notes :**

- (1) As per Section 16(4), ITC on an invoice cannot be availed after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains or the date of filing annual return, whichever is earlier.  
Since the annual return for the Financial Year 2019-20 has been filed on 15<sup>th</sup> September, 2020 (prior to due date of filing the return for September, 2020 i.e., 20<sup>th</sup> October, 2020), ITC on the invoice pertaining to Financial Year 2018-19 cannot be availed after 15<sup>th</sup> September, 2020.
- (2) Credit is not available of excise duty paid on motor spirit for discharging GST liability.
- (3) No Input tax credit will be available since Dev Ltd. is not in possession of valid tax paying document.



**Illustration 20 – ITC implications in case of taxable as well as exempt supplies :** A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a special notification. The fabric is separately procured for the supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory. The turnover of the other products of the factory and exempted uniforms in July is ₹ 8 crore and ₹ 2 crore respectively, the ITC on thread and lining material procured in July is ₹ 10,000 and ₹ 30,000 respectively. Calculate the eligible ITC on thread and lining material.

**Solution:** Thread and lining material are inputs which are used for making taxable as well as exempt supplies. Therefore, credit on such items will be apportioned and credit attributable to exempt supplies will be added to the output tax liability in terms of rule 43 of the CGST Rules, 2017.

Computation of credit attributable to exempt supplies by apportionment of common credit shall be arrived by following formula :

$$\text{Amount of ITC attributable towards exempt supplies} = \frac{\text{Aggregate value of exempt supplies during the tax period}}{\text{Total turnover in the State of the registered person during the tax period}} \times \text{Common credit}$$

Here, Common credit = ₹ 10,000 + ₹ 30,000 = ₹ 40,000

Exempt turnover = ₹ 2 crore

Total turnover = ₹ 10 crore [₹ 2 crore + ₹ 8 crore]

Amount of input tax credit attributable towards exempt supplies =  $\frac{₹ 2 \text{ crore}}{₹ 10 \text{ crore}} \times ₹ 40,000 = ₹ 8,000$

**Ineligible credit of ₹ 8,000 will reversed in form GSTR-3B to be furnished for the month of July.** Credit of ₹ 32,000 will be eligible credit for the month of July.

**Illustration 21 – Apportionment of Credit on input and input services :** X Ltd. provides taxable as well as exempted services. Turnover of X Ltd. during the month of October, 2019 is as under :

Particulars	₹
Value of exempted supply of services	5,00,000
Value of taxable supply of services	40,00,000
Value of zero rated taxable supply of services	15,00,000
<b>Total</b>	<b>60,00,000</b>

Details of Input tax credit for the month of October, 2019 are as under :

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Total Input tax	48,000	48,000	36,000
The above Input tax includes the following :			
(i) Tax on input services exclusively used for supplying exempted services	12,000	12,000	16,000
(ii) Tax on input services exclusively used for supplying taxable services (including Zero rated supplies)	30,000	30,000	12,000
(iii) Tax on inputs which are not eligible u/s 17(5)	2,400	2,400	2,000

What would be the entitlement of input tax credit of X Ltd. for month of October, 2019 under Rule 42 of the CGST Rules and also calculate the amount to be reversed by the X Ltd. in GSTR 3B.

**Solution: Computation of Input tax credit eligible for the tax period October, 2019 (amount in ₹):**

Particulars	CGST	SGST	IGST
Total Input tax in a tax period [T]	48,000	48,000	36,000
<b>Less:</b>			
Tax on input services exclusively used for effecting exempt supply of services [T <sub>2</sub> ]	12,000	12,000	16,000
Tax on input which are ineligible under Section 17(5) [T <sub>3</sub> ]	2,400	2,400	2,000
<b>Amount of ITC to the electronic credit ledger [C<sub>1</sub>] C<sub>1</sub> = T - [T<sub>2</sub> + T<sub>3</sub>]</b>	<b>33,600</b>	<b>33,600</b>	<b>18,000</b>
<b>Less:</b> Tax on input services exclusively used for supplying taxable services (including Zero rated supplies) [T <sub>4</sub> ]	30,000	30,000	12,000
<b>Common credit of input and input services used for providing supply of services [C<sub>2</sub>] C<sub>2</sub> = C<sub>1</sub> - T<sub>4</sub></b>	<b>3,600</b>	<b>3,600</b>	<b>6,000</b>
Total inadmissible common credit as per Rule 42(1) [D <sub>1</sub> ] [WN]	300	300	500



Net eligible common credit $C_3 = C_2 - [D_1]$	3,300	3,300	5,500
Total credit eligible i.e. $[T_4 + C_3]$	33,300	33,300	17,500
Amount to be reversed by the X Ltd. in GSTR 3B $[D_1]$	300	300	500

**Working Note:** Calculation of Amount of ITC towards exempt supplies and supply made for non business use (amt. ₹):

Particulars		CGST	SGST	IGST
Aggregate Value of Exempted supply of services	[E]	5,00,000	5,00,000	5,00,000
Total Turnover for October, 2019	[F]	60,00,000	60,00,000	60,00,000
Credit attributable towards exempt supplies	$D_1 = [E \div F] \times C_2$	300	300	500
<b>Total inadmissible common credit as per Rule 42(1)</b>	<b>[D<sub>1</sub>]</b>	<b>300</b>	<b>300</b>	<b>500</b>

**Illustration 22 - ITC in case of Banking Company and Financial Institution including NBFC:** Money Secure Bank provides the following information for the month of November, 2019 :

Particulars	CGST (₹)	SGST (₹)
Eligible Input tax Credit (CGST and SGST) available on Inputs received	12,000	12,000
Eligible Input tax Credit (CGST and SGST) available on Input Services availed	9,000	9,000

Turnover Details are as under -

Particulars	(₹)
Value of taxable supply of services	16,00,000
Value of exempted supply of services	8,00,000

Determine the amount of Input tax credit available to Money Secure Bank for the month of November, 2019 and also determine net SGST and CGST liability. (Rate of CGST - 9%, SGST - 9% and IGST - 18%)

**Solution:** As per Section 17(4), every banking company or a financial institution, including a non-banking financial company, engaged in supply of services by way of accepting deposits or extending loans or advances has the option either to avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month or to comply with the provisions of Section 17(2) of taking credit of inputs and input services used for making taxable supplies.

➤ **Option I : In case the Bank opts for option to avail 50% Eligible Input tax credit u/s 17(4) (amount in ₹):**

Particulars	CGST	SGST
Total Eligible Input tax credit available	21,000	21,000
<b>Less:</b> Amount of input tax credit credited to electronic credit ledger (50% of eligible input tax credit on inputs, input services and capital goods) i.e., ₹ 21,000 × 50%	10,500	10,500
<b>Remaining input tax credit Lapsed</b>	<b>10,500</b>	<b>10,500</b>

**Determination of Net Tax liability of Bank for the month of November, 2019 (amount in ₹) :**

Particulars	CGST @ 9%	SGST @ 9%	Total GST liability
Tax liability of bank before availing eligible Input tax Credit on taxable supply of services of ₹ 16,00,000	1,44,000	1,44,000	2,88,000
<b>Less:</b> Net/Eligible CGST Credit available on Inputs/Input services	10,500	-	10,500
<b>Less:</b> Net/Eligible SGST Credit available on Inputs/Input services	-	10,500	10,500
<b>Net output Tax liability of bank after availing eligible Input tax Credit</b>	<b>1,33,500</b>	<b>1,33,500</b>	<b>2,67,000</b>

➤ **Option II : In case Money Secure Bank opted to comply with the provisions of Section 17(2) (amount in ₹) :**

Particulars	CGST	SGST
Amount of input tax credit credited to electronic ledger	21,000	21,000
As per Rule 42 of CGST Rules, 2017, Credit of CGST paid on input/input services attributable towards Exempted supplies to be reversed in Form GSTR-3B = ₹ 21,000 × ₹ 8,00,000 / ₹ 24,00,000	7,000	-
Similarly the Credit of SGST paid on input/input services attributable towards Exempted supplies to be reversed in Form GSTR-3B = ₹ 21,000 × ₹ 8,00,000 / ₹ 24,00,000	-	7,000

**Determination of Net Tax liability of Bank for the month of November, 2019 (amount in ₹):**

Particulars	CGST @ 9%	SGST @ 9%	Total GST liability @ 18%
Tax liability of bank before availing eligible Input tax Credit on taxable supply of services of ₹ 16,00,000	1,44,000	1,44,000	2,88,000

Add: CGST /SGST Credit to be added to output tax liability	7,000	7,000	14,000
Less: CGST/ SGST Credit available on Inputs/Input services	21,000	21,000	42,000
Net output Tax liability of bank after availing eligible ITC	1,30,000	1,30,000	2,60,000

**Illustration 23 - ITC on Capital goods used for taxable as well as exempted supply :** PQR Ltd., a registered supplier, supplying taxable as well as exempted goods, provides following Turnover details during the month of December 2019:

Particulars	₹
Value of Taxable Supply of Goods	20,00,000
Value of Zero rated taxable Supply of goods	10,00,000
Sale value of Securities	7,00,00,000
Supply of goods made for non business use	80,000
<b>Total</b>	<b>7,30,80,000</b>

Details of Input tax paid on Capital Goods for the month of December, 2019 are as under:

Particulars	CGST @ 6% (₹)	SGST @ 6% (₹)	Total (₹)
The Input tax on capital goods is as follows:			
(i) Tax on capital goods exclusively used for supplying exempted goods	12,600	12,600	25,200
(ii) Tax on capital goods exclusively used for supplying taxable goods (including Zero rated supplies)	36,000	36,000	72,000
(iii) Tax on capital goods exclusively used for supplying goods for non business use	8,400	8,400	16,800

Capital goods used for both supply of taxable as well as exempt goods :

Capital Goods	Value of inward supplies (exclusive of CGST & SGST)	CGST @ 6% (₹)	SGST @ 6% (₹)	Date of inward supplies
P	3,50,000	21,000	21,000	13-09-2019
Q	1,00,000	6,000	6,000	25-11-2019
R	5,20,000	31,200	31,200	06-12-2019
<b>Total</b>		<b>58,200</b>	<b>58,200</b>	

Determine the credit on capital goods attributable for tax period of December, 2019.

**Solution:** Computation of credit on capital goods attributable for tax period of December, 2019 (amount in ₹) :

Particulars	CGST	SGST
Total tax on Capital goods		
Tax on capital goods exclusively used for supplying exempted goods (The amount of input tax in respect of capital goods used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-3B and shall not be credited to his electronic credit ledger.)	-	-
Tax on capital goods exclusively used for supplying taxable supplies (including Zero rated supplies) (The amount of input tax in respect of capital goods used exclusively for effecting taxable supplies including zero-rated supplies shall be indicated in FORM GSTR-3B and shall be credited to the electronic credit ledger.)	36,000	36,000
Tax on capital goods exclusively used for supplying goods for non business use (The amount of input tax in respect of capital goods used exclusively for non-business purposes shall be indicated in FORM GSTR-3B and shall not be credited to his electronic credit ledger.)	-	-
Tax on capital goods used for supplying taxable as well as exempted supplies (shall be credited to Electronic credit ledger and the useful life of such goods shall be taken as 5 years.) [A] T <sub>c</sub>	31,200	31,200
<b>ITC credited to electronic credit ledger for the month of December 2019</b>	<b>67,200</b>	<b>67,200</b>
Amount of input tax credit attributable to the month of December, 2019 on Common capital goods during their residual life $T_m = T_c \div 60$ (₹ 58,200 ÷ 60) [WN-1]	970	970
Amount of ITC on capital goods whose residual life remains in beginning of tax period i.e., December, 2019 (T <sub>r</sub> ) [WN-1]	970	970
Amount of common credit attributable towards exempted supplies to be declared in Form GSTR 3B (T <sub>e</sub> )	200	200
$T_e = T_r \times (\text{Value of Exempted supply and supply made for non business used during tax period} / \text{Total Value of supply during tax period})$ [(₹ 970 ÷ ₹ 37,80,000) × (₹ 7,00,000 + ₹ 80,000)] [WN-2]		

Working Note :

- (1) Calculation of ITC on capital goods whose residual life remains during the tax period :  $T_r = T_m/60$

Capital Goods	Value of inward supplies (exclusive of CGST & SGST) (₹)	CGST @ 6% (T <sub>i</sub> ) (₹)	SGST @ 6% (T <sub>j</sub> ) (₹)	ITC Attributable for 1 month (T <sub>r</sub> = Aggregate of T <sub>m</sub> )	
				CGST @ 6% (T <sub>m</sub> = T <sub>i</sub> /60) (₹)	SGST @ 6% (T <sub>m</sub> = T <sub>j</sub> /60) (₹)
P	3,50,000	21,000	21,000	350	350
Q	1,00,000	6,000	6,000	100	100
R	5,20,000	31,200	31,200	520	520
<b>Total</b>		<b>58,200</b>	<b>58,200</b>	<b>970</b>	<b>970</b>

- (2) Value of exempt supply : Transaction in securities is exempt supply. Value of exempt supply of transaction in securities is 1% of sales value of securities :

$$= ₹ 7,00,00,000 \times 1\%$$

$$= ₹ 7,00,000.$$

Thus, total turnover =

Particulars	₹
Value of Taxable Supply of Goods	20,00,000
Value of Zero rated taxable Supply of goods	10,00,000
Value of Securities being exempt supply	7,00,000
Supply of goods made for non business use	80,000
<b>Total turnover</b>	<b>37,80,000</b>

**Illustration 24 - ITC on Capital goods used for taxable as well as exempted supply:** Soren Enterprises is in possession of certain capital goods and purchases more of them as per the following particulars.

Particulars	Input tax on Capital Goods (₹)	Status of its use
Capital Goods A	12,000	Exclusively used for non-business purpose.
Capital Goods B	24,000	Exclusively used for zero-rated supplies.
Capital Goods C	60,000	Used both for taxable and exempt supplies.
Capital Goods D (has been exclusively used for 2 Years for exempted supplies)	1,20,000	Now there is change in use, both for taxable and exempt supplies.
Capital Goods E (has been exclusively used for 3 years for taxable supplies)	1,80,000	Now there is change in use, both for taxable and exempt supplies.

Useful life of all the above capital goods is considered as 5 years.

Apportion the input tax credit of capital goods, while being informed that aggregate value of exempt supplies during the tax period being ₹ 6,00,000 and total turnover during the tax period being ₹ 12,00,000. (7 Marks, May 2018)

**Solution: Computation of credit on capital goods attributable for tax period (amount in ₹):**

Particulars	Total Eligible ITC	Amount to be added to Output tax liability
Total credit on Capital goods		
<b>Capital Goods A :</b> Credit on capital goods exclusively used for supplying goods for non business use (The amount of input tax in respect of capital goods used exclusively for non-business purposes shall be indicated in FORM GSTR-3B and shall not be credited to his electronic credit ledger.)	Nil	-
<b>Capital Goods B :</b> Credit on capital goods exclusively used for supplying Zero rated supplies (The amount of input tax in respect of capital goods used exclusively for effecting taxable supplies including zero-rated supplies shall be indicated in FORM GSTR-3B and shall be credited to the electronic credit ledger.)	24,000	-
<b>Capital Goods C :</b> Credit on capital goods used for supplying taxable as well as exempted supplies (shall be credited to Electronic credit ledger and the useful life of such goods shall be taken as 5 years.)	60,000	500
Credit pertaining to tax period = ₹ 60,000 ÷ 60 = ₹ 1,000. Since 50% of the use is for making exempted supply, therefore 50% of the credit has to be paid and added to output tax liability		

## GST : INPUT TAX CREDIT

© CA. Yogendra Bangar &amp; CA. Vandana Bangar

<p><b>Capital Goods D :</b> (Capital goods earlier used for exempted supplies are subsequently used for providing taxable and exempt supplies)</p> <p>As per Rule 43 of CGST Rules, 2017, where any capital goods earlier used for exempted supplies are subsequently used for providing taxable supplies also, then the eligible input tax credit shall be arrived at by reducing the input tax at the rate of 5% points for every quarter or part thereof i.e., ₹ 72,000 (₹ 1,20,000 - (5% × 8 quarters × ₹ 1,20,000) shall be credited to the electronic credit ledger.</p> <p>Credit pertaining to tax period = ₹ 72,000 ÷ 60 = ₹ 1,200. Since 50% of the use is for making exempted supply, therefore 50% of the credit has to be paid and added to output tax liability.</p>	72,000	600
<p><b>Capital Goods E :</b> (Capital goods earlier used for taxable supplies are subsequently used for providing taxable and exempt supplies). Full Credit has been taken at the time of receipt of capital goods.</p> <p>Now payment is required to be made for exempted use. Balance credit shall be arrived at by reducing the input tax at the rate of 5% points for every quarter or part thereof i.e., ₹ 72,000 (₹ 1,80,000 - (5% × 12 quarters × ₹ 1,80,000).</p> <p>Credit pertaining to the tax period = ₹ 72,000 ÷ 60 = ₹ 1,200. Since 50% of the use is for making exempted supply, therefore 50% of the credit has to be paid and added to output tax liability.</p>	-	600
<b>Total</b>	<b>1,56,000</b>	<b>1,700</b>

**Illustration 25 - ITC on Capital goods used for taxable as well as exempted supply :** XYZ Pvt. Ltd. is a manufacturing company registered under GST in the State of Uttar Pradesh. It manufactures two taxable products 'Alpha' and 'Beta' and one exempt product 'Gama'. On 1<sup>st</sup> October 2019, while product 'Beta' got exempted through an exemption notification, exemption available on 'Gama' got withdrawn on the same date. The turnover (exclusive of taxes) of 'Alpha', 'Beta' and 'Gama' in the month of October, 2019 was ₹ 9,00,000, ₹ 10,00,000 and ₹ 6,00,000. XYZ Pvt. Ltd. has furnished the following details :

	Particulars	Price (₹)	GST (₹)
(a)	Machinery 'U' purchased on 01-10-2019 for being used in manufacturing all the three products	2,00,000	36,000
(b)	Machinery 'V' purchased on 01-10-2019 for being used in manufacturing product 'Alpha' and 'Gama'	1,00,000	18,000
(c)	Machinery 'W' purchased on 01-10-2019 for being exclusively used in manufacturing product 'Beta'	3,00,000	54,000
(d)	Machinery 'X' purchased on October 1, three years before 01-10-2019 for being exclusively used in manufacturing product 'Gama'. From 01-10-2019, such machinery will also be used for manufacturing product 'Beta'.	5,00,000	90,000
(e)	Machinery 'Y' purchased on October 1, four years before 01-10-2019 for being exclusively used in manufacturing product 'Beta'. From 01-10-2019, such machinery will also be used for manufacturing product 'Gama'.	4,00,000	72,000
(f)	Machinery 'Z' purchased on October 1, two years before 01-10-2019 for being used in manufacturing all the three products	3,00,000	54,000
(g)	Raw Material used for manufacturing 'Alpha' purchased on 05-10-2019	1,50,000	27,000
(h)	Raw Material used for manufacturing 'Beta' purchased on 10-10-2019	2,00,000	36,000
(i)	Raw Material used for manufacturing 'Gama' purchased on 15-10-2019	1,00,000	18,000

Compute the following for the month of October, 2019 :

- (i) Amount of input tax credit (ITC) credited to Electronic Credit Ledger
- (ii) Amount of common credit
- (iii) Common credit attributable to exempt supplies
- (iv) GST liability of the company payable through Electronic Cash Ledger

**Note:** Assume that all the procurements made by the company are from States other than Uttar Pradesh. Similarly, the company sells all its products in States other than Uttar Pradesh. Rate of IGST is 18%. All the conditions necessary for availing the ITC have been complied with. Ignore interest, if any and make suitable assumptions wherever required. (RTP May, 2019)

**Solution:** The relevant computation are as under --

	Particulars	ITC (₹)
(i)	<b>Computation of amount of ITC credited to Electronic Credit Ledger, for the month of October, 2019:</b>	
	(a) Machinery 'U' - 'A' [ITC in respect of capital goods used commonly for effecting taxable supplies and exempt supplies denoted as 'A' shall be credited to the electronic credit ledger [Rule 43(1)(c) of the CGST Rules, 2017].	36,000
	(b) Machinery 'V' [ITC in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be credited to the electronic credit ledger and shall be indicated in Form GSTR-3B ] [Rule 43(1)(b) of the CGST Rules, 2017].	18,000
	(c) Machinery 'W' [ITC in respect of capital goods used or intended to be used exclusively for effecting exempt supplies shall not be credited to electronic credit ledger and shall be indicated in Form GSTR-3B [Rule 43(1)(a) of the CGST Rules, 2017].	-
	(d) Machinery 'X' [Where any capital goods earlier used exclusively for effecting exempt supplies is subsequently also used for effecting taxable supplies, the value of 'A' shall be arrived at by reducing the ITC at the rate of 5% for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger. [Proviso to rule 43(1)(c) of the CGST Rules, 2017]. Thus, 'A' shall be computed as under – ₹90,000 – ₹54,000 (₹90,000 × 5% × 12 quarters)= ₹36,000]	36,000
	(e) Machinery 'Y' [This machine is being used for effecting both taxable and exempt supplies from 01-10-2019. Prior to that it was exclusively used for effecting taxable supplies. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.]	-
	(f) Machinery 'Z' [This machine is being used for effecting both taxable and exempt supplies from October 1, two years prior to 01-10-2019. Therefore, ITC in respect of such machinery would have already been credited to the electronic credit ledger.]	-
	(g) Raw Material used for manufacturing 'Alpha' [WN]	27,000
	(h) Raw Material used for manufacturing 'Beta' [WN]	-
	(i) Raw Material used for manufacturing 'Gama' [WN]	18,000
	<b>ITC credited to Electronic Credit Ledger, for the month of October, 2019</b>	<b>1,35,000</b>
(ii)	<b>Computation of common credit for the month of October, 2019 :</b>	
	(a) Value of 'A' for Machinery 'U' purchased on 01-10-2019	36,000
	(b) Value of 'A' for Machinery 'X' purchased 3 years before 01-10-2019 and used for effecting both taxable and exempt supplies from 01-10-2019	36,000
	(c) Value of 'A' for Machinery 'Y' purchased 4 years before 01-10-2019 and used for effecting both taxable and exempt supplies from 01-10-2019 [Where any capital goods earlier used exclusively for effecting taxable supplies is subsequently also used for effecting exempt supplies, the value of 'A' arrived at by reducing the input tax at the rate of 5% for every quarter or part thereof shall be added to the common credit (aggregate value 'T <sub>c</sub> ') [Proviso to rule 43(1)(d) of the CGST Rules, 2017]. Thus, 'A' shall be computed as under- = ₹72,000 – ₹57,600 (₹72,000 × 5% × 16 quarters) = ₹14,400]	14,400
	<b>Total common credit for the month of October, 2019 – T<sub>c</sub> [i.e. The aggregate of the amounts of 'A' credited to the electronic credit ledger, to be denoted as 'T<sub>c</sub>', shall be the common credit in respect of capital goods for a tax period.]</b>	<b>86,400</b>
(iii)	<b>Computation of common credit attributable to exempt supplies, for the month of October, 2019 :</b>	
	(a) ITC attributable to a month on common capital goods during their useful life - T <sub>m</sub> [ITC attributable to a month on common capital goods during their useful life (T <sub>m</sub> ) shall be computed in accordance with rule 43(1)(e) of CGST Rules, 2017 as under: = T <sub>c</sub> ÷ 60 = ₹86,400 ÷ 60]	1,440
	(b) ITC at the beginning of October, 2019 on all common capital goods whose useful life remains during the tax period - T <sub>r</sub> , i.e. [Useful life of capital goods used commonly for effecting taxable supplies and exempt supplies shall be taken as five years from the date of the invoice for such goods [Rule 43(1)(c) of the CGST Rules, 2017]. Machinery 'Z' is used commonly for effecting taxable and exempt supplies from October 1, two years before 01-10-2019. Hence, its useful life remains in the month of October 2019 and therefore, T <sub>r</sub> will be aggregate of T <sub>m</sub> (ITC pertaining to a month) for Machinery 'Z' and T <sub>m</sub> for other machineries computed above].	2,340



	$T_m$ for machinery 'Z' will be computed as under: $= ₹54,000 ÷ 60 = ₹900$ $T_r = T_m$ for machinery 'Z' + $T_m$ for other machineries $T_r = ₹900 + ₹1,440 = ₹2,340$	936
(c)	Common credit attributable to exempt supplies, for the month of October 2019 - $T_e$ $= T_r × \frac{\text{Turnover of exempt supplies during October 2019}}{\text{Total turnover of XYZ Pvt. Ltd. during October 2019}}$ $= 2,340 × \frac{10,00,000}{25,00,000}$	
(iv)	Common credit attributable to the exempt supplies ( $T_e$ ) along with the applicable interest (which is to be ignored in this case) shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit and delared in Form GSTR-3B [Rule 43(2)(h) of the CGST Rules, 2017]. Computation of GST liability of the company for October 2019 payable through Electronic Cash Ledger :	
	IGST payable on 'Alpha' [₹ 9,00,000 × 18%]	1,62,000
	IGST payable on 'Beta' [Exempt]	Nil
	IGST payable on 'Gama' [₹ 6,00,000 × 18%]	1,08,000
	<b>Total IGST payable on outward supply</b>	<b>2,70,000</b>
	Common credit attributable to exempt supplies for the month of October, 2019	936
	<b>Total output tax liability of October, 2019</b>	<b>2,70,936</b>
	Less: ITC available in the Electronic Credit Ledger	1,35,000
	<b>IGST payable from Electronic Cash Ledger</b>	<b>1,35,936</b>

**Working Note :** ITC in respect of inputs used for effecting taxable supplies will be credited in Electronic Credit Ledger. ITC in respect of inputs used for effecting exempt supplies will not be credited in the electronic credit ledger [Rule 42 of CGST Rules, 2017].

**Illustration 26 - ITC on Capital goods used for taxable as well as exempted supply :** With the help of information given below in respect of a manufacturer for the month of September, 2020, calculate eligible input tax credit for the month and also calculate the amount of ITC to be reversed in September, 2020 and October, 2020. There is no carry forward credit or reversal requirement. Only the current month's information is to be considered for calculation purposes.

Sl.No.	Particulars	Amount in ₹
1.	Outward supply of taxable goods	70,000
2.	Outward supply of exempted goods	40,000
	Total turnover	1,10,000
3.	Inward supplies	<b>GST paid (₹)</b>
	Capital goods purchased which are exclusively used for taxable outward supply	2,000
	Capital goods purchased which are exclusively used for exempted outward supply	1,800
	Capital goods purchased which are used for both taxable and exempted outward supply	4,200

(7 Marks, Nov. 2018-OS)

**Solution:** Computation of the amount to be credited to the electronic credit ledger and amount of common credit attributable towards exempted supplies, for the month of September, 2020 (amount in ₹) :

Particulars		Ineligible Credit	Amount to be credited to ECrL
Capital goods purchased which are exclusively used for exempted outward supply [Since exclusively used for exempt outward supply, ITC is not available under rule 43(1)(a) of CGST Rules, 2017]		1,800	
Capital goods purchased which are exclusively used for taxable outward supply [Since taxable supplies, full ITC is available]			2,000
Capital goods purchased which are used for both taxable and exempted outward supply [Commonly used for taxable and exempt supplies - Rule 43(1)(c) of the CGST Rules, 2017]	4,200		4,200
<b>Total common credit</b>	<b>4,200</b>		



Common credit for the tax period (in the given case, a month) under rule 43(1)(e) of CGST Rules, 2017 (₹ 4,200 ÷ 60)	70	
Common credit attributable to exempt supplies in September, 2020 u/r 43(1)(g) of the CGST Rules, 2017		25.45
= (Turnover of exempt supplies/Total turnover) × Common credit = (₹ 40,000/ ₹ 1,10,000) × ₹ 70		
[Such credit, along with the applicable interest, shall be added to the output tax liability of manufacturer]		
Amount to be credited to the electronic credit ledger of manufacturer for the month of September, 2020		6,200
Common credit attributable to exempt supplies in October, 2020 u/r 43(1)(g) of the CGST Rules, 2017 [Such credit, along with the applicable interest, shall be added to the output tax liability of manufacturer]		25.45

**CASE 1: Reversal before utilization amounts to non-availment of ITC :** M/s. Smart Ltd., manufacture certain excisable goods that are exempt from duty in terms of a notification provided Input tax credit of GST paid on input is not taken by the manufacturer. M/s. Smart Ltd., had taken the credit of tax paid on inputs, but reversed the same before its utilisation. The department denied the benefit of exemption on the ground that once the credit is taken, it is immaterial whether the same is reversed before or after utilisation of such credit. State briefly whether the action of the department is correct under the CGST, Act and Rules made thereunder with reference to decided case law if any. (5 Marks, May 2008)

**Ans:** The case is similar to **CCEx. v. Bombay Dyeing & Mfg. Co. Ltd. [2007] 215 ELT 3 (SC)**, wherein it was held by the Apex Court that since the entry for credit was reversed before utilizing the same, it would amount to not taking of credit. Hence, in view of this decision, M/s. Smart Ltd. is entitled to claim the benefit of exemption notification and thus the Department's action is not correct.

**Illustration 27 - Refund :** Ascertain whether the refund of GST paid on input services can be claimed in the following case (Applicable GST rate - 18%) :

- (1) Total credit of GST on input services ₹ 5,400.
- (2) Total turnover of output service ₹ 30,000.
- (3) Output service exported ₹ 20,000 without payment of IGST. (Modified 4 Marks, May 2016/Nov. 2009)

**Solution:** The relevant computations are shown below (amount in ₹)-

Total turnover of output service (Export services + Domestic Services)	30,000
Less: Output services exported	20,000
<b>Value of taxable supply</b>	<b>10,000</b>
GST thereon @ 18% (₹10,000 × 18%)	1,800
Less: ITC credit utilised against the aforesaid sum (₹5,400 but restricted to ₹1,800)	1,800
<b>GST to be deposited in cash</b>	<b>Nil</b>
Total ITC available on input services	5,400
<b>Balance of ITC</b>	<b>3,600</b>

However, as per Rule 89(4) of CGST Rules, 2017, the refund shall be -

$$\text{Maximum Refund} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

$$\text{Maximum Refund} = \frac{₹ 20,000}{₹ 30,000} \times ₹ 5,400$$

*i.e. ₹3,600*

Hence, the amount of refund admissible shall be ₹ 3,600.

**Illustration 28 - ITC & Refund under Rule 89 :** U&V Ltd. manufactures 10,000 units of Product 'W', taxable value of which is ₹ 400 per unit. GST payable is 12%. GST paid on raw material is ₹ 3,00,000. U&V Ltd. sells 2,000 units in India and 8,000 units are exported without payment of IGST. What is ITC available and what is the tax payable through Electronic cash ledger ?

Can U&V Ltd. get any refund of Input tax credit ? (Modified CS June 2004)

**Solution:** The relevant computations are shown below (amount in ₹) –

Input tax Credit taken on raw-materials	3,00,000
Assessable value of goods sold in India [2,000 units × ₹400 per unit]	8,00,000
GST on value of goods sold in India @ 12% [₹8,00,000 × 12%]	96,000
Less: Input tax credit utilised against the aforesaid sum	96,000
<b>GST payable in cash</b>	<b>Nil</b>
Balance in Electronic credit ledger	2,04,000
Export Turnover [8,000 units × ₹400 per unit]	32,00,000

However, as per Rule 89(4) of CGST Rules, 2017, the refund shall be –

$$\text{Maximum Refund} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

$$\text{Maximum Refund} = \frac{32,00,000}{40,00,000} \times ₹3,00,000$$

*i.e.* ₹ 2,40,000

Hence, the maximum amount of refund admissible shall be ₹ 2,40,000

Since the balance lying in Electronic Credit ledger is lower than the amount computed as per the formula above, hence, the refund shall be the balance lying *i.e.* ₹ 2,04,000.

**T.Q. 5 : Supplies to SEZ unit – Zero-rated – ITC reversal not required :** A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of BMT Ltd. wants to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.

**Ans:** Under section 16(2) of the IGST Act, credit of input tax is allowed to be taken for inward supplies used to make zero rated supplies. Under section 17 of the CGST Act also, ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of section 16(1) of IGST Act. Thus, full ITC is allowed on inward supplies of BMT Ltd. used for effecting supplies to the unit in the SEZ.

**Illustration 29 – ITC available on opting out of Composition Scheme :** XYZ Traders paying tax under composition scheme crosses the threshold and becomes liable to pay tax under regular scheme on 01-02-2020. Can it avail Input tax credit and if so calculate the amount of ITC available?

Break-up of credit available with XYZ Traders as on 31-01-2020 :

Particulars	CGST (₹)	SGST (₹)
Inputs lying in stock (invoice dated 18-01-2020)	4,200	4,200
Capital goods procured on 25-11-2019 invoice dated 22-11-2019	12,300	12,300
Inputs lying in semi finished goods in stock (Invoice dated 14-12-2019)	6,300	6,300

**Solution:** As per Section 18(1)(c), where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax u/s 9.

Therefore, in given case, XYZ traders shall be entitled from 01-02-2020 to avail credit available as on 31-01-2020.

As per Rule 40 of the CGST Rules, 2017, the capital goods credit can be claimed after reducing the tax paid on such capital goods by 5% points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person.

**Input tax credit available to XYZ Traders in respect of inputs (amount in ₹):**

Particulars	Input Tax (CGST + SGST)	Eligible Credit
Inputs lying in stock	8,400	8,400
Inputs lying in semi finished goods in stock (Invoice dated 14-12-2019)	12,600	12,600
<b>Total Input tax credit available</b>	<b>21,000</b>	<b>21,000</b>

**Input tax credit available to XYZ Traders in respect of capital goods (amount in ₹) :**

Date of invoice of capital goods	22-11-2019
Date from which XYZ traders are liable to pay tax under Section 9	01-02-2020
No. of quarters from date of invoice	2
CGST and SGST paid on capital goods procured on 25-11-2019	24,600
ITC to be reduced by ₹ 24,600 × 5% × 2 quarters [WN-2]	2,460
<b>Credit (CGST and SGST) available on capital goods</b>	<b>22,140</b>

**Working Notes:**

- As per Section 2(92), "quarter" shall mean a period comprising 3 consecutive calendar months, ending on the last day of March, June, September and December of a calendar year.
- Input tax credit on capital goods will be reduced by 5% per quarter of a year or part thereof from the date of invoice.

**Illustration 30 - Computation of ITC when exempt supply become Taxable supply :** M/s. PQR a registered dealer engaged in supplying exempted goods to its customers. On 03-08-2020, exemption notification was rescinded and goods were liable for tax. M/s. PQR has to make e-payment of tax on the due date i.e., on 20-09-2020. Determine the eligible credit for the month of August, 2020 if the following information is provided :

Particulars	Value (exclusive of CGST/SGST/IGST) (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Inputs lying in stock as on 02-08-2020. All inputs were procured after 22-12-2019	3,80,000	-	-	68,400
Inputs contained in semi-finished goods lying in stock as on 02-08-2020 but only inputs worth ₹ 1,26,000 in semi-finished goods were procured after 02-08-2019	2,74,000	24,660	24,660	-
Inputs received on 28-07-2020 lying in finished goods in stock on 02-08-2020	96,000	8,640	8,640	-
Capital goods procured in 10-12-2019 which is exclusively used in supplying exempted goods	12,00,000	-	-	2,16,000

**Solution:** As per Section 18(1)(d), where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

As per Rule 40(1)(a) of CGST Rules, 2017, the input tax credit on capital goods, shall be claimed after reducing the tax paid on such capital goods by 5% points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person.

**Computation of Input tax credit relating to CGST/SGST/IGST available to M/s. PQR in respect of inputs and capital goods will be as follows :**

Particulars	CGST (₹)	SGST (₹)	IGST (₹)	Total Eligible Credit (₹)
ITC on the value of inputs lying in stock [Since all inputs were acquired within 1 year prior to the effective date on which the goods became taxable, hence, entire ITC would be allowed.]	-	-	68,400	68,400
ITC on the value of inputs contained in semi-finished goods [WN-1]	11,340	11,340	-	22,680
ITC on value of inputs lying in stock of finished goods stock [Inputs received on 28-07-2020 lying in finished goods in stock on 02-08-2020 as all inputs were acquired within 1 year prior to the effective date on which the goods become taxable, therefore, entire ITC would be allowed]	8,640	8,640	-	17,280
Credit (IGST) available on capital goods [WN-2]	-	-	1,72,800	1,72,800
<b>Total Input tax credit available</b>	<b>19,980</b>	<b>19,980</b>	<b>2,41,200</b>	<b>2,81,160</b>

**Working Notes:**

- (1) **ITC on the value of inputs contained in semi-finished goods** - Out of the total stock of ₹ 2,74,000, inputs totaling to ₹ 1,48,000 are older than 1 year from the effective date on which the goods became taxable. Therefore, ITC to this extent stands disallowed. ITC on inputs contained in stock of ₹ 1,26,000 would be eligible. [Eligible credit = ₹ 24,660 × ₹ 1,26,000 ÷ ₹ 2,74,000 each in respect of CGST and SGST]
- (2) **Credit available in respect of capital goods (amount in ₹) :**

Date of invoice of capital goods	10-12-2019
Date from which the exempt goods become taxable	03-08-2020
No. of quarters or part thereof from date of invoice	4
Percentage points to be reduced (5% per quarter)	20%
IGST paid on the capital goods used exclusively in relation to goods exempted up to 02-08-2020	2,16,000
ITC to be reduced by 20%	43,200
<b>Amount of Input tax credit available in respect of capital goods</b>	<b>1,72,800</b>

**Note :** As per Section 2(92), "quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year.

**Illustration 31 - Computation of ITC one voluntary registration :** Quanto Ltd. is not required to register under CGST Act, 2017 but it wishes to obtain voluntary registration, so it applied for voluntary registration on 17<sup>th</sup> September, 2020 and registration certificate has been granted to it on 25<sup>th</sup> September, 2020. The CGST and SGST liability for the month of September, 2020 is ₹ 24,000 each.

Quanto Ltd. provides the following information of inputs and capital goods held in stock on 24<sup>th</sup> September, 2020. It is not engaged in making Interstate outward taxable supplies.

Particulars	₹
Input procured on 02-09-2020 lying in stock	
- CGST @ 6%	4,500
- SGST @ 6%	4,500
Input received on 21-07-2020 contained in semi-finished goods held in stock :	
- CGST @ 6%	7,500
- SGST @ 6%	7,500
Value of inputs contained in finished goods held in stock ₹ 2,00,000 were procured on 19-09-2019	
- IGST @ 18%	36,000
Inputs valued at ₹ 50,000 procured on 13-09-2020 lying in stock :	
- IGST @ 18%	9,000
Capital goods procured on 12-09-2020	
- CGST @ 6%	12,000
- SGST @ 6%	

You are required to compute the amount of tax to be paid in cash by Quanto Ltd. for the month of September, 2020.

You are also required to mention reasons for treatment of all above items. (10 Marks, Nov. 2018-OS)

**Solution:** As per Section 18(1)(b), in case of a person obtaining voluntary registration he shall be entitled to take credit of input tax in respect of input held in stock, or contained in semi finished or finished goods in stock on date immediately preceding the date of grant of registration i.e., 24<sup>th</sup> September, 2020.

A registered person shall not be entitled to take input tax credit in respect of any supply of goods or services or both to him after the expiry of 1 year from the date of issue of tax invoice relating to such supply. [Section 18(2)]

**In view of the above provision eligible ITC available to Quanto Ltd. will be computed as follows (amount in ₹) -**

Particulars	CGST @ 6%	SGST @ 6%	IGST @ 18%
Input procured on 02-09-2020 lying in stock on 24 <sup>th</sup> September, 2020	4,500	4,500	-
Input Received on 21-07-2020 contained in semi Finished goods held in stock on 24 <sup>th</sup> September, 2020	7,500	7,500	-
Inputs valued ₹ 2,00,000 contained in finished goods held in stock on 24 <sup>th</sup> September, 2020 [WN-1]	-	-	-
Inputs valued ₹ 50,000 procured on 13-09-2020 lying in stock	-	-	9,000
Capital Goods procured on 12-09-2020 [WN-2]	-	-	-
<b>Total amount of CGST/SGST/IGST credit eligible on inputs</b>	<b>12,000</b>	<b>12,000</b>	<b>9,000</b>

## Computation of Tax payable in cash by Quanto Ltd. for the month of September, 2020 (amount in ₹) :

Particulars	CGST	SGST
Output tax liability for September, 2020	24,000	24,000
Less: Eligible input tax Credit available on inputs in respect of --		
CGST	12,000	-
SGST	-	12,000
IGST [WN-3]	9,000	-
<b>CGST/SGST payable in Cash</b>	<b>3,000</b>	<b>12,000</b>

## Working Notes :

- (1) Since Inputs of value of ₹ 2,00,000 has been purchased on 19-09-2019 invoice for same has been issued on 19-09-2019 hence one year has been elapsed on 18<sup>th</sup> September, 2020 from date of issue of invoice so no input tax credit shall be admissible in respect of said input.
- (2) There is no provision under Section 18(1)(b) to take input tax credit of capital goods lying in stock by the person who obtains voluntary registration.
- (3) As per Section 49A and 49B read with Rule 88A of the CGST Rules, 2017, credit of Integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in any order. Since Quanto Ltd. is not engaged in inter state outward supplies, therefore, the IGST credit is utilised towards payment of CGST first.

**Illustration 32 - ITC implication when Capital goods are supplied after use :** OPQ Ltd. purchased a pollution control equipment for ₹ 17,70,000 which is inclusive of GST at 18%. The equipment was purchased on 01-10-2019 and was disposed of as second hand equipment on 25-09-2020 for a price of ₹ 11,50,000. The GST rate on the date of disposal was 18%. You are required to calculate the amount payable on disposal of the equipment.

**Solution:** As per Section 18(6) of the CGST Act read with Rule 40(2) of CGST Rules, 2017, in case of supply of capital goods, on which input tax credit has been taken, the registered person shall pay an amount --

- (1) equal to the input tax credit taken on the said capital goods reduced by an amount calculated @ 5% for every quarter or part thereof from the date of issue of invoice for such goods; or
- (2) the tax on the transaction value of such capital goods or plant and machinery determined under Section 15, whichever is higher.

## Computation of amount of tax payable by OPQ Ltd. (amount in ₹):

Date of Invoice of purchase of capital goods	01-10-2019
Date of Supply of capital goods after taking into use	25-09-2020
No. of Quarters from the date of issue of invoice for such goods	4
CGST and SGST paid on purchase of Capital Goods [₹ 17,70,000 × 18 ÷ 118]	2,70,000
Reduced by ₹ 2,70,000 × 5% × 4 quarters	54,000
<b>Amount of CGST and SGST</b>	<b>[A] 2,16,000</b>
Transaction Value on supply of Capital Goods u/s 15	11,50,000
CGST and SGST payable on supply of Capital Goods @ 18%	<b>[B] 2,07,000</b>
<b>Amount to be payable (Higher of A or B)</b>	<b>2,16,000</b>

**Illustration 33 - ITC implication in case of job work :** On 25<sup>th</sup> August, 2019, M/s Agarwal & Agarwal Ltd., a registered supplier of textile products located in Bengaluru (Karnataka) purchased one machine for ₹ 12,39,000 including IGST, from one supplier of Maharashtra who issued invoice on the same date. M/s. Agarwal & Agarwal Ltd. put the machinery to use on the same day and availed input tax credit for the eligible amount.

M/s. Agarwal & Agarwal Ltd. sold this machine after using the machine in the process of manufacture of taxable goods for ₹ 7,50,000 excluding IGST, to Mr. Suresh Kumar of Andhra Pradesh on 20<sup>th</sup> August 2020.

During purchase as well as sale of the machinery, the IGST rate applicable was 18%.

Is M/s. Agarwal & Agarwal Ltd., required to pay GST? If yes, calculate the amount of tax payable under GST Laws at the time of sale of the machine. Also briefly state the relevant statutory provisions.

**Note :** Assume that there was no change in legal position after August, 2019. (5 Marks, Nov. 2019-NS)

**Solution:** As per Section 18(6) of the CGST Act read with Rule 40(2) of CGST Rules, 2017, in case of supply of capital goods, on which input tax credit has been taken, the registered person shall pay an amount --

- equal to the input tax credit taken on the said capital goods reduced by an amount calculated @ 5% for every quarter or part thereof from the date of issue of invoice for such goods; or
- the tax on the transaction value of such capital goods or plant and machinery determined under Section 15, whichever is higher.

**Computation of amount of tax payable by M/s. Agarwal & Agarwal Ltd. (amount in ₹) :**

Date of Invoice of purchase of capital goods		25-08-2019
Date of Supply of capital goods after taking into use		20-08-2020
No. of Quarters from the date of issue of invoice for such goods		5
IGST paid on purchase of Capital Goods [₹ 12,39,000 × 18 ÷ 118]		1,89,000
Reduced by ₹ 1,89,000 × 5% × 5 quarters		47,250
<b>Amount of IGST</b>	<b>[A]</b>	<b>1,41,750</b>
Transaction Value on supply of Capital Goods u/s 15		7,50,000
IGST payable on supply of Capital Goods @ 18%	<b>[B]</b>	<b>1,35,000</b>
<b>Amount to be payable (higher of A or B)</b>		<b>1,41,750</b>

**Illustration 34 – ITC implication in case of job work :** XYZ Manufacturers availed input tax credit of the CGST and SGST of ₹ 48,000 paid on those inputs. On 28-08-2019 it sent the inputs to a job worker outside its factory for carrying out finishing work on the inputs and same were received by the Job worker on 01-09-2019.

The job worker returned the inputs on 20-09-2020 after carrying out the finishing work on the inputs.

- (i) Discuss whether XYZ Manufacturers is eligible to retain the Input tax credit availed by them on inputs.
- (ii) What would your answer be, if such inputs are received back from the Job worker on 06-07-2020.

**Solution:** As per Section 19(3) of CGST Act, 2017, if any inputs are sent to a job worker for further processing and are received back in the factory **within 1 year** of their being sent to a job worker, input tax credit in respect of such inputs is allowed to the manufacturer. However, if the inputs are not received back within 1 year, then it shall be deemed that inputs are supplied to job worker on the day when inputs are sent out.

Manufacturer shall pay an amount equivalent to the input tax credit attributable to the inputs by debiting the Electronic credit ledger. Manufacturer can take the credit again when the inputs are received back in his factory.

- (i) In the given case, the goods sent on 28-08-2019 should have been received back latest by 28-08-2020. Here, since the inputs have not been received back from the job worker within 1 year, it will be deemed that inputs have been supplied by Manufacturers to job worker on the day when they were sent to job worker *i.e.* on 28-08-2019.

So XYZ Manufacturer is required to pay tax on such deemed supply of inputs *i.e.*, ₹ 48,000 for CGST and ₹ 48,000 for SGST along-with interest @ 18% p.a. for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability.

- (ii) In case Input were received back from job worker on 06-07-2020. XYZ Manufacturer is not required to pay any amount as the input have been received back within 1 year.

**Illustration 35 – Distribution of credit by ISD :** XYZ Ltd. has following units :

- (1) Factory in Alwar, Rajasthan; closed from 2019-20 onwards, no turnover.
- (2) Factory in Pali, Rajasthan; turnover of ₹ 54 crores in 2019-20;
- (3) Service centre in Indore, Madhya Pradesh; turnover of ₹ 2 crore in 2019-20;
- (4) Service centre in Surat, Gujarat; turnover of ₹ 4 crores in 2019-20;

XYZ Ltd.'s corporate office functions as ISD. It has to distribute ITC of ₹ 12 lakh for December, 2020. Of this, an invoice involving tax of ₹ 6 lakh pertains to technical consultancy for Pali unit.

What should be the distribution of the credit?

**Solution:** As per Rule 39(d) of CGST Rules relating to ITC, –

- ₹ 6 lakh is attributable to Pali unit, and will be transferred to Pali unit only.
- Of the remaining ₹ 6 lakh, Alwar unit will not be entitled to any credit as ITC is distributed to only those recipients which supply goods and /or services.
- ₹ 6 lakh have to be distributed among Pali unit and the service centres in Indore and Surat in proportion of their turnover in the previous Financial Year, that is, in 2019-20.



Particulars	Alwar	Pali	Indore	Surat
Turnover in FY 2019-20	-	₹ 54 crore	₹ 2 crore	₹ 4 crore
ITC ₹ 6,00,000 (to be distributed on basis of turnover of operational units)	-	5,40,000 [(₹ 54 crore/₹ 60 crore) × 6 lakh]	20,000 [(₹ 2 crore/₹ 60 crore) × ₹ 6 lakh]	40,000 [(₹ 4 crore/₹ 60 crore) × ₹ 6 lakh]

**Illustration 36 - Computation of credit distributable by ISD :** PQR Ltd. a registered supplier of goods having Head Office at Rajasthan, also registered as Input Service Distributor (ISD), furnishes the following information for month of November, 2020 and asks you to distribute the credit to various units :

Input Service	Particulars	CGST (₹)	SGST (₹)	IGST (₹)	Total (₹)
"M"	Used in Unit - I (Input service "M" is availed for employee on vacation during the month to its Unit I)	1,500	1,500	-	3,000
"N"	Used in Unit - II	18,000	18,000	-	36,000
"O"	Used in Unit - I, II, and III	-	-	46,000	46,000
"P"	Used in Unit - I, II, III and IV	2,100	2,100	-	4,200
<b>Total Amount of Credit</b>		<b>21,600</b>	<b>21,600</b>	<b>46,000</b>	

**Total Turnover of the units for the year ending 31<sup>st</sup> March, 2020 are as under:**

	(₹)
Unit - I	35,00,000
Unit - II	50,00,000
Not registered as exclusively engaged in supply of exempt goods	
Unit - III	45,00,000
Unit - IV	85,00,000
<b>Total Turnover of XYZ Ltd.</b>	<b>2,15,00,000</b>

All units are operational during the current year. Unit I is located in Rajasthan whereas units II, III and IV are located in Delhi, Gujarat and Mumbai respectively.

Compute credit attributable to each of the units in the month of November 2020.

**Solution:** Computation of Input tax credit to be distributed for month of November 2020 to various units as per Rule 39 of the CGST Rules, 2017 (amounts in ₹) :

Particulars	Total Credit available				Unit : I				Unit : II	Unit : III	Unit : IV
	CGST	SGST	IGST	Total	Credit to be distributed as :						
					CGST	SGST	IGST	IGST	IGST	IGST	
Input Service "M" (ineligible ITC) [WN]	1,500	1,500	-	3,000	1,500	1,500	-	-	-	-	
Input Service "N"	18,000	18,000	-	36,000	-	-	-	36,000	-	-	
Input Service "O"	-	-	46,000	46,000	-	-	12,385	17,692	15,923	-	
Input Service "P"	2,100	2,100	-	4,200	342	342	-	977	879	1,660	
<b>Total credit distributed</b>	<b>21,600</b>	<b>21,600</b>	<b>46,000</b>	<b>89,200</b>	<b>1,842</b>	<b>1,842</b>	<b>12,385</b>	<b>54,669</b>	<b>16,802</b>	<b>1,660</b>	

**Working Note:** Given that the service availed for employee on traveling during the month would not be eligible input services under Section 17(5), the taxes relating to Invoice "M" should be distributed as ineligible input tax (₹ 1,500 + ₹ 1,500), and the distribution must be done separately for CGST and SGST. Since the service is wholly attributable to Unit I, hence distributed only to such unit.

**Note:** The 'turnover in State' is arrived at a value for the 'relevant period'. Since all the 4 units were operational during the preceding financial year, the relevant period would be the preceding financial year.

**Illustration 37 - Computation of credit distributable by ISD :** Sarani Weavers at Mumbai is an input service distributor and intends to distribute input tax credit u/s 20 of the CGST Act, 2017, for the month of March 2020. The following are the details available for such distribution:

Branch	Turnover of the last quarter (₹)	ITC specifically applicable to the branch
Ganganagar Branch	10,00,000	IGST - ₹ 12,000 CGST - ₹ 3,000 SGST - ₹ 3,000

Madhugiri Branch	5,00,000	Nil
Kosala Branch	15,00,000	Nil
Mumbai HO	20,00,000	IGST - ₹ 1,50,000 CGST - ₹ 15,000 SGST - ₹ 15,000

Inputs/Input services used commonly by all branches against which ITC available is :

- CGST - ₹ 60,000
- SGST - ₹ 60,000
- IGST - ₹ 1,20,000

ITC (IGST) of December 2019, ₹ 10,000 which was inadvertently left out, whether same can be considered for distribution in March, 2020.

Madhugiri branch uses inputs to manufacture exempted products.

All branches are outside Maharashtra. Turnover excludes duties & taxes payable to Central and State Government.

Determine the input tax distribution. (4 Marks, May 2018)

**Solution: Computation of Input tax credit to be distributed for month of March, 2020 to various units as per Rule 39 of the CGST Rules, 2017 (amounts in ₹) :**

Particulars	Credit to be distributed as :				
	Total Credit available	Mumbai HO	Ganganagar Branch	Madhugiri Branch	Kosala Branch
Turnover	50,00,000	20,00,000	10,00,000	5,00,000	15,00,000
ITC specifically attributable to Ganganagar Branch [WN-1]	CGST 3,000	-	3000	IGST	
	SGST 3,000	-	3000	IGST	
	IGST 12,000	-	12,000	IGST	
ITC Specifically attributable to Mumbai HO [WN-2]	CGST 15,000	15,000	-	-	
	SGST 15,000	15,000	-	-	
	IGST 1,50,000	1,50,000	-	-	
Input and Input services used commonly by all branches [WN-3]	CGST 60,000	24,000	12,000	IGST 6,000	IGST 18,000
	SGST 60,000	24,000	12,000	IGST 6,000	IGST 18,000
	IGST 1,20,000	48,000	24,000	IGST 12,000	IGST 36,000
<b>Total credit distributed</b>	<b>4,38,000</b>	<b>2,76,000</b>	<b>66,000</b>	<b>24,000</b>	<b>72,000</b>

**Working Notes:**

- (1) The credit of input tax attributable as input service to a particular unit shall be distributed only to that unit. ITC of CGST and SGST to be distributed as IGST if recipient is in different State.
- (2) The ITC on account of IGST shall be distributed as input tax credit of IGST to every recipient. ITC of CGST and SGST/ UTGST to be distributed as CGST and SGST/ UTGST respectively if recipient is in same State.
- (3) 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.
- (4) The credit will be distributed to Madhugiri branch also even if it uses inputs for manufacture of exempted goods. However, it will not be eligible to utilise the credit.

As per Rule 39(1)(a), the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6. Thus, input tax credit available for distribution for the month of December, 2019 cannot be distributed in the month of March, 2020.

**Illustration 38 - Computation of GST Liability:** Mr. NY, a supplier of goods pays GST under regular scheme. Mr. NY is not eligible for any threshold exemption. He has made the following outward taxable supplies during September 2019:

Particulars	Rate of Tax			Amount (₹)
	CGST	SGST	IGST	
Intra State Supply of goods				
Product A	6%	6%	-	8,00,000
Product B	9%	9%	-	2,00,000
Inter State Supply of goods				
Product A	-	-	12%	3,00,000
Product B	-	-	18%	1,50,000

He has also furnished the following information in respect of supplies received by him during September 2019 :

Particulars	Rate of Tax			Amount (₹)
	CGST	SGST	IGST	
Intra State Supply of goods				
Product A	6%	6%	-	2,00,000
Product B	9%	9%	-	1,00,000
Inter State Supply of goods				
Product A	-	-	12%	1,50,000
Product B	-	-	18%	80,000

Mr. NY has following ITCs with him at the beginning of September 2019 :

Particulars	₹
➤ CGST	40,000
➤ SGST	28,000
➤ IGST	44,600

Note :

(i) Both inward and outward supplies are exclusive of taxes, wherever applicable.

(ii) All the conditions necessary for availing the ITC have been fulfilled.

Compute net GST payable by Mr. NY for the Month of September 2019.

Make suitable assumptions wherever required. (5 Marks, May 2018)

**Solution: Computation of net GST payable (amount in ₹):**

Particulars	CGST	SGST	IGST
<b>Output tax liability</b>			
<b>Inter-State Sale:</b>			
Product A : ₹ 3,00,000 [IGST leviable @ 12%]	-	-	36,000
Product B : ₹ 1,50,000 [IGST leviable @ 18%]	-	-	27,000
<b>Intra-State Sale:</b>			
Product A : ₹ 8,00,000 [CGST and SGST leviable @ 6%]	48,000	48,000	-
Product B : ₹ 2,00,000 [CGST and SGST leviable @ 9%]	18,000	18,000	-
<b>Total output tax liability</b>	<b>66,000</b>	<b>66,000</b>	<b>63,000</b>
<b>Less: Input tax credit –</b>			
<b>Opening balance</b>	<b>40,000</b>	<b>28,000</b>	<b>44,600</b>
<b>Purchases during the month</b>			
<b>Intra-State purchases:</b>			
Product A : ₹ 2,00,000 [CGST and SGST leviable @ 6%]	12,000	12,000	
Product B : ₹ 1,00,000 [CGST and SGST leviable @ 9%]	9,000	9,000	
<b>Inter-State purchases :</b>			
Product A : ₹ 1,50,000 [IGST leviable @ 12%]			18,000
Product B : ₹ 80,000 [IGST leviable @ 18%]			14,400
<b>Total Input tax credit</b>	<b>61,000</b>	<b>49,000</b>	<b>77,000</b>
<b>Less: Extra credit of IGST can be used for payment of CGST/SGST [WN]</b>	<b>5,000</b>	<b>9,000</b>	<b>-14,000</b>
<b>Net amount of CGST/SGST/IGST payable in cash</b>	<b>Nil</b>	<b>8,000</b>	<b>Nil</b>
<b>Net amount of CGST/IGST credit to be carried forward</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>

**Working Note :** IGST credit can be utilised for payment of CGST/SGST in any order.

**Illustration 39 – Computation of GST Liability :** Tirupati Traders, a registered supplier of goods, pays GST [CGST & SGST or IGST, as the case may be] under regular scheme. It has furnished the following particulars for a tax period:-

Particulars	₹
Value of intra-State supply of goods	12,000
Value of intra-State purchase of goods	10,000

Note:

- Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively.
- Both inward and outward supplies are exclusive of taxes, wherever applicable.
- All the conditions necessary for availing the input tax credit have been fulfilled.

Compute the net GST payable by Tirupati Traders during the given tax period assuming that there is no opening balance of input tax credit (ITC). Make suitable assumptions wherever required. (RTP May, 2018)

**Solution: Computation of net GST payable (amount in ₹):**

Particulars	CGST @ 9%	SGST @ 9%
GST payable on intra-State supply of goods [Being an intra-State supply, CGST and SGST is payable on the same]	1,080 (₹ 12,000 × 9%)	1,080 (₹ 12,000 × 9%)
<b>Less:</b> Input tax credit (ITC) on intra-State purchase of goods [CGST and SGST paid on the intra-State purchases of goods]	900 (₹ 10,000 × 9%)	900 (₹ 10,000 × 9%)
<b>Net GST payable</b>	<b>180</b>	<b>180</b>

**Illustration 40 – Computation of GST Liability :** Govind, a registered supplier, is engaged in providing services in the neighbouring States from his registered office located in Mumbai. He has furnished the following details in respect of the inward and outward supplies made during a tax period:-

Particulars	₹
Inter-State supply of services	1,80,000
Receipt of goods and services within the State	1,00,000

Assume the rates of taxes to be as under:-

Particulars	Rate of tax
Central tax (CGST)	9%
State tax (SGST)	9%
Integrated tax	18%

(RTP May, 2018)

**Note:** (a) Both inward and outward supplies are exclusive of taxes, wherever applicable. (b) All the conditions necessary for availing the input tax credit have been fulfilled.

Compute the net GST payable by Govind during the given tax period. Make suitable assumptions if required.

**Solution: Computation of net GST payable by Govind (amount in ₹):**

IGST @ 18% payable on inter-State supply of services [Being an inter-State supply, IGST is payable on the same in terms of section 5 of the IGST Act, 2017] [₹ 1,80,000 × 18%]	32,400
<b>Less:</b> ITC of CGST @ 9% paid on intra-State receipt of goods and services [Cross utilisation of CGST towards IGST] [₹ 1,00,000 × 9%]	9,000
<b>Less:</b> ITC of SGST @ 9% paid on intra-State receipt of goods and services [Cross utilisation of SGST towards IGST] [₹ 1,00,000 × 9%]	9,000
<b>Net GST payable in cash</b>	<b>14,400</b>

**Working Notes :**

- (1) CGST shall first be utilised towards payment of CGST and the amount remaining, if any, be utilised towards the payment of IGST [Section 49, 49A and 49B read with Rule 88A of the CGST Rules, 2017].
- (2) SGST shall first be utilised towards payment of SGST and the amount remaining, if any, may be utilised towards the payment of IGST [Section 49, 49A and 49B read with Rule 88A of the CGST Rules, 2017].

**Illustration 41 – Computation of GST Payable :** Shipra Traders is a registered supplier of goods in Assam. It purchased goods valued at ₹ 10,000 from Kartik Suppliers located within the same State. Kartik Suppliers charged CGST & SGST separately in its invoice. Subsequently, Shipra Traders sold goods valuing ₹ 9,500 to Rabina Manufacturers located in Assam. 20% of the inputs purchased are still lying in stock and there was no opening stock of goods. Rate of CGST and SGST on supply and purchase of goods is 9% each. Calculate the net GST payable by Shipra Traders and input tax credit (ITC) to be carried forward, if any. (RTP May, 2018)

**Solution: Computation of net GST payable by Shipra Traders (amount in ₹):**

Particulars	CGST @ 9%	SGST @ 9%
GST payable on intra-State supply of goods [Being an intra-State supply, CGST and SGST is payable on the same]	855 (₹ 9,500 × 9%)	855 (₹ 9,500 × 9%)
<b>Less:</b> ITC on intra-State purchase of goods [ITC of CGST and SGST paid on intra-State purchase is available in full, even if some inputs are lying in stock]	900 (₹ 10,000 × 9%)	900 (₹ 10,000 × 9%)
<b>Net GST payable</b>	<b>Nil</b>	<b>Nil</b>
<b>Input tax credit carried forward in Electronic Credit Ledger</b>	<b>45</b>	<b>45</b>

**Illustration 42 – Computation of GST Liability :** Mr. Solanki, a supplier of goods, pays GST under regular scheme. Mr. Solanki is not eligible for any threshold exemption. He has made the following outward taxable supplies in a tax period:

Particulars	₹
Intra-State supply of goods	25,00,000
Inter-State supply of goods	8,00,000

He has also furnished the following information in respect of purchases made by him in that tax period:

Particulars	₹
Intra-State purchases of goods	14,20,000
Inter-State purchases of goods	5,80,000

Mr. Solanki has following ITCs with him at the beginning of the tax period:

Particulars	₹
CGST	25,200
SGST	25,200
IGST	50,400

**Note :**

- Rate of CGST, SGST and IGST to be 6%, 6% and 12% respectively.
- Both inward and outward supplies are exclusive of taxes, wherever applicable.
- All the conditions necessary for availing the ITC have been fulfilled.

Compute the net GST payable by Mr. Solanki during the tax period. Make suitable assumptions as required.

**Solution: Computation of GST payable by Mr. Solanki on outward supplies (amount in ₹) –**

(i)	Intra-State supply of goods		
	CGST @ 6% on ₹ 25,00,000	1,50,000	
	SGST @ 6% on ₹ 25,00,000	1,50,000	3,00,000
(ii)	Inter-State supply of goods		
	IGST @ 12% on ₹ 8,00,000		96,000
	<b>Total GST payable</b>		<b>3,96,000</b>

**Computation of total ITC :**

Particulars	CGST @ 6% (₹)	SGST @ 6% (₹)	IGST @ 12% (₹)
Opening ITC	25,200	25,200	50,400
Add: ITC on Intra-State purchases of goods valuing ₹ 14,20,000	85,200	85,200	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 5,80,000	Nil	Nil	69,600
<b>Total ITC</b>	<b>1,10,400</b>	<b>1,10,400</b>	<b>1,20,000</b>

**Computation of GST payable from cash ledger :**

Particulars	CGST @ 6% (₹)	SGST @ 6% (₹)	IGST @ 12% (₹)
GST payable	1,50,000	1,50,000	96,000
Less: ITC	1,10,400	1,10,400	96,000
Balance of IGST credit i.e. ₹ (1,20,000 - 96,000) to be utilised for payment of CGST and SGST in any order. (IGST credit of ₹ 24,000 is utilised for payment of CGST)	24,000	-	-
<b>GST payable from cash ledger</b>	<b>15,600</b>	<b>39,600</b>	<b>Nil</b>

**Illustration 43 – Computation of GST Liability :** Power Engineering Pvt. Ltd., a registered supplier, is engaged in providing expert maintenance and repair services for large power plants that are in the nature of immovable property, situated all over India. The company has its Head Office at Bangalore, Karnataka and branch offices in other States. The work is done in the following manner.

- The company has self-contained mobile workshops, which are container trucks fitted out for carrying out the repairs. The trucks are equipped with items like repair equipments, consumables, tools, parts etc. to handle a wide variety of repair work.



- The truck is sent to the client location for carrying out the repair work. Depending upon the repairs to be done, the equipment, consumables, tools, parts etc. are used from the stock of such items carried in the truck.
- In some cases, a stand-alone machine is also sent to the client's premises in such truck for carrying out the repair work.
- The customer is billed after the completion of the repair work depending upon the nature of the work and the actual quantity of consumables, parts etc. used in the repair work.
- Sometimes the truck is sent to the company's own location in other State(s) from where it is further sent to client locations for repairs.

Work out the GST liability [CGST & SGST or IGST, as the case may be] of Power Engineering Pvt. Ltd., Bangalore on the basis of the facts as described, read with the following data for the month of November 2020.

	Particulars	₹
(A)	Truck sent to own location in Tamil Nadu	
	(i) Value of items contained in the truck	3,00,000
	(ii) Value of truck	25,00,000
(B)	Truck sent to a client location in Tamil Nadu for carrying out repairs. Stand- alone machine is also sent in the truck to client location for repairs	
	(i) Value of items contained in the truck	2,85,000
	(ii) Value of stand-alone machine	4,00,000
	(iii) Value of truck	20,00,000
	(Billing for repairs to be done afterwards depending upon the actual items used)	
(C)	Truck sent to a client location in Karnataka for carrying out repairs	
	(i) Value of items contained in the truck - ₹ 1,06,000	1,06,000
	(ii) Value of truck - ₹ 20,00,000	20,00,000
	(Billing for repairs to be done afterwards depending upon the actual items used)	
(D)	Invoices raised for repair work carried out in Tamil Nadu [including the invoice for repair work done in 'B']	70,00,000
(E)	Invoices raised for repair work carried out in Karnataka [including the invoice for repair work done in 'C']	12,00,000

Also, specify the document(s), if any, which need to be issued by Power Engineering Pvt. Ltd., Bangalore for the above transactions.

All the given amounts are exclusive of GST, wherever applicable. Assume the rates of taxes to be as under :

Goods/services supplied	CGST	SGST	IGST
(i) Items used for repairs	6%	6%	12%
(ii) Container truck, Stand-alone machines	2.5%	2.5%	5%
(iii) Works contract for repairs and maintenance of immovable property	9%	9%	18%

You are required to make suitable assumptions, wherever necessary. (RTP May, 2018)

**Solution: Computation of GST Liability of Power Engineering Pvt. Ltd., Bangalore for the month of Nov. 2020 (₹):**

	Particulars	CGST	SGST	IGST
(A)	Items sent in container truck to own location in Tamil Nadu - IGST @ 12%	-	-	36,000
	[WN-1]			
	Container truck sent to own location in Tamil Nadu	-	-	-
	[WN-1]			
(B)	Stand-alone machine sent in container truck to client location in Tamil Nadu, for carrying out repairs	-	-	-
	[WN-2]			
	Container truck sent to client location in Tamil Nadu	-	-	-
	[WN-2]			
	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs	-	-	-
	[WN-2]			
(C)	Container truck sent to client location in Karnataka	-	-	-
	[WN-2]			
	Items sent in container truck to client location in Karnataka, for carrying out repairs	-	-	-
	[WN-2]			
(D)	Invoices raised for repair work carried out in Tamil Nadu: IGST @ 18%			12,60,000
	[WN-3, WN-4 and WN-5]			
(E)	Invoices raised for repair work carried out in Karnataka: CGST 9% + SGST 9%	1,08,000	1,08,000	-
	[WN-3, WN-4 and WN-6]			
	<b>Total GST liability</b>	<b>1,08,000</b>	<b>1,08,000</b>	<b>12,96,000</b>



**Working Notes:****(1) Items sent to own branch in Tamil Nadu:**

- (a) **Deemed Separate Person** : As per Section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.
- (b) **Deemed Supply** : Movement of goods without any consideration to a 'distinct person' as specified in Section 25(4) of the CGST Act, 2017 is deemed to be a supply in terms of Schedule I of the said Act.
- (c) **Value of Taxable Supply** : The purchase value is taken as taxable value, being the open market value in terms of Rule 28(a) of the CGST Rules 2017. (However, if the regional office is eligible to take full input tax credit, any value may be declared in the tax invoice and that will be taken to be the open market value in terms of the second proviso to the same rule.)
- (d) **Place of Supply – TamilNadu** : In the given case –
  - (i) the location of the supplier is in Bangalore (Karnataka); and
  - (ii) the place of supply of items contained in the truck is the location of such goods at the time at which the movement of goods terminates for delivery to the recipient *i.e.*, Tamil Nadu in terms of Section 10(1)(a) of the IGST Act, 2017.

Therefore, the given supply of items is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of Section 5(1) of the IGST Act, 2017.

- (e) **Tax Invoice** : Since the activity is a supply, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of Section 31(1)(a) of the CGST Act, 2017 for sending the items to its own location in Tamil Nadu.
- (f) **Inter State movement of conveyance is not supply** : It has been clarified that the inter-State movement of various modes of conveyance between 'distinct persons' as specified in Section 25(4), not involving further supply of such conveyance, including trucks carrying goods or passengers or both; or for repairs and maintenance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07-07-2017].
- (g) **Document for non supply** : Since the activity is not a supply, tax invoice is not required to be issued by Power Engineering Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of Rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu.

**(2) Items sent to client location in Tamil Nadu :**

- (a) **No supply** : Supply of goods without consideration is deemed to be a supply *inter alia* when the goods are supplied to a 'distinct person'. However, in this case, stand-alone machine and container truck are moved to client location and not between 'distinct persons'. Hence, the same will fall outside the scope of definition of supply and will not be leviable to GST.
- (b) **Documentation requirement** : Here again, a delivery challan is to be issued in terms of Rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.

**(3) Repair Service :**

- (a) **Repairs to immovable property is Works Contract** : As per Section 2(119) of the CGST Act, 2017, 'works contract' means a contract for, *inter alia*, repair, maintenance of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.  
In this case, the supplier provides maintenance and repair services for power plants that are in the nature of immovable property and uses consumables and parts, wherever necessary, for the repairs. Hence, the contract is that of a works contract.
- (b) **Works contract is Supply of Service** : Further, as per Section 2(30) of the CGST Act, 2017, a works contract is a 'composite supply' as it consists of taxable supplies of both goods and services which are naturally bundled and supplied in conjunction with each other. The composite supply of works contract is treated as supply of service in terms of para 6(a) of Schedule II to the CGST Act, 2017.
- (c) **Consumable etc. is a part of value of service** : The items used in relation to the repair and maintenance work could be consumables or could be identifiable items/parts. In either case, the transfer of property in goods is incidental to a composite supply of works contract service. Thus, the value of the items actually used in the repairs will be included in the invoice raised for the service and will be charged to tax at that point of time.

- (d) **Delivery challan** : Here again, a delivery challan is to be issued in terms of Rule 55(1)(c) of CGST Rules, 2017 for sending the items for carrying out the repairs.
- (4) **Supply of Service** : The activity is a composite supply of works contract, which is treated as supply of service. As per Section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly.  
 Since the activity is a supply of service, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of Section 31(2) of the CGST Act, 2017.
- (5) **Place of Supply** :
- (a) **In the given case** -
- (i) the location of the supplier is in Bangalore (Karnataka); and
  - (ii) the place of supply of works contract services relating to the power plant (immovable property) is the location at which the immovable property is located *i.e.*, Tamil Nadu in terms of Section 12(3)(a) of the IGST Act, 2017.
- Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017].
- (b) **Nature of tax** : Thus, the supply will be leviable to IGST in terms of Section 5(1) of the IGST Act, 2017.
- (6) **Place of supply** : In the given case, the location of the supplier and the place of supply of works contract services are within the same State. Therefore, the given supply is an intra-State supply in terms of Section 8(1) of IGST Act, 2017 and thus, chargeable to CGST and SGST.

**Illustration 44 - Computation of GST Liability** : M/s. XYZ, a registered supplier, supplies the following goods and services for construction of buildings and complexes -

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

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

M/s. XYZ receives the following services:

- Annual maintenance services for excavators;
- Health insurance for operators of the excavators;
- Scientific and technical consultancy for soil testing and seismic evaluation.

For a given month, the receipts (exclusive of GST) of M/s. XYZ are as follows:

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

The GST paid during the said month on services received by M/s. XYZ is as follows:

- Annual maintenance for excavators - ₹ 1,00,000
- Health insurance for excavator operators - ₹ 11,000
- Scientific and technical consultancy for soil testing and seismic evaluation - ₹ 1,00,000

Compute the net GST payable by M/s. XYZ for the given month.

Assume the rates of GST to be as under:

- ⇒ Hiring out of excavators - 12%
- ⇒ Supply of manpower services and soil-testing and seismic evaluation services - 18%

**Note:** Opening balance of input tax credit of GST is nil. (RTP May, 2018)

**Solution:** Computation of net GST payable by M/s. XYZ (amount in ₹):

Particulars	Value received	Rate of GST	GST Payable
<b>Gross GST liability</b>			
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators	[WN-1] 20,000	12%	2,400
Service charges for soil testing and seismic evaluation	[WN-2] 2,50,000	18%	45,000
<b>Gross GST liability</b>	(A)		<b>2,63,400</b>

Less: Input tax credit –			
Annual maintenance services for excavators	[WN-3]		1,00,000
Health insurance for excavator operators	[WN-4]		-
Scientific and technical consultancy	[WN-3]		1,00,000
<b>Total input tax credit available</b>	<b>(B)</b>		<b>2,00,000</b>
<b>Net GST liability [A - B]</b>			<b>63,400</b>

**Working Notes:**

- (1) **Principal supply is the hiring out of the excavator** : Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under Section 2(30) of the CGST Act, 2017 wherein the principal supply is the hiring out of the excavator. As per Section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.
- (2) Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.
- (3) Section 17(5)(d) of the CGST Act, 2017 blocks credit on goods and/or services received by a taxable person for construction of an immovable property on his own account. Here, though the excavators are used for building projects, the same are not used by M/s. XYZ on its own account for construction of immovable property; instead they are used for outward taxable supply of hiring out of machinery. Therefore, the annual maintenance service for the excavators does not get covered by the bar under Section 17 of the CGST Act, 2017 and the credit thereon will be available. The same applies for scientific & technical consultancy for construction projects because in this case also, the service is used for providing the outward taxable supply of soil testing and seismic evaluation service and not for construction of immovable property.
- (4) Section 17(5)(b) of the CGST Act, 2017 allows input tax credit on health insurance only when:
- the Government notifies the services as obligatory for an employer to provide to its employees under any law for the time being in force; or
  - the said service is used for making an outward taxable supply of the same category of service or as part of a taxable composite or mixed supply.

Since, in the given case, the health insurance service does not fall under any of the above two categories, the credit thereon will not be allowed.

**Illustration 45 - Computation of GST Liability** : V-Supply Pvt. Ltd. is a registered manufacturer of auto parts in Kolkata, West Bengal. The company has a manufacturing facility registered under Factories Act, 1948 in Kolkata. It procures its inputs indigenously from both registered and unregistered suppliers located within as well as outside West Bengal as also imports some raw material from China.

The company reports the following details for the month of November, 2020.

Payments	₹	Receipts	₹
Raw material	3,50,000	Sales	15,00,000
Consumables	1,25,000		
Transportation charges for bringing the raw material to factory	70,000		
Salary paid to employees on rolls	5,00,000		
Premium paid on life insurance policies taken for specified employees	1,60,000		
Audit fee	50,000		
Telephone expenses	30,000		
Bank charges	10,000		

All the above amount are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by the company.

Further, following additional details are furnished by the company in respect of the payments and receipts reported by it :

- (i) Raw material amounting to ₹ 80,000 is procured from Bihar and ₹ 1,50,000 is imported from China. Basic customs duty of ₹ 15,000, SWS of ₹ 1,500 and integrated tax of ₹ 29,781 are paid on the imported raw material. Remaining raw material is procured from suppliers located in West Bengal. Out of such raw material, raw material worth

- ₹30,000 is procured from unregistered suppliers; the remaining raw material is procured from registered suppliers. Further, raw material worth ₹ 5,000 purchased from registered supplier located in West Bengal has been destroyed due to seepage problem in the factory and thus, could not be used in the manufacturing process.
- (ii) Consumables are procured from registered suppliers located in Kolkata and include diesel worth ₹ 25,000 for running the generator in the factory.
  - (iii) Transportation charges comprise of ₹ 60,000 paid to Goods Transport Agency (GTA) in Kolkata and ₹ 10,000 paid to horse pulled carts. GST applicable on the services of GTA is 5%.
  - (iv) Life insurance policies for specified employees have been taken by the company to Fulfill a statutory obligation in this regard. The Government has notified such life insurance service under Section 17(5)(b). The life insurance service provider is registered in West Bengal.
  - (v) Audit fee is paid to M/s. Goyal & Co., a firm of Chartered Accountants registered in West Bengal, for the statutory audit of the preceding financial year.
  - (vi) Telephone expenses pertain to bills for landline phone installed at the factory and mobile phones given to employees for official use. The telecom service provider is registered in West Bengal.
  - (vii) Bank charges are towards company's current account maintained with a Private Sector Bank registered in West Bengal.
  - (viii) The break up of sales in as under :
    - Sales in West Bengal - ₹ 7,00,000
    - Sales in State other than West Bengal - ₹ 3,00,000
    - Export under bond - ₹ 5,00,000

The balance of input tax credit with the company as on 01-11-2020 is :

- CGST - ₹ 15,000
- SGST - ₹ 8,000
- IGST - ₹ 10,000

Compute eligible input tax credit and net GST payable [CGST, SGST or IGST, as the case may be] by V-Supply Pvt. Ltd. for the month of November 2020.

Note:

- (i) CGST, SGST and IGST rates to be 9, 9% and 18% respectively, wherever applicable.
- (ii) The necessary conditions for availing input tax credit have been complied with by V-Supply Pvt. Ltd., wherever applicable.

You are required to make suitable assumptions, wherever necessary. (MTP May, 2018)

**Solution: Computation of input tax credit available with V-Supply Pvt. Ltd. in the month of November 2020:**

S. No.	Particulars	Value of taxable supply	Eligible input tax credit			
			CGST* (₹)	SGST* (₹)	IGST* (₹)	Total (₹)
1.	Raw Material					
	Raw material purchased from Bihar [WN-1(i)]	80,000			14,400	14,400
	Raw material imported from China [WN-1(ii)]	1,50,000			29,781	29,781
	Raw material purchased from unregistered suppliers within West Bengal [WN-1(iii)]	30,000	Nil	Nil		Nil
	Raw material destroyed due to seepage [WN-1(iv)]	5,000	Nil	Nil		Nil
	Remaining raw material purchased from West Bengal [WN-1(i)]	85,000	7,650	7,650		15,300
	<b>Total</b>		<b>7,650</b>	<b>7,650</b>	<b>44,181</b>	<b>59,481</b>
2.	Consumables (excluding diesel) [WN-2]	1,00,000	9,000	9,000		18,000
3.	Diesel [WN-2]	25,000	Nil	Nil		Nil
4.	Transportation charges for bringing the raw material to factory [WN-3]	60,000	Nil	Nil		Nil
	Transportation charges for horse pulled carts	10,000	Nil	Nil		Nil
5.	Salary paid to employees on rolls [WN-4]	5,00,000	Nil	Nil		Nil
6.	Premium paid on life insurance policies taken for specified employees [WN-5]	1,60,000	14,400	14,400		28,800
7.	Audit fee [WN-6]	50,000	4,500	4,500		9,000

8.	Telephone expenses	[WN-6]	30,000	2,700	2,700		5,400
9.	Bank charges	[WN-6]	10,000	900	900		1,800
<b>Total</b>				<b>39,150</b>	<b>39,150</b>	<b>44,181</b>	<b>1,22,481</b>

**Computation of net GST payable (Amount in ₹):**

Particulars	Value of taxable supply	Eligible input tax credit			
		CGST* (₹)	SGST* (₹)	IGST* (₹)	Total (₹)
On Intra-state sales in West Bengal	7,00,000	63,000	63,000		1,26,000
On Inter-state sales other than West Bengal	3,00,000			54,000	54,000
On exports under bond	[WN-7] 5,00,000	Nil	Nil	Nil	Nil
On inward supply of GTA services under reverse charge	[WN-3] 60,000	1,500	1,500		3,000
<b>Total output tax liability</b>	<b>15,60,000</b>	<b>64,500</b>	<b>64,500</b>	<b>54,000</b>	<b>1,83,000</b>
<i>Less:</i> Cash paid towards tax payable under reverse charge	[WN-3]	1,500	1,500		3,000
<i>Less:</i> Input tax credit	[WN-8]				
Opening balance of input tax credit on 01-11-2020		15,000	8,000	10,000	33,000
Input tax credit availed during the month		39,150	39,150	44,181	1,22,481
Extra credit of IGST to be used for payment of CGST	[WN-9]	181		-181	
<b>Net GST payable through ECL including GST paid on inward supply of GTA service under RCM</b>		<b>8,669</b>	<b>15,850</b>	<b>NIL</b>	<b>24,519</b>

**Working Notes:**

- (1) (i) **Credit of ITC on interstate and intra-State purchases of goods** : Credit of input tax (CGST & SGST/IGST) paid on raw materials used in the course or furtherance of business is available in terms of Section 16(1) of the CGST Act.
 

(ii) **Credit of IGST on imports** : IGST paid on imported goods qualifies as input tax in terms of Section 2(62)(a) of the CGST Act. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of Section 16(1) of the CGST Act.

(iii) **Purchases from unregistered suppliers - No GST payable under reverse charge** : Reverse charge mechanism under Section 9(4) of the Act is applicable in respect of specified goods/services when received by specified class of registered persons from unregistered suppliers. Since the said transaction do not satisfy the conditions specified in section 9(4) of the Act, hence no GST is payable. Since no GST is paid on such raw material, there does not arise any question of input tax credit on such raw material.

(iv) **No ITC on destroyed inputs** : Input tax credit is not available on destroyed inputs in terms of Section 17(5)(h) of the CGST Act.
- (2) **On consumables - ITC admissible** : Consumables, being inputs used in the course or furtherance of business, input tax credit is available on the same in terms of Section 16(1) of the CGST Act.
 

**Diesel subject to excise duty - Credit not admissible** : However, levy of CGST on diesel has been deferred till such date as may be notified by the Government on recommendations of the GST Council [Section 9(2) of the CGST Act]. Hence, there being no levy of GST on diesel, there cannot be any input tax credit of the same.
- (3) **GST on GTA services - RCM applicable** : In respect of intra-State road transportation of goods undertaken by a GTA, who has not paid CGST @ 6%, for any person registered under the GST law, CGST is payable under reverse charge by the recipient of service. The person who pays or is liable to pay freight for the transportation of goods is treated as the person who receives the service [Notification No. 13/2017-CT (R) dated 28-06-2017]. Thus, V-Supply Pvt. Ltd. will pay GST under reverse charge on transportation service received from GTA.
 

**GST payable under RCM to be deposited in cash** : Section 49(4) of the CGST Act lays down that the amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of Section 2(82) of the CGST Act. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

**GST paid under RCM - Admissible as ITC** : Further, tax payable under Section 9(3) of the CGST/SGST Act qualifies as input tax in terms of clauses (b) and (d) of Section 2(62) of the CGST Act. Thus, input tax paid under reverse charge on GTA service will be available as input tax credit in terms of Section 16(1) of the CGST Act as the said service is used in course or furtherance of business.



- No GST on transportation services by horse pulled carts : Furthermore, intra-State services by way of transportation of goods by road except the services of a GTA and a courier agency are exempt from CGST vide Notification No. 12/2017-CT (R) dated 28-06-2017. Therefore, since no GST is paid on such services, there cannot be any input tax credit on such services.
- (4) **No GST on salaries** : Services by employees to employer in the course of or in relation to his employment is not a supply in terms of Section 7 read with para 1 of Schedule III to the CGST Act. Therefore, since no GST is paid on horse pulled cart services, there cannot be any input tax credit on such services.
  - (5) **Life insurance services of employees under Government obligation** : Admissible as ITC on supply of life insurance service is not blocked if the Government has made it obligatory for an employer to provide such service to its employees [Section 17(5)(b)(i) of the CGST Act]. Therefore, GST paid on premium for life insurance policies will be available as input tax credit in terms of Section 16(1) of the CGST Act as the said service is used in the course or furtherance of business.
  - (6) **Audit fee, telephone expenses and bank charges** : Eligible as input service Audit fee, telephone expenses and bank charges are all services used in the course or furtherance of business and thus, credit of input tax paid on such service will be available in terms of Section 16(1) of the CGST Act.
  - (7) **No GST payable on exports** : Export of goods is a zero rated supply in terms of Section 16(1)(a) of the IGST Act. A zero rated supply under bond is made without payment of integrated tax [Section 16(3)(a) of the IGST Act].
  - (8) **Full credit available in case of exports** : Since export of goods is a zero rated supply, there will be no apportionment of input tax credit and full credit will be available [Section 16 of the IGST Act read with Section 17(2) of the CGST Act].
  - (9) **Utilization of GST** : As per Section 49(5) and 49B of the CGST Act read with Rule 88A of the CGST Rules, 2017, input tax credit of—
    - (i) IGST is utilised towards payment of IGST, and balance if any towards CGST and SGST in any order.
    - (ii) CGST is utilised towards payment of CGST and IGST in that order only when IGST has been utilised fully.
    - (iii) SGST is utilised towards payment of SGST and IGST in that order only when IGST has been utilised fully.
  - (10) **Nature of tax CGST and SGST** are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

**Illustration 46 – Computation of GST payable** : Honeycure Laboratories Ltd. is a registered supplier of bulk drugs in Delhi. It manufactures bulk drugs and supplies the same in the domestic and overseas market. The bulk drugs are supplied within Delhi and in the overseas market directly from the company's warehouse located in South Delhi. For supplies in other States of India, the company has appointed consignment agents in each such State. However, supplies in Gurgaon (Haryana) and Noida (U.P.) are effected directly from South Delhi warehouse. The drugs are supplied to the consignment agents from the South Delhi warehouse.

Honeycure Laboratories Ltd. also provides drug development services to drug manufacturers located in India, including testing of their new drugs in its laboratory located in Delhi.

The company has furnished the following information for the month of January, 2020:

Particulars	₹
Advance received towards drug development services to be provided to Orochem Ltd., a drug manufacturer, located in Delhi [Drug development services have been provided in February, 2020 and invoice is issued on 28-02-2020.]	5,00,000
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Invoice for the goods is issued at the time of delivery of the drugs in March, 2020]	6,00,000
Supply of bulk drugs to wholesale dealers of drugs in Delhi	60,00,000
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA under bond [Consideration received in convertible foreign exchange]	90,00,000
Drug development services provided to Unipharms Ltd., a drug manufacturer, located in Delhi	6,00,000

You are required to determine the GST liability [CGST & SGST or IGST, as the case may be] of Honeycure Laboratories Ltd. for the month of January, 2020 with the help of the following additional information furnished by it for the said period :

- (1) Consignments of bulk drugs were sent to Cardinal Pharma Pvt. Ltd. and Rochester Medicos – agents of Honeycure Laboratories Ltd. in Punjab and Haryana respectively. Cardinal Pharma Pvt. Ltd. and Rochester Medicos supplied these drugs to the Medical Stores located in their respective States for ₹ 60,00,000 and ₹ 50,00,000 respectively.



- (2) Bulk drugs have been supplied to Ronn Medicos Pvt. Ltd. - a wholesale dealer of bulk drugs in Gurgaon, Haryana for consideration of ₹ 15,00,000. Honeycure Laboratories Ltd. owns 60% shares of Ronn Medicos Pvt. Ltd. Open market value of the bulk drugs supplied to Ronn Medicos Pvt. Ltd. is ₹ 30,00,000. Further, Ronn Medicos Pvt. Ltd. is not eligible for full input tax credit.
- (3) Bulk drugs amounting to ₹ 50,00,000 were sent under delivery challan to Sudha Bottlers, Noida (U.P) for filling the same in the glass bottles. The bottled drugs were sent back to Honeycure Laboratories Ltd. after 1 month. The consideration charged for the bottling activity (including bottles) is ₹ 5,00,000.
- (4) The turnover of Honeycure Laboratories Ltd. in the preceding financial year was ₹ 85 lakh with regard to supply of bulk drugs and ₹ 70 lakh with regard to supply of drug development services.

**Note:**

- (i) All the given amounts are exclusive of GST, wherever applicable.
- (ii) Assume the rates of GST to be as under :

Goods/services supplied	CGST	SGST	IGST
Bulk drugs	2.5%	2.5%	5%
Drug development services	9%	9%	18%

You are required to make suitable assumptions, wherever necessary. (MTP May, 2018) (Similar RTP Nov. 2019)

**Solution: Computation of GST Liability of Honeycure Laboratories Ltd. for the month of January, 2020 (amt. in ₹):**

Particulars	Value	CGST	SGST	IGST	Total
Advance received for drug development services supplied to Orochem Ltd., a drug manufacturer, located in Delhi [WN-1]	5,00,000	45,000	45,000		90,000
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [WN-2]	6,00,000	-	-	Nil	Nil
Supply of bulk drugs to wholesale dealers of drugs in Delhi [WN-3]	60,00,000	1,50,000	1,50,000	-	3,00,000
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA [WN-4]	90,00,000	-	-	Nil	
Supply of drug development services to Unipharma Ltd., a drug manufacturer, located in Delhi [WN-5]	6,00,000	54,000	54,000	-	1,08,000
Supply of bulk drugs to consignment agents - Cardinal Pharma Pvt. Ltd. and Rochester Medicos of Punjab and Haryana [WN-6]	99,00,000	-	-	4,95,000	4,95,000
Supply of bulk drugs to Ronn Medicos of Gurgaon, Haryana [WN-7]	30,00,000	-	-	1,50,000	1,50,000
Supply of bulk drugs for job work to Sudha Bottlers in Noida, U.P. [WN-8]	-	-	-	Nil	
<b>Total GST liability</b>		<b>2,49,000</b>	<b>2,49,000</b>	<b>6,45,000</b>	<b>11,43,000</b>

**Working Notes :****(1) Supply to Orochem Ltd.:**

- (a) **Nature of supply :** Being an intra-State supply of services, supply of drug development services to Orochem Ltd. of Delhi is subject to CGST and SGST @ 9% each.
- (b) **Time of supply :** Further, in terms of Section 13(2) of the CGST Act, the time of supply of services is the earlier of the date of invoice or date of receipt of payment, if the invoice is issued within 30 days of the supply of service. In the given case, invoice is issued within 30 days of the supply of service. Therefore, time of supply of services will be date of receipt of advance and hence, GST is payable on the advance received in January, 2020.

**(2) Supply to Novick Pharmaceuticals :**

- (a) **Nature of supply :** Being an inter-State supply of goods, supply of bulk drugs to Novick Pharmaceuticals of Gurgaon, Haryana is subject to IGST @ 5%.
- (b) **Time of supply :** Further, in terms of Section 12(2) of the CGST Act, the time of supply of goods is the earlier of the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, Notification No. 66/2017-CT dated 15-11-2017 provides that time of supply for all suppliers of goods (excluding composition suppliers) will be the time of issue of invoice, without any turnover limit.

- (c) **No GST on advances in respect of goods** : Thus, GST is not payable at the time of receipt of advance against supply of goods in case of such suppliers.  
The time of supply of the advance received for bulk drugs to be supplied to Novick Pharmaceuticals is the time of issue of invoice, which is in March, 2020. Thus, said advance will be taxed in March, 2020 and not in January, 2020.
- (3) **Intra-State Supply** : Being an intra-State supply of goods, supply of bulk drugs to wholesale dealers of drugs in Delhi is subject to CGST and SGST @ 2.5 % each.
- (4) **Exports under bond – Not liable to GST** : Section 2(5) of the IGST Act defines export of goods as taking goods out of India to a place outside India. In view of the said definition, supply of the bulk drugs to Anchor Pharamaceuticals Inc. of USA under bond is export of goods.  
Export of goods is a zero-rated supply [Section 16(1) of the IGST Act]. A zero-rated supply under bond is made without payment of integrated tax [Section 16(3)(a) of IGST Act].
- (5) **Intra-State Supply** : Being an intra-State supply of services, supply of drug development services to Unipharma Ltd. of Delhi is subject to CGST and SGST @ 9% each.
- (6) **Supply of goods through consignment agents** :
- (a) **Value of supply** : Value of supply of goods made through an agent is determined as per Rule 29 of the CGST Rules. Accordingly, the value of supply of goods between the principal and his agent is the open market value of the goods being supplied, or at the option of the supplier, is 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer, where the goods are intended for further supply by the said recipient.  
In the given case, since open market value is not available, value of bulk drugs supplied to consignment agents - Cardinal Pharma Ltd. and Rochester Medicos – will be ₹ 99,00,000 [90% of (₹ 60,00,000 + ₹ 50,00,000)].
- (b) **Nature of supply** : Further, being an inter-State supply of goods, supply of bulk drugs to the consignment agents is subject to IGST @ 5%.
- (7) **Supply of goods to related person** :
- (a) **Related Person** : If any person directly or indirectly controls another person, such persons are deemed as related persons. [Clause (a)(v) of explanation to Section 15 of the CGST Act]. In the given case, since Honeycure Laboratories Ltd. owns 60% shares of Ronn Medicos, both are related persons.
- (b) **Value in case of Related Person** : Value of supply of goods between related persons (other than through an agent) is determined as per Rule 28 of the CGST Rules. Accordingly, the value of supply of goods between related persons is the open market value of such goods and not the invoice value.  
Furthermore, since Ronn Medicos is not eligible for full input tax credit, value declared in the invoice cannot be deemed to be the open market value of the goods. Thus, open market value of the bulk drugs supplied to Ronn Medicos *i.e.*, ₹ 30,00,000 is the value of supply of such goods.
- (c) **Value of supply – OMV** : Further, being an inter-State supply of goods, supply of bulk drugs to Ronn Medicos is subject to IGST @ 5%.
- (8) **Supply to Job-worker- not liable to GST** : Section 143(1) of the CGST Act permits a registered person (principal) to send any inputs without payment of tax to a job worker for job work under an intimation and subject to prescribed conditions, provided such inputs, after completion of job work or otherwise, have been received back within 1 year of their being sent out, in any of his place of business. Thus, tax is not payable on the bulk drugs sent under the delivery challan to Sudha Bottlers for job work.

**Illustration 47 – Computation of GST payable** : ABC Company Ltd. of Bengaluru is a manufacturer and registered supplier of machine. It has provided the following details for the month of November, 2019.

Details of GST paid on inward supplies during the month :

Items	GST Paid (₹)
Health Insurance of factory employees.	20,000
Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month.	18,000
Work contractor's service used for installation of plant and machinery.	12,000
Purchase of manufacturing machine directly sent to job worker's premises under challan.	50,000
Purchase of car used by director for the business meetings only.	25,000
Outdoor catering service availed for business meetings.	8,000

ABC Company Ltd. also provides service of hiring of machines along with man power for operation. As per trade practice machines are always hired out along with operators and also operators are supplied only when machines are hired out.

Receipts on outward supply (exclusive of GST) for the month of November, 2019 are as follows :

Items	Value of Supply (₹)
Hiring receipts for machine	5,25,000
Service charges for supply of man power operators	2,35,000

Assume all the transactions are interstate and the rates of IGST to be as under :

- (ii) Sale of machine 5%
- (iii) Service of hiring of machine 12%
- (iv) Supply of man power operator service 18%

Compute the amount of Input Tax Credit available and also the net GST payable for the month of November 2019 by giving necessary explanations for treatment of various items.

Note: Opening balance of input tax credit is Nil. (10 Marks, May 2018-NS)

**Solution: Computation of net GST payable by ABC Company Ltd. (amount in ₹):**

Particulars	Value received	Rate of GST	GST payable
Hiring receipts for machine [WN-1]	5,25,000	12%	63,000
Service charges for supply of manpower operators	2,35,000	12%	28,200
<b>Gross GST liability</b>			<b>91,200</b>
Less: Input tax credit [WN-2]			62,000
<b>Net GST liability</b>			<b>29,200</b>

**Working Notes:**

- (1) Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply wherein the principal supply is the hiring out of machines. Therefore, service of supply of manpower operators will also be taxed at the rate applicable for hiring out of machines (principal supply), which is 12%.
- (2) Computation of ITC available with ABC Company Ltd. in the month of November, 2019:

Particulars	GST (₹)
<b>Health insurance of factory employees</b> [As per Section 17(5)(b), No input tax credit shall be available in respect of health insurance services availed for employees since the Government has not notified the said services as obligatory services to be provided to employees.]	Nil
<b>Raw material received in factory</b> [As per First proviso to Section 16(2), when inputs are received in instalments, ITC can be availed only on receipt of last instalment. Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second instalment in December, 2019.]	Nil
<b>Work's contractor's service used for installation of plant and machinery</b> [ITC on works contract services is blocked when supplied for construction of immovable property (other than plant and machinery) except when the same is used for further supply of works contract service. Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be allowed since such services are being used for installation of plant and machinery.]	12,000
<b>Manufacturing machinery directly sent to job worker's premises under challan</b> [ITC on capital goods directly sent to job worker's premises under challan is allowed.]	50,000
<b>Purchase of car used by director for business meetings only</b> [Section 17(5)(a) of CGST Act, 2017 allows ITC on motor vehicles for transportation of persons with seating capacity 13 persons (including the driver) only when the same are used for making taxable supply of – (i) further supply of such vehicles, (ii) transportation of passengers, (iii) imparting training on driving of such vehicles]	Nil
<b>Outdoor catering service availed for business meetings</b> [As per Section 17(5)(b), No input tax credit is available in respect of outdoor catering except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. Hence, no input tax credit is available on outdoor catering service availed for business meetings]	Nil
<b>Total ITC available</b>	<b>62,000</b>

**Illustration 48 - Computation of GST payable :** Pari Ltd. of Jodhpur (Rajasthan) is a registered manufacturer of cosmetic products. Pari Ltd. has furnished following details for the month of April, 2019 :

S.No.	Particulars	(₹)
(A)	Receipts	
	Details of Sales	
	(i) Sales in Rajasthan	8,75,000
	(ii) Sales in States other than Rajasthan	3,75,000
	(iii) Export under bond	6,25,000
(B)	Payments	
(1)	Raw Materials	
	(i) Purchased from registered suppliers located in Rajasthan	1,06,250
	(ii) Purchased from unregistered suppliers located in Rajasthan	37,500
	(iii) Purchased from Punjab from registered supplier	1,00,000
	(iv) Integrated tax paid on Import from USA	22,732
(2)	Consumables purchased from registered suppliers located in Rajasthan including high speed diesel (Excise and Vat paid) worth ₹ 31,250 for running the machinery in the factory	1,56,250
(3)	Monthly rent for the factory building to the owner in Rajasthan	1,00,000
(4)	Salary paid to employees on rolls	6,25,000
(5)	Premium paid on life insurance policies taken for specified employees. Life insurance policies for specified employees have been taken by Pari Ltd. to fulfill a statutory obligation in this regard. The Government has notified such life insurance service under section 17(5)(b). The life insurance service provider is registered in Rajasthan.	2,00,000
All the above amounts are exclusive of all kinds of taxes, wherever applicable. However, the applicable taxes have also been paid by Pari Ltd.		
The balance of Input Tax Credit (ITC) with Pari Ltd. as on 1 <sup>st</sup> April, 2019 is -		
	CGST - ₹ 20,000	
	SGST - ₹ 15,000	
	IGST - ₹ 15,000	

Assume CGST, SGST and IGST rates to be 9%, 9% and 18% respectively, wherever applicable.

Assume that all the other necessary conditions to avail the eligible input tax credit have been complied with by Pari Ltd., wherever applicable.

Compute eligible input tax credit and net GST payable (CGST and SGST or IGST as the case may be) by Pari Ltd. for the month of April, 2019. (10 Marks, Nov. 2018-NS)

**Solution: Computation of input tax credit available with Pari Ltd. in the month of November 2019 :**

S. No.	Particulars	Value of taxable supply	Eligible input tax credit			
			CGST* (₹)	SGST* (₹)	IGST* (₹)	Total (₹)
1.	Raw Material					
	Purchased from registered suppliers located in Rajasthan [WN-1(i)]	1,06,250	9,562.50	9,562.50		19,125.00
	Raw material purchased from registered suppliers located in Punjab [WN-1(i)]	1,00,000			18,000.00	18,000.00
	Integrated tax paid on Import from USA [WN-1(ii)]				22,732.00	22,732.00
	Raw material purchased from unregistered suppliers within Rajasthan [WN-1(iii)]	37,500	-	-		-
	<b>Total</b>		<b>9,562.50</b>	<b>9,562.50</b>	<b>40,732.00</b>	<b>59,857.00</b>
2.	Consumables (excluding diesel) [WN-2]	1,25,000	11,250.00	11,250.00		22,500.00
3.	Diesel [WN-2]	31,250	-	-		-
4.	Monthly rent for the factory building to the owner in Rajasthan [WN-3]	1,00,000	9,000.00	9,000.00		18,000.00
5.	Salary paid to employees on rolls [WN-4]	6,25,000	-	-		-
6.	Premium paid on life insurance policies taken for specified employees [WN-5]	2,00,000	18,000.00	18,000.00		36,000.00
	<b>Total</b>		<b>47,812.50</b>	<b>47,812.50</b>	<b>40,732.00</b>	<b>1,36,357.00</b>

## Computation of net GST payable :

Particulars	Value of taxable supply	Eligible input tax credit			
		CGST* (₹)	SGST* (₹)	IGST* (₹)	Total (₹)
On Intra-state sales in Rajasthan	8,75,000	78,750.00	78,750.00		1,57,500.00
On Inter-state sales other than Rajasthan	3,75,000			67,500.00	67,500.00
On exports under bond [WN- 6 & 7]	6,25,000	-	-	-	-
<b>Total output tax liability</b>	<b>18,75,000</b>	<b>78,750.00</b>	<b>78,750.00</b>	<b>67,500.00</b>	<b>2,25,000.00</b>
<b>Less: Input tax credit [WN-8]</b>					
Opening balance of input tax credit		20,000.00	15,000.00	15,000.00	50,000.00
Input tax credit availed during the month		47,812.50	47,812.50	40,732.00	1,36,357.00
<b>Net GST payable</b>		<b>10,937.50</b>	<b>15,937.50</b>	<b>11,768.00</b>	<b>38,643.00</b>

## Working Notes :

- (1) (i) **Credit of ITC on interstate and intra-State purchases of goods** : Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of Section 16(1) of the CGST Act.  
(ii) **Credit of IGST on imports** : IGST paid on imported goods qualifies as input tax in terms of Section 2(62) (a) of the CGST Act. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of Section 16(1) of the CGST Act.  
(iii) **Purchases from unregistered suppliers - No GST payable under reverse charge - Hence no ITC** : Reverse charge mechanism under Section 9(4) of the Act is applicable in respect of specified goods/services when received by specified class of registered persons from unregistered suppliers. Since the said transaction do not satisfy the conditions specified in section 9(4) of the Act, hence no GST is payable. Since no GST is paid on such raw material, there does not arise any question of input tax credit on such raw material.
- (2) **On consumables- ITC admissible** : Consumables, being inputs used in the course or furtherance of business, input tax credit is available on the same in terms of Section 16(1) of the CGST Act.  
**Diesel subject to excise duty and vat - Credit not admissible** : However, levy of CGST on diesel has been deferred till such date as may be notified by the Government on recommendations of the GST Council [Section 9(2) of the CGST Act]. Hence, there being no levy of GST on diesel, there cannot be any input tax credit of the same.
- (3) **GST paid on rent of factory building - Eligible as input service** : Renting service is used in the course or furtherance of business and thus, credit of input tax paid on such service will be available in terms of Section 16(1) of the CGST Act.
- (4) **No GST on salaries** : Services by employees to employer in the course of or in relation to his employment is not a supply in terms of Section 7 read with para 1 of Schedule III to the CGST Act. Therefore, since no GST is paid on salaries, there cannot be any input tax credit on such services.
- (5) **Life insurance services of employees under Government obligation - Admissible as ITC** : Input tax credit on supply of life insurance service is not blocked if the Government has made it obligatory for an employer to provide such service to its employees [Section 17(5)(b) of the CGST Act]. Therefore, GST paid on premium for life insurance policies will be available as input tax credit in terms of Section 16(1) of the CGST Act as the said service is used in the course or furtherance of business.
- (6) **No GST payable on exports** : Export of goods is a zero rated supply in terms of Section 16(1)(a) of the IGST Act. A zero rated supply under bond is made without payment of integrated tax [Section 16(3)(a) of the IGST Act].
- (7) **Full credit available in case of exports** : Since export of goods is a zero rated supply, there will be no apportionment of input tax credit and full credit will be available [Section 16 of the IGST Act read with Section 17(2) of the CGST Act].
- (8) **Utilization of Input tax credit** : As per Section 49(5) and 49B of the CGST Act read with Rule 88A of the CGST Rules, 2017, input tax credit of—
  - (i) IGST is utilised towards payment of IGST, and balance if any towards CGST and SGST in any order.
  - (ii) CGST is utilised towards payment of CGST and IGST in that order only when IGST has been utilised fully.
  - (iii) SGST is utilised towards payment of SGST and IGST in that order only when IGST has been utilised fully.

(9) **Nature of tax :** CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

**Illustration 49 – Computation of GST Liability :** Mr. X, a supplier of goods, pays GST under regular scheme. Mr. X is not eligible for any threshold exemption. He has made the following outward taxable supplies in a tax period:

Particulars	₹
Intra-State supply of goods	16,00,000
Inter-State supply of goods	6,00,000

He has also furnished the following information in respect of purchases made by him in that tax period:

Particulars	₹
Intra-State purchases of goods	10,80,000
Inter-State purchases of goods	1,50,000

Mr. X has following ITCs with him at the beginning of the tax period:

Particulars	₹
CGST	40,500
SGST	40,500
IGST	90,000

**Note:**

- (i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.
  - (ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.
  - (iii) All the conditions necessary for availing the ITC have been fulfilled.
- Compute the net GST payable by Mr. X during the tax period. Make suitable assumptions as required.

**Solution: Computation of GST payable by Mr. X on outward supplies –**

S.No.	Particulars	(₹)	GST (₹)
(i)	Intra-State supply of goods		
	CGST @ 9% on ₹ 16,00,000	1,44,000	
	SGST @ 9% on ₹ 16,00,000	1,44,000	2,88,000
(ii)	Inter-State supply of goods		
	IGST @ 18% on ₹ 6,00,000		1,08,000
	<b>Total GST payable</b>		<b>3,96,000</b>

**Computation of total ITC (amount in ₹) :**

Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%
Opening ITC	40,500	40,500	90,000
Add: ITC on Intra-State purchases of goods valuing ₹ 10,80,000	97,200	97,200	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 1,50,000	Nil	Nil	27,000
<b>Total ITC</b>	<b>1,37,700</b>	<b>1,37,700</b>	<b>1,17,000</b>

**Computation of GST payable from cash ledger (amount in ₹) :**

Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%
GST payable	1,44,000	1,44,000	1,08,000
Less: Input tax credit	1,37,700	1,37,700	1,17,000
Balance of IGST credit i.e. ₹ (1,17,000 - 1,08,000) to be utilised for payment of CGST and SGST respectively.	6,300	2,700	-
<b>Total ITC</b>	<b>Nil</b>	<b>3,600</b>	<b>Nil</b>

**Illustration 50 – Computation of GST liability in case of composition supplier :** B & D Company, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and an exempt product 'Q'. The firm supplies these products only in the eastern part of Maharashtra. All the procurements (both goods and services) of the firm are from the suppliers registered under regular scheme in the State of Maharashtra. The firm pays tax under composition scheme.

B & D Company has furnished the following details with respect to its turnover (exclusive of taxes) and stock (exclusive of taxes):



Particulars	Turnover for the quarter ended 30-06-2020 (₹)	Turnover for the quarter ended 30-09-2020 (₹)
'P'	70,00,000	30,00,000
'Q'	34,65,000	13,00,000

Particulars	Stock as on 30-06-2020 (₹)	Stock as on 30-09-2020 (₹)	Stock as on 31-10-2020 (₹)
'P'	25,00,000	10,00,000	3,60,000
'Q'	10,00,000	2,00,000	1,20,000

The entire stock of the products 'P' and 'Q' available with the firm as on 30-09-2020 is purchased during the said half year except a consignment of product 'P' valuing ₹ 3,00,000, which was purchased in the April month of the preceding financial year. In the month of October, 2020, no purchases were made, and the products were sold with a profit margin of 20% on sales [exclusive of taxes].

The extract of the only bill book maintained by the firm showed the following details –

Bill No.	Date	Value of products (exclusive of taxes)		
		'P' (₹)	'Q' (₹)	Total (₹)
2306	01-10-2020	1,00,000	3,000	1,03,000
2307	01-10-2020	31,250	2,000	33,250
2308	02-10-2020	43,750	15,000	58,750
2309	03-10-2020	35,000	10,000	45,000
2310	05-10-2020	1,00,000	-	1,00,000
2311	06-10-2020	94,000	6,000	1,00,000
2312	06-10-2020	-	17,000	17,000
2313	08-10-2020	50,000	6,000	56,000
2314	09-10-2020	60,000	9,000	69,000
2315	-	-	-	-
-	-	-	-	-

The details of services availed by B & D Company is as follows:

S.No.	Particulars	(₹)
(i)	Freight paid to Goods Transport Agency during the period April 2020 - October 2020. Assume equal amount of freight is paid each month on the 10 <sup>th</sup> day of each month. Also, assume that the goods for which the freight is paid on 10 <sup>th</sup> day of the month are transported between 11 <sup>th</sup> to 20 <sup>th</sup> day of the month.	1,40,000
(ii)	Special packing charges paid to a Packing Company, having expertise in such specialized packing, during the period January 2020 - October 2020. The packing charges are paid for the goods which are transported between 11 <sup>th</sup> to 20 <sup>th</sup> day of the month (as mentioned in point (i) above). The goods are packed on 10 <sup>th</sup> day and then transported from 11 <sup>th</sup> day onwards. Assume equal amount of packing charges are paid each month on the 9 <sup>th</sup> day of each month.	3,00,000

All the above amounts are exclusive of taxes, wherever applicable.

Compute the net GST liability of B & D Company for the period April, 2020 to October, 2020 under composition scheme showing calculations for each quarter separately.

**Note:** Make suitable assumptions wherever required. Rate of CGST and SGST on service of transportation of goods by GTA is 2.5% each. Stock is valued at cost price.

**Solution:** The relevant provisions are discussed as under :

- Eligibility under Composition scheme :** As per section 10(1) of the CGST Act, 2017, A registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore (₹ 75 lakhs in Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand will be eligible to opt for payment of tax under the composition scheme.)
- Option when ceases :** As per section 10(3) of the CGST Act, 2017 read with Notification No. 8/2017-CT dated 27-06-2017 as amended, the option availed of by a registered person to pay tax under composition scheme shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds ₹ 1.5 crore [₹ 75 lakh in case of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand]

**Meaning of aggregate turnover :** As per section 2(6) of the CGST Act, 2017, aggregate turnover means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same PAN, to be computed on all India basis but excludes CGST, SGST/UTGST, IGST and GST Compensation Cess.

**Composition option ceases when turnover exceeds ₹ 1.5 crore :** In the given case, the firm is registered under the composition scheme in the State of Maharashtra. The aggregate turnover of the firm exceeds ₹ 1.5 crore on 03-10-2020 [aggregate of both taxable and exempt turnover from 01-04-2020 to 03-10-2020,

S.No.	Particulars	(₹)
(i)	Turnover of product 'P' upto 30-09-2020	1,00,00,000
(ii)	Turnover of product 'Q' upto 30-09-2020 [Since exempt product turnover is included in computing aggregate turnover]	47,65,000
(iii)	Invoices issued on 1-10-2020	1,03,000
(iv)	Invoices issued on 1-10-2020	33,250
(v)	Invoices issued on 2-10-2020	58,750
(vi)	Invoices issued on 3-10-2020	45,000
	<b>Aggregate turnover exceeds ₹ 1,50,00,000 on 3-10-2020</b>	<b>1,50,05,000</b>

**Inward supplies to be taxed under RCM not to be included for computation of aggregate turnover :** The inward supplies of goods transportation services in respect of which the firm has to pay tax under reverse charge have not been included in the aggregate turnover in terms of section 2(6) of the CGST Act, 2017.

The tax is payable under reverse charge on such services as the applicable rate of tax on such services is given as 5% and not 12%, in which case the GTA would have been liable to pay tax under forward charge [Notification No. 13/2017 CT (R) dated 28-06-2017 as amended].

Thus, the firm will have to pay tax under regular scheme (Section 9 of the CGST Act, 2017) from 03-10-2020.

(3) **Output tax liability of B & D Company under composition scheme :**

**Computation of composition tax liability - Tax rate 0.5% CGST and 0.5% SGST of taxable supplies applicable :** During the period when the firm pays tax under composition scheme, i.e. from 01-04-2020 to 02-10-2020, tax will be payable on quarterly basis and no ITC will be available [Section 10(4) read with sub-sections (2) and (7) of section 39 of the CGST Act, 2017]. Further, since the firm is trading in goods, tax will be payable @ ½% [Effective rate - 1% (½% CGST + ½% SGST)] of the turnover of taxable supplies of goods (i.e. 'P') in the State [Section 10(1) read with rule 7 of CGST Rues, 2017].

The tax liability for the quarters ended June, 2020, September, 2020 and December, 2020 under composition scheme will be computed as under –

Particulars	Quarter ended 30-06-2020 (₹)	Quarter ended 30-09-2020 (₹)	Quarter ended 31-12-2020 (₹)
Turnover of 'P' (Taxable supplies)	70,00,000	30,00,000	1,75,000 [1,00,000 + 31,250 + 43,750]
CGST @ 0.5% [A1]	35,000	15,000	875
SGST @ 0.5% [B1]	35,000	15,000	875
Inward supply on which tax is payable under reverse charge [Service of goods transportation availed from a GTA @ 5%]	60,000 [(1,40,000/7) × 3]	60,000 [(1,40,000/7) × 3]	Nil [Paid on 10 <sup>th</sup> day for goods transported between 11 <sup>th</sup> to 20 <sup>th</sup> day of the month, so the same will be assessed under regular scheme]
CGST @ 2.5% [A2]	1,500	1,500	Nil
SGST @ 2.5% [B2]	1,500	1,500	Nil
Total CGST [A1 + A2]	36,500	16,500	875
Total SGST [B1 + B2]	36,500	16,500	875
Total CGST liability for the period from 01-04-2020 to 02-10-2020		53,875	[36,500 + 16,500 + 875]
Total SGST liability for the period from 01-04-2020 to 02-10-2020		53,875	[36,500 + 16,500 + 875]

**Illustration 51 – Computation of ITC to be credited to Electronic credit ledger on exit from composition scheme :** Keeping all the facts and figures of Illustration 50 unchanged, compute the ITC credited to the Electronic Credit Ledger of the B & D Company, when it exits composition scheme and becomes liable to pay tax under regular scheme, in accordance with the provisions of section 18(1)(c) of the CGST Act, 2017.

Following additional information is also available:

Particulars relating to capital goods owned by the firm	Date of purchase	Value (₹)	GST (₹)
Computers	01-02-2020	2,00,000	36,000
Printers	January 1, two years prior to 01-01-2020	80,000	14,400
Motor car used by the staff for collecting payments from the debtors	23-09-2020	85,000	15,300
Furniture & fixtures	12-06-2020	4,00,000	72,000
Air conditioner used in the office	15-10-2020	2,00,000	36,000
Exhaust fan used in the godown	10-03-2020	50,000	9,000

**Note:** The company has not claimed depreciation on the tax component of any of the capital goods (mentioned above) under the Income-tax Act, 1961. All the conditions necessary for availing the ITC have been complied with. Rate of CGST and SGST is 9% each.

**Solution: Eligibility of ITC when option of composition levy ceases :** As per section 18(1)(c) of the CGST Act, 2017 read with rule 40 of CGST Rules, 2017, where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9.

**Reduced credit available in respect of capital goods :** However, the credit on capital goods shall be reduced by 5% per quarter of a year or part thereof from the date of invoice.

**Limitation on taking of ITC – ONE year from date of issue of tax invoice :** Further, ITC on supplies of inputs and capital goods shall not be available after the expiry of one year from the date of issue of tax invoice [Section 18(2) of the CGST Act, 2017].

In the light of the above-mentioned provisions, the ITC credited to the Electronic Credit Ledger of the B & D Company on inputs held in stock and capital goods on 02-10-2020 will be computed as under:

**A. ITC on inputs :**

Particulars	(₹)
Stock of taxable inputs as on 30-09-2020 [Since no tax is paid on exempt purchases, there does not arise any question of availing ITC on the same. Hence, stock of only taxable inputs are considered]	10,00,000
<b>Add:</b> Purchases [No purchases are made in October, 2020]	Nil
<b>Less:</b> Cost of taxable goods sold from 01-10-2020 to 02-10-2020 [(₹ 1,00,000 + ₹ 31,250 + ₹ 43,750) × 80%] [Since profit margin is 20% of sales]	1,40,000
Stock of taxable inputs as on 02-10-2020 [Since the bill numbers are in continuation, it can be concluded that no sales are missing from the extract]	8,60,000
<b>Less:</b> More than one year old stock	3,00,000
<b>Stock of inputs on which ITC can be claimed [Since all purchases are intra-State and from the suppliers registered under regular scheme]</b>	<b>5,60,000</b>
<b>ITC of CGST @ 9%</b>	<b>50,400</b>
<b>ITC of SGST @ 9%</b>	<b>50,400</b>

**B. ITC on capital goods :**

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)
Computers [₹ 36,000 - (5% × 4 quarters)] ÷ 2	14,400	14,400
Printers [Being more than one year old, no ITC is available]	-	-
Motor car [WN-1]	-	-
Furniture and Fixtures [₹ 72,000 - (5% × 3 quarters)] ÷ 2	30,600	30,600
Air conditioner used in the office [WN-2]	-	-
Exhaust fan used in the godown [₹ 9,000 - (5% × 4 quarters)] ÷ 2	3,600	3,600
<b>ITC to be claimed on capital goods</b>	<b>48,600</b>	<b>48,600</b>

Total ITC on inputs and capital goods credited to Electronic Credit Ledger on 02-10-2020 [CGST : Inputs - ₹ 50,400, Capital Goods - ₹ 48,600] [SGST : Inputs - ₹ 50,400, Capital Goods - ₹ 48,600]	99,000	99,000
--	--------	--------

**Working Notes :**

- (1) Section 17(5)(a) of CGST Act, 2017 allows ITC on motor vehicles for transportation of persons with seating capacity 13 persons (including the driver) only when the same are used for making taxable supply of— (i) further supply of such vehicles, (ii) transportation of passengers, (iii) imparting training on driving of such vehicles.

Since B&D Company is a trader and it does not use the motor car for any of the specified purposes, ITC thereon will not be available.

- (2) Since air conditioners is purchased after 03-10-2020, full ITC will be available and will be computed separately.

**Illustration 52 - Computation of GST liability :** Keeping all the facts and Illustration 50 and 51 unchanged, compute the GST liability of B & D Company payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the period covered under regular scheme.

**Solution: Output tax liability of B & D Company under regular scheme :** From 03-10-2020, firm will pay tax under regular scheme on monthly basis in terms of Section 39 (1)/(7) of section 39 of the CGST Act, 2017 and will be eligible to avail ITC on inputs held in stock and capital goods as on 02-10-2020 in terms of section 18 of the CGST Act, 2017 as also on goods and services procured on or after 03-10-2020 and used in the course or furtherance of business in accordance with section 16 of the CGST Act, 2017.

However, since common input services and capital goods are used in effecting taxable supplies as well as exempt supplies, ITC attributable to the exempt supplies will need to be reversed for the month of October, 2020 in terms of section 17(2) read with rules 42 and 43 of the CGST Rules, 2017 respectively. Further, since all the sales are made within the State (eastern part of Maharashtra), CGST and SGST @ 9% each will be payable on the outward supplies.

The tax liability for the month of October, 2020 under regular scheme will be computed as under—

Particulars	Value (₹)	CGST (₹)	SGST (₹)
Tax on outward supply of 'P'	6,25,000	56,250	56,250
Taxable supplies from 03-10-2020 to 31-10-2020 chargeable to CGST and SGST 9% each [₹ 6,25,000 (Refer Working Note 4)]			
Tax on inward supplies attracting reverse charge	20,000	500	500
GTA services availed chargeable to CGST and SGST @ 2.5% each (₹1,40,000/7)			
ITC reversal on input services [Refer Working Note 1 below]		363	363
ITC reversal on capital goods [Refer Working Note 2 below]		126	126
Total GST liability		57,239	57,239
Less: ITC [Refer Working Note 3 below]		56,739	56,739
Less: Tax paid in cash [As per section 49(4) of the CGST Act, 2017 amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.]		500	500

**Working Note 1 :**

Particulars	Value (₹)	CGST (₹)	SGST (₹)
CGST & SGST @ 2.5% each paid under reverse charge on freight paid to GTA on 10-10-2020 (for the goods transported between 11-10-2020 & 20-10-2020) will be available as ITC under regular scheme	20,000	500	500
CGST & SGST @ 9% each paid to Packing Agency on 09-10-2020 (for specialized packing to be carried out on 10-10-2020 on goods to be transported between 11-10-2020 & 20-10-2020) will be available as ITC under regular scheme.	30,000	2,700	2,700
<b>Total common credit</b>		<b>3,200</b>	<b>3,200</b>
Common credit on input services attributable to exempt supplies (rounded off)		363	363

Common credit on input services availed during the period under regular scheme × (Exempt turnover made during the period under regular scheme/Total turnover during the period under regular scheme) = ₹ 3,200 × ₹ 80,000/ ₹ 7,05,000			
Turnover of 'Q' (exempt turnover) from 03-10-2020 to 31-10-2020 - ₹ 80,000 [Refer Working Note 4]			
Total turnover from 03-10-2020 to 31-10-2020 - ₹ 7,05,000 [Refer Working Note 4]			

**Working Note 2 :**

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)
ITC claimed on capital goods on 02-10-2020	48,600	48,600
Air conditioner used in the office purchased on 15-10-2020	18,000	18,000
Common ITC [Since all the capital goods are used for effecting both taxable and exempt supplies, the entire ITC on capital goods is common]	66,600	66,600
Common credit for a tax period [Common credit ÷ 60] (rounded off)	1,110	1,110
Common credit on capital goods attributable to exempt supplies (rounded off)	126	126
Common credit on capital goods during the period under regular scheme × (Exempt turnover made during the period under regular scheme/Total turnover during the period under regular scheme) = ₹ 1,110 × ₹ 80,000/ ₹ 7,05,000		

**Working Note 3 :**

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)
ITC on inputs and capital goods claimed on 02-10-2020	99,000	99,000
ITC on air conditioner used in the office purchased on 15-10-2020	18,000	18,000
ITC on freight paid to GTA	500	500
ITC on packing charges	2,700	2,700
<b>Total ITC available with the firm</b>	<b>1,20,200</b>	<b>1,20,200</b>

**Working Note 4 : Computation of turnover for the month of October, 2020 :**

Particulars	Product P (₹)	Product Q (₹)
Stock of Goods as on 30-09-2020	10,00,000	2,00,000
Stock of Goods as on 31-10-2020	3,60,000	1,20,000
Cost of goods sold during the month of October (since no purchases are made after Sept. 2020)	6,40,000	80,000
Turnover for the month of October 2020 being 125% of the Cost of goods sold since the margin is 20% of the sales [A]	8,00,000	1,00,000
Turnover effected under composition scheme upto 02-10-2020 [Bill No. 2307 to 2308] [B]	1,75,000	20,000
<b>Turnover in the month of October under regular scheme [03-10-2020 - 31-10-2020] [A] - [B]</b>	<b>6,25,000</b>	<b>80,000</b>
<b>Total turnover of taxable and exempted goods under normal scheme [₹ 6,25,000 + ₹ 80,000]</b>		<b>7,05,000</b>

**Illustration 53 - Apportionment of Credit of input and input services and Computation of GST liability :** Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures three taxable products 'M', 'N' and 'O'. Tax on 'N' is payable under reverse charge. The firm also provides taxable consultancy services.

The firm has provided the following details for the period April 2020 - September 2020 :

Particulars	₹
Turnover of 'M'	14,00,000
Turnover of 'N'	6,00,000
Turnover of 'O'	10,00,000
Export of 'M' with payment of IGST	2,50,000
Export of 'O' under letter of undertaking	10,00,000
Consultancy services provided to independent clients located in foreign countries under LUT. In all cases, the consideration has been received in convertible foreign exchange within 2-3 months from the date of the invoice	20,00,000

Sale of building (excluding stamp duty of ₹ 2.50 lakh, being 2% of value)	1,20,00,000
Interest received on investment in fixed deposits with a bank	4,00,000
Sale of shares (Purchase price ₹ 2,40,00,000/-)	2,50,00,000
Legal services received from an advocate in relation to product 'M'	3,50,000
Common inputs and input services used for supply of goods and services mentioned above [Inputs - ₹ 35,00,000; Input services - ₹ 15,00,000]	50,00,000

With the help of the above-mentioned information, compute the net GST liability of Surana & Sons, payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the period April 2020 - September 2020.

**Note:** Assume that all the domestic transactions of Surana & Sons are intra-State and that rate of GST on goods and services are 12% and 18% respectively. All the conditions necessary for availing the ITC have been complied with. Turnover of Surana & Sons was ₹ 85,00,000 in the previous financial year. All the amounts given above are exclusive of GST, wherever applicable. (MTP May 2019)

**Solution: Computation of net GST liability of Surana & Sons for the period April 2020- September 2020 :**

Particulars	₹
GST payable on outward supply [WN-1]	3,18,000
GST payable on legal services under reverse charge [₹ 3,50,000 × 18%] [Tax on legal services provided by an advocate to a business entity, is payable under reverse charge by the business entity in terms of Notification No. 13/2017-CT (R) dated 28-06-2017. Further, such services are not eligible for exemption provided under Notification No. 12/2017-CT (R) dated 28-06-2017 as the turnover of the business entity [Surana & Sons] in the preceding financial year exceeds ₹ 20 lakh.]	63,000
<b>Total GST liability</b>	<b>3,81,000</b>
Less: Input tax credit (ITC) [WN-3]	7,53,000
Less: Common credit attributable to exempt supplies during the period April 2020 - Sept. 2020 to be reversed in FORM GSTR-3B [WN-2]	4,74,820
Tax paid in cash (₹ 63,000 + ₹ 39,820) [As per section 49(4) of the CGST Act, 2017 amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.]	1,02,820

**Working Note :**

**(1) Computation of GST payable on outward supply :**

Particulars	Value (₹)	GST (₹)
Turnover of 'M' [Liable to GST @ 12%]	14,00,000	1,68,000
Turnover of 'N' [Tax on 'N' is payable under reverse charge by the recipient of such goods]	6,00,000	Nil
Turnover of 'O' [Liable to GST @ 12%]	10,00,000	1,20,000
Export of 'M' with payment of IGST @ 12%	2,50,000	30,000
Export of 'O' under letter of undertaking (LUT) [Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]	10,00,000	Nil
Consultancy services provided to independent clients located in foreign countries under LUT. [The activity is an export of service in terms of section 2(6) of the IGST Act, 2017 as – ➤ the supplier of service is located in India; ➤ the recipient of service is located outside India; ➤ place of supply of service is located outside India (in terms of section 13(2) of the IGST Act, 2017); ➤ payment for the service has been received in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and ➤ supplier of service and recipient of service are not merely establishments of distinct person.] [Export of services is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply can be supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]	20,00,000	Nil
Sale of building [Sale of building is neither a supply of goods nor a supply of services in terms of para 5 of Schedule III to the CGST Act, 2017 and hence, is not liable to any tax]	1,20,00,000	Nil



Interest received on investment in fixed deposits with a bank [Exempt vide Notification No. 12/2017-CT (R) dated 28-06-2017]	4,00,000	Nil
Sale of shares [Shares are neither goods nor services in terms of section 2(55) and 2(102) of the CGST Act, 2017. Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to any tax.]	2,50,00,000	Nil
<b>Total GST payable on outward supply</b>		<b>3,18,000</b>

(2) **Computation of common credit attributable to exempt supplies during the period April 2020 - September 2020:**

Particulars	₹
Common credit on inputs and input services [WN-3]	6,90,000
Common credit attributable to exempt supplies (rounded off)	4,74,820
= Common credit on inputs and input services × (Exempt turnover during the period/Total turnover during the period)	
= ₹ 6,90,000 × ₹ 1,33,50,000 / ₹ 1,94,00,000	
Exempt turnover = ₹ 1,33,50,000 and total turnover = ₹ 1,94,00,000 [Refer note below]	

**Note :** As per Section 17(3) of the CGST Act, 2017, value of exempt supply includes supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to Paragraph 5(b) of Schedule II, sale of building. As per explanation to Chapter V of the CGST Rules, 2017, the value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Further, as per explanation to rule 42 of the CGST Rules, 2017, the aggregate value of exempt supplies *inter alia* excludes the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances. Thus, the value of exempt supply is computed as under :

Particulars	₹
Turnover of product N taxable under reverse charge basis	6,00,000
Sale of building [Being stamp duty value [₹ 2,50,000 ÷ 2%]]	1,25,00,000
Interest received on investment in fixed deposits with a bank [Exempt vide Notification No. 12/2017-CT (R) dated 28-06-2017]	Nil
Sale of shares [1% of sales value of securities]	2,50,000
<b>Value of exempt supply</b>	<b>1,33,50,000</b>

Total turnover = ₹ 1,94,00,000 (₹ 14,00,000 + ₹ 6,00,000 + ₹ 10,00,000 + ₹ 2,50,000 + ₹ 10,00,000 + ₹ 20,00,000 + ₹ 1,25,00,000 + ₹ 4,00,000 + ₹ 2,50,000)

(3) **Computation of ITC available in the Electronic Credit Ledger of the Surana & Sons for the period April 2020 - September 2020 :**

Particulars	₹
Common credit on inputs and input services [Tax on inputs - ₹ 4,20,000 (₹ 35,00,000 × 12%) + Tax on input services - ₹ 2,70,000 (₹ 15,00,000 × 18%)]	6,90,000
Legal services used in the manufacture of taxable product 'M'	63,000
<b>ITC available in the Electronic Credit Ledger</b>	<b>7,53,000</b>

**Illustration 54 - Apportionment of Credit of input and input services and Computation of GST liability :** Vansh Shoppe is a registered supplier of both taxable and exempted goods, registered under GST in the State of Rajasthan. Vansh Shoppe has furnished the following details for the month of April, 2020 :

	(₹)
(1) Details of sales :	
Sales of taxable goods	50,00,000
Sales of goods not leviable to GST	10,00,000
(2) Details of goods purchased for being sold in the shop :	
Taxable goods	45,00,000
Goods not leviable to GST	4,00,000
(3) Details of expenses :	
Monthly Rent payable for the shop	3,50,000

Telephone expenses paid (₹ 30,000 for land line phone installed at the shop and ₹ 20,000 for mobile phone given to employees for official use)	50,000
Audit fees paid to a Chartered Accountant (₹ 35,000 for filing of Income tax return & the statutory audit of preceding financial year and ₹ 25,000 for filing of GST return)	60,000
Premium paid on health insurance policies taken for specified employees of the shop. The Government has not notified such health insurance service u/s 17(5)(b) CGST Act, 2017	10,000
Freight paid to goods transport agency (GTA) for inward transportation of non taxable goods	50,000
Freight paid to goods transport agency (GTA) for inward transportation of taxable goods	1,50,000
GST paid on goods given as free samples	5,000

All the above amounts are exclusive of all kind of taxes, wherever applicable.

All the purchases and sales made by the Vansh Shoppe are within Rajasthan. All the other expenses incurred are also within Rajasthan.

Assume wherever applicable for purpose of reverse charge payable by Vansh Shoppe the CGST, SGST and IGST rates as 2.5%, 2.5% and 5% respectively. CGST, SGST and IGST rates to be 6%, 6% and 12% respectively in all other cases.

There is no opening balance in the electronic cash ledger or electronic credit ledger.

Assume that all the necessary conditions for availing the ITC have been complied with Ignore interest, if any.

You are required to compute the following :-

- Input tax credit (ITC) credited to Electronic Credit Ledger
- Common credit
- ITC attributable towards exempt supplies out of common credit
- Net GST Liability for the month of April, 2020. (10 Marks, May 2020)

**Solution: Computation of ITC credited to electronic credit ledger :** As per Rule 42 of the CGST Rules, 2017, the ITC in respect of inputs or input services being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies.

- ITC credited to the electronic credit ledger of registered person ['C<sub>1</sub>'] is calculated as under-

Total input tax involved on inputs & input services in a tax period	T
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T <sub>1</sub> )
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T <sub>2</sub> )
Less: Input tax on inputs & input services which are ineligible for credit [Blocked credits u/s 17(5)]	(T <sub>3</sub> )
<b>ITC credited to Electronic Credit Ledger</b>	<b>C<sub>1</sub></b>

**Computation of total input tax involved [T] (amount in ₹) :**

Particulars	CGST	SGST
GST paid on taxable goods [₹ 45,00,000 × 6% CGST and 6% SGST]	2,70,000	2,70,000
Goods not leviable to tax [No GST is paid, since the same is non-taxable]	Nil	Nil
GST paid on monthly rent [₹ 3,50,000 × 6% CGST and 6% SGST]	21,000	21,000
GST paid on telephone expenses [₹ 50,000 × 6% CGST and 6% SGST]	3,000	3,000
GST paid on Audit Fees [₹ 60,000 × 6% CGST and 6% SGST]	3,600	3,600
GST paid on Premium paid on health insurance policies taken for specified employees of the shop [₹ 10,000 × 6% CGST and 6% SGST]	600	600
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable goods [₹ 50,000 × 2.5% CGST and 2.5% SGST]	1,250	1,250
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable goods [₹ 1,50,000 × 2.5% CGST and 2.5% SGST]	3,750	3,750
GST paid on goods given as free samples	2,500	2,500
<b>Total input tax involved in a tax period (April, 2020) [T]</b>	<b>3,05,700</b>	<b>3,05,700</b>

**Computation of T<sub>1</sub> i.e. Input tax on inputs & input services that are intended to be used exclusively for non-business purposes (amount in ₹) : NIL**

Computation of T<sub>2</sub> i.e. Input tax on inputs & input services that are intended to be used exclusively for exempt supplies (amount in ₹) :

GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable goods [Exempt supply includes non-taxable supply in terms of Section 2(47) of the CGST Act, 2017. Hence, input service of inward transportation of non-taxable goods is exclusively used for effecting exempt supplies.]	1,250	1,250
<b>Input tax exclusively attributable to exempt supplies [T<sub>2</sub>]</b>	<b>1,250</b>	<b>1,250</b>

Computation of T<sub>3</sub> i.e. Input tax on inputs & input services which are ineligible for credit [Blocked credits under section 17(5)] (amount in ₹) :

GST paid on Premium paid on health insurance policies taken for specified employees of the shop. The Government has not notified such health insurance service u/s 17(5)(b)(i) CGST Act, 2017 [ITC on health insurance service not notified by the Government is blocked under section 17(5)(b)(i) of the CGST Act, 2017]	600	600
GST paid on goods given as free samples [ITC on goods <i>inter alia</i> , disposed of by way of free samples is blocked under section 17(5)(h) of the CGST Act, 2017.]	2,500	2,500
<b>Input tax for which credit is blocked under section 17(5) of the CGST Act, 2017 [T<sub>3</sub>]</b>	<b>3,100</b>	<b>3,100</b>

ITC credited to the electronic credit ledger of registered person ['C<sub>1</sub>'] is calculated as under -

Total input tax involved on inputs & input services in a tax period	3,05,700	3,05,700
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	Nil	Nil
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	1,250	1,250
Less: Input tax on inputs & input services which are ineligible for credit [Blocked credits u/s 17(5)]	3,100	3,100
<b>ITC credited to Electronic Credit Ledger [C<sub>1</sub>]</b>	<b>3,01,350</b>	<b>3,01,350</b>

(ii) Computation of Common Credit :

ITC credited to Electronic Credit Ledger	C <sub>1</sub>
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T <sub>4</sub> )
<b>Common ITC available for apportionment</b>	<b>C<sub>2</sub></b>

Computation of T<sub>4</sub> i.e. ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies (amount in ₹) :

GST paid on taxable goods	2,70,000	2,70,000
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable goods	3,750	3,750
<b>Input tax exclusively attributable to taxable supplies [T<sub>4</sub>]</b>	<b>2,73,750</b>	<b>2,73,750</b>

Common Credit [C<sub>2</sub>] :

ITC credited to Electronic Credit Ledger	3,01,350	3,01,350
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	2,73,750	2,73,750
<b>Common ITC available for apportionment</b>	<b>27,600</b>	<b>27,600</b>

(iii) Computation of ITC attributable towards exempt supplies out of common credit : ITC attributable towards exempt supplies is denoted as 'D<sub>1</sub>' and calculated as -

$$\text{Common credit i.e. "C}_2\text{"} \times \frac{\text{The aggregate value of exempt supplies during the tax period i.e. "E"}}{\text{The total turnover in the State of the registered person during the tax period i.e. "F"}} = \text{The amount of input tax credit attributable towards exempt supplies, be denoted as "D}_1\text{"}$$

$$\text{CGST } 27,600 \times \frac{10,00,000}{60,00,000} = ₹ 4,600$$

$$\text{SGST } 27,600 \times \frac{10,00,000}{60,00,000} = ₹ 4,600$$

Aggregate value of exempt supplies during April, 2020

= ₹ 10,00,000

Total turnover in the State during the tax period

= ₹ 60,00,000 (₹ 50,00,000 + ₹ 10,00,000)

(iv) Computation of Net GST liability for the month of April, 2020 (amount in ₹) :

Particulars	CGST	SGST
<b>GST liability under forward charge :</b>		
Taxable goods [₹ 50,00,000 × 12%] [A]	3,00,000	3,00,000
ITC credited to the electronic ledger	3,01,350	3,01,350
Less: Ineligible ITC [ITC out of common credit, attributable to exempt supplies]	4,600	4,600
Input tax credit available for utilization [B]	2,96,750	2,96,750
<b>Net GST payable through Electronic cash ledger [A] - [B] [C]</b>	<b>3,250</b>	<b>3,250</b>
<b>GST liability under reverse charge</b>		
Freight paid to GTA for inward transportation of non-taxable goods [₹ 50,000 × 2.5% CGST and 2.5% SGST]	1,250	1,250
Freight paid to GTA for inward transportation of taxable goods [₹ 1,50,000 × 2.5% CGST and 2.5% SGST]	3,750	3,750
Total output tax liability under reverse charge [D]	5,000	5,000
<b>Net GST liability [C] + [D] [See Note]</b>	<b>8,250</b>	<b>8,250</b>

**Note :** As per Section 49(4) of the CGST Act, 2017 amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of Section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

**Illustration 55 - Apportionment of Credit of input and input services and Computation of GST liability :** X is a manufacturer of roofing sheets and has total input tax credit of ₹ 1,60,000 as on 30-06-2019. He provides other information pertaining to June 2019 :

- Input tax on for raw materials in June ₹ 40,000.
- Input tax on account of Harvest caterers in connection with his Housewarming ₹ 10,000.
- Input tax on inputs contained in exempt supplies of ₹ 2 lakhs in June is ₹ 20,000.
- GST paid on cosmetic and plastic surgery of CEO of the company ₹ 30,000.
- Total turnover (interstate, taxable @ 18%) for the month of June 2019 is ₹ 60 lakhs.

Compute the ITC available and his output tax liability for the month of June 2019. (10 Marks, May 2020-NS)

**Solution :**

- Computation of ITC credited to electronic credit ledger :** As per Rule 42 of the CGST Rules, 2017, the ITC in respect of inputs or input services being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies.

ITC credited to the electronic credit ledger of registered person ['C<sub>1</sub>'] is calculated as under-







Total input tax involved on inputs & input services in a tax period	T
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T <sub>1</sub> )
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T <sub>2</sub> )
Less: Input tax on inputs & input services which are ineligible for credit [Blocked credits u/s 17(5)]	(T <sub>3</sub> )
<b>ITC credited to Electronic Credit Ledger</b>	<b>C<sub>1</sub></b>
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T <sub>4</sub> )
<b>Common ITC available for apportionment</b>	<b>C<sub>2</sub></b>

ITC attributable towards exempt supplies is denoted as 'D <sub>1</sub> ' and calculated as -	D <sub>1</sub>
$\text{Common credit i.e. "C}_2\text{"} \times \frac{\text{The aggregate value of exempt supplies during the tax period i.e. "E"}}{\text{The total turnover in the State of the registered person during the tax period i.e. "F"}} = \text{The amount of input tax credit attributable towards exempt supplies, be denoted as "D}_1\text{"}$	
<b>Eligible ITC out of common credit :</b>	<b>D<sub>2</sub></b>
Total input tax involved on inputs & input services in a tax period (T)	1,60,000
<i>Less:</i> Input tax on inputs & input services that are intended to be used exclusively for non-business purposes i.e. Input tax on account of Harvest caterers in connection with his Housewarming (T <sub>1</sub> )	10,000
<i>Less:</i> Input tax on inputs & input services that are intended to be used exclusively for exempt supplies (T <sub>2</sub> )	20,000
<i>Less:</i> Input tax on inputs & input services which are ineligible for credit i.e. GST paid on cosmetic and plastic surgery of CEO of the company (T <sub>3</sub> )	30,000
<b>ITC credited to Electronic Credit Ledger (C<sub>1</sub>)</b>	<b>1,00,000</b>
<i>Less:</i> ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies [Assumed to be used exclusively for taxable supplies]	40,000
<b>Common ITC available for apportionment (C<sub>2</sub>)</b>	<b>60,000</b>
ITC attributable towards exempt supplies is denoted as 'D <sub>1</sub> ' and calculated as -	1,935
$60,000 \times \frac{2,00,000}{62,00,000} = 1,935$	
<b>Eligible ITC out of common credit D<sub>2</sub></b>	<b>58,065</b>

## (ii) Computation of Net GST liability for the month of June, 2019 (amount in ₹) :

<b>GST liability under forward charge :</b>		
Inter-state taxable supply [₹ 60,00,000 × 18%]	[A]	10,80,000
ITC credited to the electronic ledger		1,00,000
<i>Less:</i> Ineligible ITC [ITC out of common credit, attributable to exempt supplies]		1,935
Input tax credit available for utilization	[B]	98,065
<b>Net GST payable through electronic cash ledger [A] - [B]</b>		<b>9,81,935</b>

■ ■ ■

<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b> edu.com <b>AADHYA'S</b> http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional]</p> <p><b>Regular / Fast Track Course</b></p> <p><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP) <input checked="" type="checkbox"/> Direct Tax &amp; International Taxation <input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</p> <p>Latest recorded video lectures available in Pendrive</p> <p> You Tube Subscribe to our Channel CA.Yogendra Bangar</p>	<p> Online MCQ's</p> <p><b>Computer / EduApplet App</b></p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <p><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus <input checked="" type="checkbox"/> Practice, revision &amp; internal assessment <input checked="" type="checkbox"/> 24 x 7 Online Access <input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</p>	<p> SUBJECTIVE Test Series</p> <p>More than 23 Years of Experience</p> <p><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty <input checked="" type="checkbox"/> Based on the Institute's Examination pattern <input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern <input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level <input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</p>
---	---	--	---

## REGISTRATION

## SUMMARIZED POINTS FOR REVISION

## PERSONS LIABLE FOR REGISTRATION

## (1) Nature of registration :

- The registration in GST is PAN based and State specific.
- One registration per State/UT. Thus, there are **no centralized registration under GST**.  
A person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.
- GST identification number called "GSTIN" - a **15-digit number** and a certificate of registration incorporating therein this GSTIN is made available to the applicant on the GSTN common portal.
- **Registration under GST is not tax specific**, i.e. single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.

## (2) Advantages of registration:

Registration under Goods and Service Tax (GST) regime will confer following advantages to the business :

- (a) Legally recognized as supplier of goods or services.
- (b) Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
- (c) Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.

## (3) Persons liable to registration [Section 22] :

Those who exceed threshold limit	<ul style="list-style-type: none"> <li>➤ Aggregate turnover &gt; ₹ 20 lakh</li> <li>➤ Aggregate turnover &gt; ₹ 10 lakh in case of Special Category States being Mizoram, Tripura, Manipur and Nagaland.</li> <li>➤ It must be noted that if a person having place of business in different States across India has one branch in any of the States being Manipur, Mizoram, Nagaland, and Tripura, the threshold limit for GST registration will be reduced to ₹ 10 lakh if he is making taxable supplies from these States.</li> </ul>
Who are registered under earlier law	Shall be liable to be registered under GST.
In case of transfer of business on account of succession, etc.	Transferee liable to be registered from the date of succession of business.
In case of amalgamation/ demerger by an order of High Court etc.	Transferee liable to be registered from the date on which Registrar of Companies issues incorporation certificate giving effect to order of High Court etc.
Which place to be registered	Registration required only for a place of business from where taxable supply takes place

## Analysis of Aggregate turnover :

- (1) Aggregate turnover of persons having the same Permanent Account Number is to be computed on all India basis.
- (2) Value of exported goods/services, exempted goods/services, inter-State supplies between distinct persons having same PAN to be included in aggregate turnover.
- (3) Outward Supplies which are taxed on reverse charge basis shall be included in turnover of the supplier.
- (4) "Aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his Principals.
- (5) The supply of goods, after completion of job-work, by a registered job-worker shall be treated as the supply of goods by the principal, and the value of such goods shall not be included in the aggregate turnover of the registered job-worker.



**PERSONS EXEMPT FROM REGISTRATION**

**(4) Persons not liable for registration [Section 23]:**

- (a) Person engaged exclusively in supplying goods/services/both **not liable to tax**
- (b) Person engaged exclusively in supplying goods/services/both **wholly exempt from tax**
- (c) **Agriculturist** limited to supply of produce out of cultivation of land
- (d) Specified category of persons notified by the Government.

**The following persons have been notified :**

- (i) Persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) in a financial year - *Notification No. 10/2017-IT dated 13-10-2017 w.e.f. 13-10-2017 as amended by Notification No. 3/2019-IT dated 29-1-2019*
- (ii) Persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under Section 9(3) of the said Act. -*Notification No. 5/2017-CT dated 19-06-2017 w.e.f. 22-06-2017*
- (iii) **Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20 lakh :** The Central Government has specified the following persons making inter-State supplies of goods have been exempted from obtaining registration:
  - (a) Persons making inter-State taxable supplies of notified handicraft goods
  - (b) Persons making inter-State taxable supplies of notified products, when made by craftsmen predominantly by hand even though some machinery may also be used in the process.

**Conditions to be fulfilled :** (a) The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakh [**₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland**] in a FY.

(b) Such persons have obtained a PAN and have generated an e-way bill - Notification No. 3/2018 IT dated 22-10-2018

- (iv) Casual Taxable Persons making inter-State taxable supplies of handicraft goods and other notified products when made by craftsmen predominantly by hand up to **₹ 20,00,000 (₹ 10 lakhs in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland)**. Such persons have obtained a PAN and have generated an e-way bill [*Notification No. 56/2018 CT dated 23-10-2018*].
  - (v) **Job workers engaged in making inter-State supply of services** to a registered person **except** job-worker who is liable to be registered under Section 22(1) or who opts to take registration voluntarily under Section 25(3) of the said Act; or who is involved in making supply of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles.
  - (vi) Persons making supplies of services, other than supplies specified under Section 9(5) of the said Act through an electronic commerce operator who is required to collect tax at source under Section 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of **₹ 20 lakh** in a financial year, as the category of persons exempted from obtaining registration under the said Act. However, the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of **₹ 10 lakh** in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland" [*Notification No. 65/2017-CT dated 15-11-2017*]
- Therefore, all service providers, whether supplying intra-State, inter-State or through ECO, will be exempt from obtaining registration, provided their aggregate turnover **does not exceed ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland)**.
- (vii) Any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed **₹ 40 lakh**, except, -
    - (a) persons required to take compulsory registration u/s 24 of the said Act;
    - (b) persons engaged in making supplies of the goods being - (i) Ice cream and other edible ice, whether or not containing cocoa; (ii) Pan masala; and (iii) Tobacco and manufactured tobacco substitutes,;
    - (c) persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and
    - (d) persons exercising option of voluntary registration under the provisions of Section 25(3), or such registered persons who intend to continue with their registration under the said Act. [*Notification No. 10/2019-CT dated 07-03-2019 w.e.f. 01-04-2019*]

Present position of registration in respect of suppliers of goods is as follows:		
	Threshold	State
1.	Upto ₹ 10 lakhs	Manipur; Mizoram; Nagaland; Tripura.
2.	Upto ₹ 20 lakhs	<input type="checkbox"/> Specified States : Arunachal Pradesh, Meghalaya, Sikkim and Uttarakhand. <input type="checkbox"/> Other than Specified States/UT : Telangana, Puducherry
3.	Upto ₹ 40 lakhs	All States other than 1 and 2

**Comment :** It is to be noted that where aggregate turnover includes income by way of interest or discount on loans and advances the benefit of this exemption notification CANNOT be taken. 'Exclusively engaged in supply of goods' is a condition of the notification and Section 22 can be invoked if this condition is violated on any day in the year and tax from ₹ 20 lakhs upto the date when this condition stands breached may become due without any availability of input tax credit.

**Threshold limit for registration :** Thus, the above amendments can be summarised as under –

States with threshold limit of ₹ 10 lakh for both goods and services	States with threshold limit of ₹ 20 lakh for both goods and services	States with threshold limit of ₹ 20 lakh for services and ₹ 40 lakh for goods (i.e. persons engaged exclusively in supply of goods)
Manipur	Arunachal Pradesh	Jammu and Kashmir
Mizoram	Meghalaya	Assam
Nagaland	Sikkim	Himachal Pradesh
Tripura	Uttarakhand	All other States
	Puducherry	
	Telangana	

<b>Circular No. 57/31/2018 GST dated 04-09-2018</b>	A commission agent who is making supplies on behalf of such an agriculturist - Not a taxable person - Is not liable for compulsory registration u/s 24(vii). However, where a commission agent is liable to pay tax under reverse charge, such an agent will be required to get registered compulsorily u/s 24(iii) of the CGST Act.
---	--

### COMPULSORY REGISTRATION

- (5) **Compulsory registration in certain cases :** As per Section 24, the following category of persons are mandatorily required to obtain the registration under GST irrespective of their turnover –
- (i) persons making any inter-State taxable supply [It must be noted that Central Government has granted exemption from Registration to person making interstate supplies of taxable services having aggregate turnover not exceeding ₹ 20 lakh (₹ 10 lakhs in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland)] (Notification No. 10/2017-IT dated 13-10-2017 w.e.f. 13-10-2017)]
  - (ii) **Casual taxable person** who does not have a fixed place of business in the State or Union Territory from where he wants to make supply [However, threshold limit of ₹ 20 lakh (₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland) is available in case of CTP who is making inter-State taxable supplies of notified handicraft goods and availing the benefit of exemption from registration as mentioned in point (i) above.];
  - (iii) persons who are required to pay tax under **reverse charge** i.e. recipient of supply is liable to pay tax;
  - (iv) person who are required to pay tax under section 9(5) i.e. **E-Commerce operator** who is required to pay tax on specified services;
  - (v) **non-resident taxable persons** making taxable supply;
  - (vi) persons who are required to **deduct tax u/s 51**, whether or not separately registered under this Act;
  - (vii) **persons who make taxable supply** of goods or services or both **on behalf of other taxable persons** whether as an agent or otherwise;
  - (viii) **Input Service Distributor**, whether or not separately registered under this Act;
  - (ix) persons who supply goods or services or both, other than supplies specified u/s 9(5), through such electronic commerce operator who is required to collect tax at source u/s 52; [Persons who are suppliers of service and supplying services through e-commerce operator are not required to register under GST if their aggregate turnover is less than ₹ 20 lakhs per annum (₹ 10 lakhs in case of specified States) - Notification No. 65/2017-CT dated 15-11-2017];
  - (x) **every electronic commerce operator who is required to collect tax at source under section 52;** [Thus, small e-commerce operators who are not required to collect tax at source under section 52 would now be eligible for availing the threshold exemption limit benefit for registration purposes.]
  - (xi) **every person supplying online information and database access or retrieval services** from a place outside India to a person in India, other than a registered person; and

- (xii) such other person or class of persons as may be notified by the Govt on the recommendations of the Council.

**PROCEDURE FOR REGISTRATION**

- (6) **Procedure for registration [Section 25]** : The procedure for obtaining registration is as under –
- (a) **Application** for registration is to be made **within 30 days** in every State/UT in which such person is liable for registration.  
Separate registrations for SEZ units and Non - SEZ units in the same State or Union territory.
  - (b) If the supplier is making supply from Territorial waters of India, Registration is to be obtained from nearest coastal State or Union territory.
  - (c) A person seeking registration shall be granted a **single registration in a State or Union territory**.  
However, a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.
  - (d) If one of the place of business of a taxable person is paying tax under normal levy [Section 9], no other place of business shall be granted registration to pay tax under composition levy [Section 10].
  - (e) In case of persons seeking **Voluntary registration, all provisions of registration shall be applicable**.
  - (f) Person having **more than one registration** - Each such registration to be treated as **distinct persons**.
  - (g) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.
  - (h) **PAN is mandatory for obtaining registration**. However, a person required to deduct tax under section 51 may have, in lieu of a PAN, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.
  - (i) A non-resident taxable person may be granted registration on the basis of such other documents as may be prescribed.
  - (j) In case of Failure to obtain registration, mandatory registration will be granted by the proper officer.
  - (k) **Unique Identity Number (UIN)** is granted to specialized agency of UNO/ Consulate/ Embassy of foreign country/other notified persons for the purposes of refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed. The Unique Identity Number granted to a person under Section 25(9)(a) shall be applicable to the territory of India. [Rule 17(1A)]
  - (l) RC/ UIN to be granted or rejected after due verification **within 3 working days** from the date of submission of application.
  - (m) **Furnishing of Bank Account Details [Rule 10A] [Inserted by Notification No. 31/2019-CT dated 28-06-2019]** : After a certificate of registration in FORM GST REG-06 and a GSTIN has been assigned, the registered person, except those who have been granted registration under rule 12 (i.e. registered persons required to deduct tax at source or to collect tax at source) or, as the case may be rule 16 (i.e. persons who take *suo motu* registration), shall as soon as may be, but not later than 45 days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision.
  - (n) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.
  - (o) If RC/UIN is not granted within prescribed period, Registration shall be deemed to be granted.
- (7) **Deemed registration [Section 26]** : (a) RC/ UIN granted under SGST/UTGST Act – Deemed registration under CGST Act. (b) Rejection of registration application under SGST/ UTGST Act – Deemed rejection under CGST Act.
- (8) **Effective date of registration [Rule 10]** :
- |  |   |
|--|---|
| Application submitted <b>within 30 days</b> of the applicant becoming liable to registration | ➤ Effective date is the date on which he becomes liable to registration |
| Application submitted <b>after 30 days</b> of the applicant becoming liable to registration  | ➤ Effective date is date of grant of registration                       |
- (9) Separate registration for multiple places of business within a State or a Union territory shall be granted subject to the condition that such person shall not pay tax under section 10 for any of his places of business if he is paying tax under section 9 for any other place of business; all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

**PROCEDURE FOR REGISTRATION**

**PART - I**

Every person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his PAN, Mobile number, E-mail address, State/UT in Part A of FORM GST REG-01 on GST Common Portal.



- ◆ PAN validated online by Common Portal from CBDT database
- ◆ Mobile number and email verified through one time password sent to it.

Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

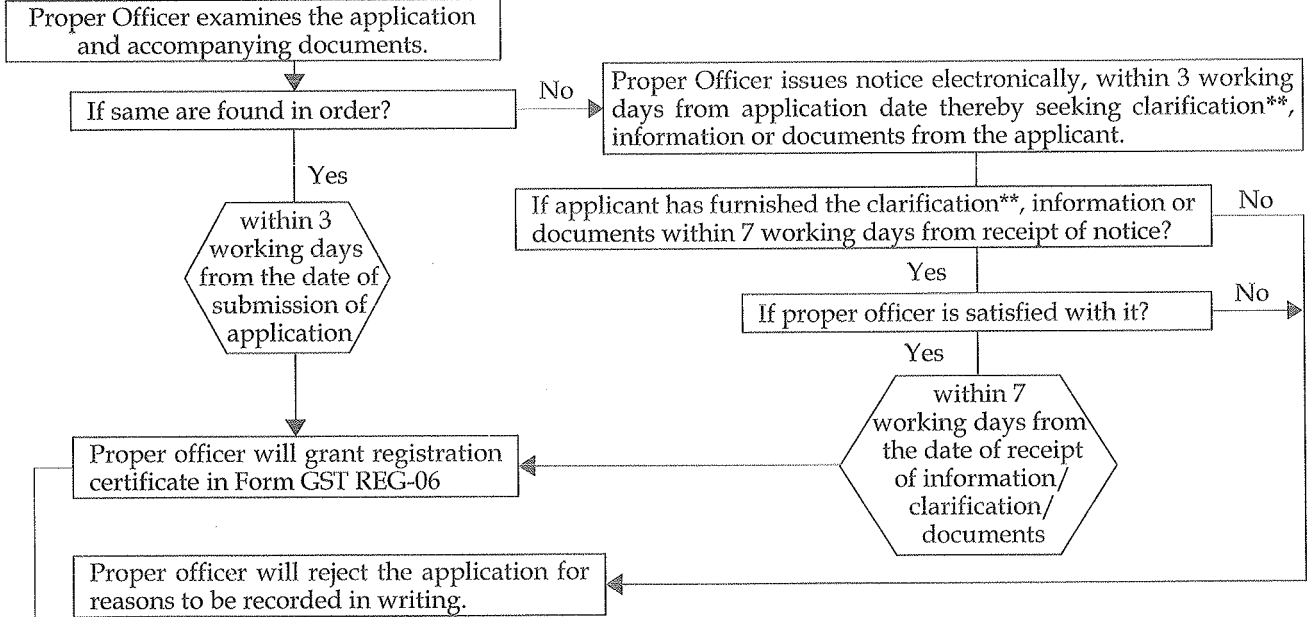
Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A Causal Taxable Person (CTP) applying for registration gets a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.

Application shall be forwarded to the Proper Officer.

The procedure after receipt of application by the Proper Officer is depicted in Part II of the diagram.

**PART - II**



\*\*Clarification includes modification/ correction of particulars declared in the application for registration, other than PAN, State, Mobile No. & E-mail address.

**Deemed Approval of Application**

If the proper officer fails to take any action -  
 ◆ within 3 working days from the date of submission of application, or  
 ◆ within 7 working days from the date of receipt of clarification, information or documents furnished by the applicant,  
 the application for grant of registration shall be deemed to have been approved.

## REGISTRATION OF NON-RESIDENT AND CASUAL TAXABLE PERSON

## (10) Special procedure for registration of CTP and NRTP :

## ➤ Meaning of Casual Taxable person and Non-resident Taxable person :

Casual Taxable Person	Non-resident Taxable Person
"Casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business. [Section 2(20)]	"Non-resident taxable person" means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India. [Section 2(77)]
He has a Permanent Account Number.	He does not have a PAN. A non-resident person, if having PAN may take registration as a casual taxable person.
Application form for registration is same as for normal taxable persons viz <b>GST REG-01</b> .	Different application form for registration by non-resident taxable person viz <b>GST REG-09</b> .
He has to undertake transactions in the course or furtherance of business.	There is no such requirement.
He has to file normal <b>GSTR-1</b> and <b>GSTR-3B</b> returns.	He has to file a separate simplified return in the format <b>GSTR-5</b> .
He can claim ITC of all inward supplies.	He can get ITC only in respect of import of goods and /or services.

## ➤ Registration procedure in respect of Casual Taxable person and Non-resident Taxable person :

- GST law prescribes special procedure for registration, as also for extension of the operation period of such Casual or Non-Resident taxable persons.
- They have to apply for registration **at least 5 days in advance** before making any supply.
- Registration is granted to them or period of operation is extended only after they make advance deposit of the estimated tax liability. Such advance tax deposit amount should be calculated after considering the due eligible ITC which might be available to such casual taxable person.
- Registration is granted to them for the **period specified in the application for registration or 90 days** from the effective date of registration.
- The proper officer may, on sufficient cause being shown by the said taxable person, **extend** the said period of 90 days **by a further period not exceeding 90 days**.

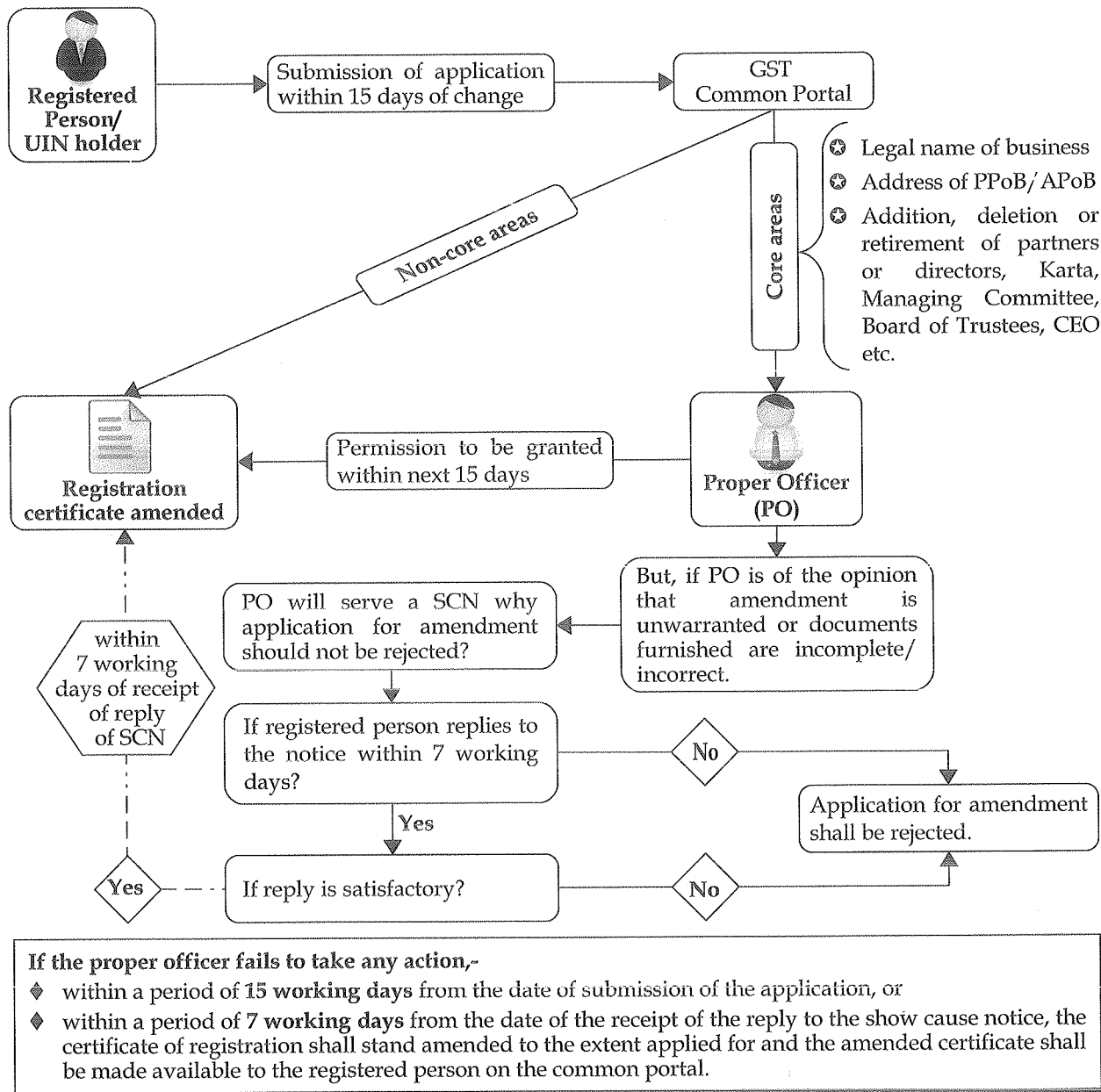
Registration of participants of long running exhibitions [Circular No. 71/45/2018-GST dated 26-10-2018]	
Whether period of period of operation by causal taxable person can be extended beyond the period of <b>180 days (90 days original period and 90 days extension)</b> , as mandated in law.	<ol style="list-style-type: none"> <li>It is clarified that in case of long running exhibitions (for a period more than <b>180 days</b>), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.</li> <li>While applying for normal registration the said person should upload a copy of the allotment letter granting him permission to use the premises for the exhibition and the allotment letter/consent letter shall be treated as the proper document as a proof for his place of business.</li> <li>In such cases he would not be required to pay advance tax for the purpose of registration.</li> <li>He can surrender such registration once the exhibition is over.</li> </ol>

## AMENDMENT AND CANCELLATION OF REGISTRATION

## (11) Amendment of Registration [Section 28] :

- Except for the changes in some core information in the registration application, a taxable person shall be able to make amendments without requiring any specific approval from the tax authority.

- In case the change is for legal name of the business, or the State of place of business or additional place of business or addition, deletion or retirement of partners or directors etc., the taxable person will apply for amendment **within 15 days** of the event necessitating the change.
- The Proper Officer, then, will approve the amendment **within the next 15 days**.
- For other changes like the name of day-to-day functionaries, e-mail Ids, mobile numbers etc. no approval of the Proper Officer is required, and the amendment can be affected by the taxable person on his own on the common portal.
- **Retrospective amendment to be effective on Commissioner's order** : Any particular of the application for registration shall not stand amended with effect from a date earlier than the date of submission of the application in **FORM GST REG-14** on the common portal except with the order of the Commissioner for reasons to be recorded in writing and subject to such conditions as the Commissioner may, in the said order, specify. [Rule 19(1A)]



**(12) Cancellation or suspension of registration [Section 29] :**

- (i) The proper officer may cancel the registration either *suo motu* or on application by registered person or by his legal heirs, in case of death of such person.



- (ii) The registration can be cancelled having regard to the following circumstances where, –
- (a) the business has been –
    - discontinued,
    - transferred fully for any reason including death of the proprietor,
    - amalgamated with other legal entity,
    - demerged, or
    - otherwise disposed of; or
  - (b) there is any change in the constitution of the business; or
  - (c) the taxable person, other than the person registered under Section 25(3) *i.e.* Voluntary Registration, is no longer liable to be registered under section 22 or section 24.

During pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.

(iii) **Cancellation by proper officer - Reasons thereof :**

- (a) a registered person has **contravened such provisions of the Act or the rules** made thereunder *i.e.* –
  - he does not conduct any business from the declared place of business; or
  - he issues invoice or bill without supply of goods or services in violation of the provisions of this Act, or the rules made thereunder.
  - he violates the provisions of Section 171 of the Act or the rules made thereunder;
  - **violates the provision of rule 10A (*i.e.* Furnishing of Bank Account Details)**

**Note :** Section 171 provides for Anti Profiteering Measure.

- (b) a person paying tax under section 10 *i.e.* **composite scheme has not furnished returns for 3 consecutive tax periods;** or
- (c) any registered person, other than composite supplier, has **not furnished returns for a continuous period of 6 months;** or
- (d) any person who has taken voluntary registration has **not commenced business within 6 months** from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

The proper officer shall not cancel the registration without giving the person an opportunity of being heard. During pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

Voluntary registration can be cancelled at any time. Application for cancellation of voluntary registration can be considered even before the expiry of one year from the effective date of registration.

- (iv) Cancellation of registration shall not affect tax and other liability of the registered person.
- (v) Cancellation of registration under SGST/ UTGST Act - Deemed to be cancellation under CGST Act.
- (vi) On cancellation the registered person is required to pay by way of debit in the electronic credit ledger or electronic cash ledger, –
  - **equivalent to the credit of input tax** in respect of –
    - inputs held in stock, or
    - inputs contained in semi-finished goods held in stock, or
    - inputs contained in finished goods held in stock, or
    - capital goods or plant and machinery
 on the day immediately preceding the date of such cancellation, or
  - **the output tax payable on such goods, whichever is higher.**

**Payment in case of capital goods :** In case of capital goods or plant and machinery, the taxable person shall pay –

- an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed *i.e.* **ITC involved in the remaining useful life in months of the capital goods will be reversed on pro-rata basis, taking the useful life as 5 years;** or
- the tax on the transaction value of such capital goods or plant and machinery under section 15, **whichever is higher.**

**(13) Application for cancellation of registration [Rule 20 of CGST Rules, 2017] :**

- A registered person seeking cancellation of registration shall electronically submit the application for cancellation of registration in prescribed form **within 30 days** of occurrence of the event warranting cancellation.
- He is required to furnish in the application the details of inputs held in stock or inputs contained in semi-finished/finished goods held in stock and of capital goods held in stock on the date from which cancellation of registration is sought, liability thereon, details of the payment, if any, made against such liability and may furnish relevant documents thereof.
- Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered, proper officer shall issue the order of cancellation of registration within 30 days from the date of submission of application for cancellation.

**(14) Suspension of registration [Rule 21A] [Amended by Notification No. 49/2019-CT w.e.f. 09-10-2019]:**

- (i) Where a registered person has applied for cancellation of registration u/r 20, the registration shall be deemed to be suspended from--
  - the date of submission of the application or
  - the date from which the cancellation is sought,
 whichever is later, pending the completion of proceedings for cancellation of registration under rule 22.
- (ii) Suspension of registration by Proper Officer during the pendency of the completion of the proceedings for cancellation of registration under rule 22.
- (iii) Taxable supplies not to be effected/return not to be filed during suspension *i.e. the registered person shall not issue a tax invoice and not charge tax on supplies made by him during the period of suspension.*
- (iv) Revocation of suspension upon completion of the proceedings by the proper officer.
- (v) **Revised tax invoice and First return provisions applicable when any order having the effect of revocation of suspension of registration has been passed.**

**(15) Procedure for cancellation of registration by proper officer :**

- Where the proper officer cancels the registration suo-motu, he shall not cancel the same without giving a show cause notice and without giving a reasonable opportunity of being heard, to the registered person. The reply to such show cause notice (SCN) has to be submitted **within 7 days** of service of notice.
- If reply to SCN is satisfactory, proper officer shall drop the proceedings and pass an order in prescribed form. However, where the person instead of replying SCN served for contravention of the provisions contained in section 29(2)(b)/(c) furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order. Where registration of a person is liable to be cancelled, proper officer shall issue the order of cancellation of registration **within 30 days** from the date of reply to SCN.
- **The cancellation of registration shall be effective from a date to be determined by the proper officer.** He will direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5).

**(16) Revocation of cancellation of registration [Section 30] :**

- (a) Application for restoration of registration is to be made **within 30 days** from service of cancellation order
- (b) The proper officer may, by order, either revoke cancellation of the registration or reject the application. However before rejection the applicant must be given an opportunity of being heard.
- (c) Restoration of registration under SGST/ UTGST Act shall be deemed restoration under CGST Act.

**(17) Revocation of cancellation of registration [Rule 23 of CGST Rules, 2017] :**

- Where the registration of a person is cancelled *suo-motu* by the proper officer, such **registered person may apply for revocation of the cancellation** to such proper officer, **within 30 days** from the date of service of the order of cancellation of registration, at the GST Common Portal in the prescribed manner.
- However, in case registration was cancelled for failure of registered person to furnish returns, before applying for revocation the person has to make good the defaults (by filing all pending returns, making payment of all dues in terms of such returns along-with interest, penalty, late fee, etc.) for which the registration was cancelled by the officer.
- **Pending returns to be filed before revocation of cancellation of registration :** All returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of 30 days from the date of order of revocation of cancellation of registration.

However, where the registration has been cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration 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.

- If the proper officer is satisfied that there are sufficient grounds for revocation of cancellation, he may **revoke the cancellation of registration**, by an order **within 30 days** of receipt of application and communicate the same to applicant.
- Otherwise, he may reject the revocation application. However, before rejecting the application, he has to first issue SCN to the applicant who shall furnish the clarification **within 7 working days** of service of SCN. The proper officer shall dispose the application (accept/reject the same) **within 30 days** of receipt of clarification.
- The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act.

### ADDITIONAL PRACTICE QUESTIONS

**T.Q. 1:** What are the advantages of taking registration in GST?

**Ans:** Registration will confer following advantages to the business :

- (i) Legally recognized as supplier of goods or services.
- (ii) Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
- (iii) Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.
- (iv) Become eligible to avail various other benefits and privileges rendered under the GST laws.

**Illustration 1 – Registration – Section 22 :** Examine whether the supplier is liable to get registered in the following independent cases:-

- (i) Raghav of Assam is exclusively engaged in intra-State taxable supply of readymade garments. His turnover in the current financial year (FY) from Assam showroom is ₹ 28 lakh. He has another showroom in Tripura with a turnover of ₹ 11 lakh in the current FY.
- (ii) Pulkit of Panjim, Goa is exclusively engaged in intra-State taxable supply of shoes. His aggregate turnover in the current financial year is ₹ 22 lakh.
- (iii) Harshit of Himachal Pradesh is exclusively engaged in intra-State supply of pan masala. His aggregate turnover in the current financial year is ₹ 24 lakh.
- (iv) Ankit of Assam is exclusively engaged in intra-State supply of taxable services. His aggregate turnover in the current financial year is ₹ 25 lakh.
- (v) Sanchit of Assam is engaged in intra-State supply of both taxable goods and services. His aggregate turnover in the current financial year is ₹ 30 lakh.

**Solution:** As per section 22 of the CGST Act, 2017 read with Notification No. 10/2019 CT dated 07-03-2019, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the rest of India.

In the light of the afore-mentioned provisions, the answer to the independent cases is as under:-

- (i) Raghav is eligible for higher threshold limit of turnover for registration, i.e. ₹ 40 lakh as he is exclusively engaged in intra-State supply of goods. However, since Raghav is engaged in supplying readymade garments from a Special Category State *i.e.* Tripura, the threshold limit gets reduced to ₹ 10 lakh. Thus, Raghav is liable to get registered under GST as his turnover exceeds ₹10 lakh. Further, he is required to obtain registration in both Assam and Tripura as he is making taxable supplies from both the States.

- (ii) The applicable threshold limit for registration for Pulkit in the given case is ₹ 40 lakh as he is exclusively engaged in intra-State taxable supply of goods. Thus, he is not liable to get registered under GST as his turnover is less than the threshold limit.
- (iii) Harshit being exclusively engaged in supply of pan masala is not eligible for higher threshold limit of ₹40 lakh. The applicable threshold limit for registration in this case is ₹20 lakh. Thus, Harshit is liable to get registered under GST.
- (iv) Though Ankit is dealing in Assam, he is not entitled for higher threshold limit for registration as the same is applicable only in case of exclusive supply of goods while he is exclusively engaged in providing services. Thus, the applicable threshold limit for registration in this case is ₹ 20 lakh and hence, Ankit is liable to get registered under GST.
- (v) Since Sanchit is engaged in supply of both taxable goods and services, the applicable threshold limit for registration in his case is ₹ 20 lakh. Thus, Sanchit is liable to get registered under GST as his turnover is more than the threshold limit.

**Illustration 2 - Registration - Section 22 :** Mahadev Enterprises, a sole proprietorship firm, opened a shopping complex dealing in supply of goods at multiple locations, i.e. in Himachal Pradesh, Uttarakhand and Tripura in the month of June.

It has furnished the following details relating to the sale made at such multiple locations for the month of June:-

Particulars	Himachal Pradesh (₹)*	Uttarakhand (₹)	Tripura (₹)
Intra- State sale of taxable goods	22,50,000	-	7,00,000
Intra-State sale of exempted goods	-	-	6,00,000
Interest received from banks on the fixed deposits	-	-	60,000
Intra-State sale of non-taxable goods	-	21,00,000	40,000

\* excluding GST

With the help of the above mentioned information, answer the following questions giving reasons:-

- (1) Determine whether Mahadev Enterprises is liable to be registered under GST law and what is the threshold limit of taking registration in this case.
- (2) Explain with reasons whether your answer in (1) will change in the following independent cases:
- (a) If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh;
- (b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh;
- (c) If Mahadev Enterprises is dealing in taxable supply of goods only from Himachal Pradesh and has also effected inter - State supplies of taxable goods amounting to ₹ 4,00,000.

**Solution: Registration requirements :** As per section 22 of the CGST Act, 2017 read with Notification No. 10/2019-CT dated 07-03-2019, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

The threshold limit for a person making exclusive taxable supply of services or supply of both goods and services is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the rest of India.

**Aggregate turnover :** As per section 2(6) of the CGST Act, 2017, aggregate turnover includes the aggregate value of:

- (i) all taxable supplies,
- (ii) all exempt supplies,
- (iii) exports of goods and/or services and
- (iv) all inter-State supplies of persons having the same PAN.

The above is computed on all India basis.

In the light of the afore-mentioned provisions, the aggregate turnover of Mahadev Enterprises is computed as under:

## Computation of State-wise aggregate turnover of Mahadev Enterprises

Particulars	Himachal Pradesh	Uttarakhand	Tripura
	(₹)*	(₹)	(₹)
Intra- State sale of taxable goods	22,50,000	-	7,00,000
Intra-State sale of exempted goods	-	-	6,00,000
Interest received from banks on the fixed deposits [WN-1]	-	-	60,000
Intra-State sale of non-taxable goods [WN-2]	-	21,00,000	40,000
<b>Aggregate Turnover</b>	<b>22,50,000</b>	<b>21,00,000</b>	<b>14,00,000</b>

## Working Notes:

- (1) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt *vide* Notification No. 12/2017-CT (R) dated 28.06.2017. Since aggregate turnover includes exempt supply, interest received from banks on the fixed deposits, being exempt supply, is included in the aggregate turnover.
- (2) As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, intra-State supply of non-taxable goods in Uttarakhand, being a non-taxable supply, is an exempt supply and is, therefore, included in the aggregate turnover.

In the given case, Mahadev Enterprises is engaged in exclusive intra-State supply of goods from Himachal Pradesh and Uttarakhand and in supply of both goods and exempted services from Tripura, the threshold limit for registration will be ₹ 40 lakh, ₹ 20 lakh and ₹ 10 lakh respectively.

Further, since Mahadev Enterprises also makes taxable supply of goods from one of the specified Special Category States (*i.e.* Tripura), the threshold limit for registration will be reduced to ₹ 10 lakh.

- (1) Thus, in view of the above-mentioned provisions, Mahadev Enterprises is liable to be registered under GST law with the aggregate turnover amounting to ₹ 57,50,000 (computed on all India basis). The applicable threshold limit of registration in this case is ₹ 10 lakh.
- (2) (a) If Mahadev Enterprises is dealing in supply of goods only from Himachal Pradesh, the applicable threshold limit of registration would be ₹ 40 lakh. Thus, Mahadev Enterprises will not be liable for registration as its aggregate turnover would be ₹ 22,50,000.  
 (b) If Mahadev Enterprises is dealing in taxable supply of goods and services only from Himachal Pradesh then higher threshold limit of ₹ 40 lakh will not be applicable as the same applies only in case of exclusive supply of goods. Therefore, in this case, the applicable threshold limit will be ₹ 20 lakh and hence, Mahadev Enterprises will be liable to registration.  
 (c) In case of inter-State supplies of taxable goods, section 24 of the CGST Act, 2017 requires compulsory registration irrespective of the quantum of aggregate turnover. Thus, Mahadev Enterprises will be liable to registration.

**Illustration 3 - Registration - Section 22 :** Barmer Oils, Rajasthan, is engaged in supplying machine oil as well as petrol. The turnover of machine oil is ₹ 24 lakhs and of petrol is ₹ 18 lakhs. Supply of petrol is not leviable to GST, but supply of machine oil is taxable. Barmer Oils contend that since turnover of machine oil does not exceed ₹ 40 lakh, it is not liable for registration under GST. Decide.

**Solution:** The contention of Barmer Oils is not correct in law. In order to determine whether Barmer Oils is liable for registration, turnover of both the supplies - non-taxable as well as taxable would be taken into account and since the same exceeds ₹ 40 lakh, Barmer Oils is liable for registration.

**Illustration 4 - Registration requirement :** Rajesh Dynamics, having its head office in Chennai, carries on the following activities with respective turnovers in a Financial Year : (4 Marks, May 2018)

	₹
Supply of petrol at Chennai	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	9,00,000
Supply of transformer oil at Chennai	2,00,000
Value of branch transfer from Chennai to Bengaluru without payment of consideration	1,50,000
Value of taxable supplies at Manipur branch	11,50,000

It argues that it does not have taxable turnover crossing threshold limit of ₹ 40,00,000 either at Chennai or Bengaluru and including turnover at Manipur branch. It believes that the determination of aggregate turnover is not required for the purpose of obtaining registration but it is required for determining composition levy.

Decide based on the above facts :

- (i) The aggregate turnover of Rajesh Dynamics.  
(ii) All conditions that fulfil the requirement for registration under CGST Act, 2017 in the given circumstances.

**Solution: Registration Provisions :** As per section 22 of the CGST Act, 2017 read with Notification No. 10/2019-CT dated 07-03-2019, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.  
(ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.  
(iii) ₹ 40 lakh for rest of India.

**Meaning of Aggregate Turnover :** As per Section 2(6) of the CGST Act, 2017, aggregate turnover includes the aggregate value of:

- (i) all taxable supplies,  
(ii) all exempt supplies,  
(iii) exports of goods and/or services and  
(iv) all inter-State supplies of persons having the same PAN.

The above is computed on all India basis. Further, the aggregate turnover excludes central tax, State tax, Union territory tax, integrated tax and cess. Moreover, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of 'aggregate turnover'.

**Non Taxable supply included for determination of aggregate turnover :** Section 9 of the CGST Act, 2017 provides that CGST is not leviable on five petroleum products *i.e.* petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel. As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, supply of petrol in Chennai, being a non-taxable supply, is an exempt supply and is, therefore, includible while computing the aggregate turnover.

Since one of the branch is located in Manipur and is making taxable supplies from that state, the turnover limit will be ₹ 10 lakhs for determination of registration requirements.

In the backdrop of the above-mentioned discussion, the aggregate turnover is computed as under- (amount in ₹)

Supply of petrol at Chennai	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	-
Supply of transformer oil at Chennai	2,00,000
Value of branch transfer from Chennai to Bengaluru without payment of consideration	1,50,000
Value of taxable supplies at Manipur branch	11,50,000
<b>Aggregate Turnover</b>	<b>33,00,000</b>

Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of ₹ 40 lakh is not being crossed either at Chennai, Bengaluru or Manipur is not correct as firstly, the aggregate turnover to be considered in its case is ₹ 10 lakh and not ₹ 40 lakh and secondly, the same is computed on all India basis and not State-wise.

Further, Rajesh Dynamics is also wrong in believing that aggregate turnover is computed only for the purpose of determining the eligibility limit for composition levy since the aggregate turnover is required for determining the eligibility for both registration and composition levy.

However, Rajesh Dynamics is compulsorily required to register under section 24 of the CGST Act, 2017 irrespective of the turnover limit as it is liable to pay tax on inward supplies under reverse charge and it also makes inter-State taxable supply.

**Illustration 5 – Registration requirement & ITC Eligibility :** LMN Pvt. Ltd., Coimbatore exclusively manufactures and sells product 'X' which is exempt from GST *vide* notifications issued under relevant GST legislations. The company sells 'X' only within Tamil Nadu. The turnover of the company in the previous year was ₹ 45 lakh. The company expects the sales to grow by 30% in the current year. The company purchased additional machinery for manufacturing 'X' on 01-07-2019. The purchase price of the capital goods was ₹ 30 lakh exclusive of GST @ 18%.

However, effective from 01-11-2019, exemption available on 'X' was withdrawn by the Central Government and GST @ 12% was imposed thereon. The turnover of the company for the half year ended on 30-09-2019 was ₹ 45 lakh.

- (i) Examine the above scenario and advise LMN Pvt. Ltd. whether it needs to get registered under GST.  
(ii) If the answer to the above question is in affirmative, advise LMN Pvt. Ltd. whether it can avail input tax credit on the additional machinery purchased exclusively for manufacturing "X"? (RTP Nov. 2019) (Similar RTP May, 2018) (Similar 5 Marks, Nov. 2018-NS)



Ans:

(i) **Registration requirements** : Section 22(1) of the CGST Act, 2017 read with Notification No. 10/2019-CT dated 07-03-2019 *inter alia* provides that every supplier who is engaged in intra-State exclusive supply of goods is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds ₹ 40,00,000.

However, the above provisions are not applicable to few specified States, *i.e.* States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

Further, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a) of CGST Act, 2017.

In the given case, the turnover of the company for the half year ended on 30-09-2019 is ₹ 45 lakh which is more than the applicable threshold limit of ₹ 40 lakh. Therefore, as per above mentioned provisions, the company should be liable to registration. However, since LMN Pvt. Ltd. supplied exempted goods till 31-10-2019, it was not required to be registered till that day; though voluntary registration was allowed u/s 25(3) of the CGST Act, 2017.

However, the position will change from 01-11-2019 as the supply of goods become taxable from that day and the turnover of company is above ₹ 40 lakh. It is important to note here that in terms of section 2(6) of the CGST Act, 2017, the aggregate turnover limit of ₹ 40 lakh includes exempt turnover also.

Therefore, turnover of 'X' will be considered for determining the limit of ₹ 40 lakh even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 01-11-2019 (the date on which it becomes liable to registration) in terms of section 25(1) of the CGST Act, 2017.

(ii) **Input tax credit eligibility** : Section 18(1)(a) of the CGST Act, 2017 provides that a person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

Thus, LMN Pvt. Ltd. cannot avail credit for additional machinery purchased exclusively for manufacturing X as input tax credit of only inputs is allowed when a person gets registered for the first time.

**Illustration 6 - Registration requirements** : Rishabh Enterprises - a sole proprietorship firm - started an air-conditioned restaurant in Virar, Maharashtra in the month of February wherein the customers are served cooked food as well as cold drinks/non-alcoholic beverages. In March, the firm opened a liquor shop in Kohima, Nagaland for trading of alcoholic liquor for human consumption.

Determine whether Rishabh Enterprises is liable to be registered under GST law with the help of the following information:

Particulars	February (₹)*	March (₹)*
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	15,50,000	6,50,000
Sale of alcoholic liquor for human consumption in Nagaland		5,00,000
Interest received from banks on the fixed deposits	10,00,000	1,00,000
Export of packed food items from restaurant in Maharashtra	1,50,000	2,00,000

\* excluding GST

You are required to provide reasons for treatment of various items given above. (RTP May, 2018)

**Solution: Registration provisions** : As per section 22 of the CGST Act, 2017 read with Notification No. 10/2019-CT dated 07-03-2019, a supplier is liable to be registered in the State/Union territory from where he makes a taxable supply of goods and/or services, if his aggregate turnover in a financial year exceeds the threshold limit. The threshold limit for a person making exclusive intra-State taxable supplies of goods is as under:-

- (i) ₹ 10 lakh for the States of Mizoram, Tripura, Manipur and Nagaland.
- (ii) ₹ 20 lakh for the States of States of Arunachal Pradesh, Meghalaya, Puducherry, Sikkim, Telangana and Uttarakhand.
- (iii) ₹ 40 lakh for rest of India.

In the given question, since Rishabh Enterprises is engaged in making taxable supplies from Maharashtra which is not a specified Special Category State, the threshold limit for obtaining registration is ₹ 40 lakh.

The threshold limit is not reduced to ₹ 10 lakh in this case, as sale of alcoholic liquor for human consumption from Nagaland (one of the specified Special Category States) are non-taxable supplies in terms of Section 9(1) of CGST Act, 2017.

As per Section 2(6) of the CGST Act, 2017, aggregate turnover includes the aggregate value of—

- (i) all taxable supplies,
- (ii) all exempt supplies,
- (iii) exports of goods and/or services and
- (iv) all inter-State supplies of persons having the same PAN.

The above is computed on all India basis. Further, the aggregate turnover excludes central tax, State tax, Union territory tax, integrated tax and cess. Moreover, the value of inward supplies on which tax is payable under reverse charge is not taken into account for calculation of 'aggregate turnover'.

In the light of the afore-mentioned provisions, the aggregate turnover of Rishabh Enterprises is computed as under:

**Computation of aggregate turnover of Rishabh Enterprises (amount in ₹):**

Particulars	Turnover of February	Cumulative turnover of February & March
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	15,50,000	22,00,000 [₹ 15,50,000 + ₹ 6,50,000]
Add: Sale of alcoholic liquor for human consumption in Nagaland [WN-1]		5,00,000
Add: Interest received from banks on the Fixed Deposits [WN-2]	10,00,000	11,00,000 [₹ 10,00,000 + ₹ 1,00,000]
Add: Export of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [₹ 1,50,000 + ₹ 2,00,000]
<b>Aggregate Turnover</b>	<b>27,00,000</b>	<b>41,50,000</b>

**Working Notes:**

- (1) As per Section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, supply of alcoholic liquor for human consumption in Nagaland, being a non-taxable supply, is an exempt supply and is, therefore, includible while computing the aggregate turnover.
- (2) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt vide Notification No. 12/2017-CT (R) dated 28-06-2017. Thus, interest received from banks on the fixed deposits is an exempt supply and is, therefore, includible while computing the aggregate turnover.

**Conclusion:** Rishabh Enterprises was not liable to be registered in the month of February since its aggregate turnover did not exceed ₹ 40 lakh in that month. However, since its aggregate turnover exceeds ₹ 40 lakh in the month of March, it should apply for registration within 30 days from the date on which it becomes liable to registration.

**Illustration 7 - Computation of aggregate turnover for Registration :** With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the year 2019-20, determine the aggregate turnover for the purpose of registration under CGST Act, 2017.

	Particulars	(₹)
(i)	Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan Government.	1,00,000
(ii)	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal.	3,00,000
(iii)	Export supply to England (U.K.)	5,00,000
(iv)	Supply to its own additional place of business in Rajasthan.	5,00,000
(v)	Outward supply on which GST is to be paid by recipient under reverse charge.	1,00,000

All the above amounts are excluding GST.

You are required to provide reasons for treatment of various items given above. (5 Marks, May 2018-NS)

**Solution: Computation of aggregate turnover of M/s. Jayant Enterprises for the FY 2019-20 (amount in ₹):**

Supply of diesel [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover]	1,00,000
Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal [to from part of the aggregate turnover of principal]	Nil
Export supply to England (U.K.) [Specifically includible in the aggregate turnover]	5,00,000
Supply to its own additional place of business in Rajasthan [Supply made without consideration to units within the same State (under same registration) is a not a supply and hence not includible in aggregate turnover] [However, if separate registration has been obtained for such additional place of business, then the value will be included for purpose of determination of aggregate turnover.]	Nil
Outward supply on which GST is to be paid by recipient under reverse charge	1,00,000
<b>Aggregate turnover</b>	<b>7,00,000</b>

**Illustration 8 – Registration requirements :** AB Pvt. Ltd., Pune provides consultancy services. The company supplies its services exclusively through an e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd., Pune. The turnover of AB Pvt. Ltd. in the current financial year is ₹ 18 lakh.

Advise AB Pvt. Ltd. as to whether they are required to obtain GST registration. Will your advice be any different if AB Pvt. Ltd. sells readymade garments exclusively through the e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd.?

**Solution:** As per section 22 of the CGST Act every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds ₹ 20 lakh [₹ 10 lakh in the States of Mizoram, Tripura, Manipur and Nagaland] in a financial year.

As per Section 24, Persons who supply goods or services or both through such electronic commerce operator (ECO), who is required to collect tax at source under section 52, are mandatorily required to obtain registration. However, Persons making supplies of services, other than supplies specified under section 9(5) through an ECO who is required to collect tax at source under section 52, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakh [₹ 10 lakh in the States of Mizoram, Tripura, Manipur and Nagaland] in a financial year, have been exempted from obtaining registration *vide* Notification No. 65/2017-CT dated 15-11-2017.

Thus, AB Pvt. Ltd. is not required to obtain registration since its turnover from consultancy services does not exceed ₹ 20 lakhs.

In the second case, AB Pvt. Ltd. sells readymade garments through ECO. Exemption under Notification No. 65/2017 is granted only to supplier of services and not to supplier of goods. Therefore, in the second case, AB Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).

**Illustration 9 – Effective date of registration :** Determine the effective date of registration in following cases:

- (1) The aggregate turnover of Balrampur Industries of Delhi has exceeded ₹ 20 lakh on 1<sup>st</sup> November. It submits the application for registration on 20<sup>th</sup> November. Registration certificate is granted to it on 25<sup>th</sup> November.
- (2) Shyam Teleservices is an internet service provider in Manipur. Its aggregate turnover exceeds ₹ 10 lakh on 15<sup>th</sup> January. It submits the application for registration on 27<sup>th</sup> February. Registration certificate is granted to it on 5<sup>th</sup> March.

OR

Pari & Sons is an unregistered dealer. On 10<sup>th</sup> August, 2019 aggregate turnover of Pari & Sons exceeded ₹ 20,00,000. The firm applied for registration on 27<sup>th</sup> August, 2019 and was granted the registration certificate on 1<sup>st</sup> September, 2019.

Under CGST Rules, 2017, you are required to advise Pari & Sons as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of revised tax invoices. (5 Marks, May 2018-NS)

**Solution:**

- (1) As per provisions of Section 22 of CGST Act, 2017, every supplier becomes liable to registration if his turnover exceeds ₹ 20 lakh [in a State/UT other than Special Category States] in a financial year. Since in the given case, the turnover of Balrampur Industries exceeded ₹ 20 lakh on 1<sup>st</sup> November, it becomes liable to registration on said date.

As per provisions of Section 25 read with Rule 10 of the Chapter III Registration of CGST Rules, 2017, if the application for registration has been submitted within 30 days from such date, the registration shall be effective from the date on which the person becomes liable to registration. Since Balrampur Industries has made application for registration within 30 days, therefore, the effective date of registration is 1<sup>st</sup> November.

- (2) As per provisions of Section 22 of CGST Act, 2017, every supplier located in Manipur becomes liable to registration if his turnover exceeds ₹ 10 lakh in a financial year. Since in the given case, the turnover of Shyam Teleservices exceeds ₹ 10 lakh on 15<sup>th</sup> January, it becomes liable to registration on said date.

Further, since the application for registration has been submitted after 30 days from the date such person becomes liable to registration, the registration shall be effective from the date of grant of registration. Therefore, the effective date of registration is 5<sup>th</sup> March.

**Illustration 10 – Time limit for obtaining registration :** State the time-period within which registration needs to be obtained in each of the following independent cases : (a) Casual taxable person; (b) Person making inter-State taxable supply.

**Ans:** Section 25(1) of the CGST Act stipulates the time-period within which registration needs to be obtained in various cases. It provides the following time-limits :

In case of -	Time limit for obtaining registration -
⇒ a person who is liable to be registered under section 22 or section 24	within 30 days from the date on which he becomes liable to registration
⇒ a casual taxable person or a non-resident taxable person	at least 5 days prior to the commencement of business

In view of the aforesaid provisions:

- A casual taxable person must obtain registration at least 5 days prior to the commencement of its business.
- As per Section 24 of the CGST Act, person making inter-State taxable supply is liable to get compulsorily registered. Therefore, such person must obtain registration within 30 days from the date on which he becomes liable to registration.

**T.Q. 2:** In order to be eligible for grant of registration, a person must have a Permanent Account Number issued under the Income- tax Act, 1961. State one exception to it.

**Ans:** A Permanent Account Number is mandatory to be eligible for grant of registration. However Non-resident taxable person is exception. As per provisions of Section 25(5) and 25(6) of the CGST Act, 2017, a non-resident taxable person may be granted registration on the basis of other prescribed documents instead of PAN. He has to submit a self-attested copy of his valid passport along with the application signed by his authorized signatory who is an Indian Resident having valid PAN and application will be submitted in a different prescribed form.

**T.Q. 3:** State which of the following suppliers are liable to be registered:

- Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed ₹ 20 lakh during the financial year.
- An agriculturist who is only engaged in supply of produce out of cultivation of land.

**Ans:**

- Section 24 of the CGST Act, 2017 provides for compulsory registration of certain persons irrespective of turnover limit. As per Section 24, a person supplying goods/services or both on behalf of other taxable persons whether as an agent or not is liable to be compulsorily registered even if its aggregate turnover does not exceed ₹ 20 lakh during the financial year.
- As per Section 23, an agriculturist who is only engaged in supply of produce out of cultivation of land is not required to obtain registration.

**T.Q. 4:** Can the Department, through the proper officer, *suo-moto* proceed to register of a person?

**Ans: Yes.** As per provisions of Section 25(8), where a person who is liable to be registered under GST law fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under CGST Act, or under any other law for the time being in force, proceed to register such person in the manner as is prescribed in the CGST Rules, 2017.

**T.Q. 5:** Whether the registration granted to any person is permanent?

**Ans: Yes,** the registration certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.

**T.Q. 6:** Is it necessary for the UN bodies to get registration under GST?

**Ans: Yes.** As per Section 25(9) of the CGST Act, any specialized agency of the United Nations Organization or any Multilateral Financial institution and organization as notified under the United Nations (Privileges and Immunities) Act, 1947, consulate or embassy of foreign countries and any other person notified by the Commissioner, is required to obtain a UIN from the GSTN portal. UIN shall be assigned and registration certificate shall be issued within 3 working days from the date of submission of application.

The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States.

This UIN will be needed for claiming refund of taxes paid on notified supplies of goods and services received by them, and for any other purpose as may be notified.

**T.Q. 7:** What is the responsibility of the taxable person making supplies to UN bodies?

**Ans:** The taxable supplier making supplies to UN bodies is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B) and the invoices of the same will be uploaded by the supplier.

**T.Q. 8:** What is the validity period of the registration certificate issued to a casual taxable person and non-resident taxable person?

**Ans:** Registration Certificate granted to Casual taxable person/Non resident taxable person will be valid for:

- (i) Period specified in the registration application, or
- (ii) 90 days from the effective date of registration [can be extended further by a period not exceeding 90 days by making an application before the end of the validity of registration granted to him].

**whichever is earlier.**

**T.Q. 9:** What could be the liabilities (in so far as registration is concerned) on transfer of a business?

**Ans:** As per provisions of Section 22(3) of CGST Act, 2017, the transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from the date of such transfer or succession [Section 22(3)].

**T.Q. 10:** At the time of registration, will the assessee have to declare all his places of business?

**Ans: Yes.** The principal place of business and place of business have been separately defined under section 2(89) & 2(85) of the CGST Act respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.

**T.Q. 11:** What will be the time limit for the decision on the on-line registration application?










**Ans:** If the information and the uploaded documents are found in order, the proper officer has to respond to the application within 3 common working days. If he communicates any deficiency or discrepancy in the application within such time, then the applicant will have to remove the discrepancy/deficiency within 7 days of such communication.

Thereafter, for either approving the application or rejecting it, the proper officer has 7 days' time from the date when the taxable person communicates removal of deficiencies. In case no response is given by the proper officer within the said time line, the portal shall automatically generate the registration.

**T.Q. 12:** Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?

**Ans: Yes,** as per Section 29(5) of the CGST Act, every registered taxable person whose registration is cancelled shall pay an amount, by way of debit in the electronic cash ledger or electronic credit ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

■ ■ ■

<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>  <b>AADHYA'S</b>  <a href="http://www.aadhyas.com">http://www.aadhyas.com</a></p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> You Tube Subscribe to our Channel CA. Yogendra Bangar</p>	<p> Online MCQ's</p> <p>Computer / EduApplet App</p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p> <b>SUBJECTIVE Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
--	--	--	---

# TAX INVOICE, CREDIT & DEBIT NOTES AND E-WAY BILL

## SUMMARIZED POINTS FOR REVISION

### TAX INVOICE IN RESPECT OF GOODS & SERVICES

(1) Who can raise a tax invoice?

**Registered Person :**

- Supplying taxable goods or services
- Receiving taxable goods or services from unregistered supplier

(2) Time limit for issuance of invoice :

	Particulars	Time limit
Taxable supply of goods	Involving movement of goods	Before or at the time of removal
	No movement of goods Sale or return supplies	At the time of delivery ⇨ Before or at the time of supply, or ⇨ within 6 months from the removal, whichever is earlier.
	Continuous supply of goods	Before/at the time each successive statements of accounts is issued or each successive payment is received
Taxable supply of services	General Services	➤ Within 30 days from the supply of services
	Insurance, Banking company, Financial institution including NBFC	➤ Within 45 days from the supply of services
	Cessation of supply	➤ Invoice shall be issued to the extent of the supply made before such cessation
	<b>Continuous supply of services :</b>	
	➤ due date of payment is ascertainable from the contract	on/before due date of payment
	➤ due date of payment not so ascertainable from the contract	before/at the time of receipt of payment
	➤ Payment is linked to the completion of an event	on/before the date of completion of that event

### CONTENTS OF TAX INVOICE AND MANNER OF ISSUING TAX INVOICE

(3) Important contents of tax invoice [Rule 46] :

- Name, address and GSTIN of supplier
- Consecutive Serial Number & date of issue
- Name, address and GSTIN of recipient, if registered
- Name & address of recipient, if not registered
- HSN code
- Description of goods or services
- Quantity in case of goods
- Total Value of supply
- Taxable Value of supply
- Tax rate - Central tax & State tax or Integrated tax, cess
- Amount of tax charged
- Place of supply
- Address of delivery where the same is different than place of supply
- Tax payable on reverse charge basis
- Signature of authorised signatory



The signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000.

Similar provisions have been made in respect of electronic bill of supply, electronic consolidated tax invoice in case of banking companies etc. and electronic ticket for passenger transportation service.

**In the case of the export of goods or services, the invoice shall carry an endorsement –**

- "SUPPLY MEANT FOR EXPORT/SUPPLY TO SEZ UNIT OR SEZ DEVELOPER FOR AUTHORISED OPERATIONS ON PAYMENT OF INTEGRATED TAX"; or
- "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",

as the case may be.

Particulars of an Export Invoice are same as a Tax Invoice. However, where recipient is **unregistered and value of supply is ₹ 50,000 or more**, instead of name of State and its code, in case of an export invoice, **name of the country of destination** is to be mentioned.

(4) **Relaxation in respect of quoting of HSN/Accounting code :**

Sl. No.	Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
1.	Upto ₹ 1.50 crores	Nil
2.	more than ₹ 1.50 crores and upto ₹ 5 crores	2
3.	more than ₹ 5 crores	4

(5) **Manner of issuing the invoice :**

Supply of goods	Supply of services
Invoice is to be issued in <b>triplicate</b>	Invoice is to be issued in <b>duplicate</b>
<ul style="list-style-type: none"> <li>➤ <b>Original</b> copy for recipient</li> <li>➤ <b>Duplicate</b> copy for transporter; and</li> <li>➤ <b>Triplicate</b> copy for supplier</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Original</b> copy for recipient; and</li> <li>➤ <b>Duplicate</b> copy for supplier</li> </ul>

The serial number of invoices issued during a month/quarter shall be furnished electronically in FORM GSTR-1.

**Invoice-cum-bill of supply [Rule 46A] :** Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "**invoice-cum-bill of supply**" may be issued for all such supplies.

(6) **Revised Tax Invoice :** Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Revised Tax Invoices shall be issued within one month from the date of issuance of certificate of registration. The revised tax invoice shall contain the the word "Revised Invoice", wherever applicable, indicated prominently; nature of the document; serial number and date of the corresponding tax invoice.

- **Consolidated Revised Tax Invoice** may be issued in respect of taxable supplies made to an **unregistered recipient** during this period.
- In case of inter-State supplies, Consolidated Revised Tax Invoice cannot be issued in respect of all unregistered recipients if the value of a supply **exceeds ₹ 2,50,000** during this period.

(7) **Revised invoice on account of demands etc. - Mention of inadmissibility of ITC [Rule 53(3)] :** Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of **Section 74 or Section 129 or Section 130** shall prominently contain the words "**INPUT TAX CREDIT NOT ADMISSIBLE**".

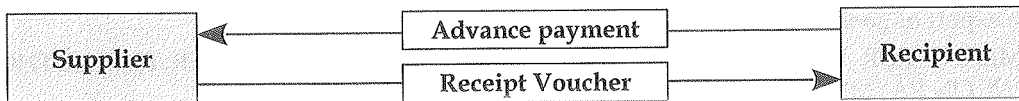
(8) **No Tax Invoice to be issued [Inserted vide Notification No. 33/2019-CT dated 18-07-2019 w.e.f. 01-09-2019] :** A registered person, **other than the supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens**, may not issue a tax invoice if –

- Value of supply < ₹ 200
- Recipient is unregistered
- Recipient does not require such invoice.

Instead such registered person shall issue a **Consolidated Tax Invoice** for such supplies **at the close of each day** in respect of all such supplies.

**RECEIPT VOUCHER**

- (9) A registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document evidencing receipt of such payment.

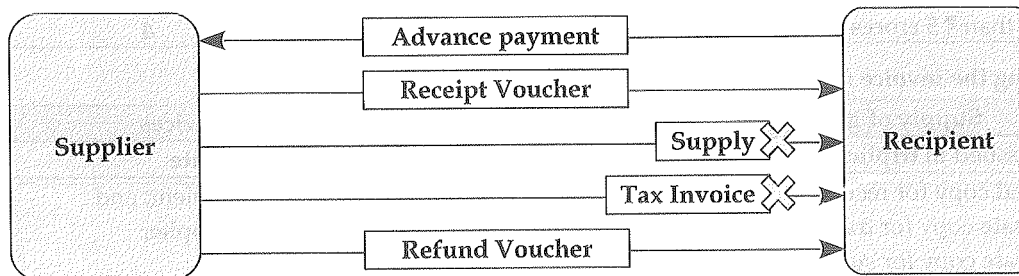


Where at the time of receipt of advance, rate of tax/nature of supply is not determinable.

Where at the time of receipt of advance -	
(i) rate of tax is not determinable	tax shall be paid at the rate of 18%
(ii) nature of supply is not determinable	same shall be treated as inter-State supply

**REFUND VOUCHER**

- (10) Refund voucher is to be issued by supplier to recipient if no supply is made and no tax invoice is issued and advance is refunded to the recipient. The refund voucher shall contain description of goods or services in respect of which refund is made and amount of refund made.



**INVOICE REQUIREMENTS IN CASE OF REVERSE CHARGE**

- (11) Issuance of invoice and payment voucher in case of reverse charge or purchases from unregistered supplier.
- (12) A registered person who is liable to pay tax under section 9(3)/(4) i.e. reverse charge shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both and registered person who is liable to pay tax under section 9(3)/(4) shall issue a payment voucher at the time of making payment to the supplier.

**BILL OF SUPPLY**

- (13) **Bill of supply [Section 31(3)(c)] :**
- (a) **Bill of supply** instead of tax invoice is to be issued in case of exempted supply or composite levy. Bill of Supply issued by such persons does not contain the details pertaining to rate of tax and amount of tax. Further, value to be mentioned in the Bill of Supply is not also taxable value. However, no bill of supply is to be issued if value is less than ₹ 200.
- (b) **Tax invoice issued for any non-taxable supply to be treated as bill of supply :** Any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

The Central government vide Removal of Difficulty Order No. 3/2019-CT dated 08-03-2019 has clarified that provisions of Section 31(3)(c) of the CGST Act, 2017 shall apply to a person paying tax under Notification No. 2/2019-CT (Rate) dated 07-03-2019 i.e. presumptive levy for service and mixed suppliers. Thus they are required to issue bill of supply instead of tax invoice.

## TAX INVOICE IN SPECIAL CASES

(14) **Relaxation from issuance of tax invoice in respect of notified services :** The Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—

- any other document issued in relation to the supply shall be deemed to be a tax invoice; or
- tax invoice may not be issued.

Further, Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

Supplier of taxable service	Document in lieu of the tax invoice	
	Optional information	Mandatory information
Insurer/ Banking company/ Financial institution, including NBFC	⇒ Serial number ⇒ Address of the recipient of taxable service	➤ Other information as prescribed for a Tax Invoice, under rule 46 ➤ Such document may be issued/made available, physically/electronically <b>Note: Supplier may issue</b> a consolidated tax invoice for the supply of services made during a month at the end of the month.
Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage		➤ Gross weight of the consignment ➤ Name of the consigner and the consignee ➤ Registration number of goods carriage in which the goods are transported ➤ Details of goods transported ➤ Details of place of origin and destination ➤ GSTIN of the person liable for paying tax whether as consigner, consignee or GTA ➤ Other information as prescribed for a tax invoice, under rule 46 <b>Note:</b> 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. [Rule 55A]
Supplier of passenger transportation service	⇒ Serial number ⇒ Address of the recipient of taxable service	➤ Other information as prescribed for a tax invoice, under rule 46 ➤ Tax invoice shall include ticket in any form, by whatever name called.
Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens <i>[Inserted vide Notification No. 33/2019-CT dtd 18-7-2019 w.e.f. 1-9-2019]</i>	⇒ Details of recipient of service	➤ <b>Electronic Ticket shall be deemed to Invoice.</b> ➤ <b>Other information as prescribed for a tax invoice, under rule 46</b> <b>Note :</b> The supplier of such service in a screen other than multiplex screens may, at his option, follow the above procedure.

**Note:** It is important to note here that keeping in view the large number of transactions in banking, insurance and passenger transportation sector, taxpayers need not mention the address of the customer and the serial number in their invoices.

**TRANSPORTATION OF GOODS WITHOUT ISSUE OF INVOICE**

**(15) Transportation of goods without issue of invoice [Rule 55] :**

- (i) **Cases where delivery challan can be issued instead of Invoice [Rule 55(1)] :** The consigner may issue a delivery challan, serially numbered, in lieu of invoice at the time of removal of goods for transportation, containing the following purposes of--
- supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
  - transportation of goods for job work,
  - transportation of goods for reasons other than by way of supply, or
  - such other supplies as may be notified by the Board.
- (ii) **Three Copies of delivery challan [Rule 55(2)] :** The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner, namely:-
- the original copy being marked as ORIGINAL FOR CONSIGNEE;
  - the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
  - the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.
- (iii) **Declaration [Rule 55(3)] :** Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in E-way bill.
- (iv) **Tax invoice to be issued after delivery of goods [Rule 55(4)] :** Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.
- (v) **Goods transported in CKD/ SKD condition [Rule 55(5)] :** Where the goods are being transported in a semi knocked down or completely knocked down condition--
- the supplier shall issue the complete invoice before dispatch of the first consignment;
  - the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
  - each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
  - the original copy of the invoice shall be sent along with the last consignment.

<i>Circular No. 10/10/2017-GST dated 18-10-2017</i>	Goods moved within the State or from the State of registration to another State for supply on approval basis - Removal under cover of delivery challan - on conformation of sale IGST payable.
<i>Circular No. 22/22/2017-GST dated 21-12-2017</i>	Removal of art work by an artist to art galleries for exhibition in various States is not regarded as supply - goods to be removed under delivery challan and supply of goods by artists to customers from galleries will be liable to GST.

<b>Goods sent/ taken out of India for exhibition or on consignment basis for export promotion - Not supply, hence cannot be regarded as Zero-rated supply. [Circular No. 108/27/2019-GST dated 18-07-2019]</b>	
(1) Goods sent/taken out of India for exhibition - not regarded as supply	
(2) Issues relating to maintenance of records, issuance of delivery challan / tax invoice etc. - The same has been clarified as under :	
Issue	Clarification
1. Whether any records are required to be maintained by registered person for sending/ taking specified goods out of India?	The registered person dealing in specified goods shall maintain a record of such goods as per the specified format.
2. What is the documentation required for sending/ taking the specified goods out of India?	(a) <b>Delivery challan :</b> The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules as the activity is covered under the ambit of sale on approval basis.

		(b) <b>Bond/LUT not required</b> : As clarified above, the activity of sending/ taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.
3.	When is the supply of specified goods sent/taken out of India said to take place	<p>(a) <b>Sale/Return - within 6 months</b> : The specified goods sent / taken out of India are required to be either sold or brought back within the stipulated period of 6 months from the date of removal as per the provisions contained in Section 31(7) of the CGST Act.</p> <p>(b) <b>Deemed supply</b> : The supply would be deemed to have taken place, on the expiry of 6 months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.</p> <p>(c) <b>Supply on sale of goods</b> : If the specified goods are sold abroad, fully or partially, within the specified period of six months, the supply is effected, in respect of quantity so sold, on the date of such sale.</p>
4.	Whether invoice is required to be issued when the specified goods sent/ taken out of India are not brought back, either fully or partially, within the stipulated period?	<p>(a) Tax invoice in respect of goods sold if goods are sold within six months.</p> <p>(b) Tax invoice on deemed supply on the date of expiry of 6 months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules.</p>
5.	Whether the refund claims can be preferred in respect of specified goods sent/ taken out of India but not brought back?	<p>(a) <b>Refund not admissible at the time of sending goods</b> : As the activity of sending/taking specified goods out of India is not a zero-rated supply, the sender of goods cannot prefer any refund claim when the specified goods are sent/taken out of India.</p> <p>(b) <b>Refund admissible when supply/ deemed supply takes place</b> : It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent/taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) the CGST Act read with rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice.</p> <p>(c) <b>Refund not admissible under Rule 96</b> : It is further clarified that refund claim cannot be preferred u/r 96 of CGST Rules as supply is taking place at a time after the goods have already been sent/taken out of India earlier.</p>

**Illustration 1** : M/s. ABC sends 100 units of specified goods out of India. The activity of merely sending/taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. In case the entire quantity of specified goods is brought back within the stipulated period of six months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case. In case, however, the entire quantity of specified goods is neither sold nor brought back within 6 months from the date of removal, a tax invoice would be required to be issued for entire 100 units of specified goods in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules within the time period stipulated u/s 31(7) of the CGST Act.

**Illustration 2** : M/s. ABC sends 100 units of specified goods out of India. The activity of sending/taking such specified goods out of India is not a supply. No tax invoice is required to be issued in this case but the specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in rule 55 of the CGST Rules. If 10 units of specified goods are sold abroad say after one month of sending/taking out and another 50 units are sold say after two months of sending/taking out, a tax invoice would be required to be issued for 10 units and 50 units, as the case may be, at the time of each of such sale in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. If the remaining 40 units are not brought back within the stipulated period of six months from the date of removal, a

tax invoice would be required to be issued for 40 units in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. Further, M/s. ABC may claim refund of accumulated input tax credit in accordance with the provisions contained in section 54(3) of the CGST Act read with rule 89(4) of the CGST Rules in respect of zero-rated supply of 60 units.

### PROHIBITION OF UNAUTHORISED COLLECTION OF TAX

**(16) Prohibition of unauthorised collection of tax [Section 32] :**

- (a) **Unregistered person not to collect tax :** A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.
- (b) **Registered person to collect tax as per Act :** No registered person shall collect tax except in accordance with the provisions of this Act or the rules made there-under.

**(17) Amount of tax to be indicated in tax invoice and other documents [Section 33] :** Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

### CREDIT AND DEBIT NOTES

**(18) Credit and debit notes [Section 34] :**

**(a) Issuance of Credit Note [Section 34(1)] :** Where one or more tax invoices have been issued for supply of any goods or services or both and

- the taxable value in the tax invoice is found to exceed the taxable value in respect of such supply, or
- the tax charged in that tax invoice is found to exceed the tax payable in respect of such supply, or
- where the goods supplied are returned by the recipient, or
- where goods or services or both supplied are found to be deficient,

the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.

**(b) Details of credit note to be given in return [Section 34(2)] :** Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note—

- in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or
- the date of furnishing of the relevant annual return,

whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.

**Output tax liability of the supplier not to be reduced – If tax incidence passed on :** No reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

**(c) Issuance of Debit note [Section 34(3)] :** Where one or more tax invoices have been issued for supply of any goods or services or both and

- the taxable value in the tax invoice is found to be less than the taxable value in respect of such supply,
- the tax charged in the tax invoice is found to be less than the tax payable in respect of such supply,

the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.

**(d) Details of debit note to be given in return [Section 34(4)] :** Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

**Explanation :** The expression “debit note” shall include a supplementary invoice.

**(19) Contents of Credit and Debit note [Rule 53(1A)] :** A credit or debit note referred to in section 34 shall contain the following particulars, namely:—

- (a) name, address and GSTIN of the supplier;
- (b) nature of the document;



- (c) a consecutive serial number and date of issue
- (d) date of issue of the document;
- (e) name, address and GSTIN or UIN, if registered, of the recipient;
- (f) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
- (g) serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply;
- (h) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
- (i) signature or digital signature of the supplier or his authorised representative.

**Procedure to be followed in respect of return of time expired drugs or medicines [Circular No. 72/46/2018-GST dated 26-10-2018]**

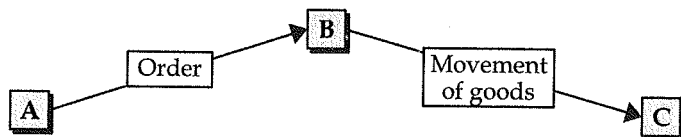
- |     |  |
|-----|--|
| 1.  | <b>Trade Practice :</b> The common trade practice in the pharmaceutical sector is that the drugs or medicines are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. Expired goods are returned back to the manufacturer, on account of expiry, through the supply chain.  |
| 2.  | <p><b>Clarification :</b> It is clarified that the retailer/wholesaler can follow either of the below mentioned procedures for the return of the time expired goods :</p> <p>(A) <b>Return of time expired goods to be treated as fresh supply :</b></p> <p>(a) <b>Registered person to issue tax invoice :</b> In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply").</p> <ul style="list-style-type: none"> <li>➤ <b>Value of supply :</b> The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply.</li> <li>➤ <b>Recipient entitled to ITC :</b> The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply subject to the fulfilment of the conditions specified in Sec 16 of the CGST Act.</li> </ul> <p>(b) <b>Composition supplier to issue bill of supply and pay composition tax :</b> In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer.</p> <p><b>ITC not available to recipient :</b> In this scenario there will not be any availability of ITC to the recipient of return supply.</p> <p>(c) <b>Unregistered Person to issue commercial document - Not to charge any tax :</b> In case the person returning the time expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.</p> <p>(d) <b>Recipient to reverse ITC at the time of destruction of expired medicines :</b> Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of the provisions of Section 17(5)(h) of the CGST Act.</p> <p>It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.</p> <p><b>Illustration:</b> Supposedly, manufacturer has availed ITC of ₹ 10/- at the time of manufacture of medicines valued at ₹ 100/-. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is ₹ 15/-. So, when the time expired goods are destroyed by the manufacturer he would be required to reverse ITC of ₹ 15/- and not of ₹ 10/-.</p> |
| (B) | <p><b>Return of time expired goods by issuing Credit Note :</b></p> <p>(a) <b>Supplier to issue credit note :</b> As per Section 34(1) of the CGST Act the supplier can issue a credit note where the goods are returned back by the recipient. Thus, the manufacturer or the wholesaler who has supplied the goods to the wholesaler or retailer, as the case may be, has the option to issue a credit note in relation to the time expired goods returned by the wholesaler or retailer, as the case may be.</p>   |

		<p><b>Goods to be Returned under cover of delivery challan :</b> In such a scenario, the retailer or wholesaler may return the time expired goods by issuing a delivery challan. It may be noted that there is no time limit for the issuance of a credit note in the law except with regard to the adjustment of the tax liability in case of the credit notes issued prior to the month of September following the end of the financial year and those issued after it.</p> <p>(b) <b>Adjustment of tax liability by the supplier if credit note issued within time limit:</b> It may further be noted that if the credit note is issued within the time limit specified in Section 34(2) of the CGST Act, the tax liability may be adjusted by the supplier, subject to the condition that the person returning the time expired goods has either not availed the ITC or if availed has reversed the ITC so availed against the goods being returned.</p> <p>(c) <b>Tax liability not to be adjusted by the supplier if credit note not issued within time limit :</b> However, if the time limit specified in Section 34(2) of the CGST Act has lapsed, a credit note may still be issued by the supplier for such return of goods but the tax liability cannot be adjusted by him in his hands.</p> <p><b>No need to declare credit note if not issued within time-limit :</b> It may further be noted that in case time expired goods are returned beyond the time period specified in the Section 34(2) of the CGST Act and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (<i>i.e.</i> by the person who has issued the credit note) as tax liability cannot be adjusted in this case.</p> <p>(d) <b>ITC attributable to manufacture of goods to be reversed :</b> Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of Section 17(5)(h) of the CGST Act. This has been <b>illustrated</b> in table below :</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 20%;">Date of Supply of goods from manufacturer/ wholesaler to wholesaler/ retailer</th> <th style="width: 20%;">Date of return of time expired goods from retailer/ wholesaler to wholesaler/ manufacturer</th> <th style="width: 50%;">Treatment in terms of tax liability &amp; credit note</th> </tr> </thead> <tbody> <tr> <td>Case 1</td> <td>1<sup>st</sup> July, 2019</td> <td>20<sup>th</sup> September, 2020</td> <td>Credit note will be issued by supplier (manufacturer/wholesaler) and the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler/retailer) has either not availed the ITC or if availed has reversed the ITC.</td> </tr> <tr> <td>Case 2</td> <td>1<sup>st</sup> July, 2019</td> <td>20<sup>th</sup> October, 2020</td> <td>Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently tax liability cannot be adjusted by such supplier.</td> </tr> </tbody> </table>		Date of Supply of goods from manufacturer/ wholesaler to wholesaler/ retailer	Date of return of time expired goods from retailer/ wholesaler to wholesaler/ manufacturer	Treatment in terms of tax liability & credit note	Case 1	1 <sup>st</sup> July, 2019	20 <sup>th</sup> September, 2020	Credit note will be issued by supplier (manufacturer/wholesaler) and the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler/retailer) has either not availed the ITC or if availed has reversed the ITC.	Case 2	1 <sup>st</sup> July, 2019	20 <sup>th</sup> October, 2020	Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently tax liability cannot be adjusted by such supplier.
	Date of Supply of goods from manufacturer/ wholesaler to wholesaler/ retailer	Date of return of time expired goods from retailer/ wholesaler to wholesaler/ manufacturer	Treatment in terms of tax liability & credit note											
Case 1	1 <sup>st</sup> July, 2019	20 <sup>th</sup> September, 2020	Credit note will be issued by supplier (manufacturer/wholesaler) and the same to be uploaded by him on the common portal. Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler/retailer) has either not availed the ITC or if availed has reversed the ITC.											
Case 2	1 <sup>st</sup> July, 2019	20 <sup>th</sup> October, 2020	Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently tax liability cannot be adjusted by such supplier.											
3.		<p><b>Procedure to be followed in other cases of return also :</b> It may be noted that though this circular discusses the scenarios in relation to return of goods on account of expiry of the same, it may be applicable to such other scenarios where the goods are returned on account of reasons other than the one detailed above.</p>												

**ELECTRONIC WAY BILL**

- (20) **Inspection of goods in movement [Section 68] :** The relevant provisions are discussed as under –
- (a) **Carrying of e-way bill [Section 68(1)] :** The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

- (b) **Validation of e-way bill [Section 68(2)]** : The details of documents required to be carried under section 68(1) shall be validated in such manner as may be prescribed.
- (c) **Transit check of e-way bill [Section 68(3)]** : Where any conveyance referred to in Section 68(1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.
- (21) **What is E-way bill** : Electronic Way Bill (E-Way Bill) is a compliance mechanism wherein by way of a digital interface the person causing the movement of goods uploads the relevant information prior to the commencement of movement of goods and generates e-way bill on the GST portal. In other words, E-way bill is an electronic document generated on the GST portal evidencing movement of goods.
- (22) **Information to be furnished prior to commencement of movement of goods and generation of e-way bill [Rule 138]** :
- (a) Registered person is required to electronically furnish information prior to movement of goods on the common portal and generation of e-way bill if value of consignment exceeds ₹ 50,000. The e-way bill can be generated optionally if value of consignment is less than ₹ 50,000.
- (b) **E-way bill can be generated by the consigner or the recipient of supply as the consignee or by the transporter if not generated by the consigner.**
- (c) E-way bill can be generated by unregistered person or by transporter also. **E-commerce operator or courier agency** on authorization may furnish information for generation of E-Way bill.
- (d) **Special situations where e-way bill needs to be issued even if the value of the consignment is less than ₹ 50,000** :
- (i) Inter-State transfer of goods by principal to job-worker,  
(ii) Inter-State transfer of handicraft goods by a person exempted from obtaining registration.
- (e) **E-way Bill in case of 'Bill To Ship To' Model** : In a "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely :
- 'A' is the person who has ordered 'B' to send goods directly to 'C'.
  - 'B' is the person who is sending goods directly to 'C' on behalf of 'A'.
  - 'C' is the recipient of goods.



In this complete scenario two supplies are involved and accordingly two tax invoices are required to be issued :

**Invoice -1** : which would be issued by 'B' to 'A'.

**Invoice -2** : which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017, either A or B can generate the e-Way Bill but it may be noted that **only one e-Way Bill** is required to be generated. [Press Release dated 23-04-2018]

- (f) **Transport by rail/by air/vessel** – E-way bill to be generated by Supplier or Recipient.
- (g) Upon generation of the e-way bill on the common portal, a **unique e-way bill number (EBN)** shall be made available to the supplier, the recipient and the transporter on the common portal.
- (h) In case of transfer of goods from one conveyance to another – the details are to be updated in e-way bill except where the goods are transported for a distance of **upto 50 km within the State or Union territory** from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated in the e-way bill.
- (i) **Consolidated e-way bill** can be generated in case of **multiple consignments** transported in one conveyance by indicating the serial number of e-way bills generated in respect of each such consignment electronically on the common portal.
- (j) If goods are not transported e-way bill generated is to be cancelled **within 24 hours of its generation.**

- (k) **Validity period of E-way Bill/ Consolidated E-Way bill** : An e-way bill or a consolidated e-way bill generated shall be valid for the period from the relevant date, for the distance the goods have to be transported, as mentioned below:

S.No.	Distance	Validity period
1.	Upto 100 km	One day in cases other than Over Dimensional Cargo
2.	For every 100 km. or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
3.	Upto 20 km	One day in case of Over Dimensional Cargo
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo

However, the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein.

- (l) The details of e-way bill shall be communicated to supplier/recipient for his acceptance or rejection of the consignment covered by the e-way bill and if no communication is received **within 72 hours** of the details being made available to him on the common portal it shall be regarded as **deemed acceptance by the recipient**.
- (m) The e-way bill generated **shall be valid in every State and Union territory**.
- (n) **No e-way bill is required to be generated –**
- (i) where the goods being transported are specified in Annexure (*Annexure contains a list of items where E-way bill is not required to be generated being –*)
    - LPG for supply to household and non-domestic exempted category (NDEC) customers;
    - Kerosene oil sold under PDS
    - Postal baggage transported by Department of Posts
    - Natural or cultured pearls and precious or semi-precious stones precious metal and metals clad with precious metals (Chapter 71)
    - Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
    - Currency
    - Used personal and household effects
    - Coral, unworked (0508) and worked coral (9601)
  - (ii) where the goods are being transported by a **non-motorised conveyance**;
  - (iii) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
  - (iv) in respect of **movement of goods within such areas as are notified** under Rule 138(14)(d) of the GST Rules of the concerned State or Union Territory;
  - (v) where the goods, other than de-oiled cake, being transported, are specified in the Schedule appended to Notification No. 2/2017- CT (Rate) dated the 28-06-2017 as amended from time to time;
  - (vi) where the goods being transported are **alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit** (commonly known as petrol), **natural gas or aviation turbine fuel**;
  - (vii) where the supply of goods being transported is treated as **no supply under Schedule III** of the Act;
  - (viii) where the goods are being transported –
    - **under customs bond** from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
    - **under customs supervision or under customs seal**;
  - (ix) where the goods being transported are **transit cargo from or to Nepal or Bhutan**;
  - (x) where the **goods being transported are exempt from tax** under Notification No. 7/2017-CT (Rate), dated 28-06-2017 as amended from time to time and notification No. 26/2017-CT (Rate), dated 21-09-2017 as amended from time to time;
  - (xi) any **movement of goods caused by defence formation** under Ministry of defence as a consigner or consignee;
  - (xii) where the **consigner of goods is the Central Government, Government of any State or a local authority for transport of goods by rail**;

- (xiii) where empty cargo containers are being transported; and
- (xiv) where the goods are being transported **upto a distance of 20 Kms** from the place of the business of the consigner to a weighbridge for weighment or from the weighbridge back to the place of the business of the said consigner subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with Rule 55.
- (xv) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.

**Explanation :** The facility of generation, cancellation, updation and assignment of e-way bill shall be made available through SMS to the supplier, recipient and the transporter, as the case may be.

<i>Circular No. 47/21/2018-GST dated 08-06-2018</i>	In many cases, goods transit through another State while moving from one area in a State to another area in the same State. It is important to note that E-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the movement of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated.
<i>Circular No. 47/21/2018-GST dated 08-06-2018 dated 26-10-2018</i>	⇒ <b>Issue :</b> Whether e-way bill is required where goods move from a DTA unit to a SEZ unit or vice versa located in the same State. ⇒ <b>Clarification :</b> Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is no requirement to generate an e-way bill, if the same has been exempted under rule 138(14)(d) of the CGST Rules.

**(23) Documents and devices to be carried by a person-in-charge of a conveyance [Rule 138A] :**

- (a) The person in charge of a conveyance shall carry the **invoice or bill of supply or delivery challan** and a **copy of the e-way bill** or the e-way bill number, either physically or electronically or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner.
- (b) A registered person may obtain an **Invoice Reference Number** by uploading tax invoice on the common portal and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid **for a period of 30 days** from the date of uploading.

**In case of imported goods :** In case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01.

- (c) On uploading of invoice, the information shall get auto populated in e-way bill.
- (d) RFID will be obtained by notified transporters and the said device shall be embedded on to the conveyance and map the e-way bill to the RFID prior to the movement of goods.
- (e) The Commissioner may require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill –
- tax invoice or bill of supply or bill of entry; or
  - a delivery challan, where the goods are transported for reasons other than by way of supply.

**(24) Verification of documents and conveyances [Rule 138B] :**

- (a) The Commissioner or empowered officer may authorise proper officer to intercept any of conveyance for verification of e-way bill.
- (b) The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.
- (c) The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf.

However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

**(25) Inspection and verification of goods [Rule 138C] :**

- (a) A summary report of every inspection of goods in transit shall be recorded online by the proper officer **within 24 hours** of inspection and the final report shall be recorded **within 3 days** of such inspection.

However, where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of FORM EWB-03, for a further period not exceeding three days.

The period of 24 hours or, as the case may be, 3 days shall be counted from the midnight of the date on which the vehicle was intercepted.

- (b) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently.
- (26) **Facility for uploading information regarding detention of vehicle [Rule 138D]:** Where a vehicle has been intercepted and detained for a period exceeding 30 minutes, the transporter may upload the said information in prescribed form on the common portal.

#### ADDITIONAL PRACTICE QUESTIONS

**Illustration 1 - Invoice time limit - Goods :** XYZ Industries Ltd., Jaipur, entered into a contract with PQR Entrepreneurs, Jaipur, for supply of spare parts of a machine on 3<sup>rd</sup> November. The spare parts were to be delivered on 25<sup>th</sup> November. XYZ Industries Ltd. removed the finished spare parts from its factory on 24<sup>th</sup> November. Determine the date by which invoice must be issued by XYZ Industries Ltd. under GST law.

**Ans:** As per the provisions of Section 31, invoice shall be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. Accordingly, in the given case, the invoice must be issued on or before 24<sup>th</sup> November.

**T.Q. 1 :** Discuss the provisions relating to issue of an invoice/document in the following circumstances :

- (i) Advance payment is received against a supply, but subsequently no supplies are made.
- (ii) Goods are sent on approval for sale or return and are removed before the supply takes place.
- (iii) Malcolm provides continuous supply of services to his client, where the due date of payment for such services is not ascertainable. No advance has been received in this behalf. (4 Marks, May 2018)

**Ans:**

- (i) As per Section 31(3)(e) of the Act, where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment.
- (ii) As per Section 31(7) of the Act, where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued—
  - before or at the time of supply, or
  - 6 months from the date of removal, whichever is earlier.
- (iii) In case of continuous supply of service, where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment.

**Illustration 2 - Invoice time limit - Services :** Maintenance Ltd., a registered person, provides the services of repair and maintenance of Plant and Machinery. On April 1, it has entered into an annual maintenance contract with RSWM Ltd. for its textile machinery. As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due 15<sup>th</sup> day on which service is supplied. During the year, it supplied the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract. When should Maintenance Ltd. issue the invoice for the services rendered?

**Ans:** Continuous supply of service means, *inter alia*, supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the periodic payment obligations.

Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by Maintenance Ltd. on a quarterly basis, under a contract, for a period of one year with the obligation for quarterly payment.



In terms of section 31, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment. Therefore, in the given case, Maintenance Ltd. should issue quarterly invoices on or before April 15<sup>th</sup>, July 15<sup>th</sup>, October 15<sup>th</sup>, and January 15<sup>th</sup>.

**Illustration 3 – Time limit for issuance of tax invoice :** Royal Fashions, a registered supplier of designer outfits in Delhi, decides to exhibit its products in a Fashion Show being organised at Hotel Park Royal, Delhi on 4<sup>th</sup> January, 2020. For the occasion, it gets the makeover of its models done by Aura Beauty Services Ltd., Ashok Vihar, for which a consideration of ₹ 5,00,000 (excluding GST) has been charged. Aura Beauty Services Ltd. issued a duly signed tax invoice on 10<sup>th</sup> February, 2020 showing the lumpsum amount of ₹ 5,90,000 inclusive of CGST and SGST @ 9% each. Royal Fashions made the payment the very next day. Answer the following questions:

- (i) Examine whether the tax invoice has been issued within the time limit prescribed under law?
- (ii) Tax consultant of Royal Fashions objected to the invoice raised suggesting that the amount of tax charged in respect of the taxable supply should be shown separately in the invoice raised by Aura Beauty Services Ltd. However, Aura Beauty Services Ltd. contended that there is no mandatory requirement of showing tax component separately in the invoice. You are required to examine the validity of the objection raised by tax consultant of Royal Fashions? (RTP May, 2018)

**Solution:**

- (i) As per section 31 of the CGST Act, 2017 read with the CGST Rules, 2017, in case of taxable supply of services, invoices should be issued before or after the provision of service, but within a period of 30 days [45 days in case of insurer/ banking company or financial institutions including NBFCs] from the date of supply of service.

In view of said provisions, in the present case, the tax invoice should have been issued in the prescribed time limit of 30 days from the date of supply of service *i.e.* upto 03-02-2020. However, the invoice has been issued on 10-02-2020.

In such a case, the time of supply as per Section 13 of the CGST Act, 2017 would be 04-01-2020 *i.e.* earliest of the following:

- (a) Date of provision of service (04-01-2020)
  - (b) Date of receipt of payment (11-02-2020)
- (ii) Section 31 of the CGST Act, 2017 read with the CGST Rules, 2017, *inter alia*, provides that tax invoice shall contain the following particulars-
    - (a) Total value of supply of goods or services or both;
    - (b) Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
    - (c) Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

The objection raised by the tax consultant of Royal Fashions suggesting that the amount of tax charged in respect of the taxable supply should be shown separately in the invoice raised by Aura Beauty Services Ltd., is valid in law. In the present case, the tax amount has not been shown separately in the invoice.

**Illustration 4 – Effective date of registration and Revised tax invoice :** The aggregate turnover of Laakhan Services Ltd. exceeded ₹ 20 lakh on 25<sup>th</sup> September. He applied for registration on 15<sup>th</sup> October and was granted the registration certificate on 20<sup>th</sup> October. You are required to advise Laakhan Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.

**Ans:** As per Section 25 read with CGST Rules, 2017, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Laakhan Services Ltd.'s turnover exceeded ₹ 20 lakh on 25<sup>th</sup> September, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, *i.e.* 25<sup>th</sup> September.

As per Section 31 read with CGST Rules, 2017, every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Therefore, in the given case, Laakhan Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (25<sup>th</sup> September) till the date of issuance of certificate of registration (20<sup>th</sup> October) within 1 month from the date of issuance of certificate of registration. Thus, revised tax invoice is to be issued *i.e.* on or before 20<sup>th</sup> November.

**T.Q. 2:** Packaging Ltd has opted for composition scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise him regarding same.

**Ans:** A registered person paying tax under the provisions of Section 10 [composition levy] shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed [Section 31(3)(c) read with CGST Rules, 2017]. Therefore, in the given case, Packaging Ltd cannot issue tax invoice. Instead, it shall issue a Bill of Supply.

**T.Q. 3:** How can a supplier supply goods without movement?

**Ans:** In cases where the ownership, or the risks and rewards are transferred without requiring the movement of goods, the goods would be treated as supplied although no movement is involved in effecting such supply. E.g. when an agent who is in possession of certain goods decides to buy the goods from the principal, on-site installation of machinery, sale and lease back transactions, etc.

**T.Q. 4:** Who can remove the goods?

**Ans:** Goods can be removed by way of : ► Dispatch by the supplier himself, ► Dispatch by any person acting on behalf of the supplier, ► Collection by the recipient himself, ► Collection by any person acting on behalf of the recipient.

**Illustration 5 – Consolidated tax invoice :** Gemini Stationers is a trader dealing in stationery items. It is registered under GST and has undertaken following sales during the day:

S.No.	Recipient of supply	Amount (₹)
(1)	Atal Enterprises - a registered retail dealer	195
(2)	Salil Associates - an unregistered trader	450
(3)	Raman - a Painter [unregistered person]	500
(4)	Kalyani Charitable Trust - an unregistered entity	190
(5)	Itishree - a Student [unregistered]	185

None of the recipients require a tax invoice [Atal Enterprises being a composition dealer].

Determine in respect of which of the above supplies, Gemini Stationers may issue a Consolidated Tax Invoice instead of Tax Invoice at the end of the day?

**Solution:** In the given illustration, Gemini Stationers can issue a Consolidated Tax Invoice only with respect to supplies made to Kalyani Charitable Trust [worth ₹ 190] and Itishree [worth ₹ 185] as the value of goods supplied to these recipients is less than ₹ 200 as also these recipients are unregistered and don't require a tax invoice.

As regards the supply made to Atal Enterprises, although the value of goods supplied to it is less than ₹ 200, Atal Enterprises is registered under GST. So, Consolidated Tax Invoice cannot be issued.

Consolidated Tax Invoice can also not be issued for supplies of goods made to Salil Associates and Raman although both of them are unregistered. The reason for the same is that the value of goods supplied is not less than ₹ 200.

**Illustration 6 – Consolidated credit note :** ABC Ltd., a registered supplier has made following taxable supplies to its customer Mr. P in the quarter ending 30<sup>th</sup> June, 2019.

Date	Bill No.	Particulars	Invoice value (including GST) [₹]
5 <sup>th</sup> April, 2019	102	Notebooks [10 in numbers]	1,200
10 <sup>th</sup> May, 2019	197	Chart Paper [4 in number]	600
20 <sup>th</sup> May, 2019	230	Crayon colors [2 packets]	500
2 <sup>nd</sup> June, 2019	254	Poster colors [5 packets]	900
22 <sup>nd</sup> June, 2019	304	Pencil box [4 sets]	700

Goods in respect of bill no. 102, 230 and 254 have been returned by Mr. P. You are required to advise ABC Ltd. whether it can issue consolidated credit note against all the three invoices?

**Solution:** Where one or more tax invoices have been issued for supply of any goods and/or services and

- the taxable value/tax charged in that tax invoice is found to exceed the taxable value/tax payable in respect of such supply, or
- where the goods supplied are returned by the recipient, or
- where goods and/or services supplied are found to be deficient,

the registered person, who has supplied such goods and/or services, may issue to the recipient one or more credit notes for supplies made in a financial year containing prescribed particulars.

Thus, one (consolidated) or more credit notes can be issued in respect of multiple invoices issued in a financial year without linking the same to individual invoices.

Hence, in view of the above-mentioned provisions, M/s ABC Ltd. can issue a consolidated credit note for the goods returned in respect of all the three invoices.

**T.Q. 5 :** What if at the time of receipt of advance, the rate of tax or nature of supply is not determinable?

**Ans:** In terms of proviso to Rule 50 of the CGST Rules, where time of receipt of advance:

- (i) the rate of tax is not determinable, the tax shall be paid at 18%;
- (ii) the nature of supply is not determinable, the same shall be treated as inter-State supply.

**T.Q. 6 :** Mr. X have a registration as an Input Service Distributor. Is he required to raise invoices even though no taxable supplies are made from this registration number?

**Ans: Yes.** An Input Service Distributor (ISD) should issue a tax invoice being an 'ISD invoice' for distributing credits to the GST registrations that have the same PAN as that of the ISD. Such invoice will be different from invoices reflecting supply of goods or services (refer Invoice Rules). This is a document required under Section 20 of the CGST Act, 2017.

**Illustration 7 - Requirement to generate E-way bill :** Happy company is a registered supplier of electric goods. It has three stores for electric goods in Jodhpur (Rajasthan) namely Ram store, Shyam store, Mohan store. It receives an order for supply of electric goods worth ₹ 1,40,000 (exclusive of GST @ 18%) from Kishan sons of Bhopal (Madhya Pradesh). Happy Company found that order worth ₹ 43,000 can be fulfilled from the Company's Ram Store, order worth ₹ 45,000 can be fulfilled from its Shyam Store and remaining goods worth ₹ 52,000 can be sent from its Mohan store. All three stores are instructed to issue separate invoices for the goods sent to Kishan sons. The goods are transported to Kishan sons in Bhopal, in a single conveyance owned by Shiv Transporters.

You are required to advise Happy Company with regard to issuance of E-way bills as per the provisions of the CGST Act, 2017. (4 Marks, May 2019)

**Ans: Separate E-way bill for separate invoices - subsequently consolidated e-way bill can be prepared if goods transported in one conveyance :** Happy Company would be required to prepare three separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

CBIC has clarified that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

Hence, Happy company is required to generate 3 e-way bills because value (inclusive of GST exceeds) ₹ 50,000.

- (1) For order worth ₹ 43,000 (exclusive of GST) : The bill amount is ₹ 50,740 [i.e. ₹ 43,000 +18% GST of ₹ 43,000], e-way bill is required to be generated as bill amount exceeds ₹ 50,000.
- (2) For order worth ₹ 45,000 (exclusive of GST) : The bill amount is ₹ 53,100 [i.e. ₹ 45,000 +18% GST of ₹ 43,000], e-way bill is required to be generated, as bill amount exceeds ₹ 50,000.
- (3) For order worth ₹ 52,000 (exclusive of GST) : The bill amount is ₹ 61,360 [i.e. ₹ 52,000 +18% GST of ₹ 43,000], e-way bill is required to be generated, as bill amount exceeds ₹ 50,000.

**Illustration 8 - Requirement to generate E-way bill :** With reference to the provisions relating to the electronic way bill (E-way bill) as prescribed under the GST laws, answer the following questions:

- (i) Sindhi Toys Manufacturers, registered in Punjab, sold electronic toys to a retail seller in Gujarat, at a value of ₹ 48,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of such toys to the retail seller in Gujarat.

You are required to advise Sindhi Toys Manufacturers on the following issues:

- (a) Whether e-way bill is mandatorily required to be generated in respect of such movement of goods?
  - (b) If yes, who is required to generate the e-way bill?
  - (c) What will be the consequences for non-issuance of e-way bill?
- (ii) Power Electricals Ltd., a registered supplier of air-conditioners, is required to send from Mumbai (Maharashtra), a consignment of parts of air-conditioner to be replaced under warranty at various client

locations in Gujarat. The value of consignment declared in delivery challan accompanying the goods is ₹ 70,000. Power Electricals Ltd. claims that since movement of goods to Gujarat is caused due to reasons other than supply, e-way bill is not mandatorily required to be generated in this case.

You are required to examine the technical veracity of the claim made by Power Electricals Ltd.

(iii) Beauty Cosmetics Ltd. has multiple wholesale outlets of cosmetic products in Mumbai, Maharashtra. It receives an order for cosmetics worth ₹ 1,20,000 (inclusive of GST leviable @ 18%) from Prasanna, owner of a retail cosmetic store in Delhi. While checking the stock, it is found that order worth ₹ 55,000 can be fulfilled from the company's Dadar (Mumbai) store and remaining goods worth ₹ 65,000 can be sent from its Malad (Mumbai) store. Both the stores are instructed to issue separate invoices for the goods sent to Prasanna. The goods are transported to Prasanna in Delhi, in a single conveyance owned by Radhey Transporters.

You are required to advise Beauty Cosmetics Ltd. with regard to issuance of e-way bill(s). (RTP May 2019)

**Solution:**

(i) (a) **E-way bill to be mandatorily generated if value of consignment (including taxes) exceeds ₹ 50,000 :** Rule 138(1) of the CGST Rules, 2017 provides that e-way Bill is mandatorily required to be generated if the goods are moved, *inter alia*, in relation to supply and the consignment value exceeds ₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes CGST, SGST/UTGST, IGST and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Accordingly, in the given case, the consignment value will be as follows: = ₹ 48,000 × 118% = ₹ 56,640.

Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.

(b) **Information in Part A – to be furnished by registered person who is causing movement and Part- B by the transporter :** An e-way bill contains two parts namely, Part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding ₹ 50,000/- and part B (transport details) is to be furnished by the person who is transporting the goods.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or a public conveyance, by road, the said person shall generate the e-way bill on the common portal after furnishing information in Part B [Rule 138(2)].

Where the goods are transported by railways or by air or vessel, the e-way bill shall be generated by the registered person, being the supplier or the recipient, who shall, either before or after the commencement of movement, furnish, on the common portal, the information in Part B [Rule 138(2A)].

Where the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].

Where the consignor or the consignee has not generated the e-way bill and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill on the common portal prior to the movement of goods [Rule 138(7)].

(c) **Penalty - ₹ 10,000/- or tax sought to be evaded whichever is greater :** It is mandatory to generate e-way bill in all cases where the value of consignment of goods being transported is more than ₹ 50,000/- and it is not otherwise exempted in terms of rule 138(14) of CGST Rules, 2017. If e-way bills, wherever required, are not issued in accordance with the provisions contained in rule 138, the same will be considered as contravention of rules. As per section 122(1)(xiv) of CGST Act, 2017, a taxable person who transports any taxable goods without the cover of specified documents (e-way bill is one of the specified documents) shall be liable to a penalty of ₹ 10,000/- or tax sought to be evaded (wherever applicable) whichever is greater.

Moreover, as per section 129(1) of CGST Act, 2017, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the Rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure.

(ii) **E-way bill to be generated even if movement of goods is by reasons other than supply** : The goods to be moved to another State for replacement under warranty is not a 'supply'. However, rule 138(1) of the CGST Act, 2017, *inter alia*, stipulates that every registered person who causes movement of goods of consignment value exceeding ₹ 50,000:

- (a) in relation to a supply; or
- (b) for reasons other than supply; or
- (c) due to inward supply from an unregistered person,

shall, generate an electronic way bill (E-way Bill) before commencement of such movement.

CBIC has also clarified that even if the movement of goods is caused due to reasons others than supply [including replacement of goods under warranty], e-way bill is required to be issued.

Thus, in the given case, since the consignment value exceeds ₹ 50,000, e-way bill is required to be mandatorily generated. Therefore, the claim of Power Electricals Ltd. that e-way bill is not mandatorily required to be generated as the movement of goods is caused due to reasons other than supply, is not correct.

(iii) **Separate E-way bill for separate invoices - subsequently consolidated e-way bill can be prepared if goods transported in one conveyance** : Beauty Cosmetics Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

CBIC has clarified that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

**Illustration 9 - Consignment value for E-way bill** : M/s Gyaan Publishing House, registered under GST in Delhi, is engaged in printing and selling of books as well as trading of stationery items. He has provided following information of a consignment which is to be supplied to Mumbai: -

- (i) Taxable value of supplies indicated on tax invoice : ₹ 35,000/-
- (ii) Value of exempted supplies : ₹ 8,000/-
- (iii) Value of goods to be sent to job worker on delivery challan : ₹ 15,000/-

Calculate the consignment value for the purpose of generating e-way bill for inter-State supply of goods. Assume rate of tax on taxable goods to be 18%.

**Solution** : Rule 138(1) of the CGST Rules, 2017 provides that e-way Bill is mandatorily required to be generated if the goods are moved, *inter alia*, in relation to supply and the consignment value exceeds ₹ 50,000. Further, explanation 2 to rule 138(1) stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes CGST, SGST/UTGST, IGST and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Accordingly, in the given case, the consignment value will be as follows:

S.No	Particulars	Consignment Value (₹)	
(i)	Taxable value of supplies indicated on tax invoice:	35,000	41,300
	Add: GST @ 18%	6,300	
(ii)	Value of exempt supplies [The same shall not be included]		-
(iii)	Value of goods to be sent to job worker on delivery challan		15,000
	<b>Consignment value for the purpose of generating E-way bill</b>		<b>56,300</b>

Since the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be issued in the given case.



## ACCOUNTS AND RECORDS

## SUMMARIZED POINTS FOR REVISION

## ACCOUNTS AND OTHER RECORDS

## (1) Accounts and other records [Section 35] :

(i) **List of records and place of maintenance of records [Section 35(1)]** : Every registered person shall keep and maintain, at his **principal place of business**, as mentioned in the certificate of registration, a true and correct account of—

- (a) production or manufacture of goods;
- (b) inward supply of goods or services or both;
- (c) outward supply of goods or services or both;
- (d) stock of goods;
- (e) input tax credit availed;
- (f) output tax payable and paid; and
- (g) such other particulars as may be prescribed.

**Records are required to be maintained at each place of business.** If records are found at other places, they shall be presumed to be maintained by the said registered person.

**E-Records** : The registered person may keep and maintain such accounts and other particulars in **electronic form** in such manner as may be prescribed.

## (ii) Records as prescribed by the Rules :

(a) Every registered person shall keep and maintain a **true and correct account of—**

- the goods or services imported or exported, or
- supplies attracting payment of tax on reverse charge,

along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.

(b) **Stock Account** : Every registered person, **other than a composite supplier**, shall maintain the accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

(c) **Separate Accounts for advances** : Separate accounts are required to be maintained for advances received, paid and adjustments made thereto.

(d) **Tax details** : Every registered person, **other than a composite supplier**, shall keep and maintain an account, containing the details of tax payable [including tax payable under reverse charge], tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

## (iii) Suppliers, Recipients and storage details [Rule 56(5)] : Every registered person shall keep the particulars of —

- names and complete addresses of **suppliers from whom he has received the goods or services** chargeable to tax under the Act;
- names and complete addresses of the **persons to whom he has supplied goods or services**, where required under the provisions of this Chapter;
- the complete address of the **premises where goods are stored by him**, including goods stored during transit along with the particulars of the stock stored therein.

(iv) **Any entry** in registers, accounts and documents **shall not be erased, effaced or overwritten**, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter, the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

(v) **Serially numbering** : Each volume of books of account maintained manually shall be **serially numbered**.



- (vi) Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.
- (vii) **Non accountal of goods and services - Consequences thereof** : Where the registered person fails to account for the goods or services or both, the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of Section 73 or Section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.
- (2) **Audit of accounts if turnover exceeds specified limits [Section 35(5)]** : Every registered person whose **turnover during a financial year exceeds ₹ 2 crores** shall get his accounts audited by a **chartered accountant or a cost accountant** and shall submit a copy of the audited annual accounts, the reconciliation statement under section 44(2) and such other documents in such form and manner as may be prescribed.
- However, nothing contained in Section 35(5) shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

### PERIOD OF RETENTION OF ACCOUNTS

- (3) **Period of retention of accounts [Section 36]** :
- (a) Every registered person required to keep and maintain books of account or other records shall retain them **until the expiry of 72 months** from the due date of furnishing of annual return for the year pertaining to such accounts and records.
- (b) Accounts pertaining to subject matter of appeal etc. is to be kept for a **period of ONE year after final disposal of such appeal etc. or for 72 months** from the due date of furnishing of annual return which ever period expires later.

### MANNER OF MAINTENANCE OF ACCOUNTS

(4) **Manner of maintenance of accounts :**

- (i) **Records by agents** : Every agent shall maintain accounts depicting the, –
- (a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
- (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
- (c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
- (d) details of accounts furnished to every principal; and
- (e) tax paid on receipts or on supply of goods or services effected on behalf of every principal. [Rule 56(11)]

*Circular No. 47/21/2018-GST dated 08-06-2018 and Circular No. 23/23/2017-GST dated 21-12-2017*

**Maintenance of books of accounts relating to additional place of business by a principal or an auctioneer for the purpose of auction of tea, coffee, rubber etc.**

- (1) Warehouse is to be declared as additional place of business.
- (2) Books are to be maintained at every place of business – In case of difficulties Books for additional place can be maintained at principal place of business.
- (3) Intimation to jurisdictional officer about the maintenance of books of accounts relating to additional place(s) of business at their principal place of business.
- (4) ITC can be availed subject to fulfillment of other conditions.
- (5) Applicability of circular when auctioneer claims ITC.

- (ii) **List out the additional records which are to be maintained by manufacturers, service suppliers, C & F agents and works contractors :**
- (a) **Production records by manufacturers [Rule 56(12)]** : Every registered person manufacturing goods shall maintain **monthly production accounts** showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

- (b) **Records of service suppliers [Rule 56(13)]** : Every registered person supplying services shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied.
- (c) **Records by carrier and C&F agents [Rule 56(17)]** : Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and shall produce the details thereof as and when required by the proper officer.
- (d) **Records of Works contractors [Rule 56(14)]** : Every registered person executing works contract shall keep **separate accounts for works contract** showing —
- the names and addresses of the persons on whose behalf the works contract is executed;
  - description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
  - description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
  - the details of payment received in respect of each works contract; and
  - the names and addresses of suppliers from whom he received goods or services.
- (iii) **Records which are required to be maintained by owner or operator of godown and transporters [Section 35(2) read with Rule 58]** :
- (a) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, **irrespective of whether he is a registered person or not**, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.
- (b) Business details is required to be submitted by godown owner/operator or transporter electronically on the common portal. Upon validation of the details furnished, a unique enrollment number shall be generated and communicated to the said person.
- Generation of a unique common enrolment number for Transporters registered in more than one State/UT and Once a transporter has obtained a unique common enrolment number, he shall not be eligible to use any of the GSTIN for the purposes of E-Way Bill under Chapter XVI of these rules.
- (c) **Records of goods Transported/ warehoused goods [Rule 58(4)]** : Subject to the provisions of Rule 56,—
- any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along-with the GSTIN of the registered consigner and consignee for each of his branches.
  - every owner or operator of a warehouse or godown shall maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods.
- (d) **Manner of storage of goods by warehouse owner/ operator [Rule 58(6)]** : 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.
- (5) **Generation and maintenance of electronic records [Rule 57]** :
- (a) **Back up of e-records [Rule 57(1)]** : Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.
- (b) **Production of hard copy or soft copy on demand [Rule 57(2)]** : The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.
- (c) **Audit trail etc. to be produced [Rule 57(3)]** : Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

**ADDITIONAL PRACTICE QUESTIONS**

**T.Q. 1 :** Kalyani Enterprises has started making taxable supplies. You are required to advice it about the accounts and records required to be maintained by it as required under section 35(1) of the CGST Act, 2017.

**Ans:** As per provisions of Section 35(1) of CGST Act, 2017, every registered person shall keep and maintain, at his **principal place of business**, as mentioned in the certificate of registration, a true and correct account of— (a) production or manufacture of goods; (b) inward supply of goods or services or both; (c) outward supply of goods or services or both; (d) stock of goods; (e) input tax credit availed; (f) output tax payable and paid; and (g) such other particulars as may be prescribed.

**T.Q. 2:** Somya Enterprises is a supplier of goods. Its turnover has exceeded ₹ 2 crore in current financial year. Discuss whether Somya Enterprises is required to get its accounts audited by the Chartered Accountant or Cost Accountant under GST law.

**Ans:** As per provisions of Section 35(5) of the CGST Act read with Rule 80 of the CGST Rules, 2017, every registered person (other than any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law) must get his accounts audited by a Chartered Accountant or a Cost Accountant if his aggregate turnover during a financial year exceeds ₹ 2 crores. Since the turnover of Somya Enterprises has exceeded ₹ 2 crore in current financial year, it has to get its accounts audited by a Chartered Accountant/ Cost Accountant.

**T.Q. 3:** Maintenance Services Ltd. is a supplier of maintenance and repair services. It has approached you to ascertain the period for which the books of accounts or other records need to be maintained?

**Ans:** According to Section 36 of CGST Act, 2017, every registered person required to keep and maintain books of account or other records shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

Besides this, a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject-matter of such appeal or revision or proceedings or investigation for—

- a period of **1 year** after final disposal of such appeal or revision or proceedings or investigation, or
- the period specified above *i.e.* until the expiry of **72 months** from the due date of furnishing of annual return for the year pertaining to such accounts and records,

**whichever is later.**

**T.Q. 4:** Bikanerwala Restaurant has opted for composition scheme in the current FY. Discuss the records which are not to be maintained by a supplier opting for composition levy as enumerated in Rule 56 of the CGST Rules, 2017.

**Ans:** Following records are not required to be maintained by a supplier who has opted for composition scheme as per Rule 56(2)&(4) of the CGST Rules, 2017 :

- (1) **Stock Account :** Composition supplier shall not be required to maintain the accounts of stock in respect of goods received and supplied by him, containing particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.
- (2) **Tax details :** Composite Supplier paying tax under section 10, shall not be required to keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of Section 9(3) and (4) *i.e.* on reverse charge basis), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

**T.Q. 5:** KGK Manufacturers Ltd. engages JPJ & Sons as an agent to sell goods on its behalf. For the purpose, KGK Manufacturers Ltd. has supplied the goods to JPJ & Sons located in Haryana. Enumerate the accounts required to be maintained by JPJ & Sons as per rule 56(11) of the CGST Rules, 2017.

**Ans:** As per provisions of Rule 56(11) of CGST Rules, 2017, every agent shall maintain accounts depicting,—

- (a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
- (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
- (c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
- (d) details of accounts furnished to every principal; and
- (e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

## PAYMENT OF TAX, TDS & TCS

### SUMMARIZED POINTS FOR REVISION

#### MANNER OF PAYMENT OF TAX, INTEREST, ETC.

**(1) Payments to be made in GST regime :**

➤ For Intra-state supply	CGST & SGST are to be paid
➤ For Inter-state supply	IGST to be paid, having components of both CGST & SGST
➤ Interest, penalty, fees and any other amount also to be paid wherever applicable.	

**(2) Electronic Ledgers or E-Ledgers** are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register.

**Types of Electronic ledgers :**

- Electronic Cash Ledger
- Electronic Credit Ledger
- Electronic Liability Register

**(3) Payment of tax, interest, penalty and other amounts [Section 49] :**

**(a) Modes of payment :** Payment of tax, interest, penalty, fee or any other amount by a person can be made—

- by internet banking, or
- by using credit or debit cards, or
- by National Electronic Fund Transfer (NeFT), or
- by Real Time Gross Settlement (RTGS), or
- Over the Counter payment through authorised banks for deposits upto ₹ 10,000 per challan per tax period, by cash, cheque or demand draft.

**OTC payment restrictions upto ₹ 10,000 not applicable in following cases :** The restriction for deposit up to ₹ 10,000 per challan in case of an Over the Counter payment shall not apply to deposit to be made by—

- (i) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;
- (ii) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;
- (iii) Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any *ad hoc* deposit.

**(b) The amount so paid shall be credited to the electronic cash ledger of such person.**

**(c) Self assessed ITC shall be credited to electronic credit ledger.**

**(4) Utilisation of amount in Electronic cash ledger :** The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

- **Head wise information is to be maintained :** In electronic cash ledger, information is kept minor head-wise for each major head as under:

Major Heads	Minor Heads
➤ IGST	➤ Tax
➤ CGST	➤ Interest
➤ SGST/UTGST, and	➤ Penalty
➤ GST Compensation Cess	➤ Fee, and
	➤ Others

- **Head wise utilisation is permissible** : The amount available in the Electronic Cash Ledger can be utilised for payment of any liability for the respective major and minor heads.
  - **Transfer of funds between the major heads not permissible** : Amount available under one major head (SGST/UTGST, CGST, IGST or CESS) cannot be utilised for discharging the liability under any other major head.
- (5) **Utilisation of amount in Electronic credit ledger – For payment of output tax under CGST and IGST Act [Section 49(4)]** : The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
- (6) **Manner of utilisation of amount in Electronic credit ledger [Section 49(5)]** : The amount of input tax credit available in the electronic credit ledger of the registered person on account of –
- (a) **Credit of IGST – To be utilised for payment of IGST, CGST, SGST and UTGST sequentially** : Integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
  - (b) **Credit of CGST – To be utilised for payment of CGST and IGST sequentially** : The central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
  - (c) **Credit of SGST – To be utilised for payment of SGST and IGST sequentially** : The State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;  
However, the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;
  - (d) **Credit of UTGST – To be utilised for payment of UTGST and IGST sequentially** : The Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;  
However, the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;
  - (e) **Credit of CGST – Cannot be utilised for payment of SGST and UTGST** : The central tax shall not be utilised towards payment of State tax or Union territory tax; and
  - (f) **Credit of SGST/ UTGST – Cannot be utilised for payment of CGST** : The State tax or Union territory tax shall not be utilised towards payment of central tax.
- (7) **Refund of balance in electronic ledger [Section 49(6)]** : The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of Section 54.
- (8) **Electronic liability register [Section 49(7)]** : All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.
- (9) **Order of discharge of liabilities [Section 49(8)]** : Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:–
- (a) self-assessed tax, and other dues related to returns of previous tax periods;
  - (b) self-assessed tax, and other dues related to the return of the current tax period;
  - (c) any other amount payable under this Act or the rules made thereunder **including the demand determined under section 73 or section 74.**
- (10) **Incidence of tax – Deemed to have been passed [Section 49(9)]** : Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be **deemed to have passed on the full incidence of such tax to the recipient** of such goods or services or both.

**Explanation :**

- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression,—

- (i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and
- (ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

"Authorised bank" shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act. [Section 2(14)]

Note : Provisions of payment of tax under CGST Act have also been made applicable to IGST Act vide Section 20 of the IGST Act.

**(11) Utilisation of input tax credit and Order of utilisation of input tax credit :**

(i) **Utilisation of input tax credit subject to certain conditions [Section 49A] :** Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

(ii) **Order of utilisation of input tax credit [Section 49B] :** Notwithstanding anything contained in this Chapter and subject to Section 49(5)(e)&(f), the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

For this purpose Rule 88A of the CGST Rules, 2017 has been inserted vide Notification No. 16/2019-CT dated 29-03-2019 which reads as under—

**Order of utilization of input tax credit [Rule 88A] :** Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order

However, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

Note : The above provisions have been summarised in Chapter – Input tax credit.

**ELECTRONIC CASH LEDGER**

**(12) Electronic Cash Ledger, Electronic Credit Ledger & Electronic Liability Register [Rule 87, Rule 86 & Rule 85]:**

Electronic Cash Ledger [Rule 87]	➤ It will reflect all deposits made in cash and TDS/TCS made on account of the tax payer.	
	➤ This ledger can be used for making ANY PAYMENT towards tax, interest, penalty, fees or any other amount on account of GST.	
	<b>Debit Amount (Dr.)</b>	<b>Credit Amount (Cr.)</b>
⇒ Credit amount of this ledger may be used for payment of tax, interest, fees etc.	⇒ Any deposit made towards tax, interest, penalty, late fee etc. via internet banking, RTGS, fund transfer etc.	
⇒ Remaining credit balance amount after payment of above tax etc. will be refunded to taxable person.	⇒ TDS/TCS claimed	
Electronic Credit Ledger [Rule 86]	➤ It will reflect Input Tax Credit as self-assessed in monthly returns.	
	➤ The credit in this ledger can be used to make payment of TAX ONLY i.e. output tax and not for other amounts such as interest, penalty, fees etc.	
	<b>Debit Amount (Dr.)</b>	<b>Credit Amount (Cr.)</b>
Credit amount of this ledger may be used for payment of output tax viz IGST, CGST, SGST, UTGST in the prescribed order.	Input Tax credit as self-assessed in the return in the form of IGST, CGST, SGST, UTGST	
Electronic Liability Register [Rule 85]	Electronic Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.	



	Debit Amount (Dr.)	Credit Amount (Cr.)
	⇒ Amount payable towards tax, interest, fees etc.	⇒ Electronic cash ledger
	⇒ Tax or interest payable due to mismatch	
	⇒ Any other dues	
	⇒ Amount payable towards output tax	⇒ Electronic credit ledger

**(13) Identification number for each transaction [Rule 88] :**

- A unique identification number (UIN) shall be generated at the common portal for each debit or credit to the electronic cash or credit ledger, as the case may be.
- The UIN relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.
- A UIN shall be generated at the common portal for each credit in the electronic liability register.

**CPIN, CIN, BRN AND E-FPB**

- CPIN stands for Common portal Identification Number. It is created for every Challan successfully generated by the taxpayer. It is a **14-digit unique number** to identify the challan. CPIN remains **valid for a period of 15 days**.
- CIN or Challan Identification Number is generated by the banks, once payment in lieu of a generated Challan is successful. It is a **17-digit number** that is **14-digit CPIN plus 3-digit Bank Code**. CIN is generated by the authorized banks/ Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.
- BRN or **Bank Reference Number** is the transaction number given by the bank for a payment against a Challan.
- E-FPB stands for **Electronic Focal Point Branch**. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for PAN India transaction.

The E-FPB will have to open accounts under each major head for all governments. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB. For NEFT/RTGS Transactions, RBI will act as E-FPB.

**Key Features of Payment process :**

- Electronically generated challan from GSTN common portal in all modes of payment and no use of manually prepared challan;
- Facilitation for the tax payer by providing hassle free, anytime, anywhere mode of payment of tax;
- Convenience of making payment online;
- Logical tax collection data in electronic format;
- Faster remittance of tax revenue to the Government Account;
- Paperless transactions;
- Speedy Accounting and reporting;
- Electronic reconciliation of all receipts;
- Simplified procedure for banks;
- Warehousing of Digital Challan.

**INTEREST ON DELAYED PAYMENT OF TAX****(18) Interest on delayed payment of tax [Section 50] :**

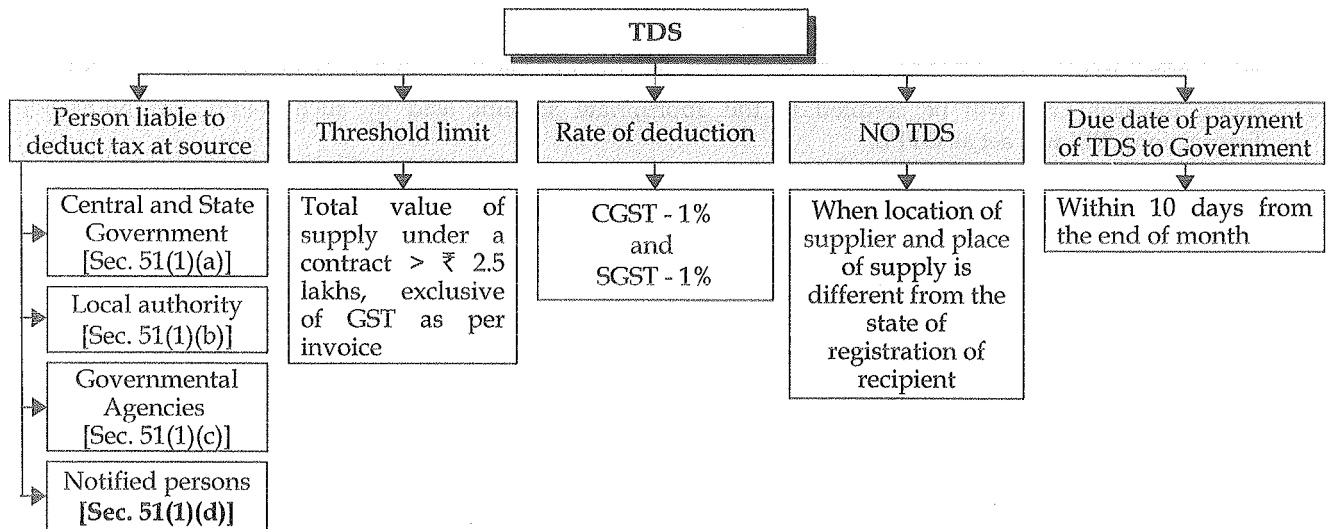
- Interest payable on delayed payment of tax @ 18% p.a. [Section 50(1)] :** Every person who fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate @ **18% p.a.** from the day succeeding the day on which such tax was due to be paid.
- A taxable person who makes an undue or excess claim of input tax credit under section 42(10), or undue or excess reduction in output tax liability under section 43(10), shall pay interest on such undue or excess claim or on such undue or excess reduction, @ **24% p.a.**

<p><i>Megha Engineering &amp; Infrastructures Ltd. v. Commissioner of Central Tax [2019] 104 taxmann.com 393 (Telangana)</i></p>	<p>Interest on delayed payment of tax is to be levied on the gross tax liability i.e. without allowing the credit of input tax. The court held that tax paid on inputs becomes an input tax credit only when a claim is made in the returns filed as self-assessed. In case of a delay in filing of returns, the payment of tax liability, partly in cash and partly in form of claim of input tax credit (ITC) also happens belatedly. Thus, liability to pay interest arises automatically on the gross amount.</p>
--	---

**TRANSFER OF INPUT TAX CREDIT**

- (19) **Transfer of input tax credit [Section 53]** : On utilisation of input tax credit availed under CGST Act for payment of tax dues under the IGST Act in accordance with the provisions of Section 49(5), as reflected in the valid return furnished under Section 39(1), the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.
- (20) **Transfer of input tax credit [Section 18 of IGST Act, 2017]** :
- (a) Use of IGST to pay CGST - CG to transfer such amount to Central Tax Account. [Section 18(a)]
  - (b) Use of IGST to pay UTGST - Central Government to transfer such amount to UTT Account. [Section 18(b)]
  - (c) Use of IGST to pay SGST - Central Government to transfer such amount to State Government Tax Account [Section 18(c)].
- (21) **Tax wrongfully collected and paid to Central Government or State Government [Section 19 of IGST Act, 2017]**:
- (a) IGST paid instead of CGST/ SGST - IGST to be refunded [Section 19(1)]
  - (b) CGST/ SGST paid instead of IGST - No interest chargeable on IGST to be deposited [Section 19(2)]

**TAX DEDUCTION AT SOURCE**



For the purpose of Section 51(1)(d), the following persons have been notified :

- (i) an authority or a board or any other body, -
  - (a) set up by an Act of Parliament or a State Legislature; or
  - (b) established by any Government,
 with 51% or more participation by way of equity or control, to carry out any function;
- (ii) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
- (iii) public sector undertakings.

The Government *vide* Notification No. 50/2018-CT dated 13-09-2018 has notified that above categories of persons are required to deduct tax at source with effect from 01-10-2018.

The CBIC *vide* Circular No. 76/50/2018-GST dated 31-12-2018 has clarified that the provisions of section 51 of the CGST Act are applicable only to such authority or a board or any other body set up by an Act of parliament or a State legislature or established by any Government in which 51% or more participation by way of equity or control is with the Government.

TDS provisions not applicable in certain cases :

- TDS provisions shall not apply to the supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person, with effect from 01-10-2018.
- TDS provisions shall not apply to the supply of goods or services or both which takes place between one person to another person specified under clauses (a), (b), (c) and (d) of section 51(1) of the said Act. *i.e.* supplies made by Government Departments and PSUs to other Government Departments and vice-versa are exempt from TDS.

**Provisions under IGST Act, 2017 :** It may be noted that Section 20 of IGST Act provides that in the case of tax deducted at source, the deductor shall deduct tax @ 2% from the payment made or credited to the supplier. Further, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.

- (22) **No deduction in certain cases :** No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

This can be explained as under :

- (a) **Supplier, place of supply and recipient are in the same state.** It would be intra-State supply and TDS (Central plus State tax) shall be deducted. It would be possible for the supplier (*i.e.* the deductee) to take credit of TDS in his electronic cash ledger.
- (b) **Supplier as well as the place of supply are in different states.** In such cases, Integrated tax would be levied. TDS to be deducted would be TDS (Integrated tax) and it would be possible for the supplier (*i.e.* the deductee) to take credit of TDS in his electronic cash ledger.
- (c) **Supplier as well as the place of supply are in State A and the recipient is located in State B.** The supply would be intra-State supply and Central tax and State tax would be levied. In such case, transfer of TDS (Central tax + State tax of State B) to the cash ledger of the supplier (Central tax + State tax of State A) would be difficult. So in such cases, TDS would not be deducted.

Thus, when both the supplier as well as the place of supply are different from that of the recipient, no tax deduction at source would be made.

- (23) **Obligations of tax deductor at source :**

(i)	Such deductors needs to get compulsorily registered under section 24 of the CGST/SGST Act.
(ii)	They need to <b>remit such TDS collected by the 10<sup>th</sup> day of the month</b> succeeding the month in which TDS was collected otherwise he is liable to pay penal interest under Section 50 in addition to the amount of tax deducted.
(iii)	The amount deposited as TDS will be reflected in the electronic cash ledger of the supplier.
(iv)	They need to issue certificate of such TDS to the deductee <b>within 5 days</b> of deducting TDS, failing which fees of <b>₹ 100 per day</b> subject to <b>maximum of ₹ 5,000/-</b> will be payable by such deductor. TDS certificates includes : <ul style="list-style-type: none"> <li>➤ contract value</li> <li>➤ rate of deduction</li> <li>➤ amount deducted</li> <li>➤ amount paid to the appropriate Government</li> <li>➤ any other particulars as may be prescribed.</li> </ul>

- (24) **Accounting of TDS :**

- Any amount shown as TDS will be reflected in the electronic cash ledger of the concerned supplier.
- He can utilize this amount towards discharging his liability towards tax, interest fees and any other amount.

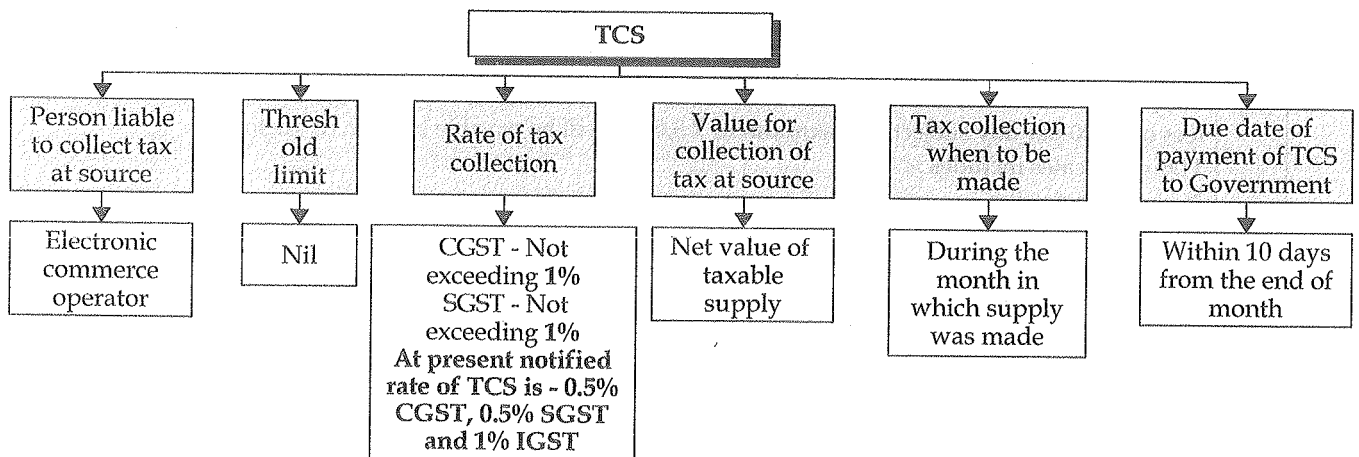
(25) Consequences of non compliance of TDS provisions :

	Event	Consequence
(i)	TDS not deducted	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.
(ii)	TDS certificate not issued or delayed beyond the prescribed period of five days	Late fee of ₹ 100/- per day subject to a maximum amount of ₹ 5,000/-.
(iii)	TDS deducted but not paid to the Government or paid later than 10 <sup>th</sup> of the succeeding month	Interest to be paid along with the TDS amount; else the amount shall be determined and recovered as per the law.
(iv)	Late filing of TDS returns	Late fee of ₹ 100/- for every day during which such failure continues, subject to a maximum amount of ₹ 5,000/-.

**REGISTRATION OF PERSONS LIABLE TO DEDUCT TAX AT SOURCE**

- (26) **Registration of Tax deductor :** A deductor has to compulsorily register without any threshold limit. The deductor has a privilege of obtaining registration under GST without requiring PAN. He can obtain registration using his Tax Deduction and Collection Account Number (TAN) issued under the Income-tax Act, 1961.
- (27) **Grant of registration to persons required to deduct tax at source [Rule 12 of CGST Rules, 2017] :**
- E-Application is to be filed in prescribed form by Tax deductor/collector on the common portal.
  - Where deductor does not have a physical presence, shall mention the name of the State or Union territory in PART A of the application in FORM GST REG-07 and mention the name of the State or Union territory in PART B thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in PART A. [Amended by Notification No. 33/2019-CT dated 18-07-2019]
  - RC to be issued **within 3 working days** from the date of submission of the application.
  - RC can be cancelled if the proper officer is satisfied that a person is no longer liable to deduct tax at source.
- (28) **Form and manner of submission of return by a person required to deduct tax at source [Rule 66] [Amended w.e.f. 28-06-2019] :** Every deductor shall furnish a return in FORM GSTR-7 electronically. The details furnished by the deductor shall be made available electronically to each of the **deductees for claiming the amount of tax deducted in his electronic cash ledger after validation**. The certificate shall be made available electronically to the deductee on the common portal in FORM GSTR-7A on the basis of the return furnished above.
- (29) **Annual return [Section 44] :** Every registered person liable to deduct tax at source shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the 31<sup>st</sup> December following the end of such financial year.

**TAX COLLECTION AT SOURCE**



**# Net Value of Taxable Supplies:**

Aggregate value of taxable supplies of goods and/or services ( <i>other than notified services under section 9(5) by all registered persons</i> )	xxx
Less: Taxable supplies returned to supplier	xxx
<b>Net value of Taxable Supplies</b>	<b>xxx</b>

The provisions of TCS has come into force w.e.f. 1-10-2018 *vide* Notification No. 51/2018-CT dated 13-09-2018.

The Government *vide* Notification No. 52/2018-CT dated 20-09-2018 has notified that every electronic commerce operator, not being an agent, shall collect an amount calculated @ 1% (0.5% CGST and 0.5% SGST) of the net value of intra-State taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator w.e.f. 01-10-2018.

The Central Government *vide* Notification No. 02/2018-IT dated 20-09-2018 has notified that every electronic commerce operator, not being an agent, shall collect an amount calculated @ 1% of the net value of inter-State taxable supplies made through it by other suppliers where consideration with respect to such supplies is to be collected by the said operator w.e.f. 01-10-2018.

- (1) Other modes of recovery not to be affected. [Section 52(2)]
- (2) Time limit for deposit of tax - Upto 10<sup>th</sup> of next month. [Section 52(3)]
- (3) E-Statement to be filed upto 10<sup>th</sup> of next month. [Section 52(4)]
- (4) Annual Statement to be filed upto 31<sup>st</sup> December of succeeding financial year. [Section 52(5)]
- (5) Rectification of mistake in monthly statement furnished by ECO [Section 52(6)]  
**Time limit of Rectification** : No such rectification of any omission or incorrect particulars shall be allowed after –
  - the due date for furnishing of statement for the month of September following the end of the financial year, or
  - the actual date of furnishing of the relevant annual statement, whichever is earlier.
- (6) Credit of TCS in electronic cash ledger by the supplier. [Section 52(7)]
- (7) Details of supplies furnished by ECO to be matched with corresponding details furnished by the supplier under section 37 or section 39 of the CGST Act and mismatch details to be communicated to the supplier and ECO. [Section 52(8) and (9)]
- (8) If discrepancy is not rectified by supplier, it is added to the output tax liability of the supplier and supplier will be liable to pay interest. [Section 52(10) and (11)]
- (9) **Issuance of notice to furnish details of supplies and stock [Section 52(12)]** : Any authority not below the rank of Deputy Commissioner may serve a notice along with summary thereof electronically in form **GST DRC-01**, either before or during the course of any proceedings under this Act, requiring the ECO to furnish such details relating to –
  - (a) supplies of goods or services or both effected through such ECO during any period; or
  - (b) stock of goods held by the suppliers making supplies through such ECO in the godowns or warehouses, by whatever name called, managed by such ECO and declared as additional places of business by such suppliers, as may be specified in the notice.
- (10) **Information to be furnished within 15 days from service of notice [Section 52(13)]** : Every ECO on whom a notice has been served under Section 52(12) shall furnish the required information within **15 days** of the date of service of such notice.
- (11) **Penalty for failure to furnish information - Upto ₹ 25,000** : Any person who fails to furnish the information required by the notice served under Section 52(12) shall, without prejudice to any action that may be taken under Section 122, be liable to a penalty which may extend to ₹ 25,000.  
**Explanation - "Concerned supplier"** shall mean the supplier of goods or services or both making supplies through the ECO.
- (12) **Registration to persons required to collect tax at source [Rule 12 of CGST Rules, 2017]** :
  - (a) E-Application to be made by Tax collector electronically in FORM GST REG-07 for the grant of registration.
  - (b) **Procedure if tax collector do not have fixed place of business in the state in which registration application is made** : A person applying for registration to collect tax where he does not have a physical presence, shall mention the name of the State or Union territory in **PART A** of the application in **FORM GST REG-07** and mention the name of the State or Union territory in **PART B** thereof in which the principal place of business is located which may be different from the State or Union territory mentioned in **PART A**.

- (c) RC to be issued within 3 working days in FORM GST REG-06.
- (d) Cancellation of RC if such person is no longer liable to collect tax at source and such cancellation shall be communicated to the said person electronically in FORM GST REG-08.
- (13) **Form and manner of submission of statement of supplies through an e-commerce operator [Rule 67] [Amended w.e.f. 28-06-2019]** : Every ECO required to collect tax at source shall furnish a statement in FORM GSTR-8 electronically, containing details of supplies effected through such operator and the amount of tax collected as required under section 52(1). The details furnished by the operator shall be made available electronically to each of the suppliers on the common portal after filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

### ADDITIONAL PRACTICE QUESTIONS

#### PAYMENT OF TAX

**T.Q. 1 :** Can one use input tax credit for payment of interest, penalty, and payment under reverse charge?

**Ans:** No, as per Section 49 (4) of the CGST Act, 2017 the amount available in the electronic credit ledger may be used for making any payment towards 'output tax'. As per Section 2(82) of the CGST Act, 2017, output tax means, the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis. **Therefore, input tax credit cannot be used for payment of interest, penalty, and payment under reverse charge.**

**Illustration 1 – Payment of tax :** Miss Nitya has following balances in her Electronic Cash Ledger as on 28-02-2020 as per GST Portal.

Major Heads	Minor Heads	Amount (₹)
CGST	Tax	40,000
	Interest	1,000
	Penalty	800
SGST	Tax	80,000
	Interest	400
	Penalty	1,200
	Fee	2,000
IGST	Tax	45,000
	Interest	200
	Penalty	Nil

Her tax liability for the month of February, 2020 for CGST and SGST was ₹ 75,000 each. She failed to pay the tax and contacted you as legal advisor on 12-04-2020 to advise her as to how much amount of tax or interest she is required to pay, if any, by utilizing the available balance to the maximum extent possible as per GST Laws. She wants to pay the tax on 20-04-2020.

**Other Information :**

- (i) Date of collection of GST was 18<sup>th</sup> February, 2020.
- (ii) No other transaction after this up to 20<sup>th</sup> April, 2020.
- (iii) Ignore penalty for this transaction.
- (iv) No other balance is available.

You are required to advise her with reference to legal provisions with brief notes on the legal provisions applicable. (5 Marks, Nov. 2018-NS)

**Solution:** According to Section 49 of the CGST Act, 2017, The amount available in the Electronic Cash Ledger can be utilised for payment of any liability for the respective major and minor heads. Amount available under one major head cannot be utilised for discharging the liability under any other major head.

According to Section 50 of the CGST Act, 2017, if the tax is not paid as per the due dates, the concerned person shall be liable to pay interest @ 18% p.a. after the expiry of due date till the date of payment of tax.



**Computation of interest liability on delay in payment of GST (amount in ₹) :**

Particulars	CGST	SGST
Due date of payment of GST of the tax liability month of February	20-03-2020	20-03-2020
Actual date of payment of tax	20-04-2020	20-04-2020
Period of delay in days	31 days	31 days
<b>GST Payable</b>	<b>75,000</b>	<b>75,000</b>
Rate of Interest	18% p.a.	18% p.a.
<b>Interest payable [₹ 75,000 × 18% × 31/366][Since leap year]</b>	<b>1,143.00</b>	<b>1,143.00</b>

The amount to be deposited upto 20<sup>th</sup> April 2020 is as under –

Major Heads	Minor Heads	Amount payable (₹)	Amount (₹)	Amount to be deposited on or before 20 <sup>th</sup> April
CGST	Tax	75,000.00	40,000.00	35,000.00
	Interest	1,143.00	1,000.00	143.00
	Penalty	-	800.00	-
SGST	Tax	75,000.00	80,000.00	-
	Interest	1,143.00	400.00	743.00
	Penalty	-	1,200.00	-
	Fee	-	2,000.00	-
IGST	Tax	-	45,000.00	-
	Interest	-	200.00	-
	Penalty	-	-	-

**T.Q. 2:** ABC limited filed the return for GST under section 39(1) for the month of November on 20<sup>th</sup>, December showing self assessed tax of ₹ 2,50,000 which was not paid. Explain what are the implications for ABC limited as per relevant provisions?

**Ans:** As per Section 2(117) of CGST Act, "valid return" means a return furnished under section 39(1) on which self-assessed tax has been paid in full. Hence, in such a case, the return is not considered as a valid return and also input tax credit will not be allowed to the recipient of supplies.

**T.Q. 3:** Are principles of unjust enrichment applicable for payment made under GST?

**Ans:** The principles of unjust enrichment are applicable for payment made under GST. As per Section 49(9) of the CGST Act, 2017 every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

**Illustration 2 - Computation of GST liability :** Mr. George, a registered supplier of goods at Kerala, who pays GST under regular scheme has made the following transactions (exclusive of tax) during April 2019 :

Source	Purchases	Sales	Tax Rate
New Delhi	5,00,000	10,00,000	18%
Trivandrum	2,50,000	8,00,000	9% each SGST & CGST
<b>Total</b>	<b>7,50,000</b>	<b>18,00,000</b>	

He has complied all the conditions for availing the ITC and on 01-04-2019 has the following ITC credit :

Source	Taxes	Interest	Penalty
CGST	30,000	1,500	500
SGST	30,000	1,500	500
IGST	1,00,000	2,000	500

Compute the net CGST, SGST and IGST payable by Mr. George during April 2019 in cash? (9 Marks, May 2019-NS)

**Solution: Computation of GST liability (amount in ₹) :**

Particulars	CGST	SGST	IGST
Inter-State Sale of goods in New Delhi [₹ 10,00,000 × 18%]			1,80,000
Intra-State Sale of goods in Trivandrum [₹ 8,00,000] (CGST/SGST @ 9% each)	72,000	72,000	
<b>Less: Input tax credit [WN]</b>			
<b>Opening balance</b>	<b>30,000</b>	<b>30,000</b>	<b>1,00,000</b>

<b>Purchases during the month</b>			
Intra-State purchases - ₹ 2,50,000 [CGST @ 9% and SGST @ 9%]	22,500	22,500	-
Inter-State purchases [₹ 5,00,000] [IGST @ 18%]	-	-	90,000
<b>Total Input tax credit</b>	<b>52,500</b>	<b>52,500</b>	<b>1,90,000</b>
<i>Less:</i> Extra credit of IGST to be used for payment of CGST	10,000	-	-10,000
<b>Net amount of CGST/SGST/IGST payable</b>	<b>9,500</b>	<b>19,500</b>	<b>NIL</b>

**Working Note :** Interest and penalty is not eligible for input tax credit. It is assumed that the details of credit of interest/penalty is actually balance in electronic cash ledger. Even than, the balance of electronic cash ledger in interest or penalty cannot be used for payment of output tax liability under GST. It can be used to pay only corresponding interest/penalty under the GST law.

**Illustration 3 - GST liability at different stages :** Manufacturer 'A' of Rajasthan extracted raw produce 'X' and raw produce 'Y' from mines at ₹ 10,000 and ₹ 15,000 respectively and sold the same at 100% margin to Manufacturer 'B' of Rajasthan (GST rate is 5% on produce 'X' and 12% on produce 'Y'). Manufacturer 'B' used X and Y as raw material and sold the resultant product for ₹ 2,00,000 to wholesaler 'C' of Rajasthan (GST rate is 12%). Wholesaler 'C' sold the same to Retailer 'D' of Rajasthan at 25% above cost (GST rate is 12%). The retailer 'D' sold the same to a consumer at 20% above cost (GST rate is 12%). Compute the amount of GST payable in cash by each person.

**Solution: Computation of GST payable in cash (amount in ₹)-**

Particulars	CGST	SGST	Total
<b>(1) GST payable in cash by Manufacturer 'A'</b>			
5% on produce 'X' i.e. 5% of ₹ 20,000 (₹ 10,000 + 100% of ₹ 10,000)	500	500	
12% on produce 'Y' i.e. 12% of ₹ 30,000 (₹ 15,000 + 100% of ₹ 15,000)	1,800	1,800	
<b>GST to be paid in cash</b>	<b>2,300</b>	<b>2,300</b>	<b>4,600</b>
<b>(2) GST payable in cash by Manufacturer 'B'</b>			
GST @ 12% on sale price of ₹ 2,00,000	12,000	12,000	
<i>Less:</i> ITC credit on raw produce 'X' & 'Y'	2,300	2,300	
<b>GST to be deposited in cash</b>	<b>9,700</b>	<b>9,700</b>	<b>19,400</b>
<b>(3) GST payable in cash by Wholesaler 'C'</b>			
GST @ 12% on sale price of ₹ 2,50,000 (₹ 2,00,000 + 25% of ₹ 2,00,000)	15,000	15,000	
<i>Less:</i> GST credit on purchases from Manufacturer 'B'	12,000	12,000	
<b>GST to be deposited in cash</b>	<b>3,000</b>	<b>3,000</b>	<b>6,000</b>
<b>(4) GST payable in cash by Retailer 'D'</b>			
GST @ 12% on sale price of ₹ 3,00,000 (₹ 2,50,000 + 20% of ₹ 2,50,000)	18,000	18,000	
<i>Less:</i> GST credit on purchases from Wholesaler 'C'	15,000	15,000	
<b>GST to be deposited in cash</b>	<b>3,000</b>	<b>3,000</b>	<b>6,000</b>
<b>Total GST paid to the Government [(1) + (2) + (3) + (4)]</b>			<b>36,000</b>

The above illustration shows that :

- the GST paid to the Government at various stages (here, ₹ 36,000) is equal to;
- the GST collected from the ultimate consumer (here, ₹ 36,000 or 12% of ₹ 3,00,000).

**Illustration 4 - Computation of GST payable :** A manufacturer has purchased raw material for ₹ 1,05,000 (inclusive of 5% GST) and plant and machinery for ₹ 2,24,000 (inclusive of 12% GST). The manufacturing and other expenses (excluding depreciation) are ₹ 3,00,000. He sells the resultant products at 50% above cost (GST on sales is 12%). The plant and machinery is to be depreciated at 50% straight line. Compute the amount of GST payable in cash. All purchases and sales are made within the State of Rajasthan.

**Solution: Computation of Value of taxable supply and GST payable in cash (amount in ₹)-**

Raw material net of GST (₹ 1,05,000 × 100 ÷ 105)	1,00,000
Depreciation on plant (50% of price net of GST i.e. 50% of ₹ 2,24,000 × 100 ÷ 112)	1,00,000
Manufacturing and other expenses	3,00,000
<b>Total cost</b>	<b>5,00,000</b>
<i>Add:</i> 50% mark-up on cost	2,50,000
<b>Value of taxable supply</b>	<b>7,50,000</b>

(Amount in ₹)

Particulars	CGST	SGST	Total
GST on sales (12% of ₹ 7,50,000)	45,000	45,000	90,000
<b>Less: Input tax credit as follows:</b>			
ITC on raw materials and components (₹ 1,05,000 × 5 ÷ 105)	2,500	2,500	5,000
Input tax credit on plant (₹ 2,24,000 × 12 ÷ 112)	12,000	12,000	24,000
<b>GST payable in cash</b>	<b>30,500</b>	<b>30,500</b>	<b>61,000</b>

**Illustration 5 - Computation of GST payable :** Nargis Agro Traders located at Jaipur and engaged in the business as retail traders provides the following details of its purchases and sales made during the month of July, 2019 :

	Items	(Amount in ₹)	
		Purchase	Sales
(i)	Sugar Candies	1,00,000	1,20,000
(ii)	Chocolate Bars	80,000	1,00,000
(iii)	Wafers Packets	75,000	60,000
(iv)	Biscuits	50,000	50,000

The rate of the under GST on the items are 5%, 12%, 12% and 18% respectively. You are required to calculate the amount of GST payable and the date by which the due tax is to be paid by the trader for the month of July, 2019 after availing the Input Credit.

**Solution: Computation of GST payable in cash (amount in ₹) –**

Particulars	Sugar Candies	Chocolate Bars	Wafers Packets	Biscuits	Total GST
Sales	1,20,000	1,00,000	60,000	50,000	
GST rate	5%	12%	12%	18%	
<b>Output tax</b>	<b>6,000</b>	<b>12,000</b>	<b>7,200</b>	<b>9,000</b>	<b>34,200</b>
<b>Less: Input tax credit on purchases</b>	<b>5,000</b>	<b>9,600</b>	<b>9,000</b>	<b>9,000</b>	<b>32,600</b>
<b>Output tax payable in cash</b>					<b>1,600</b>

Due date for payment of GST of Month of July 2019 on or before 20<sup>th</sup> August, 2019 i.e. due date of filing GSTR-3B.

**Computation of ITC on purchases (amount in ₹) –**

Particulars	Sugar Candies	Chocolate Bars	Wafers Packets	Biscuits	Total ITC
Purchases	1,00,000	80,000	75,000	50,000	
GST rate	5%	12%	12%	18%	
<b>Input tax credit on purchases</b>	<b>5,000</b>	<b>9,600</b>	<b>9,000</b>	<b>9,000</b>	<b>32,600</b>

**Illustration 6 - TOS - Reverse Charge basis, Due date of Payments and Interest Liability :** Royal Sweet Co., Delhi, a registered supplier, has furnished the details of the following few transactions which took place in November, 2019 :

S.No.	Date	Particulars	Date of invoice	Amount (₹)
1.	11-11-2019	Payment made to an advocate in Delhi	07-07-2019	1,25,000
2.	20-11-2019	Paid sitting fee to Director from Haryana for meeting held in Delhi on 15-10-2019 [Inter-State supply]	15-10-2019	75,000

Assume the rates of taxes to be as under:-

Particulars	Rate of tax
Central tax (CGST)	9%
State tax (SGST)	9%
Integrated tax	18%

You are required to compute GST [CGST & SGST/IGST, as the case may be] payable for the month of November, 2019 along with time of supply of the aforementioned activities. (RTP May, 2018)

**Solution: Computation of GST payable for the month of November, 2019 :**

S. No.	Particulars	Time of supply of services	CGST (₹)	SGST (₹)	IGST (₹)	Interest (₹)
1.	Services from an advocate in Delhi (Taxed on reverse charge basis)	06-09-2019 [WN 1 & 2]	11,250	11,250	-	244 [WN-4]
2.	Director's Sitting fee (Taxed on reverse charge basis)	20-11-2019 [WN 2 & 3]	-	-	13,500	

**Working Notes:**

- (1) Services supplied by an individual advocate to any business entity located in the taxable territory is a notified service on which tax is payable on reverse charge basis by the recipient of services.
- (2) Services supplied by a director of a company to the said company is a notified service on which tax is payable on reverse charge basis by the recipient of services.
- (3) As per Section 13 of the CGST Act, 2017, the time of supply of services in case of reverse charge is earliest of the following:
  - (a) Date of payment as entered in the books of account of the recipient or the date on which the payment is debited to his bank account, whichever is earlier, or
  - (b) Date immediately following 60 days since the date of issue of invoice.

Provisions of time of supply as provided under section 13 of the CGST Act are also applicable for inter-State supply vide Section 20 of the IGST Act.

In view of the aforesaid provisions, the time of supply and due date for payment of tax in the given cases would be determined as under:

- (i) Time of supply of the services is the date immediately following 60 days since the date of issue of invoice, i.e. 06-09-2019. The due date for payment of tax is 20-10-2019 with return of September, 2019.
- (ii) Time of supply of service is 20-11-2019 and due date for payment of tax is 20-12-2019 with return of December, 2019.
- (4) The due date for payment of tax in case (i) is 20-10-2019 with return of September, 2019. However, the payment of tax is actually made on 11-11-2019. Thus, payment of tax is delayed by 22 days.

In case of delayed payment of tax, interest @ 18% p.a. is payable for the period for which the tax remains unpaid starting from the day succeeding the day on which such tax was due to be paid [Section 50 of the CGST Act, 2017 read with Notification No. 13/2017 CT dated 28-06-2017]. In view of the same, in the given case, interest payable would be as follows :

Amount of interest payable = ₹ 22,500 × 18% × 22/366 [Since leap year] = ₹ 243.44 (rounded off)

### TDS & TCS

**T.Q. 4 :** Explain matching concept for electronic commerce operator with suitable real life example?

**Ans:** As per section 52(8) of CGST Act, the details of outward supplies furnished by every operator for the month of tax collected shall be matched with the corresponding details of outward supplies furnished by concerned supplier.

**Example:** PQR limited sold Samsung mobile via Eazybib (e-commerce operator) to customers worth ₹ 60,00,000 for the month of November and some customers returned mobile phones worth ₹ 6,00,000, so net supply for the month of November would be ₹ (60,00,000 - 6,00,000) = ₹ 54,00,000.

Now, as per section 52(4) of CGST Act, Eazybib will have to furnish statement, electronically, containing the net outward supply worth ₹ 54,00,000 up to 10<sup>th</sup> December which is to be matched with the details of outward supply furnished by PQR limited under section 39.

**T.Q. 5 :** State whether Tax collected at source u/s 52 of CGST Act, will be applicable in below mentioned scenarios -  
(a) Tanishq sells its own jewellery through its own website? (b) ABC limited who is dealer of Tanishq brand sells jewellery through flipkart, amazon etc.?

**Ans:** As per Section 52 of CGST Act, every electronic commerce operator not being an agent, shall collect an amount calculated at such rate not exceeding 1%, as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Hence, if the person sells on his own, TCS won't be applicable.

- (a) Thus, there will be no requirement of TCS when Tanishq sells its own jewellery through its own website.
- (b) If ABC limited who is dealer of Tanishq brand sells jewellery through Flipkart, Amazon etc., then the provision of TCS will be applicable to flipkart, amazon.

**Illustration 7 - Computation of TDS & Interest liability :** XYZ Ltd. has supplied goods to local authority for ₹ 11,80,000 (inclusive of GST @ 18%). Determine the amount of tax to be deducted at source. Also determine the interest liability if the tax deducted at source on 25-12-2019 is deposited on 28-03-2020.

**Solution:** As per provisions of Section 51(1) of the Act, the local authority has to deduct tax @ 2% (1% CGST and 1% SGST) from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000. Such tax has to be paid to the Government by the deductor within 10 days after the end of the month in which such deduction is made, in such manner as may be prescribed otherwise interest shall be levied @ 18% p.a. for the period for which the tax or any part thereof remains unpaid. Hence, the amount of tax to be deducted at source shall be 2% of ₹ 10,00,000 = ₹ 20,000 [i.e. ₹ 10,000 - CGST and ₹ 10,000- SGST]

**Computation of Interest on delay in deposit of TDS :**

Due date for deposit of TDS	[A]	10-01-2020
Date of payment of GST	[B]	28-03-2020
Period of delay (in days)	[C = B - A]	78
Amount of TDS	[D]	20,000
<b>Interest payable @ 18 % p.a. for delay in payment of days [D × 18% × C ÷ 366 days][Since leap year]</b>		<b>767</b>

**Illustration 8 - TCS :** XYZ Ltd. a registered supplier of goods is effecting supplies through E-Comm Ltd (an Electronic Commerce operator). It has made taxable supplies of goods amounting ₹ 55,00,000 in month of December 2019 through E-Comm Ltd. E-Comm Ltd. has returned goods amounting ₹ 5,00,000 to XYZ Ltd. during the month of December 2019. Determine the amount of tax to be collected at source by E-comm Ltd.

**Solution:** As per provisions of Section 52 of CGST Act, 2017, every electronic commerce operator, not being an agent, shall collect an amount calculated @1% [0.5% CGST and 0.5% SGST], of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Thus, the amount of tax to be collected at source by E- Comm Ltd. is as under (amount in ₹):

Value of taxable supplies of goods made by XYZ Ltd.	55,00,000
<b>Less:</b> Value of taxable supplies of goods returned to XYZ Ltd.	5,00,000
Amount on which tax is to be collected at source	50,00,000
<b>Rate of TCS [0.5% CGST and 0.5% SGST]</b>	<b>1.00%</b>
<b>Amount of TCS</b>	<b>50,000</b>

**Illustration 9 - Computation of tax deduction at source :** Manihar Enterprises, registered in Delhi, is engaged in supply of various goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017. It has provided the information relating to the supplies made, their contract values and the payment due against each of them in the month of October, 2019 as under:

S. No.	Particulars	Total contract value (inclusive of GST) (₹)	Payment due in October, 2019 (₹)
(i)	Supply of stationery to Fisheries Department, Kolkata	2,60,000	15,000
(ii)	Supply of car rental services to Municipal Corporation of Delhi	2,95,000	20,000
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand	5,90,000	25,000
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860	6,49,000	50,000
(v)	Interior decoration of Andhra Bhawan located in Delhi. Service contract is entered into with the Government of Andhra Pradesh.	12,39,000	12,39,000
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [Out of total contract value of ₹ 9,72,000, contract value for supply of books (exempt from GST) is ₹ 7,00,000 and for supply of printed post cards (taxable under GST) is ₹ 2,72,000.]	9,72,000	50,000 for books & 20,000 for printed post cards



(vii)	Maintenance of street lights in Municipal area of East Delhi* [The maintenance contract entered into with the Municipal Corporation of Delhi also involves replacement of defunct lights and other spares. However, the value of supply of goods is not more than 25% of the value of composite supply.] *an activity in relation to any function entrusted to a Municipality under article 243W of the Constitution	3,50,000	3,50,000
-------	---	----------	----------

You are required to determine amount of tax, if any, to be deducted from each of the receivable given above assuming the rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

Will your answer be different, if Manihar Enterprises is registered under composition scheme?

**Solution:** As per section 51 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017, following persons are required to deduct CGST @ 1% [Effective tax 2% (1% CGST + 1% SGST/UTGST)] or IGST @ 2% from the payment made/credited to the supplier (deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000 :

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) an authority or a board or any other body, -
  - (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by any Government, with 51% or more participation by way of equity or control, to carry out any function; or
- (e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or
- (f) Public sector undertakings.

Further, for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding CGST, SGST/UTGST, IGST and GST Compensation Cess indicated in the invoice.

Since in the given case, Manihar Enterprises is supplying goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value (₹)	Payment due (₹)	Tax to be deducted		
				CGST	SGST	IGST
(i)	Supply of stationery to Fisheries Department, Kolkata [WN-1]	2,60,000	15,000	-		
(ii)	Supply of car rental services to Municipal Corporation of Delhi [WN-2]	2,95,000	20,000	-		
(iii)	Supply of a heavy machinery to Public Sector Undertaking located in Uttarakhand [WN-3]	5,90,000	25,000			500
(iv)	Supply of taxable goods to Delhi office of National Housing Bank, a society established by Government of India under the Societies Registration Act, 1860 [WN-4]	6,49,000	50,000	500	500	
(v)	Interior decoration of Andhra Bhawan located in Delhi [WN-5]	12,39,000	12,39,000	-		
(vi)	Supply of printed books and printed post cards to a West Delhi Post Office [WN-6]	9,72,000		-		
(vii)	Maintenance of street lights in Municipal area of East Delhi [WN-7]	3,50,000	3,50,000	-		

#### Working Notes:

- (1) No TDS where total value of supply under the contract do not exceed ₹ 2,50,000 : Being an inter-State supply of goods, supply of stationery to Fisheries Department, Kolkata is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

$$= ₹ 2,60,000 \times 100 / 118$$



= ₹ 2,20,339 (rounded off)

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

- (2) **No TDS where total value of supply under the contract do not exceed ₹ 2,50,000** : Being an intra-State supply of services, supply of car rental services to Municipal Corporation of Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

= ₹ 2,95,000 × 100 / 118

= ₹ 2,50,000

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

- (3) Being an inter-State supply of goods, supply of heavy machinery to PSU in Uttarakhand is subject to IGST @ 18%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

= ₹ 5,90,000 × 100/118

= ₹ 5,00,000

Since the total value of supply under the contract exceeds ₹ 2,50,000, PSU in Uttarakhand is required to deduct tax @ 2% of ₹ 25,000, i.e. ₹ 500.

- (4) Being an intra-State supply of goods, supply of taxable goods to National Housing Bank, Delhi is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

= ₹ 6,49,000 × 100/118

= ₹ 5,50,000 (rounded off)

Since the total value of supply under the contract exceeds ₹ 2,50,000, National Housing Bank, Delhi is required to deduct tax @ 2% (1% CGST + 1% SGST) of ₹ 50,000, i.e. ₹ 1,000.

- (5) **No TDS if the location of the supplier and the POS is in a State/UT which is different from the State/UT of registration of the recipient**: Proviso to section 51(1) of the CGST Act, 2017 stipulates that no tax shall be deducted if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Section 12(3) of the IGST Act, 2017, inter alia, stipulates that the place of supply of services, directly in relation to an immovable property, including services provided by interior decorators, shall be the location at which the immovable property is located or intended to be located. Accordingly, the place of supply of the interior decoration of Andhra Bhawan shall be Delhi.

Since the location of the supplier (Manihar Enterprises) and the place of supply is Delhi and the State of registration of the recipient - Government of Andhra Pradesh is Andhra Pradesh, no tax is liable to be deducted in the given case.

- (6) **TDS only if total value of taxable supply in the contract exceeds ₹ 2,50,000, exempt supply not to be considered** : If the contract is made for both taxable supply and exempted supply, tax shall be deducted if the total value of taxable supply in the contract exceeds ₹ 2,50,000. Being an intra-State supply of goods, supply of printed post cards to a West Delhi Post Office is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

= ₹ 2,72,000 × 100/118

= ₹ 2,30,509 (rounded off)

Since the total value of taxable supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

- (7) **No TDS in case of exempt supply** : Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to, *inter alia*, local authority by way of any activity in relation to any function entrusted to a Municipality under article 243W of the Constitution is exempt from GST. Thus, maintenance of street lights (an activity in relation to a function entrusted to a Municipality) in Municipal area of East Delhi involving replacement of defunct lights and other spares where the value of supply of goods is not more than 25% of the value of composite supply is a service exempt from GST. Since tax is liable to be deducted from the payment made or credited to the supplier of taxable goods or services or both, no tax is required to be deducted in the given case as the supply is exempt.

The answer will remain unchanged even if Manihar Enterprises is registered under composition scheme. Tax will be deducted in all cases where it is required to be deducted under section 51 of the CGST Act, 2017 including the scenarios when the supplier is registered under composition scheme.

**Illustration 10 – Computation of tax deduction at source :** Yash Shoppe a registered supplier of Jaipur, is engaged in supply of various goods and services exclusively to Government Departments, Agencies, Local authority and persons notified under section 51 of the CGST Act, 2017.

You are required to briefly explain the provisions relating to tax deduction at source under section 51 of the CGST Act, 2017 and also determine the amount of tax, if any, to be deducted from each of the receivables given below (independent cases) assuming that the payments as per the contract values are made on 31-10-2019. The rates of CGST, SGST and IGST may be assumed at 6%, 6% and 12% respectively.

- (1) Supply of Computer stationery to Public Sector Undertaking (PSU) located in Mumbai. Total contract value is ₹ 2,72,000 (inclusive of GST)
- (2) Supply of Air conditioner to GST Department located in Delhi. Total contract value is ₹ 2,55,000 (exclusive of GST)
- (3) Supply of Generator renting service to Municipal Corporation of Jaipur. Total contract value is ₹ 3,50,000 (inclusive of GST) (5 Marks, May 2019)

**Solution:** As per section 51 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017, following persons are required to deduct CGST @ 1% [Effective tax 2% (1% CGST + 1% SGST/UTGST)] or IGST @ 2% from the payment made/credited to the supplier (deductee) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000 :

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) an authority or a board or any other body, -
  - (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by any Government, with 51% or more participation by way of equity or control, to carry out any function; or
- (e) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860, or
- (f) Public sector undertakings.

Further, for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding CGST, SGST/UTGST, IGST and GST Compensation Cess indicated in the invoice.

Since in the given case, Yash Shoppe is supplying goods and services exclusively to Government departments, agencies etc. and persons notified under section 51 of the CGST Act, 2017, applicability of TDS provisions on its various receivables is examined in accordance with the above-mentioned provisions as under:

S. No.	Particulars	Total contract value (₹)	Contract Value Exclusive GST	Tax to be deducted		
				CGST	SGST	IGST
(i)	Supply of Computer stationery to Public Sector Undertaking (PSU) located in Mumbai [WN-1]	2,72,000	2,42,857	-	-	-
(ii)	Supply of Air conditioner to GST Department located in Delhi [WN-2]	2,55,000	2,55,000	-	-	5,100
(iii)	Supply of Generator renting service to Municipal Corporation of Jaipur [WN-3]	3,50,000	3,12,500	3,125	3,125	-
				3,125	3,125	5,100

**Working Notes:**

- (1) No TDS where total value of supply under the contract does not exceed ₹ 2,50,000 : Being an inter-State supply of goods, supply of stationery to Public Sector Undertaking (PSU) located in Mumbai is subject to IGST @ 12%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

$$= ₹ 2,72,000 \times 100/112$$

$$= ₹ 242,857 \text{ (rounded off)}$$

Since the total value of supply under the contract does not exceed ₹ 2,50,000, tax is not required to be deducted.

- (2) TDS to be deducted where total value of supply under the contract exceed ₹ 2,50,000 : Being an inter-State supply of goods, supply of air-conditioner to GST Department in Delhi is subject to IGST @ 12%. Therefore, total value of taxable supply [excluding IGST] under the contract is as follows:

= ₹ 2,55,000

Since the total value of supply under the contract exceed ₹ 2,50,000, tax is required to be deducted.

(3) **TDS to be deducted where total value of supply under the contract exceed ₹ 2,50,000** : Being an intra-State supply of services, supply of Generator renting service to Municipal Corporation of Jaipur is subject to CGST and SGST @ 9% each. Therefore, total value of taxable supply [excluding CGST and SGST] under the contract is as follows:

= ₹ 3,50,000 × 100/112

= ₹ 312500

Since the total value of supply under the contract exceed ₹ 2,50,000, tax is required to be deducted.

**Illustration 11 - Computation of amount of tax collection at source** : M/s. Manmohak Apparels, is registered under GST in Madhya Pradesh. It sells leather handbags across India through e-commerce operator Pingpong. Pingpong, is also registered with Madhya Pradesh GST Authority as TCS collector. M/s. Manmohak Apparels made sales of ₹ 3,45,000/- and received sales returns of ₹ 67,700/- in the month of October, 2019. Sales are inclusive of tax. Leather handbags are taxable @ 18% GST. Determine the amount of tax to be collected at source.

**Solution:** As per Section 52 of CGST Act, every electronic commerce operator not being an agent, shall collect an amount calculated @ 0.5% CGST and @ 0.5% SGST, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

**"Net value of taxable supplies"** shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under Section 9(5), made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

The amount of tax to be collected at source shall be determined as under :

Value of taxable supplies of goods made by Manmohak Apparels.	3,45,000
Less: Value of taxable supplies of goods returned to Manmohak Apparels.	67,700
Net Value of taxable supplies inclusive of 18% GST	2,77,300
Less: GST [₹ 2,77,300 × 18 ÷ 118]	42,300
Net Value of taxable supplies on which tax is to be collected at source	2,35,000
Rate of TCS [0.5% CGST and 0.5% SGST]	1%
Amount of TCS	2,350



**CA | CS | CMA**  
Direct Tax Laws & Indirect Tax Laws  
Intermediate/ Final/ Professional

**Also Available Now !!**

**Bangar's** | **AADHYA'S**  
edu.com | http://www.aadhyas.com

Contact/Whatsapp - 9602066653

Video Lecture

Inter/ Executive/ Final/ Professional

**Regular / Fast Track Course**

- Indirect Tax (GST, Customs & FTP)
- Direct Tax & International Taxation
- Taxation (Income Tax & GST)

Latest recorded video lectures available in Pendrive

You Tube  
Subscribe to our Channel  
CA.Yogendra Bangar

Online MCQ's

Computer / EduApplet App

Quality Question Bank of **2000 MCQ's** for each Subject (DT/IDT)

**Test yourself - Anytime - Anywhere**

- Chapter wise coverage of entire syllabus
- Practice, revision & internal assessment
- 24 x 7 Online Access
- Available on Computer, Android Smartphone or Tablet

**SUBJECTIVE Test Series**

More than 23 Years of Experience

- Test Series by Nationally Renowned Faculty
- Based on the Institute's Examination pattern
- Evaluation as per Institute's marking pattern
- Ideal for increasing the writing abilities which is must for expert level
- Pass CA/CSC/CMA Exams with Flying Colours

## SUMMARIZED POINTS FOR REVISION

## RETURNS - BASIC ASPECTS

- (1) **General provisions relating to returns, their purposes and importance of filing of returns :**
- (a) "Return" is a statement of specified particulars, relating to business activity undertaken by the taxable person during a prescribed period.
- (b) **Purposes of Return :** The returns serve the following purposes –
- Mode for transfer of information to tax administration;
  - Compliance verification program of tax administration;
  - Finalization of the tax liabilities of the taxpayer within stipulated time period;
  - Providing necessary inputs on basis of which policy decision can be taken;
  - Management of audit and anti-evasion programs of tax administration.
- (c) **Importance of filing of returns in GST law :** The correct and timely filing of returns is of utmost importance because of two reasons.
- Firstly, under GST laws, a taxpayer is required to estimate his tax liability on "self-assessment" basis and deposit the tax amount along with/before the filing of such return. The return, therefore, constitutes a kind of working sheet/supporting document for the tax authorities that can be relied upon as the basis on which the tax has been computed by the taxpayer.
  - Secondly, under the GST regime, filing of returns not only determines the tax liability of the person filing the same, but it also has a huge bearing on determination of tax liability of other persons with whom the former has entered into taxable activities.
- (d) **Returns to be filed electronically :** All the returns are to be filed online. Returns can be filed using any of the following methods :
- GSTN portal ([www.gst.gov.in](http://www.gst.gov.in)).
  - Offline utilities provided by GSTN.
  - GST Suvidha Providers (GSPs).
- (2) **List of statements/returns under GST :**

Return	Description	Who Files?	Date for filing
GSTR-1	Monthly Statement of Outward supplies of Goods or Services	Registered Person with annual aggregate turnover greater than ₹ 1.5 crore	10 <sup>th</sup> of the next month
	Quarterly Statement of Outward supplies of Goods or Services	Registered Person with annual aggregate turnover up to ₹ 1.5 crore	10 <sup>th</sup> of the next quarter
GSTR-3B	Monthly Return for a normal taxpayer	Registered Person	20 <sup>th</sup> of the next month
GSTR-4	Return for financial year	Registered person paying tax under composition scheme/ Notification No. 2/2019-CT (R) dated 07-03-2019	30 <sup>th</sup> April of the month following the end of such financial year.
GST CMP-08	Quarterly statement for payment of tax	Registered person paying tax under composition scheme/ Notification No. 2/2019-CT (R) dated 07-03-2019	18 <sup>th</sup> of the month succeeding the quarter

GSTR-5	Monthly Return for a non-resident taxpayer	Non-resident Taxpayer	20 <sup>th</sup> of the month succeeding the tax period or within 7 days after expiry of registration, whichever is earlier
GSTR-5A	Monthly return	Registered person providing OIDAR services from a place outside India to a non-taxable online recipient	20 <sup>th</sup> of the next month
GSTR-6	Monthly Return for Input Service Distributor	Input service distributor	13 <sup>th</sup> of the next month
GSTR-7	Monthly Return for Tax deduction at source	Tax deductor at source	10 <sup>th</sup> of the next month
GSTR-8	Monthly Return for Tax Collection at source	E- Commerce operator who is required to collect tax at source	10 <sup>th</sup> of the next month
GSTR-9	Annual Return	Registered Person other than an ISD, TDS/ TCS Taxpayer, Casual Taxable Person and Non-resident Taxpayer	31 <sup>st</sup> December of next Financial Year
GSTR-9A	Annual return	Registered person paying tax under composition scheme	31 <sup>st</sup> December of the next financial year
GSTR-9B	Annual statement	E-commerce operator required to collect tax at source	31 <sup>st</sup> December of the next financial year
GSTR-9C	Reconciliation statement	Registered person whose aggregate turnover during a financial year exceeds ₹ 2 crore.	To be submitted along with the annual return [GSTR-9/9A]
GSTR-10	Final Return	Taxable Person whose registration has been surrendered or cancelled	Within three months of the date of cancellation or date of order of cancellation, whichever is later.
GSTR-11	Details of inward supplies	Persons who have been issued a Unique Identity Number (UIN)	-

### FURNISHING DETAILS OF OUTWARD SUPPLIES

#### (3) Statement of Outward Supplies - GSTR- 1 :

##### (a) Basics :

- (i) This Statement signifies the tax liability of the supplier for the supplies effected during the previous month.
- (ii) It needs to be filed by the 10<sup>th</sup> of every month in relation to supplies effected during the previous month.

As a measure of easing the compliance requirement for small tax payers, GSTR-1 has been allowed to be filed quarterly by small tax payers with aggregate annual turnover up to ₹ 1.5 crore in the preceding financial year or the current financial year. Tax payers with annual aggregate turnover above ₹ 1.5 crore will however continue to file GSTR- 1 on a monthly basis.

**GSTR-1 cannot be furnished before the end of tax period :** A taxpayer cannot file GSTR-1 before the end of the current tax period *i.e.* to say for the month of November before 30<sup>th</sup> of November. However, following are the exceptions to this rule :

- **Casual taxpayers**, after the closure of their business
- **Cancellation of GSTIN of a normal taxpayer**

A taxpayer who has applied for cancellation of registration will be allowed to file GSTR-1 after confirming receipt of the application.

- (b) **Communication of details of GSTR-1 to the recipient of supply [Section 37(2) read with sub-rules (3) and (4) of rule 59 of the CGST Rules]** : The details of outward supplies for a month furnished by the supplier are communicated and made available electronically (auto populated) to the respective recipient(s) in Part A of **Form GSTR- 2A/ Form GSTR-4A** (in case of registered person opting for composition levy/Notification No. 2/2019 CT (R) dated 07.03.2019) through the common portal after the 10<sup>th</sup> day of the succeeding month (due date of filing of GSTR-1).
- (c) **Contents of GSTR -1 [Explanation to Section 37 read with Rule 59(2) of CGST Rules]** : The kinds of details of outward supplies which are furnished in GSTR-1 are as under –

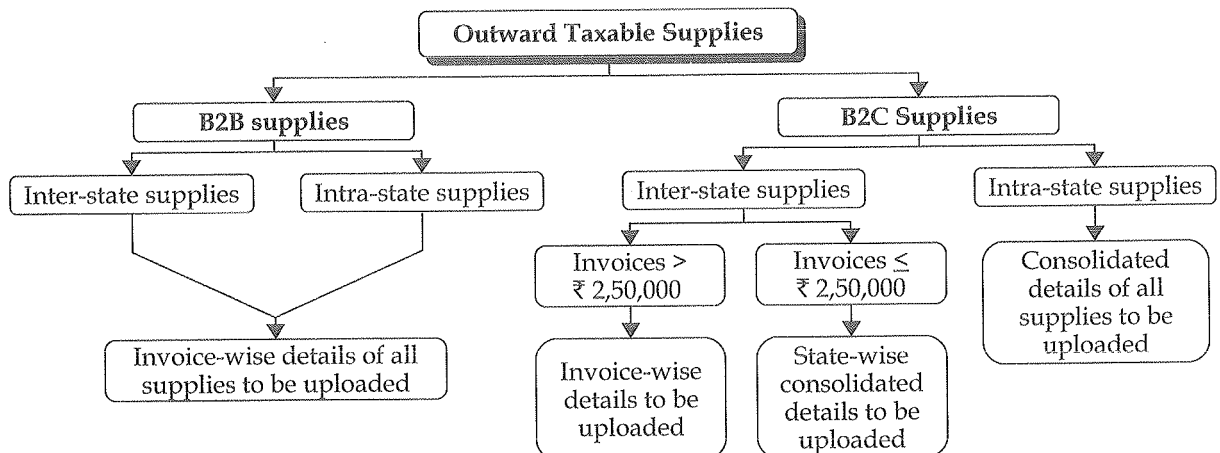
Basic & Other Details	Details of Outward Supplies
➤ GSTIN	➤ B2B
➤ Legal name and Trade name	➤ B2C
➤ Aggregate turnover in previous year	➤ Zero rated and Deemed exports
➤ Tax period	➤ Debit/ Credit notes issued
➤ HSN-wise summary of outward supplies	➤ Nil rated/ Exempted/ Non GST
➤ Details of documents issued	➤ Amendments for prior period
➤ Advances received/advances adjusted	

**Invoice wise and consolidated details** : The registered person is required to furnish details of invoices and revised invoices issued in relation to supplies made by him to registered and unregistered persons during a month in GSTR-1 in the following manner :

	Invoice-wise details of ALL	Consolidated details of ALL
(i)	Inter-State and Intra-State supplies made to registered persons <i>i.e.</i> B2B supplies	Intra-State supplies made to unregistered persons for each rate of tax
(ii)	Inter-State supplies made to unregistered persons with invoice value <b>exceeding ₹ 2,50,000</b> <i>i.e.</i> B2C supplies	Inter-State supplies made to unregistered persons with invoice value <b>upto ₹ 2,50,000</b> for each rate of tax separately for each State

Thus, uploading of invoices depends on whether the supply is B2B or B2C plus whether the supply is intra-State or inter-State. Invoices can be uploaded at any time during the tax period and not just at the time of filing.

<b>B2B means</b> business to business transaction. In such type of transactions, the recipient is also a registered supplier and hence, takes ITC.	<b>B2C means</b> business to consumer transaction. In such type of transactions, the recipient is consumer or unregistered and hence, will not take or cannot take ITC.
--	---



(d) **Other Aspects:**

- (i) GSTR-1 needs to be filed even if there is no business activity (Nil Return) in the tax period.
- (ii) Filing of GSTR-1 for current month is possible only when GSTR-1 for the previous month has been filed.



- (iii) Taxpayer opting for voluntary cancellation of GSTIN will have to file GSTR-1 for active period.
- (iv) In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer, GSTR-1 will be available for filing only for the period during which the taxpayer was registered as normal taxpayer. The GSTR-1 for the said period, even if filed with delay would accept invoices for the period prior to conversion.
- (e) **Rectification of unmatched entries and in case of short-payment of tax - Tax and interest to be paid [Section 37(3)]** : Any registered person, who has furnished the details under this Section for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such **error or omission** in such manner as may be prescribed **in the tax period in which it is noticed** and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.
- (f) **Time limit for rectification** : The maximum time limit within which such amendments are permissible is **earlier of the following dates** :
  - Date of filing of **monthly return under section 39 for the month of September** following the end of the financial year to which such details pertain *i.e. upto 20<sup>th</sup> October* of the following financial year; or
  - **Date of filing of the relevant annual return.**

### FURNISHING OF RETURNS

- (4) **GSTR-3B [Rule 61(5) & 6 of CGST Rules]** : Currently, return in Form GSTR-3B is being notified as the monthly return to be filed by the registered persons who are required to file GSTR-3. Presently, the due date of submission for GSTR-3B is being notified as 20<sup>th</sup> day of the month succeeding the relevant month.

GSTR-3B can be submitted electronically through the common portal, either directly or through a notified Facilitation Centre.

GSTR-3B is a simple return containing summary of outward supplies, inward supplies liable to reverse charge, eligible ITC, payment of tax etc. Thus, GSTR-3B does not require invoice-wise data of outward supplies.

**Payment of taxes for discharge of tax liability as per FORM GSTR-3B** : Every registered person furnishing the return in FORM GSTR-3B shall, subject to the provisions of Section 49 of the Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date for filing of return in FORM GSTR-3B. [Sub rules (5) and (6) of Rule 61 of CGST Rules]

**GSTR-3 not required to be furnished when GSTR-3B furnished** : Where a return in FORM GSTR-3B is required to be furnished by a person referred to Rule 61(1) then such person shall not be required to furnish the return in FORM GSTR-3. [Inserted vide Notification No. 49/2019-CT dated 9-10-2019 w.r.e.f. 01-07-2017]

### SPECIAL RETURNS

- (5) **Filing of returns by composition supplier [Section 39(2) read with Rule 62 of CGST Rules]** :
- (a) A special procedure for furnishing of return and payment of tax has been prescribed for the following persons:
    - (i) registered persons paying composition tax
    - (ii) registered person paying tax by availing the benefit of Notification No. 02/2019-CT (R) dated 07-03-2019.

Such persons will :

    - (i) furnish a statement in the **GST CMP - 08** containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18<sup>th</sup> day of the month succeeding such quarter.
    - (ii) furnish a return (**GSTR 4**) for every financial year (or part of the financial year), on or before 30th day of April following the end of such financial year.
  - (b) Every registered person furnishing **GST CMP - 08** shall discharge his liability towards tax or interest payable by debiting the electronic cash ledger.

## (c) Contents of information [Rule 62(3)] :

(i) The return furnished shall include the—

- invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons; and
- consolidated details of outward supplies made.

## Contents of GSTR- 4 :

Basic & Other Details	Details regarding Inward and Outward Supplies
<ul style="list-style-type: none"> <li>➤ GSTIN</li> <li>➤ Legal name and Trade name</li> <li>➤ TDS/TCS credit received [Table 7]</li> <li>➤ Tax, interest, late fee payable and paid [Table 8]</li> <li>➤ Refund claimed from Electronic cash ledger [Table 9]</li> </ul>	<ul style="list-style-type: none"> <li>➤ Invoice-wise details of all inward supplies (i.e., intra and inter-State supplies and from registered and unregistered persons) including reverse charge supplies and import of services [Table 4]</li> <li>➤ Summary of self assessed liability as per GST CMP-08 (Net of advances, credit &amp; debit notes and any other adjustments due to amendments etc.) [Table 5]</li> <li>➤ Tax rate wise details of outward supplies/inward supplies attracting reverse charge (Net of advances, credit &amp; debit notes and any other adjustments due to amendments etc.) - Consolidated details of outward supplies [Table 6]</li> </ul>

(d) Statements/return for the period prior to opting for composition scheme is required to be furnished relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

**ITC not available [Explanation] :** Here, the person shall not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to his opting for the composition scheme or paying tax by availing the benefit of Notification No. 02/2019-CT (R) dated 07-03-2019.

(e) A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax under the composition scheme till the 18<sup>th</sup> day of the month succeeding the quarter in which the date of withdrawal falls and furnish GSTR 4 for the said period till the 30<sup>th</sup> day of April following the end of the financial year during which such withdrawal falls.

(f) A registered person who ceases to avail the benefit of Notification No. 02/2019-CT (R) dated 07-03-2019, shall, where required, furnish a statement in the prescribed form for the period for which he has paid tax by availing the benefit under the said notification till the 18<sup>th</sup> day of the month succeeding the quarter in which the date of cessation takes place and furnish GSTR 4 for the said period till the 30<sup>th</sup> day of April following the end of the financial year during which such cessation happens.

As per Section 29(2), a proper officer is empowered to cancel registration of taxable person if :

- (a) a person paying tax under composition scheme has not furnished his GSTR-4 for 3 consecutive tax periods (i.e., 3 consecutive quarters)
- (b) any other taxable person has not furnished returns for consecutive period of 6 months.

## (6) Filing of Returns by Non-Resident Taxable Persons [Section 39(5) read with Rule 63 of CGST Rules] :

	Particulars	Explanation
(A)	Monthly return	A registered NRTP is not required to file separately the Statement of Outward Supplies, Statement of Inward Supplies and Return like a normal tax payer. In place of the same, a simplified monthly tax return has been prescribed in Form GSTR-5 for a NRTP for every calendar month or part thereof. NRTP shall incorporate the details of outward supplies and inward supplies in GSTR-5.
(B)	Last date of filing return	The details in GSTR-5 should be furnished within 20 days after the end of the calendar month or within 7 days after the last day of validity period of the registration, whichever is earlier.

(C)	Payment of interest, penalty, fees or any other amount payable	NRTP shall pay the tax, interest, penalty, fees or any other amount payable under the CGST Act or rules thereunder if return is not furnished as per the above time limit.
-----	--	--

- (7) **Details of inward supplies of persons having UIN [Rule 82 of CGST Rules, 2017] :**
- (a) **UIN issued for claiming refund of taxes paid on his inward supplies :** Such person shall furnish the details of those inward supplies of taxable goods and/or services on which refund of taxes has been claimed in Form GSTR-11, along with application for such refund claim.
- (b) **UIN issued for purposes other than refund of taxes paid :** Such person shall furnish the details of inward supplies of taxable goods and/or services as may be required by the proper officer in **Form GSTR-11**.
- (8) **Provisions relating to filing of return by Input service distributor :**
- (a) **Periodicity and form of return :** ISD is required to file only a monthly return in **Form GSTR-6** electronically through the common portal **on/before 13<sup>th</sup> of the month** succeeding the calendar month.  
**Form GSTR-6** contains the details of input tax credit received for distribution, total ITC/ eligible/ ineligible ITC to be distributed for the tax period, distribution of ITC, details of debit/ credit notes, etc.
- (b) **Auto-population of input tax credit received for distribution :** The details of input tax credit received for distribution by an ISD will be auto populated in **Form GSTR-6A**. Such details are auto-populated in **Form GSTR-6A** when the registered suppliers file their **GSTR-1**.  
 ISD can view the auto-populated details of ITC received for distribution in **GSTR-6A** and, where required, after adding, correcting or deleting the details, furnish **GSTR-6**.
- (c) **No supplies can procured by ISD on which tax is paid on reverse charge basis :** An ISD cannot accept any invoices on which tax is to be discharged under reverse charge mechanism. If ISD wants to take reverse charge supplies, in that case it has to separately register as a Normal taxpayer. This is because the ISD mechanism is only to facilitate distribution of credit of taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to Government account. ISD will have late fee and any other liability only.
- (9) **Return for tax deducted at source [Section 39(3) read with rule 60(6) and rule 66 of the CGST Rules] :** Deductor shall furnish a monthly return in **Form GSTR-7** electronically through the common portal on/before 10<sup>th</sup> of the month succeeding the calendar month in which tax has been deducted at source. The details of TDS furnished by the deductor in **GSTR-7** shall be made available electronically to each of the suppliers in **Part C** of **Form GSTR-2A/ Form GSTR-4A** (in case of registered person opting for composition levy) on the common portal after the due date of filing of **Form GSTR-7**. The supplier can take this amount as credit in his Electronic Cash Register and use the same for payment of tax or any other liability.  
 A TDS certificate is required to be issued by deductor (the person who is deducting tax) in **Form GSTR-7A** to the deductee (the supplier from whose payment, TDS is deducted), within 5 days of crediting the amount to the Government. It contains the details pertaining to value on which tax has been deducted, rate of deduction, amount of tax deducted at source and amount paid to the Government.
- (10) **GSTR-8 - Statement for tax collection at source [Section 52(4) read with rule 60(7) and rule 67 of the CGST Rules] :** An ECO liable to collect tax at source shall furnish a monthly return in **Form GSTR-8** electronically through the common portal on/before 10<sup>th</sup> of the month succeeding the calendar month in which tax has been collected at source. Further, the amount of tax collected by ECO (TCS amount) is required to be deposited by the 10<sup>th</sup> of the month succeeding the calendar month in which tax has been collected at source. The details of TCS furnished by the ECO in **Form GSTR-8** shall be made available electronically to each of the suppliers in **Part C** of **Form GSTR-2A** on the common portal after the due date of filing of **Form GSTR-8**.  
**Rectification of errors/omissions in GSTR-8 :** If after submission of **GSTR-8**, the ECO discovers any discrepancy therein on his own - not being the result of any scrutiny, audit, inspection or enforcement proceedings - he should rectify such discrepancy in **GSTR-8** to be filed for the month during which such discrepancy is noticed, subject to payment of interest under section 50.

The rectification is not allowed after the due date of filing of **GSTR-8** for the month of September following the end of the financial year [*i.e.*, 10<sup>th</sup> October of next financial year] or the actual date of filing of the relevant annual statement [**GSTR-9B**], whichever is earlier.

The supplier who has supplied the goods and/or services through the ECO claims credit, in his electronic cash ledger of the TCS reported by the ECO in the **GSTR-8** filed by it.

- (11) **First return [Section 40]** : Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

#### ANNUAL RETURN, FINAL RETURN AND LEVY OF LATE FEE

- (12) **Annual return [Section 44]** :

- (a) **Time limit for furnishing Annual return** : Annual return to be furnished electronically upto **31<sup>st</sup> December** of succeeding financial year in **Form GSTR-9** by registered suppliers and **Form GSTR-9A** by composition suppliers.
- (b) **Persons not required to furnish Annual Return** : Those referred to in the proviso to section 35(5), **ISD**, a person paying tax u/s 51 *i.e.* persons deducting tax at source, a person paying tax u/s 52 *i.e.* persons collecting tax at source, a **CTP**, and a **NRTP**.
- (c) Annual return to be accompanied with a **copy of the audited annual accounts and a reconciliation statement** if accounts are required to be audited.

The Central Government *vide* Notification No. 47/2019-CT dated 9-10-2019 has made the filing of annual return under section 44(1) of CGST Act for F.Y. 2017-18 and 2018-19 optional for small taxpayers whose aggregate turnover whose aggregate turnover in a financial year does not exceed ₹ 2 crore and who have not filed the said return before the due date.

The said return shall be deemed to be furnished on the due date if it has not been furnished before the due date.

- (13) **Final return [Section 45]** : Final return to be furnished on cancellation of registration **within 3 months of –**

- the date of cancellation, or
- the date of order of cancellation,

whichever is later.

- (14) **Notice to return defaulters [Section 46]** : Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return **within 15 days** in such form and manner as may be prescribed.

- (15) **Levy of late fee [Section 47]** :

- (a) **Periodical return u/s 37/38/39/45** : ₹ 100 for every day during which such failure continues; or ₹ 5,000 whichever is less.
- (b) **Annual return** : ₹ 100 for every day during which such failure continues; or 0.25% of his turnover in the State or Union territory **whichever is less**.

#### OBLIGATION TO FURNISH INFORMATION RETURN

- (16) **Authorities required to furnish information return [Section 150(1)]** : Many authorities who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of –

- (a) transaction of goods or services or both, or
- (b) transactions related to a bank account, or
- (c) transactions related to consumption of electricity, or
- (d) transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force,

shall furnish an Information Return of the same in respect of such periods, within such time, in such form and manner and to such authority/agency as may be prescribed.

- (17) **Specified Persons [Section 150(1)]** : The following persons are required to furnish information return –
- (a) Taxable person;
  - (b) Local authority or other public body or association;
  - (c) State Government 's authority responsible for the collection of VAT/sales tax/ State excise duty or Central Government's authority responsible for the collection of excise duty or customs duty;
  - (d) Income tax authority;
  - (e) Banking company;
  - (f) State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government;
  - (g) Registrar or Sub-Registrar appointed under Section 6 of the Registration Act, 1908;
  - (h) Registrar within the meaning of the Companies Act, 2013;
  - (i) Motor Vehicle registering authority;
  - (j) Collector referred to in Section 3(c) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;
  - (k) Recognised stock exchange; or
  - (l) Depository; or
  - (m) Officer of the Reserve Bank of India; or
  - (n) GSTN; or
  - (o) Unique Identity Number holders; or
  - (p) any other person as may be specified, on the recommendations of the Council, by the Government.
- (18) **Defective Information return - Notice of defect - Defect to be rectified within 30 days or extended period. If defect not rectified - Deemed non submission of return.**
- (19) **Returns not furnished – Prescribed authority may serve notice to furnish return within a period not exceeding 90 days from the date of service of the notice and such person shall furnish the information return.**
- (20) **Penalty for failure to furnish information return [Section 123]** : If a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under Section 150(3) thereof, the proper officer may direct that such person shall be liable to pay a penalty of ₹ 100 for each day of the period during which the failure to furnish such return continues.
- Maximum Penalty** : The penalty imposed under this Section shall not exceed ₹ 5,000.

### GOODS AND SERVICES TAX PRACTITIONERS

- (21) **Goods and services tax practitioners [Section 48]** :
- (a) The manner of approval of GST practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed.
  - (b) A registered person may authorise an approved GST practitioner **to furnish the details of outward supplies/ inward supplies and the returns.**
  - (c) The responsibility for correctness of any particulars furnished in the return or other details filed by the GST practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.
- (22) **Provisions relating to a goods and services tax practitioner [Rule 83]** :
- (a) **Activities of GST practitioner [Rule 83(8)]** : A GST practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by him to –
    - (i) furnish the details of outward and inward supplies;
    - (ii) furnish monthly, quarterly, annual or final return;
    - (iii) make deposit for credit into the electronic cash ledger;
    - (iv) file a claim for refund;

- (v) file an application for amendment or cancellation of registration;
- (vi) furnish information for generation of e-way bill;
- (vii) furnish details of challan in **FORM GST ITC-04**;
- (viii) file an application for amendment or cancellation of enrolment under rule 58; and
- (ix) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

**Further proceedings on consent of Registered Person :** Where any application relating to a claim for refund or an application for amendment or cancellation of registration or where an intimation to pay tax under composition scheme or to withdraw from such scheme has been submitted by the goods and services tax practitioner authorised by the registered person, a confirmation shall be sought from the registered person and the application submitted by the said practitioner shall be made available to the registered person on the common portal and such application shall not be further proceeded with until the registered person gives his consent to the same.

- (b) **Preparation and e-verification of statement by GST practitioner [Rule 83(10)]:** The GST practitioner shall—
- (i) prepare the statements with due diligence; and
  - (ii) affix his digital signature on the statements prepared by him or electronically verify using his credentials.

The person to be enrolled as GST practitioner has to pass the notified examination within a period of 18 months from the appointed date.

#### ADDITIONAL PRACTICE QUESTIONS

**T.Q. 1:** If a return has been filed, how can it be revised if some changes are required to be made?

**Ans:** In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/credit notes. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR-1 in the tables specifically provided for the purposes of amending previously declared details.

As per Section 39(9), omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month/quarter during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest. The rectification of errors/omissions is carried out by entering appropriate particulars in "Amendment Tables" contained in GSTR-1.

**Illustration 1 – Rectification of discrepancy :** Mr. Anand Kumar, a regular taxpayer, filed his return of outward supply (GSTR-1) for the month of August, 2019 before the due date, Later on, in February, 2020 he discovered error in the GSTR-1 return of August 2019 already filed and wants to revise it.

You are required to advise him as to the future course of actions to be taken by him according to statutory provisions. (5 Marks, May 2018-NS)

**Ans:** Any registered person, who has furnished the details under this Section for any tax period and which have remained unmatched under Section 42 or Section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed in the tax period in which it is noticed and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period. [Section 37(3)]

However, no rectification of details furnished in **GSTR-1** shall be allowed after:








- (i) filing of monthly return for the month of September following the end of the financial year to which such details pertain; Due date of **GSTR-3B** for September 2020 i.e. 20-10-2020; or
  - (ii) filing of the relevant annual return i.e. 31-12-2020,
- whichever is earlier.

Thus, Mr. Anand Kumar who discovered an error in GSTR-1 for August, 2019 cannot revise it.



However, he should rectify said error in the GSTR-1 filed for February, 2020 and should pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February, 2020. The error can be rectified by furnishing appropriate particulars in the "Amendment Tables" contained in GSTR-1.

■ ■ ■

<p><b>CA   CS   CMA</b>                  Direct Tax Laws &amp; Indirect Tax Laws                  Intermediate/ Final/ Professional</p> <p>  </p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>   <b>AADHYA'S</b>                  edu.com   http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p>                  Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p>                  Subscribe to our Channel  <b>CA. Yogendra Bangar</b></p>	<p>                  Computer / EduApplet App</p> <p>Quality Question Bank of  <b>2000 MCQ's</b>                  for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p>                  SUBJECTIVE  <b>Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
--	--	--	---

## SUMMARIZED POINTS FOR REVISION

## UNJUST ENRICHMENT AND REFUND OF TAX

- (1) **Doctrine of Unjust Enrichment** : The doctrine of unjust enrichment means **no person can be unjustly enriched at expense of another person**. In indirect taxes, the tax/duty burden passes on to the person who ultimately consumes goods or services. Therefore, if any refund becomes due to the supplier/importer, then, since supplier/importer has recovered the tax/duty from the consumers, thus, to be fair, refund should be made to consumers.

However, it is not possible to locate individual consumer and pay refund to them. Also without authority of law Government cannot retain the excess tax/duty, therefore, **any refund due to a recipient shall be transferred to Consumer Welfare Fund** and will be used for the purpose of protection and welfare of the consumers. The refund shall be granted to the supplier only when he proves that incidence of tax/duty has not been passed to any other person or in certain other specified cases.

- (2) **Refund of tax [Section 54]** :

- (i) **Application of refund of tax** and interest is to be made in prescribed form **within 2 years** from relevant date. It must be noted that refund of balance in the electronic cash ledger - Can be claimed in return furnished under section 39.

**Supplies of goods/services to SEZ - Filing requirements of Refund application** : In respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the -

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.

**Deemed export - Recipient/ Supplier to file application** : In respect of supplies regarded as deemed exports, the application may be filed by, -

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

**"Relevant date" means -**

	Case	Relevant date
(a)	Goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods - (i) if the goods are exported by sea or air (ii) if the goods are exported by land (iii) if the goods are exported by post	⇒ the date on which the ship or the aircraft in which such goods are loaded, leaves India; or ⇒ the date on which such goods pass the frontier; or ⇒ the date of despatch of goods by the Post Office concerned to a place outside India;
(b)	Supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods	⇒ the date on which the Return relating to such deemed exports is furnished;
(c)	Services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services and	

	(i) the supply of services had been completed prior to the receipt of such payment	⇒ the date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India.
	(ii) payment for the services had been received in advance prior to the date of issue of the invoice	⇒ the date of issue of invoice
(d)	Where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court	⇒ the date of communication of such judgment, decree, order or direction;
(e)	Refund of unutilised input tax credit under clause (ii) of the first proviso to Section 54(3) i.e. on account of inverted duty structure	⇒ the due date for furnishing of return under section 39 for the period in which such claim for refund arises.
(f)	Where tax is paid provisionally under this Act or the rules made thereunder	⇒ the date of adjustment of tax after the final assessment thereof;
(g)	A person, other than the supplier	⇒ the date of receipt of goods or services or both by such person; and
(h)	Other cases	⇒ the date of payment of tax.

- (ii) Documentary evidences are required to be furnished to establish that a refund is due to the applicant; and the incidence of such tax and interest had not been passed on to any other person.

However, where refund claim is **less than ₹ 2,00,000**, documentary evidences are not required, but certification is required from such person that the incidence of such tax and interest had not been passed on to any other person.

- (iii) **The Government may disburse the refund of the State tax in such manner as may be prescribed. [Section 54(8A)] [Inserted by the Finance (No. 2) Act, 2019 w.e.f. 01-09-2019]**

- (iv) If the proper officer is satisfied that refund is admissible, he may make refund order **within 60 days** from the date of receipt of application and the amount so determined shall be credited to the Consumer Welfare Fund.

The order issued in prescribed form shall not be required to be revalidated by the proper officer. However, the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

- (v) No refund shall be paid to an applicant, if the amount is **less than ₹ 1,000**. The limit of ₹ 1,000 shall apply for each tax head separately and not cumulatively. Further, the limit would not apply in cases of refund of excess balance in the electronic cash ledger. [Circular No. 59/33/2018-GST dated 04-09-2018]

**"Refund" includes -**

- (a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or  
 (b) refund of tax on the supply of goods regarded as deemed exports, or  
 (c) refund of unutilised input tax credit as provided under section 54(3). [Explanation 1]

- (vi) **Refund of advance tax to be claimed in last return :** Refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by casual taxable person at the time of registration, shall be claimed in the last return required to be furnished by him.

- (vii) **Documentary evidences which are to be furnished along with Refund application :** The application shall be accompanied by any of the following documentary evidences to establish that a refund is due to the applicant, namely:-

(a)	the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in Section 107(6) and Section 112(8) claimed as refund (i.e. amount to be deposited at the time of filing of appeal before Appellate Authority or Appellate Tribunal);
(b)	a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, where the refund is on account of <b>export of goods</b> ;

(c)	a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be,	where the refund is on account of the <b>export of services</b> ;
(d)	a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding goods admitted in full for authorized operations as endorsed by the specified officer of SEZ	<b>supply of goods made to a SEZ unit or a SEZ developer.</b>
(e)	a statement containing the number and date of invoices, the evidence regarding the endorsement by specified officers of SEZ and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the SEZ Act, 2005,	where the refund is on account of <b>supply of services made to a SEZ unit or a SEZ developer</b> ;
(f)	A declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer,	in a case where the refund is on account of <b>supply of goods or services or both made to a SEZ unit or a SEZ developer</b> ;
(g)	<p>a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf,</p> <p>The following have been notified :</p> <p>(i) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation (AA) holder or Export Promotion Capital Goods (EPCG) Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said AA/EPCG Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient EOU that said deemed export supplies have been received by it.</p> <p>(ii) undertaking by the recipient of deemed export supplies that no ITC on such supplies has been availed of by him.</p> <p>(iii) undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.</p>	where the refund is on account of <b>deemed exports</b> ;
(h)	a statement containing the number and the date of the invoices received and issued during a tax period	where the claim pertains to refund of any <b>unutilised input tax credit</b> under section 54(3) where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;
(i)	the reference number of the final assessment order and a copy of the said order	where the refund arises on account of the finalisation of provisional assessment;
(j)	a statement showing the details of transactions subsequently held to be inter-State supply;	considered as <b>intra-State supply</b> but which is
(k)	a statement showing the details of the amount of claim on account of excess payment of tax;	

(I)	a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person,	where the amount of refund claimed does not exceed ₹ 2,00,000.
	However, where the amount of refund claimed exceeds ₹ 2 lakh, a Certificate in Annexure 2 of Form GST RFD-01 by a Chartered Accountant or a Cost Accountant to the effect that there is not unjust enrichment in the case of the applicant [i.e. incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person.	

**Explanation :** Where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(viii) **Circumstances under which the refund would be granted to the applicant [Section 54(8)] :** The principle of unjust enrichment is applicable in all cases of refund except in the following cases where the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) refund of tax paid on **export** of goods or services or both or on inputs or input services used in making such exports;
- (b) **refund of unutilised ITC** in case of zero rated supplies or accumulated ITC on account of inverted duty structure;
- (c) refund of tax paid on a **supply which is not provided**, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) **refund of tax in pursuance of section 77** i.e. CGST paid instead of IGST or *vice versa* ;
- (e) the **tax and interest**, if any, or any other amount **paid by the applicant, if he has not passed on the incidence of such tax and interest** to any other person; or
- (f) the **tax or interest borne by such other class of applicants** as the Government may, on the recommendations of the Council, by notification, specify.

**Note :** In the above cases a certificate from Chartered Accountant/Cost Accountant is not required for claiming refund even if refund amount exceeds ₹ 2,00,000.

(ix) **Refund to be granted only as per this section [Section 54(9)] :** Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, **no refund shall be made except in accordance with the provisions of Section 54(8).**

(x) **Withholding of refund/ Deduction of dues from refund [Section 54(10)] :** Where any refund is due of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the **specified date**, the proper officer may—

- (a) **withhold payment of refund** due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
- (b) **deduct from the refund due**, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

“Specified date” shall mean the last date for filing an appeal under this Act. **[Explanation]**

(xi) **Withholding of refund till disposal of appeal [Section 54(11)] :** Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(xii) **Interest on withheld refund [Section 54(12)] :** Where a refund is withheld under section 54(11), the taxable person shall, notwithstanding anything contained in Section 56, be entitled to interest at such rate not exceeding 6% as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund. **[Interest @ 6% per annum has been notified vide Notification No. 13/2017-CT dated 28-6-2017 w.e.f. 1-7-2017]**

## REFUND IN SPECIAL CASES

- (3) **Provisions relating to refund of the amount of advance tax deposited by a casual taxable person /non resident taxable person :** As per Section 54(13), the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under section 27(2), shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.
- (4) **Refund of un-utilised Input tax credit :** As per Section 54(3), the relevant provisions are discussed as under –
- (a) **Refund of ITC can be claimed at the end of tax period :** Registered person may claim refund of any unutilised input tax credit at the end of any tax period.
- (b) **Cases when refund of un-utilised ITC is allowed :**
- (i) Zero rated supplies made without payment of tax;
- (ii) Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.
- (c) **Cases where refund of ITC is not admissible :** However, refund is not eligible in the following cases –
- (i) If the goods exported out of India are subjected to export duty; or
- (ii) If the supplier of goods or services or both avails of drawback in respect of central tax; [A supplier availing drawback of only basic customs duty shall be eligible for refund of unutilized ITC of central tax/ State tax/ Union territory tax/ integrated tax/ compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier has availed of drawback in respect of central tax.]
- (iii) If the supplier of goods or services or both claims refund of output tax paid under IGST Act.
- (5) **Refund of ITC on account of inverted duty structure [Rule 89(5)]:** In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula –
- $$\text{Maximum Refund Amount} = \left\{ \frac{\text{(Turnover of inverted rated supply of goods and services)}}{\text{Adjusted Total Turnover}} \times \text{Net ITC} \right\} \text{Tax payable on such inverted rated supply of goods and services}$$
- Where, –
- (a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under Rule 89(4A)/(4B) or both; and
- (b) "Adjusted Total turnover" shall have the same meaning as assigned to it in Rule 89(4) i.e. Adjusted Total Turnover" means the sum total of the value of –
- the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
  - the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,
- excluding –**
- the value of exempt supplies other than zero-rated supplies; and
  - the turnover of supplies in respect of which refund is claimed under rule 89(4A)/(4B) or both, if any, during the relevant period.

**Time Limit for making refund application :** A person claiming refund is required to file an application before the expiry of 2 years from the relevant date. The term 'relevant date' as explained in the Explanation to section 54 of the CGST Act, *inter alia*, stipulates that in case of refund of unutilized ITC on account of inverted duty structure the relevant date is the due date for furnishing of return under section 39 for the period in which such claim for refund arises.

**Amount refunded as ITC to be debited in electronic credit ledger [Rule 89(3)] :** Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.



**Note :** Suppliers who supply goods to merchant exporters at the concessional rate of **0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST]**, as the case may be], under Notification No. 40/2017-CT (R) dated 23-10-2017/Notification No. 41/2017-IT (R) dated 23-10-2017, subject to certain conditions specified in said notifications, are also eligible for refund on account of inverted tax structure.

<i>Circular No. 48/22/2018-GST dated 14-06-2018</i>	Fabric processor being service supplier is entitled to refund of unutilised ITC on account of inverted duty structure.
<i>Circular No. 79/53/2018-GST dated 14-06-2018</i>	<p><b>Clarification on refund amount for claim of refund of accumulated ITC on account of inverted duty structure :</b></p> <p>Where there are multiple inputs attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term "Net ITC" covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax.</p> <p>The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:</p> <p>(i) Suppose a manufacturing process involves the use of an input A (attracting 5 % GST) and input B (attracting 18% GST) to manufacture output Y (attracting 12% GST).</p> <p>(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.</p> <p>(iii) Further assume that the claimant supplies the output Y having value of ₹ 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹ 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹ 3,000/-.</p> <p>(iv) If we assume that Input A, having value of ₹ 500/- and Input B, having value of ₹ 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹ 385/- (₹ 25/- and ₹ 360/- on Input A and Input B respectively).</p> <p>(v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹ 385/-.</p> <p>(vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹ 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is ₹ 25/-.</p>
<i>Circular No. 79/53/2018-GST dated 31-12-2018</i>	<p><b>Clarification on refund of accumulated ITC of input services and capital goods arising on account of inverted duty structure :</b> It is clarified that both the law and the related rules clearly prevent the refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure.</p>
<i>Circular No. 79/53/2018 GST dated 31-12-2018</i>	<p><b>Clarification on the term "input".</b></p> <p>On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.</p> <p><b>Clarification:</b> It is clarified that input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. The GST paid on inward</p>

	supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted u/s 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.
--	--

### PROVISIONAL REFUND

- (6) **Provisional refund of 90% of the amount claimed in case of zero-rated supply of goods or services or both :** As per Section 54(6), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than notified category of registered persons refund on a provisional basis, **90% of the total amount so claimed**, excluding the amount of input tax credit provisionally accepted, and thereafter make an order for final settlement of the refund claim after due verification of documents furnished by the applicant.

The provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds ₹ 2.5 crores.

Rule 91(2) provides that the proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

The order shall not be required to be revalidated by the proper officer.

The proper officer shall issue a payment advice for the amount so sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

The payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.

### REFUND TO SPECIAL PERSONS

- (7) **Refund in certain cases [Section 55] :** The Government may, on the recommendations of the Council, by notification, specify -

- any specialised agency of the United Nations Organisation, or
- any **Multilateral Financial Institution and Organisation** notified under the United Nations (Privileges and Immunities) Act, 1947,
- **Consulate or Embassy** of foreign countries, and
- any other person or class of persons as may be specified in this behalf,

who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

**Time Limit for filing refund claim [Section 54(2)] :** The above mentioned persons may make an application for such refund, in such form and manner as may be prescribed, **once in every quarter, but before the expiry of 6 months** from the last day of the quarter in which such supply was received.

**Extension of due date for filing of application for refund u/s 55 by Notified Agencies :** The Central Government *vide* Notification No. 20/2018-CT date 28-03-2018 has notified that specified persons under Section 55 shall make an application for refund of tax paid by it on inward supplies of goods or services or both, to the jurisdictional tax authority, in such form and manner as specified, **before the expiry of 18 months from the last date of the quarter** in which such supply was received.

**Conditions to be Satisfied for Sanction of Refund :** The refund of tax paid by the applicant shall be available if-

- (a) the inward supplies of goods or services or both were received from a registered person against a tax invoice and ;
  - (b) name and GSTIN or UIN of the applicant is mentioned in the tax invoice; and
  - (c) such other restrictions or conditions as may be specified in the notification are satisfied.
- (8) **Refund of integrated tax paid on supply of goods to tourist leaving India [Section 15 of IGST Act, 2017] :** The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.
- “Tourist”** means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes. [Explanation to Section 15 of IGST Act, 2017]

#### INTEREST ON DELAYED REFUNDS

- (9) **Interest on delayed refunds [Section 56] :**
- (a) **Interest not exceeding 6%, if refund is not paid within 60 days from receipt of application :** If any tax ordered to be refunded under section 54(5) to any applicant, and such tax is not refunded **within 60 days** from the date of receipt of application, **interest @ 6% p.a.** shall be payable in respect of such refund from the date immediately **after the expiry of 60 days from the date of receipt of application till the date of refund of such tax.**
  - (b) **Refund as a consequence of adjudicating/ appellate authority order - Interest not exceeding 9%, if refund is not paid within 60 days from receipt of application :** Where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality, and the same is not refunded **within 60 days** from the date of receipt of application filed consequent to such order, **interest @ 9% p.a.** shall be payable in respect of such refund, from the date immediately **after the expiry of 60 days from the date of receipt of application till the date of refund.**

#### CONSUMER WELFARE FUND AND ITS UTILISATION

- (10) **Consumer Welfare Fund [Section 57] :** The Government shall constitute a Fund, to be called the Consumer Welfare Fund. There shall be credited to the Fund, –
- (a) the amount of refund determined by an order passed under Section 54(5);
  - (b) any income from investment of the amount credited to the Fund; and
  - (c) such other monies received by it,
- in such manner as may be prescribed.

**Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97 of the CGST Rules, 2017] :**

- (a) All amounts of duty/central tax/ integrated tax/Union territory tax/cess and income from investment along with other monies specified in Section 12C(2) of the Central Excise Act, 1944, Section 57 of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017, Section 21 of the UTGST Act, 2017 and Section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund.
- However, an **amount equivalent to 50% of the amount of integrated tax** determined under Section 54(5) of the CGST Act, 2017, read with Section 20 of the IGST Act, 2017, **shall be deposited in the Fund.**
- (b) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.
- (11) **Utilisation of Fund [Section 58] :** All sums credited to the Fund shall be utilised by the Government **for the welfare of the consumers** in such manner as may be prescribed. The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

**Constitution of Standing Committee [Rule 97(4)] :** The Government shall, by an order, constitute a Standing Committee who shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers.

(12) **Applicant [Explanation]** : 'Applicant' means,—

- (i) the Central Government or State Government;
- (ii) regulatory authorities or autonomous bodies constituted under an Act of Parliament or the Legislature of a State or Union Territory;
- (iii) any agency or organization engaged in consumer welfare activities for a minimum period of 3 years, registered under the Companies Act, 2013 or under any other law for the time being in force;
- (iv) village or mandal or samiti or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes;
- (v) an educational or research institution incorporated by an Act of Parliament or the Legislature of a State or Union Territory in India or other educational institutions established by an Act of Parliament or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956 and which has consumers studies as part of its curriculum for a minimum period of three years; and
- (vi) a complainant as defined under section 2(1)(b) of the Consumer Protection Act, 1986, who applies for reimbursement of legal expenses incurred by him in a case instituted by him in a consumer dispute redressal agency.

### ADDITIONAL PRACTICE QUESTIONS

**Illustration 1 - Interest on delayed refund** : M/s. RLL Ltd. filed an application for refund of tax amounting ₹ 5,00,000 on 01-10-2019. The refund was granted on 25-12-2019. Compute the amount of interest, if any payable to RLL Ltd. as per provisions of Section 56 of the CGST Act, 2017.

**Solution:** If any tax ordered to be refunded u/s 54(5) to any applicant, and such tax is not refunded within 60 days from the date of receipt of application u/s 54(1), interest at @ 6% p.a. shall be payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund of such tax.

The relevant computation is as follows (amounts in ₹) –

Amount of refund	[A]	5,00,000
Date of making application	[B]	01-10-2019
60 days period from the date of application expires on –	[C] = [B] + 60 days	30-11-2019
Date of making refund	[D]	25-12-2019
No. of days for which interest to be granted	[E] = [D] – [C]	25
<b>Interest on refund @ 6% [Since leap year]</b>	<b>[A] × [E] × 6% ÷ 366</b>	<b>2,049</b>

**T.Q. 1 :** State the exceptions to the principle of unjust enrichment as applicable to refund claims.

**Ans:** The principle of unjust enrichment is applicable in all cases of refund except in the following cases where the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;
- (b) refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;;
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of section 77 i.e. CGST paid instead of IGST or *vice versa* ;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he has not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

**CASE 1 : Amount paid without authority of law - Refund not hit by time limit of Section 54 :** AKB Construction Ltd. was a construction company rendering Construction services and were paying GST in accordance with the provisions of the CGST Act, 2017. They undertook certain pure labour contract on behalf of Government and paid GST accordingly. However, later they filed refund claim for the GST so paid contending that they were not actually liable to pay GST as it was exempt. Department also did not dispute the fact that GST was exempted in the instant case. However, the refund claim was rejected on the ground that same was filed beyond the limitation period provided in section 54 of CGST Act, 2017.

Discuss whether the department is justified in rejecting the refund claim? You may refer to decided case law, if any, in support of your answer. (Modified 4 Marks, Nov. 2015) (Similar 3 Marks, May 2013)

**Ans:** No, department is not justified in rejecting the refund claim. The High Court in case of **CCE (A) v. KVR Construction [2012] 26 STR 195 (Kar.)** held that refund of an amount mistakenly paid as GST could not be rejected on ground of limitation under section 54 of the Central Goods and Services Tax Act, 2017. The High Court noted that GST paid mistakenly under construction service although actually exempt, was payment made without authority of law. Mere payment of amount would not make it 'GST payable by the assessee'. Once there was lack of authority to collect such GST from the assessee, it would not give authority to the Department to retain such amount and validate it.

Further, provisions of section 54 apply only to a claim of refund of GST, and could not be extended to any other amounts collected without authority of law. However, a contrary view has been taken by the Bombay High Court in case of **Andrew Telecom India Ltd v. CCEx. [2014] 34 STR 562 (Bom.)**, wherein the Court has held that if tax has been paid treating it as tax by mistake, the refund claim has to be filed under section 54 of CGST Act, 2017 only and limitation under the section would apply. The undisputed position is that the amount was paid as GST. Further, Karnataka High Court in the case of **MCI Leasing Pvt. Ltd v. CCE [2014] 33 STR 497 (Kar.)** has also held that limitation under section 54 would be applicable.

**CASE 2:** Even if the price remains the same before and after imposition of tax – Unjust enrichment applicable : A particular product of a supplier was exempt from tax. Subsequently, tax was imposed on it. The supplier continued to sell the product without any change in selling price. Later, he realised that he had paid higher quantum of tax. He filed a refund claim stating that there was no change in price before and after imposition of tax and hence the burden of tax has not been passed on to the buyer. Will his stand for refund claim be acceptable? Discuss. (Mod. 4 Marks, Nov. 2008)

**Ans:** In **CCE v. Allied Photographics 2004 166 ELT 3(SC)**, it has been held that even if there is no change in price before and after assessment (i.e. before and after imposition of tax), it does not lead to the inevitable conclusion that incidence of tax has not been passed on to the buyer as such uniformity may be due to various factors. Thus, even if the price remains the same before and after imposition of tax, the assessee has to establish that he has not passed on the burden of tax to the buyer. Thus, the refund claim of the manufacturer will not be acceptable.

**T.Q. 2:** Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017.

**Ans:** As per provisions of **Section 54(13) of CGST Act, 2017**, the amount of advance tax deposited by a casual taxable person under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

Further, as per provisions of Rule 89, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

**T.Q. 3:** List the persons entitled to refund under section 55 of the CGST Act, 2017.

**Ans:** Government may, on the recommendations of the Council, by notification, specify:

- (i) any specialised agency of the United Nations Organisation; or
- (ii) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947; or
- (iii) Consulate or Embassy of foreign countries; and
- (iv) any other person or class of persons as may be specified in this behalf,

who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.

**T.Q. 4:** Explain the cases where refund of unutilised Input tax credit can be granted to registered person.

**Ans:** As per provisions of **Section 54(3) of the CGST Act, 2017**, registered person may claim refund of any unutilised input tax credit at the end of any tax period in the following cases :

- (1) Zero rated supplies made without payment of tax i.e. export of goods or services or both; or supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit;
- (2) Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

However, refund is not eligible in the following cases—

- If the **goods** exported out of India are **subjected to export duty**; or
- If the **supplier** of goods or services or both **avails of drawback in respect of central tax**, [A supplier availing drawback of only basic customs duty shall be eligible for refund of unutilized ITC of central tax/ State tax/ Union territory tax/ integrated tax/ compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier has availed of drawback in respect of central tax.]
- If the **supplier** of goods or services or both **claims refund of output tax paid** under IGST Act.

**Illustration 2 – Refund on account of inverted duty structure :** From the following information you are required to determine the maximum amount of refund admissible on account of inverted duty structure.

Particulars	₹
(i) Input tax credit availed on inputs	5,40,000
(ii) Input tax credit availed on input services	60,000
(iii) Turnover of inverted rated supply of goods (taxable @ 5%)	50,00,000
(iv) Turnover of other supplies of goods	20,00,000

**Solution: Refund of ITC on account of inverted duty structure [Rule 89(5)] :** In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula—

$$\text{Maximum Refund Amount} = \left\{ \frac{(\text{Turnover of inverted rated supply of goods and services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC} \right\} \times \text{Tax payable on such inverted rated supply of goods and services}$$

Where,—

- "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under Rule 89(4A)/(4B) or both; and
- "Adjusted Total turnover" shall have the same meaning as assigned to it in Rule 89(4) i.e. Adjusted Total Turnover" means the sum total of the value of -
  - the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
  - the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,
 excluding—
  - the value of exempt supplies other than zero-rated supplies; and
  - the turnover of supplies in respect of which refund is claimed under rule 89(4A)/(4B) or both, if any, during the relevant period.

The maximum amount of refund admissible on account of inverted duty structure is computed as under (*amount in ₹*):

(i) Net ITC i.e. input tax credit availed on inputs during the relevant period	5,40,000
(ii) Turnover of inverted rated supply of goods	50,00,000
(iii) Adjusted Total Turnover [Turnover of inverted rated supply of goods + Turnover of other supplies of goods] [₹ 50,00,000 + ₹ 20,00,000]	70,00,000
(iv) Tax payable on such inverted rated supply of goods [₹ 50,00,000 × 5%]	2,50,000
(v) Maximum refund = [(Item (ii) ÷ Item (iii)) × Item (i)] - [Item (iv)]	1,35,714

**Illustration 3 – Refund and interest thereon :** Y Ltd. exported service valued at US @ 1,00,000. Supply of service was completed on 15<sup>th</sup> November 2019. Payment for this service was received on 30<sup>th</sup> December 2019. Refund claim was filed by Y Ltd. in respect of tax paid on inputs and input services for ₹ 6,00,000 on 31<sup>st</sup> January, 2020. The refund claim was sanctioned on 30<sup>th</sup> April, 2020. What is the amount of refund Y Ltd. will get in accordance with law? What is the relevant date and rate of interest as per GST law? (4 Marks, Nov. 2018-OS)

**Solution:** Since export of services are zero rated, the entire amount of tax paid on input and input services which are used for export of services are eligible for refund. Thus, in this case ₹ 6,00,000 is eligible for refund.

Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of 2 years from the 'Relevant Date' in prescribed form and manner.

In case of services exported out of India where a refund of tax paid is available on the inputs or input services used in such services, and where the supply of services had been completed prior to the receipt of such payment, the relevant



date is date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India. Thus, in this case the refund application is made within time limit.

Refund order shall be issued by the proper officer within 60 days from the date of receipt of application complete in all respects.

According to Section 56 of the Act, where any tax ordered to be refunded to any applicant is not refunded within 60 days from the date of receipt of application, interest shall be payable to the applicant @ 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund of such tax. In this case the refund is to be granted upto 1<sup>st</sup> April 2020 other wise the applicant will be eligible for interest on refund

**Computation of interest payable to Y Ltd. :**

	(amount in ₹)
Amount of refund	6,00,000
Date of refund application	31-01-2020
Period of 60 days expires on	31-03-2020
Date of refund sanction	30-04-2020
No. of days of delay [01-04-2020 to 30-04-2020]	30 days
Rate of interest	6%
<b>Quantum of interest (rounded off) [₹ 6,00,000 × 29 ÷ 365 × 6%]</b>	<b>2,959</b>

**Illustration 4 - Computation of Refund - Various situations :** Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017.

The company has made the following supplies during a tax period:

S.No.	Particulars	(₹)
(i)	Export of product 'A' to UK for \$ 10,000. Assessable value under customs in Indian rupees. [Export duty is levied on product 'A' at the time of exports]	7,00,000
(ii)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @18%] *not notified as a product, in respect of which refund of unutilised ITC shall not be allowed under section 54(3)(ii) of the CGST Act, 2017	10,00,000
(iii)	Supply of goods to Export Oriented Unit [excluding tax @ 18%] [ITC has been claimed by the recipient]	5,00,000
(iv)	Export of exempt supplies of goods	6,00,000

The ITC available for the above tax period is as follows:

S.No.	Particulars	(₹)
(i)	On inputs (including ₹ 50,000 on export of exempt supplies)	3,50,000
(ii)	On capital goods	1,20,000
(iii)	On input services (including ₹ 18,000 on outdoor catering)	2,00,000

Determine the maximum amount of refund admissible to Kailash Global (P) Ltd. for the given tax period. (RTP May 2019)

**Solution: Computation of maximum amount of refund admissible to Kailash Global (P) Ltd.**

Particulars	(₹)
Exports of product 'A' to UK	[WN-1] Nil
Domestic supplies of taxable product 'B' during the period	[WN-2] 75,000
Supply of goods to Export Oriented Unit	[WN-3] Nil
Export of exempt supplies	[WN-4] 1,14,000
<b>Total refund claim admissible</b>	<b>1,89,000</b>

**Working Notes:**

- (1) **Refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty :** Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. Further, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking in accordance with the provisions of section 16(3)(a) of the IGST Act, 2017. Therefore, as per clause (i) of first proviso to section 54(3) of the CGST Act, 2017, a registered person may claim refund, of any unutilised ITC in the case of zero rated supply at the end of any tax

period. However, second proviso to section 54(3) lays down that refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty.

- (2) **Refund of unutilised ITC is allowed in case of inverted duty structure :** Refund of unutilised ITC is allowed in case of inverted duty structure, *i.e.* where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Clause (ii) of the first proviso to section 54(3) of the CGST Act, 2017].

Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC is granted as per the following formula -

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

where –

“Net ITC” means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

“Adjusted total turnover” means the sum total of the value of:

- (a) the turnover in a State/ Union territory, as defined under section 2(112), excluding turnover of services; and
- (b) the turnover of zero-rated supply of services determined in terms of specified manner and non-zero-rated supply of services,

excluding:

- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,

during the relevant period.

**The maximum amount of refund admissible on account of inverted duty structure (amount in ₹) :**

(i) Net ITC <i>i.e.</i> input tax credit availed on inputs during the relevant period [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not]	3,50,000
(ii) Turnover of inverted rated supply of goods	10,00,000
(iii) Adjusted Total Turnover <i>i.e.</i> ₹ 7,00,000 + ₹ 10,00,000 + ₹ 5,00,000 + ₹ 6,00,000	28,00,000
(iv) Tax payable on such inverted rated supply of goods [₹ 10,00,000 × 5%]	50,000
(v) Maximum refund = [(Item (ii) ÷ Item (iii)) × Item (i)] - [Item (iv)]	75,000

- (3) **Supply of goods to EOU – refund admissible to supplier only when disclaimer received from recipient :** As per section 2(39) of the CGST Act, 2017, deemed exports means such supplies of goods as may be notified under section 147 of the CGST Act, 2017. Supplies to EOU is notified as deemed export under section 147 *vide* Notification No. 48/2017-CT dated 18-10-2017. In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Third proviso to rule 89(1) of the CGST Rules, 2017]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.

- (4) **Refund of ITC on account of zero rated supply :** Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of section 17(5) of the CGST Act, ITC may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Section 54(3) of the CGST Act, 2017 allows refund of ITC in the case of zero rated supply made without payment of tax.

Rule 89(4) of the CGST Rules, 2017 stipulates that in the case of zero-rated supply of goods or services or both without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

where –








“Net ITC” means ITC availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both.

"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/LUT, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

The maximum amount of refund admissible on account of Zero-rated supply (amount in ₹) :

(i) Net ITC i.e. input tax credit availed on inputs and input services during the relevant period [₹ 3,50,000 + ₹ 2,00,000 - ₹ 18,000]	5,32,000
(ii) Turnover of zero-rated supply of goods i.e. value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking	6,00,000
(iii) Adjusted Total Turnover [ Same as discussed above]	28,00,000
(iv) Maximum refund = [(Item (ii)) ÷ Item (iii)] × Item (i)	1,14,000

■ ■ ■

<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p>  </p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b> edu.com   <b>AADHYA'S</b> http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> YouTube Subscribe to our Channel</p> <p>CA. Yogendra Bangar</p>	<p> Online MCQ's</p> <p>Computer / EduApplet App</p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p> <b>SUBJECTIVE Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
---	--	--	---

# ADMINISTRATION, ASSESSMENT AND AUDIT

## SUMMARIZED POINTS FOR REVISION

### CLASSES OF OFFICERS

- (1) **Officers under this Act [Section 3]** : The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:-
- Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
  - Chief Commissioners of Central Tax or Directors General of Central Tax,
  - Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,
  - Commissioners of Central Tax or Additional Directors General of Central Tax,
  - Additional Commissioners of Central Tax or Additional Directors of Central Tax,
  - Joint Commissioners of Central Tax or Joint Directors of Central Tax,
  - Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
  - Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
  - any other class of officers as it may deem fit.
- Excise officers deemed to officers appointed under the Act** : The officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.
- (2) **Appointment of officers [Section 4]** : The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act. The Board may, by order, authorise any officer **not below rank of Assistant Commissioners or Assistant Directors** to appoint officers of central tax below the rank of Assistant Commissioner for the administration of this Act.
- (3) **Powers of officers [Section 5]** : An officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.
- The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.
- An Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.
- (4) **Authorisation of officers of State tax or Union territory tax as PO in certain circumstances [Section 6]:**
- The officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
  - Orders issued under this Act to be backed by corresponding order under SGST/UTGST Act. No proceedings under this Act shall be initiated if proceedings has been initiated under SGST/UTGST Act by proper officer. Orders passed under CGST Act, are not appealable under SGST/UTGST Act.
- (5) **Delegation of powers [Section 167]** : The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.
- (6) **Officers to assist proper officers [Section 72]** : All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act. The Government may empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

**POWER OF BOARD TO ISSUE INSTRUCTIONS OR DIRECTIONS**

- (7) **Power to issue instructions or directions [Section 168]** : The Board may, if it considers it necessary or expedient so to do, for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

**SELF ASSESSMENT, PROVISIONAL ASSESSMENT AND OTHER PROVISIONS**

- (8) **"Assessment"** means determination of tax liability under this Act and includes—
- self-assessment,
  - re-assessment,
  - provisional assessment,
  - summary assessment, and
  - best judgment assessment. [Section 2(11)]
- (9) **Self assessment [Section 59]** : Every registered person shall self assess the taxes payable under this act and furnish a return for each tax period as specified under section 39.
- (10) **Provisional assessment [Section 60]** :
- (a) Provisional assessment can be resorted, where the taxable person is unable to determine—
- the value of goods or services or both, or
  - the rate of tax applicable thereto.
- Request of provisional assessment in writing is to be made by taxable person to the proper officer.  
The proper officer shall pass an order for provisional assessment **within 90 days** of receipt of application.
- (b) Taxable person is required to execute a bond with such surety or security as the proper officer may deem fit (**security cannot exceed 25% of the bond amount**), binding for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.
- (c) Final assessment to be made **within 6 months** from the date of the communication of the provisional assessment order. The period specified of **6 months**, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the **Joint Commissioner or Additional Commissioner** for a further period **not exceeding 6 months**, and by the **Commissioner** for such further period not exceeding **4 years**. Thus, a provisional assessment can remain provisional for a maximum of **5 years**.
- (d) Interest payable @ **18% p.a.** if final amount is more than provisional amount **from the first day after the due date of payment of tax** in respect of the said supply of goods or services or both **till the date of actual payment**, whether such amount is paid before or after the issuance of order for final assessment.
- (e) If provisional amount paid is more than final amount such excess amount is refunded as per provisions of Section 54 along with **interest @ 6% p.a.** from the date immediately after the expiry of **60 days** from the date of receipt of application till the date of refund of such tax.
- (11) **Scrutiny of returns [Section 61]** :
- (a) In order to verify accuracy of return, the Proper Officer may examine return and seek explanations.
- (b) If explanations are found acceptable, then no further action shall be taken in this regard.
- (c) If explanations not found acceptable, then the proper officer may take recourse to any of the following provisions, namely:-
- (i) proceed to **conduct audit** under section 65 of the Act;
  - (ii) direct the conduct of a **special audit** under section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or
  - (iii) undertake procedures of **inspection, search and seizure** under section 67 of the Act; or
  - (iv) initiate proceeding for **determination of tax and other dues** under Section 73 or 74 of the Act.
- (12) **Assessment of non-filers of returns [Section 62]** :
- (a) Where a registered person—
- fails to furnish the return under section 39 (monthly/quarterly) or under section 45 (final return), and
  - a notice under section 46 has been issued by proper officer to the defaulting taxable person requiring him to furnish the return **within a period of 15 days** and taxable person fails to file return within the given time;

the proper officer may proceed to assess the tax liability of said person (*i.e.* Return Defaulter) to the best of his judgment taking into account all the relevant material which is available or which he has gathered.

- (b) The Assessment Order shall be issued by Proper Officer **within a period of 5 years** from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates and the summary thereof shall be uploaded electronically in **FORM GST DRC-07**.
- (c) If valid return is furnished **within 30 days** of service of assessment order, Best judgment assessment shall stand withdrawn but liability for payment of interest and late fee shall continue.
- (13) **Assessment of unregistered persons [Section 63] :**
- (i) Where a taxable person-
- **fails to obtain registration** even though liable to do so; or
  - **whose registration has been cancelled** under Section 29(2), but who was liable to pay tax, the proper officer may proceed to assess the tax liability of said unregistered person to the best of his judgment for the relevant tax periods.
- (ii) Before making the assessment, proper officer shall issue a notice to a taxable person containing the grounds on which the assessment is proposed to be made on best judgment basis and shall be given **15 days'** time to furnish his reply, if any. The summary of the show cause notice shall be uploaded electronically in form **GST DRC-01** on the common portal. However, no such assessment order shall be passed without giving the person an opportunity of being heard.
- (iii) The assessment order shall be issued by proper officer **within a period of 5 years** from the due date for furnishing the annual return for the financial year to which non-payment of tax relates and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.
- (14) **Summary assessment in certain special cases [Section 64] :**
- (a) Summary Assessments can be initiated to **protect the interest of revenue** with the previous **permission of Additional Commissioner/Joint Commissioner** when the proper officer has evidence that a taxable person has incurred a liability to pay tax under the Act, and the proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.
- When taxable person is not ascertainable - Person in charge of goods deemed to be the taxable person.  
 The summary of the assessment order shall be uploaded electronically on the common portal in **Form GST DRC-07**.
- (b) The Summary Assessment Order may be **withdrawn by Additional Commissioner/ Joint Commissioner, -**
- (i) **on an application filed by taxable person** for withdrawal of the summary assessment order **within 30 days** from the date of receipt of order; or
  - (ii) **on his own motion**, where he finds such order to be erroneous and may instead follow the procedures laid down in Section 73 or Section 74 to determine the tax liability of such taxable person.
- (15) **"Audit"** means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder. [Section 2(13)]
- (16) **Types of Audit (5 Marks, Nov. 2018-OS) :** GST envisages three types of Audit.

	Types of Audit	Provisions
(i)	Mandatory Audit by CA/CMA	The <b>first audit</b> is by a <b>chartered accountant or a cost accountant</b> . Every registered person whose aggregate turnover during a financial year <b>exceeds ₹ 2 crore</b> has to get his accounts audited by a chartered accountant or a cost accountant and furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in <b>FORM GSTR-9C</b> .
(ii)	Departmental Audit	In the <b>second type</b> which is the <b>normal audit</b> , the <b>Commissioner or any officer authorised by him</b> , can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
(iii)	Special audit	The <b>third type</b> of audit is called the <b>Special Audit</b> . In Special Audit the registered person can be directed to get his records including books of account examined and audited by a <b>chartered accountant or a cost accountant</b> during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case.



## AUDIT BY TAX AUTHORITIES AND SPECIAL AUDIT

(17) Audit by tax authorities [Section 65] &amp; Special audit [Section 66] (5 Marks, Nov. 2018-NS) :

Audit by Tax Authorities	Special Audit
⇒ Commissioner or any officer authorized by him may undertake audit of any registered person.	⇒ At any stage of scrutiny, inquiry or investigation.
⇒ The audit may be conducted for a financial year or part thereof or multiples thereof.	⇒ Assistant Commissioner is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits
⇒ Audit may be conducted at the place of business or in their office.	⇒ may nominate a Chartered Accountant or Cost Accountant
⇒ <b>At least 15 days prior notice</b> should be given	⇒ <b>Time period : 90 days</b>
⇒ <b>Time Period : 3 months</b> from the date of commencement of audit.	⇒ <b>Extension : Further 90 days</b>
⇒ <b>Extension : Not exceeding 6 months.</b>	⇒ Audit will be conducted even if accounts have already been audited.
⇒ On conclusion, registered person shall be informed about findings, rights & obligations.	⇒ Opportunity of being heard shall be given to registered person before taking action on basis of audit report.
⇒ If results in demand of tax, shall be recovered under section 73 or 74.	⇒ Expenses to be borne by the department
	⇒ If results in demand of tax, shall be recovered under section 73 or 74.

## ADDITIONAL PRACTICE QUESTIONS

**T.Q. 1:** How is the assessment made if the taxable person is not able to determine the value of goods and/or services or determine the rate of tax?

**Ans:** Where the taxable person is **unable to determine the value of goods or services or both or determine the rate of tax applicable thereto**, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, **within a period not later than 90 days** from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

**T.Q. 2:** Whether Self-Assessment and provisional assessment are mutually exclusive?

**Ans: Yes**, if the taxable person opts for self-assessment, he cannot opt for provisional assessment for the same period for same supply. However, he can opt for provisional assessment if he is unable to determine taxable value/tax liability/ (rate of tax) for any subsequent periods.

**T.Q. 3:** What is the time limit for passing final assessment order in case of provisional assessment?

**Ans:** The proper officer shall, within a period of **6 months** from the date of communication of the provisional assessment order, pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

However, the time limit of **6 months can be further extended** on sufficient cause being shown and for reasons to be recorded in writing in the following manner:

- by the **Joint/Additional Commissioner** for a further period of **6 months**;
- by the **Commissioner** for such further period not exceeding **4 years**.

**T.Q. 4:** What does scrutiny of returns mean under CGST Act, 2017?

**Ans:** The CGST Act, 2017 empowers proper officer to scrutinize the return and related particulars furnished by the taxable person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in a manner as may be prescribed.

In case of any discrepancies, the proper officer should seek explanation from registered person. On receipt of satisfactory explanation, the proper officer is not required to take any further action.

In the event, after accepting the discrepancies, no satisfactory explanation is furnished within a period of thirty days or such further extended time. If the taxable person fails to take the corrective measures in the return for the month in which discrepancy is accepted, the proper officer may initiate audit u/s 65 or special audit u/s 66 or inspection, search and seizure u/s 67 or proceed to determine the tax and other dues u/s 73 or Section 74.

**T.Q. 5:** What action may be taken by the proper officer in case no satisfactory explanation is sought after the discrepancies are brought to the notice of the registered person?

**Ans:** In case, after accepting the discrepancies, no satisfactory explanation is furnished within a period of thirty days or such further period as may be permitted, proper officer may:

- Initiate **Audit of accounts** by the tax authorities under Section 65; or
- Initiate **special audit** under Section 66; or
- Initiate **inspection, search and seizure** under Section 67; or
- proceed to **determine the tax and other dues** under Section 73 or Section 74.

**T.Q. 6:** In what cases, assessment order passed by proper officer may be withdrawn?

**Ans:** Assessment Order passed by proper officer may be withdrawn in the following cases:-

- Assessment of Non-filers of return :** The best judgment order passed by the Proper Officer under section 62 of CGST Act shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), **within 30 days** of the receipt of the best judgment assessment order.
- Summary Assessment :** A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional **Additional/Joint Commissioner within 30 days** of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of Section 73 or 74 of CGST Act. The Additional/ Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

**Illustration 1 – Interest on Provisional assessment :** Laxmi Narayan & Sons has entered into a contract to supply two consignments of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12-01-2020, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Laxmi Narayan & Sons complies with the same and supplies both the consignments of goods on 25-01-2020 thereafter paying the tax on provisional basis in respect of both the consignments on 19-02-2020.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21-03-2020, a tax of ₹ 1,80,000 becomes due on 1<sup>st</sup> consignment whereas a tax of ₹ 4,20,000 becomes refundable on 2<sup>nd</sup> consignment.

Laxmi Narayan & Sons pays the tax due on 1<sup>st</sup> consignment on 09-04-2020 and applies for the refund of the tax on 2<sup>nd</sup> consignment same day. Tax was actually refunded to it on 05-06-2020.

Determine the interest payable and receivable, if any, by Laxmi Narayan & Sons in the above case.

**Solution: Computation of the amount of interest payable on finalisation of assessment :** Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25-01-2020 under provisional assessment is 20-02-2020. Laxmi Narayan & Sons is liable to pay following interest in respect of 1<sup>st</sup> consignment :

Due date of payment of tax under provisional assessment	20-02-2020
Actual date of payment of tax	09-04-2020
Period of delay in days	49 days
<b>GST Payable</b>	<b>1,80,000</b>
Rate of Interest	18% p.a.
<b>Interest payable [₹ 1,80,000 × 18% × 49/366] (Leap year) (Rounded off)</b>	<b>4,338</b>

**Interest on refund :** Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified u/s 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application u/s 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05-06-2020) within 60 days from the date of receipt of application of refund (09-04-2020), interest is not payable to Laxmi Narayan & Sons on tax refunded in respect of 2<sup>nd</sup> consignment.

**Illustration 2 - Interest on Provisional assessment :** Divy Trader obtained permission for provisional assessment and supplied three consignments of furniture on 28<sup>th</sup> April, 2019. The tax payment on provisional basis was made in respect of all the three consignments on 20<sup>th</sup> May, 2019.

Consequent to the final assessment order passed by the Assistant Commissioner on 21<sup>st</sup> June, 2019, a tax of ₹ 1,20,000 and ₹ 1,50,000 became refundable on 1<sup>st</sup> and 3<sup>rd</sup> consignments whereas a tax of ₹ 1,20,000 became due on 2<sup>nd</sup> consignment. Divy Trader applies for the refund of the tax on 1<sup>st</sup> and 3<sup>rd</sup> consignments on 12<sup>th</sup> July, 2019 and pays the tax due on 2<sup>nd</sup> consignment on the same day. Tax was actually refunded to it of 1<sup>st</sup> consignment on 8<sup>th</sup> September, 2019, whereas of 3<sup>rd</sup> consignment on 18<sup>th</sup> September, 2019. Customers of Divy Trader who purchased the consignments have not taken Input Tax Credit (ITC). Determine the interest payable and receivable, if any, under CGST Act, 2017 by Divy Trader. (5 Marks, Nov. 2018-NS)

**Solution: Computation of the amount of interest payable on finalisation of assessment :** Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 28-04-2019 under provisional assessment is 20-05-2019. Divy Trader is liable to pay following interest in respect of 1<sup>st</sup> consignment (amount in ₹) :

Due date of payment of tax under provisional assessment	20-05-2019
Actual date of payment of tax	12-07-2019
Period of delay in days	53 days
<b>GST Payable</b>	<b>1,20,000</b>
Rate of Interest	18% p.a.
<b>Interest payable [₹ 1,20,000 × 18% × 53/366] [Leap year] (Rounded off)</b>	<b>3,128</b>

**Interest on refund :** Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified u/s 56 [6% p.a.] from the date immediately after the expiry of 60 days from the date of receipt of application u/s 54(1) till the date of refund of such tax.

However, since in the given case, refund in respect of 1<sup>st</sup> consignment has been made (08-09-2019) within 60 days from the date of receipt of application of refund (12-07-2019), interest is not payable to Divy Trader on tax refunded in respect of 1<sup>st</sup> consignment.

In respect of 3<sup>rd</sup> consignment since refund is not granted within 60 days from the date of making refund application interest shall be calculated as under (amount in ₹) :

Date on which refund application is made	[A]	12-07-2019
Period of 60 days referred to in section 60(5) expires on	[B]	10-09-2019
Date of actual grant of refund[C]		18-09-2019
No. of days from date referred to in [B] above to date referred to in [C] above	[D]	8
Amount refundable	[E]	1,50,000
<b>Interest on refund u/s 60(5) [E × 6% × D ÷ 366 days]</b>		<b>197</b>

# INSPECTION, SEARCH, SEIZURE AND ARREST

## SUMMARIZED POINTS FOR REVISION

### INSPECTION, SEARCH AND SEIZURE

- (1) **Power of inspection [Section 67(1)]** : Where the proper officer, **not below the rank of Joint Commissioner**, has reasons to believe that—
- (a) a taxable person has—
- suppressed any transaction relating to supply of goods or services or both, or
  - suppressed the stock of goods in hand, or
  - claimed input tax credit in excess of his entitlement under this Act, or
  - indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
- (b) (i) any person engaged in the business of transporting goods, or  
(ii) 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 under this Act,
- he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.
- (2) **Power of search and seizure [Section 67(2)]** : Where the proper officer, **not below the rank of Joint Commissioner**, either pursuant to an inspection carried or otherwise, has reasons to believe that –
- any goods liable to confiscation, or
  - any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act,
- are secreted in any place, he—
- may authorise in writing any other Central tax officer to search and seize, or
  - may himself search and seize such goods, documents or books or things.
- Detention of goods which cannot be seized** : Where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may—
- serve on the owner or the custodian of the goods an order that
  - he shall not remove, part with, or otherwise deal with the goods
  - except with the previous permission of such officer.
- Period of retention of documents and things** : The documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.
- (3) **Unrelied documents to be returned within 30 days of issue of notice [Section 67(3)]** : The documents, books or things seized, or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding 30 days of the issue of the said notice.
- (4) The officer authorised shall have the power to seal or break open the door etc. in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access is denied. [Section 67(4)]
- (5) Copies or extracts of seized documents can be taken by taxable person. [Section 67(5)]
- (6) Provisional release of seized goods on execution of a bond and furnishing of a security or on payment of applicable tax, interest and penalty payable, as the case may be. [Section 67(6)]
- (7) Goods to be returned, if notice not given within 6 months from date of seizure. Extension for further a further period not exceeding 6 months. [Section 67(7)]

- (8) Perishable or hazardous or other notified goods shall be disposed of as soon as may be after its seizure. [Sec. 67(8)]
- (9) Officer shall prepare an inventory of seized goods in prescribed manner. [Section 67(9)]
- (10) There can be seizure by the Proper Officer of accounts, registers or documents produced before him of person evading tax and the proper officer shall retain the same for so long as may be necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution. [Section 67(11)]
- (11) **Purchase of goods or services by authorised officer from business premises to check issue of tax invoice** and on return of goods so purchased by such officer, such person shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier. [Section 67(12)]

### ARREST AND MISCELLANEOUS PROVISIONS

- (12) **Meaning of cognizable offence :** Generally, cognizable offence means serious category of offences in respect of which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court.
- (13) **Meaning of non-cognizable offence :** Non-cognizable offence means relatively less serious offences in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order.
- (14) **Cognizable and non-cognizable offences under CGST Act:** In Section 132 of CGST Act, it is provided that the offences relating to taxable goods and /or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken **exceeds ₹ 5 crore**, it shall be cognizable and non-bailable and in such cases the bail can be considered by a Judicial Magistrate only. Other offences under the Act are non-cognizable and bailable and all arrested persons shall be released on bail by **Deputy/Assistant Commissioner**.
- (15) **Power to arrest [Section 69] :**
- (a) **Officer empowered by Commissioner** has power to arrest a person, where there is a reason to believe that such person has committed the specified alleged offences.
  - (b) The person committing an offence under section 132(1)(a)/(b)/(c)/(d) and punishable u/s 132(1)(i) and Section 132(1)(ii) or Sec. 132(2) can be arrested by a CGST officer upon authorization by the Commissioner.
  - (c) Where a person is arrested under this Section for an offence specified under section 132(5), 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.
  - (d) Where a person is arrested for any offence specified under section 132(4), he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate. In the case of a non-cognizable and bailable offence, the **Deputy Commissioner or the Assistant Commissioner** shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.
- (16) **Power to summon persons to give evidence and produce documents [Section 70] :**
- (a) Proper officer has power to summon person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry.
  - (b) Every such inquiry shall be deemed to be a **"judicial proceedings"** within the meaning of Indian Penal Code.
  - (c) A **person who is issued summon** is legally bound to **attend either in person or by an authorized representative** and he is bound to state the truth before the officer who has issued the summon upon any subject which is the subject matter of examination and to produce such documents and other things as may be required.
  - (d) Such person is liable for prosecution and in addition, if a person does not appear before a CGST/ SGST officer who has issued the summon, he is liable to a **penalty upto ₹ 25,000** under section 122(3)(d) of the Act.
- (17) **Access to business premises [Section 71] :**
- (a) Any officer under this Act, authorised by the **proper officer not below the rank of Joint Commissioner** shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

Every person in charge shall, on demand, make available to the authorised officer or the audit party deputed by the **proper officer, or a cost accountant or chartered accountant nominated** under section 66 the following records—

- (i) records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
- (ii) trial balance or its equivalent;
- (iii) statements of annual financial accounts, duly audited, wherever required;
- (iv) cost audit report, if any, under section 148 of the Companies Act, 2013;
- (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and
- (vi) any other relevant record.

(b) Such records are to be made available to the said persons **within 15 working days** from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

(18) **Officers to assist proper officers [Section 72]** : All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act. Besides this Assistance can also be provided by other notified officers.

### ADDITIONAL PRACTICE QUESTIONS

**T.Q. 1 :** Who can authorize the act of carrying out 'Inspection' and under what circumstances?

**Ans:** As per Section 67(1), Inspection can be carried out by any officer of Central tax only upon a written authorization given by a **proper officer not below the rank of Joint Commissioner**. Such proper officer can give such authorization only if he has reasons to believe that the person concerned has -

- (a) suppressed any transaction of supply;
- (b) suppressed stock of goods in hand;
- (c) claimed excess input tax credit;
- (d) contravened any provisions of this Act or rules made thereunder to evade tax;
- (e) a transporter or an owner or operator of a warehouse or godown or any other place, has kept goods which have escaped payment of tax or has kept his accounts or goods in a manner that is likely to cause evasion of tax.

**T.Q. 2 :** Which are the places of business/premises which can be inspected by the CGST officer under this section?

**Ans:** CGST officer authorized by the **proper officer not below the rank of Joint Commissioner** shall have the powers to carry out inspection of any of the following places/premises:

- (a) any place of business of a taxable person;
- (b) any place of business of a person engaged in the business of transporting goods;
- (c) any place of business of an owner or an operator of a warehouse or godown;
- (d) any other place.

**T.Q. 3 :** Who can order for search and seizure and under what circumstances?

**Ans:** **Proper officer not below the rank of Joint Commissioner** can himself or authorize any other CGST officer to carry out search and seize goods, documents, books or things.

Such authorization can be given only where the proper officer has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted/ hidden in any place. Where any goods, documents, books or things are liable for seizure, the proper officer or an authorised officer shall make an order of seizure.

**T.Q. 4 :** Whether goods seized can be released on a provisional basis?

**Ans:** **Yes.** The seized goods can be released on provisional basis upon execution of a bond for the value of goods and furnishing of security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable, or on payment of applicable tax, interest and penalty.



**T.Q. 5:** What are the safeguards provided in section 67 in respect of search and seizure?

**Ans:** The following are the safeguards provided in section 67 in respect of search and seizure:

- (a) Seized goods or documents should not be retained beyond the period necessary for their examination.
- (b) Photocopies of the documents can be taken by the person from whose custody documents are seized.
- (c) In respect of seized goods, if a notice is not issued **within 6 months of its seizure**, such goods shall be returned to the person from whose possession it was seized. This period of six months can be extended on justified grounds up to a **further period not exceeding 6 months**.
- (d) An inventory of seized goods shall be prepared by the seizing officer.
- (e) Certain notified categories of goods such as perishable or hazardous nature, depreciation in value of the goods with the passage of time etc. can be disposed of immediately after seizure. However, if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable, whichever is lower, on proof of such payment, the Proper officer shall order for release such goods or things.
- (f) Provision of Code of Criminal Procedure 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(5) thereof, the word 'Magistrate' should be read as 'Commissioner'.

**T.Q. 6:** When can, the proper officer authorize arrest of any person under section 69?

**Ans:** The Commissioner of CGST, by order, can authorize any CGST officer to arrest a person, if he has reasons to believe that such person has committed an offence specified in Section 132(1)(a)/(b)/(c)/(d) which is punishable under Section 132(1)(i)/(ii) or Section 132(2) of the Act. This essentially means that a person can be arrested only when the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken **exceeds ₹ 2 crores** or where a person has earlier been convicted for an offence under section 132 of the CGST Act.

**T.Q. 7:** When can the proper officer issue summons?

**Ans:** Section 70(1) gives powers to the proper officer to call upon any person by issuing a summon to be physically present before him to either give evidence or produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

**T.Q. 8:** What are the responsibilities of the person so summoned?

**Ans:** A person who is issued summon is legally bound to attend either in person or by an authorized representative and he is bound to state the truth before the officer who has issued the summon upon any subject, which is the subject matter of examination and to produce such documents and other things as may be required.

**T.Q. 9:** What can be the consequences of non-appearance to summons?

**Ans:** The proceeding before the proper officer who has issued summons is deemed to be judicial proceedings. If a person does not appear on the date when summoned without any reasonable justification, he can be prosecuted under section 174 of the Indian Penal Code (IPC). If he absconds to avoid service of summons, he can be prosecuted under section 172 of the IPC and in case he does not produce the documents or electronic records required to be produced, he can be prosecuted under section 175 of the IPC. In case he gives false evidence, he can be prosecuted u/s 193 of the IPC.

**T.Q. 10:** Can the proper officer access business premises of a registered taxable person?

**Ans: Yes.** An audit party of CGST or a cost accountant or chartered accountant nominated under section 66 have access to any business premises without issuance of a search warrant for the purposes of revenue carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue. Further, in terms of Section 70(1), an officer authorised by a proper officer not below the rank of Joint Commissioner can also have access business premises of a registered person.

**T.Q. 11:** What is the distinction in law between 'Seizure' and 'Detention'?

**Ans:** Denial of access to the owner of the property or the person who possesses the property at a particular point of time by a legal order/notice is called detention. Seizure is taking over of actual possession of the goods by the department. Detention order is issued when it is suspected that the goods are liable to confiscation. Seizure can be made only on the reasonable belief which is arrived at after inquiry/investigation that the goods are liable to confiscation.

## DEMANDS, RECOVERY AND LIABILITY TO PAY IN CERTAIN CASES

### SUMMARIZED POINTS FOR REVISION

#### DEMANDS AND ALLIED PROVISIONS

- (1) **Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts [Section 73] :**
- (a) The proper officer shall serve show cause notice on the person chargeable with tax which has not been so paid/short paid/erroneously refunded/ITC has been wrongly availed/utilised **other than the reason of fraud, or any wilful-misstatement, or suppression of facts** requiring him to show cause as to why he should not pay the amount specified in the notice.  
The notice would specify the amount of tax along with interest payable @ 18% p.a. and a penalty leviable under the provisions of this Act or the rules made there-under, liable to be paid by him.
  - (b) **Time limit for issue of notice :** The time-limit for issuance of SCN is **2 years and 9 months from the due date of filing Annual Return** for the Financial Year to which the demand pertains **or from the date of erroneous refund.**
  - (c) The proper officer may serve a statement, containing the details of tax not paid/short paid/erroneously refunded/ ITC wrongly availed or utilised for periods other than those covered in SCN and the **service of a statement to be deemed to be service of SCN** if grounds relied upon are same as mentioned in earlier SCN.
  - (d) The concerned person may make voluntary payment of tax and interest before issue of SCN/ Statement and shall inform the proper officer of such payment in writing and on receipt of such information, the proper officer shall not serve any SCN/statement in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder. Thus, the matter closes at this stage itself and no penalty is imposed on the person. SCN shall be issued by the proper officer for recovery if amount voluntarily paid is short of the amount actually payable.
  - (e) **If tax and interest is paid within 30 days of issue of notice** – No penalty to be levied and all proceedings in respect of the said notice shall be deemed to be concluded.
  - (f) The proper officer shall determine the amount of tax, interest and a **penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher**, due from such person and issue an order.
  - (g) The proper officer shall issue the adjudication order **within 3 years from the due date for furnishing of annual return** for the financial year to which the tax not paid/short paid/ITC wrongly availed/ utilised relates to or **within 3 years from the date of erroneous refund.**
  - (h) **Penalty shall be payable if self assessed tax is not paid within 30 days from due date.**

<i>Circular</i>	<i>No.</i>	No penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in Form GSTR-3B has been filed after the due date of filing such return. However, penalty under Section 125 can be imposed.
<i>76/50/2018-GST</i>		
<i>dated 31-12-2018</i>		

- (2) **Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts [Section 74] :**
- (a) The proper officer shall serve show cause notice on the person chargeable with tax which has not been so paid/short paid/erroneously refunded/ITC has been wrongly availed/utilised **by reason of fraud, or any wilful-misstatement, or suppression of facts** requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable and a penalty equivalent to the tax specified in the notice.
  - (b) The **time-limit for issuance of SCN is 4 years and 6 months** from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund.
  - (c) The proper officer may serve a statement, containing the details of tax not paid/short paid/ erroneously refunded/ ITC wrongly availed or utilised for periods other than those covered in SCN and the service of a statement to be deemed to be service of SCN if grounds relied upon are same as mentioned in earlier SCN.

- (d) The person chargeable with tax may, before service of notice pay the amount of tax along with interest @ 18% p.a. and a **penalty equivalent to 15%** of such tax on the basis of his own ascertainment of such tax, or the tax as ascertained by the proper officer and shall inform the proper officer of such payment in writing. No SCN would be issued by the proper officer in respect of the amount so paid and the matter closes at this stage itself. SCN shall be issued by the proper officer for recovery if amount voluntarily paid is short of the amount actually payable.
- (e) If **tax, interest and penalty @ 25% of tax is paid within 30 days of issue of notice**, all proceedings in respect of the said notice shall be deemed to be concluded.
- (f) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.
- (g) The proper officer shall issue the **adjudication order within a period of 5 years from the due date for furnishing of annual return** for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or **within 5 years from the date of erroneous refund**.
- (h) If **tax, interest and penalty @ 50% of tax is paid within 30 days** of communication of adjudication order, all proceedings in respect of the said notice shall be deemed to be concluded.

**Explanation 1 :** For the purposes of section 73 and this section, --

- (i) the expression "**all proceedings in respect of the said notice**" shall not include proceedings u/s 132;  
**Note :** Section 132 provides for punishment for certain offences under GST law.
- (ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

"**Suppression**" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. [*Explanation 2*]

- (3) **The above provisions have been summarized in the following tables :**

Table - A			
S.No.	Nature of case	Normal Cases	Fraud Cases
1.	Time for issuance of show cause notice	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
2.	Time for issuance of adjudication order	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund

Table - B			
S. No.	Action by tax payer	Amount of penalty payable	
		Cases involving normal period of limitation	Cases involving extended period of limitation - Fraud etc.
1.	Tax amount, along with the interest, paid before issuance of show cause notice	No penalty and no show cause notice shall be issued	15% of the tax amount payable as penalty and show cause notice shall be not be issued
2.	Tax amount, along with the interest, paid <b>within 30 days</b> of issuance of show cause notice	No penalty. All proceedings deemed to be concluded	25% of the tax amount payable as penalty. All proceedings deemed to be concluded.
3.	Tax amount, along with the interest, paid <b>within 30 days</b> of communication of adjudication order	⇒ 10% of the tax amount; or ⇒ ₹ 10,000, <b>whichever is higher</b>	50% of the tax amount payable as penalty. All proceedings deemed to be concluded.

4.	Tax amount, along with the interest, paid after 30 days of communication of adjudication order	⇒ 10% of the tax amount; or ⇒ ₹ 10,000, whichever is higher	100% of the tax amount
<b>Note:</b> The penalty shall also be not chargeable in cases where the self-assessed tax or any amount collected as tax is paid (with interest) within 30 days from the due date of payment.			

- (4) **Proper officers and their monetary limit :** The Board has assigned the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to issue of show cause notices and orders u/s 73 and 74 of the CGST Act and Section 20 of the IGST Act (read with sections 73 and 74 of the CGST Act), up to the monetary limits as mentioned in columns (3), (4) and (5) respectively of the Table below:-

S. No.	Officer of Central Tax	Monetary limit of the amount of central tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized for issuance of show cause notices and passing of orders u/ss 73 and 74 of CGST Act	Monetary limit of the amount of integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders u/s 73 and 74 of CGST Act made applicable to matters in relation to integrated tax vide Section 20 of the IGST Act	Monetary limit of the amount of central tax and integrated tax (including cess) not paid or short paid or erroneously refunded or input tax credit of central tax and integrated tax wrongly availed or utilized for issuance of show cause notices and passing of orders u/s 73 and 74 of CGST Act made applicable to integrated tax vide Section 20 of the IGST Act
(1)	(2)	(3)	(4)	(5)
1.	Superintendent of Central Tax	Not exceeding ₹ 10 lakhs	Not exceeding ₹ 20 lakhs	Not exceeding ₹ 20 lakhs
2.	Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakhs and not exceeding ₹ 1 crore	Above ₹ 20 lakhs and not exceeding ₹ 2 crores	Above ₹ 20 lakhs and not exceeding ₹ 2 crores
3.	Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	Above ₹ 2 crores without any limit

- (5) **General provisions relating to determination of tax [Section 75] :**

- Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period for issuance of notice and issuance of adjudication order, as the case may be.
- In case the charges of fraud, wilful misstatement or suppression of facts are not established against the person to whom the notice was issued, tax to be determined for treating notice for normal period of limitation.
- Adjudication order in pursuance of Appellate Authority/Appellate Tribunal/Court's direction can be issued within 2 years from the date of communication of the said direction.
- An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
- The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing  
No such adjournment shall be granted for more than 3 times to a person during the proceedings.
- Relevant Facts and basis of decision is to be given in adjudication order by the proper officer, thus, adjudication order should be a speaking order.
- The amount of tax, interest and penalty demanded cannot be in excess of amount specified in notice.
- In case of modification of tax by the Appellate Authority/Tribunal/Court, penalty and interest to be modified accordingly

- (i) **Payment of interest is mandatory** even if not specified in the order determining tax.
- (j) Deemed conclusion of adjudication proceedings if adjudication order not issued **within 3 years/5 years** as the case may be.
- (k) In case of appeal filed by Department against prejudicial decision of the Appellate Authority/Appellate Tribunal/High Court, **period between the date of decision of the higher authority and that of the lower authority to be excluded.**
- (l) The amount of Self assessed tax and interest thereon to be recovered as per Section 79.
- (m) In case of penalty being imposed u/s 73/74, no other penalty to be imposed for the same act/omission.

#### TAX COLLECTED BUT NOT PAID TO GOVERNMENT

- (6) **Tax collected but not paid to Government [Section 76] :**
  - (a) Any person who has collected amount representing tax, is required to deposit the same to Government irrespective of whether the supplies in respect of which such amount was collected are taxable or not.
  - (b) If such amount is not paid, the proper officer may serve SCN to the concerned person for payment of such amount and imposition of penalty equivalent to such amount.
  - (c) The proper officer shall, after considering the representation of such person, determine the amount due from such person **within one year from the date of issue of the notice** and thereupon such person shall pay the amount so determined. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
  - (d) Such person is also required to pay interest on such amount @ **18% p.a.** from the date such amount was collected by him to the date such amount is paid by him to the Government.
  - (e) **An opportunity of hearing shall be granted** where a request is received in writing from the person to whom the notice was issued to show cause.
  - (f) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such **stay shall be excluded** in computing the period of one year.
  - (g) The amount paid to the Government shall be adjusted against the tax payable, if any, by the person in relation to the supplies and where any surplus is left after the adjustment, the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.
  - (h) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of Section 54.
- (7) **Tax wrongfully collected and paid to Central Government or State Government [Section 77] :**
  - (a) A registered person who has paid the Central tax and State tax/UTT on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.
  - (b) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.

#### RECOVERY OF TAX AND ALLIED PROVISIONS

- (8) **Initiation of recovery proceedings [Section 78] :** If tax demand is not paid within 3 months from the date of service of order, recovery proceedings shall be initiated. The Proper officer may require payment of amount **prior to expiry of 3 months** to protect interest of revenue.
- (9) **Recovery of tax [Section 79] :**
  - (i) **Modes of recovery :** The proper officer shall proceed to recover the amount by one or more of the following modes, namely:-
    - (a) Recovery by deduction from any money owed [Section 79(1)(a) read with Rule 143]
    - (b) Recovery by sale of goods under the control of proper officer [Section 79(1)(b) read with Rule 144]
      - Detention and sale of goods
      - Preparation of inventory and estimation of market value

- Cancellation of auction, if defaulter pays dues :
- (c) **Garnishee proceedings - Recovery from a third person [Section 79(1)(c) read with Rule 145]**
  - Notice to Garnishee for payment of dues.
  - Compliance of Notice by the garnishee
  - Non compliance of notice – Garnishee deemed to be defaulter
  - Revocation of notice or extension of time by the officer
  - Garnishee discharged from defaulter's liability to the extent of such payment
  - Garnishee personally liable if payment is made to defaulter
  - Garnishee not personally liable if he shows that he did not owe to defaulter
  - Issuance of Certificate by the officer to the garnishee clearly indicating the details of the liability so discharged.

- (d) **Recovery by sale of movable/immovable property [Section 79(1)(d) read with Rules 147, 148, 149, 150 & 154] :**

- **Collection by distraint and detention of any movable or immovable property** if the amount payable or of the cost of the distress or keeping of the property, remains **unpaid for a period of 30 days** next after any such distress.
- **Preparation of list of defaulters movable/immovable property and their attachment/ seizure.**

In case of attachment/d distraint of -	
⇒ an immovable property	order shall be affixed on the property till the confirmation of sale
⇒ a movable property	proper officer shall seize the property and take its custody.

- All taxes payable by Person Getting Title.
- Attachment of debts, shares etc. in the manner provided in Rule 151.
- Investigation of objections against attachment/ postponement of sale, if claim made that property cannot be attached/ Rejection of claim.
- Auction cancelled if dues are paid by defaulter.
- **Disposal of proceeds of sale of goods and movable or immovable property :** (i) first, be appropriated against the administrative cost of the recovery process; (ii) next, be appropriated against the amount to be recovered; (iii) next, be appropriated against any other amount due from the defaulter under the CGST Act or the IGST Act or the UTGST Act or any of the SGST Act and the rules made thereunder; and (iv) any balance, be paid to the defaulter.
- Sale through broker in case of securities etc.
- Prohibition against bidding or purchase by Officer. [Rule 148]
- Prohibition against sale on Holidays. [Rule 149]
- Assistance by Police. [Rule 150]

- (e) Recovery as arrears of land revenue – Certification Proceedings. [Section 79(1)(e) read with Rule 155]

- (f) Recovery as fine imposed by Magistrate. [Section 79(1)(f) read with Rule 156]

- (g) Recovery through execution of a decree, etc. [Rule 146]

- (h) Recovery through surety. [Rule 157]

- (i) Recovery from company in liquidation. [Rule 160]

- (ii) Recovery of amount specified in bond can be made as per the above provisions. [Section 79(2)]

- (iii) SGST/UTGST Officer may also recover CGST dues from defaulter and credit the same to Central Government. [Section 79(3)]

- (iv) Apportionment of amount collected to State/Central Government in proportion to the amount due to each such Government. [Section 79(4)]

Recovery of tax dues can be made from establishment with separate registration with same PAN [Explanation]

- (10) **Payment of tax and other amount in instalments [Section 80] :**

- (a) On application of the concerned person, the Commissioner may extend the time or allow making of payment in **monthly instalments not exceeding 24**, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed.



However, the extension and instalments shall not be allowed for the amount due as per the liability self-assessed in any return.

- (b) In case of default in payment of instalment, All outstanding instalments shall become due and payable on date of such default and shall, without any further notice being served on the person, be liable for recovery.
- (c) The facility for **deferred payment/payment in instalments** shall not be allowed where—
  - (i) the taxable person has already defaulted on the payment of any amount under the CGST Act, 2017 or IGST Act, 2017 or UTGST Act, 2017 or any of the SGST Act, 2017, for which the recovery process is on;
  - (ii) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the CGST Act, 2017 or IGST Act, 2017 or UTGST Act, 2017 or any of the SGST Tax Act, 2017;
  - (iii) the amount for which instalment facility is sought is less than ₹ 25,000.

**(11) Transfer of property to be void in certain cases [Section 81] :**

- (a) Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.
- (b) Such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

**(12) Tax to be first charge on property [Section 82] :** Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the **Insolvency and Bankruptcy Code, 2016**, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

**(13) Provisional attachment to protect revenue in certain cases [Section 83] :**

- (i) During pendency of any proceedings, if the **Commissioner** is of the opinion that for the purpose of **protecting the interest of the Government revenue**, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.
- (ii) Every such provisional attachment shall cease to have effect after the expiry of a period of **one year** from the date when provisional attachment order is made under this Section.
- (iii) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith.

**(14) Continuation and validation of certain recovery proceedings [Section 84] :** Issuance of fresh notice is required when government dues are enhanced in appeal, revision or other proceedings and recovery proceedings of earlier demand will be continued as per earlier notice.

Issuance of fresh notice is not necessary when government dues are reduced in appeal, revision or other proceedings and any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

**LIABILITY IN CASE OF TRANSFER OF BUSINESS**

**(15) Liability in case of transfer of business [Section 85] :**

- (a) In respect of liability of tax, interest or penalty arising prior to transfer of business, **the transferor and transferee shall be jointly and severally liable.**
- (b) In respect of liability arising post transfer, the transferee liable for tax dues. Further, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.

**(16) Liability of agent and principal – Joint and several liability [Section 86] :** Where an agent supplies or receives any taxable goods on behalf of his principal, **such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.**

**LIABILITY IN CASE OF AMALGAMATION OR MERGER OF  
COMPANIES OR COMPANIES IN LIQUIDATION**

- (17) **Liability in case of amalgamation or merger of companies [Section 87]** : Tax liability on transactions between the effective date of amalgamation/merger and date of order (Tribunal/ Court/ CG) for amalgamation or merger of companies – Such companies to be treated as different taxable person till the date of order and transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.
- (18) **Liability in case of company in liquidation [Section 88]** : The liquidator of company is required to give intimation of his appointment to Commissioner **within 30 days** after his appointment. The **Commissioner** shall notify the liquidator **within 3 months** from the date on which he receives intimation the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty.

The director of a private company shall not be held liable if he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

**LIABILITY OF DIRECTORS, PARTNERS, TRUSTEES, GUARDIANS ETC.**

- (19) **Liability of directors of private company [Section 89]** : Directors shall be jointly and severally liable in case tax dues cannot be recovered from company unless the director proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. However, the liability (except personal penalty) shall be dispensed off on conversion of private company into a public company.
- (20) **Liability of partners of firm to pay tax [Section 90]** : Where any firm is liable to pay any tax, interest or penalty under this Act, **the firm and each of the partners of the firm shall, jointly and severally,** be liable for such payment. The firm has to intimate the date of retirement of partner to the **Commissioner** and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.
- If no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.
- (21) **Liability of guardians, trustees, etc. [Section 91]** : If business is carried on for the benefit of a minor or incapacitated person – **Guardian/ Trustee/ Agent will be liable to pay tax.** Guardian, trustee or agent liable in like manner as minor or other incapacitated person is liable. The dues are recoverable from the guardian, trustee or agent in respect of business of the minor or other incapacitated person by treating them as major or capacitated person, who is conducting the business for himself.
- (22) **Liability of Court of Wards, etc. [Section 92]** : Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the **Court of Wards, the Administrator General, the Official Trustee, or any receiver or manager** (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, **the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager.**

Tax, interest or penalty shall be levied and recoverable in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself and all the provisions of this Act or the rules made thereunder shall apply accordingly.

**SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX,  
INTEREST OR PENALTY IN CERTAIN CASES**

(23) Special provisions regarding liability to pay tax, interest or penalty in certain cases [Section 93] :

- (a) **Liability in case of death of individual** : Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then—
- (i) **In case of continuation of business** - person who continues the business shall be liable to pay tax, interest or penalty due from such person under this Act; and
- (ii) **In case of discontinuation of business before or after his death** - Legal representative is liable to pay tax, interest or penalty and the liability shall be limited to the extent of estate of deceased.
- (b) **In case of partition of HUF or AOP** : Members or group of members shall be jointly or severally liable to pay the tax, interest or penalty due from the taxable person.
- (c) **In case of dissolution of firm**: Partners of the firm at the time of dissolution shall be jointly and severally liable to pay the tax, interest or penalty due from the firm.
- (d) **In case of termination of Guardianship or Trusteeship** : The ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person **upto the time of the termination of the guardianship or trust**, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

*Circular No. 96/15/2019  
GST dated 28-03-2019*

**Transferee / successor be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.**

(24) Liability in other cases [Section 94] :

- (a) **Discontinuation of business by a firm/ AOP/ HUF** : Where business is discontinued the tax, interest or penalty payable under this Act by firm, association or family up to the date of such discontinuance may be determined **as if no such discontinuance had taken place**; and every person who, at the time of such discontinuance, was a **partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable** for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.
- (b) There will be Joint and several Liability of partners of firm or members of AOP in case of change in constitution of firm/ AOP.

**ADDITIONAL PRACTICE QUESTIONS**

**Illustration 1 - Interest and penalty provisions in case of delayed payment of self assessed GST** : (i) Chckernot has self-assessed tax liability under IGST Act, 2017, as ₹ 80,000. He fails to pay the tax within 30 days from the due date of payment of such tax.

Determine the interest and penalty payable by him explaining the provisions of law, with the following particulars available from his records :

Date of collection of tax : 18<sup>th</sup> December, 2019

Date of payment of tax : 26<sup>th</sup> February, 2020

No Show Cause Notice (SCN) has been issued to him so far, while he intends to discharge his liability even before it is issued to him, on the assumption that no penalty is leviable on him as payment is made before issue of SCN. (4 Marks, May 2018)

**Solution:** The self assessed tax for a month is to be deposited on or before the due date of furnishing the return for the relevant tax period. In this case the self assessed tax is to be deposited upto 20<sup>th</sup> January 2020. Since Checkernot has deposited the self assessed tax on 26<sup>th</sup> February, 2020, it shall be liable to pay interest as per provisions of Section 50 @ 18% p.a. from the date following the due date of payment to the actual date of payment of tax.

Thus interest liability shall be calculated as under (amount in ₹) :

Particulars	Interest Liability
Self Assessed tax	80,000
Due date of payment of tax	20-01-2020
Interest period ends on the date of payment of duty	26-02-2020
No. of days for which interest payable	37
Rate of interest	18%
Interest [₹ 80,000 × 18% × 37 / 366] [Since leap year]	1,456
<b>Total Sum paid (including interest)</b>	<b>81,456</b>

As per Section 73(9), If a person fails to pay amount of self assessed tax within 30 days from the due date, he shall be liable to penalty of 10% of the tax not so paid or ₹ 10,000 whichever is more. In case of non-payment of self-assessed tax and the amount collected as representing the tax, the only opportunity for paying the same without incurring any penalty is, if it is paid, with interest, within 30 days from the due date of payment. The option to pay such tax before issuance of SCN or within 30 days of issuance of SCN and avoid penalty consequences is not available. Penalty under section 73(9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

Since, Mr. Checkernot has not paid self assessed tax within 30 days from the due date, he shall be liable to pay penalty of 10% of ₹ 80,000 or ₹ 10,000 whichever is more *i.e.* ₹ 10,000.

However, CBIC vide Circular No. 76/50/2018-GST dated 31-12-2018 has clarified that penalty under Section 73(11) can be levied only when show cause notice is issued as per the provisions of Section 73 of the Act. No penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in Form GSTR-3B has been filed after the due date of filing such return. However, general penalty under Section 125 can be imposed in such cases.

**T.Q. 1 :** Discuss briefly the time limit for issue of show cause notice as contained under sections 73 and 74 of the CGST Act, 2017. Is there any time limit prescribed for adjudication of the cases under CGST Act, 2017? If yes, discuss the same.

**Ans:** The relevant provisions are discussed as under –

	Nature of case	Normal Cases (Section 73)	Fraud Cases (Section 74)
1.	Time for issuance of show cause notice	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
2.	Time for issuance of adjudication order	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund

The adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3 years as provided for in Section 73(10) or within 5 years as provided for in Section 74(10).

**CASE 1 : Time limit for issuance of SCN :** Rajul has been issued a show cause notice (SCN) on 31-12-2023 under Section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01-07-2019 and 31-12-2019. He has been given an opportunity of personal hearing on 15-01-2024. Advice Rajul as to what should be the written submissions in the reply to the show cause notice issued to him. (RTP May, 2018)

**Ans:** The written submissions in reply to SCN issued to Rajul are as follows –

- (1) Notice not sustainable :** The show cause notice (SCN) issued for normal period of limitation under Section 73(1) of the CGST Act, 2017 is not sustainable.
- (2) Time limit for issuance of notice :** The SCN under Section 73(1) of the CGST Act, 2017 can be issued at least 3 months prior to the time limit specified for issuance of order under Section 73(10) of the CGST Act, 2017. The adjudication order under Section 73(10) of the CGST Act, 2017 has to be issued within 3 years from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.
- (3) Time limit decoded :** The due date for furnishing annual return for a financial year is on or before the 31<sup>st</sup> day of December following the end of such financial year [Section 44 of the CGST Act, 2017]. Thus, SCN under Section 73(1) of the CGST Act, 2017 can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.

- (4) **Notice is barred by limitation** : The SCN has been issued for the period between 01-07-2019 to 31-12-2019 which falls in the financial year (FY) 2019-20. Due date for furnishing annual return for the FY 2019-20 is 31-12-2020 and 3 years' period from due date of filing annual return lapses on 31-12-2023. Thus, SCN under Section 73(1) ought to have been issued latest by 30-09-2023.
- (5) **Notice invalid, proceedings concluded** : Since the notice has been issued after 30-09-2023, the entire proceeding is barred by limitation and deemed to be concluded under Section 75(10) of the CGST Act, 2017.

**CASE 2: Time limit for issuance of SCN** : Everest Technologies Private Limited has been issued a show cause notice (SCN) on 31-01-2023 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01-07-2019 and 31-12-2019. Everest Technologies Private Limited contends that the show cause notice issued to it is time-barred in law. You are required to examine the technical veracity of the contention of Everest Technologies Private Limited. (MTP May, 2018)

**Ans:** The contention of Everest Technologies Private Limited is not valid in law. The SCN under section 73(1) of the CGST Act can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the CGST Act [Section 73(2) of the CGST Act]. The adjudication order under section 73(10) of the CGST Act has to be issued **within 3 years** from the due date for furnishing of annual return for the financial year to which the short-paid/not paid tax relates to.

The due date for furnishing annual return for a financial year is 31<sup>st</sup> day of December following the end of such financial year [Section 44 of the CGST Act]. Thus, SCN under section 73(1) of the CGST Act can be issued **within 2 years and 9 months** from the due date for furnishing of annual return for the financial year to which the short-paid/not paid tax relates to.

The SCN has been issued for the period between 01-07-2019 to 31-12-2019 which falls in the financial year (FY) 2019-20. Due date for furnishing annual return for the FY 2019-20 is 31-12-2020 and 3 years' period from due date of filing annual return lapses on 31-12-2023. Thus, SCN under section 73(1) ought to have been issued latest by 30-09-2023. Since in the given case, the notice has been issued on 31-01-2023, notice is not time-barred.

**T.Q. 2: Issuance of SCN** : Mr. X registered under GST Act, had made short payment of GST for the month of July 2019. He does not want a Show Cause notice to be served on him by Proper Officer. Advice Mr. X, if :

- (i) Short payment of tax is on account of reasons other than fraud.  
 (ii) Short payment of tax is on account of fraud. (4 Marks, Nov. 2018-OS)

**Solution:**

(i) According to Section 73 of the CGST Act, 2017, the person who is chargeable with tax, but has not paid the tax, or short paid the tax or wrongly availed/utilized the credit, or been granted an erroneous refund, may voluntarily come forward to pay such tax along-with interest before the issue of SCN/Statement, as the case may be. In such case, he has to pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer. Further, he needs to inform the proper officer in writing of such payment. Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN. Where such voluntary payment is made, Department shall not serve any SCN/Statement. The matter closes at this stage itself and no penalty is imposed on the person.

(ii) According to Section 74 of the CGST Act, 2017, the person who is chargeable with tax, but has not paid the tax/short paid the tax/wrongly availed/utilised the credit/been granted an erroneous refund by reason of fraud etc., may voluntarily come forward to pay such tax alongwith interest and specified penalty before the issue of SCN/Statement, as the case may be.

In such case, he has to pay the amount of tax along with interest payable thereon under section 50 and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer. Further, he needs to inform the proper officer in writing of such payment.

Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN.

Where such voluntary payment is made, Department shall not serve any SCN/Statement. The matter closes at this stage itself.

**CASE 3: Self-assessed tax and penalty** : Mr. Anant Kumar Gupta self-assessed his tax liability as ₹ 90,000 for the month of April 2019 but failed to make the payment.

Subsequently the Department initiated penal proceedings against Mr. Anant Kumar Gupta for recovery of penalty under section 73 of CGST Act, 2017 for failure to pay GST and issued show cause notice on 10-08-2019 which was received by Mr. Anant Kumar Gupta on 14-08-2019.

Mr. Anant Kumar Gupta deposited the tax along with interest on 25-08-2019 and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 45,000 (i.e. 50% of 90,000).

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act, 2017, explain the relevant provisions in brief. (5 Marks, Nov. 2018-NS)

**Solution:** According to Section 73(11), penalty under Section 73(9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax. In case of non-payment of self-assessed tax, the only opportunity for paying the same without incurring any penalty is, if it is paid, with interest, within 30 days from the due date of payment. The option to pay such tax before issuance of SCN or within 30 days of issuance of SCN and avoid penalty consequences is not available. Penalty under section 73(9) shall be payable where any amount of self-assessed tax has not been paid within a period of 30 days from the due date of payment of such tax.

However the contention of the department to levy penalty of ₹ 45,000 i.e. 50 % of the self assessed tax is not correct. The maximum amount of penalty which can be levied under Section 73(9) is equivalent to 10% of tax or ₹ 10,000, whichever is higher. Thus, in this case the maximum penalty which can be levied on Mr. Anant Kumar Gupta is ₹ 10,000.

**T.Q. 3:** Will omission on the part of the taxable person to provide correct information constitute 'suppression of facts' for the purpose of Section 74 of the CGST Act, 2017 ? Write a brief note with reasons. (Modified 3 Marks : May 2008/ June 2009)

**Ans: Yes.** As per Explanation to Section 74 of CGST Act, 2017, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer. Thus, omission on the part of the taxable person to provide correct information constitute 'suppression of facts'.

**T.Q. 4:** A person is chargeable with tax in case of fraud. He decides to pay the amount of demand alongwith interest before issue of notice. Is there any immunity available to such person?

**Ans: Yes.** As per provisions of Section 74(6) of the CGST Act, 2017, person chargeable with tax, shall have an option to pay the amount of tax along with interest and penalty equal to 15% of the tax involved, as ascertained either on his own or ascertained by the proper officer, and on such payment, no notice shall be issued with respect to the tax so paid.

**CASE 4: Interest payable even if not specified in adjudication order :** On 05-07-2019, a show cause notice for ₹ 5,00,000 was issued to Mr. Vijay Kumar Sharma demanding short payment of GST ₹ 4,50,000 for the month of January, 2019 and also interest of ₹ 50,000. Mr. Sharma raised objections and, after personal hearing on 30-08-2019 adjudicating authority passed the final order for ₹ 3,50,000 for GST, without any reference with regard to payment of interest.

Mr. Sharma deposited the tax of ₹ 3,50,000 on 02-09-2019 and informed the department on the same day. Subsequently on 15-09-2019 department demanded payment of interest of ₹ 60,000 on GST of ₹ 3,50,000.

Mr. Vijay Kumar Sharma is not ready to pay any interest. His contention is that, he is not liable for interest because he deposited all the amount specified in the final adjudication order.

Examine with a brief note the validity of the action taken by the Department with reference to provisions of the CGST Act, 2017. (4 Marks, May 2019)

**Ans:** The issue under consideration is whether demand of interest raised by the department is valid when the same has not been mentioned in the adjudication order.

As per section 75 of the CGST Act, 2017, the interest on the tax short paid has to be paid whether or not the same is specified in the order determining the tax liability.

Thus, in view of the same, Mr. Vijay Kumar Sharma will have to pay the interest even though the same is not specified in the final adjudication order. His contention that he is not liable for interest because he deposited all the amount specified in the final adjudication order is not valid in law.

However, the amount of interest demanded in the order cannot be in excess of the amount specified in the notice.

Therefore, in the given case, Department cannot demand the interest in excess of the amount specified in the notice, which will be ₹ 50,000.



**T.Q. 5 :** Raghav Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Raghav Enterprises the consequences of collecting tax, but not depositing the same with Government as provided under section 76 of the CGST Act, 2017.

**Ans:** As per provisions of Section 76 of CGST Act, 2017, It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined alongwith interest at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

**T.Q. 6 :** When can recovery proceedings be initiated under CGST Act, 2017.

**Ans:** As per provisions of Section 78 of CGST Act, 2017, any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of 3 months from the date of service of such order failing which recovery proceedings shall be initiated. However, where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment **within such period less than a period of 3 months** as may be specified by him.

**T.Q. 7 :** Briefly discuss the modes of recovery of tax available to the proper officer.

**Ans:** The proper officer may recover the dues in following manner –

- (a) Deduction of dues from the amount owned by the tax authorities payable to such person.
- (b) Recovery by way of detaining and selling any goods belonging to such person.
- (c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government.
- (d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
- (e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
- (f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
- (g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.
- (h) CGST arrears can be recovered as an arrear of SGST and vice versa.

Recovery of tax dues can be made from establishment with separate registration with same PAN. [Explanation]

### LIABILITY TO PAY IN CERTAIN CASES

**T.Q. 8 :** Ajmera Industries, a registered person under GST, has sold whole of its business to Softex Manufacturers. Determine the person liable to pay GST, interest or any penalty under GST law [determined before sale, but still unpaid] due from Ajmera Industries upto the time of such transfer.

**Ans:** As per provisions of Section 85 of CGST Act, 2017, where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person upto the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

Thus, in the given case, Ajmera Industries and Softex Manufacturers shall, jointly and severally, be liable wholly or to the extent of such transfer, to pay GST, interest or any penalty [determined before sale, but still unpaid] due from Ajmera Industries upto the time of such transfer.

**T.Q. 9:** XYZ Manufacturers Ltd. engages Vaibhav & Sons as an agent to sell goods on its behalf. Vaibhav & Sons sells goods to Baba Associates on behalf of XYZ Manufacturers Ltd. Determine the liability to pay GST payable on such goods as per the provisions of Section 86 of the CGST Act.

**Ans:** Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act. Thus, in the given case, XYZ Manufacturers Ltd. and Vaibhav & Sons shall, jointly and severally, be liable to pay GST payable on such goods.

**T.Q. 10:** A person, liable to pay GST, interest and penalty under GST law, dies. Determine the person liable to pay the GST, interest and penalty due from such person under GST law determined after his death if the business carried on by such person is continued after his death by his legal representative. Would your answer be different if the business carried on by the person who has died, is discontinued after his death.

**Ans:** As per Section 93 of CGST Act, 2017, Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under this Act, dies, then if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

If a business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

**T.Q. 11:** What happens to the GST liability when the estate of a taxable person is under the control of Court of Wards?

**Ans:** As per Section 92 of CGST Act, 2017, where the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable is under the control of the Court of Wards/Administrator General/ Official Trustee/ Receiver or Manager appointed under any order of a Court, the tax, interest or penalty shall be levied and recoverable from such Court of Wards/Administrator General/Official Trustee/Receiver or Manager to the same extent as it would be determined and recoverable from a taxable person.

**T.Q. 12:** Discuss the liability of the retiring partner of a firm to pay any tax, interest or penalty, if any, leviable on the firm under CGST/IGST/SGST Act. (2 Marks, Nov. 2018-OS)

**Ans:** According to section 90, where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.










However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

**T.Q. 13:** Discuss the liability to pay tax in case of an amalgamation/merger, under section 87 of the CGST Act, 2017. (RTP November, 2019)

**Ans:** Section 87 of the CGST Act, 2017 stipulates that when two or more companies are amalgamated/merged in pursuance of an order of court/Tribunal/otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied/received any goods and/or services to/from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

For the purposes of the CGST Act, 2017, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order. The registration certificates of the said companies shall be cancelled with effect from the date of the said order.

■ ■ ■

<p><b>CA   CS   CMA</b>                  Direct Tax Laws &amp; Indirect Tax Laws                  Intermediate/ Final/ Professional</p> <p> Video Lecture   Online MCQ's   SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>  <b>AADHYA'S</b>   <a href="http://www.aadhyas.com">http://www.aadhyas.com</a></p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> You Tube                  Subscribe to our Channel  <b>CA. Yogendra Bangar</b></p>	<p> Online MCQ's</p> <p><b>Computer / EduApplet App</b></p> <p>Quality Question Bank of  <b>2000 MCQ's</b>                  for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p> SUBJECTIVE Test Series</p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/Cs/CMA Exams with Flying Colours</li> </ul>
---	---	--	--

## ADVANCE RULING, APPEALS AND REVISION

### SUMMARIZED POINTS FOR REVISION

#### ADVANCE RULING

- (1) "Advance ruling" means a decision provided by the AAR or the AAAR to an applicant on matters or on questions specified in Section 97(2) or Section 100(1), in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. [Section 95(a)]
- (2) "Applicant" means any person registered or desirous of obtaining registration under this Act. [Section 95(c)]
- (3) **Authority for Advance Ruling (AAR) [Section 96]** : Authority for Advance Ruling (AAR) constituted under the provisions of a SGST Act or UTGST Act shall be deemed to be the AAR in respect of that State or Union territory.
- (4) **Appellate Authority for Advance Ruling [Section 99]** : Appellate Authority for Advance Ruling (AAAR) constituted under the provisions of a SGST Act or a UTGST Act shall be deemed to be the AAAR in respect of that State or Union territory.
- (5) **Questions for which advance ruling can be sought [Section 97(2)]** : Advance Ruling can be sought for the following questions -
  - (a) classification of any goods or services or both;
  - (b) applicability of a notification issued under provisions of this Act;
  - (c) determination of time and value of supply of goods or services or both;
  - (d) admissibility of input tax credit of tax paid or deemed to have been paid;
  - (e) determination of the liability to pay tax on any goods or services under the Act;
  - (f) whether applicant is required to be registered under the Act;
  - (g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

**Note :**

- (1) **AAR cannot take issue relating to place of supply** : In *Utility Powertech Ltd. In re [2018] 68 GST 750 (AAR - Chhattisgarh)*, it has been held that AAR cannot take question relating to place of supply.  
In *Fichtner Consulting Engineers (I) P Ltd. In re [2018] 69 GST 839*, it has been held that AAR cannot decide whether supply is inter-state supply or intra-state.  
*Authors Note* : The same seems doubtful as liability to pay tax (whether IGST or CGST plus SGST/UTGST or no tax payable) depends on determination of place of supply.
- (2) **AAR cannot decide whether transaction is export** : In *K Uttamlal Exports P Ltd. In re [2019] 102 taxmann.com 217 (AAR-Maharashtra)*, it has been held that AAR cannot decide whether transaction is export.
- (3) **Liability to deduct TDS cannot be decided by AAR** : In *Kandla Port Trust (Deendayal Port Trust), In re [2018] 98 taxmann.com 139 (AAR-Gujarat)*, it was held that Issue as to 'whether applicant-port trust is liable to deduct TDS under section 51' does not fall in category of section 97(2) of CGST Act, 2017.
- (4) **Recipient of goods or services cannot apply for advance ruling** : Recipient of goods or services cannot apply for advance ruling where tax is payable by supplier and there is no reverse charge - *Visvesvaraya National Institute of Technology, Nagpur, In re [2018] 69 GST 621 (AAR)*.

#### PROCEDURE FOR ADVANCE RULING

- (6) **Application for Advance Ruling and Procedure for Advance Ruling (5 Marks, Nov. 2018-NS)** :
  - (a) An application for obtaining an advance ruling shall be made on the common portal and shall be accompanied by a fee of ₹ 5,000.
  - (b) On receipt of an application, the AAR shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records and such records shall, as soon as possible, be returned to the said concerned officer.

- (c) The AAR may, **after examining the application** and the records called for and after hearing the applicant and the concerned officer **by order either admit or reject the application.**

The AAR shall **not admit the application** where the question raised in the application is **already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.**

Before rejection the applicant must be given **an opportunity of being heard** and on rejection, the reasons for such rejection shall be specified in the order. A copy of every order made shall be sent to the applicant and to the concerned officer.

- (d) The AAR shall after examining such further material as may be placed before it by the applicant, or obtained by the AAR, and after providing an opportunity of being heard to both the parties pronounce its advance ruling in writing on the question specified in the application **within 90 days from the date of receipt of application.**

A copy of the advance ruling pronounced by the AAR duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

- (e) Where the members of the AAR differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the AAAR for hearing and decision on such question.

#### PROVISIONS FOR APPEALS AGAINST ORDER OF AAR

- (7) **Appeal to Appellate Authority [Section 100]** : If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST/UTGST does not agree with the finding of AAR, he can also file an appeal with AAAR.

Every appeal shall be filed within a period of **30 days** from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant. The AAAR may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said **period of 30 days**, allow it to be presented within a further period **not exceeding 30 days.**

An appeal against the advance ruling shall be made by an applicant on the common portal and shall be accompanied by a **fee of ₹ 10,000.**

- (8) **Orders of Appellate Authority [Section 101]** :

(i) The AAAR may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(ii) The order shall be passed within a period of **90 days** from the date of filing of the appeal or application for reference.

(iii) Where the **members of the AAAR differ on any point or points** referred to in appeal or reference, **it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.**

(iv) A copy of the advance ruling pronounced by the AAAR duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the AAR after such pronouncement.

- (9) **Rectification of advance ruling [Section 102]** :

(a) The AAR or the AAAR may amend any order passed by it, so as to rectify any error apparent on the face of the record, if such error is noticed by the AAR or the AAAR on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant **within a period of 6 months** from the date of the order.

(b) No rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

#### APPLICABILITY OF ADVANCE RULING

- (10) **Applicability of advance ruling [Section 103]** :

(a) The advance ruling pronounced by the AAR or the AAAR shall be binding only

- **on the applicant** who had sought it;
- **in respect of any matter** referred to in Section 97(2) for advance ruling;

➤ on the concerned officer or the jurisdictional officer in respect of the applicant.

(b) The advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

**(11) Advance ruling to be void in certain circumstances [Section 104] :**

(a) Where the AAR or the AAAR finds that advance ruling pronounced by it has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may by order declare such ruling to be void *ab-initio*, and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made.

No order shall be passed unless an opportunity of being heard has been given to the applicant or the appellant.

The period beginning with the date of such advance ruling and ending with the date of order shall be excluded while computing the period of limitation of demands.

(b) A copy of the order shall be sent to the applicant, the concerned officer and the jurisdictional officer.

**(12) Powers of AAR and AAAR [Section 105] :**

(i) The AAR or the AAAR shall, for the purpose of exercising its powers regarding —

- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) issuing commissions and
- (d) compelling production of books of account and other records,

have all the powers of a civil court under the Code of Civil Procedure, 1908.

(ii) **AAR/ AAAR deemed to be civil court [Section 105(2)] :** The AAR or the AAAR shall be deemed to be a civil court and every proceeding before the AAR or the AAAR shall be deemed to be a judicial proceedings within the meaning of the Indian Penal Code.

**(13) Procedure of AAR and AAAR [Section 106] :** The AAR or the AAAR shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

**APPEALS AND REVISION**

**(14) Brief chart showing Appellate Mechanism under indirect taxes :**

Description	Appellate Authority	Revisional Authority	Appellate Tribunal	High Court	Supreme Court
<b>Section</b>	<b>107</b>	<b>108</b>	<b>112</b>	<b>117</b>	<b>118</b>
<b>Appeal can be filed against</b>	Order of Adjudicating Authority	<i>Suo Motu</i> revision	Against order of: (a) Appellate Authority or (b) Revisional Authority	Order of State/Area bench of Tribunal (If case involves substantial question of law)	Order of National/Regional bench of Tribunal and against orders of HC if HC certifies fit case for appeal to SC
<b>Departmental Appeal</b>	Department can file appeal after review by Commissioner	Not Applicable	Department can file appeal on review by Commissioner	Order of State/Area bench of Tribunal (If case involves substantial question of law)	Order of National/Regional bench of Tribunal and against orders of HC if HC certifies fit case for appeal to SC
<b>Place of supply matters</b>	Appealable	Revision extends power	National/Regional bench of Tribunal can hear	No	Yes
<b>Other matters</b>	Appealable	Revision extends power	State/Area bench of Tribunal can hear	Yes	Yes



Appeal Fee	Nil	Not applicable	₹ 1,000 per lakh of tax or ITC subject to maximum of ₹ 25,000	-	-
Time limit to file appeal	3 months + 1 month extension	Power exercisable only after 6 months but within 3 years from date of order [if no appeal filed]	3 months + 3 month extension	Within 180 days + condonation of delay without time limit	As per Code of Civil Procedure, 1908.
Pre-deposit [Mandatory]	100% of admitted due (with interest/penalty) + 10% of disputed tax (before interest/penalty) subject to maximum of ₹ 50 crores. [₹ 25 crores CGST and ₹ 25 crores SGST]	Not applicable	100% of admitted due (with interest/penalty) + Additional 20% of disputed tax (before interest/penalty) subject to maximum of ₹ 100 crores. [₹ 50 crores CGST and ₹ 50 crores SGST]	All tax dues is required to be deposited	All tax dues is required to be deposited
If assessee wins	Deposit refunded with interest	Not applicable	Pre-deposit refunded with interest	Sums to be refunded	Sums to be refunded

#### APPEALS TO APPELLATE AUTHORITY

#### (15) Appeals to Appellate Authority [Section 107] :

##### (a) Appeal before the Appellate Authority by the aggrieved person :

- (i) Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to such AA **within 3 months** from the date of communication of such decision/order.

The AA can **condone the delay** in filing of appeal by **1 month** if it is satisfied that there was sufficient cause for such delay.

- (ii) **Admitted tax and 10% of disputed tax subject to maximum of ₹ 25 crores to be deposited before filing appeal [Section 107(6)]** : No appeal shall be filed under Section 107(1), unless the appellant has paid –

- **in full, such part of the amount of tax, interest, fine, fee and penalty** arising from the impugned order, as is admitted by him; and
- **a sum equal to 10% of the remaining amount** of tax in dispute arising from the said order subject to a maximum of **₹ 25 crore**, in relation to which the appeal has been filed.

**On pre-deposit of tax - Recovery Proceedings to be Stayed [Section 107(7)]** : Where the appellant has paid the amount under Section 107(6), the recovery proceedings for the balance amount shall be deemed to be stayed.

##### (b) Application before Appellate Authority by the department :

- (i) The **Commissioner** may on his own motion, or upon request from the State tax/UTT Commissioner, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order, **for the purpose of satisfying himself as to the legality or propriety** of the said decision or order; and may, by order direct any officer subordinate to him, to apply to the Appellate Authority within **6 months** from the date of communication of the decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of application by **1 month** if it is satisfied that there was sufficient cause for such delay.

(ii) The application so filed shall be treated as departmental appeal. There is no requirement of making a pre-deposit in case of departmental appeal.

(c) **The Appellate authorities are as under :**

Adjudicating authority who passed decision or order -	Appellate Authority to whom Appeal is to be filed -
Deputy Commissioner or Assistant Commissioner or Superintendent	Any officer not below the rank of Joint Commissioner (Appeals)
Additional Commissioner or Joint Commissioner	Commissioner (Appeals)

(d) **Appeal process to be followed by Appellate Authority :**

- (i) The AA shall give an opportunity to the appellant of being heard.
- (ii) The AA may grant time to the parties and adjourn the hearing of the appeal for reasons to be recorded in writing. However, no such adjournment shall be granted more than 3 times to a party during hearing of the appeal.
- (iii) The AA may allow an appellant to add any ground of appeal not specified in the grounds of appeal, if the omission of that ground from the grounds of appeal was not wilful or unreasonable.
- (iv) The AA shall pass such order, as it thinks just and proper confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order.

Appellate order enhancing any fee/penalty/redemption fine/reducing refund shall be passed only when the appellant has been given a reasonable opportunity of showing cause against the proposed order.

**Issuance of SCN by AA :** Where the AA is of the opinion that any tax has not been paid/short-paid/erroneously refunded, or where ITC has been wrongly availed/ utilised, no order requiring the appellant to pay such tax or ITC shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the specified time limit.

- (v) The order of the AA disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon, and the reasons for such decision.
- (vi) The AA shall, where it is possible to do so, hear and decide every appeal within a period of 1 year from the date on which it is filed. However, stay period has to be excluded in computing the said time limit.
- (vii) On disposal of the appeal, the AA shall communicate the order passed by it to the appellant, the respondent, the adjudicating authority and to the Jurisdictional Commissioner or an authority designated by him in this behalf.
- (viii) Every appellate order passed shall subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.

### REVISIONAL AUTHORITY AND ITS POWERS

(16) **Powers of Revisional Authority [Section 108] :**

- (i) **Revision of orders prejudicial to interest of revenue [Section 108(1)] :** The Revisional Authority may, on his own motion, or upon information received by him, or on request from the State/UTT Commissioner call for and examine the record of any proceedings, and if he considers that any decision or order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue, and is illegal or improper, or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, —
  - stay the operation of such decision or order for such period as he deems fit, and
  - after giving the person concerned an opportunity of being heard, and
  - after making such further inquiry as may be necessary,
  - pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order. Along with the order, the RA shall also issue a summary of the order clearly indicating the final amount of demand confirmed.

“Record” shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.

"Decision" shall include intimation given by any officer lower in rank than the Revisional Authority.

- (ii) The Revisional Authority shall not exercise any power under this section, if—
- the order has been subject to an appeal under section 107 (i.e. AA) or section 112 (i.e. Appellate Tribunal) or section 117 (High Court) or section 118 (Supreme Court); or
  - the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or
  - the order has already been taken for revision under this section at an earlier stage; or
  - the order sought to be revised is a revisional order in the first place.

The Revisional Authority may pass an order under section 108(1) on any point which has not been raised and decided in an appeal, before the expiry of a period of -

- 1 year from the date of the order in such appeal, or
- 3 years after passing of order sought to be revised,

whichever is later.

- If the RA decides to pass an order which is likely to affect the person adversely, he shall serve a notice on such person and give him a reasonable opportunity of being heard.
- Every revision order shall be, subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.
- If the said decision or order involves an issue which is appealed in higher forum, the period spent between the date of the decision of the lower authority and the date of the decision of the higher authority shall be excluded in computing the period of limitation.
- Where the issuance of an order is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in Section 108(2)(b) i.e. 3 years.

#### CONSTITUTION OF APPELLATE TRIBUNAL

#### (17) Constitution of Appellate Tribunal and Benches thereof [Section 109]:

- The law envisages constitution of a **two tier Tribunal** i.e. National Bench/Regional Benches and the State Bench/ Area Benches. Jurisdiction of the two constituents of the GST Tribunal is also defined.
- If **place of supply is one of the issues** in dispute, then the **National Bench/Regional benches** of the Tribunal will have jurisdiction to hear the appeal. If the dispute relates to issues other than the place of supply, then the State/Area Benches will have the jurisdiction to hear the appeal.
- Absence of member or in case of vacancy - Hearing by a Bench of two Members** : In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members.

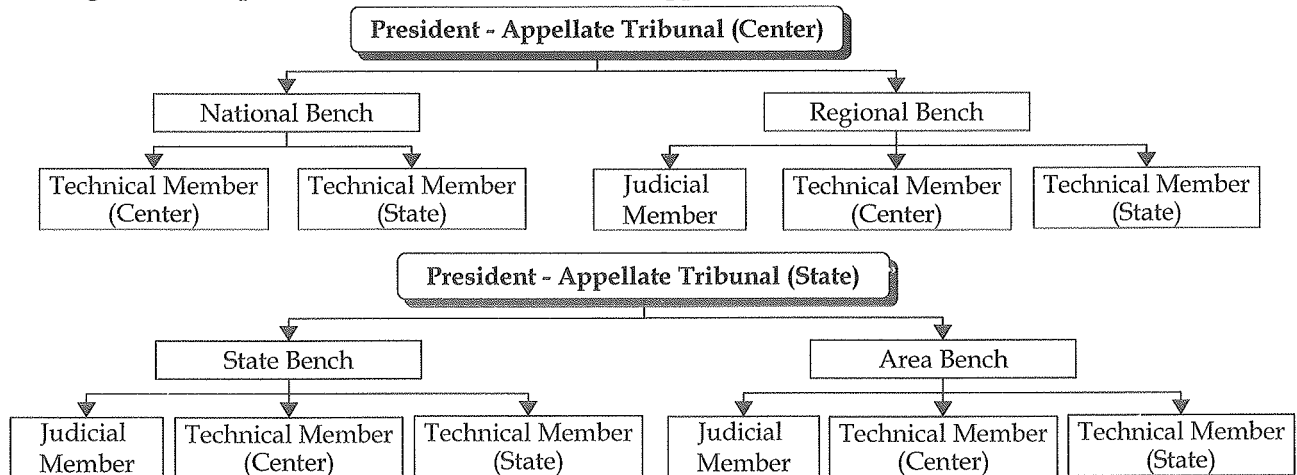
**Note: Single member bench to hear appeal if amount involved does not exceed ₹ 5 lakhs:** Any appeal where—

- the tax or input tax credit involved, or
- the difference in tax or input tax credit involved, or
- the amount of fine, fee or penalty determined in any order appealed against,

**does not exceed ₹ 5 lakh** and which does not involve any question of law may with the approval of the President be heard by a bench consisting of a single member. [Section 109(10)]

- Difference in opinion - Decision by majority** : In case of difference in opinion the decision will be arrived as follows, —
  - If the Members of bench differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority,
  - If the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points to one or more of the other Members Bench and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it. [Section 109(11)]

A diagrammatic representation of the structure of the Appellate Tribunal is show below :



**(18) Procedure before Appellate Tribunal [Section 111] :**

- (a) The Appellate Tribunal while disposing of any proceedings/appeal before it shall be guided by the principles of natural justice and shall have power to regulate its own procedure. [Section 111(1)]
- (b) **Appellate Tribunal have same powers of Civil Court :** The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
- (i) summoning and enforcing the attendance of any person and examining him on oath;
  - (ii) requiring the discovery and production of documents;
  - (iii) receiving evidence on affidavits;
  - (iv) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
  - (v) issuing commissions for the examination of witnesses or documents;
  - (vi) dismissing a representation for default or deciding it ex parte;
  - (vii) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
  - (viii) any other matter which may be prescribed.
- (c) **Enforcement of orders of Appellate Tribunal :** Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—
- (i) in the case of an order against a company, the registered office of the company is situated; or
  - (ii) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain. [Section 111(3)]
- (d) Proceedings before tribunal shall be deemed to be Judicial Proceedings. [Section 111(4)]

**APPEALS TO APPELLATE TRIBUNAL**

**(19) Appeals to Appellate Tribunal [Section 112] :**

**(a) Appeal by the Aggrieved person :**

- (i) Any person aggrieved by an order of AA or RA may appeal to the Appellate Tribunal against such order **within 3 months** from the date on which the order sought to be appealed against is communicated to the person preferring the appeal. The Tribunal can condone **delay of up to 3 months** beyond the specified time period of **3 months**, if it is satisfied that there was sufficient cause for the delay.

- (ii) **Fees of filing and restoration of appeal** : The fees for filing of appeal or its restoration shall be ₹ 1,000 for every ₹ 1 lakh of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, **subject to a maximum of ₹ 25,000.**
- (iii) **Discretionary Power** : The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved, or the difference in tax or input tax credit involved, or the amount of fine, fee or penalty determined by such order, **does not exceed ₹ 50,000.**
- (iv) **Admitted dues and 20% of disputed tax subject to maximum of ₹ 50 crores to be deposited before filing appeal [Section 112(8)]** : No appeal shall be filed under Section 112(1), unless the appellant has paid—
  - **in full**, such part of the **amount of tax, interest, fine, fee and penalty** arising from the impugned order, as is **admitted by him**, and
  - **a sum equal to 20% of the remaining amount of tax in dispute**, in addition to the amount paid under Section 107(6), arising from the said order **subject to a maximum of ₹ 50 crore**, in relation to which the appeal has been filed.

On pre-deposit of tax, the recovery proceedings shall be stayed till the disposal of the appeal.

**(b) Departmental appeal :**

- (i) **Orders appealable to Appellate Tribunal [Section 112(3)]** : The **Commissioner** may, on his own motion, or upon request from the State/UTT Commissioner call for and examine the record of any order passed by AA, or RA for the purpose of satisfying himself as to the **legality or propriety of the said order** and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal **within 6 months** from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by him.
- (ii) The Application so filed shall be dealt by the Appellate Tribunal as if it were an appeal made against the order of AA/RA and all the provisions of the Act shall apply accordingly.
- (iii) There is no requirement of making a pre-deposit in case of departmental appeal.

**(c) Other Aspects :**

**Memorandum of cross objections to be filed within 45 days [Section 112(5)]** : On receipt of notice that an appeal has been preferred, the other party may, **within 45 days** of the receipt of notice from tribunal, file a memorandum of cross-objections against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the specified time limit.

**(20) Production of additional evidence before the AA or the Appellate Tribunal [Rule 112] :**

- (i) **General bar on production of additional evidences [Rule 112(1)]** : The appellant shall not be allowed to produce before the AA or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA except in the following circumstances, namely:-
  - (a) where the **adjudicating authority** or, as the case may be, the **AA has refused to admit evidence** which ought to have been admitted; or
  - (b) where the **appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce** by the adjudicating authority or, as the case may be, the AA; or
  - (c) where the **appellant was prevented by sufficient cause from producing** before the adjudicating authority or, as the case may be, the AA **any evidence which is relevant to any ground of appeal**; or
  - (d) where the **adjudicating authority** or, as the case may be, **the AA** has made the order appealed against **without giving sufficient opportunity to the appellant** to adduce evidence relevant to any ground of appeal.
- (ii) No evidence shall be admitted unless the AA or the Appellate Tribunal records in writing the reasons for its admission.
- (iii) The AA or the Appellate Tribunal shall not take any evidence produced unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity—
  - (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
  - (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant.

**ORDERS OF APPELLATE TRIBUNAL**

**(21) Orders of Appellate Tribunal [Section 113] :**

- (a) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, **confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the AA**, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.
- (b) The Appellate Tribunal may grant time to the parties or any of them and **adjourn the hearing** of the appeal for reasons to be recorded in writing. No such adjournment shall be granted more than **3 times to a party** during hearing of the appeal.
- (c) The Appellate Tribunal may amend any order passed by it so as to **rectify any error apparent on the face of the record**, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the other party to the appeal **within a period of 3 months** from the date of the order.  
No amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.
- (d) The Appellate Tribunal shall, as far as possible, **hear and decide** every appeal **within a period of 1 year** from the date on which it is filed.
- (e) The Appellate Tribunal shall send a copy of every order passed to the –
  - (i) AA or the Revisional Authority, or the original adjudicating authority,
  - (ii) appellant and
  - (iii) the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.
- (f) Orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

**(22) Interest on refund of amount paid for admission of appeal [Section 115] :** Where an amount of pre deposit paid by the appellant is required to be refunded consequent to any order of the AA or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

**AUTHORISED REPRESENTATIVE**

**(23) Appearance by authorised representative [Section 116] :**

- (i) **Appearance by authorised representative [Section 116(1)] :** Any person who is entitled or required to appear before an officer, or the AA, or the Appellate Tribunal in connection with any proceedings under this Act otherwise than when required under this Act to appear personally for examination on oath or affirmation, may appear by an authorised representative.
- (ii) **Person who can act as Authorised representative [Section 116(2)] :** “Authorised representative” shall mean a person authorised by the person referred to in Section 116(1) to appear on his behalf, being –
  - (a) his relative or regular employee; or
  - (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
  - (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
  - (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of **not less than 2 years**.  
**Department officials - barred upto 1 year after retirement or resignation :** Such officer shall not be entitled to appear before any proceedings under this Act **for a period of 1 year** from the date of his retirement or resignation; or
  - (e) any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.



- (iii) **Person who cannot act as Authorised representative [Section 116(3)]** : No person, –
- (a) who has been dismissed or removed from Government service shall be qualified to represent any person for all times; or
  - (b) who is convicted of an offence connected with any proceedings under GST laws or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; shall be qualified to represent any person for all times.
  - (c) who is found guilty of misconduct by the prescribed authority shall be qualified to represent any person for all times.
  - (d) who has been adjudged as an insolvent shall be qualified to represent any person for the period during which the insolvency continues.
- (iv) Any person who has been disqualified under the provisions of the SGST/UTGST Act shall be deemed to be disqualified under this Act.

#### APPEAL TO HIGH COURT

**(24) Appeal to High Court [Section 117] :**

- (a) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court if the case involves a substantial question of law.
- (b) An appeal shall be filed within a period of **180 days** from the date on which the order appealed against is received by the aggrieved person. The High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.
- (c) The High Court shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

However, nothing in this section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

- (d) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
- (e) The High Court may determine any issue which has not been determined by the Tribunal (State Bench or Area Benches); or has been wrongly determined by the Tribunal (State Bench or Area Benches), by reason of a decision on such question of law.
- (f) Where the High Court delivers a judgment, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.
- (g) Pre-deposit of all tax dues is required to be made; otherwise the inherent powers of the High Court have to be invoked for obtaining a stay pending disposal of the appeal.

#### APPEAL TO SUPREME COURT

**(25) Appeal to Supreme Court [Section 118] :**

- (i) An appeal shall lie to the Supreme Court –
  - (a) from any **order passed by the National Bench or Regional Benches of the Appellate Tribunal**; or
  - (b) from any **judgment or order passed by the High Court** in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

**Note:** The National/ Regional Bench of the Tribunal has jurisdiction to entertain appeal if the dispute or one of the issues in dispute involves place of supply.

- (ii) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.
- (iii) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 117 in the case of a judgment of the High Court.

- (26) **Sums due to be paid notwithstanding appeal, etc. [Section 119]** : Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by Appellate Tribunal or an order passed by the High Court, as the case may be, shall be payable in accordance with the order so passed.
- (27) **Bar on jurisdiction of civil courts [Section 162]** : No civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.
- (28) **Appeal not to be filed in certain cases [Section 120]** : The Board may fix monetary limits for regulating the filing of appeal etc. The Central tax Officer may file appeal etc. in any other case involving the same or similar issues or questions of law if monetary amount is more.  
No person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application. The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the departmental officer.
- (29) **Non-appealable decisions and orders [Section 121]** : No appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:—
- an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
  - an order pertaining to the seizure or retention of books of account, register and other documents; or
  - an order sanctioning prosecution under this Act; or
  - an order passed under section 80.

### ADDITIONAL PRACTICE QUESTIONS

#### ADVANCE RULING

**T.Q. 1:** Is the applicant bound to actually undertake the proposed activity in relation to which he has obtained an advance ruling?

**Ans:** No, the applicant is not bound to actually undertake the proposed activity in relation to which he has obtained an advance ruling. An applicant has to sought the advance ruling in accordance with the legal provisions framed thereof and the decision for actually undertaking the said proposed activity totally depends on him.

**T.Q. 2:** Basant, a non-resident intends to supply a taxable service under a joint venture in collaboration with a non-resident, but has entertained some doubts about its valuation. Aarohi, Basant's friend, has obtained an 'Advance Ruling' under CGST Act, 2017 from the Authority for Advance Rulings on an identical point. Basant proposes to follow the same ruling in his case. Basant has sought your advice as his consultant whether he could follow the ruling given in the case of Aarohi. Explain with reasons.

**Ans:** According to Section 103 of CGST Act, 2017, an advance ruling is binding only on the applicant who has sought it. In the given problem, in view of the aforesaid provision, Basant cannot make use of the advance ruling pronounced in the identical case of his friend, Aarohi. Basant should obtain a ruling from the Authority of Advance Ruling by making an application under section 97 along with a fee of ₹ 5,000.

**Illustration 1 – Advance Rulings – Comprehensive :** Ranjan intends to start selling certain goods in Delhi. However, he is not able to determine - (i) the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious] and (ii) the place of supply if he supplies said goods from Delhi to buyers in U.S.

Ranjan's tax advisor has advised him to apply for the advance ruling in respect of these issues. He told Ranjan that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Ranjan agreed with his view, but has some apprehensions.

In view of the information given above, you are required to advise Ranjan with respect to following:

- The tax advisor asks Ranjan to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Ranjan needs to get registered?
- Can Ranjan seek advance ruling to determine (a) the classification of the goods proposed to be supplied by him and (b) the place of supply, if he supplies said goods from Delhi to buyers in U.S?
- Ranjan is apprehensive that if at all advance ruling is permitted to be sought, he has to seek it every year. Whether Ranjan's apprehension is correct?

- (iv) The tax advisor is of the view that the order of Authority for Advance Ruling (AAR) is final and is not appealable. Whether the tax advisor's view is correct?
- (v) Sambhav - Ranjan's friend - is a supplier registered in Delhi. He is engaged in supply of the goods, which Ranjan proposes to supply at the same commercial level that Ranjan proposes to adopt. He intends to apply the classification of the goods as decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi. Whether Sambhav can do so? (RTP May, 2018)

**Ans:**

- (i) **Registration not mandatory for Advance Ruling :** As per provisions of Section 95(c) of the CGST Act, 2017, Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- (ii) **Classification issue can be raised :** Section 97(2) of the CGST Act, 2017 stipulates the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought for, *inter alia*, determining the classification of any goods or services or both. Therefore, Ranjan can seek the advance ruling for determining the classification of the goods proposed to be supplied by him.

**Place of supply issue cannot be raised :** Determination of place of supply is not one of the specified questions/matters on which advance ruling can be sought under Section 97(2). Further, Section 96 of the CGST Act, 2017 provides that AAR constituted under the provisions of an SGST Act/UTGST Act shall be deemed to be the AAR in respect of that State/Union territory under CGST Act also.

Thus, AAR is constituted under the respective State/Union Territory Act and not the central Act. This implies that ruling given by AAR will be applicable only within the jurisdiction of the concerned State/Union territory.

It is also for this reason that the questions on determination of place of supply cannot be raised with the AAR. Hence, Ranjan cannot seek the advance ruling for determining the place of supply of the goods proposed to be supplied by him.

**Alternative view relating to place of supply issue :** However, it can be also be argued that the question relating to determination of the liability to pay tax on goods and/or services as provided under Section 96(2)(e) of the CGST Act, 2017 encompasses within its ambit the question relating to place of supply. This is so because place of supply is one of the factor to determine as to whether the supply is leviable to CGST & SGST or IGST.

- (iii) **Advance Ruling to be binding :** Section 103(2) of the CGST Act, 2017 stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Ranjan has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.
- (iv) **Appeal can be filed against such ruling :** No, the tax advisor's view is not correct. As per Section 100 of the CGST Act, 2017, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR.

Such appeal must be filed within 30 days from the receipt of the advance ruling. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.

- (v) **Applicability only for applicant and not to others :** Section 103 of the CGST Act provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sambhav will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Ranjan, to the goods supplied by him in Delhi.

#### APPEALS AND REVISION

**Illustration 2 - Appeal - Miscellaneous:** Pursuant to audit conducted by the tax authorities under Section 65 of the CGST Act, 2017, a show cause notice was issued to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July, 2019. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20-08-2019 (received by Home Furnishers on 22-08-2019) confirming a tax demand of ₹ 50,00,000 and imposing a penalty of equal amount under Section 122 of the CGST Act, 2017.

Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard.

- (1) Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed ?
- (2) Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal ?
- (3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give our opinion on the issue. (MTP May, 2018)

Ans:

- (1) **Appeal to Appellate Authority** : As per Section 107(1) of the CGST Act, An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/UTGST Act is appealable before the Appellate Authority. Thus, Home Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax to Commissioner (Appeals).
- (2) **Time Limit - 3 months, Condonation - 1 month** : Further, such appeal can be filed within 3 months from the date of communication of such decision/order . Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22-11-2019. Further, the Appellate Authority can also condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay .
- (3) **Authority before whom appeal is to be filed** : GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction.
- (4) **Appeal to Central tax authority** : The law further provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/ revision/rectification against the said order will lie only with the proper officers of that Act only (CGST Act). Similarly, if any order is passed by the proper officer of SGST, any appeal/review/ revision/ rectification will lie with the proper officer of SGST only. Thus, Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority [Section 6 of CGST Act].
- (5) **Requirement of pre-deposit** : Home Furnishers' view is not correct in law. Section 107(6) of the CGST Act provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—
  - (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
  - (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 25 crore, in relation to which the appeal has been filed.

Since in the given case, Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of **10% of the amount of tax** in dispute arising from the impugned order, i.e., 10% of ₹ 50,00,000 which is ₹ 5,00,000.

**T.Q. 3** : Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act? Explain the related provisions under the CGST Act.

**Ans: Yes.** Section 107 of the CGST Act, 2017 provides that any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act may file an appeal to the Appellate Authority. The appeal should be filed **within 3 months** from the date of communication of such order or decision. However, the Appellate Authority has the power to **condone the delay of up to 1 month** in filing the appeal if there is sufficient cause for the delay. The appeal can be filed only when the admitted liability and **10% of the disputed tax** amount subject to a maximum of ₹ 25 crore is paid as pre-deposit by the appellant.

However, as per provisions of Section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by an adjudicating authority if such decision taken or order passed relates to any one or more of the following matters, namely:—

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under this Act; or
- (d) an order passed under section 80 i.e. Payment of tax in installments.

**CASE 1: Time limit for filing appeal to Commissioner (Appeals)** : What is the time limit for filing appeal to the Appellate Authority by a person aggrieved by any decision or order passed by an adjudicating authority? Explain with reference to GST provisions. Whether this time limit can be extended ? (2 Marks, May 2016)

**Ans:** A person aggrieved by any decision or order passed by an adjudicating authority may file an appeal to the Appellate Authority within 3 months from the date of communication of decision/order of adjudicating authority. The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay.

**T.Q. 4:** Describe the provisions relating to Departmental appeal to Appellate Authority u/s 107 of the CGST Act.

**Ans:** Section 107(2) provides that Department can file a "review application/appeal" with the Appellate Authority. The Commissioner may, on his own motion, or upon request from the State/UTT Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order to satisfy himself as to the legality or propriety of the said decision /order. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by **1 month** if it is satisfied that there was sufficient cause for such delay.

Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the adjudicating authority.

There is no requirement of making a pre-deposit in case of departmental appeal.

**Illustration 3 – Computation of pre-deposit amount :** In an order dated 20-08-2020 issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed a CGST demand of ₹ 280 crore. The company is disputing the entire demand of CGST and wants to know how much pre-deposit it has to make under the CGST Act, 2017 for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, how much pre-deposit it has to make under the CGST Act, 2017 for filing the said appeal?

**Ans:** Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed with the Appellate Authority unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 25 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed ₹ 25 crore.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

- (i) ₹ 28 crore [10% of the amount of tax in dispute, viz. ₹ 280 crore]; or
- (ii) ₹ 25 crore,

whichever is less. = ₹ 25 crore.

Further, section 112(8) of the CGST Act, 2017 provides that no appeal shall be filed with the Appellate Tribunal unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of ₹ 50 crores.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is :

- (i) ₹ 56 crores [20% of the amount of tax in dispute, viz. ₹ 280 crores]; or
- (ii) ₹ 50 crores,

whichever is less. = ₹ 50 crores.

**T.Q. 5:** The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.

**Ans:** The statement is partially correct. It can refuse to admit an appeal where –

- the tax or input tax credit involved or
- the difference in tax or the difference in input tax credit involved or
- the amount of fine, fees or penalty determined by such order,

does not exceed ₹ 50,000.



**T.Q. 6 :** Section 113(3) of the CGST Act, 2017 provides that the Appellate Tribunal, may at any time within 3 months of the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it. Briefly illustrate with two examples as to what would constitute "mistake apparent from the record" for the purpose of this provision. *(Modified 5 Marks, Nov. 2007)*

**Ans:** Two illustrations of mistakes apparent on the face of the record are as follows – Failure to take into consideration the material evidence, which is present on record, would amount to a mistake apparent on the face of the record. - **CCEx. v. Bharat Bijlee Ltd. [2006] 198 ELT 489 (SC)**

- (i) When a decision rendered by the Apex Court is not considered, non-consideration of such binding precedent constitutes an error apparent on the face of the record. The binding decision of the Apex Court would cover even the period prior to the inception of such law during which the orders contrary to such ratio of the subsequent decision were passed. - **Hindustan Lever Ltd. v. CCEx. [2006] 202 ELT 177 (Tri.-LB)**
- (ii) Other mistakes apparent on the face of the record, which can be rectified by the Tribunal in terms of section 113(3), can be typographical error, calculation mistakes, point raised in appeal but not considered, retrospective amendments in the statute, etc.

**CASE 2 : Appellate Tribunal has to pass rectificatory order even after 3 months :** An assessee moved an application on 01-01-2020 under section 113(3) of the CGST Act, 2017 for rectification of mistake in an order passed on 04-10-2019. The Tribunal took up the application on 01-01-2020 and dismissed the same on the ground that the Tribunal cannot entertain an application for rectification beyond a period of 3 months. Explain briefly with reference to any decided case law whether the Tribunal's decision is correct in law. *(Modified 3 Marks, May 2010)*

**Ans:** Section 113(3) of the CGST Act, 2017 *inter alia* states that the Appellate Tribunal may at any time **within 3 months** from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it. Since, in the present case, the application has been made **within 3 months** from the date of the order, it is not relevant for the purpose of limitation as to when the Tribunal takes up the same for hearing and disposal.

This view has been confirmed by the Supreme Court in the case of **Sree Ayyanar Spinning and Weaving Mills Ltd. v. CIT [2008] 229 ELT 164 (SC)** wherein it was ruled out that once the assessee has moved the application within the period prescribed under the statute, the Tribunal cannot reject the application on the ground that the statutory period for amending the order has elapsed when taken with the period of pendency before the Tribunal.

Therefore, in this case, the Tribunal cannot reject the application for rectification of mistake on the ground of limitation if application is made within time limit.

**Illustration 4 – Computation of amount of pre deposit :** XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 01-11-2019 under section 73 of the CGST Act, 2017 wherein it was decided as follows:

Particulars	
CGST and SGST due (Total)	₹ 6,00,000
Interest	@ 18% p.a. for number of delayed days
Penalty	₹ 60,000

The assessee filed an appeal before the Appellate Authority on 26-11-2019.

**Case I :** How much the company has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017 ?

**Case II :** Whether your answer would be different if the assessee appeals only against part of the demanded amount say ₹ 4,00,000 and admits the balance liability of the amounting to ₹ 2,00,000 arising from the said order. *(5 Marks, May 2018-NS)*

**Solution:** No appeal shall be filed before Appellate Authority, unless the appellant pays –

- (i) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- (ii) 10% of remaining tax in dispute arising from the impugned order subject to maximum of ₹ 25 crores.

**Case I :** The company has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000.

**Case II :** Since the company admits the tax liability of ₹ 2,00,000 and disputes the tax demanded of only ₹ 4,00,000, it has to make a pre-deposit of:

- (i) ₹ 2,00,000 + ₹ 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and
- (ii) 10% of ₹ 4,00,000 which is ₹ 40,000.



**Illustration 5 – Computation of amount of pre deposit :** An order has been issued to M/s. Shankar & Sons in which the Adjudicating Authority has confirmed a tax demand of ₹ 12,50,000 and imposed a penalty of equal amount under section 122 of the CGST Act, 2017.

M/s. Shankar & Sons intends to file an appeal with the Appellate Authority against the said adjudication order. Compute the quantum of pre-deposit required to be made by M/s. Shankar & Sons for filing the appeal with the Appellate Authority.

**Ans:** According to **Section 107(6) of the CGST Act, 2017**, no appeal shall be filed to the Appellate Authority, unless the appellant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and a sum equal to **10% of the remaining** amount of tax in dispute arising from the said order subject to maximum of ₹ 25 crores., in relation to which the appeal has been filed.

Therefore, in the given case, though both duty and penalty are in dispute, quantum of pre-deposit will be **10% of only** the disputed tax amount *i.e.*, **10% of ₹ 12,50,000 which is ₹ 1,25,000.**

**Illustration 6 – Computation of interest on pre deposit :** AK & Co. deposits the required amount of ₹ 1,00,000 as pre-deposit on 30-09-2019 and files an appeal before the CESTAT. The said appeal is decided in favour of AK & Co. on 30-11-2019. AK & Co. forwards a letter seeking refund of pre-deposit on 07-12-2019 and the same was refunded on 15-12-2019. Explain whether AK & Co. is entitled to payment of interest and compute the amount of interest payable on refund of such pre-deposit. (Modified 4 Marks, May 2015)

**Solution:** As per Section 115 of CGST Act, 2017, where an amount paid by the appellant as pre deposit is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, **interest @ 6% p.a.** shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Therefore, AK & Co. will be entitled to payment of interest on such delayed refund of pre-deposit as under (*amt in ₹*):

Amount of pre-deposit	1,00,000
Date of payment of pre-deposit	30-09-2019
Date of refund of pre-deposit	15-12-2019
No. of days of delay	76 days
Rate of interest	6%
<b>Amount of interest (rounded off) [₹ 1,00,000 × 76 ÷ 366 × 6%][Since leap year]</b>	<b>1,246</b>

**CASE 3: Re-appreciation of evidence by CESTAT on a debatable point cannot be considered to be rectification of mistake apparent on record :** Discuss with the help of decided case, whether the re-appreciation of evidence on a debatable point by the Goods and Service Tax Appellate Tribunal can be considered as rectification of mistake apparent on record under section 113(3) of the CGST Act. (Modified 3 Marks, Nov. 2012)

**Ans: No,** re-appreciation of evidence by Goods and Services Tax Appellate Tribunal on a debatable point cannot be considered to be rectification of mistake apparent on record under section 113(3) of the CGST Act, 2017.

Supreme Court, in case of **CCE v. RDC Concrete (India) Pvt. Ltd. [2011] 270 FLT 625 (SC)** observed that a mistake apparent on record must be an obvious and patent mistake. It need not be established by a long drawn process of reasoning. Arguments not accepted earlier during disposal of appeal cannot be accepted while hearing rectification of mistake application.

The Apex Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier. Hence, the Court opined that in pursuance of a rectification application, CESTAT cannot reappreciate the evidence and reconsider its legal view taken earlier.

**T.Q. 7:** Can department file appeal in respect of same assessee, if in respect of some years, no appeal was filed involving identical dispute? (Modified : 2 Marks, Nov. 2009 & 3 Marks, May 2012)

**Ans:** It was held in **C. K. Gangadharan v. CIT [2008] 228 ELT 497 (SC)** that if the Revenue has not filed an appeal against any order/judgment in one case, it would not be allowed to file an appeal in another case when the same issue is involved due to the reasons that it cannot pick and choose and certainty in law should be ensured.

However, the Revenue can file an appeal in another case involving same/similar issue –

- where there is just cause in doing so (e.g. where appeal was not preferred earlier in view of small amount involved or where earlier case was revenue-neutral); or
- where it is in public interest to do so; or
- for a pronouncement by higher court when divergent views are expressed by Tribunals/High Courts.

Section 120 of the CGST Act also provides that the Board may issue orders or instructions or directions fixing monetary limits for the purposes of regulating the filing of appeal, etc. by the Department. If Department has not filed an appeal, etc. as per circular fixing monetary limits, the Department may file any appeal, application or revision in any other case involving the same or similar issues or questions of law and the assessee cannot contend that the Department has accepted the decision on the disputed issue by not filing the appeal.

**Illustration 7 - Appeal relating to place of supply matters - lies to Supreme Court:** Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved related to place of supply. The order of Appellate Tribunal is also in favour of the Department. Mr. A now wants to file an appeal against the decision of the Appellate Authority as he feels the stand taken by him is correct.

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal. (RTP May, 2018)

**Ans:** As per Section 117(1) of the CGST Act, 2017, an appeal against orders passed by the State Bench or Area Benches of the Tribunal lies to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal lies to the Supreme Court and not High Court. As per Section 109(5) of the Act, only the National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the National Bench or Regional Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

**T.Q. 8 :** Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate authority (AA) or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA.

What are the exceptional circumstances specified in the rule where the production of additional evidence will be allowed? Can AA or the Tribunal direct production of any document or examination of any witness? (5 Marks, Nov. 2018-NS)

**Ans:** Production of additional evidence before the Appellate Authority or the Appellate Tribunal [Rule 112]:








- (1) **General bar on production of additional evidences [Rule 112(1)] :** The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely:-
  - (a) **Refusal by lower authority :** where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or
  - (b) **Appellant could not furnish evidence due to sufficient cause despite demanded by lower authority** where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or
  - (c) **Appellant could not furnish evidence which is relevant to any ground of appeal** where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or
  - (d) **Lower authority did not allow opportunity to appellant to adduce evidence** where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (2) **Reasons for Admission to be Recorded in Writing [Rule 112(2)] :** No evidence shall be admitted unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.
- (3) **Opportunity to department to Cross Examine or to Rebut Evidence [Rule 112(3)] :** The Appellate Authority or the Appellate Tribunal shall not take any evidence produced unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity –
  - (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
  - (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant.
- (4) **Appellate bodies can direct for production of Documents/ Examination of any Witness [Rule 112(4)] :** Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

**CASE 4 : Revision not permissible when subject matter considered and decided in appeal :** The original adjudicating authority confirmed a demand of GST of ₹ 42,50,000 in its order dated 1<sup>st</sup> September, 2019. The assessee filed an appeal before appellate authority challenging the demand as well as penalty. The internal audit party after an audit of the records of the assessee, submitted a note to the Commissioner that actual amount demanded should have been ₹ 48,50,000. While the issue was pending before the appellate authority, based on the note, the Commissioner stayed the order of the original authority and issued a show cause notice on 15<sup>th</sup> March, 2020, proposing revision of the order of the original authority and revise the demand on the basis of the audit note. Examine the correctness of the action taken by the Commissioner in accordance with the provisions of GST law. (4 Marks, Nov. 2018-OS)

**Solution:** According to Section 108 of the CGST Act, 2017, the Revisional Authority may, on his own motion, or upon information received by him, or on request from the SGST/UTGST Commissioner, call for and examine the record of any proceedings, and if he considers that any decision or order passed under the Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue, and is illegal or improper, or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit, and after giving the person concerned an opportunity of being heard, and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

However, the Revisional Authority shall not exercise any power under this section, if the order has been subject to an appeal under Section 107 of the Act. In this case since the subject matter is pending in appeal before the Appellate authority, the Commissioner cannot exercise the power of revision under Section 108 of the Act. Thus, the action taken by the Commissioner is not valid as per the provisions of the CGST Act, 2017.



<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>   <b>AADHYA'S</b> edu.com   http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> Subscribe to our Channel CA. Yogendra Bangar</p>	<p> Online MCQ's</p> <p>Computer / EduApplet App</p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p> <b>SUBJECTIVE Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CMA Exams with Flying Colours</li> </ul>
--	---	---	--

## OFFENCES AND PENALTIES

## SUMMARIZED POINTS FOR REVISION

## PENALTY FOR CERTAIN OFFENCES

## (1) Penalty for certain offences [Section 122] :

Section	Offence	Quantum of Penalty
122(1)	<p>(1) Supplies of goods/services made without invoice/false invoice, invoices or bills issued without any supply of goods/services, transports taxable goods without document cover.</p> <p>(2) Collects tax, but fails to pay to Government within 3 months from due date of payment.</p> <p>(3) Fails to deduct any tax or collect any tax, deduct or collect lesser amount of tax, fails to pay the same to Government.</p> <p>(4) Takes or utilizes ITC or distributes ITC in contravention of the Act.</p> <p>(5) Obtains refund fraudulently.</p> <p>(6) Falsifies or substitutes financial records/produces fake accounts/furnishes false information with an intention to evade tax/suppresses the turnover in order to evade tax.</p> <p>(7) Fails to obtain registration/ furnishes false particulars with regard to registration/ issues invoices using registration number of another person.</p> <p>(8) Obstructs or prevents officer in discharge of his duties.</p> <p>(9) Fails to keep, maintain or retain books of accounts.</p> <p>(10) Fails to furnish information or documents/ furnishes false information during any proceedings.</p> <p>(11) Supplies, transports or stores goods which person has a reason to believe are liable for confiscation.</p> <p>(12) Tampers with or destroys any material evidence or document. Disposes off or tampers any goods that have been detained, seized or attached.</p> <p>(13) Transporting any taxable goods without cover of documents.</p>	<p>⇒ ₹ 10,000, or</p> <p>⇒ an amount equivalent to any of the following (applicable as the case may be)–</p> <ul style="list-style-type: none"> <li>– the tax evaded, or</li> <li>– the tax not deducted under section 51 or short deducted or deducted but not paid to the Government, or</li> <li>– tax not collected under section 52 or short collected or collected but not paid to the Government, or</li> <li>– input tax credit availed of or passed on or distributed irregularly, or</li> <li>– the refund claimed fraudulently,</li> </ul> <p><b>whichever is higher.</b></p>
122(2)	Supplies on which tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised:	
	(a) For any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax	<p>⇒ ₹ 10,000; or</p> <p>⇒ 10% of the tax due from such person,</p> <p><b>whichever is higher.</b></p>
	(b) For reason of fraud or any wilful misstatement or suppression of facts to evade tax	<p>⇒ ₹ 10,000; or</p> <p>⇒ 100% of the tax due from such person,</p> <p><b>whichever is higher.</b></p>

122(3)	<b>Any person other than taxable person:</b> <ul style="list-style-type: none"> <li>➤ Aids or abets offences specified u/s 122(1)</li> <li>➤ Acquire possession/ concerns in dealing goods which he knows or reason to believe are in contravention such as transport, remove, keeps, conceals, supply or purchase.</li> <li>➤ Receives/deals with supply of services which he knows or reasons to believe are liable to contravention of Act/Rules</li> <li>➤ Fails to appear when summon is issued to give evidence/ produce a document</li> <li>➤ Fails to issue invoice or account for in accordance with provisions.</li> </ul>	Amount which may extend to ₹ 25,000.
123	<b>Failure to furnish information return:</b> Failure to furnish information return within the period as specified in notice	₹ 100 for each day of the period during which the failure to furnish information return continues subject to maximum of ₹ 5,000.
124	<b>Fine for failure to furnish statistics :</b> Fails to furnish statistics without reasonable cause/ willfully furnishes or causes to furnish false information	⇒ ₹ 10,000 ⇒ In continuing offence ₹ 100 per day subject to maximum of ₹ 25,000.
125	<b>General penalty:</b> Contravention for which no penalty is separately provided	Amount which may extend to ₹ 25,000.

(2) **General disciplines related to penalty [Section 126]:**

- (a) Penalty shall not to be imposed for minor breaches or omission or mistake in documentation made without fraudulent intent or gross negligence. A breach shall be considered a '**minor breach**' if the amount of tax involved is **less than ₹ 5,000**. An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
- (b) Penalty imposed shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach. No penalty shall be imposed on any person without giving him an opportunity of being heard. Penalty order must clearly specify the nature of breach.  
Voluntary disclosure to be a mitigating factor when quantifying a penalty except in cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

- (3) **Power to waive penalty or fee or both [Section 128] :** The Government may, by notification, waive in part or full, any penalty referred to in Section 122 or Section 123 or Section 125 or any late fee referred to in Section 47 for –
- such class of taxpayers, and
  - under such mitigating circumstances as may be specified therein,
- on the recommendations of the Council.

**DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT**(4) **Detention, seizure and release of goods and conveyances in transit [Section 129] :**

- (i) Where any person transports any goods, or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made there-under, then all such goods, and conveyance used as a means of transport for carrying the said goods, and documents relating to such goods and conveyance, shall be liable to detention or seizure.

The detained or seized goods or conveyance shall be released :

(a) **Where the owner of the goods comes forward for payment of tax and penalty :**

- On payment of the applicable tax and **penalty equal to 100%** of the tax payable on such goods, and
- **in case of exempted goods**, on payment of—
  - (i) an amount **equal to 2%** of the value of goods, or
  - (ii) ₹ 25,000,**whichever is less.**

(b) Where owner does not come forward for payment of such tax and penalty :

- On payment of the applicable tax and penalty equal to the 50% of the value of the goods reduced by the tax amount paid thereon, and
- in case of exempted goods, on payment of –
  - (i) an amount equal to 5% of the value of goods, or
  - (ii) ₹ 25,000,
 whichever is less.

(c) **Furnishing a security:** Upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed.

**Service of order of detention or seizure – Mandatory :** However, no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

- (ii) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and after giving the concerned person opportunity of being heard, pass an order for payment of tax and penalty under this Section.
- (iii) On payment of above amount, all proceedings in respect of the notice shall be deemed to be concluded.
- (iv) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in Section 129(1) within 14 days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of Section 130.

Circular No. 76/50/2018 GST dated 31-12-2018	
Issue	Clarification
Who will be considered as the owner of the goods for the purposes of section 129(1) of the CGST Act?	It has been clarified that if the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner. If the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of goods.

**CONFISCATION OF GOODS OR CONVEYANCES  
AND LEVY OF PENALTY**

(5) **Confiscation of goods or conveyances and levy of penalty [Section 130] :**

(a) **Specified Contraventions :** If any person—

- (i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made there-under with intent to evade payment of tax; or
- (ii) does not account for any goods on which he is liable to pay tax under this Act; or
- (iii) supplies any goods liable to tax under this Act without having applied for registration; or
- (iv) contravenes any of the provisions of this Act or the rules made there-under with intent to evade payment of tax; or
- (v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made there-under unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, **all such goods or conveyances shall be liable to confiscation** and the person shall be liable to penalty under section 122.

(b) **Redemption fine :** Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit.

**Maximum amount of Redemption fine :** Such fine leviable shall not exceed the **market value of the goods confiscated, less the tax chargeable thereon.**

The aggregate amount of fine and penalty – Cannot be less than penalty under section 129(1).

Redemption fine option **equal to tax payable** on the goods being transported can be given in case of conveyance used for the carriage of the goods or passengers for hire.

(c) **Tax, penalty and other charges also payable :** Where any fine in lieu of confiscation of goods or conveyance is imposed u/s 130(2), the owner of such goods or conveyance or the person referred to in Section 130(1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.



- (d) The concerned person will be given an opportunity of being heard before passing confiscation order and on confiscation the title of goods and conveyance vests in Government. The award of confiscation will not interfere with the other punishments.

### OFFENCES AND PROSECUTION

**(6) Punishment for certain offences [Section 132] :**

(i) **Type of Offences:** As per Section 132(1), whoever commits any of the following offences, shall be liable to punishment:-

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b);
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due;
- (e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

(ii) **Punishment :** The punishment for the above offences is as under,-

Offence Involving -	Amount Involved (in ₹)	Punishment <i>(Imprisonment minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court and extending to -)</i>
Tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken	Exceeds ₹ 500 lakh	5 Years and with fine
	Exceeds ₹ 200 lakhs but does not exceed ₹ 500 lakh	3 Years and with fine
	Exceeds ₹ 100 lakh but does not exceed ₹ 200 lakh	1 Years and with fine
Commits or abets in - ➤ Falsification or substitution of financial records or producing fake accounts, documents or furnishes any false information with an intention to evade payment of tax;		6 months or with fine or with both

<ul style="list-style-type: none"> <li>➤ Obstruction or prevention any officer in the discharge of his duties</li> <li>➤ Tampering with or destroying any material evidence or documents;</li> </ul>		
For second and every subsequent offence under Section 132	No limit	5 Years and with fine

- (iii) **In case of second and subsequent offence [Section 132(2)/(3)] :** If any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to 5 years and with fine. However, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than 6 months.
- (iv) **Sanction of Commissioner [Section 132(6)]:** A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.  
"Tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the SGST Act, the IGST Act or the UTGST Act and cess levied under the GST(Compensation to States) Act. *[Explanation]*
- (7) **Liability of officers and certain other persons [Section 133] :**
- (a) **Wilful disclosure of any information or the contents of any return [Section 133(1)] :** Where—
- any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof, or
  - if any officer of central tax having access to information specified under section 150(1), or
  - if any person engaged in connection with the provision of service on the common portal or the agent of common portal,
- wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than—
- in execution of his duties under the said sections or
  - for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force,
- he shall be punishable with—
- imprisonment for a term which may extend to 6 months, or
  - with fine which may extend to ₹ 25,000, or
  - with both.
- (b) **Previous sanction [Section 133(2)] :** Any person—
- (i) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;
  - (ii) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.
- (8) **Cognizance of offences [Section 134] :** No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.
- (9) **Presumption of culpable mental state [Section 135] :**
- (a) "Culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.
- (b) **Presumption of criminal or guilty mind unless otherwise proved :** In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.  
A fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.
- (10) **Relevancy of statements under certain circumstances [Section 136] :** Statement made and signed by a person on appearance in response to any summons issued under section 70 shall be valid in prosecution proceedings when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out

of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

- (11) **Offences by companies [Section 137]** : Where an offence committed by a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Where it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary, or other officer of the company, they shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Offences by LLP/Firm/HUF/Trust** : Partner or karta or managing trustee shall be liable to be proceeded against and punished accordingly.

### COMPOUNDING OF OFFENCES

- (12) **Compounding of offences [Section 138]** :

- (i) **Compounding of offences by the Commissioner [Section 138(1)]** : Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed.

**Cases, where compounding is not possible** : Nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in Section 132(1)(a) to (f) and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any SGST Act or the UTGST Act or the IGST Act in respect of supplies of value **exceeding ₹ 1 crores**;
- (c) 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;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in Section 132(1)(g)/(j)/(k); and
- (f) any other class of persons or offences as may be prescribed.

**Compounding not to affect proceedings instituted under other law** : Any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law.

**Tax/Interest/Penalty to be paid before compounding** : Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- (ii) **Compounding amount [Section 138(2)]** : The amount for compounding of offences under this section shall be such as may be prescribed, subject to—

- (a) The **minimum limit** for compounding amount is to be the higher of the following amounts:

- 50% of tax involved, or
- ₹ 10,000.

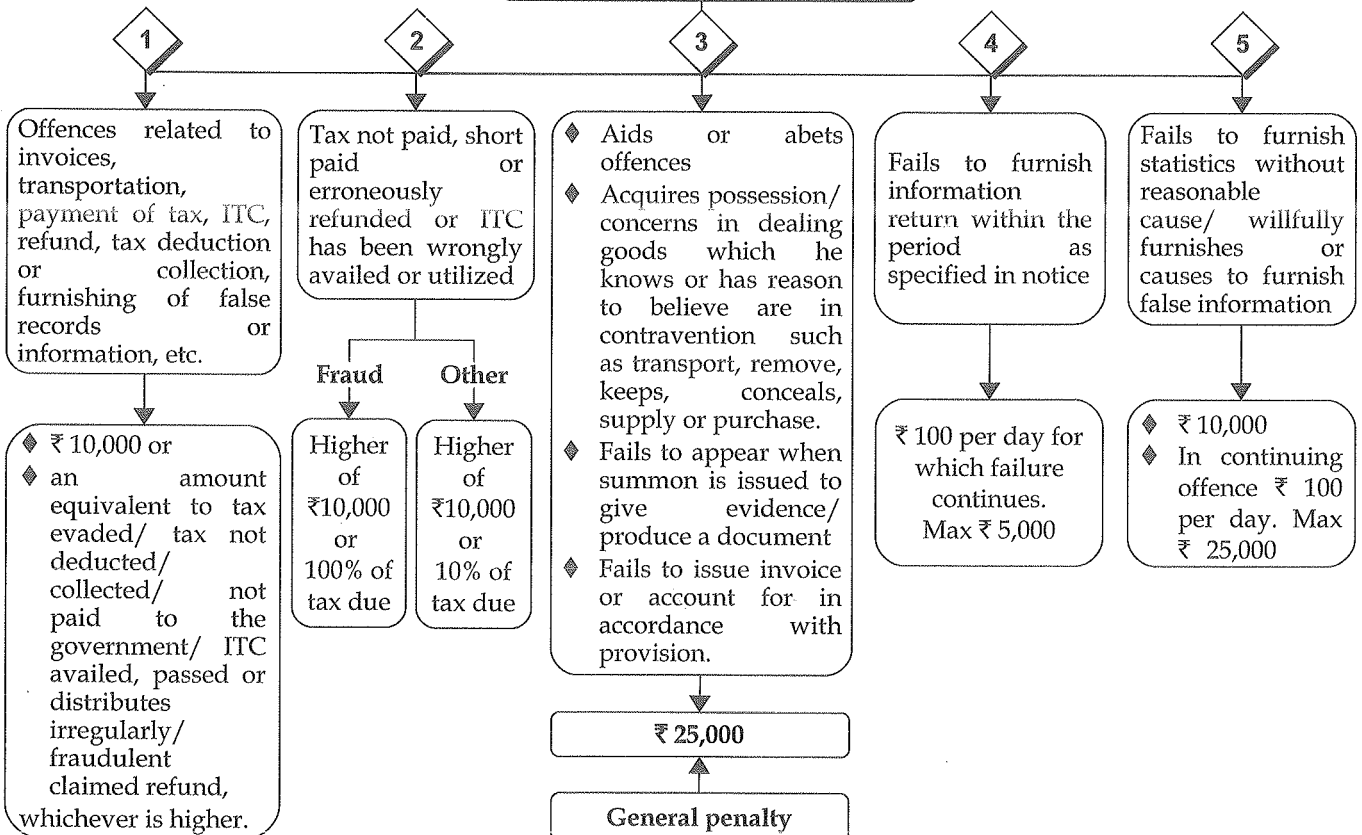
- (b) The **upper limit** for compounding amount is to be higher of the following amounts:

- 150% of tax involved, or
- ₹ 30,000.

- (iii) **Abatement of proceedings and non initiation of criminal proceedings [Section 138(3)]** : On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

The provisions relating to offences and penalties have been summarised by way of a diagram to help students remember and retain the provisions in a better and effective manner:

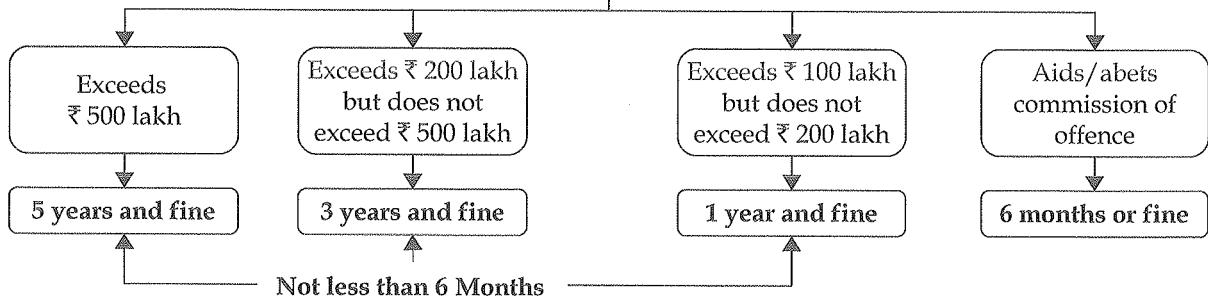
**OFFENCES & PENALTIES**



**General penalty**

**Prosecution**

**Amount of tax evaded/ ITC wrongly availed or utilised/ refund wrongly taken**



**Note :** Irrespective of amount involved on 2<sup>nd</sup> Conviction imprisonment will extend to 5 year and fine with minimum 6 months.

**ADDITIONAL PRACTICE QUESTIONS**

**Illustration 1 – Penalty provisions :** Mangeshwar, registered under the CGST Act, 2017 has made a breach in payment of tax amounting to ₹ 6,100. Assessing authority has imposed a penalty as per law applicable to the breach. Invoking the provisions of Section 126, Mangeshwar argues that it is a minor breach and therefore no penalty is imposable. In another instance, Mangeshwar has omitted certain details in documentation that is not easily rectifiable. This has occurred due to the gross negligence of his accountant and he makes a plea that he was unaware of it and therefore no penalty should be levied.

Mangeshwar voluntarily writes accepting a major procedural lapse from his side and requests the officer to condone the lapse as the loss caused to the revenue was not significant.

Also a lapse on the part of Mangeshwar has no specific penalty provision under the CGST Act, 2017. He is very confident that no penalty should be levied without a specific provision under the Act.

Discuss, what action may be taken by the Assessing Authority under law for each of the above breaches. (4 Marks, May 2018)

**Solution:** As per provisions of Section 126(1), no penalty shall be imposed by any officer under this Act for –

- (i) minor breaches of tax regulations, or
- (ii) procedural requirements of the law, or
- (iii) any omission or mistake in documentation which is easily rectifiable.

As per Explanation to Section 126(1),–

- (i) a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000;
- (ii) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

Since Mangeshwar has made a breach in payment of tax amounting to ₹ 6,100, such breach cannot be considered as minor breach.

Similarly, as Mangeshwar has omitted certain details in documentation that is not easily rectifiable, the same cannot be said to be omission or mistake in documentation which is easily rectifiable.

As per Section 125, Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to ₹25,000. Thus, Mangeshwar can be liable to penalty of ₹ 25,000.

As per Section Section 126(5), when a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person. Since Mangeshwar has voluntarily accepted a major procedural lapse from his side and has requested the officer to condone the lapse as the loss caused to the revenue was not significant, the proper officer can reduce the penalty leviable on Mangeshwar.

**T.Q. 1:** What are the various type of offences which may be committed by a taxable person liable to penalty?

**Ans:** There are 21 offences which may be committed by a taxable person and may be classified into following categories based upon their nature:

**Offences having nexus with invoice:**

- (i) Issue of invoice or bill without making supply;
- (ii) Issuing invoice or document using GSTIN of another person;
- (iii) Making a supply without invoice or with false/ incorrect invoice; Offences having nexus with payment of tax;
- (iv) Not paying any amount collected as tax for a period exceeding three months;
- (v) Not paying tax collected in contravention of the CGST/SGST Act for a period exceeding 3 months;
- (vi) Non deduction or lower deduction of tax deducted at source or not depositing tax deducted at source under section 51;
- (vii) Non collection or lower collection of or non- payment of tax collectible at source under section 52;
- (viii) Availing/ utilizing input tax credit without actual receipt of goods and/or services;
- (ix) Availing/ distributing ITC by an Input Service Distributor in violation of Section 20;
- (x) Fraudulently obtains any refund of tax;
- (xi) Suppressing turnover;

**Offences having nexus with Records and related information :**

- (xii) Falsification/substitution of financial records or furnishing of fake accounts/ documents or Furnishing false information/return with intent to evade payment of tax;
- (xiii) Failure to maintain accounts/documents in the manner specified in the Act or failure to retain accounts/documents for the period specified in the Act;
- (xiv) Failure to furnish information/ documents required by an officer in terms of the Act/Rules or furnishing false information/ documents during the course of any proceeding;
- (xv) Tampering/ destroying any material evidence/ documents;
- (xvi) Obstructing or preventing any official in discharge of his duty;

**Offences having nexus with Registration :**

- (xvii) Failure to register despite being liable to pay tax;
- (xviii) Furnishing false information regarding registration particulars either at the time of applying for registration or subsequently;

**Offences having nexus with Supply/Transport of goods :**

- (xix) Transporting goods without prescribed documents;
- (xx) Supplying/transporting/storing any goods liable to confiscation;
- (xxi) Disposing of /tampering with goods detained/ seized/attached under the Act.

**Illustration 2 – Penalty u/s 122 :** Answer the following questions:

- (1) Shagun started supply of goods in Vasai, Maharashtra from 01-01-2020. Her turnover exceeded ₹ 40 lakh on 25-01-2020. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Shagun on 31-03-2020, if the tax evaded by her, as on said date, on account of failure to obtain registration is ₹ 1,26,000.
- (2) Sagar, managing director of Telecom Solutions Ltd., is issued a summon to appear before the central tax officer to produce the books of accounts of Telecom Solutions Ltd. in an inquiry conducted on said company. Determine the amount of penalty, if any, that may be imposed on Sagar, if he fails to appear before the central tax officer. (RTP May, 2018)

**Solution:**

- (1) **Penalty for failure to obtain registration :** Where the aggregate turnover of a supplier making supplies from a State/UT exceeds ₹ 40 lakh in a financial year, he is liable to be registered in the said State/UT. The said supplier must apply for registration **within 30 days** from the date on which he becomes liable to registration. However, in the given case, although Shagun became liable to registration on 25-01-2020, she didn't apply for registration within 30 days of becoming liable to registration.

Section 122(1)(xi) of the CGST Act, 2017 stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

- (a) ₹ 10,000, or
- (b) an amount equivalent to the tax evaded [₹ 1,26,000 in the given case], whichever is higher.

Thus, the amount of penalty that can be imposed on Shagun is ₹ 1,26,000.

- (2) **Penalty for non-compliance of summon :** Section 122(3)(d) of the CGST Act, 2017 stipulates that any person who fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry is liable to a penalty which may extend to ₹ 25,000. Therefore, penalty upto ₹ 25,000 can be imposed on Sagar, in the given case.

**T.Q. 2 :** What is the quantum of penalty for an offence mentioned under section 122(1)?

**Ans:** Any taxable person who has committed any of the offences mentioned under section 122(1), shall be liable to a penalty which shall be higher of the following amounts:

- (a) ₹ 10,000; or
- (b) An amount equivalent to, any of the following (Applicable as the case may be) –
  - (i) Tax evaded; or
  - (ii) Tax not deducted under section 51 or short deducted or deducted but not paid to the Government; or
  - (iii) Tax not collected under section 52 or short collected or collected but not paid to the Government; or
  - (iv) Input tax credit availed of or passed on or distributed irregularly; or
  - (v) Refund claimed fraudulently.

However, Section 122(2) provides that if a registered person supplying goods or services has not paid any tax or short paid it or tax has been erroneously refunded to him, or ITC has been wrongly availed or utilized, for any reason other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, penalty shall be leviable for an amount higher of following:

- (a) ₹ 10,000 ; or
- (b) 10% of the tax due from such person,

and in case of fraud, or any willful misstatement or suppression of facts to evade tax, penalty shall be equal to ₹ 10,000 or the tax due from such person, whichever is higher.

**T.Q. 3 :** Is there any penalty prescribed for a person other than the taxable person?



**Ans:** Yes, Section 122(3) provides for levy of penalty extending to ₹ 25,000/- for any person who –

- aids or abets any of the offences specified under section 122(1),
- deals in any way (whether receiving, supplying, storing or transporting) with goods that are liable to confiscation,
- receives or deals with supply of services in contravention of the Act,
- fails to appear before an authority who has issued a summon,
- fails to issue any invoice for a supply or account for any invoice in his books of accounts.

**T.Q. 4:** Mr. X, an unregistered person under GST purchases the goods supplied by Mr. Y who is a registered person without receiving a tax invoice from Mr. Y and thus helps in tax evasion by Mr. Y. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom?

**Ans:** Both Mr. X and Mr. Y will be offender and will be liable to penalty as under :

- Mr. X – Penalty u/s 122(3) which may extend to ₹ 25,000 ;
- Mr. Y – Penalty u/s 122(1), which will be higher of following, namely :- ₹ 10,000 ; or 100% of tax evaded.

**T.Q. 5:** A disciplinary action is taken against Mr. X and an adhoc penalty of ₹ 20,000 is imposed by issue of SCN without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed. Should Mr. X proceed to pay for penalty or challenge SCN issued by department?

**Ans:** The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. Accordingly –

- no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
- the nature of the breach is to be specified clearly in the order imposing the penalty,
- the provisions of the law under which the penalty has been imposed is to be specified.

Since SCN issued to Mr. X suffers from lack of clarity about nature of breach which has taken place and about provision of law under which penalty has been imposed, SCN issued by department may be challenged.

**T.Q. 6:** Mr. X has collected tax on supply of goods and services and did not remit the same within 3 months to the Government. Does the same attract penalty? If yes what is the amount of penalty?

**Ans:** Collection of tax and non-remittance of the same within 3 months to the Government from the due date for remittance is considered to be an offence under Section 122(1)(iii) of the CGST Act, 2017 attracting penalty of **an amount equal to the tax so collected or an ₹ 10,000/- whichever is higher.**

**T.Q. 7:** Whether action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books? If yes, explain the related provisions under the CGST Act, 2017.

**Ans:** Yes, action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books. If any person transports any goods or stores any such goods while in transit without the documents prescribed under the Act (*i.e.* invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him, then such goods shall be liable for detention along with any vehicle on which they are being transported [Section 129 of CGST Act].

**Where owner comes forward :** Such goods shall be released on payment of the **applicable tax and penalty equal to 100% of the tax payable** on such goods or upon furnishing of security equivalent to the said amount.

In case of exempted goods, penalty is **2% of value of goods or ₹ 25,000/- whichever is less.**

**Where owner does not come forward :** Such goods shall be released on payment of the **applicable tax and penalty equal to 50% of value of goods** reduced by the tax amount paid thereon or upon furnishing of security equivalent to the said amount.

In case of exempted goods, penalty is **5% of value of goods or ₹ 25,000/- whichever is lesser.**

**Illustration 3 – Computation of amount payable for release of detained goods :** From the following details, calculate the amount to be paid, for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty. Details are as follows :

Particulars	Amount (₹)
Value of Goods	30,00,000
Applicable GST on such goods	5,40,000

GST already paid on such goods 3,60,000

Would your answer be different, if goods were exempted from GST and value remains the same namely ₹ 30,00,000? (5 Marks, May 2018-NS)

**Solution:** Where owner does not come forward for payment of such tax and penalty, the goods shall be released :

- On payment of the applicable tax and penalty equal to the 50% of the value of the goods reduced by the tax amount paid thereon,  
= [(₹ 30,00,000 × 50%) - ₹ 3,60,000]  
= ₹ 1,140,000

In aggregate the tax and penalty must not exceed 50% of the value of goods under CGST Act, 2017 i.e. ₹ 15,00,000  
As per ICAI suggested answer the amount payable = [₹ 5,40,000 + 50% of ₹ 30,00,000] - ₹ 3,60,000 = ₹ 16,80,000 which exceeds 50% of the value of goods.

- in case of exempted goods, on payment of –
  - (a) an amount equal to 5% of the value of goods, or
  - (b) ₹ 25,000,
 whichever is less.  
= (₹ 30,00,000 × 5%) i.e. ₹ 15,00,000 or ₹ 25,000 whichever is less.  
= ₹ 25,000

**Illustration 4 – Computation of amount payable for release of detained goods :** XYZ carries goods from Vadodara to Pune valuing ₹ 80,000 which is chargeable to tax @ 18% IGST and in transit proper officer intercepted under Section 68 of CGST Act, and found contravention. Calculate the penalty payable under section 129 of CGST Act, 2017 :

- (i) If XYZ comes forward for payment of tax and penalty,
- (ii) If XYZ does not come forward for payment of tax and penalty. (4 Marks, May 2019-NS)

**Ans:** As per Section 129 of the CGST Act, 2017, the detained or seized goods or conveyance shall be released :

- (i) **Where the owner of the goods comes forward for payment of tax and penalty :** On payment of the applicable tax and penalty equal to 100% of the tax payable on such goods. Thus, in this case XYZ has to pay tax amounting to ₹ 14,400 [₹ 80,000 × 18%] and penalty equal to 100% of tax payable on such goods i.e. ₹ 14,400.
- (ii) **Where owner does not come forward for payment of such tax and penalty :** On payment of the applicable tax and penalty equal to the 100% of the value of the goods[ 50% under CGST and 50% under SGST/UTGST] reduced by the tax amount paid thereon. Thus, in this case XYZ has to pay tax amounting ₹ 14,400 and penalty of 100% of value of goods i.e. 100% of ₹ 80,000 = ₹ 80,000 as reduced by tax i.e. 14,400 = ₹ 65,600. In all he is required to pay ₹ 14,400 + ₹ 65,600 = ₹ 80,000.

**Illustration 5 – Punishment on prosecution :** Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period Dec., 2019 under CGST Act, 2017;

- (i) 'X' collects ₹ 245 lakh as tax from its clients and deposits ₹ 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.
- (ii) 'Y' collects ₹ 550 lakhs as tax from its clients but deposits only ₹ 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences ? What would be the position, if 'X' and 'Y' repeat the offences ?

It may be assumed that offences are proved in the court. (5 Marks, May 2018-NS)

**Solution:** The implications are as under –

Offence	Amount Involved (₹)	Punishment	Subsequent offence	Bailable/ Non-bailable
➤ Failure to pay any amount collected as tax beyond 3 months	4 lakhs	Not punishable Since, Punishable only if amount of tax evaded exceeds ₹ 100 lakhs.		Bailable and Non-cognizable
➤ Falsifying Financial records		Imprisonment upto 6 months or with fine or both (Minimum Imprisonment – 6 Months)	Imprisonment upto 5 years and with fine. (Minimum Imprisonment – 6 Months)	
Failure to pay any amount collected as tax beyond 3 months	520 lakh	Imprisonment upto 5 years and with fine. (Minimum Imprisonment – 6 Months)	Imprisonment upto 5 years and with fine. (Minimum Imprisonment – 6 Months)	Non-bailable and Cognizable

**Illustration 6 – Fine in lieu of confiscation :** From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on :

- (i) The goods liable for confiscation.
- (ii) On the conveyance used for carriage of such goods.

Details are as follows:

Cost of the goods for owner before GST	₹ 15,00,000
Market Value of Goods	₹ 20,00,000
GST on such goods	₹ 3,60,000

You are also required to explain relevant legal provisions in brief. (5 Marks, May 2018-NS)

**Ans:**

- (i) In case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is the market value of the goods confiscated, less the tax chargeable thereon.  
Therefore the Fine leviable = ₹ 20,00,000 – ₹ 3,60,000 = ₹ 16,40,000.
- (ii) In case of conveyance used for carriage of such goods and liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is equal to tax payable on the goods being transported thereon.  
Therefore, the Fine leviable = ₹ 3,60,000.

**T.Q. 8 :** Where an offence under the GST law is committed by a taxable person being a trust, who are deemed to be guilty of the offence and under what circumstances? When do the relevant provisions become inapplicable in respect of individuals concerned with the trust? (4 Marks, Nov. 2018-OS)

**Ans:** Section 137 of the CGST Act, 2017 stipulates that where an offence under the GST law is committed by a taxable person being a trust, the managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Further, where it is proved that the offence committed by the trust has been committed –

- with the consent or connivance of, or
- is attributable to any negligence on the part of any other individual concerned with the trust,

he shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The relevant provisions will become inapplicable in respect of individuals concerned with the trust, if they prove that the offence was committed without their knowledge or that they had exercised all due diligence to prevent the commission of such offence.

**Illustration 7 – Compounding limit :** Department initiated prosecution proceedings against a taxable person who had evaded GST of ₹ 4.2 crores. He has approached the Commissioner with a request for compounding the offence. After considering the request, the Commissioner has directed him to pay an amount of ₹ 2.5 crores as compounding amount. Indicate the minimum and maximum limits for compounding amount. Is the amount fixed by the Commissioner in this case within the limits prescribed under the law? What is the consequence of the decision of the commissioner allowing the request for compounding the offence? (4 Marks, Nov. 2018-OS)

**Solution:** Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed. Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- The minimum limit for compounding amount is to be the higher of the following amounts:
  - (i) 50% of tax involved, or
  - (ii) ₹ 10,000.
- The upper limit for compounding amount is to be higher of the following amounts:
  - (i) 150% of tax involved, or
  - (ii) ₹ 30,000.

Thus in this case the compounding amount can range from 50% of ₹ 4.2 crores i.e. ₹ 2.1 crores to 150% of ₹ 4.2 crores i.e. ₹ 6.3 crores. Thus, ₹ 2.5 crores compounding amount is within the permissible limit.

On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

## JOB WORK AND MISCELLANEOUS PROVISIONS

### SUMMARIZED POINTS FOR REVISION

#### PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES

**(1) Job work procedure [Section 143] :**

- (a) Inputs and Capital goods can be sent to job-worker without payment of tax. Principal can send inputs and capital goods directly to job workers premises without bringing them to his premises and can still avail the credit of tax paid on such inputs or capital goods.

However, he is required to bring back **inputs**, after completion of job work or otherwise, or **capital goods, other than moulds and dies, jigs and fixtures, or tools, within 1 year and 3 years**, respectively, of their being sent out, to any of his place of business, without payment of tax.

He can also supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, **within 1 year and 3 years**, respectively, of their being sent out from the place of business of a job worker -

- (i) on payment of tax within India, or
- (ii) with or without payment of tax for export, as the case may be.

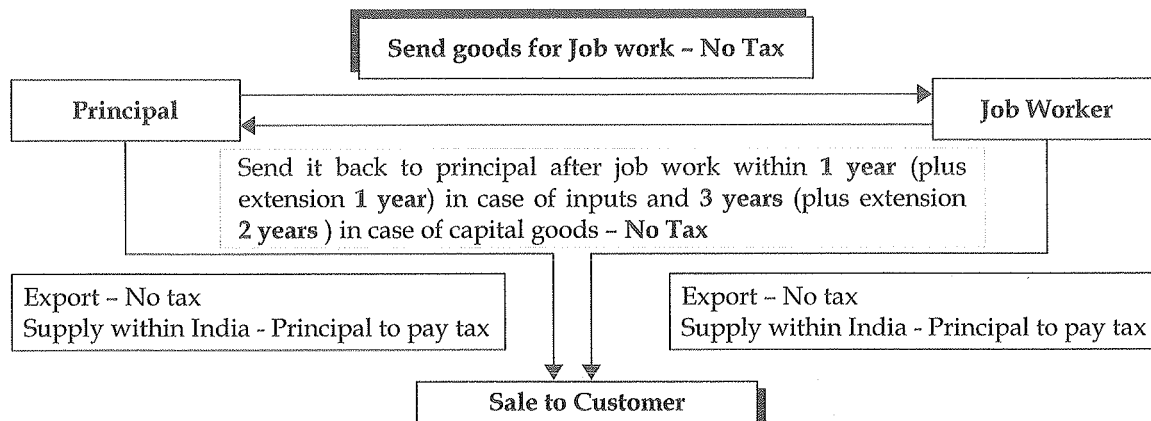
The period of 1 year and 3 years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and 2 years respectively.

Principal has to declare **job-workers place as additional place of business** if supply is to be made from such place. However, such declaration is not required by Principal where:—

- (i) where the job worker is registered under section 25; or
  - (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.
- (b) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the Principal.
- (c) If inputs/capital goods are not returned **within a period of 1 year/3 years (or extended period as allowed by the Commissioner)** of their being sent out to job workers premises, it shall be deemed to be supply of inputs/capital goods by the Principal.
- (d) 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.

**Input includes intermediate goods [Explanation] :** For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker. Such intermediate product can also be removed without the payment of tax. Therefore, both input and intermediate product can be cleared without payment of tax to job-worker.

The above can be explained diagrammatically below :



In the above chart the Job worker can directly sell the goods on behalf of principal provided that principal declares the job worker's premises as 'additional place of business' except where :

- Job worker is registered under section 25; or
- Principal is engaged in supply of notified goods.

- (2) **Presumption as to documents in certain cases [Section 144]** : Where any document is produced by any person/ seized from the custody or control of any person/has been received from any place outside India and such document is tendered by the prosecution in evidence against such person or any other person who is tried jointly with him, the court shall presume –
- the truth of the contents of such document, and
  - that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting, and
  - in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested.

The same will be admissible as evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

- (3) **Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence [Section 145]** : The Micro films, facsimile copies and computer printouts shall be deemed to be document and is admissible as evidence.

In any proceedings, where it is desired to give a statement in evidence, a certificate identifying the document containing the statement and describing the manner in which it was produced and giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer, shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

- (4) **Common Portal [Section 146]** : The Government may, on the recommendations of the Council, notify the **Common Goods and Services Tax Electronic Portal (www.gst.gov.in and "www.ewaybillgst.gov.in")** for –
- facilitating registration,
  - payment of tax,
  - furnishing of returns,
  - computation and settlement of integrated tax,
  - electronic way bill and
  - for carrying out such other functions and for such purposes as may be prescribed.

- (5) **Deemed exports [Section 147] (3 Marks, Nov. 2018-OS)** : The Government may notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

The Central Government *vide* **Notification No. 48/2017-CT dated 18-10-2017** has notified the following supplies as deemed exports under section 147 of the CGST Act, 2017 –

Description of supply	
1.	Supply of goods by a registered person against <b>Advance Authorisation</b> . However, goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply, No such certificate shall be required if input tax credit has not been availed on inputs used in manufacture of export goods.
2.	Supply of capital goods by a registered person against <b>Export Promotion Capital Goods Authorisation</b> .
3.	Supply of goods by a registered person to <b>Export Oriented Unit</b> .
4.	Supply of gold by a bank or Public Sector Undertaking specified in the Notification No. 50/2017-Customs, dated 30 <sup>th</sup> June, 2017 (as amended) against <b>Advance Authorisation</b> .

**GOODS AND SERVICES TAX COMPLIANCE RATING**

- (6) **Goods and services tax compliance rating [Section 149]** : GST compliance rating score to be assigned to registered person by the Government based on his record of compliance with the provisions of this Act. GST compliance rating score to be determined on basis of prescribed parameters. There will be periodic updation of GST compliance rating score and the same will be intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

**OBLIGATION TO FURNISH INFORMATION RETURN**

- (7) **Obligation to furnish information return [Section 150]** :
- (a) The specified person who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of –
- (i) transaction of goods or services or both, or
  - (ii) transactions related to a bank account or
  - (iii) transactions related to consumption of electricity, or
  - (iv) transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force.
- shall furnish an information return within such time, in such form and manner to such authority or agency as may be prescribed.
- (b) In case of **defective Information return**, notice of defect will be given to the concerned person to **rectify the defect within 30 days** or extended period and if defect not rectified it shall be deemed non submission of return.
- (c) If returns is not furnished within prescribed time limit, the prescribed authority may serve notice to furnish return **within a period not exceeding 90 days** from the date of service of the notice and such person shall furnish the information return.

**OTHER MISCELLANEOUS PROVISIONS**

- (8) **Power to collect statistics [Section 151]** : The Commissioner may by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act. Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.
- (9) **Bar on disclosure of information [Section 152]** : There is bar on publication and use of information of any individual return furnished under Section 150 /151 relating to a particular person and no such information shall be used for the purpose of any proceedings under this Act. Similarly there is bar on access to any information or any individual return referred to in Section 151. However, this bar is not applicable to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the **Commissioner**, it is desirable in the public interest to publish such information.
- (10) **Taking assistance from an expert [Section 153]** : Any officer **not below the rank of Assistant Commissioner** may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.
- (11) **Power to take samples [Section 154]** : The **Commissioner or an officer authorised by him** may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.
- (12) **Persons deemed to be public servants [Section 156]** : All persons discharging functions under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.
- (13) **Disclosure of information by a public servant [Section 158]** :
- (i) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act



(other than proceedings before a criminal court), or in any record of any proceedings under this Act, save as provided in Section 158(3), shall not be disclosed.

- (ii) No court shall require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in Section 158(1).
- (iii) Nothing contained in this section shall apply to the disclosure of information -
- (a) For prosecution.
  - (b) For carrying out the objects of the Act.
  - (c) For service of notice or recovery of demand.
  - (d) For furnishing to Court in a proceeding where Government is a party.
  - (e) For audit of tax receipts or refunds.
  - (f) For inquiry into the conduct of GST officer.
  - (g) For enabling levy/realisation of any tax or duty.
  - (h) By lawful exercise of powers.
  - (i) For inquiry into a charge of misconduct by any professional.
  - (j) For data entry on automated system.
  - (k) For any other law.
  - (l) In public interest.
- (14) **Publication of information in respect of persons in certain cases [Section 159] :** If the Commissioner or any authorised officer, 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 such name and particulars in such manner as it thinks fit.
- No publication shall be made in respect of penalty till disposal of appeal if the same has been filed or time limit for filing appeal has not expired. In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.
- (15) **Assessment proceedings, etc., not to be invalid on certain grounds [Section 160] :** Assessment, re-assessment, etc. shall not to be invalid merely on grounds of procedural infractions. The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.
- (16) **Rectification of errors apparent on the face of record [Section 161] :**

<b>Documents covered u/s 161</b>	⇒ Decision ⇒ Order ⇒ Any notice ⇒ Certificate ⇒ Any other document
<b>Rectifying Authority</b>	Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error which is apparent on the face of record in such documents.
<b>Type of mistakes or errors which can be rectified</b>	Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.
<b>When does the Authority rectify the mistakes/errors</b>	The authority may rectify the mistake/error: ⇒ suo moto ⇒ when such error or mistake is brought to its notice by a GST officer ⇒ when such error or mistake is brought to notice by the affected person <b>within a period of 3 months</b> from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

<b>Time limit for rectification</b>	<b>No rectification can be done after a period of 6 months</b> from the date of issue of such decision/order/notice/certificate/any other document. However, such <b>time limit does not apply</b> in cases where the rectification is purely in the nature of <b>correction of a clerical or arithmetical error or mistake</b> , arising from any accidental slip or omission.
<b>Hearing if rectification goes adverse to assessee</b>	Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.

- (17) **Power of Government to make rules [Section 164/ Section 22 of IGST Act, 2017] :**
- The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
  - The Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
  - The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
  - Any rules made may provide that a contravention thereof shall be liable to a penalty **not exceeding ₹ 10,000**.
- (18) **Power to make regulations [Section 165/ Section 23 of IGST Act, 2017] :** The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.
- (19) **Service of notice in certain circumstances [Section 169] :**
- Manner of service [Section 169(1)] :** Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—
    - giving or tendering;
    - by registered post or speed post or courier with acknowledgement due;
    - via e-mail;
    - At common portal;
    - Publication in newspaper;
    - Affixing at place of business etc.
  - Deemed service [Section 169(2)] :** Every decision, order, summons, notice or any communication shall be deemed to have been served **on the date on which it is tendered or published or a copy thereof is affixed** in the manner provided in Section 169(1).
  - Deemed service in case of registered post or speed post [Section 169(3)] :** When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.
- (20) **Rounding off of tax, etc. [Section 170] :** The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, **if such part is 50 paise or more, it shall be increased to ₹ 1 and if such part is less than 50 paise it shall be ignored.**

#### ANTI-PROFITEERING MEASURE

- (21) **Anti-profiteering measure [Section 171] :**
- 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.
  - The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
  - The Authority shall exercise such powers and discharge such functions as may be prescribed.

**National Anti-profiteering Authority :**

- (a) **Constitution :** National Anti-profiteering Authority is constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.

The National Anti-Profiteering Authority shall be a **5 member committee** consisting of a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under earlier laws.

The Authority shall cease to exist after the expiry of **4 years** from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise. [*Inserted vide Notification No. 33/2019-CI dated 18-07-2019*]

- (b) **Duties of the Authority (5 Marks, Nov. 2018-NS) :** It shall be the duty of the authority –
- (i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices
  - (ii) to identify the taxpayer who has not passed on the benefit
  - (iii) to order
    - reduction in prices
    - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest **at the rate of 18%** from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be. If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;
    - imposition of penalty
    - cancellation of registration
  - (iv) to furnish a performance report to the GST Council by the 10<sup>th</sup> of the month succeeding each quarter.

(c) **Process followed by the Authority :**

- (i) **Application to the Authority :** All applications from interested parties on issues of local nature shall first be examined by the State Level Screening Committee within a period of two months from the date of the receipt of a written application or **within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority.** [*Inserted by the CGST (Amendment) Rules, 2019, w.e.f. 28-6-2019*]

If the Standing Committee is satisfied that there is a *prima facie* evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation.

- (ii) **Investigation :** The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter).

The evidence or information presented to the Director General of Anti-profiteering by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005, shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.

The Director General of Anti-profiteering can seek opinion of any other agency or statutory authorities in the discharge of his duties. The **Director General of Anti-profiteering**, or an officer authorised by him will have the power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

The Director General of Anti-profiteering will complete the investigation within a period of **6 months** or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as allowed by the Standing Committee. Upon completion of the investigation, the Director General of Anti-profiteering will furnish to the Authority, a report of its findings along with the relevant records. [*Substituted for "three" by the CGST (Amendment) Rules, 2019, w.e.f. 28-6-2019*]

**Reference to DG Safeguards for further investigation :** If the report of the Director General of Anti-profiteering recommends that there is contravention or even non-contravention of the provisions of Section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Anti-profiteering to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.

- (d) **Order of the Authority [Rule 133 of CGST Rules, 2017] :** Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order—
- (i) reduction in prices;
  - (ii) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;
  - (iii) the deposit of an amount equivalent to 50% of the amount determined under the above clause **along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount** in the Fund constituted under section 57 and the remaining 50% of the amount in the Fund constituted under section 57 of the GST Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;
  - (iv) imposition of penalty as specified under the Act; and
  - (v) cancellation of registration under the Act.

**"Concerned State"** means the State in respect of which the Authority passes an order. **[Explanation]**

**The following are noteworthy in this regard :**

- Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount.
- The Authority will pass order **within 6 months** from the date of the receipt of the report from the Director General of Anti-profiteering.
- **The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted by him.**
- An opportunity of being heard will be given, if the interested parties request for it in writing.
- If the eligible person (*i.e.*, the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.
- **Where upon receipt of the report of the Director General of Anti-profiteering, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within 6 months, direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules. The investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.**

## IGST ACT, 2017 - OTHER PROVISIONS

### ADMINISTRATION, APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS

(22) **Apportionment of tax and settlement of funds [Section 17 of IGST Act, 2017] :**

- (i) **IGST equivalent to the CGST shall be apportioned to the Central Government [Section 17(1)] :** Out of the integrated tax paid to the Central Government,—
  - (a) **in respect of inter-State supply of goods or services** or both to an unregistered person or to a registered person paying tax under section 10 of CGST Act or where the registered person is not eligible for input tax credit or where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;

- (b) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of CGST Act or where the registered person is not eligible for input tax credit or where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,

the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.

- (ii) **Balance IGST equivalent to the SGST/ UTGST shall be apportioned to the State Government/ Union Territory [Section 17(2)]** : The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under section 17(1) shall be apportioned to the,-

(a) State where such supply takes place; and

(b) Central Government where such supply takes place in a Union territory.

**If place of such supply made by any taxable person cannot be determined separately** : Where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to,-

(a) each of the States; and

(b) Central Government in relation to Union territories,

in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year.

**Taxable person making such supplies is not identifiable** : Where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to -

(a) all States, and

(b) Central Government,

in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

The amount not apportioned under Section 17(1) and Section 17(2) may, for the time being, on the recommendations of the Council, be apportioned @ 50% to the Central Government and 50% to the State Governments or the Union territories, as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections.

- (iii) **Apportionment of interest, penalty and compounding amount [Section 17(3)]** : The above provisions *i.e.* Section 17(1) & (2) relating to apportionment of integrated tax shall, *mutatis mutandis*, apply to the apportionment of interest, penalty and compounding amount realised in connection with the tax so apportioned.

- (iv) **Transfer of taxes [Section 17(4)]** : Where an amount has been apportioned to the Central Government or a State Government as per above provisions,-

- (a) The Central Government shall transfer in such manner and within such time as may be prescribed -

Amount	Transfer to -
⇒ an amount equal to the amount so apportioned to the Central Government	Central tax account or Union territory tax account
⇒ an amount equal to the amount apportioned to that State,	State tax account of the respective States

- (b) The amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned.

- (v) **Refund of IGST to any person to be reduced from apportioned amount [Section 17(5)]** : Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

## APPLICATION OF PROVISIONS OF CGST ACT, 2017

(23) Application of provisions of Central Goods and Services Tax Act [Section 20 of IGST Act, 2017] : Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

- |   |  |
|---|--|
| ⇒ scope of supply;  | ⇒ composite supply and mixed supply;   |
| ⇒ time and value of supply;   | ⇒ input tax credit;                    |
| ⇒ registration;   | ⇒ tax invoice, credit and debit notes; |
| ⇒ accounts and records;   | ⇒ returns, other than late fee;        |
| ⇒ payment of tax;   | ⇒ tax deduction at source;             |
| ⇒ collection of tax at source;  | ⇒ Assessment;                          |
| ⇒ refunds;  | ⇒ Audit;                               |
| ⇒ inspection, search, seizure and arrest;   | ⇒ demands and recovery;                |
| ⇒ liability to pay in certain cases;  | ⇒ advance ruling;                      |
| ⇒ appeals and revision;   | ⇒ presumption as to documents;         |
| ⇒ offences and penalties;   | ⇒ job work;                            |
| ⇒ electronic commerce;  | ⇒ transitional provisions; and         |
| ⇒ miscellaneous provisions including the provisions relating to the imposition of interest and penalty, |  |

shall, *mutatis mutandis*, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act.

## Modifications of certain provisions of CGST Act, 2017 :

- (1) **TDS @ 2%** : In the case of tax deduction at source, the deductor shall deduct tax at the rate of 2% from the payment made or credited to the supplier.
- (2) **TCS @ 2%** : In the case of tax collection at source, the operator shall collect tax at such rate not exceeding 2%, as may be notified on the recommendations of the Council, of the net value of taxable supplies [TCS @ 1% has been notified *vide* Notification No. 02/2018-IT dated 20-09-2018]
- (3) **Value of supply to include Other Taxes** : The value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.
- (4) **IGST Penalty = CGST Penalty Plus SGST/ UTGST Penalty** : In cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.
- (5) **Ceiling limit of pre-deposit for filing Appeals** : Where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be ₹ 50 crore and ₹ 100 crore respectively.

## ADDITIONAL PRACTICE QUESTIONS

**Illustration 1 - Job work:** Alok Pvt. Ltd., a registered manufacturer, sent steel cabinets worth ₹ 50 lakh under a delivery challan to M/s. Prem Tools, a registered job worker, for work on 28-01-2019. The scope of job work included mounting the steel cabinets on a metal frame and sending the mounted panels back to Alok Pvt. Ltd. The metal frame is to be supplied by M/s. Prem Tools. M/s. Prem Tools has agreed to a consideration of ₹ 5 lakh for the entire mounting activity including the supply of metal frame. During the course of mounting activity, metal waste is generated which is sold by M/s. Prem Tools for ₹ 45,000. M/s. Prem Tools sent the steel cabinets mounted on the metal frame of Alok Pvt. Ltd. on 03-12-2019.

Assuming GST rate for metal frame as 28%, for metal waste as 12% and standard rate for services as 18%, you are required to compute the GST liability of M/s. Prem Tools. Also, give reasons(s) for inclusion or exclusion of the value of cabinets in the job charges for the purpose of payment of GST by M/s. Prem Tools. (MTP May, 2018)



**Solution: Job work – Deemed Supply of services – GST rate of services applicable :** As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

In the given case, M/s. Prem Tools (job worker) undertakes the process of mounting the steel cabinets of Alok Pvt. Ltd. (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act, the mounting activity classifies as service even though metal frames are also supplied as a part of the mounting activity. Accordingly, the job charges will be chargeable to rate of 18%, which is the applicable rate for services.

**Valuation of Job-work Services :** Further, the value of steel cabinets will not be included in the value of taxable supply made by M/s. Prem Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s. Prem Tools. M/s. Prem Tools is only required to mount the steel cabinets, which are to be supplied by Alok Pvt. Ltd., on metal frames, which are to be supplied by it.

**Sale of waste generated during job work – Liable to GST :** As regards sale of waste generated during the job work, since M/s. Prem Tools is registered, the tax leviable on the supply will have to be paid by it in terms of Section 143(5) of the CGST Act. Such supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

**Accordingly, the GST liability of M/s. Prem Tools will be computed as under (amount in ₹):**

Job charges		5,00,000
GST @ 18%	[A]	90,000
Sale of metal waste		45,000
GST @ 12%	[B]	5,400
<b>Total GST payable [A] + [B]</b>		<b>95,400</b>

**Illustration 2 – Job work - Different Issues :** Sudama Industries Ltd., registered in the State of Jammu & Kashmir, manufactures plastic pipes for other suppliers on job-work basis.

On 10-01-2020, Plasto Manufacturers (registered in the State of Himachal Pradesh) sent plastic worth ₹ 4 lakh and moulds worth ₹ 50,000, free of cost, to Sudama Industries Ltd. to make plastic pipes. Sudama Industries Ltd. also used its own material - a special type of lamination material for coating the pipes - worth ₹ 1 lakh in the manufacture of pipes. It raised an invoice of ₹ 2 lakh as job charges for making pipes and returned the manufactured pipes through challan to Plasto Manufacturers on 20-10-2020.

The same quality and quantity of plastic pipes, as was made for Plasto Manufacturers, were made by Sudama Industries Ltd. from its own raw material and sold to Solid Pipes (registered in Jammu and Kashmir) for ₹ 7.5 lakh on 20-10-2020.

Examine the scenario and offer your views on the following issues with reference to the provisions relating to job work under the GST laws:

- (i) Is there any difference between the manufacture of plastic pipes by Sudama Industries Ltd. for Plasto Manufacturers and for Solid Pipes?
- (ii) Whether Sudama Industries Ltd. can use its own material even when it is manufacturing the plastic pipes on job-work basis?
- (iii) Whether sending the plastic and moulds to Sudama Industries Ltd. by Plasto Manufacturers is a supply and a taxable invoice needs to be issued for the same?
- (iv) Whether Sudama Industries Ltd. should include the value of free of cost plastic supplied by Plasto Manufacturers in its job charges? [MTP May 2019]

**Solution:**

- (i) As per section 2(68) of the CGST Act, 2017, job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly. The registered person on whose goods (inputs or capital goods) job work is performed is called the principal. Thus, the job worker is expected to work on the goods sent by the principal.

Therefore, when the goods are manufactured by Sudama Industries Ltd. for Plasto Manufacturers, it is job work as the manufacturing process is undertaken on inputs (plastic and moulds) supplied by the principal (Plasto Manufacturers) and when goods are manufactured for Solid Pipes, it is manufacture on own account as the pipes are manufactured from company's own raw material. Further, manufacture on job work basis is a supply of service in terms of para 3 of Schedule II to the CGST Act, 2017 and manufacture of pipes on own account is a supply of goods.

- (ii) It has been clarified *vide* Circular No. 38/12/2018-GST dated 26-03-2018 that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.
- (iii) Section 143 of the CGST Act, 2017 provides that the registered principal may, without payment of tax, send inputs or capital goods to a job worker for job work. Subsequently, on completion of the job work, the principal shall either bring back the goods to his place of business or supply (including export) the same directly from the place of business/premises of the job worker within one year plus extended period of one year in case of inputs or within three years plus extended period of two years in case of capital goods (except moulds and dies, jigs and fixtures or tools). Thus, the provision relating to return of goods is not applicable in case of moulds, dies, jigs, fixtures and tools.

If above time frame is not adhered to, the activity of sending the goods for job work shall be deemed to be a supply by the principal on the day when the said inputs/ capital goods were sent out by him. Thus, essentially, sending goods for job work is not a supply as such, but it acquires the character of supply only when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/premises of the job worker within the specified period of being sent out.

Therefore, sending of plastic and moulds by Plasto Manufacturers to Sudama Industries Ltd. (job worker) is not supply as the manufactured pipes are received back within the stipulated time and the provisions relating to return of goods are not applicable in case of moulds.

Rule 45 of the CGST Rules provides that the inputs, semi-finished goods or capital goods being sent for job work shall be sent under the cover of a challan issued by the principal.

Therefore, Plasto Manufacturers need not issue a taxable invoice for sending the inputs to Sudama Industries Ltd. but should send the inputs under the cover of a challan.

- (iv) As per section 15(2)(b) of the CGST Act, any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both, is includible in the value of supply. However, Sudama Industries Ltd. should not include the value of free of cost plastic supplied by Plasto Manufacturers in its job charges as Sudama Industries Ltd. is manufacturing the plastic pipes on job work basis. The scope of supply of the Sudama Industries Ltd. is to manufacture plastic pipes from the raw material supplied by the Plasto Manufacturers. Thus, at no point of time was Sudama Industries Ltd. (supplier of job work service) liable to pay for the raw material and therefore, the value thereof should not be included in its job charges even though the same has been incurred by Plasto Manufacturers (recipient of job work service).

**CASE 1: Job work provisions :** Bedi Manufacturers, a registered person, instructs its supplier to send the capital goods directly to Rajesh Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 10-04-2019 and were received by the job worker on 15-04-2019. Rajesh Enterprises carried out the job work but did not return the capital goods to their Principal Bedi Manufacturers. Discuss whether Bedi manufactures are eligible to retain the input tax credit availed by them on the capital goods. What action under the GST Act is required to be taken by Bedi Manufacturers.

What would be your answer if in place of capital goods jigs and fixtures are supplied to the job worker and the same has not been returned to the Principal. (6 Marks, Nov. 2018-OS)

**Solution:** As per section 19(5) of the CGST Act, 2017, the principal is entitled to take input tax credit of capital goods sent for job work even if the said goods are directly sent to job worker.

Further, section 19(6) of the CGST Act, 2017 stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were received by the job worker.

However, there is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [Section 19(7) of the CGST Act, 2017.]

However, if Rajesh Enterprises does not return the jigs and fixtures to Bedi Manufacturers, it shall not be considered as a supply of jigs and fixtures to Rajesh Enterprises by Bedi Manufacturers. In this case also, Bedi Manufacturers will be eligible to retain the input tax credit availed by them.

**T.Q. 1:** Whether goods sent by a taxable person to a Job Worker will be treated as supply and liable to GST? If yes, why?

**Ans:** It shall be regarded as supply as since it includes all forms of supply such as sale, transfer, etc. and also includes cases where the conditions as specified in Section 143 of the CGST Act, 2017 are not met.

However, it shall not be regarded as supply if the conditions as specified in Section 143 of CGST Act, 2017 are satisfied. As the deeming provision contained in Section 143(3) to treat the goods sent by the principal to job worker as supply is applicable only when the condition of Section 143 with respect to receiving back the goods within the stipulated period is not satisfied.

**T.Q. 2:** Can a registered taxable person send goods without payment of tax to his Job Worker?

**Ans: Yes.** Section 143 of the CGST Act, 2017 provides that the registered taxable person (principal) can send any inputs or capital goods to a job-worker for job-work without payment of tax. He, further can, send the goods from one job-worker to another job-worker and so on subject to certain conditions.

It may be noted that provisions of Section 143 are not applicable if non-taxable or exempted goods are proposed to be sent for job-work.

**T.Q. 3:** If the conditions specified in Section 143 in respect of receiving back the inputs within stipulated time are not satisfied what is the implications in the hands of job worker?

**Ans:** In terms of Section 143(3), if the said inputs are not received back within the stipulated time, then it shall be deemed that the said inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.

Accordingly, such goods will become the inputs of the job-worker and he can avail the input credit of tax on the same if the principal issue a tax invoice and the same is declared in the return of the principal in terms of section 37 and by the job worker in terms of section 38 of the CGST Act, 2017. Further the value of such goods will be included in the computation of aggregate turnover of the principal.

**T.Q. 4:** What is the time period allowed to rectify the defect in information return filed under Section 150 of CGST Act, 2017. What will be the consequence if defect is not rectified.

**Ans:** As per Section 150(2) of the CGST Act, 2017, the defect in the information return filed **can be rectified within a period of 30 days** from the date of intimation of such defect to the person filing the return. The period of 30 days can be extended further by the prescribed authority on request. If the defect is not rectified within the said period of 30 days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

**T.Q. 5:** How shall the GST compliance rating score be determined?

**Ans:** As per Section 149, the GST compliance rating score may be determined based on registered persons record of compliance with the provisions of this Act on the basis of such parameters as may be prescribed.

**T.Q. 6:** When shall the power to collect statistics be exercised under GST laws?

**Ans:** As per section 151, if the Commissioner considers that collection of statistics is necessary for the purpose of better administration of the Act, he may direct that statistics be collected.

**T.Q. 7:** When shall the particulars relating to any proceedings or prosecution be published under GST laws?

**Ans:** As per provisions of Section 159 of the CGST Act, 2017, when the Commissioner/authorised officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars.

No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

**CASE 2: Rectification of mistake:** A show cause notice was issued demanding GST of ₹ 1,80,180 for the month of July, 2019 on 1<sup>st</sup> October, 2019. However, adjudicating authority after the personal hearing found that there was a typographical error while mentioning the amount of GST and he confirmed the demand for ₹ 10,80,180. Assessee seeks your advice.

What would be your advice if : (a) assessee comes to you after issue of order or (b) a corrigendum revising the amount to ₹ 10,80,180 on 15<sup>th</sup> November, 2019, is issued. (4 Marks, Nov. 2018-OS)

**Solution:** The relevant provisions are discussed as under :

- (i) **Advice after issue of order :** As per section 75(7) of the CGST Act, 2017, *inter alia*, the amount of tax, interest and penalty demanded in the order cannot exceed the amount specified in the notice. Since, in the given case, the amount of tax demanded in the order exceeds the amount of tax demanded in the show cause notice, the assessee can file an appeal against the adjudication order within the prescribed time limit.
- (ii) **Advice after issue of corrigendum :** Any authority, who has issued, *inter alia*, any notice, may rectify any error which is apparent on the face of record in such notice, *inter alia*, on its own motion within a period of 6 months from the date of issue of such notice except where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission [Section 161 of the CGST Act, 2017].

In the given case, since the corrigendum has been issued to rectify a typographical error in the show cause notice, which is an error apparent on the face of the record, the rectification is correct in law. Further, being rectification of a clerical error, the time limit of 6 months will not apply.

Therefore, the assessee should reply to the show cause notice considering the revised amount of demand.

**T.Q. 8 :** Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?

**Ans:** Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may **rectify any error which is apparent on the face of record** in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person **within a period of 3 months** from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be done **after a period of 6 months** from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission. Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

**T.Q. 9 :** What are the various modes of service of notice under Section 169 of CGST Act, 2017.

**Ans:** As per Section 169(1) of CGST Act, 2017, a notice, decision, order, summons, or any other communication can be served by any one of the following methods :

- (a) **Giving/ tendering directly :** By giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- (b) **Registered post/ speed post/ courier :** By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- (c) **Email:** By sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- (d) **At common portal :** By making it available on the common portal; or
- (e) **Publication in newspaper :** By publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- (f) **Affixing at place of business etc. :** If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

**T.Q. 10 :** What is Anti-profiteering measure?

**Ans:** As per Section 171 of the CGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. National Anti-profiteering Authority may examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.



<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>   <b>AADHYA'S</b> edu.com   http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> You Tube Subscribe to our Channel CA. Yogendra Bangar</p>	<p> Online MCQ's</p> <p><b>Computer / EduApplet App</b></p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p></p> <p><b>SUBJECTIVE Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
--	--	--	---

***SECTION : B***

***CUSTOMS***





## BASIC CONCEPTS

## SUMMARIZED POINTS FOR REVISION

## CONSTITUTIONAL PROVISIONS

## (1) Body of customs law:

- (a) The Customs Act, 1962 [It extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.
- (b) The Customs Tariff Act, 1975;
- (c) Rules;
- (d) Regulations;
- (e) Notifications.

## DEFINITIONS

## (2) Definitions [Section 2]:

Term	Definition
<b>Adjudicating Authority</b>	Means any authority competent to pass any order or decision under this Act, <b>but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.</b>
<b>Assessment</b>	Means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force, with reference to— <ul style="list-style-type: none"> <li>(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;</li> <li>(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;</li> <li>(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;</li> <li>(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;</li> <li>(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;</li> <li>(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,</li> </ul> and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil. [Section 2(2)]
<b>Baggage</b>	<b>Includes</b> unaccompanied baggage but does not include motor vehicles.
<b>Board</b>	Means the <b>Central Board of Indirect Taxes and Customs</b> constituted under the Central Boards of Revenue Act, 1963.
<b>Beneficial owner</b>	Means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported.
<b>Customs airport</b>	Means any airport appointed under section 7(a) to be a customs airport, <b>and includes</b> a place appointed under Section 7(aa) to be an air freight station.
<b>Customs area</b>	Means,— <ul style="list-style-type: none"> <li>(i) the area of a customs station or a warehouse; and</li> <li>(ii) includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.</li> </ul>

<b>Customs port</b>	Means any port appointed under section 7(a) to be a customs port and includes a place appointed under Section 7(aa) of that section to be an inland container depot.
<b>Customs station</b>	Means any customs port, customs airport, <b>international courier terminal, foreign post office</b> or land customs station.
<b>Entry</b>	In relation to goods means an entry made in,- (i) an entry made in a bill of entry, (ii) shipping bill or bill of export <b>and includes</b> the entry made under the regulations made u/s 84.
<b>Export goods</b>	Means any goods which are to be taken out of India to a place outside India.
<b>Exporter</b>	In relation to any goods at any time between their entry for export and the time when they are exported, includes <b>any owner, beneficial owner</b> or any person holding himself out to be the exporter.
<b>Foreign post office</b>	Means any post office appointed under section 7(1)(e) to be a foreign post office.
<b>Foreign-going vessel or aircraft</b>	Means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, <b>and includes</b> - (i) Any naval vessel of a foreign Government taking part in any naval exercises; (ii) Any vessel engaged in fishing or any other operations outside the territorial waters of India; (iii) Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.
<b>Goods</b>	<b>Includes</b> - (i) Vessels, Aircrafts and Vehicles; (ii) Stores; (iii) Baggage; (iv) Currency and negotiable instruments; and (v) Any other kind of movable property.
<b>Import</b>	With its grammatical variations and cognate expressions, <b>means</b> bringing into India from a place outside India.
<b>Arrival manifest or Import manifest or import report</b>	Means the manifest or report required to be delivered under section 30; [Section 2(24)]
<b>Imported goods</b>	Means any goods brought into India from a place outside India <b>but does not include</b> goods, which have been cleared for home consumption. The warehoused goods u/s 59 are imported goods until they are cleared for home consumption from warehouse.
<b>Importer</b>	In relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.
<b>India</b>	<b>Includes</b> the territorial waters of India. Territorial waters of India extends to 12 nautical miles.
<b>Indian customs waters</b>	Means the waters extending into the sea up to the limit of <b>Exclusive Economic Zone under section 7</b> of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river; <i>Analysis:</i> Indian customs waters cover both the Indian territorial waters and exclusive economic zone as well. Indian territorial waters extend up to 12 nautical miles (nm) from the base line Whereas, exclusive economic zone of India is an area beyond the Indian territorial waters. The limit of exclusive economic zone is 200 nautical miles from the nearest point of the baseline. Therefore, Indian customs waters extend to a total of 200 nm from base line.
<b>International courier terminal</b>	Means any place appointed under section 7(1)(f) to be an international courier terminal.
<b>Land customs station</b>	Means any place appointed under section 7(b) to be a land customs station.

<b>Market price</b>	In relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India.
<b>Notification</b>	Means notification published in the Official Gazette and the expression "notify" with its cognate meaning and grammatical variation shall be construed accordingly.
<b>Passenger name record information</b>	Means the records prepared by an operator of any aircraft or vessel or vehicle or his authorised agent for each journey booked by or on behalf of any passenger.
<b>Person-in-charge</b>	(i) in relation to vessel means the <b>master of the vessel</b> ; (ii) in relation to aircraft means the <b>commander or pilot-in-charge of the aircraft</b> ; (iii) in relation to railway train means the <b>conductor, guard or other person having chief direction of the train</b> ; (iv) in relation to any other conveyance means the <b>driver or other person-in-charge of the conveyance</b> .
<b>Prohibited goods</b>	Means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force <b>but does not include</b> any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.
<b>Proper officer</b>	In relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Commissioner of Customs.
<b>Stores</b>	Means goods for use in a vessel or aircraft, and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.
<b>Warehouse</b>	Means,- (a) a public warehouse licensed under section 57; or (b) a private warehouse licensed under section 58; or (c) a special warehouse licensed under section 58A.
<b>Warehoused goods</b>	Means goods deposited in a warehouse.

The distinction between Rules and Regulations is as under -

Rules	Regulations
(i) Power to make rules vests with <b>Central Government</b> .	Power to make regulations vests with <b>CBIC</b> .
(ii) Central Government has been empowered to make Rule under <b>section 156</b> .	CBIC has been empowered to make Regulations under <b>section 157</b> .
(iii) Rules must be consistent with the provisions of the Act.	Regulations must be consistent with the provisions of the Act as well as the rules.

(3) **Rates of custom Duty** : The basic customs duty are 5%, 7.5% and 10%. Highest rate of basic customs duty is 10% for non-agricultural items, with some exceptions. On baggage, the general rate of duty is 35% and no additional duty of customs is leviable on baggage.

(4) **Social Welfare Surcharge (SWS) on Imports** :

1.	<b>Social Welfare Surcharge (SWS)</b>	A social welfare surcharge has been imposed on <b>imported goods @ 10%</b> of total customs duties (excluding certain duties). Hence, <b>effective rate of BCD = 10%</b> general rate of basic customs duty (BCD) + SWS @ 10% of BCD = <b>11%</b>
2.	<b>No SWS on Export goods</b>	Export goods are not liable to social welfare surcharge.

**DUTIABLE GOODS, DATE FOR DETERMINATION OF DUTY AND TARIFF VALUATION IN CASE OF IMPORTED/ EXPORTED GOODS**

(5) **Dutiable goods [Section 12]** : The charging section provides the following,-

- (a) The levy of duty is on goods.
- (b) The goods must be imported into or exported from India.
- (c) The rate at which duty of customs is to be levied is specified in the Customs Tariff Act, 1975 or any other law for the time being in force.
- (d) Government goods shall be treated at par with the non-government goods for the purpose of levy of customs duty.
- (e) Such levy of duty is subject to the exception of the Act or any other law for the time being in force.

## (6) Date for determination of the rate of duty and tariff valuation :

Types of Goods	Section	Relevant date
<b>(a) In case of Imported Goods -</b>		
➤ Goods entered for home consumption u/s 46	15(1)(a)	The <b>date of Presentation of Bill of entry</b> or the <b>date of entry inwards</b> of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, <b>whichever is later.</b>
➤ Goods cleared from a warehouse u/s 68	15(1)(b)	The <b>date of presentation of the Ex-Bond Bill of Entry</b> for home consumption under that section.
➤ For any other goods	15(1)(c)	On the <b>date of payment of duty.</b>
<b>(b) In case of Export Goods -</b>		
➤ Goods entered for export under section 50	16(1)(a)	On the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under Section 51.
➤ For any other goods	16(1)(b)	On the date of payment of duty.

**Provisions of section 15 and 16 not to apply :** The provisions of section 15 and section 16 shall not apply to baggage and goods imported/exported by post.

**ASSESSMENT, PROVISIONAL ASSESSMENT AND  
DUTY LIABILITY OF GOODS IN SETS**

## (7) Assessment of duty [Section 17] :

- (a) Importer or exporter shall self assess the duty.
- (b) Verification of the entries made under section 46 or section 50 and the self-assessment of goods/ Examination/Testing of goods by proper officer to determine whether the self assessment is proper. Selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
- (c) Calling for information/ documents from importer/ exporter by the proper officer for verification of self assessment and such person shall produce such document or furnish such information.
- (d) Re-assessment of duty if the self-assessment is not done correctly by the importer or exporter.
- (e) Reassessment contrary to self-assessment - Proper officer to pass speaking order **within 15 days.**

## (8) Provisional assessment [Section 18] :

Provisional assessment can be made in the following circumstances:

- (a) where the importer or exporter is unable to make self-assessment under section 17(1) and makes a request in writing to the proper officer for assessment; or
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
- (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
- (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry.

Where, pursuant to the provisional assessment under Section 18(1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.

Provisional assessment is allowed both in respect of imports as well as exports.

Finalization of assessment shall be done by the proper officer and the importer shall be liable to pay differential duty along with interest @ **15% p.a.** or shall be entitled to refund along with interest @ **6% p.a.**

For this purpose **Customs (Finalisation of Provisional Assessment) Regulations, 2018** have been framed which have been made effective from 14-08-2018 wherein it is provided that :

- (i) One month will be allowed for importer/exporter to furnish the deficient information from the date of the provisional assessment order or as requested.

- (ii) Intimation for furnishing deficient information will be issued to the importer/exporter within 15 days from date of provisional assessment order.
- (iii) Extension not exceeding 3 months will be granted to the importer/ exporter for this purpose. Power to extend by a further 3 months is available with the Additional Commissioner or Joint Commissioner of Customs and with further powers with Commissioner of Customs.
- (iv) Upon receipt of the information, assessment is required to be finalized within 2 months from the date when the last of the information was furnished by the importer/exporter. Where documents are not furnished, provisional assessment is to be finalized within 2 months from the end of the time allowed for furnishing the information. This time period of 2 months may be extended by Commissioner of Customs by additional 3 months.
- (v) Assessment to be finalized as per section 18 and any shortfall in duty paid to be appropriated from the security collected.
- (vi) Bond executed at the time of order of provisional assessment may be cancelled on finalization of the assessment.
- (vii) Failure to adhere to these Regulations attracts penalty which may extend to ₹ 50,000 to importer/exporter and authorized person/ CH Broker.

(9) **Audit [Section 99A]** : The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.

"Auditee" means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods. *[Explanation]*

For this purpose **Customs Audit Regulations, 2018**, have been framed. The salient feature of the audit procedure are as follows:

- (i) Auditee is to preserve records for conduct of this audit for a period of 5 years.
- (ii) Risk based assessment will identify persons to be audited.
- (iii) Audit will be conducted at the premises of the auditee by the authorized officers who will intimate 15 days in advance of their schedule visit.
- (iv) Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable.
- (v) The proper officer shall complete audit in cases where it is conducted at the premises of the auditee **within 30 days** from the date of starting of the audit. However, the jurisdictional Commissioner of Customs may extend the period of completion of audit from **30 days to 60 days**, by an order in writing.
- (vi) Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/ Commissioner of Customs.
- (vii) Contravention of these Regulations attracts penalty which may extend to ₹ 50,000.

**Types of Audit-Transaction Based Audit (TBA) and Premise Based Audit (PBA) [Circular No. 02/2019-Cus dated 08-01-2019]**

<p><b>Under the new scheme, Transaction based audit (TBA) and Premises based audit (PBA) have been prescribed</b></p>	<ul style="list-style-type: none"> <li>➤ <b>TBA (audit of transactions)</b> : Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA).</li> <li>➤ <b>PBA (audit at the premises)</b> : The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of Premises Based Audit by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or Theme for the audit.</li> </ul>
<p><b>Selection criteria for audit</b></p>	<p>Directorate General of Analysis and Risk Management has been entrusted the responsibility of identifying the potential focus areas and entities for various types of audit.</p>



<b>Executive Commissionerates to assist Audit Commissionerates</b>	The executive Customs Commissionerates shall also assist Audit Commissionerates in the conduct of Theme based audit and Premises based audit. The Chief Commissioners shall put in place a suitable monitoring arrangement to review the progress and performance of audit. Apart from overall supervision, Chief Commissioner shall examine on a selective basis, 5% of the Audit reports, selected randomly based on the quarterly reports submitted by Audit Commissionerates to ensure that audit has been conducted as per prescribed procedures.
--	---

**(10) Determination of duty on sets of articles imported [Section 19] :**

- (a) articles liable to duty with reference to quantity shall be chargeable to that duty.
- (b) articles liable to duty with reference to value shall be chargeable to duty as under -
  - (i) if such articles are liable with the same rate of duty then duty shall be levied at that rate;
  - (ii) if the articles in the set are liable to duty at different rates then duty shall be calculated at the highest of those rates.
- (c) articles not liable to duty, then they shall also be chargeable to duty at the highest of the rates specified in (b) above.

**Assessment of accessories, etc. supplied with imported article** - shall be chargeable at the same rate of duty as that article, if the same are compulsorily supplied with that article and no separate charge is made for such supply, their price being included in the price of that article.

**REMISSION/ABATEMENT OF DUTY**
**(11) Duty on pilfered goods [Section 13] :** If any imported goods are pilfered **after the unloading** thereof but before the **proper officer has made an order for clearance** for home consumption or deposit in a warehouse the importer shall not be liable to pay the duty leviable on such goods **except where such goods are restored to the importer after pilferage.**

**Liability of duty in case of pilfered goods :** Custodian of cargo shall be liable at the rate prevailing on the date of delivery of an import manifest/report for the arrival of the conveyance in which the said goods were carried.

**(12) Abatement of duty on damaged or deteriorated goods [Section 22] :**

Where it is shown to the satisfaction of the AC/DC-

- (a) that any imported goods had been damaged or had deteriorated **at any time before or during the unloading** of the goods in India; or
  - (b) at any time **after the unloading** thereof in India but **before their examination under section 17**; or
  - (c) that any warehoused goods had been damaged **at any time before clearance for home consumption**,
- then, such goods shall be chargeable to duty determined in the following manner -

$$\text{Duty leviable on such damaged or deteriorated goods} = \frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{Value of the goods before damage or deterioration}} \times \text{Value of the damaged or deteriorated goods}$$

The value of such goods may be ascertained by the proper officer; or Such goods may be sold by proper officer by public auction or by tender or with consent of owner in any other manner and the gross sale proceeds shall be deemed to be the value of such goods.

**(13) Remission of Duty on Lost, Destroyed and Abandoned Goods [Section 23] :**

**Loss or destruction of goods** AC/DC is satisfied that any of the imported goods have been **lost (otherwise than as a result of pilferage) or destroyed**, at any time before clearance for home consumption, then he shall remit the duty on such goods;

**Abandonment or Relinquishment** of goods by importer before an order for clearance of goods for home consumption under section 47; or warehousing under section 60, he shall not be liable to pay the duty thereon. No relinquishment shall be allowed, if offence appears to have been committed in respect of such goods.

**(14) Goods derelict, wreck, etc. [Section 21] :** Goods derelict, wreck, etc. are liable to customs duty unless they are admitted duty-free under this Act.**(15) Power to make rules for denaturing or mutilation of goods [Section 24] :** The Central Government has power to make rules for denaturing or mutilation of goods and in such case, they are assessed as if the goods were imported in denatured or mutilated form.

(16) **Re-importation of goods [Section 20]** : Re-importation of goods liable to customs duty in the same manner as in case of normal imports.

Re-imports are entitled for following concessions as have been notified by the Government [Notification No. 158/95 and 45/2017-Cus.] :

	Case of re-import	Time-limit for re-import	BCD, IGST & GST Cess is exempt and following sum is payable -
1.	Goods manufactured in India and exported and re-imported in India for -		Duty is Fully Exempt, if -
	(i) Repairs or re-conditioning other than the specified goods	Within 3 years (10 years in case of Nepal and Bhutan)	➤ Such goods are re-exported within 6 months from date of re-import (extension upto 6 months allowed by Commissioner or Principal Commissioner); and
	(ii) Reprocessing/refining/re-making or other similar process	Within 1 year	➤ Assistant Commissioner is satisfied about identity of such goods.
2.	Goods re-imported without being subjected to re-manufacturing or reprocessing through melting, recycling or recasting abroad -	Within 3 years from date of export (2 year extension)	
	(A) If exported under following benefit-		
	(a) Claiming drawback/refund of customs or central excise or state excise, or, IGST;		Amount of drawback/refund of customs or central/state excise duty, or, IGST
	(b) Under bond without payment of IGST		Amount of IGST not paid
	(c) Under duty exemption scheme (DEEC/Advance Authorisation/DFIA) or Export Promotion Capital Goods Scheme (EPCG)	[Only for (c): in 1 year from export (1 year extension)]	Amount of IGST and GST compensation cess leviable at time and place of import
	(B) Re-import of any other Goods [not falling under 2(a) to 2(c)] exported for repairs abroad and there has been no change in ownership of the goods between the time of export of such goods and re-import thereof.		Value (for levy of duty) = Fair cost of repairs + Cost of materials used in repairs (such cost includible even if not actually incurred) + Insurance and freight charges both ways
	(C) Re-import of any other exported goods		Nil

Re-import of goods which had been earlier exported either for participation in exhibition or on consignment basis - such re-imports not liable to IGST since the activity does not amount to supply at the time of taking/ sending goods out of India. Goods sent to related or distinct persons or to principal or agent - returned after exhibition - not liable to integrated tax at the time of re-imports if such re-imports take place within 6 months from delivery challan. [Circular No. 21/2019 -Customs dated 24-07-2019]

(17) **Inward processing/ Outward processing of goods :**

	Inward processing of goods [Section 25A]	Outward processing of goods [Section 25B]
(1)	Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are - Imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon.	Re-imported after being exported for the purposes of repair, further processing or manufacture,
(2)	<b>Conditions for exemption :</b> The following conditions must be satisfied for the purpose of claiming exemption, namely:- (a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;	(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;

(b) the imported goods are identifiable in the export goods; and	(b) the exported goods are identifiable in the re-imported goods; and
(c) such other conditions as may be specified in that notification.	(c) such other conditions as may be specified in that notification.
It must be noted that the provisions of Section 25B has been given an overriding effect over provisions of Section 20.	

**CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017**

**(18) Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 :**

**(1) Application [Rule 2] :**

- (a) These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under section 25(1) of the Customs Act, 1962 and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service.
- (b) These rules shall apply only in respect of such exemption notifications which provide for the observance of these rules.

**(2) Information about intent to avail benefit of exemption notification [Rule 4] :** An importer who intends to avail the benefit of an exemption notification shall provide the information to the DC/AC having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, (herein after referred as Jurisdictional AC/DC) the particulars, namely:-

- (i) the name and address of the manufacturer;
- (ii) the goods produced at his manufacturing facility;
- (iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.

“Information” means the information provided by the manufacturer who intends to avail the benefit of an exemption notification.

**(3) Procedure to be followed [Rule 5] :**

- (i) **Information to be provided by Importer :** The importer who intends to avail the benefit of an exemption notification shall provide information -
  - (a) in duplicate, to the Jurisdictional AC/DC, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding 1 year; and
  - (b) in one set, to the DC/AC at the Custom Station of importation.
- (ii) **Submission of Continuity Bond :** The importer shall submit a continuity bond with such surety or security as deemed appropriate by the Jurisdiction DC/AC with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, @ 15% p.a. for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.
- (iii) **Jurisdiction AC/DC to send one copy to AC/DC at Customs Station :** The Jurisdictional DC/AC, shall forward one copy of information received from the importer to the DC/AC at the Custom Station of importation.
- (iv) **AC/DC at Customs Station to Allow Exemption :** On receipt of the copy of the information, the DC/AC at the Custom Station of importation shall allow the benefit of the exemption notification to the importer.

**(4) Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records [Rule 6] :**

- (i) **Information of receipt of goods in 2 working days to jurisdictional Custom Officer :** The importer shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within 2 days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

“Jurisdictional Custom Officer” means an officer of Customs of a rank equivalent to the rank of Superintendent or an Appraiser exercising jurisdiction over the premises where either the imported goods shall be put to use for manufacture or for rendering output services.

- (ii) **Maintenance of stock of imported goods** : The importer shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Jurisdictional DC/AC.
  - (iii) **Quarterly return by 10<sup>th</sup>** : The importer shall submit a quarterly return, in the prescribed form, to the Jurisdictional DC/AC, by the 10<sup>th</sup> day of the following quarter.
- (5) **Re-export or clearance of unutilised or defective goods [Rule 7]** :
- (i) **Re-export of goods within 6 months from date of import** : The importer may re-export the unutilised or defective imported goods, within 6 months from the date of import, with the permission of the Jurisdictional DC/AC.  
However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.
  - (ii) **Clearance of goods on payment of duty with interest** : The importer may also clear the unutilised or defective imported goods, with the permission of the jurisdictional DC/AC within a period of 6 months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.
- (6) **Recovery of duty in certain case [Rule 8]** : The importer shall—
- use the goods imported in accordance with the conditions mentioned in the concerned exemption notification, or
  - take action by reexport or clearance of unutilised or defective goods under rule 7, and
- in the event of any failure, Jurisdictional DC/AC shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest @ 15% p.a. for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

**PAST EXAMINATION QUESTIONS**

**TAXABLE EVENT AND DATE FOR DETERMINATION OF DUTY AND TARIFF VALUATION**

**Illustration 1 – Computation of cost of imported goods** : Mr. Rohan imported certain consignment valuing ₹ 3,50,000. The date of entry inwards of the vessel is 25-2-2020 on which date the rate of customs duty is 15%. Mr. Rohan filed Bill of Entry for home consumption on 4-3-2020, on which date the rate of customs duty has been reduced to 10%. Compute the amount of duty payable by Mr. Rohan, assuming that Social Welfare Surcharge is 10%. Also compute the total imported cost of the consignment.

**Solution:** As per Section 15(1)(a), the relevant date for determination of rate of duty and tariff valuation is **date of entry inwards** or **date of presentation of bill of entry** for home consumption, **whichever is later**. Hence, the relevant date is 4-3-2020 and the rate of duty on that date is 10% plus SWS @ 10% of BCD. (*amount in ₹*)

Assessable Value	3,50,000
<i>Add:</i> Basic Custom Duty (BCD) @ 10%	35,000
<i>Add:</i> Social welfare surcharge (SWS) @ 10% of BCD	3,500
<b>Total Imported Cost of consignment</b>	<b>3,88,500</b>
<b>Total Custom duty payable including SWS</b>	<b>38,500</b>

**Illustration 2 – Cost of imported goods** : What will be your answer in illustration above, if the date of entry inwards is 06-03-2020 and on that date an exemption notification was issued exempting goods from basic custom duty in excess of 5%.

**Solution:** In this case, since bill of entry is presented before the date of grant of entry inwards to such vessel. Hence, custom duty rate shall be applicable of the date of grant of entry inwards. The custom duty rate on date of grant of entry inwards is 5%. Hence, custom duty payable (including SWS) is 5.5% of ₹ 3,50,000 = ₹ 19,250. Total imported cost = ₹ 369,250.

**Illustration 3 – Computation of cost of imported goods :** An importer, imported consignment of goods, chargeable to duty @ 15% ad valorem. The vessel arrived on 31<sup>st</sup> May, 2019. A bill of entry for warehousing the goods was completed on 2<sup>nd</sup> June, 2019 and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15<sup>th</sup> October, 2019 reducing the effective customs duty to 10% ad valorem. Thereafter, the importer filed a bill of entry for home consumption on 20<sup>th</sup> October claiming 10% duty. The customs Department charged higher rate of duty @ 15% ad valorem. Give your view about the same, discussing the relevant provisions of the Customs Act, 1962.

**Solution:** According to section 15(1)(b) of the Customs Act, 1962 the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20-10-2019 (the date on which the bill of entry for home consumption is presented). Therefore, the relevant rate will be 10%.

**Illustration 4 – Computation of export duty :** Mr. Tapas has exported goods valuing ₹ 8,00,000 to UK by a vessel. He filed the shipping bill for export on 28-2-2020 (rate of duty 5%). The order permitting clearance and loading of the goods for exportation was made by the proper officer on 1-3-2020 (rate of duty 15%). The ship left for UK on 04-3-2020 (rate of duty 15%) and the ship crossed the territorial waters of India on 8-3-2020 (goods were made exempt from duty). Compute the amount of duty payable by Mr. Tapas.

**Solution:** As per section 16(1)(a), the relevant date for determination of rate of duty and tariff valuation in case of export goods is the date on which the proper officer makes an order for clearance and loading of the goods for exportation under section 51. Hence, relevant date, in this case, is 1-3-2020 and rate of duty is 15%.

Export duty payable by Mr. Tapas = ₹ 8,00,000 × 15% = ₹ 1,20,000. No SWS is levied on export goods.

**Illustration 5 – Computation of export duty :** Compute export duty from the following data:

- (i) FOB price of goods : US \$ 1,00,000.
- (ii) Shipping bill presented electronically on 26-02-2020.
- (iii) Proper officer passed order permitting clearance and loading of goods for export on 04-03-2020.
- (iv) Rate of exchange and rate of export duty are as under :

	Rate of Exchange	Rate of Export Duty
On 26-02-2020	1 US \$ = ₹ 68	10%
On 04-03-2020	1 US \$ = ₹ 70	8%

- (v) Rate of exchange is notified for export by Central Board of Indirect Taxes.

(Make suitable assumptions wherever required and show the workings.) (5 Marks, Nov. 2013)

**Solution:** Computation of export duty is as under –

FOB price of goods		US \$ 1,00,000
Rate of exchange and rate of export duty are as under	[WN-1]	1 US \$ = ₹ 68
FOB price of goods (In Indian Rupees)		68,00,000
Export duty rate	[WN-2]	8%
<b>Total Export duty payable (No SWS is leviable on export duty)</b>		<b>5,44,000</b>

**Working Notes:**

- (1) As per Section 14(1), the 'price' is to be calculated with reference to the rate of exchange as in force on the date on which a shipping bill or bill of export is presented under Section 50.
- (2) According to Section 16 of the Customs Act, 1962, the provisions relating to date for determination of rate of duty and tariff valuation of export goods in the case of goods entered for export under section 50, the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.

**Illustration 6 – Computation of export duty :** Pyramid Expo Ltd. has exported some goods by air. The FOB price of goods exported is US \$ 50,000. The shipping bill was presented electronically on 7-3-2020 and Let Export Order is passed by proper officer on 19-4-2020. The rate of exchange notified by CBIC on 7-3-2020 and 19-4-2020 are 1 US \$ = ₹ 65 and 1 US \$ = ₹ 64 respectively. Compute the export duty payable by Pyramid Expo with the help of following details provided.

Particulars	Date	Rate of duty
Presentation of shipping bill	07-03-2020	12%
Let Export Order	19-04-2020	10%

**Solution:** Computation of export duty is as under —

(4 Marks, Nov. 2017)

Assessable Value = Transaction value <i>i.e.</i> , FOB price of export goods		US \$ 50,000
Rate of exchange and rate of export duty are as under	[WN-1]	1 US \$ = ₹ 65
Assessable value = US \$ 50,000 × ₹ 65 <i>i.e.</i> FOB price of goods ( <i>In Indian Rupees</i> )		32,50,000
Export duty rate	[WN-2]	10%
Total Export duty payable ( <i>No SWS is leviable on export duty</i> )		3,25,000

**Working Notes:**

- As per Section 14(1), the 'price' is to be calculated with reference to the rate of exchange as in force on the date on which a shipping bill or bill of export is presented u/s 50.
- According to Section 16 of the Customs Act, 1962, the provisions relating to date for determination of rate of duty and tariff valuation of export goods in the case of goods entered for export u/s 50, the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation u/s 51.

**ASSESSMENT, PROVISIONAL ASSESSMENT, LIABILITY OF GOODS IMPORTED IN SETS**

**Illustration 7 – Computation of interest in case of provisional assessment u/s 18 :** Moris Lal has imported goods from Germany and is finally re-assessed u/s 18(2) of the Customs Act, 1962 for two such consignments. Particulars are as follows :

Date of provisional assessment	12 <sup>th</sup> December, 2019
Date of final re-assessment	2 <sup>nd</sup> February, 2020
Duty Demand for 1 <sup>st</sup> consignment	₹ 1,80,000
Refund for the 2 <sup>nd</sup> consignment	₹ 4,20,000
Date of refund made by the department	28 <sup>th</sup> April, 2020
Date of payment of duty demanded	5 <sup>th</sup> February, 2020

Determine the interest payable and receivable, if any, by Moris Lal on the final re-assessment of the two consignments, with suitable notes thereon. (4 Marks, May 2018)

**Solution:** As per provisions of Section 18 of the Customs Act, 1962, the importer shall be liable to pay interest, on any amount payable to Central Government, consequent to the final assessment order or reassessment order, at the @ 15% p.a. from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

If any amount refundable is not refunded within 3 months from the date of assessment of duty finally or reassessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount @ 6% p.a. till the date of refund of such amount.

Thus, the interest liability shall be calculated as under —

(amount in ₹)

Particulars	Interest Liability
Duty paid	1,80,000
Interest period starts from 1 <sup>st</sup> day of the month in which the duty is provisionally assessed	01-12-2019
Interest period ends on the date of payment of duty	05-02-2020
No. of days for which interest payable	67
Rate of interest notified u/s 28AA of the Customs Act, 1962	15%
Interest [₹ 1,80,000 × 15% × 67/366] [ <i>Since leap year</i> ]	4,943
<b>Total Sum paid (including interest)</b>	<b>1,84,943</b>

**Calculation of interest on refund :** The refund is to be paid within 3 months from finalization of provisional assessment. In this case since the assessment is finalized on 2<sup>nd</sup> February 2020, the refund is to be paid upto 2<sup>nd</sup> May, 2020. Since the refund is granted on 28<sup>th</sup> April, 2020, no interest will be paid on refund.

**Illustration 8 – Computation of interest in case of refund on provisional assessment u/s 18 :** Compute the amount of interest, if any, u/s 18 of the Customs Act, 1962 in the following case : Mr. X imported a consignment declaring a value of ₹ 10 lakhs by presenting a bill of entry on 8-4-2020, on which date the rate of duty was 10%. The proper officer decided to subject the goods to chemical examination and assessed the said consignment at a value of ₹ 15 lakhs and the provisional duty was paid accordingly on that date. Thereafter, on receipt of report of chemical examination, the said goods were finally valued at ₹ 12 lakhs on 25-5-2020 and the amount of refund was granted to Mr. V on 25-9-2020.



**Solution:** The interests, in the aforementioned cases, shall be arrived at as under –

The amount of duty refundable to Mr. X = (₹ 15 lakh – ₹ 12 lakh) × 11% (including SWS) = ₹ 33,000.

No. of days for which interest payable = Date after expiry of 3 months from the date of final assessment to the date of refund = 26-8-2020 to 25-9-2020 = 31 days.

The interest payable to Mr. V on this amount = ₹ 33,000 × 6% × 31 days ÷ 365 = ₹ 168.16.

**Illustration 9 – Computation of interest in case of provisional assessment u/s 18 :** Laxmi Company Imported goods valued at ₹ 10,00,000 vide a Bill of entry presented before the proper officer on 15<sup>th</sup> December, 2019, on which date the rate of customs duty was 20%. The proper officer decided that the goods should be subject to chemical or other test and therefore, the same were provisionally assessed at a value of ₹ 10,00,000 and Laxmi company paid provisional duty ₹ 2,00,000 on the same date. Laxmi company wants to voluntarily pay duty of ₹ 1,50,000 on 20<sup>th</sup> January, 2020.

- (1) Can Laxmi Company provisionally pay duty and what are the conditions which are to be complied before such payment is made?
- (2) Determine the amount of interest payable, if any, under section 18 of the Customs Act, 1962 assuming that the payment of ₹ 1,50,000 as stated above is made on 20<sup>th</sup> January, 2020 and that the final duty is assessed on 31<sup>st</sup> January, 2020 at ₹ 4,00,000 and the balance duty is paid on the same day. (5 Marks, May 2019)

**Solution:** The answer is as under –

- (1) **Yes**, Laxmi Company can provisionally pay duty. Where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test, the proper officer can direct provisional assessment. In the given case the proper officer decided that the goods should be subject to chemical or other test and therefore, the same were provisionally assessed at a value of ₹ 10,00,000 and Laxmi company paid provisional duty ₹ 2,00,000 on the same date. The following conditions must be satisfied before such payment :
  - (i) Such duty should be paid, along with interest on the amount of duty so being paid, @ 15% from the first day of the month in which the duty is provisionally assessed till the date of payment thereof;
  - (ii) The terms and conditions of the bond and the amount of security of surety furnished at the time of provisional assessment shall remain unchanged; and
  - (iii) No refund of duty will be granted till the assessment is finalised.

Thus, on above compliances, Laxmi Company can provisionally pay duty.

- (2) Wherever the importer or exporter pays any amount of duty before finalisation of assessment, he shall not incur interest on the amount of duty so paid for the period from the date of such payment till the finalization of assessment. Consequent to final assessment, the interest due will be calculated from the first day of the month in which the duty is provisionally assessed till the date of payment of duty. Also, the amount of duty that is initially provisionally paid or paid in the interim period and interest paid, if any, shall be adjusted against the duty finally assessed, and the interest payable.

Thus, the interest liability shall be calculated as under :-

	Voluntary payment on 20-01-2020	Final payment on 31-01-2020
Duty paid	1,50,000	50,000
Interest period starts from 1 <sup>st</sup> day of the month in which the duty is provisionally assessed	01-12-2019	01-12-2019
Interest period ends on the date of payment of duty	20-01-2020	31-01-2020
No. of days for which interest payable	51	62
Rate of interest notified u/s 28AA of the Customs Act, 1962	15%	15%
Interest [leap year]	3,135	1,270
<b>Total Sum paid (including interest)</b>	<b>1,53,135</b>	<b>51,270</b>

**Note :** Since final duty is ascertained ₹ 4,00,000, the importer shall be liable to pay deficiency of ₹ 50,000 i.e. [₹ 4,00,000 – ₹ 2,00,000 – ₹ 1,50,000].

**Illustration 10 – Computation of duty on goods imported in sets :** Mr. A imported certain goods comprising of set of articles at a consolidated price of ₹ 16 lakhs. Mr. A claims that the value of various articles is as follows (along with rate of duty prevalent on the date of presentation of bill of entry) –

- |     |             |            |          |
|-----|-------------|------------|----------|
| (a) | Article 'P' | ₹ 10 lakhs | Exempt ; |
| (b) | Article 'Q' | ₹ 4 lakhs  | 5% ;     |
| (c) | Article 'R' | ₹ 2 lakhs  | 10%.     |

What is the amount of import duty of customs payable (including SWS @ 10%) by Mr. A if -

- (1) He fails to furnish evidence supporting the aforesaid values?
- (2) He furnishes requisite documents supporting the aforesaid values ?

**Solution:** The amount of import duty of customs payable -

- (3) If Mr. A fails to furnish evidence supporting the aforesaid values, then, in view of the provisions of section 19 of the Customs Act, the set of articles shall be chargeable to duty at the highest of the rates. Those articles which are not liable to duty shall also be chargeable at highest of the rates. Therefore, the amount of duty payable by Mr. A = ₹ 16 lakhs × 11% (including SWS) = ₹ 176,000.
- (4) In case Mr. A furnishes evidence supporting the value of individual articles, the duty shall be chargeable on the individual articles at the rates applicable to them. Accordingly, duty payable by Mr. A = Nil on Article 'P' + ₹ 4 lakh × 5.5% + ₹ 2 lakh × 11% = ₹ 44,000.

**Illustration 11 - Duty liability in case goods are imported in sets - Section 19 :** Mr. X imports a toy set (separately valued at ₹ 5,000) containing :

- (1) two soft dolls (separately valued at ₹ 1,000 each),
- (2) two racing cars (separately valued at ₹ 500 each), and
- (3) four soft teddys (separately valued at ₹ 500 each).

Determine duty payable (Ignore SWS) in the following independent cases -

- (a) the entire set is imported as a single pack and duty is levied at specific rate viz. ₹ 100 per soft doll, ₹ 50 per racing car, ₹ 75 per soft teddy.
- (b) The entire set is imported as a single pack at a single price of ₹ 5,000 (no separate values available) and duty is levied *ad valorem*. The rate of duty applicable is 10% for soft dolls, 7.5% for racing cars, 0% (Nil) for soft teddys.
- (c) The entire set is imported at a price of ₹ 5,000 and duty is levied *ad valorem*. The rate of duty applicable is 10% for soft dolls, 7.5% for racing cars, 0% (Nil) for soft teddys. The importer is able to show evidence of separate values.

**Solution:** The duty payable as per section 19 is as follows -

- (a) Since duty is leviable on the basis of quantity, the duty shall be calculated as under (*amount in ₹*):

(1) Two soft dolls (Applicable duty ₹ 100 per soft doll) (₹ 100 × 2)	200
(2) Two racing cars (Applicable duty ₹ 50 per car) (₹ 50 × 2)	100
(3) Four soft teddys (Applicable duty ₹ 75 per soft teddy) (₹ 75 × 4)	300
<b>Total duty payable</b>	<b>600</b>

- (b) The entire set is imported as a single pack at a single price of ₹ 5,000 (no separate values available) and duty is levied *ad valorem*. Highest rate of duty shall be applicable on the entire set *i.e.* ₹ 5,000 × 10% = ₹ 500.
- (c) In case importer is able to show evidences of individual value of articles the duty shall be calculated as under (*₹*) :

(1) Two soft dolls (separately valued at ₹ 1,000 each) (Applicable duty 10%) (₹ 1000 × 2 × 10%)	200
(2) Two racing cars (separately valued at ₹ 500 each (Applicable duty 7.5%) (₹ 500 × 2 × 7.5%)	75
(3) Four soft teddys (Applicable duty NIL rate)	NIL
<b>Total duty payable</b>	<b>275</b>

**DERELICT, JETSAM ETC., DENATURED OR MUTILATED  
GOODS, REIMPORTED GOODS**

**CASE 1: Fish, jetsam and floatsam brought into India by the fishing trawler would be liable to customs duty :** A fishing trawler operating in high seas, beyond the territorial waters of India, finds a ship wrecked in mid-sea and brings jetsam and flotsam into India, along with fish caught by it. Discuss the liability of duty on the fish, jetsam and flotsam.

**Ans:** Under section 2(23) of the Customs Act, 1962, the term "import" with its grammatical variations and cognate expressions means "bringing into India from a place outside India".

"India" has been defined under section 2(27) of the Customs Act, 1962, to include "Territorial Waters" of India. Therefore, any thing brought into India from a place outside India is liable to customs duty irrespective of whether it is merchandise or not, whether it is deliberately brought into India or accidentally comes into India. Section 21 of the Customs Act, 1962 provides that all goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act. Thus, fish, jetsam and floatsam brought into India by the fishing trawler would be liable to customs duty.

**CASE 2:** *No remission in case goods remain in warehouse beyond warehousing period* : M/s. Decent Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of their import. M/s. Decent Laminates sought an extension of the warehousing period, which was granted. However, even after the expiry of extended period, it did not remove the goods from the warehouse. Subsequently, it applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the imported goods had become unfit for use on account of non-availability of orders for clearance and had lost their shelf life also. Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by M/s. Decent Laminates is valid in law. (3 Marks, Nov. 2013)

**Ans:** The facts of the given case are similar to the case of **CCEx. v. Decorative Laminates (I) Pvt. Ltd. [2010] 257 ELT 61 (Kar.)**. The High Court held that the circumstances made out under section 23 were not applicable in the instant case as the **destruction/loss of the goods had not occurred before the clearance for home consumption.**

Remission can be granted u/s 23 only when the imported goods have been lost or destroyed at any time before clearance for home consumption. The expression "at any time before clearance for home consumption" as provided in Section 23 means the time period originally fixed and extended period available for warehousing and not after the lapse of such periods. The said expression cannot extend to a period after the lapse of the extended period merely because the goods were not cleared within the stipulated time. Instead, it would be a case of goods improperly removed from the warehouse. Hence, the application for remission of duty filed by M/s. Decent Laminates is not valid in law.

**Illustration 12 - Abatement of duty on damaged goods** : In January, 2020, Rock & Rock India Ltd, imported a consignment from U.S.A (by sea). The value of consignment was ₹ 7,50,000 and total duty payable was ₹ 1,50,000.

Company filed bill of entry for home consumption but before inspection and clearance for home consumption it found that the goods were damaged.

On filing a representation to the Customs Department, proper officer refused the claim for abatement because goods were already unloaded. The proper officer is in agreement with the claim that the value of goods has come down to only ₹ 1,50,000.

Examine the issue with reference to the relevant statutory provisions and calculate the amount of total duty payable.

Would your answer be different in the above case if the goods get deteriorated after unloading and examination but before clearance for home consumption, and value comes down to ₹ 7,00,000 ? (5 Marks, Nov. 2018-NS)

**Solution:** According to Section 22 of the Customs Act, 1962, where it is shown to the satisfaction of the **Assistant Commissioner** of Customs or **Deputy Commissioner** of Customs, that any imported goods, other than warehoused goods, had been damaged **at any time after the unloading thereof in India but before their examination under section 17**, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent then abatement of duty will be granted as under :

$$\text{Duty leviable on such damaged or deteriorated goods} = \frac{\text{Duty chargeable on the goods before the damage or deterioration}}{\text{Value of the goods before damage or deterioration}} \times \text{Value of the damaged or deteriorated goods}$$

Thus in this case the contention of the proper officer abatement will not be granted as the goods have been unloaded is not correct.

The duty liability after abatement will be :

$$30,000 = \frac{₹ 1,50,000}{₹ 7,50,000} \times ₹ 1,50,000$$

The amount of abatement will be ₹ 1,50,000 - ₹ 30,000 = ₹ 1,20,000.

However, no abatement will be granted in case the goods get deteriorated after unloading and examination but before clearance for home consumption since when bill of entry for home consumption is filed the benefit of abatement is not available after examination by the proper officer under Section 17 of the Customs Act, 1962 for assessment purposes.

**T.Q. 1:** Discuss with a brief note the distinction between the functioning of Inland Container Depots (ICD) and Container Freight Stations (CFS). (4 Marks, May 2010)

**Ans:** The differences between the functioning of Inland Container Depot (ICD) and Container Freight Station (CFS) are,-

	Basis of difference	Inland Container Depot (ICD)	Container Freight Station (CFS)
(1)	Meaning	An ICD is a place where containers are aggregated for onward movement to or from the ports.	CFS is a place where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place.
(2)	Location	ICDs are normally located outside the port towns.	No site restrictions apply to CFS.
(3)	Attachment	An ICD may have a CFS attached to it.	CFS is treated as an extension of a port/ICD/air cargo complex.
(4)	Appointment	ICD is appointed by Board under section 7 of Customs Act, 1962.	CFS is specified u/s 8(b) by the Principal Commissioner or Commissioner of Customs within his jurisdiction.
(5)	Equivalent status	ICD is at par with other customs port/airport/ Land Customs Station.	CFS is specified as customs area.

**RE-IMPORT OF GOODS AFTER REPAIRS**

**Illustration 13 - Re-import of goods after repairs :** Maxiline Corp. not being an EOU, had imported technical instruments from the USA for ₹ 180 lakhs on payment of duty. It had to subsequently send back the same to the supplier for repairs. The supplier has agreed to provide discount of 50% of the fair cost of repairs, resulting in Maxiline Corp paying USD 15,000.

Following further particulars are available.

Particulars	Date	Rate of duty	Inter Bank Exchange Rate	Rate Notified by CBIC
Bill of Entry	21-02-2020	20%	60	62
Aircraft arrival	26-02-2020	15%	62	61

IGST under section 3(7) of Customs Tariff Act, 1975 - 12%.

	Outwards (Amount in ₹)	Inwards (Amount in ₹)
Insurance	20,000	30,000
Air Freight	80,000	1,20,000

Other details available on records:

- (i) Goods are reimported within 3 years of despatch for repairs.
- (ii) Both the exported and imported goods are the same.
- (iii) There is no change in the ownership of technical instruments.
- (iv) The export is not from a public/private warehouse and repairs does not amount to manufacture.

Determine total duty payable with appropriate notes for your computation. (5 Marks, May 2018)

**Solution:** As per Section 20, imported goods would include re-imported goods as well and therefore the goods sent/exported out of India and re-imported would also be liable to payment of duty. However, in this connection, the Central Government has granted concessions.

Accordingly, the importer is liable to pay basic customs duty as well as Integrated tax only on the value = Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) + Insurance and freight charges, both ways. [Notification No. 45/2017-Cus dated 30-06-2017]

Value for the purposes of levy of customs duty [Fair cost of repairs before allowing discount	[A]	30,000
Exchange Rate		62
		18,60,000
<b>Add:</b> Insurance and Air freight charges both ways [₹ 20,000 + ₹ 30,000 + ₹ 80,000 + ₹ 1,20,000]		2,50,000
Assessable Value for purpose of levy of custom duty		21,10,000
<b>Add:</b> Basic Customs Duty @ 15 %	[B]	3,16,500
<b>Add:</b> Social Welfare Surcharge @ 10% of [B]	[C]	31,650
<b>Value for the levy of Integrated tax u/s 3(7)</b>	[D]	<b>24,58,150</b>
Integrated tax u/s 3(7) @ 12% of [D]		2,94,978
<b>Total import duties of customs [BCD + SWS + Integrated Tax]</b>		<b>6,43,128</b>

**Working Note :**

- (1) Rate of exchange as determined by CBIC on the date of presentation of Bill of Entry is to be considered [as per Section 14 of the Customs Act, 1962.

- (2) Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- (3) Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1962].
- (4) Social Welfare Surcharge leviable on integrated tax have been exempted *vide* Notification Nos. 13/2018-Cus. dated 02-02-2018.

**Illustration 14 – Re-import of goods after repairs :** A machine was originally imported from Japan at ₹ 250 lakh in August, 2019 on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in January, 2020 and re-imported without any re-manufacturing or re-processing in October, 2020 after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material ₹ 6 lakh) would have been ₹ 9 lakh. Actual insurance and freight charges (to and fro) were ₹ 3 lakh. The rate of basic customs duty is 10% and rate of IGST in India on like article is 12%.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period. (5 Marks, Nov. 2014)

**Solution:** Yes, as per Section 20, imported goods would include re-imported goods as well and therefore the goods sent/ exported out of India and re-imported would also be liable to payment of duty. However, in this connection, the Central Government has granted concessions.

Accordingly, the importer is liable to pay basic customs duty as well as additional customs duty only on the value = Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) + Insurance and freight charges, both ways. - *Notification No. 45/2017-Cus.*

Value for the purposes of levy of customs duty [₹ 9 lakhs + ₹ 3 lakhs]	[A]	12,00,000
Add: Basic Customs Duty @ 10 %	[B]	1,20,000
Add: SWS on basic customs duty <i>i.e.</i> 10% of [B]	[C]	12,000
Value for the levy of Integrated tax u/s 3(7)	[D]	13,32,000
Integrated tax u/s 3(7) @ 12% of [D]		1,59,840
<b>Total import duties of customs [BCD + SWS + Integrated tax ]</b>		<b>2,91,840</b>

#### SUMMARY OF IMPORTANT CASE STUDIES

<p>☞ <i>Mangalore Refinery &amp; Petrochemicals Ltd. v. CC</i> [2015] 323 ELT 433 (SC)</p>	<p>Taxable event occurs only when goods are imported and the levy of duty is only on goods imported into India. The act of importation is complete only after the order for clearance for home consumption is made.</p> <p>Thus, where the quantity of imported crude oil actually received in the shore tank in port in India was lesser than the quantity mentioned in the Bill of lading, duty was leviable only on the goods received in the shore tank. Quantity shown in the Bill of lading cannot form the basis for valuation as it does not reflect the quantity of goods at the time and place of importation.</p>
<p><i>CCEx. v. Bakelite Hylam Ltd.</i> [2016] 335 ELT 673 (SC)</p>	<p>No customs duty is payable on unsuitable goods rejected as waste including those damaged in transit and not put to further use.</p>

■ ■ ■



## CLASSIFICATION & TYPES OF CUSTOMS DUTIES

### SUMMARIZED POINTS FOR REVISION

#### CUSTOMS TARIFF ACT, 1975

- (1) **Basic Concepts :** The Customs Tariff Act provides the classification of the goods and rates of duties of customs. It comprises of two schedules :-

**First Schedule - Import Tariff :** In this schedule goods chargeable with import duty are listed.

**Second Schedule - Export Tariff :** In this schedule goods chargeable with export duty are listed.

The Customs Tariff Act, 1975, adopts eight-digit classification code based on **Harmonised Commodity Description and Coding System (HSN)**.

The five column headings as prescribed in schedules to Customs Tariff Act, 1975 are as under,-

Column No.	Particulars
1.	Tariff Item
2.	Description of the Goods
3.	Unit
4.	Standard Rate of duty
5.	Preferential Rate of duty

- **Rates of custom duty :** The basic customs duty are 5%, 7.5% and 10%. Highest rate of basic customs duty is 10% for non-agricultural items, with some exceptions. On baggage, the general rate of duty is 35%.

- (2) **Interpretative Rules :**

**Rule 1 - Section and Chapter Titles** have no legal validity and classification to be as per terms of heading and section/chapter notes.

**Rule 2(a) - Reference to an article**, to include reference to that article incomplete/unfinished or un-assembled/disassembled.

**Rule 2(b) - Reference to a material/substance**, to include reference to mixtures or combinations of that material/substance.

**Rule 3 - Classification when goods classifiable under two or more headings :**

- (a) Specific heading to prevail over general;
- (b) Classification as if goods consisted material/component, which gives them essential character;
- (c) **Latter the better maxim** i.e. goods to be classified under the heading, which occurs last in numerical order among those, which equally merit considerations.

**Rule 4 - Akin Rule :** Goods, which cannot be classified in accordance with the above rules, shall be classified under the heading appropriate to the goods to which they are most akin.

**Rule 5 - Classification of Packing materials :**

- (a) Classification of cases/containers used for packaging of goods along with the goods for which they are meant.
- (b) Classification of packing materials and packing containers shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are for repetitive use.

**Rule 6 - Only sub-headings at the same level are comparable.**

- (3) **'Standard Unit of Quantity'** is a unit of measure. It is used to facilitate the collection, comparison and analysis of trade statistics.



## (4) General Explanatory Notes : System of dashes—

	Where description of an article or group of articles is preceded by -	The said article or group of articles shall be taken to be a sub-classification of -
(a)	"-" (Single dash)	The article or group of articles covered by the said heading
(b)	"--" (Double dash)	The article or group of articles which has "-" (single dash).
(c)	"---" (Triple dash) or "----" (Quadruple dash)	The immediately preceding description of article or group of articles which has "-" (single dash) or "--" (double dash).

**Meaning of abbreviation "%"** in relation to the rate of duty : The abbreviation "%" in column (4) of Tariff Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods.

## (5) Additional Notes:

- (a) **"Heading"**, in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items, the first four-digits of which correspond to that number.
- (b) **"Sub-heading"**, in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items, the first six-digits of which correspond to that number.
- (c) **"Tariff item"** means a description of goods in the list of tariff provisions accompanying either, eight-digit number and the rate of the duty of excise, or eight-digit number with blank in the column of the rate of duty.
- (6) **Levy of duty where standard rate and preferential rate are specified [Section 4]** : The imports from preferential areas are chargeable to preferential rate of duty. Power to declare certain areas as preferential areas vests with the Central Government.
- (7) **Social Welfare Surcharge (SWS) on imported goods** : SWS is levied on imports. SWS is levied to fulfil the commitment of the Government to provide and finance education, health and social security. SWS shall be calculated @ 10% on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government under section 12 of the Customs Act, 1962 and any sum chargeable on the imported goods specified under any other law as an addition to, and in the same manner as, a duty of customs, but not including—
- (a) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act;
- (b) the countervailing duty referred to in section 9 of the Customs Tariff Act;
- (c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act;
- (d) the Social Welfare Surcharge on imported goods *i.e.* no SWS shall be levied on SWS (which is a duty of customs).

SWS on IGST and GST compensation cess has been made exempt.

The Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

- (8) **Road and Infrastructure Cess on imported goods** : Road and Infrastructure cess is levied as duty of customs @ ₹ 9 per litre on motor spirit (petrol) and high speed diesel (HSD) imported into India for the purpose of financing infrastructure projects.
- (9) **Additional duty of customs equal to excise duty (also known as CVD) [Section 3]** : Any article which is imported into India shall be liable to an additional duty of customs equal to the excise duty for the time being leviable on a like article, if produced or manufactured in India. Special additional duty of customs equal to sales-tax/VAT (also known as Special CVD) is levied @ 4%.

**Mode of calculation of Additional duty of customs u/s 3(1) & 3(5) :**

Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act	[A]	xx
<b>Add:</b> Basic duty of customs u/s 12 on (A) above and other duties (See Note)	[B]	xx
Value for the purposes of levy of additional duty of customs u/s 3(1) [A + B]	[C]	xx
<b>Add:</b> Additional duty of customs u/s 3(1) = Excise Duty computed on (C) above	[D]	xx
<b>Add:</b> SWS @ 10% on Custom duty [10% of {(B) +(D)}]	[E]	xx

Value for the purposes of levy of additional duty of customs u/s 3(5) [C + D + E]	[F]	xx
Add: Additional duty of customs u/s 3(5) computed on (F) above	[G]	xx
<b>Total cost of imported goods [F + G]</b>	[H]	xx
<b>Total Customs Duty payable = [B + D + E + G] or [H - A]</b>		xx

**Additional duty leviable on 'RSP Less Abatement' for article subject to RSP based excise duty.**

Tariff value shall be deemed to be value of imported article for the purpose of calculating additional duty of custom, if excise duty is levied on the basis of tariff value.

**Note:** Due to introduction of GST, the applicability of additional duty of customs is very limited. GST is levied on all supplies of goods and /or services except supply of alcoholic liquor for human consumption. Further, GST on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council. Thus, additional duty of customs will be levied only on the few products not leviable to GST.

- (10) **Integrated tax [Section 3(7) of the Customs Tariff Act]** : Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding 40% as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Section 3(8).
- (11) **GST Compensation Cess [Section 3(9) of the Customs Tariff Act]** : Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Section 3(10).
- (12) **Mode of calculation of Integrated Tax u/s 3(7) & GST Compensation Cess 3(9) [Section 3(8) & 3(10) of the Customs Tariff Act]** : The Integrated tax under section 3(7) and GST Compensation Cess under Section 3(9) of the Custom Tariff Act on any imported article shall be calculated as follows -

Assessable value u/s 14(1) or Tariff Value u/s 14(2) of Customs Act	[A]	xx
Add: Basic duty of customs (BCD) u/s 12 on (A) above and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs	[B]	
Add: SWS @ 10% of BCD	[C]	xx
<b>Value for the purposes of levy of Integrated Tax u/s 3(7) and GST Compensation Cess u/s 3(9)</b>	[D]	xx
[A + B + C]		
Add: Integrated Tax (IT) u/s 3(7) = Applicable Rate of IT computed on (D) above ( <i>Integrated tax will be exclusive of SWS, as SWS on Integrated tax have been exempted vide Notification No. 13/2018-Cus. dated 02-02-2018</i> )	[E]	xx
Add: GST Compensation Cess u/s 3(9) = Applicable Rate of GST compensation cess computed on (D) above ( <i>GST compensation cess will be exclusive of SWS, as SWS on GST Compensation cess have been exempted vide Notification No. 13/2018-Cus. dated 2-2-2018</i> )	[F]	xx
<b>Total cost of imported goods [D + E + F]</b>	[G]	xx
<b>Total Customs Duty payable = [G - A], or [B + C + E + F]</b>		xx

**Note: Non Inclusion of duties :** In computation of value for levy Integrated Tax and GST Compensation Cess, the following duties shall not be included,-

- (a) Integrated tax referred to in Section 3(7) of the CTA, 1975;
  - (b) GST compensation cess referred to in Sections 3(9) of the CTA, 1975.
- (13) **Value for levy of integrated tax in respect of warehoused goods [Section 3(8A)]** : Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under Section 3(7) shall be,--
- (a) where the whole of the goods are sold, the value determined under Section 3(8) or the transaction value of such goods, whichever is higher; or
  - (b) where any part of the goods is sold, the proportionate value of such goods as determined under Section 3(8) or the transaction value of such goods, whichever is higher.

**Last transaction value to be taken :** However, where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a)/(b).

**Unsold goods - Value to be determined as per Section 3(8) :** In respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of Section 3(8).

**"Transaction value"**, in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods. [Explanation]

The value for levying GST compensation cess in case of warehoused goods is to be computed in the same manner as discussed above [Section 3(10A) of Customs Tariff Act]

- (14) **Levy of lower rate of duty under trade agreement [Section 5] :** In case Central Government has entered into trade agreement with a Government of foreign country or territory for levy of duty at a lower rate, then duty as per the trade agreement shall be levied.
- (15) **Protective duty [Section 6 & 7] :** It is levied on the recommendation of the **Tariff Commission of India** for protection of interest of domestic industry established in India. The duty shall have effect only up to and inclusive of the date, if any, specified in First Schedule. The Central Government has the powers to reduce or increase such duty.
- (16) **Increase or levy of export duties [Section 8] :** The Central Government has emergency power to increase or levy export duties by notification in Official Gazette.
- (17) **Increase of import duties [Section 8A] :** The Central Government has emergency power to increase import duties by notification in Official Gazette.
- (18) **Safeguard duty [Section 8B] :** Safeguard duty is imposed to protect domestic industry where **increased imports have caused or threaten to cause serious injury to domestic industry**. Serious injury means an injury causing significant overall impairment in the position of a domestic industry. Threat of serious injury means a clear and imminent danger of serious injury.

**Safeguard duty cannot be imposed on articles originating from developing countries if imports of such article is less than 3% or 9% (more than one developing countries) of total imports of that article into India.**

The **Provisional safeguard duty** cannot remain in force for **more than 200 days** from the date when it was first imposed.

**Final duty remain in force 4 years** from the date of its imposition. However, Central Government can extend the period of imposition but the **total period** of imposition cannot be **beyond 10 years** from the date of its imposition. Safeguard duty shall not be imposed on goods imported by a 100% EOU or unit located in Free Trade Zone/ Special Economic Zone.

**Non Imposition of safeguard duty :** The safeguard duty shall not apply to articles imported by a 100% export-oriented undertaking or a unit in a special economic zone unless,—

- (a) specifically made applicable in such notifications or such impositions, as the case may be; or
- (b) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.
- (19) **"Countervailing duty on subsidized articles" or "Anti Subsidy Duty" [Section 9] :** In case any foreign country or territory gives any subsidy, directly or indirectly, upon the manufacture or production, transportation or exportation of such article into India, then the **Central Government levy countervailing duty not exceeding the amount of such subsidy**.

The countervailing duty shall not be levied unless it is determined that,—

- (a) the subsidy relates to export performance;
- (b) the subsidy relates to the use of domestic goods over imported goods in the export article; or
- (c) the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

*CVD on subsidized article to be extended on articles imported by Altering form/ Description [Section 9(1A)]:* Where the Central Government is of the opinion that circumvention of countervailing duty imposed has taken place, –

- (a) either by altering the description or name or composition of the article on which such duty has been imposed or
- (b) by import of such article in an unassembled or disassembled form or
- (c) by changing the country of its origin or export or
- (d) in any other manner,

whereby the countervailing duty so imposed is rendered ineffective, it may extend the countervailing duty to such other article also. [Amended by Finance (No. 2) Act, 2019 w.e.f. 01-08-2019]

Similar provisions are applicable for anti-dumping duty also.

Period for which duty remains in force 5 years, extension for a further period of 5 years. Where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year. Retrospective levy of Countervailing duty on imports made not beyond 90 days from the date of imposition of provisional duty.

- (20) **Power to levy Anti Dumping Duty (ADD) [Section 9A]** : The Central Government can levy ADD, not exceeding the margin of dumping. **Margin of Dumping in relation to an article, means the difference between its export price and its normal value.** Determination of Margin of Dumping on the basis of records maintained by exporter/producer. ADD can be levied to articles imported by altering form/description.

Unless specifically provided, anti dumping duty shall not be imposed on goods imported by a ♦ 100% EOU; or ♦ unit located in Free Trade Zone/Special Economic Zone. *Anti dumping duty is leviable on goods imported by EOU and cleared to DTA. Duration of levy and retrospective levy are same as of countervailing duty on subsidized article.*

- (21) **Refund of anti-dumping duty in certain cases [Section 9AA]** : If an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty, in excess of the actual margin of dumping in relation to such article. Refund to be made within 90 days of the receipt of the application.

- (22) **Appeal [Section 9C]** : An appeal against the order of determination or review thereof shall lie to the CESTAT, in respect of the existence, degree and effect of –

- (a) any subsidy or dumping in relation to import of any article; or
- (b) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article. [Amended by Finance (No. 2) Act, 2019 w.e.f. 01-08-2019]

**Time limit of filing appeal :** Within 90 days of the date of order under appeal. **Fees for Appeal ₹ 15,000.**  
**Passing of order -** After giving the parties to the appeal an opportunity of being heard, the Appellate Tribunal may pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

### PAST EXAMINATION QUESTIONS

#### VARIOUS TYPES OF DUTIES LEVIED UNDER CUSTOMS TARIFF ACT, 1975

**CASE 1 :** Exemption from BCD does not mean exemption from ADC Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons. Goods exempt from basic customs duty would automatically be exempt from additional duty of customs. (2 Marks, Nov. 2007)

**Ans:** The statement is not correct. Exemption from basic customs duty would not mean exemption from additional duty. When goods are exempted from basic customs duty in terms of section 12 of the Customs Act, 1962 it would not mean that they are exempted from additional duty of customs also, as basic customs duty is leviable by virtue of section 12 of the Customs Act, 1962 while additional customs duty is leviable under section 3 of the Customs Tariff Act, 1975. - Kaur Sarin Traders v. UOI [2006] 199 ELT 224 (Pat.).

**Illustration 1 - Computation of safeguard duty :** Determine the customs duty payable under Customs Tariff Act, 1975 including the safeguard duty of 30% under section 8B of the said Act with the following details available on hand :

Import of Sodium Nitrite from a developing country from 26 <sup>th</sup> February, 2019 to 25 <sup>th</sup> February, 2020 (both days inclusive)	30,00,000
Share of imports of Sodium Nitrite from the developing country against total imports of Sodium Nitrite to India	4%
Basic Customs Duty	10%
Integrated tax u/s 3(7) of Customs Tariff Act, 1975	18%
GST compensation Cess	Nil
Social Welfare Surcharge	10%

(4 Marks, May 2016)

**Solution: Computation of customs duty payable thereon (amount in ₹):**

Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (₹ 30,00,000 × 10%)	3,00,000
Add: Safeguard Duty	9,00,000
Add: SWS @ 10% on basic customs duty i.e. 10% of BCD [No SWS is leviable on safeguard duty]	30,000
<b>Total for IGST</b>	<b>42,30,000</b>
IGST u/s 3(7) of Customs Tariff Act (₹ 42,30,000 × 18%)	7,61,400
<b>Total Customs Duty Payable (₹ 3,00,000 + ₹ 9,00,000 + ₹ 30,000 + ₹ 7,61,400)</b>	<b>19,91,400</b>

**Working Note :** Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India.

**Illustration 2 - Computation of safeguard duty :** Determine the total duties (duty, tax and cess) payable under Customs Act if Mr. Rao imported Rubber from Malaysia at landed price of ₹ 25 lakhs. It has been notified by Central Government that share of imports of Rubber from the developing country against total imports to India exceeds 5% and safeguard duty is notified to this product @ 30% and rate of integrated tax u/s 3(7) is 12%, and rate of Basic customs duty was 10%. (5 Marks, May 2019-NS)

**Solution: Computation of customs duty payable thereon (amount in ₹):**

Assessable value of imported rubber	25,00,000
Add: Basic custom duty @ 10% (₹ 25,00,000 × 10%)	2,50,000
Add: Safeguard Duty @ 30%	7,50,000
Add: Social Welfare Surcharge @ 10% of BCD [No SWS is leviable on safeguard duty]	25,000
<b>Total for IGST</b>	<b>35,25,000</b>
IGST u/s 3(7) of Customs Tariff Act (₹ 35,25,000 × 12%)	4,23,000
<b>Total Customs Duty Payable (₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 4,23,000)</b>	<b>14,48,000</b>

**Working Note :** Safeguard duty is imposable in the given case since share of imports of rubber from the developing country is more than 3% of the total imports of rubber into India.

**T.Q. 1 :** Explain briefly the difference between "Safeguard duty" and "Anti-dumping Duty" under the Customs Tariff Act, 1975. (May 2001)

**Ans:** The following are the differences between the safeguard duty and the anti dumping duty -

Basis	Safeguard Duty	Anti-dumping duty
Section	It is levied under section 8B of the Customs Tariff Act, 1975.	It is levied under section 9A of the Customs Tariff Act, 1975.
Purpose of levy	It is levied to ensure that the goods imported in increased quantity do not cause or threaten to cause serious injury to the domestic industry.	It is levied on the dumped articles in order to protect the domestic market from dumping.
Nature of levy	It relates to quantum of imports.	It is concerned with the valuation of imported goods.
Duration of levy	It is effective for 4 years, but in appropriate cases can be extended, but cannot exceed 10 years from the date of its imposition.	It is effective for upto 5 years and can be extended in certain cases for a further period of 5 years.

<p><b>Conditions for levy</b></p>	<p>In case of articles originating from developing country, safeguard duty can be imposed only if –</p> <p>(i) Imports of such article from that developing country exceeds 3% of the total imports of that article into India.</p> <p>(ii) Where the article is originating from more than one developing country (with each less than 3% import share), then, aggregate of imports from all such countries exceeds 9% of the total imports of that article into India.</p>	<p>Anti-dumping duty can be levied by the Central Government only where any article is exported from any country to India at less than its normal price. Further, the amount of this duty cannot exceed margin of dumping.</p> <p><b>“Margin of dumping”</b> = Normal value of the article - Export price of the article.</p>
<p><b>Retrospective levy</b></p>	<p>There is no provision for retrospective levy.</p>	<p>Duty can be levied retrospectively in respect of imports made <b>within 90 days</b> before the imposition of provisional anti-dumping duty.</p>

**T.Q. 2:** What will be the dates of commencement of the definitive anti-dumping duty in the following cases under section 9A of the Customs Tariff Act, 1975 and the Rules made thereunder –

- (i) Where no provisional duty is imposed;
- (ii) Where provisional duty is imposed;
- (iii) Where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.

*(2 Marks Each, Nov. 2006)*

**Ans:** The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of Section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

- (i) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty, in the Official Gazette.
- (ii) In a case where provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty, in the Official Gazette.
- (iii) In a case where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.

**T.Q. 3:** What are the ways that would constitute circumvention of anti-dumping duty imposed on an article that may warrant action by the Central Government based on inquiry as it may consider necessary for purpose of Section 9A(1A) of the Customs Tariff Act 1975. *(3 Marks, May 2012)*

**Ans:** As per Section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention of antidumping duty imposed on an article that may warrant action by the Central Government :

- (i) altering the description or name or composition of the article subject to such anti-dumping duty,
- (ii) import of such article in an unassembled or disassembled form,
- (iii) changing the country of its origin or export, or
- (iv) any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

**T.Q. 4:** Chaintop Industries has challenged the imposition of anti-dumping duty retrospectively from the date prior to the date of imposition of anti-dumping duty on the grounds that it is unconstitutional. Explain whether it would succeed in its contention. *(4 Marks, May 2018)*

**Ans:** Chaintop Industries will not succeed in its contention. According to Section 9A(3), Notwithstanding anything contained in any law for the time being in force, such ADD shall be payable at such rate and from such date as may be specified in the notification. The retrospective date from which the duty is payable shall not be beyond 90 days from the date of such notification.

- (a) There is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury; and



- (b) The injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.



<p><b>CA   CS   CMA</b>                  Direct Tax Laws &amp; Indirect Tax Laws                  Intermediate/ Final/ Professional</p> <p> <b>Video Lecture</b>   <b>Online MCQ's</b>   <b>SUBJECTIVE Test Series</b></p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>    <b>AADHYA'S</b>   <a href="http://www.aadhya.com">http://www.aadhya.com</a></p> <p>Contact/Whatsapp - 9602066653</p>	<p> <b>Video Lecture</b></p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> <b>Subscribe to our Channel</b>                  CA. Yogendra Bangar</p>	<p> <b>Online MCQ's</b></p> <p><b>Computer / EduApplet App</b></p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p></p> <p><b>SUBJECTIVE Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
--	--	---	--

**SUMMARIZED POINTS FOR REVISION**

**CONCEPT OF VALUATION AND TARIFF VALUE**

- (1) **Valuation of goods [Section 14]** : For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be **the transaction value** of such goods, that is to say, **the price actually paid or payable for the goods** when sold -
- (a) for export to India for delivery at the time and place of importation, or for export from India for delivery at the time and place of exportation,
  - (b) where the **buyer and seller of the goods are not related** and **price is the sole consideration for the sale** subject to such other conditions as may be specified in the rules made in this behalf.
- Price to be computed with reference to exchange rate** : The 'price' referred under section 14(1) is to be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export is presented under section 50.
- (2) **Tariff value [Section 14(2)]** : The CBIC has power to fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value. At present tariff value has been fixed for some essential edible oils, brass scrap, gold or silver etc.

**VALUATION OF IMPORTED GOODS - TRANSACTION VALUE**

- (3) **"Place of importation"** means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse. *[Rule 2(da)]*
- (4) **Transaction Value [Rule 3]** : As per Rule 3(1), the value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10.
- **Conditions subject to which transaction value acceptable** : According to Rule 3(2), the transaction value of the imported goods, shall be accepted as the value of such goods subject to fulfillment of the following conditions -
    - (i) there are **no restrictions as to the disposition or use of the goods** by the buyer;
    - (ii) the **sale or price is not subject to some condition or consideration** for which a value cannot be determined in respect of the goods being valued;
    - (iii) **no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller**, unless an appropriate adjustment can be made in accordance with the provisions of Rule 10; and
    - (iv) the **buyer and seller are not related**, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of Rule 3(3).
  - **Cases where transaction value to be assessable value if goods sold to related person** :
    - (i) If the examination of circumstances of the sale of imported goods indicate that the relationship did not influence the price.
    - (ii) Whenever the importer demonstrates that the declared value of the goods, being valued closely, approximates transaction value/deductive value/computed value of the identical or similar goods, in sales to unrelated buyers in India.
  - **Related Persons** : Persons shall be deemed to be 'related' only if, -
    - (i) they are officers or directors of one another's businesses;
    - (ii) they are legally recognised partners in business;
    - (iii) they are employer and employee;
    - (iv) any person directly or indirectly owns, controls or holds **5% or more of the outstanding voting stocks** or shares of both of them;

- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.

### ADJUSTMENTS FOR COSTS AND SERVICES FOR VALUATION OF IMPORTED GOODS

- (5) **Costs and Services [Rule 10]** : As per Rule 10(1), while determining the transaction value, there shall be added to the price actually paid or payable for imported goods,-
- (a) (i) commission and brokerage, except buying commission; (ii) the cost of containers which are treated as being one for customs purposes with the goods in question; (iii) cost of packing whether for labour or materials.
  - (b) the value, apportioned as appropriate of the following goods and services, which are supplied directly or indirectly by the buyer free of charge or at reduced costs for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely -
    - (i) materials, components, parts and similar items incorporated in the imported goods;
    - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
    - (iii) materials consumed in the production of the imported goods;
    - (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods.
  - (c) royalties and the licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent the same is not included in the price actually paid or payable. Royalty payments for post importation process are includible.
  - (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller.
  - (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller, to the extent that such payments are not included in the price actually paid or payable.

**Adjustments of cost of transportation, loading, unloading and handling charges and Insurance charges [Rule 10(2)]** : The value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include,-

- (a) **Cost of transportation, loading, unloading and handling charges** : The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods **TO** the place of importation.
  - **Cost of transportation, loading, unloading and handling charges is not ascertainable** : Where the cost referred to in 10(2)(a) i.e. Cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is not ascertainable, such cost shall be 20% of the free on board value of the goods. [First Proviso to Rule 10(2)]
  - **Cost of transportation, loading, unloading and handling charges when FOB value not ascertainable but FOB value + Cost of Insurance ascertainable** : Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of insurance to the place of importation is ascertainable, the cost of transportation, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall be 20% of such sum i.e. 20% of [FOB Value + Cost of Insurance]. [Second Proviso to Rule 10(2)]
  - **Air freight etc. cannot exceed 20% of FOB value of the goods** : In case of importation of goods by air, even if the actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the same shall not exceed 20% of FOB value of the goods. [Fifth Proviso to Rule 10(2)]
  - **Transshipment costs to be excluded** : In the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded. [Sixth Proviso to Rule 10(2)]

- **Ship demurrage charges on chartered vessels, lighterage or barge charges - Includible:** The cost of transport of the imported goods referred above includes the ship demurrage charges on chartered vessels, lighterage or barge charges. [Explanation to Rule 10(2)]
- (b) **Insurance charges:** The cost of insurance **TO** the place of importation.
  - **Cost of insurance not ascertainable :** However, in case the cost of insurance to the place of importation is not ascertainable, such cost shall be 1.125% of the FOB value of the goods. [Third Proviso to Rule 10(2)]
  - **Cost of insurance when FOB value not ascertainable but FOB value + Cost of transportation, loading, unloading and handling charges ascertainable :** Where the FOB value of the goods is not ascertainable but the sum of FOB value of the goods and the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is ascertainable, the cost of insurance to the place of importation shall be 1.125% of such sum i.e. 1.125% of [FOB Value + Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation]. [Fourth Proviso to Rule 10(2)]

(6) **Chart showing Determination of assessable value after adjustments under Rule 10 [ICAI Valuation Norms] :**

FOB Price (Free on Board)	xxx
Add: Charges for costs and services as per Rule 10(1) (Excluding charges for Post-importation Activities)	xxx
<b>Customs FOB</b>	xxx
Add: The following adjustments [(a) and(b)] under Rule 10(2) –	
(a) Actual cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (In case of air it cannot exceed 20% of Customs FOB value of goods) If not ascertainable - 20% of the Customs FOB value of goods. In case Customs FOB value is also not ascertainable, then it will be 20% of [Customs FOB value + Cost of Insurance]	xxx
(b) Actual Cost of insurance If not ascertainable - 1.125% of the Customs FOB value of goods. In case Customs FOB value is also not ascertainable then it will be 1.125% of [Customs FOB value + Cost of transport, loading, unloading and handling charges]	xxx
<b>CIF value (Customs FOB value + cost of transport + cost of insurance) being Assessable Value for the Purpose of calculating duties of custom</b>	xxx

**IDENTICAL GOODS, SIMILAR GOODS, TRANSACTION VALUE OF IDENTICAL GOODS AND SIMILAR GOODS**

- (7) **“Identical goods” means –**
- (i) imported goods which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods,
  - (ii) produced in the country in which the goods being valued were produced; and
  - (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,
- but shall not include** imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods. [Rule 2(1)(d)]
- (8) **“Similar goods” means** imported goods which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark. Rest of the points are same as of identical goods. [Rule 2(1)(f)]
- (9) **Transaction value of identical goods [Rule 4] :** The value thereof shall be the transaction value of the identical goods sold for export to India and imported at or about the same time as the goods being valued. However, such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962. The Value shall be adjusted for costs and services referred in Rule 10(2).  
If more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of the imported goods.

- (10) **Valuation of similar goods [Rule 5]** : The above principles of valuation on basis of identical goods equally applies to similar goods.

**DEDUCTIVE VALUE, COMPUTED VALUE AND  
RESIDUAL METHOD OF VALUATION**

- (11) **Deductive value [Rule 7]** :

<b>Unit price</b> at which the imported goods or identical or similar imported goods are sold in the <b>greatest aggregate quantity</b> i.e. the price at which the greatest number of units is sold to unrelated buyers at the first commercial level after importation.	xxx
<b>Less:</b> The following deductions on account of post importation costs or expenses,-	
(a) Commissions; or Selling expenses, general expenses and selling profits made in connection with sale of imported "goods of the same class or kind". The "general expenses" include the direct and indirect costs of marketing the goods in question.	xxx
(b) Transport, insurance and associated costs within India.	xxx
(c) Customs duties, sales tax and other taxes levied in India.	xxx
(d) In case the value is based on unit price after further processing, the processing cost.	xxx
<b>Deductive Value</b>	<b>xxx</b>

- (12) **Computed value [Rule 8]** :

[1] Cost or value of the materials and fabrication or other processing employed in producing the imported goods.	xxx
[2] <b>Add:</b> An amount for profit and general expenses equal to that usually reflected in the sales of the goods of the same class or kind as the goods being valued, which are made by producers in the country of exportation for export to India.	xxx
[3] <b>Add:</b> Costs and charges referred to in Rule 10(2)	xxx
<b>Computed Value [1 + 2 + 3]</b>	<b>xxx</b>

- (13) **Residual method of valuation [Rule 9]** : According to residual method, value is to be determined using reasonable means consistent with the principles and general provisions of these Rules and Section 14 and the data available.

**Basis on which value cannot be determined under this rule :**

- (a) the selling price in India of the goods produced in India;
  - (b) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
  - (c) price of goods on the domestic market of the country of exportation;
  - (d) the cost of production other than the computed value of identical goods or similar goods as determined in Rule 8;
  - (e) the price of the goods for the export to a country other than India;
  - (f) minimum customs values;
  - (g) arbitrary or fictitious values.
- (14) **Declaration to be furnished by importer [Rule 11]** : Rule 11 requires the importer or his agent to furnish, a declaration disclosing full and accurate details relating to the value of imported goods.

**VALUATION OF EXPORT GOODS**

- (15) **Determination of the method of valuation [Rule 3]** :

- (i) **Transaction value** : The value of the export goods shall be the **transaction value**. However, such transaction value is subject to the provisions of Rule 8 i.e. the proper officer has a right to reject such transaction value.
- (ii) **Valuation in case of related persons** : The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.
- (iii) **Valuation when transaction value not acceptable** : In case the transaction cannot be determined, then the value shall be determined proceeding sequentially through Rules 4 to 6 (i.e. comparison, computed value and residual method).

**(16) Determination of export value by comparison [Rule 4] :**

- (a) The value of the export goods shall be based on the transaction value of "goods of like kind and quality" exported at or about the same time to other buyers in the same destination country of importation or, in its absence, another destination country of importation, adjusted in accordance with provisions given below.
- (b) **Adjustments to be made :** In determining the value of export goods as above the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including,-
- (i) difference in the dates of exportation,
  - (ii) difference in commercial levels and quantity levels,
  - (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,
  - (iv) difference in domestic freight and insurance charges depending on place of exportation.

**(17) Computed value [Rule 5] :** If the value cannot be determined as per above, it shall be based on a computed value, which shall include the following -

- (a) Cost of production, manufacture or processing of export goods;
- (b) Charges, if any, for the design or brand;
- (c) An amount towards profit.

## PAST EXAMINATION QUESTIONS

## DETERMINATION OF VALUE, VALUATION RULES, CONCEPT OF TARIFF VALUE

**CASE 1:** *Valuation of export goods as per Section 14 even if no duty is leviable :* XYZ Co. has claimed before the Customs Authority that since the exports of goods in its case attracted no duty, the value for purposes of Customs Act, 1962 to be declared shall be the value of the goods, which he expects to receive on sale of goods in the overseas market. Discuss whether the stand taken by XYZ Co. is correct. (3 Marks, Nov. 2004)

**Ans:** The facts of the case are similar to the Supreme Courts judgment in the case of *M/s. Om Prakash Bhatia v. CC [2003] 155 ELT 423*. The Apex Court observed that for finding the true export value of the goods, section 14 of the Customs Act, 1962 has to be read along with section 2(41) which defines the word 'value'. Value in relation to any goods means the value thereof determined in accordance with the provisions of section 14(1). Section 14 specifically provides that in case of assessing the value for purpose of export, value is to be determined at the price at which such or like goods are ordinarily sold or offered for sale at the place of exportation in the course of international trade where the seller and buyer have no interest in the business of each other and the price is the sole consideration for the sale. Therefore, for determining the export value of the goods, the method of determining the value under section 14 has to be followed even if no duty is leviable on the export of goods. Hence, the contention of XYZ Co. in the instant case will be rejected.

**T.Q. 1:** Exchange Rate Bill of entry was filed on 27-10-2019. Will you apply exchange rate notified by the Central Board of Indirect Taxes on 25-9-2019 or notified on 25-10-2019 ? (2 Marks, Nov. 2008)

**Ans:** According to Section 14, the value shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46. The rates of exchange are notified by the Board in every week or at other intervals and such rates continue to be in force unless new rates are notified. Hence, for the bill of entry filed on 27-10-2019, the latest exchange rate notified by Board on 25-10-2019 will be applicable.

**T.Q. 2:** *Valuation when price increases after contract:* What shall be the value if there is a price rise between the date of contract and the date of actual importation. (2 Marks, Nov. 2008)

**Ans:** As per the amended section 14(1) of the Customs Act, 1962, the value of imported or export goods shall be their transaction value. The old concept of deemed value has been dispensed with. Accordingly, the value of the goods shall be the price of contract (i.e., the transaction value), even if there is price rise subsequently. Therefore, in case there is price rise between the date of contract and the date of actual importation or exportation, then, in that case too, the transaction value i.e. price determined on the date of contract shall be taken, provided that such transaction value is the sole consideration for the sale and is acceptable. - *CC v. Aggarwal Industries Ltd. [2011] 272 ELT 641 (SC)*

**CASE 2:** *Rejection of Transaction :* Value C & Co. imported a second-hand machinery and declared transaction value in the Bill of Entry filed for the purposes of assessment of duty. The Assistant Commissioner ignored the transaction value and based on the Chartered Engineer's certificate showing that the machinery was in a working condition and



had a residual life of 10 years he completed the assessment under rule 9 of the Customs Import Valuation Rules, 2007 after allowing maximum depreciation of 70%. Discuss whether the action of the Assistant Commissioner is valid. (3 Marks, Nov. 2004)

**Ans:** The facts in this case are similar to the facts in **Tolin Rubbers Pvt. Ltd. v. CC [2004] 163 ELT 289 (SC)**. In this case, the Supreme Court stated that the value of the goods has to be determined as per Rule 3(1) of the Customs Valuation Rules, 1988 and only in circumstances specified under Rule 3(2) the transaction value as per Rule 3(1) has to be rejected and further determination has to be made as per Rule 9. The assessing authority had not provided any reasons for rejecting the transaction value.

Hence, the Bill of Entry as made by the company and the transaction value as declared by it had to be accepted by the Department. Applying the same ratio to the given situation, it could be said that the action of the Assistant Commissioner in the instant case is not valid in law.

#### VALUATION OF IMPORTED GOODS : ADJUSTMENTS FOR COSTS AND SERVICES, INCLUSIONS AND EXCLUSIONS

**CASE 3 : International Price relevant for Valuation and not the price after importation of goods :** ABC imported a vessel 'Waterloo' for the purpose of breaking from XYZ Ltd. of U.K. A memorandum of understanding was signed between the buyer and seller on 02-6-2019 and ABC took delivery of the vessel on 4-6-2019. Vessel drifted and landed in the yard of B in a damaged condition on 09-6-2019. On 24-6-2019, ABC filed application to concerned Assistant Commissioner for extension of time to file bill of entry, which was granted on 12-8-2019. ABC paid ₹ 24 crores to XYZ Ltd. towards the purchase price of the vessel. Thereafter, ABC sold the vessel to B for ₹12 crores and B filed bill of entry on 12-9-2019. Assessing authority assessed the ship taking the value as ₹ 24 crores and ship was taken over by B after assessment order was passed. 'B' argues that assessable value should be taken as ₹ 12 crores since the vessel was damaged because of the storm which made the vessel drift during appellate proceedings. No application for abatement of duty was made before the assessing authority by ABC or B.

Examine whether benefit of relief under section 22 of the Customs Act, 1962 to reduce the value and thereby duty can be extended to B under the above circumstances. The assessment order in respect of bill of entry was passed on 23-12-2019. (5 Marks, June 2009-NS)

**Ans:** The facts of this case are similar to that in **Udayani Ship Breakers Ltd. v. CC [2006] 195 ELT 3 (SC)** wherein Supreme Court held that in order to claim the benefit of the abatement under section 22, the party claiming the abatement has to satisfy the Assessing Authority that a case has been made out under section 22 for abatement of duty on damaged or deteriorated goods. In the absence of any claim made under section 22 in writing to the Assessing Authority, the appellant (B) could not claim the abatement under section 22 and the Assessing Authority did not record rightly to its satisfaction that the appellant was entitled to the abatement of duty. In this case, damage occurred in Indian shore. Importer sought extension of time to file bill of entry. But, thereafter remitted the purchase price and sold the vessel to B. B in turn filed the bill of entry and the vessel was assessed. No application was made by the buyers *i.e.* importer (ABC) to the Assistant Commissioner for any abatement of duty on damaged goods.

The transaction between the importer (ABC) and the respondent (C) cannot be described as the transaction of purchase and sale during the course of international trade. Any sale of goods carried out, after the act of 'import' within the meaning of the Act is over, can only be described as a sale in the course of domestic trade and not a sale in the course of international trade. Therefore, the appellant *i.e.* buyer (B) who had purchased the vessel in the course of domestic trade was not entitled to seek any abatement of duty under section 22 of the Customs Act, 1962 on the ground on which it claimed before the Appellate Authority.

Hence, in the light of above discussion, the price actually paid or payable by ABC to the foreign seller *i.e.* ₹ 24 crores shall be taken to be the assessable value. The price actually paid by M/s. B (*i.e.* ₹ 12 crores) is a price after the 'act of import' is over, therefore, the same cannot be taken to be the assessable value.

**CASE 4 : Appointment of importer as an indenting agent of supplier by itself does not make him related person-Commission paid to him not includible in the assessable value :** RI is an indenting agent of an Italian company. The agreement provides for payment of 20% commission on imported equipments supplied by RI to users in India. However, in respect of RI's own requirements of the equipment supplied by the Italian company no commission was payable as there was to be no value addition by the indenting agent. The department wants to enhance the value of the imports by 20% as according to them the Indenting Agent is a 'Related person'. Examine briefly whether the stand taken by the Department is correct. (3 Marks, May 2003)

**Ans:** The agent M/s. RI gets 20% commission for sale effected through him, but no commission is allowable in case of imports made by it. The Customs authorities want to load the value of imports made by M/s. RI by such 20%. The Customs authorities cannot enhance the value of imports by 20% due to the following reasons –

- (a) **Related person :** A mere indenting agent doesn't fall within the definition of 'related person' given under rule 2(2) of the valuation rules.
- (b) According to **Rule 10(1)**, cost and services incurred by the buyer, value of any proceeds of subsequent sale or use of imported goods that flows directly and indirectly to the seller and also for any payment made by the buyer to the exporter as a condition of sale shall be added to the price actually paid or payable for imported goods.

In this case, the importer-buyer is RI. The 20% commission is receivable by RI on sales effected through it, it is neither incurred by RI nor it is paid by RI to the exporter-Italian company. Further, there is no allegation that any part of the proceeds of subsequent sale or use of imported equipments flows directly and indirectly to the exporter-company.

The same view has been upheld by tribunal in **Mittal International v. CC [2002] 145 ELT 667 (Tri. - Del.)**

**CASE 5: Technical service fee relating to imported goods includible even if relates to post importation process :** The assessee M Ltd. entered into a joint venture with a foreign collaborator 'N' for promotion and selling antennas, accessories and other communication equipment. The agreement between them indicates that 'N' owned majority of equity shares in M Ltd. Technical services were provided by 'N' to M Ltd. for various functions that were carried out in respect of manufacture of antenna system in India, for which technical service fee was paid to 'N' by M Ltd. Based on the above facts, the department opined that both M Ltd. and 'N' were related person in terms of Rules 2(2)(i) and 2(2)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and that the technical fee paid by M Ltd was includible in the assessable value of the imported components in terms of Rule 10(1)(c) of the Rules. Decide referring to decided case law. (5 Marks, May 2007)

**Ans:** The Department was not able to prove that the relationship between the assessee and the foreign collaborator had influenced the value of the imported goods.

As per Explanation to Rule 10(1) of the Customs Import Valuation Rules, 2007, any royalty or licence fee or any other payment made for a process, which is carried out on the imported goods after importation thereof, shall be included in the assessable value of imported goods, if the same is related to the imported goods and is paid as a condition of sale.

In this case, M Ltd. had imported antenna parts from N and has paid technical fees to N for various functions to be carried out on such imported antenna parts for manufacture of antenna system in India. Though this technical fees relates to a post importation activity, the same is includible in assessable value of imported antenna parts in view of express provisions of the said explanation.

**T.Q. 3 :** Discuss includibility to assessable value under Customs Act, 1962 of the following payments made by an importer to the overseas supplier of a second hand plant in India : (2 Marks Each, May 1999)

- (i) Dismantling charges for removing the second hand plant at the supplier's place and shipping to the Indian importer.
- (ii) Fees for supervision of erection and commissioning of plant in India. For this purpose, the foreign supplier deputed their technicians in India.
- (iii) Payments for tools, dies and moulds (imported along with the plant) for use in connection with the manufacture of excisable goods on successful commissioning of the plant.
- (iv) Lumpsum payment and annual royalty for transfer of technical knowhow for manufacturing goods.

**Ans:** For computing assessable value under Customs Act, 1962 –

- (i) Dismantling charges for removing the second hand plant at the supplier's place and then exporting to India is a payment which can be linked to the import of plant and such payment appears to be a payment as a condition of sale of the imported plant. Therefore such payment shall be included in arriving at value of second hand plant for customs duty purposes.
- (ii) The payment of fee for supervision of erection and commissioning of the plant in India is in the nature of post import and has nothing to do with the activity of import of second hand plant and the same is not again liable to customs duty. However, if the same is a condition of sale, then the same shall form part of the transaction value.
- (iii) Such payment will be included in the assessable value of goods. The purpose behind import of such tools, dies, etc. is irrelevant here.
- (iv) The royalty doesn't relate to imported goods being plant, it relates to manufacture of goods in India. Hence, the same is not includible.

**T.Q. 4 :** Discuss the includibility or otherwise of the following payments made by an importer to the overseas supplier of an imported machine/equipment, to the assessable value of goods imported.

- (i) Process licence fee and technology transfer fees.
- (ii) Dismantling charges for removing the machine (before shipment to India) at the foreign supplier's site.
- (iii) Training charges paid to supplier, for imparting training to the Indian company's personnel, on how to use the equipment. Your answer shall be with reference to Section 14 of the Customs Act, 1962. You may draw support from decided cases. (2 Marks Each, Nov. 1998)

**Ans:** In view of *CC v. Essar Gujarat Ltd. [1996] 88 ELT 609 (SC)/ CC (Imports) v. Hindalco Industries Ltd. [2015] 320 ELT 42 (SC)-*

- (i) Process licence fee and technology transfer fees is includible, as the same is related to imported goods/ machine and is payable as a condition of sale of the imported goods, being machine.
- (ii) Dismantling charges for removing the second hand plant at the supplier's place and then exporting to India is a payment which can be linked to the import of plant and such payment appears to be a payment as a condition of sale of the imported plant. Therefore, such payment shall be included in arriving at value of second hand plant for customs duty purposes.
- (iii) Training charges paid to supplier, for imparting training to the Indian company's personnel, on how to use the equipment is not includible, as the same is a post importation activity. However, if the same is a condition of sale, the same will form part of the transaction value under rule 10 in view of Explanation to Rule 10.

**T.Q. 5 :** Examine the validity of the following statements with reference to the Customs Act, 1962 giving brief reasons :

- (i) Service charges paid to canalizing agent are not includible in the assessable value of imports.
- (ii) Design and engineering charges are includible in the assessable value of the imported goods only if the goods imported are specifically manufactured on the basis of the design and engineering specification provided by the importer.
- (iii) Inspection charges are not includible in the assessable value of the imported goods, if contract does not specify for certification by an independent agency. (2 Marks, Nov. 2007)/(3 Marks, May 2013)

**Ans:** With reference to the Customs Act, 1962, the validity of the statements are -

- (i) **The statement is not valid.** Since the canalizing agent is not the agent of the importer nor does he represent the importer abroad, purchases by canalizing agency from foreign seller and subsequent sale by it to Indian importer are independent of each other. Hence, the commission or service charges paid to the canalizing agent are includible in the assessable value as these cannot be termed as buying commission. - *Hyderabad Industries Ltd. v. UOI [2000] 115 ELT 593 (SC)*
- (ii) The Supreme Court in *Andhra Petro chemicals v. CC [1997] 90 ELT 275 (SC)* has held that, Design and engineering charges are includible in the assessable value when goods imported are specially manufactured on the basis of design and engineering specifications.

**Post-importation design and engineering charges - Includible, if related to imported goods and paid as a condition of sale :** Designing and engineering charges which have gone into erection, commissioning and supervision or short-term and long-term tests of machinery/equipments in India or the value of the drawings and documents for use during construction, erection, assembly etc. of imported goods, which is relatable to post import activity, will be includible in the value of imported goods if the same is paid as condition of sale of imported goods.

- (iii) **The statement is valid.** Where there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on his own and is not required for the purpose of fulfilling the condition of the contract, then such charges incurred on inspection are not includible in assessable value. - *Bombay Dyeing & Mfg. v. CC [1997] 90 ELT 276 (SC)*

**CASE 6 : International Price at the time of contract relevant for valuation :** The importer entered into contract for supply of crude sunflower seed oil @ U.S. \$ 435 C.I.F./Metric ton. Under the contract, the consignment was to be shipped in the month of July, 2019. The period was extended by mutual agreement and goods were shipped on 5<sup>th</sup> August, 2019 at old agreed prices. In the meanwhile, the international prices had gone up due to volatility in market and other imports during August, 2019 were at higher prices. Department sought to increase the assessable value on the basis of the higher prices as contemporaneous imports. Decide whether the contention of the department is correct. You may refer to decided case law, if any, for your decision. (3 Marks, May 2013)

**Ans:** The facts of the case are similar to that in case of *CC v. Aggarwal Industries Ltd.* [2011] 272 ELT 641 (SC). According to Rule 12 of Custom Valuation Rules, 2007, if the proper officer has a reason to doubt the truth or accuracy of the declared value, then he can call for information from importer and if he is still not satisfied, only then such value can be rejected. Merely on basis of suspicion regarding correctness of invoice produced by an importer, the transaction value cannot be rejected.

In the present case, the contract could not be performed in July 2019 and the same was shipped in August 2019. The importer paid contracted price only, though subsequently oil price increased drastically.

There was no collusion between importer and foreign supplier and the transaction so entered was genuine and the condition of Rule 3(2) were also satisfied.

Thus, merely because there is difference between contract price and price prevalent at the time of importation, the same cannot form the basis of rejection of transaction value. Thus, contract price shall be acceptable. No, the contention of the Department is not correct.

**CASE 7: Laptops imported with preloaded operating software -Value of software includible :** M/s. Hind IT Co. imported laptops with Hard Disc Drivers (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law. (May 2008, 4 Marks)

**Ans:** The action proposed by the Department is correct in law. The facts of the case are similar to *CC v. Hewlett Packard India Sales (P) Ltd.* [2007] 215 ELT 484 (SC). In this case, the Supreme Court observed that the pre-loaded operating system recorded in HDD in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit and assessed accordingly. However, if the operating system had been imported as packaged software like an accessory, then the benefit of exemption notification would have been available on it.

**Illustration 1 – Computation of customs duty along with anti-dumping duty :** Miss Priya imported certain goods weighing 1,000 kgs. with CIF value US \$ 45,000. Exchange rate was 1 US \$ = ₹ 65 on the date of presentation of bill of entry. Basic customs duty is chargeable @ 10% and Social welfare surcharge as applicable. IGST is 18% and GST compensation cess is NIL. As per Notification issued by the Government of India, anti-dumping duty has been imposed on these goods. The anti-dumping duty will be equal to difference between amount calculated @ US \$ 60 per kg. and 'landed value' of goods. You are required to compute custom duty and anti-dumping duty payable by Miss Priya. (5 Marks, May 2010-NS)

**Solution:** The following points are to be taken note of –

- (i) For the purposes of the notifications imposing anti-dumping duty, "landed value" means the assessable value as determined under the Customs Act, 1962 and includes all duties of customs except duties levied u/s 3, 8B, 9 and 9A of the said Customs Tariff Act, 1975.
- (ii) No Social Welfare surcharge is imposable on anti-dumping duty.

Keeping into mind the aforesaid, the relevant computations are as under (amounts in ₹) –

CIF Value of the consignment (in Indian ₹) [US \$ 45000 × 65] [Assessable Value]	29,25,000
Add: Basic Customs Duty @ 10%	2,92,500
Add: Social Welfare surcharge @ 10% on Basic Customs Duty	29,250
<b>Landed Value/Cost of the goods</b>	<b>32,46,750</b>
Add: Anti dumping duty [Cost of commodity for the purposes of anti-dumping notification] [1000 Kg. × US \$ 60 per Kg. × ₹ 65 per dollar - Landed Value - ₹ 32,46,750]	6,53,250
<b>Value for purpose of IGST</b>	<b>39,00,000</b>
Add: IGST u/s 3(7) of the CTA, 1975 [18% of ₹ 39,00,000]	7,02,000
<b>Total duties payable [₹ 2,92,500 + ₹ 29,250 + ₹ 6,53,250 + ₹ 7,02,000]</b>	<b>16,77,000</b>

**Illustration 2 – Computation of Anti Dumping Duty :** Ganga Ltd., an Indian company located at Jaipur, imported into India certain commodities in July, 2019 from a country which is covered by a Notification issued under Section 9A of the Customs Tariff Act, 1975. The relevant particulars relating to import are as follows :

- (i) CIF value of the consignment – US \$ 35,000
- (ii) Quantity imported – 700 kgs.
- (iii) Exchange rate applicable – US \$ 1 = ₹ 62



- (iv) Basic Customs Duty (BCD) - 20%
- (v) As per the Notification, the anti-dumping duty leviable will be 75% of the difference between the cost of the commodity calculated @ US \$ 80 per kg. and the landed value of the commodity as imported.
- (vi) IGST is 12% and GST compensation cess is NIL.

You are required to calculate the amount of total Customs duty (including anti-dumping duty) payable by Ganga Ltd.

**Note:** Social Welfare Surcharge may be adopted, wherever applicable. Working notes with brief reasons should form part of the answer. (4 Marks, May 2017)

**Solution:** Computation of total customs duty payable (amount in ₹):

Computation of Landed Value:			
Total CIF value in INR = US \$ 35,000 × ₹ 62 being Assessable Value	[A]		21,70,000
Basic customs duty (BCD) @ 20%	[B]		4,34,000
SWS @ 10% on BCD	[C]		43,400
<b>Landed Value/Cost of the goods</b>	[D]		<b>26,47,400</b>
<b>Add: Anti dumping duty (See Note)</b>	[F]		<b>6,18,450</b>
<b>Value for purpose of IGST</b>	[G]		<b>32,65,850</b>
<b>Add: IGST u/s 3(7) of the CTA, 1975 [12% of ₹ 32,65,850]</b>	[H]		<b>3,91,902</b>
<b>Total customs duty payable [(B) + (C) + (F) + (H)]</b>			<b>14,87,752</b>
<b>Note: Computation of Anti-dumping duty payable:</b>			
Cost of commodity = 700 Kg × US \$ 80 × ₹ 62			34,72,000
<b>Less: Landed value of goods</b>			<b>26,47,400</b>
<b>Difference</b>	[E]		<b>8,24,600</b>
<b>Anti-dumping duty (rounded off)</b>		[F] = 75% of (E)	<b>6,18,450</b>

**Illustration 3 - Computation of assessable value & customs duty :** Compute (keeping in mind the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975) the total customs duty payable by an importer on goods imported by sea into India, from the following details. You may, wherever appropriate, make suitable assumptions, indicating the same in your answer.

Name of Goods		'X'
Value of Goods (FOB)	\$	1,000 (Dollars)
Weight of Goods		1,000 Kg.
Freight Charges	\$	100 (Dollars)
Insurance Charges	\$	20 (Dollars)
Handling Charges	₹ 200	
Exchange Rate	4 Dollars = ₹ 240	
Date of Presentation of Bill of Entry	04-05-2019	
Date of Entry Inwards of Vessel	01-05-2019	
Rates of Customs Duty		
01/05/19	04-05-2019	
Basic 100% Adv. plus ₹ 25 per Kg.		Basic 110% Adv. plus ₹ 25 per Kg.
Integrated tax 12% and GST compensation cess -NIL		Integrated tax 12% and GST Compensation cess - NIL

**Note:** No other particulars are relevant. (8 Marks, Nov. 1996)

**Solution:** Computation of assessable value and customs duty -

FOB cost	US \$	1,000
<b>Add: Freight from UK to Indian port</b>	US \$	100
<b>Add: Insurance</b>	US \$	20
<b>Total (A)</b>	US \$	<b>1,120</b>
Exchange rate to be applied for 1 Dollar, as notified by CBIC (₹ Per dollar)		60
<b>Total sum in Indian ₹ [CIF Value being Assessable Value]</b>	₹	<b>67,200.00</b>
<b>Add: Basic Customs duty [110% of Assessable value + ₹ 25 × 1000 Kg.]</b>	[1] ₹	98,920.00
<b>Add: SWS @ 10% of BCD</b>	[2]	9,892.00
<b>Total for Integrated Tax leviable u/s 3(7)</b>	₹	<b>1,76,012.00</b>
<b>Add: Integrated tax u/s 3(7) @ 12%</b>	[4] ₹	21,121.44
<b>Total imported cost (rounded off)</b>	₹	<b>1,97,133</b>
<b>Total customs duty payable = [1] + [2] + [3] + [4] (rounded off)</b>	₹	<b>1,29,933</b>

**Working Note :** Customs duty rate shall be of the date of presentation of bill of entry, since, the same is presented after the date of entry inwards of vessel.

**Illustration 4 – Computation of Assessable Value and GST liability :** Product 'Z' was imported by Mr. X by air. The details of the import transaction are as follows:

Particulars	US \$
Price of 'Z' at exporter's factory	8,500
Freight from factory of the exporter to load airport (airport in the country of exporter)	250
Loading and handling charges at the load airport	250
Freight from load airport to the airport of importation in India	4,500
Insurance charges	2,000

Though the aircraft arrived on 22-08-2019, the bill of entry for home consumption was presented by Mr. X on 20-08-2019.

The other details furnished by Mr. X are :

	20-08-2019	22-08-2019
Rate of basic customs duty	20%	10%
Exchange rate notified by CBIC	₹ 60 per US \$	₹ 63 per US \$
Exchange rate prescribed by RBI	₹ 61 per US \$	₹ 62 per US \$
Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975	18%	12%

**Compute – (i) value of product 'Z' for the purpose of levying customs duty; (ii) customs duty and tax payable.**

**Solution:**

➤ **Approach 1 :** Computation of Assessable value & customs duty –

Particulars	US \$
FOB Value	
Factory price	\$ 8,500
Freight from factory to foreign airport	\$ 250
Loading at foreign airport	\$ 250
	9,000
<b>Add:</b> Cost of transport under Rule 10(2)(a)	[WN-1] 1,800
<b>Add:</b> Insurance cost on actual basis under Rule 10(2)(b)	2,000
<b>CIF Value or Assessable Value</b>	<b>12,800</b>
	(₹)
Exchange rate as per CBIC	[WN-2] 60
Assessable value (₹ 60 × 12,800 US \$)	7,68,000.00
<b>Add:</b> Basic customs duty @ 10% [A]	[WN-3] 76,800.00
<b>Add:</b> SWS @ 10% on BCD [B]	7,680.00
<b>Sub-total</b>	<b>8,52,480.00</b>
<b>Add:</b> IGST on sub-total above @ 12% [C]	[WN-4] 1,02,297.60
<b>Total duty and tax payable [A + B + C] (rounded off)</b>	<b>1,86,778</b>

**Working Notes :**

- (1) In the case of goods imported by air, air freight shall not exceed 20% of the FOB value of the goods. [Fifth proviso to Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].  
FOB value in this case is the ex-factory price of the goods (8,500 US \$) plus the cost of transport from factory to load airport (250 US \$) plus loading and handling charges at the load airport (250 US \$) which is 9,000 US\$.
- (2) Rate of exchange determined by CBIC is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- (3) Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- (4) Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1962]. Social Welfare Surcharge leviable on integrated tax have been exempted *vide* Notification No. 13/2018-Cus. dated 2-2-2018.
- (5) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR *vide* Notification No. 91/2017-Cus. (NT) dated 26-09-2017.



- **Approach 2 (used by ICAI in RTP May 2018) :** The approach used by the RTP May 2018 is that -
- Rule 10(2)(a) covers freight/ handling in Foreign Country Total of all freight and handling cost (including that incurred at the foreign port of export or foreign country) shall be addable as per provisions of Rule 10(2) (a) and in case of import by air, said total cannot exceed 20% of FOB.
  - FOB for this purpose shall include the freight and handling cost at foreign port.

The revised calculation is given below -

**Computation of Assessable value & customs duty -**

Ex-factory price of the goods		US \$	8,500
Freight from factory of the exporter to load airport (airport in the country of exporter)	US \$	250	
Loading and handling charges at the load airport	US \$	250	
Freight from load airport to the airport of importation in India	US \$	4,500	
<b>Total cost of transport, loading and handling charges associated with the delivery of the imported goods to the place of importation</b>	<b>US \$</b>	<b>5,000</b>	
<i>Add:</i> Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation ( <i>restricted to 20% of FOB value</i> ) [WN-1]	US \$		1,800
Insurance (actual)	US \$		2,000
<b>CIF for customs purpose being Assessable Value</b>	<b>US \$</b>		<b>12,300</b>
Exchange rate as per CBIC (₹ 64 per US \$)	[WN-2]		
Assessable value (₹ 60 × 12,300 US \$)		₹	7,38,000.00
<i>Add:</i> Basic customs duty @ 10% [A]	[WN-3]	₹	73,800.00
<i>Add:</i> SWS @ 10% of custom duty [10% of ₹ 73,800] [B]		₹	7,380.00
<b>Value for the purpose of levying integrated tax</b>	[WN-4]	₹	<b>8,19,180.00</b>
<i>Add:</i> Integrated tax leviable under section 3(7) @ 12% [C]		₹	98,301.60
<b>Total duty &amp; tax payable [A + B + C] (rounded off)</b>			<b>1,79,482</b>

**Working Notes :**

- In the case of goods imported by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation shall not exceed 20% of the FOB value of the goods. [Fifth proviso to Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR)].  
FOB value in this case is the ex-factory price of the goods (8,500 US \$) plus the cost of transport from factory to load airport (250 US \$) plus loading and handling charges at the load airport (250 US \$) which is 9,000 US\$.
- Rate of exchange determined by CBIC is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- Section 15 of the Customs Act, 1962 provides that rate of duty shall be the rate in force on the date of presentation of bill of entry or the rate in force on the date of arrival of aircraft, whichever is later.
- Integrated tax is levied on the sum total of the assessable value of the imported goods and customs duties [Section 3(8) of the Customs Tariff Act, 1962]. Social Welfare Surcharge leviable on integrated tax have been exempted *vide* Notification No. 13/2018-Cus. dated 2-2-2018.
- No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR *vide* Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Authors :** The approach used by ICAI does not seem to be correct because, -

- on the one hand, freight/handling within exporting country is taken to be part of FOB, while on the other hand, it is taken to part of handling/transport cost under rule 10(2)(a). This is itself confusing since addition under rule 10(2)(a) itself depends upon FOB.
- Indicating "**FOB port**" means that the seller pays for transportation of the goods to the port of shipment, plus loading costs. The buyer pays the cost of marine freight transport, insurance, unloading, and transportation from the arrival port to the final destination. In view of this, what Rule 10(2)(a) refers to is "transport and handling from place of export to place of import".

This entire confusion arose because of last sentence in para 4.2 of Circular No. 39/2017-Cus., dated 26-09-2017, which reads -

4.2 The phrase "loading, unloading and handling charges" appearing in the amended Rule 10(2)(a) is to be understood in context of Article 8(2) of the WTO Agreement which reads as "the cost of transport of the imported goods to the port or place of importation". Thus, only charges incurred for delivery of goods "to" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value.

In exams : Students may adopt any approach with working note.

Illustration 5 – Determine the assessable value of imported goods in the following cases :

➤ Case I :

Particulars	US \$
FOB value	1,000
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known
Insurance charges	10

➤ Case II :

Particulars	US \$
FOB value plus insurance charges	1,010
Freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	Not known

➤ Case III :

Particulars	US \$
FOB value	1,000
Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	60
Insurance charges	Not known

➤ Case IV :

Particulars	US \$
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
Insurance charges	Not known

➤ Case V :

Particulars	US \$
FOB value	1,000
Air freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	250
Insurance charges	10

**Solution:** Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007 (CVR) has been substituted by a new sub-rule. The new sub-rule provides that for the purposes of Section 14(1) of the Customs Act, 1962 and these rules, the value of the imported goods shall be the value of such goods, and shall include –

- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- (b) the cost of insurance to the place of importation :

However, where, –

- The cost referred to in clause (a) is not ascertainable, such cost shall be 20% of the free on board value of the goods.
- The free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be 20% of such sum:
- The cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods.
- The free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum.
- In the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed 20% of free on board value of the goods.

- In the case of goods imported by sea or air and transhipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

**Explanation :** The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge charges.

In the backdrop of the above provisions, the assessable value in the various cases will be computed as under:

**Computation of assessable value :**

➤ **Case I :**

(amount in US \$)

FOB value	1,000
<i>Add:</i> Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of FOB value in terms of first proviso to rule 10(2) of CVR]	200
Cost of insurance [Including in terms of Rule 10(2)(b) of CVR]	10
<b>Assesable value [CIF value]</b>	<b>1,210</b>

➤ **Case II :**

(amount in US \$)

FOB value plus insurance charges	1,010
<i>Add:</i> Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of sum of FOB value of the goods and the cost of insurance in terms of second proviso to rule 10(2) of CVR]	202
<b>Assesable value [CIF value]</b>	<b>1,212</b>

➤ **Case III :**

(amount in US \$)

FOB value	1,000
<i>Add:</i> Cost of sea transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [Includible in terms of rule 10(2)(a) of CVR]	60
Insurance [1.125% of sum of FOB value of the goods in terms of third proviso to rule 10(2) of CVR]	11.25
<b>Assesable value [CIF value]</b>	<b>1,071.25</b>

➤ **Case IV :**

(amount in US \$)

FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
<i>Add:</i> Insurance [1.125% of sum of FOB value of the goods and sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation in terms of fourth proviso to rule 10(2) of CVR]	11.925
<b>Assesable value [CIF value]</b>	<b>1,071.925</b>

➤ **Case V :**

(amount in US \$)

FOB value	1,000
<i>Add:</i> Cost of air transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is restricted to 20% of FOB value when transportation of goods is through air [Fifth proviso to rule 10(2) of CVR]	200
Cost of insurance	10
<b>Assesable value [CIF value]</b>	<b>1,210</b>

**Illustration 6 - Computation of assessable value :** From the particulars given below, find out the assessable value of the imported goods under the Customs Act, 1962 :

(5 Marks, Nov. 2010)

Particulars	US \$
(1) Cost of the machine at the factory of the exporting country	10,000
(2) Transport charges incurred by the exporter from his factory to the port for shipment	500
(3) Handling charges paid for loading the machine in the ship	50
(4) Buying commission paid by the importer	50
(5) Freight charges from exporting country to India	1,000
(6) Exchange rate to be considered : 1 \$ = ₹ 60	

**Solution: Computation of Assessable Value of the Imported Goods -**

(1) Cost of the machine at the factory of the exporting country	\$	10,000.00
(2) Transport charges incurred by the exporter from his factory to the port for shipment [WN-2]	\$	500.00
(3) Handling charges paid for loading machine in ship	\$	50.00

	<b>FOB Value</b>		\$	<b>10,550.00</b>
(4)	Buying commission paid by the importer	[WN-1]	\$	Nil
(5)	Freight charges from exporting country to India		\$	1,000.00
(6)	Insurance Charges @ 1.125% of FOB	[WN-3]	\$	118.69
	<b>CIF Value</b>		\$	<b>11,668.69</b>
	<b>CIF Value in Indian ₹ (CIF Value × ₹ 60) being Assessable Value (Rounded off)</b>		₹	<b>7,00,121</b>

**Working Notes :**

- Buying commission is not included in the assessable value as per Rule 10(1)(a)(i) of the Customs Valuation Rules, 2007.
- Transport charges incurred by the exporter from his factory to the port for shipment have been included as it is logical to presume that the same have been recovered separately from the importer.
- Insurance charges have been included @ 1.125% of FOB value of goods.
- No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 7 - Computation of assessable value & customs duty:**

- Vishal Industries imported goods from U.S.A., CIF Value bearing US \$ 2600. Air freight 500 US \$, insurance cost 100 US \$, landing charges are not ascertainable.
  - Date of bill of entry is 25-09-2019 and basic custom duty on this date is 10% and exchange rate notified by Central Board of Indirect Taxes in US \$ 1 = ₹ 62.
  - Date of entry inward is 21-10-2019. Basic customs duty on this date is 20% and exchange rate notified by Central Board of Indirect Taxes is US \$ 1 = ₹ 60.
  - Integrated tax under section 3(7) of the Customs Tariff Act is 12%. Compute the assessable value and amount of total customs duty payable under the Customs Act, 1962. Make suitable assumptions, where required. (5 Marks, May 2015)
- Working notes should form part of your answer.

**Solution: Computation of Assessable value and customs duty payable thereon :**

CIF Value		\$	2,600
Less: Air freight		\$	500
Less: Insurance		\$	100
<b>FOB value</b>		\$	<b>2,000</b>
Add: Air freight (2,000 × 20%)	[WN-1]	\$	400
Add: Insurance (Actual)		\$	100
<b>CIF value being Assessable Value for customs purposes</b>		\$	<b>2,500</b>
Exchange rate	[WN-2]	₹	62
<b>Assessable value in Indian Rupees = US \$ 2,500 × ₹ 62</b>		₹	<b>1,55,000</b>
Add: Basic custom duty @ 20% (₹ 1,55,000 × 20%)	[WN-3]	₹	31,000
Add: SWS @ 10% of BCD		₹	3,100
<b>Total for Integrated Tax</b>		₹	<b>1,89,100</b>
Add: Integrated tax leviable u/s 3(7) @ 12% (₹ 1,89,100 × 12%)		₹	22,692
<b>Total customs duty payable (₹ 31,000 + ₹ 3,100 + ₹ 22,692) (rounded off)</b>		₹	<b>56,792</b>

**Working Notes:**

- In case of goods imported by air, freight cannot exceed 20% of FOB price - Rule 10 of Customs Valuation Rules.
- Rate of exchange notified by CBIC on the date of filing of bill of entry to be considered - Section 14 of the Customs Act, 1962.
- Rate of duty will be rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later - Section 15 of the Customs Act, 1962.
- No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 8 - Computation of assessable value & customs duty :** 15000 Chalices were imported for charitable distribution in India by XY Charitable Trust. The Trust did not pay either for the cost of goods or for the design and development charges, which was borne by the supplier. Customs officer computed its FOB value at US \$ 20,000 (including design and development charges), which was accepted by the Trust. Other details obtained were as follows :

Particulars		Amount
(1)	Freight paid (air) (in USD)	4,500
(2)	Design & Development charges paid in USA (in USD)	2,500
(3)	Commission payable to an agent in India (in ₹)	12,500
(4)	Exchange rate and rate of basic duty notified by CBIC is as follows :	
	<b>Date of Bill of Entry</b> <b>BCD</b> <b>Exchange Rate in ₹</b>	
	08-09-2019                      20%                      60	
	<b>Date of Entry Inward</b> <b>BCD</b> <b>Exchange Rate in ₹</b>	
	30-09-2019                      30%                      62	
	While the inter-bank rate was 1 USD = ₹ 63	
(5)	Integrated Tax payable u/s 3(7) of the Customs Tariff Act, 1975	12%
(6)	Social Welfare surcharge as applicable	

Compute the Assessable value and amount of total customs duty payable under the Customs Act, 1962. Make suitable assumptions where required. Working notes should form part of your answer. (5 Marks, Nov. 2015)

**Solution: Computation of assessable value and customs duty payable thereon -**

Particulars	Amount
FOB value computed by Customs Officer (including design and development charges) (in US \$)	20,000.00
Exchange rate (for 1 US \$) [Rate of exchange notified by CBIC on the date of filing of bill of entry to be considered - Section 14 of the Customs Act, 1962]	60.00
<b>FOB Value in Indian Rupees</b>	<b>12,00,000.00</b>
<i>Add:</i> Commission payable to agent in India	12,500.00
<b>Customs FOB Value</b>	<b>12,12,500.00</b>
<i>Add:</i> Air freight (₹ 12,12,500 × 20%) [In case of goods imported by air, freight cannot exceed 20% of Customs FOB value - Rule 10 Customs Valuation Rules]	2,42,500.00
<i>Add:</i> Insurance (1.125% of ₹ 12,12,500) [Insurance charges, when not ascertainable, have to be included @ 1.125% of Customs FOB value of goods - Rule 10 of Customs Valuation Rules]	13,640.63
<b>CIF value for customs purposes being Assessable Value</b>	<b>14,68,640.63</b>
<i>Add:</i> Basic custom duty @ 30% (₹ 14,68,640.63 × 30%) [Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later - Section 15 of the Customs Act, 1962]	[A] 4,40,592.19
<i>Add:</i> Social Welfare surcharge @ 10% of ₹ 4,40,592.19	[B] 44,059.22
<b>Total for Integrated Tax</b>	<b>19,53,292.03</b>
<i>Add:</i> Integrated tax leviable u/s 3(7) of Customs Tariff Act (CTA) @ 12% (₹ 19,53,292.03 × 12%)	[C] 2,34,395.04
<b>Total customs duty payable (₹ 4,40,592.19 + ₹ 44,059.22 + ₹ 2,34,395.04) [A + B + C] (rounded off)</b>	<b>7,19,046</b>

**Illustration 9 - Computation of assessable value and customs duty payable thereon :** F. Ltd. imported a machine from UK in May, 2019. The details in this regard are as under :

- (i) FOB value of the machine : 10000 UK Pound
- (ii) Freight (AIR) : 3000 UK Pound
- (iii) Licence fee, the buyer was required to pay in UK : 400 UK Pound
- (iv) Buying commission paid in India ₹ 20,000
- (v) Date of bill of entry 20-05-2019 and the rate of exchange notified by CBIC on this date was ₹ 99.00 per one pound. Rate of BCD was 7.5%.
- (vi) Date of arrival of aircraft was 25-05-2019 and the rate of exchange notified by CBIC on this date was ₹ 98.50 per pound and rate of BCD was 10%.
- (vii) Rate of Integrated tax was 12% and there was no GST Compensation Cess.
- (viii) Insurance premium details were not available.

You are required to compute the assessable value of the machine for valuation of customs duty and the total duty payable. You may make suitable assumptions wherever required. (5 Marks, Nov. 2017)

**Solution: Computation of assessable value and total customs duty payable by F Ltd. :**

FOB Value	£	10,000
<i>Add:</i> Licence fee required to be paid in UK	£	400
<b>Customs FOB value</b>	£	<b>10,400</b>

Exchange rate is ₹ 99 per £	[WN-2]		
<b>Value in rupees</b>		₹	10,29,600.00
<b>Add: Air freight</b>	[WN-3]	₹	2,05,920.00
Insurance @ 1.125% of ₹ 10,29,600	[WN-4]	₹	11,583.00
Buying commission	[WN-5]		-
<b>Assessable Value</b>		₹	<b>12,47,103.00</b>
<b>Add: Basic custom duty @ 10% (₹ 12,47,103 × 10%)</b> [WN-6]	[A]	₹	1,24,710.30
<b>Add: Social Welfare surcharge @ 10% of ₹ 1,24,710.30</b>	[B]	₹	12,471.03
<b>Value for Integrated tax</b>		₹	<b>13,84,284.33</b>
<b>Add: Integrated Tax @ 12%</b>	[C]	₹	1,66,114.12
<b>Total customs duty payable [A + B + C] (rounded off)</b>		₹	<b>3,03,295</b>

**Working Notes :**

- (1) Licence fees is includible in assessable value as per Rule 10(1)(c) of Custom Valuation Rules.
- (2) Rate of exchange notified by CBIC on the date of filing of bill of entry to be considered - Section 14 of the Customs Act, 1962.
- (3) In case of goods imported by air, freight cannot exceed 20% of Customs FOB value. Since actual freight is more than 20% of customs FOB value, air freight is restricted to 20% of customs FOB value as per Rule 10(2) of Customs Valuation Rules.
- (4) Insurance charges are included @ 1.125% of FOB value of goods.
- (5) Buying commission is not included in the assessable value as per Rule 10(1) of Customs Valuation Rules.
- (6) Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later - Section 15 of the Customs Act, 1962.
- (7) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 10 - Computation of assessable value & customs duty :** Mr. Backpack imported goods from a UK supplier by air, which was contracted on CIF basis. However, there were changes in prices in the international market between the date of contract and actual importation. As a result of several negotiations, the parties agreed for a negotiated price payable as follows:

Particulars	Contract Price (£)	Changed Price (£)	Negotiated Price (£)
CIF Value	5,000	5,800	5,500
Air Freight	300	600	500
Insurance	500	650	600

Other details for computing assessable value and duty payable are as tabled below:

Particulars	Amount (£)
Vendor inspection charges (not required for making the goods ready for shipment)	600
Commission payable to local agent 1% of FOB in local currency	

Date of Bill of Entry	Basic Customs Duty	Exchange rate in ₹ (notified by CBIC)
18-02-2020	10%	102
Date of arrival of aircraft	Basic Customs Duty	Exchange rate in ₹ (notified by CBIC)
15-02-2020	15%	98

\*Inter-bank rate 1 UK Pound = ₹ 106

Compute the assessable value and calculate basic customs duty payable by Mr. Backpack. (5 Marks, May 2016)

**Solution: Computation of assessable value and calculate basic customs duty payable -**

CIF value (negotiated price)	[WN-1]	£	5,500.00
<b>Less: Air freight</b>		£	500.00
<b>Less: Insurance</b>		£	600.00
<b>FOB Value</b>		£	<b>4,400.00</b>
Exchange rate is ₹ 102 per £	[WN-4]		
Fob value in Indian Rupees		₹	4,48,800.00
<b>Add: Commission payable to local agent [1% of FOB] = (US \$ 4,400 × ₹ 102) × 1%</b>	[WN-5]	₹	4,488.00
<b>Add: Vendor inspection charges</b>	[WN-2]	₹	-
<b>Customs FOB Value</b>			<b>4,53,288.00</b>



Freight [£ 500 × ₹ 102] [Actual since it does not exceed 20% of Customs FOB value]	[WN-3]	₹	51,000.00	
Insurance - Actual		₹	61,200.00	
<b>CIF Value being Assessable Value</b>			₹	<b>5,65,488.00</b>
Add: Basic custom duty @ 10% (₹ 5,65,488 × 10%)	[WN-6]	₹	56,548.80	
Add: SWS (10% of ₹ 56,548.80)		₹	5,654.88	
<b>Customs duty payable [rounded off]</b>			₹	<b>62,204</b>

**Working Notes :**

- (1) The value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
- (2) Where there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on his own and is not required for the purpose of fulfilling the condition of the contract, then such charges incurred on inspection are not includible in assessable value. - *Bombay Dyeing & Mfg. v. CC [1997] 90 ELT 276 (SC)*
- (3) In case of goods imported by air, freight cannot exceed 20% of FOB price. Since actual freight is not more than 20% of FOB value, actual air freight is considered as per Rule 10(2) of Customs Valuation Rules.
- (4) Rate of exchange notified by CBIC on the date of filing of bill of entry to be considered - Section 14 of the Customs Act, 1962.
- (5) Local agent's commission is includible in the assessable value as per Rule 10(1)(a)(i).
- (6) Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later - Section 15 of the Customs Act, 1962.
- (7) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 11 - Assessable Value :** Compute the assessable value of the machine imported by M/s. Exports India Pvt. Ltd., under the Customs Act, 1962.

FOB price of the machine [US \$]	10,000
Air freight paid [US \$]	2,500
Insurance for transit of machine	Not Ascertainable
Cost of development work in India (₹)	40,000
Local agent's commission (₹)	10,000
Cost of local transport (₹)	5,000

Exchange rate applicable US \$ 1 = ₹ 60. Provide explanation for your answer. (5 Marks, May 2011)

**Solution: Computation of Assessable Value -**

FOB price of the machine	\$	10,000.00
Exchange rate to be applied is 1 US \$ = ₹ 60, as notified by CBIC	₹	60.00
FOB price in Indian Rupees	₹	6,00,000.00
Add: Commission to the Agent (since not buying commission, hence includible)	₹	10,000.00
<b>Customs FOB Value</b>	₹	<b>6,10,000.00</b>
Add: Air freight (Actual Air freight i.e. ₹ 2,500 × 60 = ₹ 1,50,000 cannot exceed 20% of Customs FOB value of the goods.)	₹	1,22,000.00
Add: Insurance charges @ 1.125% of the Customs FOB Value	₹	6,862.50
<b>Total CIF Value being Assessable Value</b>	₹	<b>7,38,862.50</b>

**Working Notes:**

- (1) Cost of local transport is not includible in assessable value as it is a post importation activity.
- (2) Cost of development work in India is not includible in the assessable value [Rule 10(1)(b)].
- (3) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 12 - Computation of assessable value :** Determine the assessable value for the purpose of Customs Act, 1962 from the following information in respect of import of a machine from UK : (5 Marks, Nov. 2011)

FOB Value	£ 6,000
Air Freight	£ 1,500

Design and development charges paid in UK	£ 500
Design and development charges paid in India	£ 10,000
Commission paid to local agents 1% of FOB Value	
Date of Bill of Entry 10-4-2019 (Exchange rate notified by CBIC £ 1 = ₹ 100)	
Date of Entry Inward 20-4-2019 (Exchange rate notified by CBIC £ 1 = ₹ 95)	

Insurance charges are not ascertainable. Make assumptions where required and provide suitable explanations.

**Solution: Computation of Assessable Value under the Customs Act, 1962 –**

FOB Value		£	6,000.00
Add: Design and development charges paid in UK	[WN-1]	£	500.00
Add: Commission to the Agent @ 1% of FOB Value	[WN-2]	£	60.00
<b>Customs FOB value</b>			<b>6,560.00</b>
Add: Air freight (restricted to 20% of Customs FOB value of goods)		£	1,312.00
Add: Insurance charges (1.125% of Customs FOB) (since not ascertainable)		£	73.80
<b>CIF value</b>		£	<b>7,945.80</b>
Exchange rate to be applied is 1 Pound = ₹ 100, prevalent on date of bill of entry		₹	100
<b>Total CIF value in Indian ₹ being Assessable Value</b>		₹	<b>7,94,580.00</b>

**Working Notes :**

- Design & development charges paid in India have not been considered on the presumption that the same have been paid for design & development work undertaken in India. Rule 10(1)(b) of the Customs Valuation Rules provides for inclusion of only those design & development charges which have been paid for design & development work undertaken elsewhere than in India.
- Local agent's commission is includible in the assessable value as per Rule 10(1)(a)(i).
- No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR *vide* Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 13 – Computation of assessable value :** T Ltd. imported some goods from LMP Inc. of United States by air freight. You are required to compute the value for purposes of customs duty under the Customs Act, 1962 from the following particulars :

CIF Value	US \$ 6,000
Freight paid	US \$ 2,000
Insurance cost	US \$ 700

The bank had received payment from the importer at the exchange rate of US \$ 1 = ₹ 59 while the CBIC notified exchange rate on the relevant date was US \$ 1 = ₹ 60. (Make suitable assumptions where required and provide brief explanations to your answer) (5 Marks, Nov.2010-NS) (Similar RTP May 2011)

**Solution: Assessable value may be ascertained as follows –**

Particulars	US \$	US \$
CIF value		6,000
Less: Air freight	2,000	
Insurance charges	700	2,700
<b>FOB value</b>		<b>3,300</b>
<b>Computation of Assessable value : FOB value as calculated above</b>		3,300
Add: Freight restricted to 20% of FOB value	660	
Insurance charges (actual)	700	1,360
<b>CIF Value (for customs purposes) (amount in US \$)</b>		<b>4,660.00</b>
Rate of Exchange notified by the CBIC		60.00
<b>CIF value in Indian ₹ being Assessable Value</b>		<b>2,79,600.00</b>

**Illustration 14 – Computation of assessable value for purpose of calculating import duty :** Care Energy Ltd. imported a lift from England at an invoice price of ₹ 20,00,000. The assessee had supplied raw material worth ₹ 5,00,000 to the supplier for the manufacture of said lift. Due to safety reasons, the lift was not taken to the jetty in the port but was unloaded at the outer anchorage. The charges incurred for such unloading amounted to ₹ 25,000 and the cost incurred on transport of the lift from outer anchorage to the jetty was ₹ 50,000. The importer was also required to pay ship demurrage charges ₹ 10,000. The lift was imported at an actual cost of transport ₹ 45,000 and insurance charges ₹ 20,000. Compute its assessable value. (5 Marks, CS June 2010)

**Solution: Computation of Assessable Value (amount in ₹) -**

FOB value being the invoice price		20,00,000
Add: Raw material supplied by assessee under Rule 10(1)(b)		5,00,000
<b>FOB Value</b>		<b>25,00,000</b>
Add: Transportation under Rule 10(2)	[WN-1]	
Sea Freight		45,000
Ship demurrage charges		10,000
Lighterage		25,000
Barge charges		50,000
Add: Actual cost of insurance		20,000
<b>CIF Value being Assessable Value</b>		<b>26,50,000</b>

**Working Note :**

- (1) The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges.
- (2) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 15 - Computation of assessable value & customs duty :** Compute the assessable value and Custom duty payable from the following information : (CA Final June 2009, 6 Marks) (Similar 5 Marks, Nov. 2012)

- FOB value of machine - 8,000 UK Pounds
- Freight paid (air) - 2,500 UK Pounds
- Design and development charges paid in UK - 500 UK Pounds
- Commission payable to local agent @ 2% of FOB in Indian ₹
- Date of bill of entry - 24-10-2019 (Rate BCD 20%, Exchange rate as notified by CBIC ₹ 100 per UK Pound)
- Date of entry inward - 20-10-2019 (Rate BCD 18%, Exchange rate as notified by CBIC ₹ 95 per UK Pound)
- Integrated tax payable @ 12%
- GST Compensation cess - NIL
- Insurance charges actually paid but details not available.

**Solution: Computation of Assessable value & customs duty -**

FOB cost	£	8,000
Add: Design and development charges paid in UK	£	500
<b>Total</b>	£	<b>8,500</b>
Exchange rate to be applied is 1 £ (Pound) = ₹ 100, as notified by CBIC.	₹	100
Total sum in Indian ₹	₹	8,50,000
Add: Commission to the Agent @ 2% of FOB cost × ₹ 100 per pound	₹	16,000
<b>FOB Value as per customs</b>	₹	<b>8,66,000</b>
Add: Insurance charges (1.125% of customs FOB)	₹	9,742.50
Add: Air freight (20% of customs FOB)	₹	1,73,200.00
<b>Total CIF Value being Assessable Value</b>	₹	<b>10,48,942.50</b>
Add: Basic Customs duty @ 20%	[1] ₹	2,09,788.50
Add: SWS@ 10%	[2] ₹	20,978.85
<b>Total for Integrated tax leviable u/s 3(7)</b>	₹	<b>12,79,709.85</b>
Add: Integrated tax u/s 3(7) @ 12%	[3] ₹	1,53,565.18
<b>Total imported cost (rounded off)</b>	₹	<b>14,33,275</b>
<b>Total customs duty payable = [1] + [2] + [3] (rounded off)</b>	₹	<b>3,84,333</b>

**Illustration 16 - Computation of assessable value & customs duty :** Compute the duty payable under the Customs Act, 1962 for an imported equipment based on the following information :

- Assessable value of the imported equipment US \$ 10,100.
- Date of Bill of Entry 25-4-2019 basic customs duty on this date 20% and exchange rate notified by the Central Board of Indirect Taxes US \$ 1 = ₹ 65.
- Date of Entry inwards 21-4-2019 Basic customs duty on this date 16% and exchange rate notified by the Central Board of Indirect Taxes US \$ 1 = ₹ 64.
- Integrated tax payable under Section 3(7) of the Customs Tariff Act, 1975 : 12%.

(v) GST Compensation Cess : NIL

(vi) Social Welfare Surcharge @ 10%.

Make suitable assumptions where required and show the relevant workings and round off your answer to the nearest Rupee. (5 Marks, Nov. 2009-NS)

**Solution: The relevant computations are shown below –**

Assessable Value		\$	10,100
Exchange rate to be applied is 1 Pound = ₹ 65, as notified by CBIC		₹	65
<b>Assessable value</b>		₹	<b>6,56,500.00</b>
<i>Add:</i> Basic Customs duty @ 20%	[1]	₹	1,31,300.00
<i>Add:</i> SWS @ 10%	[2]		13,130.00
<b>Total for Integrated tax leviable under section 3(7)</b>		₹	<b>8,00,930.00</b>
<i>Add:</i> Integrated tax u/s 3(7) @ 12%	[3]	₹	96,111.60
<b>Total imported cost (rounded off)</b>		₹	<b>8,97,042</b>
<b>Total customs duty payable = [1] + [2] + [3] (rounded off)</b>		₹	<b>2,40,542</b>

**Illustration 17 – Computation of assessable value :** From the following particulars, determine the assessable value of the imported equipment giving explanation for each item :

(1) FOB cost of equipment (Japanese Yen)	2,00,000 Yen
(2) Sea Freight charges in Japanese Yen	20,000 Yen
(3) Charges for development connected to equipment paid in India	₹ 60,000
(4) Insurance charge paid in India for transportation from Japan	₹ 15,000
(5) Commission payable to agent in India	₹ 15,000

Exchange rate as per RBI is 1 Yen = ₹ 0.60; Exchange rate as per CBIC is 1 Yen = ₹ 0.63; Landing charges: 1% of CIF cost. (5 Marks, June 2009-NS)

**Solution: Computation of Assessable value –**

FOB cost		Yen	2,00,000
<i>Add:</i> Freight	[WN-1]	Yen	20,000
<b>Total</b>		Yen	<b>2,20,000</b>
Exchange rate to be applied is 1 yen = ₹ 0.63, as notified by CBIC	[WN-4]	₹	0.63
<b>Total sum in Indian ₹</b>		₹	<b>1,38,600.00</b>
<i>Add:</i> Commission to the Agent	[WN-2]	₹	15,000.00
<i>Add:</i> Insurance charges		₹	15,000.00
<b>Total CIF Value being Assessable Value</b>		₹	<b>1,68,600.00</b>

**Working Notes:**

- Freight in Japan is includible in the assessable value.
- Agency commission paid in India is not a buying commission and hence includible in the assessable value.
- Charges for development, paid in India do not form part of assessable value because as per rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, only the development undertaken at a place other than India shall form part of assessable value.
- Currency conversion rate as notified by CBIC is to be taken into consideration.
- No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 18 – Computation of assessable value :** Infotech limited has imported a machine from Japan at an FOB cost of 50,000 yen (Japanese). The other expenses incurred are as follows : (10 Marks, Nov. 2002)

- Freight from Japan to Indian Port 5,000 yen ;
- Insurance paid to insurer in India ₹ 2,500 ;
- Designing charges paid to consultancy firm in Japan 7,500 yen ;
- M/s. Infotech spent ₹ 25,000 in India for development work connected with the machine ;
- Transportation cost from India Port to Factory ₹ 7,500 ;
- CBIC had announced exchange rate of 1 yen = ₹ 0.60 by Notification under Section 14(3) of the Customs Act, 1962. The exchange rate prevailing on that day in the market was = ₹ 0.61 ;

(vii) M/s. Infotech made payment to the Bank based on an exchange rate of 1 yen = ₹ 0.62 ;

(viii) The commission payable to the agent in India was at 5% of the FOB price in Indian ₹.

The rate of Customs duty is 10%. Similar goods are subject to 12% IGST in India.

Clearly showing your workings to arrive at the total Assessable value in ₹ for purposes of levy of customs duty.

**Solution: Computation of assessable value -**

FOB cost	Yen	50,000
Add: Design charges	Yen	7,500
Add: Freight	Yen	5,000
<b>Total</b>	<b>Yen</b>	<b>62,500</b>
Exchange rate to be applied is 1 yen = ₹ 0.60, as notified by CBIC	₹	0.6
Total sum in Indian ₹	₹	37,500.00
Add: Commission to the Agent [5% of FOB value of goods] i.e. [5% of (50,000 × 0.6)]	₹	1,500.00
Add: Insurance charges	₹	2,500.00
<b>Total CIF Value being Assessable Value</b>	<b>₹</b>	<b>41,500.00</b>

**Illustration 19 - Machinery imported with accessories - Assessable Value :** Compute the assessable value for purpose of determination of Customs duty from the following data : (5 Marks, May 2010)

	US \$
Machinery imported from USA by air (FOB price)	4,000
Accessories compulsorily supplied alongwith the machinery	1,000
Air freight	1,200
Insurance charges	Actuals not available
Local agent's commission to be paid in Indian Currency	₹ 9,300
Transportation from Indian Airport to factory	₹ 4,000
Exchange rate US \$ 1 = ₹ 60. Provide explanation where necessary.	

**Solution: Computation of Assessable Value of Machinery and Accessories -**

Particulars	Accessories	Machinery
	US \$	US \$
FOB price	1,000.00	4,000.00
Exchange rate to be applied is 1 \$ = ₹ 60, as notified by CBIC	₹	₹
<b>Total sum in Indian ₹</b>	<b>60,000.00</b>	<b>2,40,000.00</b>
Add: Commission to the Agent [Allocated on pro rata basis = 60,000 : 2,40,000]	1,860.00	7,440.00
Customs FOB value in Indian Rupees	61,860.00	2,47,440.00
Add: Air freight (restricted to 20% of Customs FOB value of goods)	12,372.00	49,488.00
Add: Insurance charges @ 1.125% of the Customs FOB Value	695.93	2,783.70
<b>Total CIF Value being Assessable Value</b>	<b>74,927.93</b>	<b>2,99,711.70</b>

**Working Notes:**

- Since the price of the accessories is not included in the price of the machinery and is charged separately, the accessories will not be charged at the same rate as applicable to the machinery. Hence, separate assessable values for the machinery and accessories have been computed.
- Transportation charges from Indian airport to factory of importer are not includible in the assessable value.
- No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 20 - Computation of assessable value :** A material was imported by air at CIF price of 5,000 US \$. Freight paid was 1,500 US \$ and insurance cost was 500 US \$. The banker realized the payment from importer at the exchange rate of ₹ 61 per dollar. Central Board of Indirect Taxes notified the exchange rate as ₹ 60 per US \$. Find the value of the material for the purpose of levying duty. (4 Marks, May 2005)

**Solution: Computation of assessable value -**

CIF value	US \$	5,000.0
Less: Air freight	US \$	1,500.0
Insurance charges	US \$	500.0
<b>FOB value</b>	<b>US \$</b>	<b>3,000.0</b>



Add: Air Freight restricted to 20% of FOB value	US \$	600.0
Insurances charges (actual)	US \$	500.0
<b>CIF value (for customs purposes)</b>	US \$	<b>4,100.0</b>
CIF Value in Indian ₹ (CIF Value in US \$ × ₹ 60 per US \$) being Assessable Value	₹	2,46,000.0

**Illustration 21 – Computation of assessable value and customs duty :** An importer imported some goods for subsequent sale in India at \$12,000 on CIF basis. Relevant exchange rate as notified by the Central Government/ CBIC and RBI was ₹ 60 and ₹ 60.50 respectively. The item imported attracts basic duty at 10%. Integrated tax @ 12%. GST compensation cess – Nil. Arrive at the Assessable value and the total duty payable thereon. (6 Marks, May 2000)

**Solution: The solution is as follows –**

CIF Value	\$	12,000
Exchange rate to be applied is 1 \$ (Dollar) = ₹ 60, as notified by CBIC	₹	60
<b>Total CIF Value in Indian ₹ being Assessable Value</b>	₹	<b>7,20,000.00</b>
Add: Basic Customs duty @ 10%	[1] ₹	72,000.00
Add: SWS @ 10%	[2] ₹	7,200.00
<b>Total for Integrated tax leviable u/s 3(7)</b>	₹	<b>7,99,200.00</b>
Add: Integrated tax u/s 3(7) @ 12%	[3] ₹	95,904.00
<b>Total imported cost (rounded off)</b>	₹	<b>8,95,104</b>
<b>Total customs duty payable = [1] + [2] + [3] (rounded off)</b>	₹	<b>1,75,104</b>

**Illustration 22 – Computation of assessable value :** XYZ Industries Ltd., has imported certain equipment from Japan at an FOB cost of 2,00,000 Yen (Japanese). The other expenses incurred by M/s. XYZ Industries in this connection are as follows:

- (a) Freight from Japan to Indian port : 20,000 Yen
- (b) Insurance paid to Insurer in India : ₹ 10,000
- (c) Designing charges paid to Consultancy firm in Japan : 30,000 yen
- (d) M/s. XYZ Industries had expended ₹ 1,00,000 in India for certain development activities with respect to the imported equipment
- (e) XYZ Industries Ltd. had incurred road transport cost from Mumbai port to their factory in Karnataka : ₹ 30,000
- (f) The Central Board of Indirect Taxes had notified for purpose of Section 14(3) of the Customs Act, 1962 exchange rate of 1 yen = ₹ 0.6948
- (g) The inter bank exchange rate was 1 yen = ₹ 0.60
- (h) M/s. XYZ Industries had effected payment to the Bank based on exchange rate 1 yen = ₹ 0.6150
- (i) The commission payable to the agent in India was 5% of FOB cost of the equipment in Indian ₹.

Arrive at the assessable value for purposes of Customs duty under the customs Act, 1962 providing brief notes wherever required with appropriate assumptions. (6 Marks, May 2008) (Similar 5 Marks, May 2012)

**Solution: Computation of assessable value –**

FOB cost	Yen	2,00,000
Add: Freight from japan to Indian port	Yen	20,000
Add: Designing charges paid to Consultancy firm in Japan	Yen	30,000
<b>Total</b>	Yen	<b>2,50,000</b>
Exchange rate to be applied is 1 Japanese yen = ₹ 0.6948, as notified by CBIC	₹	0.6948
<b>Total sum in Indian ₹</b>	₹	<b>1,73,700.00</b>
Add: Insurance charges paid in Indian ₹	₹	10,000.00
Add: Commission to the Agent @ 5% of FOB value (5% of 200,000.00 × 0.6948)	₹	6,948.00
<b>Total CIF Value being Assessable Value</b>	₹	<b>1,90,648.00</b>

**Working Notes:**

- (1) Rule 10(1)(b)(iv) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 *inter alia* provides that value of development work undertaken elsewhere than in India is includible in the value of the imported goods. Thus, development charges paid for work done in India have not been included for the purposes of arriving at the assessable value.
- (2) As per Rule 10(2)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the cost of transport of the imported goods up to the place of importation is includible for the purpose of valuation. Thus, transport cost from Mumbai port (place of importation) to the factory in Karnataka has not been considered for the purpose of customs valuation.



- (3) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 23 - Computation of customs duty payable :** Assessable value of an item imported is ₹ 1,00,000. Basic customs duty is 20%, Integrated tax is 12%, Social Welfare surcharge is 10% on customs duty. No GST compensation Cess is leviable. Compute the amount of total customs duty payable. Also, state the amount of credit available to the importer and how it can be utilised by him. (4 Marks, Nov. 2005)

**Solution: Computation of total amount of customs duty payable (amount in ₹) -**

Assessable Value		1,00,000
Basic Customs Duty (BCD) @ 20%	[1]	20,000
Add: Social Welfare surcharge @ 10%	[2]	2,000
<b>Total for Integrated tax leviable u/s 3(7)</b>		<b>1,22,000</b>
Add: Integrated tax u/s 3(7) @ 12%	[3]	14,640
<b>Total imported cost (rounded off)</b>		<b>1,36,640</b>
<b>Total customs duty payable = [1] + [2] + [3] (rounded off)</b>		<b>36,640</b>

Total credit available to the importer shall be equal to the Integrated tax leviable under Section 3(7) of the Custom Tariff Act i.e. ₹ 14,640. It can be utilized for the payment of GST.

**Illustration 24 - Computation of assessable value :** BSA & Company Ltd. have imported a machine from U.K. from the following particulars furnished by them, arrive at the assessable value for the purpose of customs duty payable :

(i) FOB value	10,000 U.K. Pounds
(ii) Freight (air)	3,000 U.K. Pounds
(iii) Engineering and design charges paid to a firm in U.K.	500 U.K. Pounds
(iv) License fee relating to imported goods payable by the buyer as a condition of sale	20% of F.O.B. Cost
(v) Materials and components supplied by the buyer free of cost valued	₹ 20,000
(vi) Insurance paid to the insurer in India	₹ 6000
(vii) Buying commission paid by the buyer to his agent in U.K.	100 U.K. Pounds

Other particulars :

- Inter-bank exchange rate as arrived by the authorized dealer : ₹ 98 per U.K. Pound.
- CBIC had notified for purpose of Section 14 of the Customs Act, 1944, exchange rate of ₹ 100 per U.K. Pound.
- Importer paid ₹ 5,000 towards demurrage charges for delay in clearing the machine from the Airport.

(Make suitable assumptions wherever required and show workings with explanations) (5 Marks, May 2013)

**Solution: Computation of assessable value -**

Particulars	UK Pound
FOB cost of the machine	10,000.00
Exchange rate to be applied is 1 UK Pound = ₹ 100, as notified by CBIC	₹
FOB Cost of the machine in INR	10,00,000.00
Add: Materials and components supplied by the buyer free of cost valued Commission to the Agent [The same is includible in the assessable value as per rule 10(1)(b)]	20,000.00
Add: Engineering and design charges paid to a firm in U.K. (includible as per Rule 10(1)(b))	50,000.00
Add: Licence fees relatable to imported goods paid as a condition of sale (20% of FOB value of goods) [The same is includible in the assessable value as per rule 10(1)(c)]	2,00,000.00
<b>Customs FOB value in INR</b>	<b>12,70,000.00</b>
Add: Air freight actual ₹ 3,00,000 restricted to 20% of customs FOB value	2,54,000.00
Add: Insurance paid to insurers in India [The same is includible in the assessable value as per rule 10(2)(c)]	6,000.00
<b>Total CIF Value being Assessable Value</b>	<b>15,30,000.00</b>

**Illustration 25 - Computation of assessable value and custom duty payable :** Compute the assessable value and total customs duty payable under the Customs Act, 1962 for an imported machine, based on the following information:

S.No.	Particulars	US \$
(i)	Cost of the machine at the factory of the exporter	20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	800
(iii)	Handling charges paid for loading the machine in the ship	50

(iv)	Buying commission paid by the importer	100
(v)	Lighterage charges paid by the importer	200
(vi)	Freight incurred from port of entry to Inland Container depot	1,000
(vii)	Ship demurrage charges	400
(viii)	Freight charges from exporting country to India	5,000

Date of bill of entry	20-03-2020 (Rate BCD 20%; Exchange rate as notified by CBIC ₹ 60 per US \$)
Date of entry inward	25-03-2020 (Rate of BCD 10%; Exchange rate as notified by CBIC ₹ 65 per US \$)
Integrated tax payable u/s 3(7) of the Customs Tariff Act, 1975	12%
GST compensation Cess	NIL

**Solution: Computation of Assessable value -**

Particulars	US \$
Cost of the machine at the factory of the exporter	20,000.00
<i>Add:</i> Transport charges from the factory of exporter to the port for shipment	800.00
<i>Add:</i> Handling charges paid for loading the machine in the ship	50.00
<b>FOB Value of machine</b>	<b>20,850.00</b>
<i>Add:</i> Freight charges from exporting country to India	5,000.00
<i>Add:</i> Lighterage charges paid by the importer	200.00
<i>Add:</i> Ship demurrage charges	400.00
<i>Add:</i> Insurance charges @ 1.125% of the FOB Value	234.56
<b>CIF Value being Assessable Value</b>	<b>26,684.56</b>
Exchange rate to be applied is 1 US \$ = ₹ 60, as notified by CBIC on the date of presentation of bill of entry	₹
Assessable Value in Indian Rupees	16,01,073.75
<i>Add:</i> Basic Customs duty @ 10%	[1] 1,60,107.38
<i>Add:</i> SWS @ 10%	[2] 16,010.74
<b>Total for Integrated tax leviable u/s 3(7)</b>	<b>17,77,191.86</b>
<i>Add:</i> Integrated tax u/s 3(7) @ 12%	[3] 2,13,263.02
<b>Total imported cost (rounded off)</b>	<b>19,90,454.89</b>
<b>Total customs duty payable = [1] + [2] + [3] (rounded off)</b>	<b>3,89,381</b>

**Working Notes:**

- Insurance charges are included @ 1.125% of FOB value of goods.
- Buying commission is not included in the assessable value.
- Freight incurred from port of entry to Inland Container depot is not includible in assessable value.
- Ship demurrage charges and lighterage charges are included in the assessable value.
- Rate of duty is the rate prevalent on the date of presentation of bill of entry or the rate prevalent on the date of entry inwards, whichever is later.
- No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 26 - Computation of assessable value and duty liability :** M/s. AMTL Ltd., Kolkata imported CNC Grinding machine from Catalyst Inc. USA, complete with accessories and spares in October 2019 for use in the manufacture of high precision micro tools.

Basic cost of machine with accessories US \$ F.O.B. 50,000. Catalyst Inc. supplied one extra set of accessories valued at US \$ 2,000 free of cost to cover for transit damage.

Other details available were as follows :

	Particulars	Amount
1.	Warranty Cost Payable to Catalyst Inc. (Not included in the cost of the Machine i.e. US \$ 50000)	\$ 4,500
2.	Design & Development charges paid in USA (Not included in the cost of the Machine i.e. US \$ 50000)	\$ 6,000
3.	Licence Fee, AMTL is required to pay in USA	\$ 1,000

4.	Value of Drawings supplied by AMTL Ltd. Kolkata free of cost an is necessary for customising machine to the needs of AMTL Ltd. Kolkata	\$	1,000
5.	Freight by AIR	\$	15,000
6.	Buying Commission paid to Indian Agent in India	₹	30,000

Bill of Entry presented on 10-11-2019 and the rate of exchange notified by CBIC on this date was ₹ 66.25 per US \$ and rate of BCD was 7.5%.

Date of arrival of aircraft was 06-11-2019 and rate of exchange notified by CBIC on this date was ₹ 66.50 per US \$ and rate of BCD was 7.5%.

Integrated Tax leviable @ 12%. GST compensation cess : Nil

Machine was insured but Insurance premium was not shown/available in/from the invoice.

From the above particulars, compute the assessable value for purpose of customs duty payable. Make suitable assumptions wherever required.

Working notes should form part of you answer.

**Note:** Customs duty calculations need not be shown. (5 Marks, May 2017)

**Solution: Computation of Assessable value :**

FOB value of machine with accessories		\$	50,000.00
<b>Add:</b> Extra set of accessories supplied free of cost to cover for transit damage	[WN-1]	\$	Nil
Buying commission	[WN-2]	\$	Nil
Warranty cost	[WN-3]	\$	4,500.00
Design and development charges	[WN-4]	\$	6,000.00
License fee	[WN-5]	\$	1,000.00
Value of drawings supplied by AMTL Ltd.	[WN-6]	\$	1,000.00
<b>Customs FOB Value</b>		\$	<b>62,500.00</b>
<b>Add:</b> Air freight i.e. 20% of US \$ 62,500	[WN-7]	\$	12,500.00
Insurance @ 1.125% of US \$ 62,500	[WN-8]	\$	703.13
<b>CIF Value</b>		\$	<b>75,703.13</b>
Exchange rate is ₹ 66.25 per \$	[WN-9]	₹	66.25
<b>Assessable value in Rupees</b>		₹	<b>50,15,332.03</b>

**Working Notes:**

- (1) Sale price of machine is deemed to include the value of such accessories.
- (2) Buying commission is not included in the assessable value as per Rule 10(1)(a)(i) of the CVR, 2007.
- (3) Warranty costs is includible, as the same is related to imported machine and is payable as a condition of sale of the imported goods, being machine.
- (4) Rule 10(1)(b) of the Customs Valuation Rules provides for inclusion of only those design & development charges which have been paid for design & development work undertaken elsewhere than in India.
- (5) Licence fees is includible in the assessable value as per rule 10(1)(c) of the Customs Valuation Rules.
- (6) Value of Drawings supplied by the buyer free of cost an is necessary for customising machine to the needs of buyer, hence will be included in the assessable value as per Rule 10(1)(b) of Custom Valuation Rules. However, if the same is undertaken in India, then the same shall not form part of Assessable Value.
- (7) In case of goods imported by air, freight cannot exceed 20% of Customs FOB value as per Rule 10 (2) of Customs Valuation Rules.
- (8) Insurance charges not ascertainable are to be added @ 1.125% of customs FOB value in terms of rule 10 of Customs Valuation Rules
- (9) Rate of exchange notified by CBIC on the date of filing of bill of entry is to be considered as per Section 14 of the Customs Act, 1962.
- (10) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.

**Illustration 27 - Computation of assessable value and duty liability :** Niketan Industries Ltd., New Delhi has imported certain machine (by sea) from Japan.

From the following particulars furnished by it, work out the assessable value of the machine and customs duty payable by Niketan Industries Ltd. with appropriate working notes.

S.No.	Particulars	Amount in (₹)
(i)	CIF value of the machine	4,23,379.69
(ii)	Freight incurred from port of entry to Inland Container depot	25,000.00
(iii)	Unloading and handling charges paid at the place of importation	40,000.00
(iv)	Designing charges paid to Consultancy firm in Mumbai	10,000.00

Basic Customs Duty leviable - 10% advalorem  
 Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 18%.

Note: Ignore GST Compensation Cess. (5 Marks, May 2018)

**Solution: Computation of assessable value and customs duty payable (amount in ₹):**

CIF value of the machine		4,23,379.69
Unloading and handling charges at the place of importation	[WN-1]	Nil
Freight from port of entry to ICD	[WN-2]	Nil
Designing charges paid to Consultancy firm in Mumbai	[WN-3]	Nil
<b>Assessable Value</b>		<b>4,23,379.69</b>
Add: Basic customs duty (BCD) @ 10%	[A]	42,337.97
Add: SWS @ 10% of BCD	[B]	4,233.80
<b>Value for computing IGST</b>		<b>4,69,951.46</b>
IGST @ 18%	[C]	84,591.26
<b>Total Custom duty payable (Rounded off) [A + B + C]</b>		<b>1,31,163.00</b>

**Working Notes :**

- Only charges incurred for delivery of goods "to" the place of importation are includible in the transaction value. Thus, loading, unloading and handling charges at the place of importation are not to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.
- Freight incurred from port of entry to Inland Container depot is not includible in assessable value.
- Only the design and engineering work undertaken elsewhere than in India is includible in the assessable value.

**Illustration 28 - Computation of assessable value :** Jolly overseas Ltd. of Hyderabad has imported a machine from U.K. (England) through the sea route by a vessel. The details of the import transaction are as follows :

S. No.	Particulars	Amount in UK £
(i)	Cost of the machine at the factory of the exporter	20,000
(ii)	Transport charges from the factory of exporter to the port for shipment	600
(iii)	Handling charges paid for loading the machine on the ship at the port of exportation	500
(iv)	License fee relating to the imported goods payable by the importer as a condition of sale	900
(v)	Actual Freight charges from the port of export to the port of import are not ascertainable	-
(vi)	Actual insurance charges paid	200
(vii)	Landing charges paid at the place of importation are not ascertainable	-
(viii)	Handling charges associated with the delivery of the imported goods at the place of importation	15,000

- Bill of entry :** Dated 21-01-2020  
 Exchange rate on that day :  
 (a) Notified by CBEC 1 UK £ = ₹ 101  
 (b) Prescribed by RBI 1 UK £ = ₹ 100
- Entry inward :** Date 26-01-2020  
 Exchange rate on that day :  
 (a) Notified by CBEC 1 UK £ = ₹ 102  
 (b) Prescribed by RBI 1 UK £ = ₹ 103

Compute the assessable value of the machine (in ₹) for the purpose of levy of Customs Duty. (5 Marks, Nov. 2018-NS)

**Solution: Computation of Assessable value & customs duty -**

Ex-factory price of the goods		UK £	20,000
Freight from factory of the exporter to load port (port in the country of exporter)	UK £	600	
Handling charges at the load port	UK £	500	
License fee relating to the imported goods payable by the importer as a condition of sale	[WN-4] UK £	900	2,000
<b>Customs FOB value</b>			<b>22,000</b>
<b>Add:</b> Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (20% of Customs FOB value)	[WN-1]	UK £	4,400
Insurance (actual)		UK £	200
CIF for customs purpose being Assessable Value		UK £	26,600
Exchange rate as per CBIC (₹ 101 per UK £)	[WN-2]		
<b>Assessable value (₹ 101 × 26,600 UK £)</b>		₹	<b>26,86,600</b>

**Working Notes :**

- (1) In the case of goods imported by sea, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation if not ascertainable, the same shall be 20% of the Customs FOB value of the goods.  
Customs FOB value in this case is the ex-factory price of the goods (20,000 UK £) plus the cost of transport from factory to load port (600 UK £) plus loading and handling charges at the load port (500 UK £) plus licence fees related to imported goods paid as condition of sale which is 900 UK £. Thus, Customs FOB value of machine is 22,000 UK £.
- (2) Rate of exchange determined by CBIC on the date of presentation of bill of entry is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- (3) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR *vide* Notification No. 91/2017-Cus. (NT) dated 26-09-2017.
- (4) Licence fees relating to imported goods payable by the importer as condition of sale is includible in assessable value as per Rule 10(1)(c) of Custom Valuation Rules.

**Alternate answer as per ICAI Approach :**

**Computation of Assessable value & customs duty -**

Ex-factory price of the goods		UK £	20,000
License fee relating to the imported goods payable by the importer as a condition of sale	[WN-3]	UK £	900
<b>Add:</b> Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation (20% of Customs FOB value)	[WN-1]	UK £	4,400
Insurance (actual)		UK £	200
CIF for customs purpose being Assessable Value		UK £	25,500
Exchange rate as per CBIC (₹ 101 per UK £)	[WN-2]		
<b>Assessable value (₹ 101 × 25,500 UK £)</b>		₹	<b>25,75,500</b>

**Working Notes :**

- (1) In the case of goods imported by sea, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation if not ascertainable, the same shall be 20% of the Customs FOB value of the goods.  
Customs FOB value in this case is the ex-factory price of the goods (20,000 UK £) plus the cost of transport from factory to load port (600 UK £) plus loading and handling charges at the load port (500 UK £) plus licence fees related to imported goods paid as condition of sale which is 900 UK £. Thus, Customs FOB value of machine is 22,000 UK £.
- (2) Rate of exchange determined by CBIC on the date of presentation of bill of entry is to be considered [Clause (a) of the explanation to section 14 of the Customs Act, 1962].
- (3) Licence fees relating to imported goods payable by the importer as condition of sale is includible in assessable value as per Rule 10(1)(c) of Custom Valuation Rules.
- (4) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR *vide* Notification No. 91/2017-Cus. (NT) dated 26-09-2017.



**Illustration 29 – Computation of assessable value and duty liability :** ABC Industries Ltd. of Mumbai imported one machine through vessel from Japan, in the month of September, 2019 :

The following particulars are made available :

S. No.	Particulars	Amount in Japanese Yen (¥)
(i)	Cost upto port of exportation incurred by exporter	6,00,000
(ii)	Loading charges at port of exportation	25,000
(iii)	Freight Charges from port of export to port of import in India	1,00,000

Following additional amounts paid by ABC Industries Ltd :

S. No.	Particulars	Amount in ₹
(i)	Designing charges paid to Consultancy firm in New Delhi, which was necessary for such machine	8,00,000
(ii)	Commission paid (not buying commission) to local agent of exporter	1,25,000
(iii)	Actual Landing charges paid at the place of importation	15,000
(iv)	Actual insurance charges paid to the place of importation are not ascertainable	-
(v)	Lighterage charges paid at port of importation	20,000

**Other Information :**

- (i) Rate of basic customs duty is 10%
- (ii) Rate of social welfare surcharge is 10%
- (iii) Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 is 12%.
- (iv) Ignore GST Compensation Cess.
- (v) Rate of exchange to be taken 1 Japanese Yen (¥) = ₹ 0.65

Arrive at the total customs duty, including Integrated tax payable under section 3(7) of the Customs Tariff Act, 1975 with appropriate working notes. (5 Marks, May 2019)

**Solution: Computation of Assessable value & customs duty -**

FOB cost	¥	6,00,000.00
<i>Add:</i> Loading charges at port of exportation (Loading charges at place of exportation includible in the value of Imported goods)	¥	25,000.00
<i>Add:</i> Designing charges paid to consultancy firm in New Delhi (Value of design work undertaken elsewhere than in India is includible in the value of the imported goods).		Nil
<b>Total</b>		<b>6,25,000.00</b>
Exchange rate to be applied is 1 ¥ (Japanese Yen) = ₹ 0.65	₹	0.65
Total sum in Indian ₹	₹	4,06,250.00
<i>Add:</i> Commission to local Agent of exporter (Buying commission is not includible in the value of the imported goods. Since the agent's commission does not represent buying commission, hence, it is includible).	₹	1,25,000.00
<b>Customs FOB value</b>	₹	<b>5,31,250.00</b>
<i>Add:</i> Sea freight, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation		
(i) Actual Sea Freight ( Actual ¥ 1,00,000 × ₹ 0.65)		65,000
(ii) Lighterage charges paid at port of importation (Lighterage charges upto place of importation includible in the value of Imported goods)		20,000
<i>Add:</i> Insurance charges (1.125% of Customs FOB)	₹	85,000.00
<i>Add:</i> Landing charges paid at the place of importation (No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017)		5,976.56
<b>Total CIF Value being Assessable Value</b>		<b>6,22,226.56</b>
<i>Add:</i> Basic Customs duty @ 10%	[1]	₹ 62,222.66
<i>Add:</i> SWS @ 10% of [1]	[2]	₹ 6,222.27
<b>Total for Integrated tax leviable u/s 3(7)</b>		<b>₹ 6,90,671.48</b>
<i>Add:</i> Integrated tax @ 12% of ₹ 6,90,671	[3]	₹ 82,880.58
<b>Total imported cost (rounded off)</b>		<b>₹ 7,73,552.06</b>
<b>Total customs duty payable = [1] + [2] + [3] (rounded off)</b>		<b>₹ 1,51,325.50</b>



**Illustration 30 - Computation of assessable value and duty liability :** Determine the Assessable value under customs law of an imported machine based on the following information :

- (1) Cost of machine (Contract price = ₹ 1,00,000, Revised price = ₹ 2,00,000, Negotiated & Agreed price = ₹ 1,50,000)
- (2) Freight from the factory of the exporter to the port for shipment = ₹ 20,000
- (3) Freight incurred from port of entry to inland container depot = ₹ 60,000
- (4) Handling charges paid for loading the machine in the ship = ₹ 5,000
- (5) Demurrage charge paid at port = ₹ 30,000
- (6) Buying commission paid by importer = ₹ 5,000
- (7) Commission paid to local agent appointed by exporter = ₹ 1,000
- (8) Vendor inspection charges (not required under contract) = ₹ 8,000 (5 Marks, May 2018-NS)

**Solution: Computation of Assessable value (as per ICAI approach) -**

(amount in ₹)

Cost of machine	[WN-1]	1,50,000
Local agents commission	[WN-2(a)]	1,000
Buying commission	[WN-4]	-
Vendor inspection charges	[WN-7]	-
Freight from factory of the exporter to load port (port in the country of exporter)	20,000	
Handling charges at the load port	5,000	
Total cost of transport, loading and handling charges associated with the delivery of the imported goods to the place of importation	25,000	
<b>Add:</b> Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation including ship demurrage charges [20% of Customs FOB value]	[WN-2(b)]	35,200
<b>Add:</b> Insurance charges (1.125% of customs FOB Value)	[WN-3]	1,980
Freight incurred from port of entry to Inland Container depot	[WN-5]	-
<b>CIF for customs purpose being Assessable Value</b>		<b>1,88,180</b>

**Working Notes :**

- (1) The value of the imported goods is the transaction value, which means the price actually paid or payable for the goods. In this case, since the contract was re-negotiated and the importer paid the re-negotiated price, the transaction value would be such re-negotiated price and not the contract price.
- (2) As per rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007-
  - (a) Local agents commission is includible in assessable value.
  - (b) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value. Where such cost is not ascertainable, it shall be 20% of the free on board (FOB) value of the goods. As per explanation to Rule 10(2), the cost of transport of the imported goods referred above includes the ship demurrage charges on chartered vessels, lighterage or barge charges. FOB value will be sum total of cost of machine, transport charges from factory to port of exportation, handling charges at the port of exportation and local agents commission, which will be—

Cost of the machine at the factory of the exporting country	1,50,000
Transport charges incurred by the exporter from his factory to the port for shipment	20,000
Handling charges paid for loading machine in ship	5,000
Local agents commission	1,000
<b>FOB Value</b>	<b>1,76,000</b>

- (3) Insurance charges are included @ 1.125% of FOB value of goods.
- (4) Buying commission is not included in the assessable value.
- (5) Freight incurred from port of entry to Inland Container depot is not includible in assessable value.
- (6) No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2) of the CVR vide Notification No. 91/2017-Cus. (NT) dated 26-09-2017.
- (7) Where there is no requirement in the contract for independent inspection and the inspection is carried out by foreign supplier on his own and is not required for the purpose of fulfilling the condition of the contract, then such charges incurred on inspection are not includible in assessable value. - *Bombay Dyeing & Mfg. v. CC [1997] 90 ELT 276 (SC)*

**VALUATION OF IMPORTED GOODS : IDENTICAL GOODS, SIMILAR GOODS,  
TRANSACTION VALUE OF IDENTICAL GOODS AND SIMILAR GOODS**

**Illustration 31 – Identical goods – Rule 4 :** A Malaysian company donated 1,000 metric tons of palm oil to a charitable trust in India for free distribution to the poor and the needy citizens. The trust in India had to meet the expenditure towards freight and insurance only which came to US \$ 20 per metric ton. The Customs Department found that at or about the same time of importation of this consignment, there were following imports of palm oil of Malaysian origin into India.

Sl. No.	Quantity imported in metric tons	Unit price in US Dollars (CIF)
1.	500	400
2.	900	350
3.	780	300

The rate of exchange on the relevant date was 1 US \$ = ₹ 65 and the rate of customs duty was 20% ad-valorem. Calculate the amount of customs duty payable on the consignment under the Customs Act, 1962 with appropriate assumptions and explanations. It would be sufficient if only basic customs duty is calculated. (5 Marks, Nov. 2018-OS)

**Solution:** In the instant case, while determining the transaction value of the goods, following factors need consideration,-

- (1) In the given case, US \$ 20 per metric tonne has been paid only towards freight and insurance charges and no amount has been paid or payable towards the cost of goods. Thus, there is no transaction value for the subject goods.
- (2) In such case the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.
- (3) The transaction value of comparable import should be at the same commercial level and in substantially same quantity as the goods being valued.
- (4) All the consignments are in comparable quantities which can be considered for valuation purposes. However, the unit prices in 3 consignments are different. Rules 4(3) of Customs Valuation (DVIG) Rules, 2007 stipulates that in applying rule 4 of the said rules, if more than one transaction value of identical goods is found, the lowest of such value shall be used to determine the value of imported goods.

Accordingly, the unit price of the consignment under valuation shall be US \$ 300 per metric tonne.

CIF value of 1000 metric tones @ US \$ 300 per m.t. (in US \$)	3,00,000
Rate of exchange (for 1 US \$)	65
CIF value in Indian ₹ /Assessable value	1,95,00,000
Basic Customs Duty @ 20%	39,00,000

**CASE 8 : Identical goods – Rule 4 :** M/s. S.A.S imported 10,000, citizen calculators model no. CT 500 of Chinese origin from Singapore and declared value to be US \$ 0.90 per piece in the Bill of Entry. The Customs authorities enhanced the value to be US \$ 1.80 per piece on basis of price list of citizen calculator and contemporaneous imports at the same value. Is the action of Customs authorities justified? (Nov. 2002)

**Ans:** The customs authorities have enhanced the value of the goods on the basis of price lists of contemporaneous imports of identical goods. The burden now vests with the importer to prove that the price at which the said goods are imported is genuine and is not influenced by any relationship.

The facts of the case are similar to that in **SAS Impex v. CC. [2002] 144 ELT 215 (T)**, in which the Tribunal held that enhancement of value on the basis of contemporaneous imports is sustainable in absence of any evidence from the assessee that the price so declared in the bill of entry is genuine.

Thus, in view of the aforesaid decision, the action of the Customs authorities is justified.

**Illustration 32 – Valuation as per identical goods – Rule 4 :** Gujarat Dry Fruits Ltd., imported dry fruits and declared the value as under –

Date of Imports	Quantity	Value declared	Country of Import
01-11-2019	250 MT	₹ 25,000 per MT	Egypt
November 2019	150 MT	₹ 25,000 per MT	Egypt

It was found that imports were also made by some other dealers as indicated below –

Date of Imports	Quantity	Value declared	Country of Import
September 2019, By importer Mumbai International	50 MT	₹ 35,000 per MT	Dubai
October 2019, By importer Chennai Fruits Ltd.	20 MT	₹ 40,000 per MT	Persia

The Customs Department has sought to assess the imports made by Gujarat Dry Fruits Ltd., as “contemporaneous imports” under section 14 read with Rule 4 of the Customs Import Valuation Rules, 2007. Briefly examine whether the action proposed by the department is correct. (7 Marks, May 2003)

**Solution:** In the given case, the Department wants to value the imported goods as per Section 14 read with Rule 4. None of the conditions of Rule 4 are satisfied *i.e.* Sale of the goods does not appear to be at the same commercial level and the quantity of the goods is not same. As per the definition of identical goods given in Rule 2(1)(d), the goods must be produced in the same country in which the goods being valued were produced. In the given question, the goods were imported from Egypt but the other imports were from Dubai and Persia. Hence, the country of importation was not same. Moreover, the Department does not seem to have any objective reason and strong evidence for not treating the declared value of the imported goods as *bona fide*. Hence, department’s action to enhance the value is not correct according to the provisions of section 14 read with the Customs Import Valuation Rules, 2007.

**T.Q. 6:** When are the customs authorities precluded from enhancing the value on the basis of contemporaneous imports at higher price invoking Rule 4 of the Customs Import Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962. (3 Marks, Nov 1999)

**Ans:** The customs authorities are precluded from enhancing the value of the goods imported on basis of contemporaneous imports when they do not follow the methodology provided in Rule 3. The customs authorities can reject the transaction value if the conditions as provided in Rule 3 are not fulfilled. In such a case, the value will be determined proceeding sequentially through Rules 4 to 9. The value can be enhanced on the basis of identical goods or similar goods imported at or about the same time as the goods are being valued. Once the contemporaneous import does not satisfy the criteria of the identical goods or similar goods, then, the value cannot be enhanced by the customs authorities.

**CASE 9: Value of imported goods cannot be increased if Department fails to provide evidence of import of identical goods at higher prices :** Kaveri Enterprises imported some goods from Italy. On the basis of certain information obtained through computer printouts from the Customs House, Department alleged that during the period in question, large number of consignments of such goods were imported at a much higher price than the price declared by Kaveri Enterprises. Therefore, Department valued such goods on the basis of transaction value of identical goods as per rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and demanded the differential duty along with penalty and interest from the Kaveri Enterprises. However, Department did not provide these printouts to Kaveri Enterprises.

Kaveri Enterprises contended that Department's demand was without any basis in law, without any legally admissible evidence and opposed to the principles of natural justice as the computer printouts which formed the basis of such demand had not been supplied to them. Resultantly, they had no means of knowing as to whether any imports of comparable nature were made at the relevant point of time. You are required to examine the contention of Kaveri Enterprises, with the help of a decided case law, if any. (4 Marks, May 2016)

**Ans:** The facts of the given case are similar to the case of **Gira Enterprises v. CC [2014] 307 ELT 209 (SC)** decided by the Supreme Court. In the instant case, the Supreme Court observed that since Revenue did not supply the copy of the computer printout, which formed the basis of the conclusion that the appellants under-valued the imported goods, the appellants obviously could not and did not have any opportunity to demonstrate that the transactions relied upon by the Revenue were not comparable transactions. The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and they should have been given reasonable opportunity to establish that the import transactions were not comparable.

MISCELLANEOUS QUESTIONS

**CASE 10 : Price reduction due to quantum of import - Acceptable :** M/s. IES Ltd. (assessee) imported certain goods at US \$ 20 per unit from an exporter who was holding 30% equity in the share capital of the importer company. Subsequently, the assessee entered into an agreement with the same exporter to import the said goods in bulk at US \$ 14 per unit. When imports at the reduced price were effected pursuant to this agreement, the Department rejected the transaction value stating that the price was influenced by the relationship and completed the assessment on the basis of transaction value of the earlier imports *i.e.* at US \$20 per unit under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, *viz* transaction value of identical goods. State briefly, whether the Department's action is sustainable in law, with reference to decided cases, if any. (5 Marks, Nov. 2008-NS)

**Ans:** No, the Department's action is not sustainable in law. Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 *inter alia* provides that persons shall be deemed to be "related" if one of them directly or indirectly controls the other. The word "control" has nowhere been defined under the said rules. **As per the common parlance, the control is established when one enterprise holds at least 51% of the equity shareholding of the other company.** However, in the instant case, the exporter company held only 30% of shareholding of the assessee. Thus, exporter company did not exercise a control over the assessee. So, the two parties cannot be said to be related. The fact that assessee had made bulk imports could be a reason for reduction of import price. The burden to prove under valuation lies on the Revenue and in absence of any evidence from the Department to prove under-valuation, the price declared by the assessee is acceptable. The same has been judicially decided by Supreme Court in **CC v. Initiating Explosives Systems (I) Ltd. [2008] 224 ELT 343 (SC)**, In the light of foregoing discussion, it could be inferred that Department's action is not sustainable in law.

**T.Q. 7 :** Discuss how the 'value' of imported goods shall be determined in the following cases : (a) Goods are offered at specially reduced price to buyer and the buyer is asked not to disclose the specially reduced price to any other party in India. (b) The sale involves special discounts limited to exclusive agents. (Nov. 2002)

**Ans:** The value of imported goods shall be determined in the following cases as under -

- (a) As per Section 14(1), the value of imported goods shall be its transaction value *i.e.* price actually paid or payable. Hence, even if the goods are sold at specially reduced price to a buyer, the value at which such goods are sold shall be taken to be the customs value of such goods. However, the proper officer may invoke Explanation to Rule 12, where goods offered at specially reduced price to buyer forms basis to doubt the truth or accuracy of the value. Accordingly, the proper officer may ask the importer of such goods to furnish further information including documents or other evidence. If, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under Rule 3(1).
- (b) Even if the sale involved special discounts limited to exclusive agents, the value at which such goods are sold shall be taken to be the customs value of such goods. However, the proper officer may invoke Explanation to Rule 12, where the sale involves special discounts limited to exclusive agents forms basis to doubt the truth or accuracy of the value. Accordingly, the proper officer may ask the importer of such goods to furnish further information including documents or other evidence. If, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under Rule 3(1).

SUMMARY OF IMPORTANT CASE STUDIES

<p><b>SI2 Micro Systems Ltd. v. CCE &amp; Cus. [2016] 335 ELT 198 (SC)</b></p>	<p>The assessee pleaded that though there was no sale consideration payable at the time of import of machines, but since the payment was made subsequently through banking channels, the Department had wrongly applied Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 instead of Rule 3 as the transaction value could be arrived at on the basis of the evidence placed.</p> <p><b>Held that,</b> since the payment was made through the banking channels, same was verifiable and the valuation should have been made on basis of 'Transaction value' as per Rule 3 of Valuation Rules, 2007.</p>
--	--

<p><i>CCE &amp; ST v. Sanjivani Non-ferrous Trading Pvt. Ltd [2019] 365 ELT 3 (SC)</i></p>	<p>The normal rule as provided under section 14 of the Customs Act, 1962, being that assessable value to be arrived at on basis of price actually paid and mentioned in Bills of Entry. In order to reject the transaction value, it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.</p>
<p><i>CC v. Truwoods Pvt. Ltd. [2016] 331 ELT 15 (SC)</i></p>	<p>The transaction value cannot be enhanced on the basis of unsigned and unattested photo copies of documents obtained from Custom house of foreign country showing higher sale price and no presumption can be raised under section 139 of the Customs Act, 1962 in respect of the same. The said documents are not admissible in evidence.</p>
<p><i>CCE &amp; ST v. Sanjivani Non-ferrous Trading Pvt. Ltd [2019] 365 ELT 3 (SC)</i></p>	<p>The normal rule as provided under section 14 of the Customs Act, 1962, being that assessable value to be arrived at on basis of price actually paid and mentioned in Bills of Entry. In order to reject the transaction value, it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.</p>
<p><i>Century Metal and Recycling Pvt. Ltd. v. UOI 2019 (367) E.L.T. 3 (S.C.)</i></p>	<p>Rejection of the transaction value declared by importer without giving cogent and good reasons in terms of section 14(1) of the Customs Act, 1962 and rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is not permissible. Enquiry prior to such rejection and giving of valid reasons for doing so by proper officer, is necessary. Requirement of giving reasons, both at the preliminary as well as the second stage of enquiry <i>i.e.</i> when doubting the truth or accuracy of the value declared, mandatory in nature</p>
<p><i>Anil Kumar Anand v. CC [2019] 366 ELT 601 (SC)</i></p>	<p>Valuation Rules are to be sequentially followed. Valuation could not be determined straightaway under on Rules 7, 8 and 9 of Valuation Rules, 2007 without considering and making adjustments as set out in Rules 3, 4 and 5 of the said rules.</p>



<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> </p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>   <b>AADHYA'S</b> <a href="http://www.aadhya.com">http://www.aadhya.com</a></p> <p>Contact/Whatsapp - 9602066653</p>	<p></p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p><b>Latest recorded video lectures available in Pendrive</b></p> <p> </p> <p>Subscribe to our Channel <b>CA. Yogendra Bangar</b></p>	<p><b>Online MCQ's</b></p> <p><b>Computer / EduApplet App</b></p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p></p> <p><b>SUBJECTIVE Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern.</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern.</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
--	---	---	---



# IMPORTATION AND EXPORTATION

## SUMMARIZED POINTS FOR REVISION

### FLOW PATTERN OF IMPORT

- (1) **Arrival of vessels or aircraft in India [Section 29]** : No landing at a place other than custom port/custom airport first time after arrival in India or at any time while it is carrying passengers or cargo brought in that vessel or aircraft. Statutory obligation of person in charge to report to nearest custom officer/permit not to unload cargo/passenger to depart if vessel or aircraft call or land at a place other than custom port or custom airport unless permitted by the Board. Exceptions-Passengers or crew members may leave or cargo may be removed for reasons of health, safety or the preservation of life or property.
- (2) **Persons liable to file the manifest/report [Section 30]** : Persons in charge of conveyance has to present **arrival manifest or import manifest (in case of vessel or aircraft) or import report (in case of vehicle)** in such form and manner as prescribed. The Import Manifest/Import Report must also contain details of goods meant for export and carried by the conveyance.
  - **Time limit for presentation of arrival manifest or import manifest or import report :**
    - (i) In case of Vessel or Aircraft Electronically Prior to its arrival at customs station,
    - (ii) In case of Vehicle Within twelve hours after its arrival in the customs station.

**Electronic filing not feasible – Filing in other manner :** The **Commissioner of Customs** may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.
  - **Penalty for non compliance - Not exceeding ₹ 50,000.**
- (3) **Passenger and crew arrival manifest and passenger name record information [Section 30A]** :
  - (a) **Person-in-charge or other specified person is to** deliver to the proper officer the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and the passenger name record information of arriving passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.
 

**“Passenger name record information”** means the records prepared by an operator of any aircraft or vessel or vehicle or his authorised agent for each journey booked by or on behalf of any passenger.
  - (b) **Penalty for non filing of manifest within time limit – Not exceeding ₹ 50,000.**
- (4) **Boat Note/ Restrictions on goods being water borne [Section 35]** : In case, if the vessel does not get berth at port, then it is anchored in the mid sea and the goods are brought from such vessel to the port, or taken from port to such vessel through small boat and lighters. **Boat Note Regulations, 1976** have been framed which provides that such boats shall be accompanied by boat note.
 

In case of Export cargo, boat note shall not be required if the goods are accompanied by shipping bill.
- (5) **Other provisions relating to conveyances carrying imported goods :**
  - (i) Imported goods not to be unloaded from vessel until entry inwards granted. [Section 31]
  - (ii) Imported goods not to be unloaded unless mentioned in arrival manifest or import manifest or import report. [Section 32]
  - (iii) Unloading and loading of goods at approved places only. [Section 33]
  - (iv) Goods not to be unloaded or loaded except under supervision of customs officer. [Section 34]
  - (v) Restrictions on unloading and loading of goods on holidays etc. [Section 36]
  - (vi) The proper officer has power to board conveyances. [Section 37]
  - (vii) The proper officer has power to require production of documents and ask questions. [Section 38]

### CUSTODIANS OF CARGO AND PROCEDURE FOR CLEARANCE OF IMPORTED GOODS

- (6) **Restrictions on custody and removal of imported goods [Section 45]** : All the imported goods that are unloaded in the customs area shall remain in the custody of such person as may be approved by the Principal Commissioner or Commissioner of Customs until they are cleared for home consumption, or are warehoused, or are transhipped. The custodians shall maintain a proper record of goods received from the carriers and send a



copy of the record to the proper officer. They shall not permit such goods to be removed from the customs area or allow them to be dealt with otherwise except under the specific permission in writing of the proper officer or in accordance with a general procedure that may be prescribed that avoid subjectivity of the officer as to the manner of removal of such goods. However, the control shall be of proper officer. **Custodian liable to pay duty on pilfered goods** - at the rate prevalent on the date of delivery of arrival manifest or import manifest or import report to the proper officer for the arrival of the conveyance in which the said goods were carried.

- (7) **Entry of goods on importation [Section 46]** : Bill of Entry is the basic document for assessment of custom duty. The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to proper officer a bill of entry in prescribed manner and form for home consumption or warehousing. The Commissioner of Customs may, allow an entry to be presented in physical form if the same cannot be presented electronically.
- **Time limit of presentation of Bill of Entry** : The importer shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing. However, a bill of entry may be presented at any time **not exceeding 30 days** prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India. Where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.
  - **Substitution of bill of entry** : A bill of entry for home consumption can be substituted for bill of entry for warehousing or vice versa if the interest of revenue are not prejudicial affected and there was no fraudulent intention. Substitution takes place when revised bill of entry in prescribed form is presented.
  - **Amendment of Bill of Entry** : Amendment of bill of entry can be made on the basis of documentary evidence which was in existence at the time the goods were cleared or deposited. Amendment relates back to the date of presentation of original bill of entry.
  - **Compliance by Importer** : The importer who presents a bill of entry shall ensure the following, namely:
    - (i) the accuracy and completeness of the information given therein;
    - (ii) the authenticity and validity of any document supporting it; and
    - (iii) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.
- (8) **Clearance of goods for home consumption [Section 47]** : If the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption. Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.
- Deferred payment option to certain class of importers** : The Central Government has notified the following importers to make deferred payment of import duty :
- Importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three). 'AEO' means Authorized Economic Operator certified by the Directorate General of Performance Management under the Central Board of Excise and Customs. *[Explanation]*
- Payment of Duty Electronically** : The Central Government has notified the following classes of importers who shall pay duty electronically, namely,-
- (a) Importers registered under Accredited Clients Programme; and
  - (b) Importers paying customs duty of ₹ 10,000 or more per bill of entry.
- Time Limit** : The importer shall pay the import duty –
- (a) on the date of presentation of the bill of entry in the case of self-assessment; or
  - (b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
  - (c) in the case of deferred payment, from such due date as may be specified by rules made in this behalf, and where the importer fails to pay the duty within the time so specified, he shall pay interest @ 15% p.a. on the duty not paid or short-paid till the date of its payment.

**Deferred Payment of Import Duty Rules, 2016 :**

	Particulars	Provisions								
1	Information about intent to avail benefit of notification	(1) An eligible importer who intends to avail the benefit of deferred payment of duty shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs having jurisdiction over the port of clearance, his intention to avail the said benefit. (2) The Principal Commissioner of Customs or the Commissioner of Customs, shall, upon being satisfied with the eligibility of the importer to pay the duty under these rules, allow the eligible importer to pay the duty by due dates as mentioned below.								
2	Payment of duty	The eligible importer shall pay the duty by the dates specified hereunder inclusive of the period (excluding holidays) as mentioned in Section 47(2) of the Act, namely:- <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 70%;">For goods corresponding to Bill of Entry returned for payment -</th> <th style="width: 30%;">Date for payment of Duty</th> </tr> </thead> <tbody> <tr> <td>⇒ from 1<sup>st</sup> day to 15<sup>th</sup> day of any month</td> <td>16<sup>th</sup> day of that month</td> </tr> <tr> <td>⇒ from 16<sup>th</sup> day till the last day of any month other than March</td> <td>1<sup>st</sup> day of the following month</td> </tr> <tr> <td>⇒ from 16<sup>th</sup> day till the 31<sup>st</sup> day of March</td> <td>31<sup>st</sup> March</td> </tr> </tbody> </table>	For goods corresponding to Bill of Entry returned for payment -	Date for payment of Duty	⇒ from 1 <sup>st</sup> day to 15 <sup>th</sup> day of any month	16 <sup>th</sup> day of that month	⇒ from 16 <sup>th</sup> day till the last day of any month other than March	1 <sup>st</sup> day of the following month	⇒ from 16 <sup>th</sup> day till the 31 <sup>st</sup> day of March	31 <sup>st</sup> March
For goods corresponding to Bill of Entry returned for payment -	Date for payment of Duty									
⇒ from 1 <sup>st</sup> day to 15 <sup>th</sup> day of any month	16 <sup>th</sup> day of that month									
⇒ from 16 <sup>th</sup> day till the last day of any month other than March	1 <sup>st</sup> day of the following month									
⇒ from 16 <sup>th</sup> day till the 31 <sup>st</sup> day of March	31 <sup>st</sup> March									
3	Manner of payment	The eligible importer shall pay the duty electronically. The AC or the DC may for reasons to be recorded in writing, may allow payment of duty by any mode other than electronic payment.								
4	Deferred payment not to apply in certain cases	An eligible importer who fails to pay duty in full by due date more than once in a period of 3 consecutive months shall not be permitted to make deferred payment. The facility of deferred payment shall not be restored unless the eligible importer has paid the duty in full along with the interest.								
5	Exemption in respect of certain goods	Nothing contained in these rules shall apply to the goods which have not been assessed or not declared by the importer in the entry made under the Act.								

**Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 :**

<p>Procedure for filing bill of entry [Regulation 4]</p>	<p>(1) The authorised person shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.</p> <p>(2) The bill of entry shall be deemed to have been filed and self-assessment completed when after entry of the electronic integrated declaration on the customs automated system or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may be electronically transmitted to the authorised person or printed out at the service centre.</p> <p>(3) Where the bill of entry is not filed within the time specified above and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of ₹ 5,000 per day for the initial 3 days of default and at the rate of ₹ 10,000 per day for each day of default thereafter. Where the proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to Section 46(3) of the Customs Act, 1962.</p> <p>(4) The late presentation charges in respect of any bill of entry shall not exceed the duty payable in respect of that particular bill of entry. Where the duty or any other charges in respect of any bill of entry are not payable for any reason like exemption or otherwise, the late presentation charges shall not exceed ₹ 50,000.</p> <p>"Bill of entry" means electronic integrated declaration accepted and a unique number generated and assigned to that particular bill of entry by the Indian Customs Electronic Data Interchange System, and includes its electronic records or print-outs. "ICEGATE" means the customs automated system of CBIC.</p>
--	---

<b>Retention of bill of entry and supporting documents [Regulation 6]</b>	The authorised person shall retain, for a period of <b>5 years</b> from the date of presentation of the bill of entry, the assessed copy of the bill of entry, digital or otherwise, and all supporting documents in original, which were used or relied upon by him in submitting the electronic integrated declaration, and shall produce them before Customs in connection with any action or proceedings under the Act or under any other law for the time being in force.
<b>Penalty [Regulation 8]</b>	Any authorised person who contravenes any provision of these regulations or who fails to comply with any provisions of these regulations shall be liable to a penalty which may extend to ₹ 50,000.

(9) **Storage of imported goods in warehouse pending clearance or removal [Section 49] : Where,-**

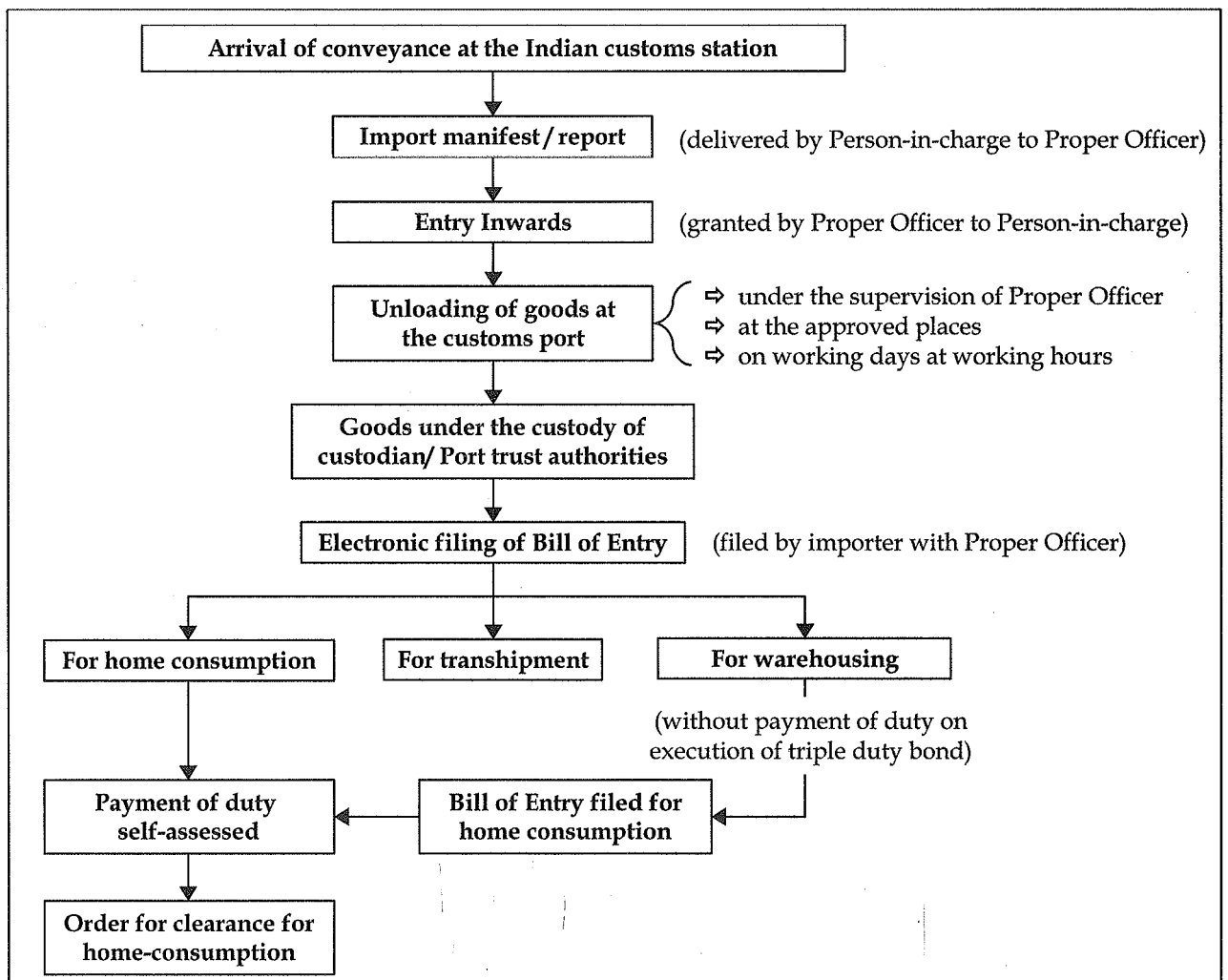
- (a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the AC/DC is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;
- (b) in the case of any imported dutiable goods, entered for warehousing, the AC/DC is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time,

the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding 30 days.

However, goods which are permitted to be stored in a public warehouse shall not be deemed to be warehoused goods for the purposes of this Act under this section and accordingly the provisions of warehousing shall not apply to such goods.

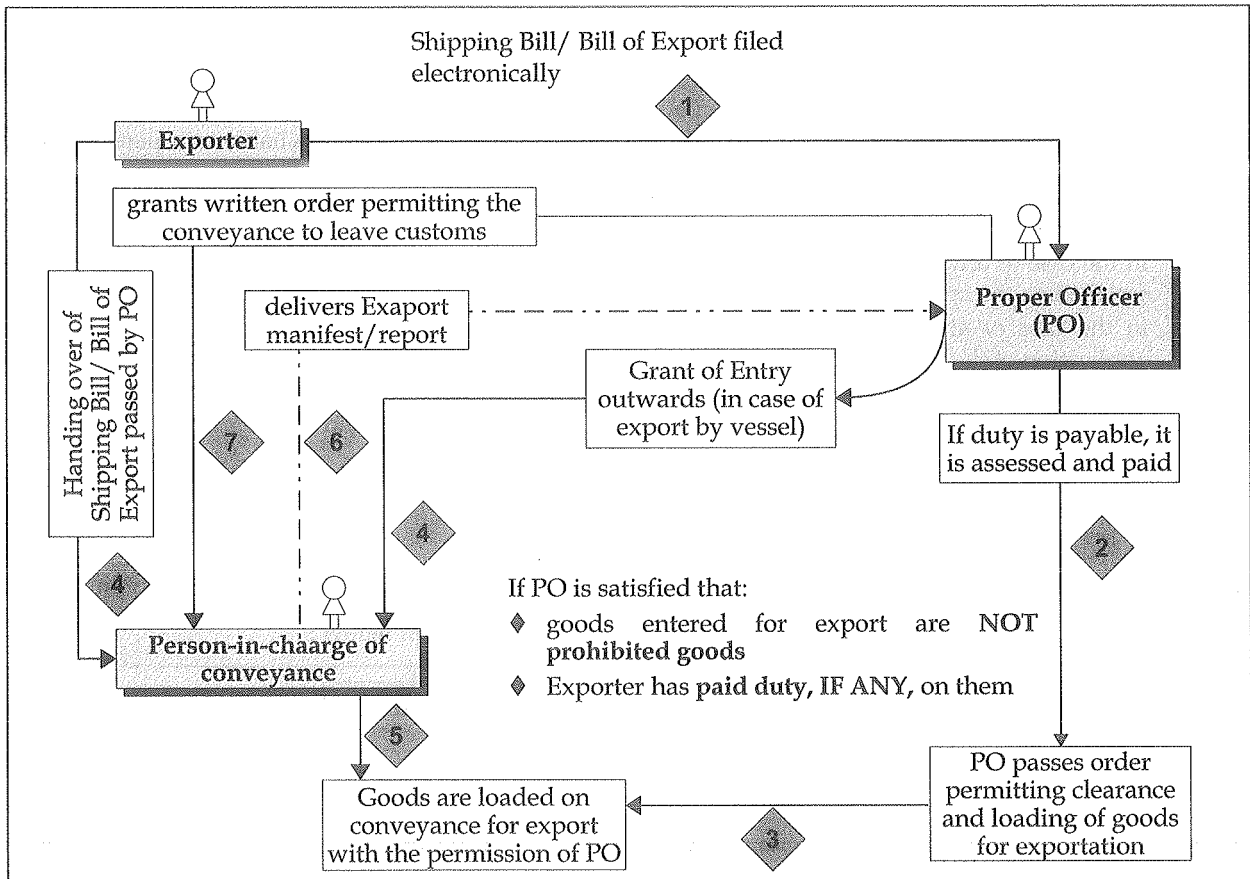
The PCC or CC may extend the period of storage for a further period not exceeding 30 days at a time.

(10) **The flow pattern of import of goods has been depicted in the diagram below :**



**PROCEDURE FOR CLEARANCE OF EXPORT GOODS**

(11) The brief procedure for export of goods has been depicted in the diagram below:-



(12) Flow pattern of Export is as follows -

- (i) **Presentation of Electronic Integrated declaration by the authorized person and assessment of goods to duty [Shipping Bill (Electronic Integrated Declaration and Paperless Processing) Regulations, 2019] :**
  - (a) Any authorised person [i.e. exporter or custom broker authorised by him] shall enter the electronic integrated declaration [i.e. particulars relating to the export goods] and upload the supporting documents on the ICEGATE by affixing his digital signature on the ICEGATE or get the electronic integrated declaration made on the ICEGATE along with the supporting documents by availing the services at the service centre. (Regulation 3)
  - (b) The shipping bill shall be deemed to have been filed and self-assessment completed when a shipping bill number is generated by the ICEDIS for the said declaration. (Regulation 4)
  - (c) After the completion of assessment, payment of duty or cess, etc. if any, and examination of export goods, if so required, an order permitting clearance, under Section 51(1) or section 69 as the case may be, shall be made and the order under this regulation may be recorded on the ICEGATE and conveyed electronically to the authorised person, the custodian, and to any other person(s) designated by the authorised person (Regulation 5)
  - (d) The authorised person shall retain, for a period of 5 years from the date of presentation of the shipping bill, the assessed copy of the shipping bill, digital or otherwise, and all supporting documents in original, which were used or relied upon by him in submitting the electronic integrated declaration, and shall produce them before Customs authorities in connection with any action or proceedings under the Act or under any other law for the time being in force (Regulation 6)
  - (e) An authenticated copy of shipping bill may be generated at the request of the authorised person if possession of the said copy is required by him for compliance of provisions of any law for the time being in force. (Regulation 7)

- (f) Any authorised person who contravenes any provision of these regulations or who fails to comply with any provisions of these regulations shall be liable to a penalty which may extend to ₹ 50,000. (Regulation 8)
- (g) The export goods along with assessed shipping bill is presented to preventive officers of customs *i.e.* (an officer-in-charge in-charge of supervision of the loading of cargo). Permission of loading of goods *i.e.* 'Let Ship' order is given by preventive officer, if he is satisfied that all the customs checks (including export trade control licence and export duty payment) have been completed.

(ii) **Loading of Goods :**

- (a) The assessed **Shipping Bill is presented to the master/ agent/ mate** of the vessel, who shall permit loading of goods.
- (b) If the vessel is anchored in mid sea, the goods have to be taken to the ship by boats/lighters, and the **boat note procedure** would be followed.
- (c) On receipt of the cargo on board the ship, **the master/mate/agent of the ship issues a receipt of the quantity and particulars of the cargo loaded** on the ship which is endorsed by Customs Officer.

(iii) **Notice of Short-Export Rules, 1963 :** If any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the **exporter shall, within 7 days, from the date of departure of the conveyance** by which such goods were intended to be exported, —

(a) furnish information in writing to proper officer in respect of the goods not so exported:

- Number of Packages,
- Description of goods,
- Quantity,
- Value,
- Country of destination; or

(b) present the shipping bill or the bill of export for cancellation or amendment.

**Penalty : Any exporter fails to comply with aforesaid provisions shall be liable to penalty not exceeding ₹ 100.**

(13) **Delivery of departure manifest or export manifest or export report [Section 41] [Amended by Finance (No. 2) Act, 2019 w.e.f. 01-08-2019] :** The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer —

(a) in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and

(b) in the case of a vehicle, an export report,

**in such form and manner as may be prescribed.**

**Penalty - Not exceeding ₹ 50,000 :** In case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding ₹ 50,000.

If electronic filing is not feasible, the Commissioner can allow the same to be presented in physical form. Declaration is to given as to the truth of its content. If the proper officer is satisfied that the departure manifest or export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

(14) **Passenger and crew departure manifest and passenger name record information [Section 41A] :**

(a) Person-in-charge or any other notified person shall deliver to the proper officer —

- (i) the passenger and crew departure manifest; and
- (ii) the passenger name record information of departing passengers,

in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(b) If passenger manifest is not presented within time limit, proper officer may levy penalty not exceeding ₹ 50,000.

(15) **No conveyance to leave without written order [Section 42]** : No such order shall be given by the proper officer until,-

- (a) The person-in-charge has answered the questions put to him under section 38 of the Act.
- (b) The provisions of Section 41 have been complied with;
- (c) The shipping bill or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him.
- (d) All duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct.
- (e) The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the same is secured by such guarantee or deposit of such amount as the proper officer may direct.
- (f) In any case, where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods,-
  - (i) such goods have been unloaded, or
  - (ii) where the Assistant/Deputy Commissioner is satisfied that it is not practicable to unload such goods, person-in-charge of conveyance has given an undertaking, secured by such guarantee or deposit of such amount as proper officer may direct, for bringing back the goods to India.

(16) **Entry of Goods for Exportation [Section 50]** : The exporter of goods shall make the entry of such goods by presenting electronically on the customs automated system to the proper officer in such form and manner as may be prescribed, a shipping bill (in case of goods to be exported in a vessel or aircraft); or a bill of export (in case of goods to be exported by land). In exceptional case, it can be presented in physical form.

**Compliance by Exporter** : The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(17) **Clearance of goods for exportation [Section 51]** :

- (a) **Order for clearance of goods for exportation [Section 51(1)]** : The proper officer may make an order permitting clearance and loading of export goods for exportation only when -
  - (i) the shipping bill has been presented by the exporter;
  - (ii) the proper officer is satisfied that such goods are not prohibited goods; and
  - (iii) the exporter has paid the duty, if any, assessed on such goods and any charges payable under this Act in respect of the same.

Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

**Deferred payment option to certain class of exporters** : The Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

- (b) **Interest on delayed payment of export duty [Section 51(2)]** : Where the exporter fails to pay the export duty, either in full or in part, under section 51(1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below 5% and not exceeding 36% p.a, as may be fixed by the Central Government, by notification in the Official Gazette.

#### PAYMENTS THROUGH ELECTRONIC CASH LEDGER

(18) **Payment of duty, interest, penalty, etc. [Section 51A]** : Deposits towards duty, interest, penalty, fee or any other sum payable by a person under this act or CTA 1975 is to be credited in electronic cash ledger. The credit amount may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975. The balance in the electronic cash ledger after utilisation may be refunded in such manner as may be prescribed.



## TRANSIT AND TRANSHIPMENT OF GOODS

(19) Differences between transit and transhipment has been summarized in the table hereunder –

Basis of difference	Transit	Transhipment
Statutory provision	Section 53 of the Customs Act, 1962 provides for transit of goods.	Section 54 of the Customs Act, 1962 provides for transhipment of goods.
Conveyance	In case of transit of goods, goods are allowed to remain on the same conveyance.	In case of transhipment of goods, the conveyance changes i.e. the goods are unloaded from one conveyance and loaded in another conveyance.
Documentation	In case of transit, the record already made in the ship's/aircraft's manifest continues. The imported goods are shown in the arrival manifest or import manifest as the same bottom cargo. Thus, there is continuity in the records and there is no chance of the control over such transit goods being lost.	In transhipment of goods, continuity in the records is not maintained as the goods are transferred to another conveyance.
Supervision	No supervision is required for transit goods.	Transhipment takes place under the supervision of the proper officer.
Additional Formalities	No additional conditions or formalities are required.	Specific conditions are imposed if the goods are deliverable at Indian port.
Port	Transit is allowed in every port normally.	Transhipment is allowed in specified ports only.

## PAST EXAMINATION QUESTIONS

**CASE 1: Loss v. Pilferage:** Triveni Alloys imported during June by sea, a consignment of metal scrap weighing 3000 metric tonnes from U.K. They filed a Bill of Entry for Home consumption and the Assistant Commissioner passed an order for clearance of goods and the applicable duty was also paid. The importer thereafter found on taking delivery from the Port Trust Authorities, that only 2,500 metric tonnes of scrap were available at the docks although they had paid duty for the entire 3000 metric tonnes since there was no short landing of cargo. The short delivery of 500 metric tonnes was also substantiated by the Port Trust Authorities, who gave a weightment certificate to the importer to that effect.

Upon a representation to the Customs Department the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs the importer's claim for restoration of duty paid on the quantity of 500 metric tonnes scrap not delivered by the Port Trust.

Examine the issues involved and briefly discuss the same with reference to the provisions of the Customs Act, 1962. (Nov. 1998) (Nov. 2000) OR

An importer imported a consignment weighing 10,000 tons. The importer filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. The importer thereafter found, on taking delivery from the Port Trust Authorities i.e., before the clearance for home consumption, that only 9,000 tonnes of inputs were available at the docks although he had paid duty for the entire 10,000 tonnes.

There was no short-landing of cargo. The short-delivery of 10,000 tonnes was also substantiated by the Port Trust Authorities, who gave a weightment certificate to the importer.

On filing a representation to the Customs Department, the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs his claim for remission of duty on the 1,000 tonnes not delivered by the Port Trust. Examine the issue and tender your opinion as per law, giving reasons. (5 Marks, May 2018-NS)

**Ans:** From the facts of the case it is evident that,–

- (i) Triveni Alloys imported 3000 metric tonnes of metal scrap from U.K. and the Bill of Entry for the same was filed, duty was deposited and they obtained order for clearance of goods for home consumption.
- (ii) Entire 3000 metric tonnes of cargo was unloaded by the Port Trust Authorities.

Thus, in present case 500 metric tones of metal scrap has been lost, hence it will not be covered under pilferage because pilferage is loss of goods in small quantities by reason of theft etc.

Thus, the case is covered under Section 23 of the Customs Act, 1962 which covers remission of duty on lost goods. As per the provisions of Section 23(1) in case the goods are lost before physical clearance for home consumption, the importer will not be liable to pay duties of customs.

Hence, here the goods have been lost before physical clearance by the importer, he will get remission of duty on the imported goods. However, since the importer has already paid the import duty he will have to make an application for refund of such duty in accordance with provisions of Section 27 of the Customs Act, 1962.

**CASE 2: Cancellation of bill of entry - No interest can be demanded u/s 47:** ITDC as a canalizing agent imported certain goods and stored them in a bonded warehouse. A private party obtained an import licence and approached ITDC for clearance of these goods. ITDC filed ex-bond Bill of Entry on 29<sup>th</sup> January. This was returned by customs authorities to ITDC, after due processing, for payment of duty. The private party, in the meantime, changed his mind and decided not to clear the goods and informed ITDC accordingly who in turn, by their requested the Customs Department to cancel the Bill of Entry. This was done. Subsequently, the Customs Department demanded interest since the duty had not been paid within one day of assessment of the Bill of Entry as stipulated by Section 47 of the Customs Act. Do you think that the demand for interest is sustainable? Discuss. (4 Marks, May 2000)

**Ans:** As per section 47(2) of Customs Act, interest is payable on customs duty till date of payment of duty, if duty is not paid within one working day after Bill of Entry is returned. In this case, no customs duty was payable, since Bill of Entry was cancelled. Hence, no interest is payable, since duty itself was not payable on the Bill of Entry which was returned after assessment. Hence, the demand for interest is not sustainable in law.

**Illustration 1 - Computation of interest payable u/s 47(2):** A bill of entry was presented on 4<sup>th</sup> August 2019. The vessel carrying goods arrived on 11<sup>th</sup> August 2019. Entry inwards was granted on 16<sup>th</sup> August 2019, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹ 4,60,000 was paid by the importer on 22<sup>nd</sup> August, 2019. Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were no holidays during the period from 16<sup>th</sup> August to 22<sup>nd</sup> August, 2019 (Modified CS Dec. 2003)

**Solution:** Interest under section 47 @ 15% p.a. becomes payable when the importer fails to pay the import duty assessed on the bill of entry under section 47(1) within **one day (excluding holidays)** from the date on which the bill of entry is returned to him by the proper officer for payment of duty. The assessed bill of entry was returned to him, on 16<sup>th</sup> August. The due date of payment of duty was 17<sup>th</sup> August, 2019 and the duty was paid on 22<sup>nd</sup> August, 2019. Thus, the assessee shall be liable to pay interest for 5 days [i.e. 18<sup>th</sup> August 2019 to 22<sup>nd</sup> August 2019]. The amount of interest payable = ₹ 4,60,000 × 15% × 5 ÷ 366 = ₹ 942.62

**CASE 3: Time limit for presentation of Bill of Entry:** An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹ 10,000 for late filing of the bill of entry. Since, importer wanted to clear the goods urgently, he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Can bill of entry be filed in advance? Examine the issue regarding period available for filing bill of entry in the light of relevant statutory provisions? (5 Marks, May 2018-NS)

**Ans:** Though no penalty has been prescribed for late filing of bill of entry but charges are prescribed for such late filing. The time limit for filing bill of entry is before the end of the next day following the day (excluding holidays) on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing, and the proper officer is satisfied that there was no sufficient cause for such delay. Where the bill of entry is not filed within the time as specified above, the importer shall be liable to pay charges for late presentation of the bill of entry @ ₹ 5,000 per day for the initial 3 days of default and @ ₹ 10,000 per day for each day of default thereafter.

Yes, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/vessel vehicle by which the goods have been shipped for importation into India.








**CASE 4: Time limit for presentation of Bill of Entry:** Can the time-limit prescribed under section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Customs Act, 1962? You may take the help of case law, if any, for your decision.

**Ans:** As per Section 46, the importer shall present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing. Since there is delay in filing bill of entry, he shall be liable to pay charges for late presentation of Bill of Entry which are ₹ 5,000 per day for the initial 3 days of default and @ ₹ 10,000 per day for each day of default thereafter. He shall also be liable to penalty under section 117 which may extend to ₹ 1,00,000.

### SUMMARY OF IMPORTANT CASE STUDIES

<i>Caravel Logistics P. Ltd. v. Jt. Secy (RA) Ministry of Finance, Department of Revenue [2016] 338 ELT 266 (Mad.)</i>	IGM is an important document without which the entry inwards of the vessel cannot be granted by the proper officer and unloading of goods cannot be permitted. The person lodging the IGM with customs authorities has to be treated as an agent of the 'Master of Vessel'. In case of short landing of goods penalty is imposable on such agent.
<i>Mohit Overseas v. CC [2016] 335 ELT 18 (Del.)</i>	Amendment in Bill of entry after clearance of goods for home consumption is permissible under section 149 of the Customs Act, 1962 provided the amendment is based on the documentary evidence which was in existence at the time when the goods were cleared.
<i>Jain Exports Pvt. Ltd. v. UOI [2017] 354 ELT A15 (SC)</i>	<p>The imported goods were confiscated with option to redemption on payment of fine, however such confiscation was subsequently quashed by Appellate Authority but importer did not get the goods released. The assessee had been prosecuting the case before wrong forum by filing writ petition before the High Court which was dismissed after 20 years for lack of jurisdiction. The question that arose was whether, during the pendency of the writ before High Court, can the Customs be held liable for the demurrage charges?</p> <p><b>Held that,</b> Demurrage charges are payable by importer if he did not get the goods released after confiscation set aside in appeal even though no detention certificate was issued by Customs. The Customs Authorities could only be held liable for charges during the pendency of then proceedings before the Adjudicating Authority and the Appellate Authority but could not be held liable for payment of the demurrage charges during the period when the importer had been prosecuting the case before a wrong forum.</p>

■ ■ ■

<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p>Also Available Now !!</p> <p><b>Bangar's</b>   <b>AADHYA'S</b> <small>cafe.com</small>   <small>http://www.aadhyas.com</small></p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional]</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> You Tube Subscribe to our Channel <b>CA. Yogendra Bangar</b></p>	<p> Online MCQ's</p> <p>Computer / EduApplet App</p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p> SUBJECTIVE Test Series</p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
---	--	---	--

## DUTY DRAWBACK

## SUMMARIZED POINTS FOR REVISION

## DUTY DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS

(1) The differences between the provisions of Section 74 and Section 75 are as follows -

	Basis	Drawback allowable on re-export of duty paid goods - Section 74	Drawback on materials used in the manufacture of exported goods - Section 75
1.	Meaning of drawback	Drawback in relation to any goods exported out of India, means the refund of duty or tax or cess as referred to in the Customs Tariff Act, 1975 and paid on importation of such goods in terms of Section 74 of the Customs Act. Thus, IGST and GST compensation cess paid on imported goods is also eligible for drawback.	"Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty excluding IGST leviable u/s 3(7) and Compensation cess leviable u/s 3(9) of the Customs Tariff Act, 1975 chargeable on any imported materials or excisable materials used in the manufacture of such goods. Thus, IGST and GST Compensation cess leviable on imported material or excisable material is not eligible for drawback. GST has to be taken as credit or refund as per the provisions of CGST Act and the rules made thereunder.
2.	Identity of goods exported	The goods must be capable of being easily identified.	There is no criteria of such identification since the inputs are manufactured before their export.
3.	Eligibility	All goods are eligible for drawback subject to their identification.	Drawback is available only in respect of notified goods.
4.	User criteria	Duty drawback shall be allowed even if the imported goods are taken into use and then exported.	If the goods manufactured from imported material are used in India and subsequently exported, then no duty drawback shall be allowed. (subject to certain exceptions)
5.	Nature of goods exported	The exported goods should have been imported and customs duty be paid thereon.	The goods exported may be manufactured or processed from imported or indigenous inputs.
6.	Rate of Duty drawback	Duty drawback is allowed @ 98% of the import duty, if the goods are exported without use and in case if they are taken into use drawback is allowed at notified rate depending upon the period of use.	Duty drawback is allowed as per All Industry Rate notified by the Drawback Directorate. In case if no rate is notified, then the exporter can apply for Brand rate and in case if duty drawback as per <i>All Industry Rate is less than 80% of the duty paid on importation, then the exporter can apply for Special Brand Rate.</i>
7.	Time limit for exportation of goods	The goods must be exported within 2 years from the date of payment of duty or such extended time as allowed by Board.	There is no time limit for such exportation.
8.	Requirement of Value addition	There is no requirement of minimum value addition.	There should not be any negative value addition and minimum value addition must be achieved, if specified.
9.	Realisation of export-sale proceeds in convertible foreign exchange	There is no requirement to bring the export proceeds in convertible foreign exchange.	If the export proceeds are not brought in convertible foreign exchange within time limit specified under FEMA,1999, then the drawback so granted shall be recovered.

10.	Rules framed	Re-export of Imported goods (Drawback of Customs Duties) Rules, 1995 has been framed.	Customs and Central Excise Duties Drawback Rules, 2017 has been framed.
11.	Export in form of Baggage	The goods can be exported in form of Baggage.	The goods cannot be exported as Baggage.

- (2) **Rates of Drawback notified by the Central Government:** The Central Government has notified the drawback rates in respect of goods taken into use after importation,-

Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.	% of import duty to be paid as Drawback
Not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	Nil

In respect of a motor car or goods imported by a person for his personal and private use, drawback of duty shall be equal to the import duty paid in respect of such motor car or goods as reduced by 4%, 3%, 2.5% and 2% for use for each quarter or part thereof during the period of first year, second year, third year, and fourth year respectively.

- (3) **Time and manner of claiming drawback in case of goods exported other than by post :** Within 3 months from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs. Extension of due date of filing the form & fees therefor :

Extending authority	Period of extension, which can be allowed by the authority	Fees payable along with the application for grant of extension
Assistant/Deputy Commissioner	Further 3 months ( <i>beyond original period of 3 months</i> )	(A) 1% of the FOB value of exports or (B) ₹ 1000, whichever is less.
Commissioner	Further 6 months ( <i>beyond original period of 3 months &amp; extension of 3 months by AC/DC</i> )	(A) 2% of the FOB value or (B) ₹ 2000, whichever is less.

**List of documents to be filed along with duty drawback claim :** The claim shall be filed along with the following documents -

- (i) Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export;
- (ii) Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation;
- (iii) Import invoice;
- (iv) Evidence of payment of duty paid at the time of importation of the goods;
- (v) Permission from Reserve Bank of India for re-export of goods, wherever necessary;
- (vi) Export invoice and packing list;
- (vii) Copy of Bill of lading or Airway bill;
- (viii) Any other documents as may be specified in the deficiency memo.

**Condonation of delay and fees** same as discussed above.

- (4) **All Industry Rates :** The Central Government's Drawback Directorate fixes all industry rates, having regard to the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods; The average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods; input output ratio etc.
- (5) **Brand Rate :** In case of any product on which All Industry Rate is not fixed, the exporter or manufacturer has to get the brand rate fixed on such product by furnishing the prescribed data **within 3 months** from the relevant date for determination of rate of duty and tariff valuation u/s 16 or 83, to the **Commissioner of Customs** stating all relevant facts including the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.



- (6) **Special Brand Rate** : In case if the duty drawback as per all industry rate is less than 80% of the duties paid on the materials or components, then, except where a claim for drawback under Rule 3 or Rule 4 has been made, the manufacturer or exporter can apply for special brand rate to the **Commissioner of Customs** by furnishing the prescribed data **within 3 months** from the relevant date for determination of rate of duty and tariff valuation under section 16 or Section 83.

**Provisional determination of special brand rate :**

- (a) Provisional drawback amount, equal to the customs component of all industry rate corresponding to the export goods, as may be specified by the Commissioner will be paid by the proper officer of customs pending processing of the application for brand rate of drawback : Provisional drawback amount, as may be specified by the Commissioner, shall be paid by the proper officer of Customs.
- (b) **Option to claim further provisional drawback** : Where the manufacturer or exporter desires that he may be granted further drawback provisionally, he may, while making an application under rule 7(1), apply to the Commissioner of Customs in writing in this behalf in the manner as has been provided in Rule 6(2) for the applications made under that rule along with details of provisional drawback already paid and the grant of further provisional drawback shall be considered in the manner and subject to the conditions as specified in Rule 6, subject to the condition that bond required to be executed by the claimant shall only be for the difference between amount or rate of drawback determined under rule 3 or, as the case may be, revised under rule 4 by the Central Government and the provisional drawback authorised by the Commissioner of Customs under this rule.

<i>Circular No. 23/2015-Cus. dated 29-09-2015 and Circular No. 49/2017-Cus dated 12-12-2017</i>	<b>Refund/ Claim of Safeguard Duties/Countervailing Duties u/s 9 as Duty Drawback.</b>
(1)	<b>Drawback of safeguard duty/Countervailing Duties u/s 75</b> admissible as Brand Rate or Special Brand rate : Safeguard Duties/Countervailing Duties leviable under Section 9 are not taken into consideration while fixing All Industry Rates of drawback, the drawback of such duties can be claimed under an application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 2017. This would necessarily mean that drawback shall be admissible only where the inputs which suffered such duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.
(2)	<b>Drawback of safeguard duty/Countervailing duty u/s 74</b> is admissible : Where imported goods subject to Safeguard Duties/Countervailing Duties are exported out of the country as such, then the Drawback payable under Section 74 of the Customs Act would also include the incidence of Safeguard Duties as part of total duties paid, subject to fulfilment of other conditions.

- (7) **Upper limit of drawback money or rate** : Shall not exceed 1/3<sup>rd</sup> of the market price of export product.
- (8) **Supplementary Claim** : Where any exporter finds that the amount of drawback paid to him is less than what he is entitled to on the basis of the amount or rate of drawback determined by the Commissioner, he may prefer a supplementary claim.

**Time-limit for preferring supplementary claim :**

Case	Claim to be file within 3 months from -
(a) In case of All Industry Rates	the date of determination of such All Industry Rate.
(b) In case of brand rates or special brand rates	the date of communication of the said rate.
(c) In all other cases	the date of payment or settlement of the original drawback claim by the proper officer.

**Extension of due date of filing the form & fees therefor :**

Extending authority	Period of extension, which can be allowed by the authority	Fees payable along with the application for grant of extension
Assistant/Deputy Commissioner	Further 9 months ( <i>beyond original period of 3 months</i> )	(A) 1% of the FOB value of exports; or (B) ₹ 1000, whichever is less.
Commissioner	Further 6 months ( <i>beyond original period of 3 months &amp; extension of 9 months by AC/DC</i> )	(A) 2% of the FOB value; or (B) ₹ 2000, whichever is less.



- (9) **Recovery of drawback** : Drawback shall be recovered if sale proceeds not realised within the time limit under FEMA. No recovery of drawback if sale proceeds compensated by ECGC and collection waived by RBI and exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer,-

**Amount of drawback to be recovered where only part of sale proceeds is realised :**

$$\text{Amount of drawback to be recovered} = \frac{\text{Sale proceeds not realised}}{\text{Total amount of sale proceeds}} \times \text{Amount of Drawback Paid}$$

**Repayment of drawback recovered on realisation of sale proceeds** : Where the sale proceeds are realised by the exporter after the amount of drawback has been recovered from him and he produces evidence about such realisation **within a period of 3 months from the date of realisation of sale proceeds**, the amount of drawback so recovered shall be repaid by the **Assistant/ Deputy Commissioner** to the claimant, if the sale proceeds have been realised within the period permitted by the RBI.

Extending authority	Period of extension, which can be allowed by the authority	Fees payable along with the application for grant of extension
Commissioner	Further 9 months ( <i>beyond original period of 3 months</i> )	(A) 1% of the FOB value; or (B) ₹ 1000, } <b>whichever is less.</b>

- (10) **Interest on Drawback [Section 75A] :**

SS.	Circumstance	Specified time period for payment of drawback & interest	Rate of interest	Amount on which interest payable	Interest from -
(1)	Any drawback payable to a claimant u/s 74 or 75 is not paid <i>within specified time period</i>	<b>One month</b> from the date of filing of drawback claim	Rate specified u/s 27A of the Customs Act, 1962 <i>i.e.</i> 6% p.a.	Amount of drawback remaining unpaid to the claimant	The date after expiry of the said period of <b>one month till the date of payment of such drawback shall be paid to the claimant</b>
(2)	Drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or rules made thereunder	<b>Two months</b> from date of demand of the amount of drawback erroneously paid or otherwise recoverable	Rate specified u/s 28AA of the Customs Act, 1962 <i>i.e.</i> 15% p.a.	Amount of drawback erroneously paid to the claimant or otherwise recoverable from him	The date of payment of such drawback to the claimant till the date of recovery of such drawback shall be paid by the claimant

- (11) **Prohibition and regulation of drawback in certain cases [Section 76] :** According to Section 76,-

- (a) No drawback shall be allowed in respect of any goods,-
- the market price of which is less than the amount of drawback due thereon;
  - where the amount of drawback is less than ₹ 50.
- (b) If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed, are **likely to be smuggled back into India**, it may, by notification in the Official Gazette, direct that,-
- drawback shall not be allowed in respect of such goods; or
  - may be allowed subject to such restrictions and conditions as may be specified.

Circular No. 33/2019-Cus dated 19-09-2019	
Issue	Clarification
Representations have been received from EPC's Trade Bodies, and individual exporters regarding show cause notices issued for recovery of duty drawback on account of short realisation of export sale proceeds due to bank charges deducted from export invoice by the banks.	It is clarified that duty drawback may be permitted on FoB value without deducting foreign bank charges. It is further clarified that since agency commission up to the limit of 12.5% of the FoB value has been allowed, such deduction on account of foreign bank charges is allowed within this overall limit of 12.5% of the FoB value. From the average rates of agency commission and foreign bank charges in respect of export shipments, it is seen that these deductions fall within the aforesaid overall limit of 12.5% of FoB value allowed by the Board. Agency commission and foreign bank

charges, separately or jointly, exceeding this limit should be deducted from the FoB value for granting duty drawback.

PAST EXAMINATION QUESTIONS

DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS

**T.Q. 1:** Sulabh Ltd. has imported 5 mainframe computer systems from USA in December 2017 paying customs duty of ₹ 60 lakhs. Due to some technical snags that developed in the system in March 2018 the supplier sent his technicians from USA to repair/solve the snag. No solution was found, as a result of which in July 2019 Sulabh Ltd. decided to re-ship/return the goods to the foreign supplier. You are the Finance Manager of Sulabh Ltd. and have been approached by the Board of Directors to examine and advice whether import duty already paid can be got back from the Central Government, when the goods are sent back. Examine and advise in light of provisions of Customs Act, 1962. (8 Marks, Nov. 1998) (4 Marks, Nov. 2000)

**Ans:** It is evident from the question that the goods were imported in December, 2017 from USA on payment of applicable customs duty of ₹ 60 lakhs. The same goods are proposed to be again exported back to the country of their origin. If the goods are entered for export before December 2019 (2 years from the date of payment of duty), the company will be eligible for the drawback claim under Section 74 either at industry rates (in case the goods are put to any use) or at the rate of 98% of the duty (where the goods are not put to use at all).

**CASE 1:** Computation of duty drawback u/s 74 No Duty drawback is allowed if market price in India less than drawback due. What is the meaning of 'market price' ?

**Ans:** Duty drawback shall not be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. [Section 76(1)(b) of Customs Act.] In *Om Prakash Bhatia v. CC* [2003] 155 ELT 423 (SC), it was held that 'market price' is as prevailing in India and not the price which exporter expects to receive from the overseas purchaser.

**Illustration 1 - Computation of Duty Drawback :** An exporter has exported under-mentioned goods under draw-back claim :

Particulars	Serial	FOB value ₹	Drawback rate
1000 Kg handicrafts of brass @ ₹ 200 per kg	74.24	2,00,000	16.5% of FOB Value subject to maximum of ₹ 33 per kg of brass content
1000 Kg of Artware of copper @ ₹ 300 per kg	74.27	3,00,000	₹ 33 per kg.
20,000 pc GLS Lamps @ ₹ 5 per piece	85.81	1,00,000	1% of FOB

**Note:** (i) On examination it is found that brass content in brass artware is 80%. (ii) Artware has copper content of weight 950 kg.

Compute the amount of drawback admissible taking into account the above facts. (ICWA Inter Dec. 2003)

**Solution:** Calculation of amount admissible as drawback –

Description	Calculation of Duty Drawback	Duty drawback Available - ₹
1000 Kg handicrafts of brass @ ₹ 200 per kg	16.5% FOB value is ₹ 33,000. However, maximum is ₹ 33 per Kg of brass content. Brass content in brassware @ 80% is 800 Kg. Hence. Maximum permissible drawback is ₹ 26,400	26,400
1000 kg of Artware of copper @ ₹ 300 per kg	Actual weight is 950 Kg. Hence, drawback will be 950 Kg × ₹ 33 per kg	31,350
20,000 pc GLS Lamps @ ₹ 5 per piece	1% of FOB i.e., 1% of ₹ 1,00,000	1,000
<b>Total</b>		<b>58,750</b>

**Illustration 2 - Computation of Duty Drawback :** 'X' has exported under-mentioned goods under drawback claim –

Description of goods & quantity exported	Serial	FOB value ₹	Drawback rate
Leather footwear Boots 200 pairs @ ₹ 1,000 per pair	64.01	2,00,000	11% of FOB subject to maximum of ₹ 85 per pair
Leather chappals 2000 pairs @ 50 per pair	64.11	1,00,000	3% of FOB subject to maximum of ₹ 5 per pair
Brass Jewellery 200 kgs. @ 200 per kg	71.01	-	₹ 22.50 per kg of Brass content

Plastic bangles with embellishment 200 kgs @ ₹ 100 per kg	71.05	-	₹ 5.00 per kg of plastic content.
---	-------	---	-----------------------------------

On examination it is found that brass content in brass jewellery is 50% of weight and in plastic bangles the plastic content is 50% but the total weight comes to 190 kgs only.

Compute drawback on each item and total drawback. (ICWA Inter Dec. 2002)

**Solution: Calculation of amount admissible as drawback (amount in ₹) -**

Description	FOB Value	Rate of Drawback	Drawback
Leather footwear Boots - 200 pairs @ ₹ 1,000 per pair	2,00,000	11% of FOB subject to max of ₹ 85 per pair	17,000
Leather chappals - 2,000 pairs @ ₹ 50 per pair	1,00,000	3% of FOB subject to max ₹ 5 per pair	3,000
Brass jewellery 200 kgs @ ₹ 200 per Kg - Brass content 50% of weight	-	₹ 22.50 per kg of Brass content	2,250
Plastic bangles with embellishment 200 Kgs - Plastic content 50%. Actual weight 190 Kgs only	-	₹ 5 Per Kg of plastic content	475
<b>Total duty Drawback</b>			<b>22,725</b>

### CUSTOMS AND CENTRAL EXCISE DUTIES DRAWBACK RULES, 2017

**CASE 2: Duty drawback admissible once vessel crosses territorial waters :** R & Co., sent certain goods by ship from Calcutta to Colombo in Sri Lanka. After the ship set sail, it developed engine trouble and while going to the nearest port, ran aground in the Indian Territorial Waters, ultimately reaching Paradeep Port. The fillings, stores and cargo were salvaged. R & Co., applied for drawback of duty under Section 75 of Customs Act, 1962, in respect of the goods. The application was rejected by the Assistant Commissioner of Customs, holding that there was no "export" of goods under the Customs Act, by R & Co. You are retained as Counsel by R & Co., to advise them on the admissibility of the drawback claim. Examine the relevant issues and advise. (8 Marks, May 1996) (3 Marks, Nov. 1999)

**Ans:** Section 75 provides that duty drawback is permissible on the goods which have "entered for export" and in respect of which an order permitting the clearance and loading thereof is granted by the proper officer. Hence, the admissibility of the claim for drawback will not depend on the fact whether the goods have reached the destination or not.

The facts are similar to that of **Sun Industries v. CC [1988] 35 ELT 241 (SC)**, wherein the Apex Court held that export is complete on loading after clearance and accordingly allowed the drawback claim where the ship carrying goods ran aground after crossing territorial waters due to engine trouble and the goods in question were neither salvaged nor re-landed; it further held that off-loading of goods at foreign port is not an essential requirement for export to take place. Applying the ratio of the said case to the present case, M/s. R & Co. is eligible for drawback claim.

**CASE 3: Duty drawback inadmissible if vessel do not cross territorial waters :** XYZ Company Limited exported a consignment of manufactured goods. The company has paid import duty and Central Excise duty on the components used in the manufacture. A duty drawback rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian territorial waters. The Customs Department has refused to grant drawback for the reason that the goods have not reached their destination. As a consultant for M/s. XYZ Limited, prepare a brief note with reasons whether the stand taken by Customs Department is correct in law. (5 Marks, Nov. 2002)(4 Marks, Nov. 2005)

**Ans:** The Customs and Central Excise Duties Drawback Rules, 2017 provides that "drawback", in relation to any goods manufactured in India, and exported, means the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such goods. As per the said Rules "export" means "taking out of India to a place outside India". Section 2(27) of the Customs Act, 1962 provides that 'India includes the territorial waters of India'.

In case of **Sun Industries v. CC. [1988] 35 ELT 241 (SC)**, the Supreme Court held that the expression "taking out to a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. Therefore, the goods taken out to the high seas outside territorial waters of India would come within the ambit of expression "taking out to a place outside India".

The emphasis in the aforementioned judgment was on the movement of the goods outside the territorial waters of India. It is then that an export may be said to have been taken place. In the instant case, the vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. Similar decision was given by the Supreme Court in the case of **UOI v. Rajindra Dyeing & Printing Mills Ltd. [2005] 180 ELT 433 (SC)**.

**Illustration 3 – Special brand rate :** An exporter exported 2,000 pairs of leather shoes @ ₹ 750 per pair. All industry rate of drawback is fixed on average basis, i.e., @ 11% of FOB subject to maximum of ₹ 80 per pair. The exporter found that the actual duty paid on inputs was ₹ 1,95,000. He has approached you, as a consultant, to apply under Rule 7 of drawback rules for fixation of 'special brand rate'. Advise him suitably. (CS Dec. 2003)

**Solution:** The exporter can apply for special brand rate if duty drawback as per all industry rate is less than 80% of the duties paid by the exporter.

Drawback as per all industry rate is 11% of FOB ( $11\% \times ₹ 750 \times 2,000$ ) = ₹ 1,65,000 (subject to maximum of ₹ 1,60,000). Thus allowable drawback as per all industry rate is ₹ 1,60,000.

Actual import duty paid by the importer is ₹ 1,95,000.

All industry rate is  $(₹ 1,60,000 \div ₹ 1,95,000) \times 100 = 82.05\%$  of the duties paid by the exporter.

Hence, he is not eligible to apply for Special Brand rate.

**Illustration 4 – Eligibility for special brand rate :** An exporter exported 4,000 pairs of shoes @ ₹ 940 per pair. All industry rate of drawback is fixed @ 10% of FOB subject to maximum of ₹ 95 per pair. The exporter found that the actual duty paid on inputs was ₹ 4,70,000. He wishes to apply for fixation of 'special brand rate'. Advise.

**Solution:** The drawback eligible is ₹ 94 per pair (10% of FOB = 10% of ₹ 940 = ₹ 94 per pair); aggregating to ₹ 3,76,000. 80% of ₹ 4,70,000 (i.e. actual duty paid on inputs) = ₹ 3,76,000. Since the drawback as per All Industry Rates is not less than 80% of actual duty paid on inputs, therefore, the exporter is not eligible to apply for Special Brand Rate.

**T.Q. 2:** An exporter obtained inputs on payment of Customs duty and has availed Input tax credit. Advise whether he could avail Duty Drawback also under Section 75 of the Customs Act, 1962, if imported inputs are used in the manufacture of goods, which are then exported. (4 Marks, May 2004)

**Ans:** Yes, he can avail duty drawback under section 75 of Customs Act, even if he has availed Input tax credit. Input tax credit can be availed only in respect of IGST and GST compensation cess leviable under section 3 of the Customs Tariff Act, paid on imported inputs. Duty drawback of customs portion, i.e. customs duties other than IGST is allowed even after availing Input tax it on inputs used in the manufacture of goods that are exported.

**CASE 4 : Duty drawback inadmissible if goods exported are manufactured out, using non excisable materials :** M/s. RIL Ltd. claimed duty drawback in respect of its export products. Over 97% of the inputs by weight of the product were procured indigenously and were not excisable. All industry rates under the Customs and Central Excise Duties Drawback Rules, 2017 were fixed taking into account the incidence of customs duty on imported product inputs. Explain briefly with reference to Rule 3(1)(ii) of the said rules whether the claim of M/s. RIL will merit consideration by the authorities. (4 Marks, Nov. 2007)

**Ans:** Rule 3 of the Customs and Central Excise Duties Drawback Rules, 2017 *inter alia* provides that no drawback shall be allowed if the exported goods have been produced or manufactured using imported materials or excisable materials on which duties have not been paid.

In the given case, there was no duty incidence on 97% of the inputs of the export product except the duty incidence on remaining 3% of the inputs, which was insignificant. All Industry Rates fixed for particular export products are applicable to all exporters who export the same. However, in a case where there is clear evidence, as in the present one, that the inputs of such export products have not suffered any duty, no drawback can be claimed. Same view was expressed by the Tribunal in the case of **Rubfila International Ltd. v. CCus. Cochin [2005] 190 ELT 485 (Tri.-Bang.)**.

**Illustration 5 – Computation of Duty Drawback :** Infinity Corporation has imported goods and the following particulars are available for claiming duty drawback under Section 74 & 75 of Customs Act, 1962 :

- |     |   |             |
|-----|---|-------------|
| (a) | Custom duty has been paid on goods imported for use and have been out of customs control for 14 months. | ₹ 14,00,000 |
| (b) | Raghuveer exports manufactured goods having FOB value of ₹ 86,000.                                      |             |
|     | Rate of duty drawback on FOB value of exports   | 40%         |
|     | Market value of the export product  | ₹ 96,000    |

Determine duty drawback with explanations in the above cases. (4 Marks, May 2018)

**Solution:**

- (a) As per Section 74 of the Customs Act, in case goods imported for use are subsequently exported after use, duty drawback is allowed @ 65% if length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export is more than 12 months but not more than 15 months. Thus, duty drawback will be allowed @ 65% of ₹ 14,00,000 = ₹ 9,10,000.

- (b) As per Rule 9 of Customs and Central Excise Duties Drawback Rules, 2017, the drawback amount or rate determined under rule 3 (*i.e.* the all industry rate) shall not exceed  $1/3^{\text{rd}}$  of the market price of export product.

Thus, duty drawback as per All Industry Rate is 40% of ₹ 86,000 = ₹ 34,400 but it cannot exceed  $1/3^{\text{rd}}$  of ₹ 96,000 = ₹ 32,000.

**Illustration 6 - Computation of Duty Drawback :** CBZ Ltd. has exported following goods to Germany. Write a brief note with reasons whether any duty drawback is admissible under Section 75 of the Customs Act, 1962 in each of the following cases :

Product	FOB value of Exported Goods Amount in ₹	Market Price of Goods Amount in ₹	Duty drawback rate
A	4,30,000	3,50,000	30% of FOB
B	6,00,000	7,00,000	3.50% of FOB
C	1,20,000	60,000	0.75% of FOB
D	3,00,000	3,50,000	1.50% of FOB

**Note:**

- (i) Imported value of Product B is ₹ 8,00,000.  
(ii) Product D is manufactured out of duty free inputs.  
(iii) Working notes should form part of the answer. (4 Marks, May 2017)

**Solution:**

- (A) Duty drawback amount = 30% of ₹ 4,30,000 = ₹ 1,29,000. Duty drawback is allowed, but amount is restricted to  $1/3^{\text{rd}}$  of ₹ 3,50,000 = ₹ 1,16,667 (rounded off)  
(B) No drawback shall be allowed in this case, as the export value *i.e.* FOB value of the goods is less than the value of imported materials used therein. Alternatively, if Product B is imported and the same product is exported without any manufacturing operation carried out on the same, no duty drawback is admissible under Section 75 of the Customs Act, 1962.  
(C) As per Section 76 of the Customs Act, 1962, Duty drawback is admissible since the amount of drawback per shipment is ₹ 900. (₹ 1,20,000 × 0.75% = ₹ 900).  
(D) No duty drawback is allowed if exported goods are manufactured out of duty free inputs.

**Illustration 7 - Computation of duty drawback :** Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following cases :

- (a) Jaggi Mehta imported a car from U.K. for his personal use and paid ₹ 4,50,000 as import duty. However, the car is re-exported immediately without bringing it into use.  
(b) Meenakshi imported a music player from Dubai and paid ₹ 12,000 as import duty. She used it for four months but re-exports the same after four months.  
(c) XYZ Ltd. exported 1000 kgs of a metal of FOB value of ₹ 1,00,000. Rate of duty drawback on such export is ₹ 60 per kg. Market price of goods is ₹ 40,000 (in wholesale market). (RTP Nov. 2013)

**Solution:** Computation of duty drawback is as follows -

- (a) As per Section 74 of the Customs Act, 1962, when any identifiable imported goods are re-exported, 98% of the import duty is re-paid as drawback provided the goods are identified to the satisfaction of the Assistant/ Deputy Commissioner of Customs as the goods which were imported and the same are entered for export within two years from the date of payment of the import duty.  
Thus, Jaggi Mehta can claim duty drawback of ₹ 4,41,000 (98% of ₹ 4,50,000) on the presumption that the car has been identified to the satisfaction of the Assistant/Deputy Commissioner of Customs as the one which was imported.  
(b) As per Section 74 of the Customs Act, 1962, in respect of a **motor car or goods** imported by a person **for his personal and private use**, drawback of duty shall be equal to the import duty paid in respect of such motor car or goods as reduced by 4%, 3%, 2.5% and 2% for use for each quarter or part thereof during the period of first year, second year, third year, and fourth year respectively. Hence, Meenakshi can claim duty drawback of 92% *i.e.* ₹ 11,040.  
(c) As per Section 76 of the Customs Act, 1962, no drawback is allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 40,000, which is less than the amount of duty drawback, *i.e.* 1,000 kgs × ₹ 60 = ₹ 60,000. Hence, XYZ Ltd. is not entitled to claim duty drawback in this case.



**Illustration 8 – Computation of duty drawback :** Calculate the amount of duty drawback (if any) allowable under the Customs Act, 1962 and the rules made thereunder in the following independent cases :

- (i) Hema Ltd. has exported goods worth ₹ 80,000 (*FOB value*). Rate of duty drawback on such export of goods is 0.8%.
- (ii) High Value Ltd. exported 1,000 kgs. of goods of *FOB value* of ₹ 1,50,000. Rate of duty drawback on such export is 50 per kg. Market price of goods is ₹ 48,000 (in wholesale market). (4 Marks, Nov. 2014)

**Ans:** Computation of duty drawback allowable -

- (i) **Drawback Admissible ₹ 640 :** As per Section 76 of the Customs Act, 1962, no drawback shall be allowed if the amount of drawback is less than ₹ 50. Since drawback amount is ₹ 640 the same shall be admissible.
- (ii) **No Drawback Admissible :** As per Section 76 of the Customs Act, 1962, no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 48,000, which is less than the amount of duty drawback, i.e. 1,000 kgs × ₹ 50 = ₹ 50,000. Hence, no drawback shall be allowed.

**Illustration 9 – Computation of duty drawback :** Ascertain whether the exporter is entitled to duty drawback in the following independent cases and if yes, what is the quantum of such duty drawback :

- (i) *FOB value* of goods exported ₹ 50,000. Rate of duty drawback on such export of goods is 1%.
- (ii) *FOB value* of 2,000 kgs. goods exported ₹ 2,00,000. Rate of duty drawback on such export ₹ 30 per kg. Market price of goods ₹ 50,000 (in wholesale market). (2 + 2 = 4 Marks, Nov. 2009)

**Solution:** The amount of duty drawback in the aforesaid case is as follows -

- (i) **Drawback Admissible ₹ 500 :** As per section 76(1)(c) of the Customs Act, 1962 drawback is not allowed where the drawback due in respect of any goods is less than ₹ 50. In this case duty drawback shall be admissible.
- (ii) **Drawback Inadmissible :** Section 76(1)(b) of the Customs Act, 1962 *inter alia* provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 50,000, which is less than the amount of duty drawback, i.e. 2,000 kgs × ₹ 30 = ₹ 60,000. Hence, no drawback shall be allowed.

**Illustration 10 – Computation of duty drawback :** New Horizon Exporters have exported some goods outside India. *FOB value* of 1,000 kg of goods exported is ₹ 2,30,000. Rate of duty drawback on such export is ₹ 100 per kg. Market price of goods is ₹ 75,000 (in wholesale market). You are required to ascertain whether New Horizons Exporters is entitled to duty drawback and if yes, what is the quantum of such duty drawback? (MTP, May 2013, 3 Marks) / Similar (MTP, May 2014, 3 Marks)

**Solution:** Section 76(1)(b) of the Customs Act, 1962 provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon. In this case, the market price of the goods is ₹ 75,000, which is less than the amount of duty drawback, i.e. 1,000 kg × ₹ 100 = ₹ 1,00,000. Hence, no duty drawback shall be allowed in this case.

**CASE 5: Relevant date for computation of export incentive :** Certain goods were brought to the export shed on 05-10-2019. The goods were examined and 'let export order' was issued on the same day by noting of the shipping bill. Computer processed shipping bill was issued on 06-10-2019. Rate was lowered on 06-10-2019 and the Department allowed MEIS at the rate prevailing on 06-10-2019. The goods were permitted for clearance and loading on 05-10-2019. It is the assessee's case that under the Customs Act, 1962 they are entitled for the higher rate of MEIS prevailing on 05-10-2019. Write a brief note whether the assessee's stand is correct in law. (4 Marks, Nov. 2010-NS)

**Ans:** In this case, the goods were brought to export shed on 5-10-2019 and were examined on the same day when the noting of the shipping bill was also completed. The goods were permitted for clearance and loading on the same day. Section 16(1)(a) of the Customs Act, 1962 deals with date for determination of rate of duty and tariff valuation of export goods. It states that in the case of goods entered for export under section 50, the rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under section 51.

Section 50 deals with entry of goods for exportation by presenting a shipping bill and Section 51 deals with the permission to clear and load the goods. Since, in the given case, both the events have taken place on 5-10-2019, the rate of duty for MEIS purposes shall be the rate prevailing on 5-10-2019 which is the higher rate. The assessee's stand in this case is correct.

**Illustration 11 – Interest on drawback :** Answer the following with reference to the provisions of the Customs Act, 1962 and rules made thereunder:



- (1) Mr. A filed a claim for payment of duty drawback amounting to ₹ 50,000 on 30-07-2019. But the amount was received on 28-10-2019. You are required to calculate the amount of interest payable to Mr. A on the amount of duty drawback claimed. (2 Marks, May 2015)

Ans: Computation of interest payable to Mr. A on duty drawback claimed :

(amount in ₹)

Duty drawback claimed	50,000
Date of filing drawback claim	30-07-2019
Starting date of interest [30-07-2019 + 1 month]	31-08-2019
Date of payment of drawback	28-10-2019
No. of days of delay [31-08-2019 to 28-10-2019]	59 days
Rate of interest	6%
<b>Quantum of interest (rounded off) [₹ 50,000 × 59 ÷ 366 × 6%][leap year]</b>	<b>484</b>

**Working Note :** Since the claim of duty drawback is not paid to claimant within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback.

- (2) Mr. X was erroneously refunded a sum of ₹ 20,000 in excess of actual drawback on 20-06-2019. The same was returned to the department on 20-10-2019. You are required to calculate the amount of interest chargeable from Mr. X. Provide brief reasons for your answer. (2 Marks, May 2015)

Ans: Computation of interest chargeable from Mr. X on excess duty drawback paid :

(amount in ₹)

Duty drawback erroneously refunded	20,000
Due date of repayment of erroneous drawback	20-06-2019
Date of repayment by the assessee	20-10-2019
No. of days of delay [21-06-2019 to 20-10-2019]	122 days
Rate of interest	15%
<b>Quantum of interest (rounded off) [₹ 20,000 × 122 ÷ 366 × 15%][leap year]</b>	<b>1,000</b>

**Working Note :** Interest is payable, by the claimant, on erroneous refund of duty drawback @ 15% per annum for the period beginning from the date of payment of such drawback to the claimant, till the date of recovery of such drawback.

**Illustration 12 - Interest on drawback :** Abdul Overseas Pvt. Ltd. was erroneously refunded a sum of ₹ 30,000 in excess of actual drawback on 16-06-2019. A demand for recovery of the same was issued by the Department on 24-08-2019. Abdul Overseas Private Limited returned the erroneous refund to the Department on 16-10-2019. You are required to calculate the amount of interest chargeable from Abdul Overseas Pvt. Ltd.

Provide brief reasons for your answer. (4 Marks, Nov. 2018-OS)

**Solution:** According to Section 75A(2) of the Customs Act, 1962, where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under the Customs Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest @ 15% p.a. and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

Computation of interest chargeable from Abdul Overseas Pvt. Ltd. on excess duty drawback paid:

(amount in ₹)

Duty drawback erroneously refunded	30,000
Due date of repayment of erroneous drawback	16-06-2019
Date of repayment by the assessee	16-10-2019
No. of days of delay [16-06-2019 to 16-10-2019]	122 days
Rate of interest	15%
<b>Quantum of interest (rounded off) [₹ 30,000 × 122 ÷ 366 × 15%][leap year]</b>	<b>1,500</b>

### SUMMARY OF IMPORTANT CASE STUDIES

CC, Mumbai v. Tex Age  
[2016] 340 ELT 3 (SC)

Where the goods with reference to invoices were duly checked by the Customs at the time of export and entire remittances also received, the Department cannot deny the duty drawback and other export benefits to the assessee in absence of any evidence of repatriation of money through hawala and over invoicing not established.

## BAGGAGE, POSTAL ARTICLES & STORES

### SUMMARIZED POINTS FOR REVISION

#### PROVISIONS RELATING TO BAGGAGE

(1) **Date for determination of rate of duty and tariff valuation [Section 78]** : The rate of duty and tariff valuation applicable to the baggage shall be the rate of duty and valuation in force **on the date on which a baggage declaration is made under Section 77 to the proper officer**. In case if such declaration has been made before the arrival of vessel, then same shall be deemed to have been made on the date of arrival of the vessel.

(2) **Rate of duty** : The rate of duty applicable in respect of baggage is as under –

Description of articles	Rate
Any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 2016.	35% ad valorem
On the unaccompanied baggage.	35% ad valorem
Duty is to be increased by SWS @ 10%. Hence, effective duty is 38.5%.	

(3) **Temporary detention of baggage [Section 80]** : Where the baggage of a passenger contains any article, which is **dutiable or the import of which is prohibited**, and in respect of which a **true declaration has been made under section 77**, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India. If, for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him, through any other passenger authorised by him and leaving India, or as cargo consigned in his name.

#### BAGGAGE RULES, 2016

(4) **Passengers arriving from countries other than Nepal, Bhutan or Myanmar [Rule 3]** : Passenger shall be allowed clearance free of duty articles in his *bona fide* baggage, that is to say,–

- (a) used personal effects (*i.e. things required for satisfying daily necessities but does not include jewellery*) and travel souvenirs; and
- (b) Articles, other than those mentioned in Annexure I, carried on the person or in the accompanied baggage of the passenger upto a value mentioned below –

Passengers	Duty free allowance
<ul style="list-style-type: none"> <li>➤ (i) Indian resident; or</li> <li>      (ii) foreigner residing in India; or</li> <li>      (iii) tourist of Indian origin.</li> </ul>	₹ 50,000
<ul style="list-style-type: none"> <li>➤ Tourist of foreign origin</li> </ul>	₹ 15,000

**Duty free allowance in respect of infants** : Where the passenger is an infant *i.e. a child not more than two years of age*, only used personal effects shall be allowed duty free.

**Jewellery eligible for GFA under Rule 3 and Rule 4** : Jewellery has been specifically excluded from personal effects. The same is not eligible for full exemption as applicable in case of used personal effects. Gold or silver in any form other than ornaments is specifically included in Annexure I. Hence, Ornaments becomes eligible for GFA under Rule 3 and 4 within the monetary limits specified in the said Rules.

The special provision for jewellery under Rule 5 may be regarded as an additional allowance subject to conditions specified in the said rule.

(5) **Passengers arriving from Nepal, Bhutan or Myanmar [Rule 4]** : Passenger shall be allowed clearance free of duty articles in his *bona fide* baggage, that is to say,–

- (a) used personal effects (*i.e. things required for satisfying daily necessities but does not include jewellery*) and travel souvenirs; and

- (b) Articles, other than those mentioned in Annexure I, carried on the person or in the accompanied baggage of the passenger upto a value mentioned below -

Passengers	Duty free allowance
(i) Indian resident; or	₹ 15,000
(ii) foreigner residing in India; or	
(iii) tourist	

Where the passenger, is arriving by land, only used personal effects shall be allowed duty free.

**Note: Pooling not permissible :** The General Free Allowance (GFA) of a passenger under this rule shall not be allowed to be pooled with the free allowance of any other passenger.

- (6) **Jewellery [Rule 5] :** A passenger returning to India shall be allowed clearance free of duty jewellery in his *bona fide* baggage to the extent as given below :

Passenger who has been residing abroad for over one year	<ul style="list-style-type: none"> <li>➤ For a Gentleman passenger : Jewellery upto a weight, of 20 grams with a value cap of ₹ 50,000.</li> <li>➤ For a lady passenger : Jewellery upto a weight, of 40 grams with a value cap of ₹ 1,00,000.</li> </ul>
--	---

- (7) **Transfer of residence [Rule 6]:**

- (a) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his *bona fide* baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.
- (b) The conditions mentioned in column (3) of the said Appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.

#### APPENDIX

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From 3 months upto 6 months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 60,000.	Indian passenger	—
From 6 months upto 1 year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of ₹ 1,00,000.	Indian passenger	—
Minimum stay of 1 year during the preceding 2 years.	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 2,00,000.	The Indian passenger should not have availed this concession in the preceding 3 years.	—
Minimum stay of 2 years or more.	Personal and household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of ₹ 5,00,000.	(i) Minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence;	Shortfall of upto 2 months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of :- (i) terminal leave or vacation being availed of by the passenger; or

			(ii) any other special circumstances for reasons to be recorded in writing.
		(ii) Total stay in India on short visit during the 2 preceding years should not exceed 6 months; and	The Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.
		(iii) Passenger has not availed this concession in the preceding 3 years.	No relaxation.

(8) **Currency [Rule 7]** : The import and export of currency under these rules shall be governed in accordance with the provisions of the **Foreign Exchange Management (Export and Import of Currency) Regulations, 2015** and the notifications issued thereunder.

(9) **Provisions regarding unaccompanied baggage [Rule 8]** : The provisions of free allowances given under **Baggage Rules, 2016** shall be applicable to 'unaccompanied baggage' if,-

(a) the said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched **within 1 month** of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow.

(b) the said unaccompanied baggage may land in India **upto 2 months before** the arrival of the passenger or within such period, **not exceeding 1 year**, as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of **2 months** due to circumstances beyond his control, such as -

- sudden illness of the passenger or a member of his family, or
- natural calamities, or
- disturbed conditions, or
- disruption of the transport or travel arrangements in the country or countries concerned, or
- any other reasons,

which necessitated a change in the travel schedule of the passenger.

**Note:** "Family" includes all persons who are residing in the same house and form part of the same domestic establishment;

(10) **Applicability of baggage rules to member of crew [Rule 9]** : These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

A member of crew of a vessel or an aircraft other than those referred above, shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use **which shall not exceed the value of ₹ 1,500.**

The Annexures under the Baggage Rules, 2016 are given below -

ANNEXURE - I (See rule 3, 4 and 6)	
1. Fire arms.	4. Alcoholic liquor or wines in excess of two litres.
2. Cartridges of fire arms exceeding 50.	5. Gold or silver in any form other than ornaments.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.	6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

ANNEXURE - II (See rule 6)	
1. Colour Television.	6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
2. Video Home Theatre System.	(a) television receiver;
3. Dish Washer.	(b) sound recording or reproducing apparatus;
4. Domestic refrigerators of capacity above 300 litres or its equivalent.	(c) video reproducing apparatus.
5. Deep Freezer.	7. Cinematographic films of 35mm and above.
	8. Gold or Silver, in any form, other than ornaments.
ANNEXURE - III (See rule 6)	
1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.	8. Portable Photocopying Machine.
2. Digital Video Disc player.	9. Washing Machine.
3. Music System.	10. Electrical or Liquefied Petroleum Gas Cooking Range.
4. Air-Conditioner.	11. Personal Computer (Desktop Computer).
5. Microwave Oven.	12. Laptop Computer (Note book Computer).
6. Word Processing Machine.	13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.
7. Fax Machine.	

### GOODS IMPORTED OR EXPORTED BY POST/ COURIER

- (11) **Date for Determination of rate of duty and tariff valuation in case of goods imported or exported by post or courier [Section 83] :**
- (a) **For goods imported by Post/ Courier :** The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which the postal authorities or the authorised courier present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon. However, if such goods are imported by a vessel and the list was presented before the date of the arrival of the vessel, then it shall be deemed to have been presented on the date of such arrival.
- (b) **For goods exported by Post/ Courier :** The rate of duty and tariff value, if any, applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the authorised courier for exportation.
- (12) **Regulations regarding goods imported or to be exported by post or courier [Section 84] :** The Board may make regulations providing for -
- (a) the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier;
- (b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier;
- (c) the transit or transshipment of goods imported by post or courier, from one customs station to another or to a place outside India.

### STORES

- (13) "Stores" may be allowed to be warehoused without assessment of duty. Imported stores **may remain on board or consumed on board a foreign-going vessel or aircraft without payment of duty.** In case if any goods are "taken on board any foreign-going vessel or aircraft as stores", then the same shall be regarded as export & duty drawback shall be allowed of the import duty so paid. In case of fuel and lubricating oil taken on board any foreign-going aircraft as stores, **100% drawback shall be admissible u/s 74.** the goods shall be free of export duty.

PAST EXAMINATION QUESTIONS

BAGGAGE

**Illustration 1 - Computation of duty on baggage :** Gregory Peg of foreign origin has come on travel visa, tour in India. He carries with him, as part of baggage, the following :

Particulars	Value in ₹
Travel Souvenir	85,000
Other articles carried on in person	1,50,000
120 sticks of cigarettes of ₹ 100 each	12,000
Fire arm with 100 cartridges (value includes the value of cartridges at @ ₹ 500 per cartridges)	1,00,000

Determine customs duty payable, if the effective rate of customs duty is 27.5% inclusive of social welfare surcharge, with short explanations where required. (4 Marks, May 2018)

**Solution: Computation of Custom duty payable by Mr. Gregory Peg (amount in ₹)-**

Particulars	Baggage	Other Goods
(1) Travel souvenir (Exempt as per Rule 3)	Nil	-
(2) Other articles carried on in person (Can be accommodated in General free allowance of Rule 3)	1,50,000	-
(3) 100 sticks of cigarettes (Can be accommodated in General free allowance of Rule 3) [WN]	10,000	2,000
(4) Fire Arms [₹ 1,00,000 - ₹ 50,000]		50,000
(5) Cartridges of fire arm upto 50 cartridges [₹ 500 × 50]	25,000	25,000
<b>Total dutiable goods imported</b>	<b>1,85,000</b>	<b>77,000</b>
Less: General Free Allowance under Rule 3	15,000	-
<b>Balance Goods on which duty is payable</b>	<b>1,70,000</b>	<b>77,000</b>
<b>Effective rate of Customs duty</b>	<b>38.50%</b>	<b>110%</b>
<b>Customs Duty payable (including SWS)</b>	<b>65,450</b>	<b>84,700</b>

**Working Notes :**

- The rate of duty on baggage is 35%. It is to be increased by SWS @ 10%.
- Cigarettes exceeding 100 sticks is mentioned in Annexure-I which will not get benefit of General Free Allowance of Rule 3 of Baggage Rules, 2016. Thus, out of 120 sticks of cigarettes, 100 sticks can be accommodated in General Free allowance and balance 20 sticks will be liable to custom duty as per normal provisions of the Act.  
Fir Arms are mentioned in Annexure-I, thus cannot be accommodated in General free Allowance.
- Cartridges of fire arms exceeding 50 is mentioned in Annexure-I. Thus, out 100 cartridges of firearms, 50 cartridges can be accommodated in General Free Allowance and balance will be liable to custom duty as per normal provisions of the Act.  
Tourist of foreign origin is allowed General free allowance of ₹ 15,000 as per Rule 3 of Baggage Rules, 2016.
- Fire arms, cartridges of firearms exceeding 50 and cigarettes exceeding 100 sticks are not chargeable to rate applicable to baggage [Notification No. 26/2016-Cus. dated 31-03-2016]. These items are charged @ 100% applicable to baggage under Heading 9803 of the Customs Tariff.

**Illustration 2 - Computation of duty on baggage :** Mr. Devendra, an Indian Entrepreneur, went to China to explore new business opportunities on 05-04-2019. The following details regarding imports are submitted by him with the Customs authorities on return to India on 20-02-2020.

- 2 Music systems each worth ₹ 23,000
- Jewellery brought by Mr. Devendra worth ₹ 49,000. (18 Grams)

Write a brief note on his eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016. (2 Marks, May 2017)

**Solution:** An Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his *bona fide* baggage,-

- used personal effects, travel souvenirs; and
- articles other than those mentioned in Annexure I, upto the value of ₹ 50,000 if these are carried on the person or in the accompanied baggage of the passenger.



However, since his period of stay abroad does not exceed 1 year, he will not be eligible for additional allowance in respect of jewellery.

**Computation of Custom duty payable by Mr. Devendra -**

(amount in ₹)

(1) 2 Music systems each worth ₹ 23,000.	46,000
(2) Jewellery brought by Mr. Devendra (can be accommodated in General Free Allowance)	49,000
<b>Total dutiable goods imported</b>	<b>95,000</b>
Less: General Free Allowance under Rule 3	50,000
<b>Balance Goods on which duty is payable</b>	<b>45,000</b>
<b>Customs Duty payable @ 38.5%</b>	<b>17,325</b>

**Illustration 3 - Computation of duty on baggage :** After visiting USA, Mrs. & Mr. X brought to India a laptop computer valued at ₹ 80,000, personal effects valued at ₹ 90,000 and a personal computer for ₹ 52,000 on 25-04-2019. What is the customs Duty payable? (3 Marks, May 2007)

**Solution: Computation of customs duty payable on baggage (amount in ₹) -**

(1) Laptop	[WN-1]	Exempt
(2) Personal effects	[WN-2]	Nil
(3) Personal Computer		52,000
Total dutiable goods imported (that can be accommodated in General Free Allowance)		52,000
Less: General Free Allowance under Rule 3	[WN-3]	50,000
<b>Balance Goods on which duty is payable</b>		<b>2,000</b>
<b>Customs Duty payable @ 38.5%</b>		<b>770</b>

**Working Notes :**

- Laptop exempt :** The laptop brought by Mr. & Mrs. X will not be included in assessable value of Baggage, since one laptop computer imported by any passenger (other than a member of the crew) of 18 years or above as a part of the baggage has been exempted from the whole of customs duty.
- Personal effects are not included in the value of baggage.
- As per Rule 3, the general free allowance of ₹ 50,000 will be available.  
Hence, the value of personal computer i.e. ₹ 52,000 will be reduced by the General Free Allowance and duty shall be levied on the balance of ₹ 2,000.
- The general free allowance cannot be pooled with another person.  
Hence, Mr. X & Mrs. X will be separately allowed the general free allowance. Thus, personal computer can be claimed exempt either by Mr. X or Mrs. X.

**Illustration 4 - Computation of customs duty :** After visiting USA for a month, Mrs. and Mr. Iyer (Indian resident aged 35 and 40 years respectively) brought to India a laptop computer valued at ₹ 70,000, used personal effects valued ₹ 1,40,000 and a personal computer for ₹ 58,000.

Calculate the custom duty payable by Mrs. & Mr. Iyer, if any. (4 Marks, Nov. 2018-OS)

**Solution: Computation of customs duty payable on baggage (amount in ₹) -**

(1) Laptop	[WN-1]	Exempt
(2) Personal effects	[WN-2]	Nil
(3) Personal Computer		58,000
<b>Total dutiable goods imported (that can be accommodated in General Free Allowance)</b>		<b>58,000</b>
Less: General Free Allowance under Rule 3	[WN-3]	50,000
<b>Balance Goods on which duty is payable</b>		<b>8,000</b>
<b>Customs Duty payable @ 38.5%</b>		<b>3,080</b>

**Working Notes:**

- Laptop exempt The laptop brought by Mr. & Mrs. Iyer will not be included in assessable value of Baggage, since one laptop computer imported by any passenger (other than a member of the crew) of 18 years or above as a part of the baggage has been exempted from the whole of customs duty.
- Personal effects are not included in the value of baggage.
- As per Rule 3, the general free allowance of ₹ 50,000 will be available.  
Hence, the value of personal computer i.e. ₹ 52,000 will be reduced by the General Free Allowance and duty shall be levied on the balance of ₹ 2,000.

(4) The general free allowance cannot be pooled with another person.

Hence, Mr. Iyer & Mrs. Iyer will be separately allowed the general free allowance. Thus, personal computer can be claimed exempt either by Mr. Iyer or Mrs. Iyer.

**Illustration 5 – Computation of customs duty:** Mrs. & Mr. Kapoor visited Germany and brought following goods while returning to India on 18-4-2020 –

- Their personal effects like clothes, etc., valued at ₹ 35,000.
- A personal computer bought for ₹ 52,000.
- A laptop computer bought for ₹ 95,000.
- Two litres of liquor bought for ₹ 3,000.
- A new camera bought for ₹ 47,400.

What is the amount of customs duty payable? (CS June 2005)

**Solution:** In this question, Mrs. and Mr. Kapoor have brought certain goods while returning to India. The question doesn't mention whether the same have been brought through separate baggages or through a single baggage. If the goods have been brought in a single baggage, the same would be supported by a single baggage declaration form and, in that event, the general free allowance will be available only once and the same cannot be pooled in respect of Mr. Kapoor and Mrs. Kapoor separately.

However, if the goods are brought in separate baggages support by two separate baggage declaration forms, the general free allowance will be available separately to Mrs. and Mr. Kapoor.

It has been assumed that Mrs. and Mr. Kapoor have brought two separate baggages in a manner so as to lower the incidence of customs duty. Accordingly, –

Particulars	Mrs. Kapoor (amount in ₹)
Personal effects like clothes, etc.	Exempt
Laptop computer	Exempt
Personal computer (assumed that it has been brought on account of Mrs. Kapoor)	52,000
<b>Total</b>	<b>52,000</b>
<i>Less: General Free Allowance under Rule 3 (Since both have filled separate baggage declaration forms, hence, they will be eligible for GFA separately)</i>	50,000
<b>Assessable Value</b>	<b>2,000</b>
<b>Customs Duty @ 38.5%</b>	<b>770</b>

Particulars	Mr. Kapoor (amount in ₹)
Two litres of liquor (assumed that it has been brought on account of Mr. Kapoor)	3,000
New camera (assumed that it has been brought on account of Mr. Kapoor)	47,400
<b>Total</b>	<b>50,400</b>
<i>Less: General Free Allowance under Rule 3 (Since both have filled separate baggage declaration forms, hence, they will be eligible for GFA separately.)</i>	50,000
<b>Assessable Value</b>	<b>400</b>
<b>Customs Duty @ 38.5%</b>	<b>154</b>

Hence, total customs duty payable = ₹ 924.

In case only one baggage declaration form is given by Mr. & Mrs. Kapoor than duty free allowance shall be worked out as under –

Particulars	Mr. & Mrs. Kapoor (amount in ₹)
Personal effects like clothes, etc.	Exempt
Laptop computer	Exempt
Personal computer (assumed that it has been brought on account of Mrs. Kapoor)	52,000
Two litres of liquor	3,000
New camera	47,400
<b>Total</b>	<b>1,02,400</b>
<i>Less: General Free Allowance under Rule 3 (Since both have filled one baggage declaration forms, hence, they will not be eligible for GFA separately.)</i>	50,000
<b>Assessable Value</b>	<b>52,400</b>
<b>Customs Duty @ 38.5%</b>	<b>20,174</b>

**Illustration 6 – Computation of customs duty :** Mr. Ajay, an Indian entrepreneur, went to London to explore new business opportunities on 01-04-2019. His wife also joined him in London on 01-12-2019. The following details are submitted by them with the Customs authorities on their return to India on 30-04-2020 –

- (a) used personal effects worth ₹ 80,000;
- (b) a music system worth ₹ 45,000;
- (c) the jewellery (18 grams) brought by Mr. Ajay for ₹ 48,000 and the jewellery (9 grams) brought by his wife worth ₹ 20,000.

Determine their eligibility with regard to duty free allowance. (RTP Nov. 2013)

**Solution:** As per the Baggage Rules, 1998, in case of passengers other than tourists, there is no customs duty on used personal effects and general free allowance is ₹ 50,000 per passenger. Thus, their duty liability is nil for the personal effects and a music system.

However, the additional duty free allowance, that is jewellery allowance is applicable to non-tourist passenger of Indian origin who had stayed abroad for period exceeding one year. *The additional jewellery allowance is as follows:-*

Gentleman Passenger	-	Jewellery upto a weight, of 20 grams with a value cap of ₹ 50,000/-
Lady Passenger	-	Jewellery upto a weight, of 40 grams with a value cap of ₹ 1,00,000/-

Thus, there is no duty liability on the jewellery brought by Mr. Ajay as he had stayed abroad for period exceeding one year. However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period less than a year. Thus, she has to pay customs duty on the amount of jewellery brought by her if the same cannot be accommodated in General free allowance as per Rule 3 of the said Rules.

### POSTAL ARTICLES AND STORES

**Illustration 7 – Computation of duty on goods imported by post :** M/s. XYZ Ltd. imported certain goods valuing ₹ 30 lakhs (assessable value) from America by post. Compute the amount of duty payable by the importer in the light of the following information :

Date of presentation of a list containing particulars of said goods to proper officer of customs	15-05-2020
Rate of duty prevalent on the date of such presentation	10%
Date of arrival of vessel through which the packet containing the said goods was imported	20-05-2020
Rate of duty prevalent on the date of such arrival	7.50%

**Solution:** As per Section 83 of the Customs Act, 1962, in case of importation of goods by **post or courier**, the date for determination of rate of duty shall be,-

- (a) the date on which postal authorities present a list containing particulars of the said goods to the proper officer of customs; or
- (b) if such goods are imported by a vessel, the date of arrival of the vessel, whichever is later. In this case, the date of arrival of vessel, being later in time, shall be the relevant date and the rate of duty prevalent on that date shall be applicable.

Therefore, duty payable will be 7.5% as increased by Social welfare surcharge @ 10% = 8.25% of ₹ 30 lakhs = ₹ 247500.

**Illustration 8 – Computation of duty on goods exported by post :** On 15-6-2019 M/s. XYZ Ltd. delivered goods valuing ₹ 20 lakhs (assessable value) to the postal authorities for the purpose of export by post to Germany. The order for clearance of such goods for export was made on 29-6-2019, but the goods could actually be exported on 01-07-2019. The rates of duty prevalent on the said dates were 10%, 15% and 20% respectively. Determine the amount of customs duty payable ?

**Solution:** As per section 83, in the case of goods exported by **post or courier**, the relevant date for determination of rate of duty shall be the date on which the exporter delivers such goods to the **postal authorities or the authorised courier** i.e. 15-06-2019.

Hence, the amount of customs duty payable = 10% of ₹ 20 lakhs = ₹ 2,00,000.



## EXEMPTIONS AND REFUNDS

### SUMMARIZED POINTS FOR REVISION

#### EXEMPTIONS

(1) Power to grant exemption from duty [Section 25] :

- (a) **General exemption** : The Central Government in public interest may exempt the goods from duties of customs. The exemption may be **from the whole/part of customs duties**. The exemption may be **with conditions** (to be fulfilled before or after removal of goods) or **unconditional (Absolute exemption)**.
- (b) **Special exemption/ Ad hoc Exemption** : Central Government by **special order in each case**, exempt from the payment of duties, under circumstances of an exceptional nature to be stated in such order, any goods on which duty are leviable.
- (c) Scope and applicability of exemption can be clarified **within 1 year** by inserting an explanation in the exemption notification or order. Such an explanation shall have the effect as if it had always been part of the first notification or order as the case may be.
- (d) **Duty after exemption cannot exceed statutory duty** *i.e.* the duty levied before such exemption.
- (e) Every notification issued u/s 25(1) or 25(2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.
- (f) No collection of customs duty if it does not exceed ₹ 100.

<p><i>CC (Import) v. Dilip Kumar and Company [2018] 361 ELT 577 (SC)</i></p>	<ul style="list-style-type: none"> <li>➤ <b>Interpretation of Tax exemption notifications</b> - Burden to prove for its entitlement is on assessee claiming exemption. If there is any ambiguity in exemption Notification, benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue.</li> <li>➤ <b>Interpretation of Taxing statutes</b> - In case there is ambiguity in interpretation of a taxing statute and it is open to two interpretations, benefit of interpretation is given to the subject / assessee.</li> </ul>
--	---

#### REFUNDS AND INTEREST THEREON

(2) Refund of import duty in certain cases [Section 26A] :

**Conditions** : The following conditions must be satisfied for claiming refund of import duty:

- (i) the goods are found to be defective or otherwise not in conformity with the specification agreed upon between the importer and the supplier of goods;
- (ii) the goods have not been worked, repaired or used after importation;
- (iii) the goods are identified to the satisfaction of AC/DC;
- (iv) no duty drawback claimed; and
- (v) the goods are exported or the importer relinquishes his title or such goods are destroyed/rendered commercially valueless **within a period of upto 30 days** from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47. Extension by Commissioner for a further period of 3months.

**Application for refund** : An application for refund of duty shall be made **before the expiry of 6 months** from the relevant date in prescribed form and manner.

**"Relevant date"** means,-

- (a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;
- (b) in cases where the title to the goods is relinquished, the date of such relinquishment;
- (c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

**Exceptions to this Section:**

- (a) **Offending Goods** : This section shall not apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.
- (b) **Perishable goods or Expired Goods** : No refund shall be allowed in under this section in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.
- (3) **Refund [Section 27]** : Application to AC/DC in prescribed form from the date of payment of such duty or interest. Refund can be granted to applicant or deposited in consumer welfare fund. Where the amount of refund claimed is less than ₹ 100, the same shall not be refunded.

**Circumstances when refund granted to the assessee :**

- (a) If the importer or exporter has paid the duty and interest and has not passed on the incidence of such duty and interest to any other person.
- (b) If the duty and interest is paid on imports made by an individual for his personal use.
- (c) If the duty and interest has been borne by the buyer and he has not passed on the incidence thereof to any other person.
- (d) In case of drawback of duty payable under sections 74 and 75 of the Customs Act, 1962.
- (e) In case the refund is in respect of the export duty as specified in Section 26 of Customs Act, 1962.
- (f) In case the duty and interest is borne by any other such class of applicants as the Central Government may by notification in the official gazette specify and such class of persons have not passed on the incidence thereof to any other person. Thus, the aforesaid refunds are outside the ambit of Doctrine of unjust enrichment.
- (g) **Excess duty paid by importer** : The duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where –
- (i) such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry; or
- (ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

**Manner of computation of limitation period of :**

	In case	The limitation of shall be computed from the
(i)	Goods are exempt from payment of duty by a special order issued under section 25(2)	Date of issue of such order.
(ii)	Where the duty becomes refundable as a consequence of any judgment, decree, order or direction of the Appellate authority, Appellate Tribunal or any court	Date of such judgment, decree, order or direction.
(iii)	Where any duty is paid provisionally under Section 18	Date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment.
(iv)	In any other case	Date of payment of such duty or interest.

- (4) **Interest on late disbursement of refund [Section 27A]** : Interest will be paid @ 6% p.a. on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.
- (5) **Refund of export duty [Section 26]** : If the following conditions are satisfied,–
- (a) Goods are re-imported **within 1 year**;
- (b) The goods are returned otherwise than **by way of resale**; and
- (c) Refund claim is made **within 6 months** from the date when the proper officer made an order for clearance of the goods for re-importation.

<i>IITC Ltd. v. CCEX. [2019] 368 ELT 216 (SC)</i>	Refund claim against the assessed duty cannot be entertained without challenging the assessment order even in case of self assessment made by the assessee. Thus, only when the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings, refund claim u/s 27 of the Customs Act, 1962 is admissible.
---	--

PAST EXAMINATION QUESTIONS

EXEMPTION AND REFUNDS

**CASE 1:** *Interpretation rules of classification do not apply to exemption notification* : Examine whether the rules for interpretation of tariff schedules applicable to classification of goods are also applicable to interpretation of exemption notification or to determine the eligibility of goods for exemption under an exemption notification. (3 Marks, Nov.2010)

**Ans:** The above issue was discussed in *CCEx. v. Mewar Bartan Nirman Udyog* [2008] 231 ELT 27 (SC) wherein it was held that it is a well settled position in law that exemption notification must be read strictly and interpreted in terms of its language. Where the language is plain and clear, effect must be given to it. The rules of interpretation applicable in the cases of classification under the Tariff cannot be applied to interpretation of exemption notification.

**CASE 2:** *Benefit of exemption notification not available to smuggled goods* : Write a brief note on the following with reference to decided case law and the provisions of the Customs Act, 1962 : Whether benefit of exemption notification meant for 'imported goods' could be extended in case of "smuggled goods"? (1½ Marks, May 2012) [Similar 2 Marks, Nov. 2017]

**Ans:** No, the benefit of the exemption notification meant for 'imported goods' could not be extended to "smuggled goods".

The Supreme Court in the case of *CC v. M. Ambalal & Co.* [2010] 260 E.L.T 487 (SC) has held that had smuggled goods and imported goods were to be treated as one, Customs Act, 1962 would not have provided for two different definitions for the two. Considering that curbing the ills of smuggling in the economy is one of the principal functions of the Customs Act, the purpose of exemption notifications would be defeated if the benefit meant for imported goods is given to smuggled goods.

**CASE 3:** *Expert opinion is relevant while determining the admissibility of exemption* : Sun Synthetic Fibres was an importer. It had imported one unit of the equipment which was declared as "High Speed Draw Warping Machiner with 1536 ends along with essential spares". The importer claimed that these goods are covered under an exemption notification. Under said notification, exemption was available in respect of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories. Undisputedly, the assessee had imported High Speed Warping Machine, but it had drawing unit and not the pneumatic suction device. The textile commissioner, who was well conversant with these machines, had stated that the goods imported by the assessee were covered under the exemption notification. He further stated that drawing unit was just an essential accessory to the machines imported by assessee and, therefore, was covered under said notification. The opinion so furnished is taken note of by the Tribunal while granting relief to the assessee. Revenue contended that the machine imported by the assessee was not in consonance with the exemption notification and, therefore, the benefit of exemption should not be available under the notification to the assessee. Discuss whether the contention of the Revenue is sustainable in law, with the help of decided case law, if any. (3 Marks, May 2013)

**Ans:** In *CC v. Konkan Synthetic Fibres* [2012] 278 ELT 37 (SC), the Supreme Court stated that it was a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance.

The Supreme Court on referring to the case of *CC v. Swastik Woollens (P) Ltd.* [1988] 37 ELT 474 (SC), held that when no statutory definition was provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding of an expert of a particular field will be a guiding factor. It is well accepted that in taxing statutes, provision for concessional rate of tax should be liberally construed and strict interpretation is not required.

Thus, the Supreme Court concluded that the imported goods were covered under the exemption notification.

**CASE 4:** *Exemption to 'inputs' imported for use in the manufacture of final product - Damage of such 'inputs' during transit - Exemption not deniable* : An importer imported certain inputs for manufacture of final product. A small portion of the imported inputs were damaged in transit and could not be used in the manufacture of the final product. An exemption notification was in force providing exemption in respect of specified raw materials imported into India for use in manufacture of specified goods, which was applicable to the imports made by the importer in the present case. Briefly examine whether the importer could claim the benefit of the aforesaid notification in respect of the entire lot of the inputs imported including those that were damaged in transit. (3 Marks, Nov. 2006)



**Ans:** The similar issue was discussed in *BPL Display Devices Ltd. v. CC* [2004] 174 ELT 5 (SC) wherein the Supreme Court held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage. No material distinction can be drawn between loss on account of leakage and loss on account of damage.

Hence, in the instant case, the benefit of said exemption cannot be denied as inputs were 'intended for use' in the manufacture of final product but could not be so used due to shortage/leakage/damage. The words "for use" have to be construed to mean "intended for use". Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

**CASE 5: *Furnishing of bank guarantee is not payment of duty - Unjust enrichment not applicable*** : The assessee had imported capital goods under a licence with a condition to fulfill an export obligation within a certain time limit. The assessee failed to discharge the export obligation within the said time limit. Consequently, the Department invoked the bank guarantee and realized the amount. However, subsequently the assessee was able to fulfill the export obligation and the Department cancelled the bank guarantee. The assessee thereafter filed a refund claim for the amount realized by invocation of the bank guarantee by the Department. The Department rejected the refund claim on the ground that it was barred in terms of Section 27(1)(b) of the Customs Act, 1962 as the assessee had not been able to establish that the incidence of duty had not been passed on by him to any other person. Examine briefly with the help of any decided case law whether the stand taken by the Department is correct in law. (5 Marks, Nov. 2009-NS)

**Ans:** The issue was discussed in *CC v. Jraj Exports (P) Ltd.* [2007] 217 ELT 504 (Mad.), wherein it was held that when the Department had accepted the fulfillment of export obligation, there was no need to invoke the bank guarantee and retain the amount. The Department's claim that refund had been time barred was not sustainable as furnishing of bank guarantee in order to fulfill the export obligation could not be regarded as payment of duty.

The High Court relied on the Supreme Court's ruling in the case of *Oswal Agro Mills Ltd. and Another v. Asstt. Collector of Central Excise* [1994] 70 ELT 48 (SC), wherein also it was held that furnishing of bank guarantee pursuant to an order of the Court would not be equivalent to payment of excise duty. The furnishing of bank guarantee is only a security to safeguard the interest of the Revenue, hence the Department cannot retain the amount.

Therefore, the stand of the Revenue is not correct in law.

**CASE 6: *CA certificate is not sufficient evidence to prove that incidence of duty has not been passed*** : The assessee, an importer, filed a refund application under section 27 of the Customs Act, 1962. In support of the refund claim, the assessee submitted a Chartered Accountant's certificate giving the various facts ruling out unjust enrichment under the Customs Act. The department denied the refund on the grounds being insufficient evidence. Examine the validity of departmental action citing a decided case, if any. (3 Marks, May 2014)

**Ans:** The facts of the case are similar to *CC v. BPL Ltd.* [2010] 259 ELT 526 (Mad.) Section 27 of the Customs Act, 1962, mandates importer to produce such documents or other evidence, while seeking refund, to establish that amount of duty in relation to which such refund is claimed, has not been passed on by him to any other person. Certificate issued by the Chartered Accountant is merely a piece of evidence acknowledging certain facts. If the assessee has not produced any document other than the certificate issued by the CA to substantiate its refund claim, then, it would not automatically entitle a person to refund in absence of any other evidence. Hence, the assessee could not be granted refund merely on the basis of the said certificate.

**CASE 7: *Refund claim not admissible without challenging the assessment order*** : M/s. XYZ Ltd. were liable for the duty assessed and payable on certain import which, it paid under protest and filed a claim for refund of duty on the ground that duty had been wrongly levied. On rejection of claim for refunds, the assessee filed an appeal before Tribunal which was also dismissed on the ground that as no appeal had been filed against the assessment order, the refund claim was not maintainable. Assessee seeks your advice for remedy. Discuss whether the stand taken by the Tribunal is correct. (5 Marks, May 2006)

**Ans:** The Supreme Court in *Priya Blue Industries Ltd. v. CC* [2004] 172 ELT 145 (SC) has held that refund claim under section 27 of the Customs Act, 1962 can be made by any person who has paid duty in pursuance of an assessment order. However, such a claim for refund cannot be made without challenging the order of assessment in appeal. It cannot be inferred that if the assessment is not correct, a party can file a claim for refund and the correctness of the assessment order can be examined while considering the claim for refund.

So long as the order of assessment stands, the duty would be payable as per that order. Unless that order is modified in appeal or has been reviewed, the order of assessment stands and, thus, a claim for refund contrary to such an order cannot be maintained. A refund claim is not an appeal proceeding. The officer considering refund claim cannot sit in appeal over an assessment made by a competent officer.

Thus, in view of the above mentioned decision, the stand taken by the Tribunal is correct.

**CASE 8 : Assessment order not required to be challenged if duty paid inadvertently - Refund admissible :** PQR Ltd. imported certain machine parts and filed a Bill of Entry in the usual course. The said machine parts are entitled for concessional rate in terms of a notification. The assessee PQR Ltd. omitted to claim the benefit of the aforesaid notification at the time of filing and assessment of the Bill of Entry. Later when PQR Ltd. discovered about the benefit under the notification as aforesaid, they filed a refund claim for the excess amount paid as customs duty under section 27 of the Customs Act, 1962. There was no assessment order since the duty was paid on the basis of the Bill of Entry filed in the usual course. The refund claim was rejected on the ground that Section 27 of the Customs Act, 1962 could be invoked only if an assessment order has been passed and duty payment made pursuant thereto. Discuss with a brief note and decided case law, if any, whether the stand of the Department is correct in law. (3 Marks, Nov. 2011)

**Ans:** Section 27(1) of the Customs Act, 1962 provides that any person claiming refund of any duty and interest,-

- (i) paid by him in pursuance of an order of assessment; or
  - (ii) borne by him,
- may make an application for refund of such duty and interest.

Here, there is expression 'or' in between them which makes it clear that application for refund cannot only be made in pursuance of an assessment order but also when the duty is borne by the applicant. In fact, Section 27(1)(ii) aims to cover those very cases where the duty is paid by a person without an order of assessment.

The above conclusion has also been confirmed by the High Court in the case of **Aman Medical Products v. CCus. [2010] 250 ELT 30 (Del.)** wherein it was held that it is not necessary that a refund can be claimed only when the duty paid by the importer is in pursuance to an order of assessment. The refund can also be claimed when the duty paid by the importer is 'borne by him'.

In view of the above discussion, the stand taken by the Department is not correct in law.

**Illustration 1 - Computation of Refund admissible u/s 27 :** Mr. N has imported 1000 units of an article "ZEP", which has been valued at ₹ 1,150 per unit. The customs duty on this article has been assessed ₹ 250 per unit and paid by Mr. N. He adds his profit margin ₹ 350 per unit and sells the article for ₹ 1,750 per unit.

After one month of sale of whole units of article "ZEP", Mr. N found that there was an error in assessment resulting in excess collection of duty by the Customs Department and such excess collection of ₹ 100 per unit is liable to be refunded by department. Mr. N files an application and demands refund.

Calculate the amount of refund to be received by Mr. N. Also mention provisions of the Customs Act, 1962 related to refund in above-said situation. (4 Marks, Nov. 2015)

**Ans:** According to Section 27 of the Customs Act, 1962 the refund shall be granted to the applicant if the Assistant Commissioner or Deputy Commissioner is satisfied that the importer has not passed the incidence of duty to any other person. In the given case, the price charged by Mr. N (importer) from his buyers includes the duty element. Thus, Mr. N has passed on the burden of duty to the buyers and if any refund will be granted to him, it would confer on him, the benefit to which he does not have a valid right. In this case the amount of refund will be credited to the consumer welfare fund. Thus, the amount of refund is ₹ 1,00,000 (1000 units × ₹ 100) and will be credited to Consumer Welfare Fund. Thus, no refund will be granted to Mr. N.

**CASE 9 : Principle of unjust enrichment - Refund admissibility:** M/s. HIL imports copper concentrate from different suppliers. At the time of import, the seller issues a provisional invoice and the goods are provisionally assessed under section 18 of the Customs Act, 1962 based on the invoice. When the final invoice is raised, based on the price prevalent in the London Metal Exchange on a predetermined date as agreed in the contract between the buyer and seller, the assessments are finalized on the basis of the price in such invoices.

M/s HIL has filed a refund claim arising out of the finalization of the bill of entry by the authorities. The Department, however, has rejected the refund claim on the grounds of unjust enrichment. Discuss whether the action of the department is correct in law?

**Ans:** Section 18 (dealing with provisional assessment) incorporates the principle of unjust enrichment in case of refund arising out of finalization of provisional assessment. Sub-section (5) of section 18 of Customs Act, 1962 provides that if any amount is found to be refundable after finalisation of provisional assessment, such refund will be subject to doctrine of unjust enrichment.

Further, section 28D places the onus on the person who has paid duty to prove that he has not passed on the incidence of such duty. In the absence of any proof from such person, section 28D deems that the burden of duty has been passed on to the buyer.

Therefore, in the given case, the Department's action will be correct if M/s HIL does not produce any evidence of bearing the burden of duty.

**Illustration 2 - Interest on refund payable from 3 months' after expiry of filing original claim :** M/s. ABC imported polystyrene resin on 23-9-2016 seeking classification under the Heading 3903 of the Tariff. However, the Department denied the benefit and charged the additional duty of customs @ 40%. M/s. ABC paid the amount with protest and claimed refund of ₹ 20 lakhs on 28-9-2016. The Assistant Commissioner sanctioned refund *vide* order dated 7-4-2017 but credited the same to the Consumer Welfare Fund.

The assessee went into appeal and the Tribunal gave the decision in favour of the assessee. Hence, the assessee applied to the Assistant Commissioner *vide* application dated 21-12-2019 who by order dated 25-2-2020 passed order of refund but without giving interest for delayed payment under section 27A of the Customs Act, 1962 as it is of the opinion that the refund was made within 3 months from the date of receipt of duly completed application on 21-12-2019.

Discuss the validity of the Department's opinion and compute the interest, if any, payable on refund u/s 27A.

**Solution:** The issue was discussed in **Super Cassettes Ltd. v. CC [2009] 244 ELT 45 (Cal.)** wherein it was held that the interest on refund under section 27A of the Customs Act, 1962 is payable from the date immediately after expiry of 3 months from the date on which the assessee applies for the refund under section 27(1) of the Act.

In the instant case, the application for refund was filed by the assessee on 28-9-2016 and all necessary documents in support of the claim were also filed. It is irrelevant that the assessee got the refund after making an appeal to the Tribunal.








Hence, the assessee was entitled to interest under section 27A as follows (amounts in ₹) :

Amount of refund	[A]	20,00,000
Date of making application	[B]	28-09-2016
Date after the expiry of 3 months from the date of application	[C] = [B] + 3 months	28-12-2016
Date of making refund	[D]	25-02-2020
No. of years and days for which interest to be granted	[E] = [D] - [C]	3 years 59 days
Interest on refund @ 6% [Since 19-20 is leap year]	[A] × [E] × 6%	3,79,344

### SUMMARY OF IMPORTANT CASE STUDIES

<b>CCEx. v. Gujarat Ambuja Exports Ltd. [2016] 338 ELT 481 (SC)</b>	The applicability of exemption has to be examined in terms of the conditions laid down in the exemption notification. The HSN Explanatory Notes cannot be used to interpret such notifications but they would only serve as a guide for such interpretation.
<b>Yu Televentures Pvt. Ltd. v. UOI [2017] 358 ELT 81(Del)</b>	Chartered Accountant's certificate that incidence of Countervailing Duty (CVD) on import was not passed on to customers is sufficient to rebut presumption of unjust enrichment, more so where same certificate had been accepted in earlier proceedings.
<b>CC v. Coronation Spinning India [2015] 319 ELT 550 (SC)</b>	Interest on delayed refunds would be payable to assessee only on amount of duty and not on refund of fine and penalty.

■ ■ ■

<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>   <b>AADHYA'S</b> edu.com   http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> You Tube Subscribe to our Channel CA. Yogendra Bangar</p>	<p> Online MCQ's</p> <p>Computer / EduApplet App</p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 × 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p> SUBJECTIVE Test Series</p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
---	--	---	--

**SECTION : C**

**FOREIGN TRADE POLICY**



## FOREIGN TRADE POLICY

## SUMMARIZED POINTS FOR REVISION

## BASIC CONCEPTS OF FOREIGN TRADE POLICY

- (1) **Foreign Trade Policy (FTP)** is a set of guidelines or instructions issued by the Central Government in matters related to import and export of goods in India *i.e.* foreign trade. The main legislation concerning foreign trade is the Foreign Trade (Development and Regulation) Act, 1992. The Foreign Trade Policy (FTP), 2015-2020, (as updated) w.e.f. 05-12-2017 incorporating provisions relating to export and import of goods and services, is effective from 05-12-2017 *vide* Notification No. 41/2015-2020, dated 05-12-2017 and shall remain in force up to 31<sup>st</sup> March, 2020, unless otherwise specified.
- (2) **The objectives of FTP 2015-20 :**
- Stable and sustainable policy environment for foreign trade ;
  - Export Promotion Mission ;
  - Diversification of India's export ;
  - Expansion and integration of export market ;
  - Regular appraisal.

## FTP – OBJECTIVES, ADMINISTRATION AND LEGAL FRAMEWORK

- (3) **Coverage of FTP :** The FTP covers the policies and regulations with respect to the following matters –
- Policy for regulating import and export of goods and services ;
  - Exports from India Scheme ;
  - Duty Remission and Duty Exemption Scheme for promotion of exports ;
  - Export Promotion Capital Goods (EPCG) Scheme ;
  - Export Oriented Undertakings (EOU)/Electronic Hardware Technology Park (EHTP)/ Software Technology Park (STP) and Bio Technology Parks (BTU) Schemes ;
  - Special Economic Zones ;
  - Deemed Exports.

## TRADE FACILITATION &amp; EASE OF DOING BUSINESS

- (4) **“E-commerce”** means buying and selling of goods and services including digital products, conducted over digital and electronic network.  
For the purposes of Merchandise Exports from India Scheme (MEIS) e-commerce shall mean the export of goods hosted on a website accessible through the internet to a purchaser. While the dispatch of goods shall be made through courier or postal mode, as specified under the MEIS, the payment for goods purchased on e-commerce platform shall be done through international credit/debit cards and as per the relevant Circular of RBI.
- (5) **DGFT** acts as a facilitator of exports/ imports. The decision of DGFT shall be final and binding on all matters relating to interpretation of Policy, or provision in Handbook of Procedures, Appendices and Aayat Niryat Forms or classification of any item for import/ export in the ITC (HS).
- (6) **Director General of Commercial Intelligence and Statistics (DGCI&S)** acts as the provider of trade data through Monthly & Quarterly publications in CD form and Generation of data from the Foreign Trade database as per user's request. Data Suppression Policy is in force to maintain confidentiality of importer's and exporter's commercially sensitive business data.
- (7) **Special focus initiatives :** The FTP provides certain special focus initiatives for Market Diversification, Technological Upgradation, Support to status holders, Agriculture, Handlooms, Handicraft, Gems & Jewellery, Leather, Marine, Electronics and IT Hardware Manufacturing Industries, Green products, Exports of products from North-East, Sports Goods and Toys sectors wherein the Government of India shall make concerted efforts to promote exports.



(i)	<b>Handlooms</b>	<ul style="list-style-type: none"> <li>➤ Duty free import entitlement of specified trimmings and embellishments upto 5% of FOB value of exports during previous financial year. Handloom and made ups are included for the entitlement.</li> <li>➤ Duty free import entitlement of hand knotted carpet samples upto 1% of FOB value of exports during previous financial year.</li> </ul>
(ii)	<b>Handicrafts</b>	<ul style="list-style-type: none"> <li>➤ Duty free import entitlement of tools, trimmings and embellishments upto 5% of FOB value of exports during previous financial year. Entitlement shall extend to merchant exporters tied up with supporting manufacturers.</li> <li>➤ Handicraft EPC is authorized to import trimmings, embellishments and consumables on behalf of those exporters for whom directly importing may not be viable.</li> </ul>
(iii)	<b>Leather and Footwear</b>	<ul style="list-style-type: none"> <li>➤ Duty free import entitlement of specified items upto 3% of FOB value of exports of leather garments during preceding financial year.</li> <li>➤ Duty free entitlement for import of trimmings, embellishments and footwear components for footwear (leather as well as synthetic) and other leather products upto 5% of FOB' value of exports of previous financial year.</li> </ul>
(iv)	<b>Marine Sector</b>	Duty free import of specified specialised inputs/chemicals and flavouring oils is allowed to the extent of 1% of FOB value of preceding financial year's export.
(v)	<b>Sports Goods and Toys</b>	Duty free import of specified specialised inputs allowed to the extent of 3% of FOB value of preceding financial year's export.

- (8) **Single window scheme** : Indian Customs has introduced **SWIFT (Single Window Interface for Facilitating trade)** w.e.f. 01-04-2016 for ensuring ease of doing business.

Under SWIFT, the Importers electronically lodge Integrated Declaration at a single point only with Customs. The required permission, if any, from other regulatory agencies (such as Animal quarantine, Plant quarantine, Drug Controller, Textile Committee etc.) is obtained online without the importer/exporter having to separately approach these agencies. Benefits of Single Window Scheme include :

- (a) Reduced Cost of doing business;
- (b) Enhanced transparency;
- (c) Reduced duplicity and cost of compliance;
- (d) Optimal utilization of man power.

- (9) **National Committee on Trade Facilitation (NCTF)** : Consequent to India's ratification of the **WTO Agreement on Trade Facilitation (TFA)** in April 2016, the National Committee on Trade Facilitation (NCTF) has been constituted. The establishment of the Committee is part of mandatory, institutional arrangement of the TFA. The defined objective behind setting up the NCTF is to have national level body that will facilitate domestic co-ordination and implementation of TFA provisions. It will play the lead role in developing the **Pan-India road map for trade facilitation**. It will be instrumental in synergizing the various 21 trade facilitation perspectives across the country and will also focus on an outreach programmes for sensitization of all stakeholders about TFA.

#### GENERAL PROVISIONS REGARDING IMPORTS AND EXPORTS

- (10) **Exports and Imports - 'Free'**, unless regulated.
- (11) **Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports** : ITC (HS) is a compilation of codes for all merchandise/goods for export/ import. Goods are classified based on their group or sub-group at 2/4/6/8 digits. Schedule 1 of ITC (HS) lays down the Import Policy regime while Schedule 2 of ITC (HS) details the Export Policy regime.
- (12) **Importer-Exporter Code (IEC) - 10 digit PAN based code** : **Importer-Exporter Code (IEC) - 10 digit PAN based code** : An IEC is a **10-character alpha-numeric number** allotted to a person that is mandatory for undertaking any export/import activities.

With a view to maintain the unique identity of an entity (firm/company/LLP etc.), consequent upon introduction/implementation of GST, **IEC will be equal to PAN** and will be separately issued by **DGFT based on an application**.

No export or import shall be made by any person without obtaining an IEC number unless specifically exempted. For services exports, IEC shall be necessary as per the provisions in Chapter 3 only when the service provider is taking benefits under the Foreign Trade Policy.

Exempt categories and corresponding permanent IEC numbers are given in Para 2.07 of Handbook of Procedures. Application process for IEC is completely online and IEC can be generated by the applicant as per the procedure detailed in the Handbook of Procedure.

- (13) **Principles of Restriction** : Restriction are placed for Protection of public morals; Protection of human, animal or plant life or health etc. Any goods /service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the procedure prescribed in a Notification / Public Notice issued in this regard.

- (14) **'Authorization'** means a permission in terms of the FT (D&R) Act to import or export issued by DGFT. Authorization is not a right.

**Terms and Conditions of an authorization** : Every Authorisation shall, *inter alia*, include following terms and conditions (as applicable), in addition to such other conditions as may be specified : (a) Quantity, description and value of goods; (b) Actual User condition; (c) Export obligation; (d) Value addition to be achieved; and (e) Minimum export/import price. Violation of conditions of authorisation liable to penal action.

**Outstanding export obligations/liabilities to be informed to NCLT and RA** : Any firm / company coming under the adjudication proceedings before the National Company Law Tribunal (NCLT) shall inform the concerned Regional Authority (RA) and NCLT of any outstanding export obligations/liabilities under any of the schemes under FTP. The total outstanding duty saved amount/dues along with interest, and any penalty imposed under FTD&R Act, or any other dues, shall be counted as part of the dues to the government against the said firm/company. [Inserted by Notification No. 25/2015-20 dated 18-10-2019]

- (15) **Placement of firm in denied entity list - consequences thereof** : A firm may be placed under Denied Entity List (DEL), by the concerned for reasons to be recorded in writing, a firm may be refused grant or renewal of a license, certificate, scrip or any instrument bestowing financial or fiscal benefits. If a firm is placed under DEL all new licences, scrips, certificates, instruments, etc will be blocked from printing/ issue/ renewal. DEL order to be kept in abeyance for a period not more than 60 days. On fulfillment of conditions firm name can be removed from DEL.
- (16) **State Trading Enterprises (STEs)** are governmental and non-governmental enterprises, including marketing boards. Any good, import or export of which is governed through exclusive or special privilege granted to STE, may be imported or exported by the concerned STE. Imports or exports by STE in accordance with commercial considerations. Other person can be granted authorization to import or export such goods.
- (17) **Export Credit Agencies (ECAs)** are policy instrument for Government to support exports. ECAs support exports by insurance, guarantee and also direct lending. Export Credit Agencies (ECAs) like Export Credit Guarantee Corporation of India Ltd. (ECGC) provides credit insurance support to exports and export credit lending. Covers issued by ECGC to exporters, protect against losses arising out of payment failures due to insolvency or default of the buyers or due to political risks.

Exporters can diversify their markets in addition to protecting existing markets through such covers. ECGC also supports Medium and Long term (MLT) exports including project exports. Exim Bank is the other ECA in the business of lending for MLT exports and fronting the government's line of credit. ECGC indemnifies losses of exporters in export trade due to insolvency or default of the buyer.

- (18) **Export Promotion Councils (EPCs)** are organizations of exporters, set up with the objective to promote and develop Indian exports. EPCs are also eligible to function as Registering Authorities to issue Registration-cum-Membership Certificate (RCMC) to its members.

- (19) **Registration-cum-Membership Certificate (RCMC)** : It means certificate of registration and membership granted by an Export Promotion Council/ Commodity Board/ Development Authority or other competent authority as prescribed in FTP or Handbook of Procedures. CRES issued by Spices Board to be treated as RCMC It is needed for grant of authorisation and any other benefit or concession under FTP. Certificate of Registration as Exporter of coir & coir products issued by the Coir Board shall be treated as RCMC for the purposes under this Policy.

- (20) The mandatory documents for export/ import of goods from/into India are as under :
- (a) **Mandatory documents required for export of goods from India :**
    - (i) Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/ Postal Receipt.
    - (ii) Commercial Invoice cum Packing List [Separate Commercial Invoice and Packing List would also be accepted]
    - (iii) Shipping Bill/Bill of Export.
  - (b) **Mandatory documents required for import of goods into India :**
    - (i) Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/ Postal Receipt.
    - (ii) Commercial Invoice cum Packing List [Separate Commercial Invoice and Packing List would also be accepted.]
    - (iii) Bill of Entry
  - (c) **Additional documents required for restricted goods :** For export or import of specific goods or category of goods, which are subject to any restrictions/policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.
  - (d) **Additional documents to ensure legal compliance :** In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.
  - (e) The above stipulations are effective from 1<sup>st</sup> April, 2015.

(21) **Import Policy for Second Hand Goods:**

Sl. No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
(I)	<b>Second Hand Capital Goods</b>		
(a)	(i) Personal computers/ laptops including their refurbished /re-conditioned spares (ii) Photocopier machines/ Digital multifunction Print & Copying Machines (iii) Air conditioners (iv) Diesel generating sets.	<b>Restricted</b>	Importable against authorization
(b)	Refurbished/ re-conditioned spares of Capital Goods	<b>Free</b>	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.
(c)	All other second hand capital goods [other than (a) & (b) above]	<b>Free</b>	
(II)	Second Hand Goods other than capital goods	<b>Restricted</b>	Importable against Authorization
(III)	Second Hand Goods imported for the purpose of repair/refurbishing/re-conditioning or re-engineering.	<b>Free</b>	Subject to condition that waste generated during the repair/refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental/ safety and health norms and the imported item is re-exported back as per the Customs Notification.

- (22) **Import/ Export of gifts :** Import of gifts shall be 'free' where such goods are otherwise freely importable under ITC (HS). In other cases, such imports shall be permitted against an authorisation issued by DGFT. Goods, including edible items, of value **not exceeding ₹ 5,00,000** in a licensing year, may be exported as a gift. However, items mentioned as restricted for exports in ITC(HS) shall not be exported as a gift, without an Authorization.
- (23) **Export through courier service/ post :** Exports through a registered courier service/ Foreign Post Office is permitted as per Notification issued by DoR. However, exportability of such items shall be regulated in accordance with FTP/ Export Policy in ITC (HS), 2018. The value limit for exports through courier service shall be ₹ 5,00,000 per consignment.

EXPORT PROMOTION SCHEMES

- (24) **Objective of Schemes for Exports of Merchandise and Services** : The objective of schemes is to provide rewards to exporters to offset infrastructural inefficiencies and associated costs involved and to provide exporters a level playing field. There shall be following two schemes for exports of Merchandise and Services respectively :
- (a) **Merchandise Exports from India Scheme (MEIS).**  
(b) **Service Exports from India Scheme (SEIS).**
- (25) **Nature of Rewards** : Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for :
- (a) Payment of Customs Duties for import of inputs or goods, except items listed in Appendix 3A.  
(b) Payment of excise duties on domestic procurement of inputs or goods, **including capital goods, as per DoR** notification.  
(c) Payment of Customs Duty and fee as per paragraph 3.18 of this Policy.  
(d) Payment of composition fee under FTP, for payment of application fee under FTP, if any and for payment of value shortfall in EO.
- No use for payment of GST on domestic/ imports** : In absence of enabling provision, scrips cannot be used to pay GST (CGST or SGST/UTGST or IGST or GST Cess on domestic purchases or imports).
- (26) **Scrip may be used to import under lease financing** : Utilization of Duty Credit Scrip shall be permitted for payment of duty in case of import of capital goods under lease financing.
- (27) **Drawback of BCD paid using scrip** : Basic Customs duty paid in cash or through debit under Duty Credit scrip shall be adjusted for Duty Drawback as per DoR rules or notifications.
- (28) **Scrip valid for 24 months** : Duty Credit Scrip issued on or after 01-01-2016 **shall be valid for 24 months** from the date of issue and must be valid on date on which actual debit of duty is made. **Re-validation of Duty Credit Scrip is not permitted unless covered under HBP.**

**Concept of "Credit Scrips":**

- Credit Scrips are just like 'E-Credit Ledger or E-Wallet'.
- While e-credit/e-cash is earned on payment in cash to supplier/Government, credit scrips are earned as a specified percentage of exports (or on any other basis) (scrips are export incentive for exporters).
- E-Credit may be used to pay duty/tax on output. But, credit scrips may be used to pay duty even on inputs or even make other payments as per FTP.
- Just as amount paid through e-credit/e-cash is available to buyer of output as credit/drawback, etc.; similarly, with exceptions, amount paid through credit scrips on purchases, is available as drawback to assessee himself.

**Example** : Rohan makes exports worth ₹ 1,000. He is entitled to credit scrips @ 5%. Hence, he will have a credit scrip of ₹ 50. Now, Rohan wants to import inputs for use in exports and duty thereon is ₹ 40. Here, Rohan can pay ₹ 40 out of ₹ 50 credit scrip and duty so paid may be availed as drawback as follows :

	Scrip	Drawback
Opening assumed to be Nil	-	-
Exports made worth ₹ 1,000	50 credit	-
Import of inputs and use of scrip to pay BCD	40 debit	40 credit
<b>Total</b>	<b>10 credit</b>	<b>40 credit</b>

MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS)

- (29) **Merchandise Exports from India Scheme (MEIS)** : Objective of Merchandise Exports from India Scheme (MEIS) is to offset infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.
- (30) **Basis of calculation of reward** : Unless otherwise specified, the basis of calculation of reward would be -
- (a) on realized FOB value of exports in free foreign exchange, or  
(b) on FOB value of exports as given in the Shipping Bills in free foreign exchange,  
**whichever is less.**

- (31) **Entitlement under MEIS for Export of goods through courier or foreign post offices** : Exports of goods through courier or foreign post office, as notified in Appendix 3C, of FOB value upto ₹ 5,00,000 per consignment shall be entitled for rewards under MEIS. If the value of exports, is more than ₹ 5,00,000 per consignment then MEIS reward would be calculated on the basis of FOB Value of ₹ 5,00,000 only.
- (32) **Ineligible categories under MEIS** : The following exports categories /sectors shall be ineligible for Duty Credit Scrip entitlement under MEIS :
- Supplies made from DTA units to SEZ units
  - Export of imported goods covered under paragraph 2.46 of FTP;
  - Exports through trans-shipment, meaning thereby exports that are originating in third country but trans-shipped through India;
  - Deemed Exports;
  - SEZ/ EOU /EHTP/ BTP /FTWZ products exported through DTA units;
  - Export products which are subject to Minimum export price or export duty.
  - Exports made by units in FTWZ.

### SERVICE EXPORTS FROM INDIA SCHEME (SEIS)

- (33) **Service Exports from India Scheme (SEIS)** : Objective of SEIS is to encourage export of notified Services from India. Service Providers of notified services, located in India, shall be rewarded under SEIS.

- (a) A service provider (with active IEC at the time of rendering services) located in India, should have minimum net free foreign exchange earnings as under mentioned in year of rendering service to be eligible for Duty Credit Scrip.

➤ Individual service providers and sole proprietorship	US \$ 10,000
➤ Other service providers	US \$ 15,000

\*Specified manner is supply of a 'service' from India to any other country; (Mode 1- Cross border trade) and supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2- Consumption abroad). Payment in Indian Rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India.

- (b) NFE of services only to be taken into account for person who is manufacturer as well as service provider.  
(c) Service provider to have an active IEC to claim rewards .

- (1) **Net Foreign exchange earnings** = Gross Earnings of Foreign Exchange Minus Total expenses/ payment/ remittances of Foreign Exchange by the IEC holder, relating to service sector in the financial year.
- (2) **'Services'** include all tradable services covered under **General Agreement on Trade in Services (GATS)** and earning foreign exchange.
- (3) **'Service Provider'** means a person providing:
  - (i) Supply of a 'service' from India to any other country; (Mode 1 - Cross border trade)
  - (ii) Supply of a 'service' from India to service consumer(s) of any other country in India; (Mode 2 - Consumption abroad)
  - (iii) Supply of a 'service' from India through commercial presence in any other country. (Mode 3 - Commercial Presence)
  - (iv) Supply of a 'service' from India through the presence of natural persons in any other country (Mode 4 - Presence of natural persons).

- (34) **Ineligible categories under SEIS** : Foreign exchange remittances other than those earned for rendering of notified services would not be counted for entitlement. Thus, other sources of foreign exchange earnings such as equity or debt participation, donations, receipts of repayment of loans etc. and any other inflow of foreign exchange, unrelated to rendering of service, would be ineligible.

- (35) **Common Provisions for MEIS and SEIS** :

- CENVAT/ Drawback** : Additional Customs duty/excise duty/Service Tax paid in cash or through debit under Duty Credit scrip shall be adjusted as CENVAT Credit or Duty Drawback as per DoR rules or notifications.
- Import under lease financing** : Utilization of Duty Credit Scrip shall be permitted for payment of duty in case of import of capital goods under lease financing in terms of provision in paragraph 2.34 of FTP.

- (c) **Transfer of export performance** : Transfer of export performance from one IEC holder to another IEC holder - Not permissible. Supporting manufacturer eligible on obtaining necessary disclaimer.
- (d) **Facility of payment of custom duties in case of EO defaults and fee through duty credit scrips** : Duty Credit Scrip can be utilised/ debited for payment of Customs Duties in case of EO defaults for Authorizations issued under Chapters 4 and 5 of Foreign Trade Policy. Such utilization/ usage shall be in respect of those goods which are permitted to be imported under the respective reward schemes. However, penalty/ interest shall be required to be paid in cash.
- (e) **Risk Management System** : (i) Random selection of 10% of cases for selection. (ii) Examination of documents of scrip holder. (iii) Recovery of excess claim along with interest. (iv) Surrender of scrip if the same is unutilised. (v) Original documents can be demanded within 3 years from the date of issue of scrip. Consequences of failure to submit documents - reward to be refunded along with interest.

**(36) Status Holder :**

- (a) **Meaning** : Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and hand holding to new entrepreneurs.
- (b) **Eligibility - Export performance** : All exporters of goods, services and technology having an import-export code (IEC) number shall be eligible for recognition as a status holder.  
**Status recognition will depend on export performance.** An applicant shall be categorized as status holder on achieving export performance during the **current and previous 3 financial years** (for Gems & Jewellery Sector the performance during the current and previous two financial years shall be considered for recognition as status holder) as indicated in table below.
- (c) **Computation of export performance** : The export performance will be counted on the basis of **FOB of export** earning in free foreign exchange. **For deemed export, FOR value of exports** in Indian Rupees shall be converted in US \$ at the exchange rate notified by CBEC, as applicable on 1<sup>st</sup> April of each Financial Year.
- (d) **Export performance necessary in 2 out of 4 years** : For granting status, export performance is necessary in at least two out of 4 years.

**(37) Status Category :**

Status Category	Export Performance FOB/FOR (as converted) Value (in US \$ million)
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2,000

**(38) Privileges of Status Holders** : A Status Holder shall be eligible for privileges as under -

- (a) Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
- (b) Input-Output norms may be fixed on priority within 60 days by the Norms Committee;
- (c) Exemption from furnishing of Bank Guarantee
- (d) Exemption from compulsory negotiation of documents
- (e) Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.
- (f) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.
- (g) Self certification facilities.
- (h) Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of -

Export of -	Annual limit for export promotion
Gems and Jewellery, Articles of Gold & precious metals	Annual limit of ₹ 1 crore or 2% of average annual export realization during preceding 3 licensing years, whichever is lower.



Supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes	Upto 8% of the average annual export realisation during preceding 3 licensing years.
Any other case	2% of average annual export realization during preceding 3 licensing years.
<b>No export incentive</b> : Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotions scheme.	

- (39) **Duty exemption/remission schemes** : Schemes under this Chapter enable duty free import of inputs for export production, including replenishment of input or duty remission.
- (a) **Duty Exemption Schemes** : The Duty Exemption schemes consist of the following -
- (i) Advance Authorisation (AA) (which includes Advance Authorisation for Annual Requirement).
  - (ii) Duty Free Import Authorisation (DFIA).
- (b) **Duty Remission Scheme** Duty Drawback (DBK) Scheme, administered by Department of Revenue.

#### ADVANCE AUTHORIZATION SCHEME

- (40) **Advance Authorization Scheme** : Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). Advance Authorisation is issued on basis of Standard Input Output Norms (SION) notified or on the basis of self declaration. Advance Authorisation can be issued either to a **manufacturer exporter or merchant exporter** tied to supporting manufacturer. Advance Authorisation shall be issued for :

- (a) Physical export (including export to SEZ);
- (b) Intermediate supply; and/or
- (c) Deemed exports ;
- (d) Supply of 'stores' on board of foreign going vessel/ aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

Advance Authorisation and/or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. Export Obligation Period for inputs, as specified in Appendix 4-J, shall be as mentioned in the relevant column of the said Appendix. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed.

- (41) **Eligibility Condition to obtain Advance Authorisation for Annual Requirement** : Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorisation for Annual requirement. Entitlement in terms of CIF value of imports shall be upto **300% of the FOB value** of physical export and/or FOR value of deemed export in preceding financial year or **₹ 1 crore**, whichever is higher.
- (42) **Minimum Value Addition** - 50% in case of tea and 15% in other cases (except in cases of jewellery)
- (43) **Import of Mandatory Spares** - upto 10% of CIF value of authorisation
- (44) **Details of Duties exempted** : Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Anti-dumping Duty (ADD), **Countervailing Duty [Anti-subsidy]** and Safeguard Duty, wherever applicable.

**ADD/Anti-subsidy/Safeguard duty not exempt in certain cases** : However, Import against following deemed exports will not be exempt from ADD, Anti-subsidy duty and Safeguard duty -

- (a) Supply of capital goods against EPCG Authorisation;
- (b) Supply of marine freight containers by 100% EOU (Domestic freight container-manufacturers); and
- (c) Supply of goods to United Nations or International Organisations, etc.

**Exemption to IGST and GST Cess** : Imports against Advance Authorisations for physical exports or for domestic supplies being deemed exports notified under section 147 of the CGST Act, 2017 (i.e. Supply of goods by a registered person against Advance Authorisation, Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation and Supply of goods by a registered person to Export Oriented Unit) are exempted from Integrated Tax and Compensation Cess upto 31-03-2020 only.

- (45) **Validity Period for Import** : Advance Authorisation - Valid for **12 months** from the date of issue.
- (46) **Export Obligation** : Period for fulfillment of export obligation - **18 months**. Period for fulfillment of export obligation for defence items - **24 months**.
- (47) **Period in case of deemed exports or turnkey projects** : In cases of supplies to projects in India under deemed export category or projects abroad, the Export Obligation period shall be co-terminus with contracted duration of the project execution or **18 months** whichever is more.

#### DUTY FREE IMPORT AUTHORIZATION (DFIA) SCHEME

- (48) **Duty Free Import Authorization (DFIA) Scheme** : Duty Free Import Authorisation is issued to allow duty free import of inputs. Duty Free Import Authorisation Scheme shall not be available for import of raw sugar. **Drawback** as per rate determined and fixed by Central Excise authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product. However, in case such drawback is claimed for inputs not specified in SION, the applicant should have indicated clearly details of such duty paid inputs also in the application for Duty Free Import Authorization, and as per the details mentioned in the application, the Regional Authority should also have clearly endorsed details of such duty paid inputs in the condition sheet of the Duty Free Import Authorisation. Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms have been notified. Minimum value addition of **20% shall be required** to be achieved. Exports must be from Listed Ports and separate application is to be made for EDI and Non EDI ports.
- (49) **Fulfillment of exports - 12 months** : Fulfillment of exports - **12 months** from the date of online filing of application and generation of file number.
- (50) **Transferability of DFIA - After completion of exports** : After completion of exports and realization of proceeds, request for issuance of transferable Duty Free Import Authorisation may be made to concerned Regional Authority **within a period of 12 months from the date of export or 6 months** (or additional time allowed by RBI for realization) from the date of realization of export proceeds, whichever is later. Applicant shall be allowed to file application beyond 24 months from the date of generation of file number as per paragraph 9.02 of Hand Book of Procedures. Separate DFIA shall be issued for each SION and each port. No DFIA shall be issued for an input where SION prescribes 'Actual User' condition and/or Appendix-4J prescribes pre import condition for such an input.

#### EXPORT PROMOTION CAPITAL GOODS SCHEME (EPCG)

- (51) **EPCG Scheme (4 Marks, Nov. 2018-OS)**: This Scheme allows import of capital goods for pre-production, production and post-production at Zero customs duty. Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources. **Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier** : A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefit under FTP and as may be provided under GST Rules under category of Deemed Exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfillment of positive NFE by said EOU.
- (52) **Eligible Capital goods** : Capital goods for the purpose of the EPCG scheme shall include --
- (a) Capital Goods as defined in Chapter 9 including in CKD/SKD condition thereof;
    - (i) Computer software systems;
    - (ii) Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories; and
    - (iii) catalysts for initial charge plus one subsequent charge.
  - (b) EO equivalent to **6 times of duty saved on capital goods -Time limit of 6 years.**
  - (c) Authorisation validity - **18 months.**
  - (d) **IGST & GST Cess exempt on imports** : Capital goods imported under EPCG scheme for physical exports are exempt from IGST and GST Compensation Cess upto 31-03-2020.
  - (e) Second hand capital goods - Not eligible.
  - (f) **Ineligible capital goods** : Authorisation under EPCG Scheme shall not be issued for import of any Capital Goods for generation/ transmission of power (including Captive plants and Power Generator Sets of any kind) for -

- (i) Export of electrical energy (power);
  - (ii) Supply of electrical energy (power) under deemed exports;
  - (iii) Supply of power (energy) in their own unit; and
  - (iv) Supply/export of electricity transmission services.
  - (g) Import of Restricted items permissible only after approval.
  - (h) Goods restricted for export - EPCG authorisation only after approval.
  - (i) Manufacturer exporters/Merchant exporters/Service providers eligible.
  - (j) Common Service Provider (CSP) also eligible.
  - (k) Actual User Condition till export obligation fulfilled.
- (53) **Export Obligation (EO)** : Following conditions shall apply to the fulfilment of EO -
- (a) Fulfillment through export of goods or services.
  - (b) Over and above the average level of exports achieved in the preceding **3 licensing years**.
  - (c) **25% less EO** in case of **ingeniousness sourcing of capital goods**.
  - (d) Shipments under AA/ DFIA/ Drawback scheme or reward schemes - Also eligible.
  - (e) Physical exports and specific deemed exports included.
  - (f) Payment received in rupee terms for such Services as notified in Appendix 5D shall also be counted towards discharge of export obligation under the EPCG scheme.

Thus, the export obligation to be fulfilled can be summarised as under:

	Case	Export Obligation (EO)	Duty Saved
(A)	Imports under EPCG Scheme	Duties, taxes and cess saved on capital goods $\times 6$	Actual duty saved amount
(B)	Indigenous sourcing of Capital Goods	25% lesser than that in item (A) <i>i.e.</i> , Duties, taxes & cess saved $\times 4.5$ times	Notional Customs duties saved on "FOR value"
(C)	For exporters of Green Technology Products	<i>In case falling in Item (A)</i> : 7.5% of EO in Item (A) <i>i.e.</i> , Duty saved $\times 4.5$ times <i>In any other case</i> : No change	As applicable, as per above
(D)	For units located in Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Jammu & Kashmir	<i>In case falling in Item (A)</i> : 25% of EO in Item (A) <i>i.e.</i> , Duty saved $\times 1.5$ times <i>In an other case</i> : No change	As applicable, as per above

#### EOU, EHTP, STP & BTP SCHEMES

- (54) All goods and services other than prohibited goods can be exported. The export of findings like posts, push backs, locks which help in collating the jewellery pieces together, containing gold of 3 carats and above up to a maximum limit of 22 carats only shall be allowed. Export promotion material only upto 1.5% of FOB value of exports.
- (55) **All goods including capital goods may be imported/procured from DTA** : An EOU/EHTP/STP/BTP unit may import/procure all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS) as follows-

	Procurement Mode	Duty exemption
(i)	(a) <b>Import</b> , (b) <b>Procure from bonded warehouses in DTA, and</b> (c) <b>Procure from international exhibition held in India</b>	Without payment of - <ul style="list-style-type: none"> <li>➤ Basic customs duty</li> <li>➤ Additional duty of Customs (CVD or Special CVD)</li> <li>➤ IGST leviable u/s 3(7) of Customs Tariff Act, 1975</li> <li>➤ GST Compensation Cess leviable u/s 3(9) of Customs Tariff Act, 1975,</li> </ul> as per notification issued by the Department of Revenue. Exemption from IGST and GST compensation cess is available upto 31-03-2020.

(ii)	Procurement from DTA	<ul style="list-style-type: none"> <li>➤ <b>GST payable</b> : Procurement of GST goods from DTA would be on payment of applicable GST taxes. The refund of GST taxes for supply from DTA to EOU would be available to supplier as provided under GST rules subject to such conditions and documentations as specified there in under GST rules.</li> <li>➤ <b>Excise duty not payable</b> : EOU's can procure excisable goods, falling in Fourth Schedule of Central Excise Act, from DTA without payment of excise duty.</li> </ul>
------	----------------------	--

- (56) **Export of spares and components upto 5% of FOB value of exports** : Procurement and export of spares or components, upto 5% of FOB value of exports, may be allowed to same consignee/buyer of the export article, subject to the condition that it shall not count for NFE and direct tax benefits.
- (57) **Positive NFE** : EOU/EHTP/STP/BTP unit shall be a positive net foreign exchange earner except for sector specific provision as specified, where a higher value addition shall be required. NFE Earnings shall be calculated cumulatively in blocks of 5 years, starting from commencement of production.
- (58) **Letter of permission or letter of intent or legal undertaking** : LoP/LoI shall have an initial validity of 2 years - Extension of 1 year may be given by the DC and further 1 year may be given by the Unit Approval Committee. Lop/LoI valid for 5 years from commencement of production - **Extension for 5 years.**
- (59) **Investment criteria - minimum investment ₹ 1 crore** : Not applicable to units in EHTP/ STP/ BTP, Handicrafts/ Agriculture/ Floriculture/ Aquaculture/ Animal Husbandry/ Information Technology, Services, Brass Hardware and Handmade jewellery sectors.
- (60) **DTA Sale of Finished Products/ Rejects/ Waste/ Scrap/ Remnants and By-products** : DTA sales - 50% of FOB value of exports.
- (a) DTA sale by units manufacturing and exporting more than one product - upto 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit, as stipulated above.
- (b) DTA sale of Rejects within an overall limit of 50% may be sold in DTA on payment of duties. Sale of rejects upto 5% of FOB value of exports shall not be subject to achievement of NFE.
- (61) **DTA supply of services** : For services, including software units, sale in DTA in any mode, including on line data communication, shall also be permissible up to 50% of FOB value of exports and /or 50% of foreign exchange earned, where payment of such services is received in foreign exchange. However, sale in DTA in respect of services classified under Chapter Heading 9988 and 9989 under GST, but covered in LOP/para 9.31 of FTP as manufacturing of goods, will continue to be covered under (a) above. At the time of DTA clearance, applicable GST and compensation cess as per GST classification would apply.
- (62) **Deemed Exports** : Supplies from DTA to EOU/EHTP/ STP/BTP units will be regarded as "deemed exports" and DTA supplier shall be eligible for relevant entitlements as per FTP, besides discharge of export obligation, if any, on the supplier.
- (63) **Other Benefits** : In addition, EOU/ EHTP/ STP/ BTP units shall be entitled to following - (i) Reimbursement of Central Sales Tax; (ii) Exemption from excise duty; (iii) Reimbursement of duty paid on fuel; (iv) CENVAT Credit.
- (64) **Other Entitlements** : (i) Exemption from industrial licensing; (ii) 100% in EEFC account ; (iii) No bank guarantee in certain cases; (iv) 100% FDI.
- (65) **Inter Unit Transfer** : The provisions of inter unit transfer in case of EOU/EHTP/STP/BTP. Prior intimation to concerned DC is to be given. Transfer of capital goods is also allowed.
- (66) **Sub contracting by EOU/ EHTP/ STP/ BTP units** : Provisions have been made for Sub-Contracting. Annual permission required to be taken from Customs authorities. 50% of overall value of production can be subcontracted : Job work can be undertaken by EOU unit on behalf of DTA exporter.
- (67) **Sale of Unutilized Material** : In case an EOU/ EHTP/ STP/ BTP unit is unable to utilize goods and services, imported or procured from DTA, it may be - (a) transferred to another EOU/ EHTP/ STP/ BTP/ SEZ unit; (b) disposed off in DTA with approval of Customs authorities on payment of applicable duties and submission of import authorization; or (c) exported.

- (68) **Exit from EOU Scheme** : With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of Excise and Customs duties and industrial policy in force.
- (69) **Conversion** : Existing DTA units may also apply for conversion into an EOU/ EHTP/ STP/ BTP unit. Existing EHTP/ STP units may also apply for conversion/ merger to EOU unit and vice-versa. In such cases, units will remain in bond and avail exemptions in duties and taxes as applicable.

### DEEMED EXPORTS

- (70) **Deemed Exports** : Deemed Exports refer to those transactions in which goods supplied do not leave country, and payment for such supplies are received either in Indian rupees or in free foreign exchange. Supply of goods as specified below shall be regarded as "Deemed Exports" provided goods are manufactured in India.
- (71) **Areas of Deemed Exports** : Deemed exports broadly cover three areas.
- (a) Supplies to domestic entities who can import their requirements duty free or at reduced rates of duty.
  - (b) Supplies to projects or purposes that involve international competitive bidding.
  - (c) Supplies to infrastructure projects of national importance.
- (72) **Categories of Supplies** : Supply by manufacturer –
- (a) Supply of goods against Advance Authorization/ Advance Authorization for Annual Requirement DFIA ;
  - (b) Supply of goods to Export Oriented Units (EOUs) or units located in or Software Technology Parks (STPs) or to Electronic Hardware Technology Parks (EHTPs) or Bio Technology Parks (BTPs);
  - (c) Supply of capital goods to Export Promotion Capital Goods (EPCG) Authorisation holders ;
  - (d) Supply of marine freight containers by 100% EOU (Domestic freight containers-manufacturers) provided the said containers are exported out of India within 6 months or such period as permitted by the custom authorities;
- (73) **Benefits for Deemed Exports** : Deemed Exports shall be eligible for any or all of the following benefits in respect of manufacture and supply of goods qualifying as deemed exports subject to conditions as given in HBP and ANF-7A,-
- (a) Advance Authorisation/ Advance Authorisation for Annual requirement/ DFIA;
  - (b) Deemed Export Drawback for BCD.

**Refund of drawback** : Refund of drawback on the inputs used in manufacture and supply under the said category can be claimed on 'All Industry Rate' of Duty Drawback Schedule notified by Department of Revenue from time to time provided no CENVAT credit has been availed by supplier of goods on excisable inputs or on 'Brand Rate Basis' upon submission of documents evidencing actual payment of basic customs duties. [Amended by Notification No. 28/2015-2020 dated 31-10-2019]

Common conditions for deemed export benefits :

- (i) Supplies must be to specified entity
- (ii) Subcontractor may make supplies to main contractors
- (iii) Indian subcontractor may supply to Indian/ Foreign main contractor directly at project site – Name of sub-contractor must be indicated in main contract.

### PAST EXAMINATION QUESTIONS

**Illustration 1 – DFIA** : XYZ Ltd. has imported inputs without payment of duty under DFIA. The CIF value of such inputs is ₹ 10,00,000. The inputs are processed and the final product is exported. The exports made by XYZ Ltd. are subject to general rate of value addition prescribed under Advance Authorization Scheme. No other input is being used by XYZ Ltd. in the processing. What should be the minimum FOB value of the exports made by the XYZ Ltd. as per the provisions of Advance Authorization?

**Ans:** DFIA necessitates exports with a minimum value addition of 20% value addition (VA). Therefore, the minimum FOB value of the exports made by XYZ Ltd. should be ₹ 12,00,000.

**Illustration 2 – EPCG scheme** : X Ltd. has imported capital good under EPCG scheme. The total amount of duty saved amounted ₹ 2,00,000. Discuss its export obligation and the time limit to achieve the same.

**Solution:** The benefit under EPCG is subject to the condition that export obligation equivalent to 6 times of duty saved on capital goods imported under EPCG scheme is to be fulfilled in 6 years reckoned from Authorization issue-date. Thus, X Ltd. has to fulfill export obligation amounting ₹ 12,00,000 and the same must be achieved in 6 years.

**Illustration 3 – EPCG scheme :** X Ltd. has imported capital good valued ₹ 10,00,000 under zero duty EPCG scheme. It wants to import spares for that machine under the said scheme. Can it do so?

**Solution:** Spares (including refurbished/reconditioned spares), moulds, dies, jigs, fixtures, tools, and refractory for initial lining; for existing plant and machinery (imported earlier, under EPCG or otherwise), shall be allowed to be imported under the EPCG scheme upto 10% of book value of plant and machinery subject to an export obligation equivalent to 50% of the prescribed export obligation (for import of capital goods), to be fulfilled in 6 years, reckoned from Authorization issue date. Thus, X Ltd. can import spares CIF value ₹ 1,00,000 under the said scheme.

**Illustration 4 – Deemed Export :** Mr. A, manufactured goods in India and got a contract to supply capital goods within India to M/s. Z Export Ltd. (holding license under Export Promotion Capital Goods Scheme). Due to some operational problem, Mr. A sub-contracted supply of capital goods to Mr. M with proper authorization from M/s. Z Export Ltd. and included name of Mr. M in main contract of supply before he started supply of goods. Can Mr. M claim benefit of deemed export for supplies made to Mr. A ? Explain with reasons. (4 Marks, Nov. 2015)

**Ans:** Supply of capital goods by a manufacturer against EPCG authorization is considered as deemed exports.

Further, supply of domestically manufactured goods by an Indian sub-contractor (Mr. M) to any Indian or foreign main contractor (Mr. A), directly at the designated project's/ Agency's site, is eligible for deemed export benefit provided name of sub-contractor is indicated either originally or subsequently (but before the date of supply of such goods) in the main contract.

Since in the given case, the name of Mr. M (sub contractor) was included in the main contract of supply before he started supply of goods, he can claim benefit of deemed exports on the presumption that he domestically manufactured the capital goods and supplied the same directly at the designated project's/ Agency's site.

**Illustration 5 – Merchandise Exports from India Scheme (MEIS) :** Determine reward under Merchandise Exports from India Scheme (MEIS) from the following particulars (rate of reward may be taken to be 5%) :

- (1) Goods X – FOB Value declared in shipping bill is ₹ 5,00,000. FOB value realised due to exchange gains : ₹ 5,10,000.
- (2) Goods Y – FOB Value declared in shipping bill is ₹ 2,00,000. FOB value realised due to exchange loss : ₹ 1,98,000.
- (3) Exports of Product 'X' through e-commerce Platform – FOB Value ₹ 30,000
- (4) Exports of Product 'Y' through e-commerce Platform – FOB Value ₹ 22,000
- (5) Supplies of goods made to SEZ units : ₹ 50,000
- (6) Export of sugar : FOB Value ₹ 1,75,000

**Solution: The MEIS reward is a computed below –**

(amount in ₹)

(1)	Goods X (FOB Value realized or FOB value in shipping bill, whichever is lower is to be taken)	5,00,000
(2)	Goods Y (FOB value realized or FOB value in shipping bill, whichever is lower is to be taken)	1,98,000
(3)	Exports of Product 'X' through e-commerce Platform – FOB Value ₹ 30,000 (For MEIS computation, value is to be limited to ₹ 25,000)	25,000
(4)	Exports of Product 'Y' through e-commerce Platform with FOB Value ₹ 22,000 (For MEIS computation, value is to be limited to ₹ 25,000)	22,000
(5)	Supplies of goods made to SEZ units : ₹ 50,000 (Not eligible for MEIS)	Ineligible
(6)	Export of sugar FOB Value ₹ 1,75,000 (Not eligible for MEIS)	Ineligible
	<b>Total</b>	<b>7,45,000</b>
	<b>MEIS reward @ 5%</b>	<b>37,250</b>

**Illustration 6 – Merchandise Exports from India Scheme (MEIS) :** From the following particulars you are required to determine reward under Merchandise Exports from India Scheme (MEIS) under Foreign Trade Policy 2015-2020 :

- (1) Exports of handloom products through notified courier with FOB value ₹ 5,15,000 per consignment.
- (2) Exports of goods which are subject to minimum export price with FOB value ₹ 50,000.
- (3) Exports of goods where FOB value declared in shipping bill is ₹ 8,00,000. FOB value realised with exchange gain ₹ 8,20,000.
- (4) Exports of books through foreign post office with FOB value ₹ 4,95,000 per consignment.
- (5) Biotechnology Park (BPT) products exported through DTA units ₹ 3,00,000.
- (6) Supplies made from DTA units to SEZ units ₹ 2,00,000.
- (7) Rate of reward under MEIS is 7%. (5 Marks, May 2019)



**Solution:** The MEIS reward is a computed below (amount in ₹)-

(1)	Exports of handloom products through notified courier - FOB Value ₹ 5,15,000 (For MEIS computation, value is to be limited to ₹5,00,000)	5,00,000
(2)	Exports of goods which are subject to minimum export price with FOB value ₹ 50,000	Ineligible
(3)	Export of Goods (FOB value realized or FOB value in shipping bill, whichever is lower is to be taken)	8,00,000
(4)	Exports of books through foreign post office - FOB Value ₹ 4,95,000 (For MEIS computation, value is to be limited to ₹4,95,000)	4,95,000
(5)	Biotechnology Park (BPT) products exported through DTA units ₹ 3,00,000	Ineligible
(6)	Supplies made from DTA units to SEZ units R. 2,00,000	Ineligible
<b>Total</b>		<b>17,95,000</b>
<b>MEIS reward @ 7%</b>		<b>1,25,650</b>

**Illustration 7 - Service Exports from India Scheme (SEIS) :** ABC Ltd., an eligible service exporter of specified service, requires you to compute its duty credit scrip entitlement for financial year under the Service Exports from India Scheme (SEIS) from the following information -

- (1) Supply from India to US : \$ 30,000 (Expenses incurred US \$ 900)
- (2) Amount of \$ 4,000 (net of expenses) realised on behalf of client who is also an exporter of specified services.

Notified rate for SEIS is 7%.

**Solution: Eligibility for SEIS Benefits :** Service providers of notified services who have earned minimum net free foreign exchange earnings of US \$ 15,000 in year of rendering service are eligible for Duty Credit Scrip.

The SEIS benefit is computed below :

	Gross (\$)	Expenses in foreign exchange (\$)	NFE of current year (\$)
Supply from India to US - Eligible	30,000	900	29,100
Realization on behalf of client	Ineligible	Ineligible	Ineligible
<b>Total</b>	<b>30,000</b>	<b>900</b>	<b>29,100</b>
<b>Credit scrip entitled @ 7% of \$ 29,100</b>			<b>2,037</b>

**Illustration 8 - Service Exports from India Scheme (SEIS) :** Service Exports from India Scheme (SEIS) : Mr. Mukul, a Chartered Accountant received US \$ 12,000 (net) during the financial year from M/s. Carter & Company of USA for providing auditing services. Out of this, ₹ 1,20,000 equivalent to US \$ 2,000 was received in Indian Rupees and US \$ 2,000 was received through the credit card of Mr. Romeo, who is the partner of M/s. Carter & Company.

Explain with reference to provisions of new Service Export from India Scheme (SEIS) as provided in new Foreign Trade Policy 2015-2020 whether Mr. Mukul is entitled to avail benefit under SEIS Scheme ?

If yes, what will be the rate of entitlement of reward ? (4 Marks, May 2016)

**Solution:** An individual service provider located in India providing notified services in the specified manner is eligible for duty credit scrip entitlement under SEIS provided he has minimum net foreign exchange (NFE) earnings of USD 10,000 . Further, while computing NFE :

- (i) Payment in Indian Rupees for service charges earned on specified services shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India, and
- (ii) Free foreign exchange earned through International Credit Cards is to be taken into account.

In the given case, the auditing services provided by Mr. Mukul are the notified services provided in the specified manner. Further, the NFE of Mr. Mukul in financial year is US \$ 12,000 [including US \$ 2,000 received in Indian rupees and US \$ 2,000 received through credit card of Mr. Romeo, partner in M/s. Carter & Company]. Consequently, Mr. Mukul is eligible for duty credit scrip entitlement under SEIS.

The rate of duty credit entitlement under SEIS is 7% of NFE.

**Illustration 9 - Status Holders :** A Ltd., a medium enterprise, covered under MSMED Act has made exports worth US \$ 25 lakhs per annum (on an average) during last three years. It seeks your advice to determine whether it can export certain goods for export promotion on free of cost basis, which are worth ₹ 34 lakh. Exchange rate 1 \$ = ₹ 60.

**Solution:** The exports by IEC holders under Micro, Small & Medium Enterprises (MSME) shall be granted double weightage for calculation of export performance for grant of status. Hence, for said purpose, exports are worth = \$ 25 lakh × 2 = \$ 50 lakh = \$ 5 million. Therefore, A Ltd. is eligible for status of one star.

A status holder can export goods free of cost for export promotion of 2% of average exports of last three years *i.e.*, 2% of \$ 25 lakh × ₹ 60 per \$ = ₹ 30 lakh. Hence, it can export freely export promotion material upto ₹ 30 lakh.

**Illustration 10 – Advance Authorisation entitlement :** Compute entitlement advance authorisation for annual requirement for an exporter having export performance in past 5 years and last financial year's details being :

- (i) Physical export (FOB ₹ 50 lakh);
- (ii) Deemed Exports (FOR ₹ 5 lakh).

**Solution:** Since exporter has export performance in at least past 2 years, it is eligible for advance authorisation for annual requirement.

The Entitlement would be :

- 300% of the (₹ 50 lakh + ₹ 5 lakh) = ₹ 165 lakh; or
- ₹ 1 crore,

whichever is higher *i.e.*, ₹ 165 lakh.

**Illustration 11 – Status Holders :** Payal Company, a unit located in Agri Export Zone has made exports of machineries worth US \$ 30 lakh per annum (on an average) during the last three years and in the current year. It wants to export certain goods for export promotion on free of cost basis, which are worth ₹ 25 lakh. 1 US \$ = ₹ 50. Examine whether Payal Company can export, export promotion goods on free of cost basis as proposed ? (5 Marks, Nov. 2018-NS)

**Solution:** Exports by Agri export zones are given double weightage for determination of one-star status. Hence, for said purpose, exports are worth = \$ 30 lakh × 2 = \$ 60 lakh = \$ 6 million. Therefore, XYZ Ltd. is eligible for status of one star export house.

A status holder can export goods free of cost for export promotion - 2% of average exports of last 3 years *i.e.*, 2% of \$ 30 lakh × ₹ 50 per \$ = ₹ 30 lakh. Hence, it can export freely export promotion material upto ₹ 30 lakh. Thus, Payal Company can export, export promotion goods on free of cost basis amounting ₹ 25 lakhs.

**Illustration 12 – Domestic clearances by EOU :** An Export oriented unit furnishes you with the following information relating to export and domestic clearances of various products manufactured by it. Export clearances : Product A = ₹ 150 lakhs and that of Product B = ₹ 2,500 lakhs. The EOU requires you to determine the amount of maximum amount of sales of product A that can be made in DTA at concessional rates if it has made DTA sales of ₹ 1,180 lakhs of Product B.

**Solution:** Units which are manufacturing and exporting more than one product can sell any of these products into DTA, upto 90% of FOB value of export of the specific products, subject to the condition that total DTA sale does not exceed the overall entitlement of 50% of FOB value of exports for the unit. Here, the maximum domestic sales that can be effected of both the products together = 50% (₹ 150 lakhs + ₹ 2,500 lakhs) = ₹ 1,325 lakhs. Since it has effected domestic sales of product B amounting ₹ 1180 lakhs, the balance sale of ₹ 145 lakhs (₹ 1,325 - ₹ 1,180) can be made in domestic tariff area. However, the domestic sales of product A cannot exceed 90% of ₹ 150 lakhs = ₹ 135 lakhs.

**T.Q. 1 :** Explain the conditions for redeeming authorization under duty free import authorization scheme as per Foreign Trade Policy 2015-2020. (4 Marks, Nov. 2016)

**Ans:** The conditions for redeeming authorization under Duty Free Import Authorization scheme (DFIA) as per Foreign Trade Policy 2015-2020 are as follows:-

- It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under the authorization and inputs actually imported must be used in the export product, for redeeming the DFIA. The name/description of the input in the DFIA must match exactly with the name/description endorsed in the shipping bill.
- Further, quantity of input to be allowed under DFIA shall be in proportion to the quantity of input actually used/ consumed in production.
- Aforesaid provisions will also be applicable for supplies to SEZs and supplies made under deemed exports.

**T.Q. 2 :** A star export house wishes to import goods which are exempt under Foreign Trade Policy (FTP) subject to fulfilment of export obligation. However, Customs Notification giving effect to the FTP is yet to be issued. Can the export house import the goods claiming exemption under FTP in the absence of Customs Notification ? (2 Marks, Nov. 2017)

**Ans:** No. The exemptions extended by FTP can be taken only when the exemption notification is issued under the relevant tax laws. The provisions of Foreign Trade Policy cannot override tax laws.

**T.Q. 3:** Explain the significance of duty credit scrips under Merchandise Exports from India Scheme (MEIS). Vasant exports a consignment of hand crafted items through courier using e-commerce of FOB value of ₹ 5,48,000. Determine whether he is eligible for the above benefit. (4 Marks, Nov. 2017)

**Ans:** The significance of duty credit scrips under Merchandise Exports from India Scheme (MEIS) is to compensate infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially goods having high export intensity, employment potential and thereby enhancing India's export competitiveness.








Export of handicraft items through courier, using e-commerce, of FOB value upto ₹ 5,00,000 per consignment is entitled for rewards under MEIS.

Since the FOB value of handicraft consignment exported by Vasant exceeds ₹ 5,00,000, but, benefit would be restricted to only FOB value of ₹ 5,00,000.

**T.Q. 4:** Nirav Shah used some duty paid inputs for manufacture of the export products. However, for the rest of the inputs, he wants to apply for advance authorization. Can he do so? Advise him with reference to foreign trade policy 2015-2020. (5 Marks, May 2019-NS)

**Ans: Yes,** 'Nirav Shah' can do so. In case of part duty free and part duty paid imports, both Advance Authorization and drawback will be available. Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per drawback rate fixed by DoR, Ministry of Finance (Directorate of Drawback). Advance Authorization can be used for importing duty free material. Drawback allowed must be mentioned in the application for Advance Authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from Commissioner for these exported goods.



<p><b>CA   CS   CMA</b> Direct Tax Laws &amp; Indirect Tax Laws Intermediate/ Final/ Professional</p> <p> Video Lecture  Online MCQ's  SUBJECTIVE Test Series</p> <p><b>Also Available Now !!</b></p> <p><b>Bangar's</b>   <b>AADHYA'S</b> http://www.aadhyas.com</p> <p>Contact/Whatsapp - 9602066653</p>	<p> Video Lecture</p> <p>Inter/ Executive/ Final/ Professional</p> <p><b>Regular / Fast Track Course</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Indirect Tax (GST, Customs &amp; FTP)</li> <li><input checked="" type="checkbox"/> Direct Tax &amp; International Taxation</li> <li><input checked="" type="checkbox"/> Taxation (Income Tax &amp; GST)</li> </ul> <p>Latest recorded video lectures available in Pendrive</p> <p> You Tube Subscribe to our Channel <b>CA. Yogendra Bangar</b></p>	<p> Online MCQ's</p> <p><b>Computer / EduApplet App</b></p> <p>Quality Question Bank of <b>2000 MCQ's</b> for each Subject (DT/IDT)</p> <p><b>Test yourself - Anytime - Anywhere</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Chapter wise coverage of entire syllabus</li> <li><input checked="" type="checkbox"/> Practice, revision &amp; internal assessment</li> <li><input checked="" type="checkbox"/> 24 x 7 Online Access</li> <li><input checked="" type="checkbox"/> Available on Computer, Android Smartphone or Tablet</li> </ul>	<p></p> <p><b>SUBJECTIVE Test Series</b></p> <p>More than 23 Years of Experience</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Test Series by Nationally Renowned Faculty</li> <li><input checked="" type="checkbox"/> Based on the Institute's Examination pattern</li> <li><input checked="" type="checkbox"/> Evaluation as per Institute's marking pattern</li> <li><input checked="" type="checkbox"/> Ideal for increasing the writing abilities which is must for expert level</li> <li><input checked="" type="checkbox"/> Pass CA/CS/CMA Exams with Flying Colours</li> </ul>
---	---	--	--

**SOLVED PAPER**

**CA Final - Indirect Tax Laws - Nov. 2019 (New & Old Course)**

**Question 1 :** Sukhdev is a mining engineer. He has crossed the threshold limit for registration under the GST Law and is duly registered in the State of Maharashtra. He effects the following transactions in the month of March, 2020 and wants you to compute the tax payable in cash. He has filed bond/LUT to claim benefits from Zero-rated supplies. The following are the particulars furnished by him.

Sl. No.	Particulars	Value of supply in ₹
(a)	Sukhdev being an operating member in mining and exploration services at Mumbai High, has provided certain services to the Joint Venture (JV) in which he is also a participant. He believes that the consideration received from the JV is 'Cost Petroleum' and not taxable.	12,00,000
(b)	He has purchased certain machinery from outside the State, to render services to the JV at Mumbai High.	6,00,000
(c)	He has obtained legal opinion from a local firm of advocates to enter into the contract with the JV, for providing services to it.	1,00,000
(d)	He has obtained accommodation from the State Government to locate his office close to the sea shore.	2,00,000
(e)	He gets a portion of the petroleum silt as part of the compensation while exploring the petroleum reserves in the Bombay High - which as per the contract with the Government is part of 'Cost Petroleum'.	6,00,000
(f)	He sells the petroleum silt to a SEZ Developer in Mumbai	6,80,000
(g)	Consideration is received towards transfer of tenancy rights, which according to Sukhdev is not liable to GST as it has suffered stamp duty.	8,00,000
(h)	On violation of the terms in production sharing agreement, Sukhdev has paid liquidated damages to the Government.	3,00,000
(i)	He has been assigned the right to collect royalty on behalf of Maharashtra Government, as 'Excess Royalty Collection Contractor'. He has noticed that the mining lease holders have short paid ₹ 2,00,000 as IGST from what had been exempted to him under the assignment.	-
(j)	He has sold self-fabricated machinery through his agent in Mumbai, that has been used for 2 years, the value of which is not available in the open market. The agent sells it immediately to an unrelated customer in Mumbai.	10,00,000
(k)	Opening Balance and brought forward tax credits are as follows : - Electronic Cash Ledger - CGST - Electronic Credit Ledger - CGST - Electronic Credit Ledger - SGST - Electronic Credit Ledger - IGST	12,000 18,000 12,000 60,000
Supply value is exclusive of taxes. Supply of services are taxable at CGST 9%, SGST 9% and IGST 18% and supply of goods are taxable at CGST 2.5%, SGST 2.5% and IGST 5%. Determine the tax payable in cash. Provide suitable notes where required.		

(14 Marks, Nov. 2019)

**Solution: Computation of Value of Taxable supply and GST Liability (amount in ₹) :**

Particulars	Value of supply	CGST	SGST	IGST
<b>GST payable under forward charge mechanism</b>				
Sl No. (a): Mining and exploration services provided to Joint Venture (JV) [WN-1]	12,00,000	1,08,000	1,08,000	-
Sl No. (e): Share of a portion of the petroleum silt [WN-2]	6,00,000	-	-	-
Sl No. (f): Sale of the petroleum silt to a SEZ Developer in Mumbai. [WN-3]	6,80,000	-	-	-
Sl No. (g): Consideration is received towards transfer of tenancy rights - Liable to GST [WN-4]	8,00,000	72,000	72,000	-

SI No. (j): Self fabricated machinery sold through an agent [WN-5]	9,00,000	22,500	22,500	-
<b>Total GST payable under forward charge mechanism [A]</b>		<b>2,02,500</b>	<b>2,02,500</b>	-
<b>Less: Input tax credit -</b>				
SI No. (k): Opening balance		18,000	12,000	60,000
ITC availed during the month				
SI No. (b): Machinery purchased from outside the state for providing services to joint venture [WN-6]	6,00,000			30,000
GST paid on services under reverse charge mechanism [WN-7]		27,000	27,000	2,00,000
<b>Total available balance in electronic cash ledger [B]</b>		<b>45,000</b>	<b>39,000</b>	<b>2,90,000</b>
<b>Balance tax payable [A - B]</b>		<b>1,57,500</b>	<b>1,63,500</b>	-
<b>Less: Extra credit of IGST to be used for payment of CGST and SGST liability in any order</b>		<b>1,57,500</b>	<b>1,32,500</b>	<b>2,90,000</b>
<b>GST to be deposited through electronic cash ledger [C]</b>		-	<b>31,000</b>	-
<b>GST payable under reverse charge mechanism through Electronic cash ledger</b>				
SI No. (c): Legal opinion from a local firm of advocates to enter into the contract with the JV, for providing services to it. [WN-8]	1,00,000	9,000	9,000	-
SI No. (d): Accommodation service availed from the State Govt. [WN-9]	2,00,000	18,000	18,000	
SI No. (h) : Liquidated damages paid to the Government [WN-10]	3,00,000	-	-	-
SI No. (i) : Assignment of right to collect royalty [WN-11]	-	-	-	2,00,000
<b>Total GST liability under reverse charge mechanism</b>		<b>27,000</b>	<b>27,000</b>	<b>2,00,000</b>
<b>Less: Opening balance of Electronic cash ledger</b>		<b>12,000</b>	-	-
<b>Balance GST payable through electronic cash ledger [D]</b>		<b>15,000</b>	<b>27,000</b>	<b>2,00,000</b>
<b>Total amount of GST payable through electronic cash ledger [C] +[D]</b>		<b>15,000</b>	<b>58,000</b>	<b>2,00,000</b>

**Working Notes :**

- (1) Services supplied by member of Joint venture to Joint venture will be covered under the ambit of supply. - *Circular No. 35/9/2018 GST dated 05-03-2018.*

The Central Government *vide Circular No. 32/06/2018-GST dated 12-02-2018* has clarified that oil exploration and production contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable *per se*. 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.

**Supply shall be regarded as intra-state supply as location of supplier and place of supply are in the same state. Hence, CGST @ 9% and SGST @ 9% is levied**

- (2) Portion of the petroleum silt as part of the compensation while exploring the petroleum reserves in the Bombay High - which as per the contract with the Government is part of 'Cost Petroleum' is not covered under the ambit of supply, hence not liable to GST.
- (3) As per Section 16(1) of the IGST Act, 2017, Supply of goods or services or both to a Special Economic Zone developer is regarded as Zero rated supply. As he has executed bond/LUT in respect of Zero rated supply, no GST is payable on the same.
- (4) It is a form of lease or renting of property and thus is squarely covered under the scope of supply and taxable *per se* under the CGST Act, 2017- *Circular No. 44/18/2018 CGST dated 02-05-2018*
- (5) As per Rule 29 of the CGST Rules, 2017, the value of supply shall be 90% of the price charged for the supply of goods of like kind and quality by the agent to his customer not being a related person, where the goods are intended for further supply by the said agent. Hence value of supply shall be 90% of ₹ 10,00,000. It will be an intra-state supply and leviable to CGST @2.5% and SGST @ 2.5%.
- (6) Machinery purchased from outside the state for providing services to joint venture shall be regarded as capital goods and shall be eligible for input tax credit. Since it is purchased from outside the state, integrated tax is paid on the same and shall be eligible for input tax credit.
- (7) The amount of GST leviable on reverse charge basis is to be paid through electronic cash ledger and the same shall be eligible as Input tax credit.

- (8) Legal services availed from a local firm of advocates is taxable under Reverse charge mechanism as Sukhdev is registered under GST laws.
- (9) Accommodation service availed from the State Government is taxable under Reverse charge mechanism as Sukhdev is registered under GST laws.
- (10) Liquidated damages paid to the Government is exempt from GST vide Entry 62 of Notification No. 12/2017-CT (Rate)]
- (11) Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders is exempt from tax but where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and the ERCC shall pay the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty. Thus, the shortfall in collection of IGST is to be paid by excess royalty collection contractor i.e. ₹ 2,00,000.

**Question 2(a) :** BODMAS Ltd., providing educational services, furnishes you with the following information for the various service provided by it for the month of March, 2020.

Particulars	₹
Receipts from running a Boarding School (including receipts for providing residential dwellings services ₹ 14,00,000)	30,00,000
Receipts of 'Gyan Uday' an Industrial Training Institute (ITI) affiliated to the National Council for Vocational Training (NCVT)	2,00,000
Receipts of 'Lakshya', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESOC) approved by the National Council for Vocational Training (NCVT)	1,00,000
Receipts of 'Wizard' a Commercial Coaching Institute providing commercial coaching in the field of arts and science (no certificate was issued on completion of the training)	80,000
Fees from prospective employers for campus interview	4,00,000
Renting of furnished flats for temporary stay to different persons	5,00,000
Receipts of 'Concepts', a Commercial coaching institute providing coaching in the field of commerce (a certificate was awarded to each trainee after completion of the training)	1,40,000
Receipts of Gurukul School providing education upto higher secondary	5,00,000

Compute the value of taxable supply assuming that all the above receipts are exclusive of GST. (9 Marks, Nov. 2019)

**Solution: Computation of Value of taxable supply and GST liability (amount in ₹)–**

Running a boarding school [including residential dwelling services] Running a boarding school is not taxable since education up to higher secondary school is exempt vide Entry 66 of Notification No. 12/2017-CT (Rate) and renting of residential dwelling is exempt vide Entry 12 of Notification No. 12/2017-CT (Rate)].	Nil
Receipts of 'Gyan Uday' an Industrial Training Institute (ITI) affiliated to the National Council for Vocational Training (NCVT), are not liable to GST, since the same are exempt vide Entry 66 of Notification No. 12/2017-CT (Rate).	Nil
Receipts of 'Lakshya', an institute, registered with Directorate General of Employment and Training (DGET), Union Ministry of Labour and Employment, running a Modular Employable Skill Course (MESOC) approved by the National Council of Vocational Training - Not liable to GST, since the same is exempt vide Entry 66 of Notification No. 12/2017-CT (Rate).	Nil
Receipts of 'Wizard' a Commercial coaching institute providing commercial coaching in the field of arts and science shall be liable for GST.	80,000
Fees from prospective employers for campus interview [Not covered in exemption]	4,00,000
Value of renting of furnished flats for temporary stay to different persons [Short stay by different persons in furnished flats is not renting of residential dwelling and thus, not exempt.]	5,00,000
Receipts of 'Concepts' a Commercial coaching institute providing coaching in the field of commerce shall be liable for GST irrespective of the fact that a certificate was awarded to each trainee after completion of the training.	1,40,000
Receipts of Gurukul school providing education upto higher secondary shall are exempt vide Entry 66 of Notification No. 12/2017-CT (Rate)].	Nil
<b>Value of taxable supply</b>	<b>11,20,000</b>



**Question 2(b)** : Mr. X has imported a machine from Japan in June 2019 for ₹ 50 lakhs. However, the machine was exported back in December 2019 for repairs. The supplier has agreed to carry out the repairs as the machine was still in warranty period, which would normally take 6 months. The fair cost of the repairs will cost ₹ 10 lakhs. In the meantime, Mr. X has requested the supplier to provide him another machine so that he can carry out his operations without hindrance. According to the request, the supplier has provided him with another machine which was imported during February 2020. The value of the new machine is ₹ 55 lakhs. Freight charges incurred were ₹ 2 lakhs, You are required to compute the Assessable value and Total duty payable for the above transaction of replacement.

Customs duty is 10% and IGST is 12%. Social Welfare Surcharge to be taken at 10%. (5 Marks, Nov. 2019)

**Solution:** Where the goods were originally exported for repairs, the duty on re-importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above concession is given subject to the condition that:

- the re-importation is done within 3 years or 5 years if time is extended.
- the exported goods and re-imported goods must be the same.

Since in case of Mr. X the supplier has agreed to provide a new machine the benefit of concession will not be available and Mr. X will be liable to pay duty as under (*amount in ₹*) :

FOB Value as per customs (assumed to be inclusive of insurance charges)		55,00,000
Add: Freight		2,00,000
<b>Total CIF Value being Assessable Value</b>		<b>57,00,000</b>
Add: Basic Customs duty @ 10%	[1]	5,70,000
Add: SWS @ 10% of [1]	[2]	57,000
<b>Total for Integrated tax leviable u/s 3(7)</b>		<b>63,27,000</b>
Add: Integrated tax @ 12% of ₹ 63,27,000	[4]	7,59,240
<b>Total imported cost (rounded off)</b>		<b>70,86,240</b>
<b>Total customs duty payable = [1] + [2] + [3] + [4] (rounded off)</b>		<b>13,86,240</b>

**Question 3(a)** : Mr. Rajbeer, a registered person at Delhi, is in the business of selling goods relating to interior decoration under the Firm name M/s. Rajbeer & Sons. He has opted for Composition scheme for the Financial Year 2019-20.

His turnover for Financial Year 2019-20 is ₹ 80 lakh and is expected to achieve ₹ 130 lakh in Financial Year 2020-21. Discuss whether M/s Rajbeer & Sons can still enjoy the benefits of Composition Scheme in Financial Year 2020-21.

His son Karan wants to start business of providing services relating to interior decoration, after completing post-graduation course in interior decoration under same firm name M/s. Rajbeer & Sons with effect from 1-4-2020 and wants to enjoy the benefits of composition scheme under GST.

Advise Mr. Rajbeer and his sons Karan. (5 Marks, Nov. 2019)

**Solution:** A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy in Delhi. Since the aggregate turnover of Rajbeer does not exceed ₹ 1.5 crore, he is eligible for composition levy in the current year. Composition scheme under Section 10(1) is not meant for supplier of services. However, A composition supplier may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II i.e. restaurant services), of value -

- not exceeding 10% of turnover in a State or Union territory in the preceding financial year; or
- ₹ 5,00,000,

whichever is higher.

Thus if his son Karan wants to join the same firm, interior decorator services can be provided upto 10% of ₹ 80 lakhs or ₹ 5 lakhs whichever is higher i.e. maximum ₹ 8 lakhs in this case.

In order to provide benefit to exclusive service suppliers, a scheme to pay tax at the concessional rate has been formulated primarily for small service providers who are not otherwise eligible for composition scheme. This scheme is contained in Notification No. 2/2019-CT (R) dated 07-03-2019 which provides an option to a registered person whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 3% [Effective rate 6% (CGST + SGST/ UTGST)] on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on/after 1<sup>st</sup> April in any financial year, subject to specified

conditions. Thus, it is advised to Mr. Karan to open his own firm for providing interior decorator service and avail the benefit of concessional rate of tax under Notification No. 2/2019-CT (R) dated 07-03-2019.

**Question 3(b) :** Surya Agencies has agreed to supply goods to customer's premises. Goods valued ₹ 80,000 are taxable at 5% IGST as it is an Inter-State supply. It also pays freight and transit insurance of ₹ 12,000. GTA is a registered entity and has charged GST (6% CGST and 6% SGST) under forward charge.

- (i) Compute the Invoice value of supply including IGST.
- (ii) What will be the Invoice value of supply including IGST, if the supply was under ex-factory basis instead of door-delivery basis? (4 Marks, Nov. 2019)

**Solution:** Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport and insurance the contract of supply becomes a composite supply, the principal supply being the supply of goods. Therefore, outward freight and transit insurance become part of the value of the composite supply and GST is payable thereon at the same rate as applicable for the relevant goods. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight and insurance, the same will not be included in the value of supply of goods.

- (i) The invoice value shall be computed as under (amount in ₹):

Sale Price of goods	80,000
Transportation cost	12,000
<b>Taxable value of supply</b>	<b>92,000</b>
IGST leviable @ 5%	4,600
<b>Total Invoice value</b>	<b>96,600</b>

- (ii) In case the supply is on ex-factory basis, the invoice value shall be (amount in ₹) :-

Sale Price of goods	80,000
Transportation cost	Nil
<b>Taxable value of supply</b>	<b>80,000</b>
IGST leviable @ 5%	4,000
<b>Total Invoice value</b>	<b>84,000</b>

**Question 3(c) :** During the year 2019, the Customs Authorities have noticed that there is an increased quantity of Product XYZ being imported into the Country. Determine whether the Central Government should consider levying Safeguard duty or antidumping duty with appropriate reasons. Also enumerate any exemptions/reliefs available from such duty. (5 Marks, Nov. 2019)

**Ans:** Safeguard duty can be imposed if the Central Government on enquiry finds that the imports in increased quantity-

- (a) have caused serious injury to domestic industry or,
- (b) is threatening to cause serious injury to domestic industry.

It can be imposed irrespective of origin of imported goods.

Anti-dumping duty is levied on the dumped articles in order to protect the domestic market from dumping. Anti-dumping duty can be levied by the Central Government only where any article is exported from any country to India at less than its normal price. Further, the amount of this duty cannot exceed margin of dumping.

In this case the Customs Authorities have noticed that there is an increased quantity of Product XYZ being imported into the Country, safeguard duty must be levied.

The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

- (i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
- (ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
- (iii) Articles imported by a 100% EOU or units in a Special Economic Zone unless the duty is specifically made applicable on them or the article imported is either cleared as such into DTA or used in the manufacture of any goods that are cleared into DTA. In such cases, safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

**Question 4(a) :** The following particulars are furnished by Delight Exporters, Karnataka, which is duly registered under the GST Act. The entity has also filed bond/LUT in order to export goods without payment of any taxes. You are required to calculate the refund amount in respect of input tax credit on inputs and input services relating to goods exported in the relevant tax period.

Sl. No.	Particulars of Supply	Value of Supply in ₹
1.	Turnover - excluding supply of services, but includes exempt supplies of ₹ 8,00,000 and inward supplies of ₹ 2,00,000	76,00,000
2.	Zero-rated supply of goods under bond/LUT	12,00,000
3.	Export services under bond/LUT	48,00,000
4.	Non zero-rated supply of services	10,00,000
5.	Payments received towards zero-rated supply, which includes ₹ 12,00,000 against which services are yet to be supplied.	48,00,000
6.	Advance received in the past, against which zero-rated supplies have been made in the current tax period	14,00,000
7.	Turnover on which suppliers have claimed refund under rule 89(4A) and rule 89(4B)	
	- Goods	6,00,000
	- Services	6,00,000
8.	ITC on inputs and input services during the tax period including those u/r 89(4A) and rule 89(4B)	12,00,000
9.	ITC relating to rule 89(4A) and rule 89(4B)	2,40,000

(5 Marks, Nov. 2019)

**Solution:** In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of Section 16(3) of the IGST Act, 2017, refund of input tax credit shall be granted as per the following formula-

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

**Computation of maximum refund admissible in respect of Zero-rated supplies (amount in ₹) :**

(i)	Net ITC i.e. input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under <b>Rule 89(4A) or (4B) or both</b> [₹ 12,00,000 - ₹ 2,40,000]	9,60,000
(ii)	Turnover of zero-rated supply of goods i.e. the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under <b>Rule 89(4A) or (4B) or both;</b> [₹ 12,00,000 - ₹ 6,00,000]	6,00,000
(iii)	Turnover of zero-rated supply of services i.e. <b>Zero-rated supply of services</b> is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period; [₹ 48,00,000 + ₹ 14,00,000 - ₹ 12,00,000]	50,00,000
(iv)	Adjusted Total Turnover Turnover of goods excluding exempt supplies and inward supplies and supplies on which suppliers have claimed refund under Rule 89(4A) and 89(4B) [₹ 76,00,000 - ₹ 8,00,000 - ₹ 2,00,000 - ₹ 6,00,000] Turnover of non zero rated supply of services Value of Zero rated supplies of services (as computed above)	₹ 60,00,000 ₹ 10,00,000 ₹ 50,00,000
(v)	<b>Maximum refund = [(Item (ii) + Item (iii)) ÷ Item (iv)] × Item (i)</b>	1,20,00,000 4,48,000

**Question 4(b) :** Dharma Dutta has taken voluntary registration and has not opted for the composition scheme of levy. He is aggrieved by the cancellation of his registration under GST, although he is filing NIL returns, as he has not conducted any business for the past 8 months. He wants to know the circumstances under which the proper officer can cancel registration on his own. (4 Marks, Nov. 2019)

**Ans:** According to **Section 29(2) read with Rule 21 of CGST Rules, 2017**, The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

- (a) a registered person has **contravened such provisions of the Act or the rules** made thereunder *i.e.* —
- (i) he does not conduct any business from the declared place of business; or
  - (ii) he issues invoice or bill without supply of goods or services in violation of the provisions of this Act, or the rules made thereunder.
  - (iii) he violates the provisions of Section 171 of the Act or the rules made thereunder;
  - (iv) violates the provision of rule 10A (*i.e.* Furnishing of Bank Account Details)
- Note :** Section 171 provides for Anti Profiteering Measure.
- (b) a person paying tax under Section 10 *i.e.* **composition scheme has not furnished returns for 3 consecutive tax periods;** or
- (c) any registered person, other than a person specified in Section 29(2)(b), **has not furnished returns for a continuous period of 6 months;** or
- (d) any person who has taken voluntary registration under Section 25(3) **has not commenced business within 6 months** from the date of registration; or
- (e) registration has been obtained by means of **fraud, wilful misstatement or suppression of facts.**

Thus, in this case since Dharma Dutta has obtained voluntary registration and has not conducted any business for the past 8 months, hence the proper office may cancel his registration, but before cancellation Dharma Dutta must be given a reasonable opportunity of being heard.

**Question 4(c) :** Mr. X imported certain goods from a related person Mr. Q of US and transaction value has been rejected. Rules 4 and 5 of the Import Valuation Rules are found inapplicable, as no similar/ identical goods are imported in India. Mr. X furnishes cost related data of imports and requests Customs Authorities to determine value accordingly as per Rule 8. The relevant data are -

- (1) Cost of materials incurred by Mr. Q \$ 2000
- (2) Fabrication charges incurred by Mr. Q \$ 1000
- (3) Other chargeable expenses incurred by Mr. Q \$ 400
- (4) Other indirect costs incurred by Mr. Q \$ 250
- (5) Freight from Mr. Q's factory to US port \$ 250
- (6) Loading charges at US port \$ 100
- (7) Normal net profit margin of Mr. Q is 20% of FOB
- (8) Air freight from US port to Indian port \$ 1,500
- (9) Insurance from US port to Indian port \$ 50
- (10) Exchange Rate 70 per \$

The Customs Authorities are of the opinion that since value as per Rule 7 can be determined at ₹ 4,00,000, there is no need to apply Rule 8.

Can the request of Mr. X be legally acceptable ? If so compute the assessable value under the Customs Act, 1962. (5 Marks, Nov. 2019)

**Solution:** As per Rule 6, at request of importer, Rule 8 may be applied before Rule 7. Hence, request of Mr. X to apply Rule 8 is valid and since Rule 8 data is available, the Customs Authorities cannot insist upon valuation as per Rule 7.

**Computation of value as per Rule 8 :**

(1)	Cost of materials incurred by Mr. X	\$	2,000
(2)	Fabrication charges incurred by Mr. X	\$	1,000
(3)	Other chargeable expenses incurred by Mr. X	\$	400
(4)	Other indirect costs incurred by Mr. X	\$	250
(5)	Freight from Mr. X's factory to US port	\$	250
(6)	Loading charges at US port	\$	100
	<b>Total Cost incurred by Mr. X</b>	\$	<b>4,000</b>
(7)	Normal net profit margin of Mr. X [20% of FOB or 25% of cost = 25% of \$ 4,000]		1,000
	<b>FOB price</b>		<b>5,000</b>
(8)	Air freight from US port to Indian [Air freight cannot exceed 20% of FOB, hence, restricted to 20% of \$ 5,000] [Rule 10(2)(a)]	\$	1,000
(9)	Insurance from US port to Indian port [Rule 10(2)(b)]	\$	50
	<b>CIF/Assessable Value under Customs</b>		<b>6,050</b>
(10)	Exchange Rate	₹	70
	<b>Assessable Value under Customs</b>		<b>4,23,500</b>

**Alternative Answer :** As per ICAI approach Rule 10(2)(a) covers freight/ handling in Foreign Country. Total of all freight and handling cost (including that incurred at the foreign port of export or foreign country) shall be addable as per provisions of Rule 10(2)(a) and in case of import by air, said total cannot exceed 20% of FOB i.e. US\$ 1,000. In such case valuation will be US \$ [ 2,000 + 1,000 + 400 + 250 + 1,000 (profit) + 1,000 (Air freight) + 50 (insurance)] = US\$ = 5,700 = ₹ 70 × 5700 = ₹ 3,99,000.

**Question 5(a) :** A taxpayer has suppressed certain facts resulting in short payment of tax. The mistake is pointed out by the Department, but no Show-Cause Notice (SCN) has been issued. As per the taxpayer, suppression is accepted at ₹ 12,00,000 and he agrees that the suppression has taken place in the month of January, 2020. He clears the dues on 20<sup>th</sup> April, 2020. However, the Department, on verification, identifies additional suppression of ₹ 2,00,000 in the same month of January, 2020. SCN is issued and the taxpayer represents before the proper officer, which results into an adverse order against the taxpayer. The order is passed on 25-05-2020 and the taxpayer complies with the adverse adjudication order on 27-06-2020.

Determine the tax, interest and penalty payable at each stage. (5 Marks, Nov. 2019)

**Solution:** Section 74 of the CGST Act, 2017 provides an opportunity to the person chargeable with tax to pay tax, interest and penalty equivalent to 15% of such tax, before the issuance of notice. Such voluntary payment can be made even if the mistake is pointed out by the Department, before issue of SCN.

**Stage -I : Clearance of dues as accepted by tax payer before issuance of show cause notice (amount in ₹) :**

Tax accepted on suppression for the month of January 2020	12,00,000
Due date of payment of tax	20-02-2020
Date of payment of tax	20-04-2020
No. of days of delay [21-02-2020 to 20-04-2020]	60 days
Rate of interest	18%
<b>Quantum of interest (rounded off) [₹ 12,00,000 × 60 ÷ 366 × 18%] [Since leap year]</b>	<b>35,410</b>
<b>Quantum of penalty payable [15% of tax]</b>	<b>1,80,000</b>

**Stage - II : Payment of Tax as determined by the department in adjudication order after 30 days of adjudication order :**

Tax accepted on suppression for the month of January 2020	2,00,000
Due date of payment of tax	20-02-2020
Date of payment of tax	27-06-2020
No. of days of delay [21-02-2020 to 20-04-2020]	128 days
Rate of interest	18%
<b>Quantum of interest (rounded off) [₹ 2,00,000 × 128 ÷ 366 × 18%] [Since leap year]</b>	<b>12,590</b>
<b>Quantum of penalty payable [100% of tax] [Since the tax amount, along with the interest, paid after 30 days of communication of order, hence penalty shall be 100% of the tax.]</b>	<b>2,00,000</b>

**Question 5(b) :** Ganesh Enterprises, a registered supplier under the GST Law, has committed an offence that is compoundable. The Department has instituted prosecution against the proprietor of Ganesh Enterprises and he is of the opinion that he shall not be able to apply for compounding the offence as the prosecution has been launched. He seeks your advice whether he has the opportunity to apply for compounding the offence and the consequences arising therefrom. (4 Marks, Nov. 2019)

**Ans:** The opinion of Ganesh Enterprises is not correct. As per the provisions of Section 138(1), Compoundable offence may be compounded by the Commissioner, either before or after the institution of prosecution, upon payment of such compounding amount in such manner as may be prescribed, by the person accused of the offence, to the Central Government or the State Government.

Any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law.

Compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

The amount for compounding of offences under this section shall be such as may be prescribed, subject to –

- The **minimum limit** for compounding amount is to be the higher of the following amounts:
  - 50% of tax involved, or
  - ₹ 10,000.

- The upper limit for compounding amount is to be higher of the following amounts:
- 150% of tax involved, or
  - ₹ 30,000.

The applicant shall, within a period of 30 days from the date of the receipt of the order, pay the compounding amount as ordered by the Commissioner and shall furnish the proof of such payment to him otherwise the compounding order shall be vitiated and be void.

On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

**Question 5(c) :** Mrs. X, an Indian resident who was on a visit to China, returned after 6 months, She was carrying with her the following items :

	Particulars	₹
(i)	Personal effects	75000
(ii)	Laptop Computer	60000
(iii)	Jewellery - 25 grams (purchased in China)	75000
(iv)	Music System	50000

Compute the Customs duty payable by Mrs. X with reference to Baggage Rules, 2016. (5 Marks, Nov. 2019)

**Solution:** According to Rule 3 of Baggage Rules, 2016, an Indian resident not being an infant, arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his *bona fide* baggage, that is to say,-

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure I, upto the value of ₹ 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

**Computation of custom duty payable by Mrs. X (amount in ₹) :**

(i)	Personal effects	Nil
(ii)	Laptop Computer	Nil
(iii)	Jewellery - 25 grams (purchased in China)	75,000
(iv)	Music System	50,000
<b>Total dutiable goods imported</b>		<b>1,25,000</b>
<i>Less:</i> General free allowance under Rule 3		50,000
<b>Balance Goods on which duty is payable</b>		<b>75,000</b>
<b>Customs duty @ 38.5% (inclusive of SWS)</b>		<b>28,875</b>

**Working Notes :**

- (1) One laptop computer (notebook computer) is exempted from whole of the duty of Customs when imported by a passenger (*other than member of crew*) of the age of 18 years or above *vide* Notification No. 11/2004-Cus., dated 8-1-2004.)
- (2) Music system is eligible for general free allowance of ₹ 50,000.
- (3) Mrs. X is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of ₹ 50,000 allowed under rule 3.

**Question 6(a) :** Mr. Pankaj, an unregistered person under GST purchases the goods supplied by Mr. Raman, who is a registered person without receiving a tax invoice from Mr. Raman and thus helps in tax evasion by Mr. Raman. What disciplinary action may be taken by tax authorities to curb such type of cases and on whom? (4 Marks, Nov. 2019)

**Ans:** Both Mr. Pankaj and Mr. Raman will be offender and will be liable to penalty as under:

Mr. Pankaj - Penalty u/s 122(3) which may extend to ₹ 25,000/-;

Mr. Raman - Penalty u/s 122(1), which will be higher of following, namely: (i) ₹ 10,000/- or (ii) 100% of tax evaded.

**Question 6(b) :** Neurological Systems Private Limited has been subject to confiscation of goods on the ground that it has not accounted for the goods that are liable to tax under the CGST Act, 2017. The directors would like to know from you as to how such goods are to be got released from the Department. You are required to advise the directors the provisions of law on this matter. (5 Marks, Nov. 2019)



**Ans:** According to Section 130 of the CGST Act, 2017, the confiscated goods can be released on payment of fine in lieu of confiscation.

According to Section 130 (2), whenever confiscation of any goods is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit subject to –

- Amount of fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon;
- Aggregate of fine and penalty leviable shall not be less than the amount of penalty leviable Section 129 (1).

Where any fine in lieu of confiscation of goods or conveyance is imposed, the owner of such goods, shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods.

No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

**OR**

**Question 6(b) :** Enumerate any five matters on which the GST Council may make recommendations under Article 279A of the Constitution of India. (5 Marks, Nov. 2019)

**Ans:** The GST Council shall make recommendations to the Union and the States on–

- (a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;
- (b) the goods and services that may be subjected to, or exempted from the goods and services tax;
- (c) model Goods and Services Tax Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-State trade or commerce under Article 269A and the principles that govern the place of supply;
- (d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
- (e) the rates including floor rates with bands of goods and services tax;
- (f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;
- (g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

any other matter relating to the GST, as the Council may decide.

**Question 6(c) :** M/s. PQR has imported used wearing apparel from USA in April 2020. After receipt, PQR is doubtful that the apparel may not be saleable in India and want to re-export back to USA, without use, which the supplier has accepted. Will PQR be eligible to take Drawback of duty paid on imports? Also list out the conditions for duty drawback. (5 Marks, Nov. 2019)

**Ans: Yes,** duty drawback is allowed when wearing apparels are re-exported without being used. However, Notification No. 19/65-Cus dated 06-02-1965 as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India. Thus, in this case M/s. PQR shall be entitled to claim 98% of the import duty paid as drawback on used wearing apparel which are exported without use.

As per Section 74 of the Customs Act, 1962, 98% of the import duty is re-paid as drawback subject to the fulfillment of the following conditions :

- (a) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported and
- (b) the goods are entered for export within two years from the date of payment of duty on the importation thereof.

However, in any particular case, the aforesaid period of 2 years may, on sufficient cause being shown, be extended by the Board by such further period, as it may deem fit.

■ ■ ■

**REVISION TEST PAPER & ADDITIONAL AMENDMENTS**

**[Applicable for May 2020 Exams (New/Old Scheme)]**

- (1) ABC Petroleum Limited is engaged in the business of refining and marketing of petroleum products. It has one refinery each in the States of Tamil Nadu, West Bengal & Maharashtra and numerous administrative and marketing offices spread across the country. The Company has separate marketing cum administrative offices for every major State and common administrative cum marketing offices for a group of small States e.g., all north-eastern States are covered under one marketing cum administrative office. The Company also blends lubricants in its blending plants located in the States of Maharashtra and Tamil Nadu.

As a policy, all the places of business of the Company in a State are registered under one registration.

Imported crude is used as input in the refinery and following major products are extracted after refining process:

Products chargeable to GST (Group A)	Products not chargeable to GST (Group B)
Base oil (An input for blending lubricants)	Petrol
Furnace oil	Diesel
Bitumen (Used for road construction)	Air turbine fuel
LPG (Domestic and Industrial)	

Base oils are further sent to blending plants where they are blended with additives to produce lubricants. The Company provides the following particulars for States of Tamil Nadu, Maharashtra and Kerala for the month of January 2020:

(Amount in thousands)

Particulars	Tamil Nadu	Maharashtra	Kerala
	(₹)	(₹)	(₹)
Value of supply inclusive of all taxes/ duties (Group B products)	1,650	3,400	1,575
Value of supply (Group A products) before all taxes/ duties	100	200	20
Excise duty leviable on supply of Group B products	500	1,000	110
VAT on supply of Group B products	250	600	65
Tax paid on inputs and input services procured at the blending plant	5	6	0
Tax paid on spares procured at the refinery (Spares are booked in revenue account)	3	8	0
Tax paid on inputs and input services procured at the marketing cum administrative office	2	3	1
Tax paid capital asset procured at the blending plant	0	5	0
Tax paid capital asset procured at the refinery	12	0	0

Assume that all of the Group A products are chargeable to GST @ 18% (including both CGST and SGST or IGST, as the case may be)

The Finance department of ABC Petroleum Limited seeks your professional advice on following questions :

- (i) The value of company's supply in the Union Territory of Puducherry is ₹ 32,34,000 (Group A products) and in the State of Goa is ₹ 18,38,000 (Group A and Group B products) for the year ending March 2020. GST registration is -

- (a) Not required for both Puducherry and Goa  
 (b) Not required for Goa but required for Puducherry  
 (c) Required for both Puducherry and Goa  
 (d) Not required for Puducherry but required for Goa

[Ans: (c)]

- (ii) The eligible ITC available at marketing cum administrative office located in the State of Maharashtra, for the month of January 2020, is -

- (a) ₹ 3,000  
 (b) ₹ 300  
 (c) ₹ 166.67  
 (d) ₹ 1,500

[Ans: (b)]

*Hint Answer:*

Tax paid on inputs and input services procured at the marketing cum administrative office		3,000
Less: Amount Attributable to exempt supplies (Net ITC × Value of Exempt supplies / Aggregate Turnover)- Net ITC	3,000	
The aggregate value of exempt supplies (₹ 34,00,000 - ₹ 10,00,000 - ₹ 6,00,000)	18,00,000	
Aggregate Turnover [Value of Taxable Supplies + Value of exempt supplies]	20,00,000	2,700
<b>Eligible ITC</b>		<b>300</b>

(iii) The eligible ITC in respect of the capital asset procured in the State of Tamil Nadu, for the month of January 2020:

- (a) ₹ 12,000  
 (b) ₹ 200  
 (c) ₹ 11,811.11  
 (d) ₹ 11,820

*[Ans: (d)]**Hint Answer:*

Amount of credit on Capital goods credited to electronic credit ledger		12,000
Less: Amount Attributable to exempt supplies which is to be reversed during the month Monthly credit (₹ 12,000 ÷ 60)	200	
The aggregate value of exempt supplies during the tax period [₹ 16,50,000 - ₹ 5,00,000 - ₹ 2,50,000]	9,00,000	
Aggregate Turnover [Value of Taxable Supplies (₹ 1,00,000) + Value of exempt supplies (₹ 9,00,000)]	10,00,000	180
<b>Eligible ITC</b>		<b>11,820</b>

(iv) Lubricant valued at ₹ 10,000 has been stock transferred from the blending plant located in the State of Tamil Nadu to the refinery located in the same State, in the month of January 2020. The GST (CGST and SGST) payable on such transaction is?

- (a) Nil as the transaction is not a supply  
 (b) ₹ 900  
 (c) ₹ 1,800  
 (d) Nil as such supply is exempted from GST

*[Ans: (a)] [Since only one registration has been obtained in each state, hence not distinct person]*

(v) Due to sudden fire in the store room of the refinery located in Maharashtra on January 28<sup>th</sup> 2020, the entire quantity of spares procured in the month of January 2020 gets destroyed. What action is required from ABC Petroleum Limited?

- (a) No action is required on the part of ABC Petroleum Limited under GST Law.  
 (b) ABC Petroleum Limited should report to jurisdictional GST Department for verification of the loss of inputs on account of fire.  
 (c) ABC Petroleum Limited should not avail ITC of tax paid on the spares.  
 (d) ABC Petroleum Limited should avail ITC and reverse the same.

*[Ans: (c)] [As per Section 17(5)(h), credit is blocked]*

(2) Dumdum Engineering Private Limited (DEPL), Surat (Gujarat), a supplier of heavy machinery, supplied a machine to Gulati Manufacturers from its godown located in Mumbai, Maharashtra, on 1<sup>st</sup> January at a price of ₹ 64,00,000 (excluding all taxes).

Gulati Manufacturers has its corporate office in New Delhi. However, the machinery was installed at its manufacturing unit located in Gurugram (Haryana) for which installation and commissioning charges of ₹ 4,80,000 and handling and loading charges of ₹ 1,60,000, were charged by DEPL. For every machinery supplied, DEPL receives a grant of ₹ 3,20,000 from its holding company Dharam Ltd.

Transportation of machinery to the customer's premises is arranged by DEPL through a third-party service provider [Goods Transport Agency (GTA)]. Gulati Manufacturers entered into a separate service contract with the GTA and paid the freight of ₹ 50,000 directly to it.

DEPL offered a cash discount of 2% on the price of the machinery at the time of supply since Gulati Manufacturers agreed to make the payment within 15 days of the receipt of the machinery at its premises. However, it was agreed that in case Gulati Manufacturers failed to make the payment within the stipulated time, DEPL would –

- recover the discount given; and
- charge interest @ 1% per month or part of the month on the total amount due (including discount recovered) from Gulati Manufacturers (towards the machinery supplied) from the date of making the supply till the date of payment. However, no interest is to be charged on the tax dues.

Gulati Manufacturers paid the consideration for the machine on 31st March. Since the payment was made after the stipulated period of 15 days of the receipt of the machinery, discount given was recovered from it and interest was accordingly charged. However, Gulati Manufacturers refused to pay tax on interest and discount recovered.ume the rates of taxes to be as under:

Supply	CGST rate	SGST rate	IGST rate
Machinery supplied	6%	6%	12%
Service of transportation of goods	2.5%	2.5%	5%
Other services involved in the above supply	9%	9%	18%

In view of the above information, you are required to answer the following questions:

- (i) The place of supply of the machinery supplied by DEPL is \_\_\_\_\_ and the nature of supply is \_\_\_\_\_.
- (a) Gujarat, intra-State supply
  - (b) Haryana, inter-State supply
  - (c) New Delhi, inter-State supply
  - (d) Maharashtra, inter-State supply [POS is the place of installation, Interstate supply, as location of supplier and place of supply are in two different States] [Ans: (b)]
- (ii) The GST liability of DEPL for the month of January is \_\_\_\_\_ (approx.).
- (a) ₹ 9,46,660
  - (b) ₹ 8,67,840
  - (c) ₹ 9,06,153
  - (d) ₹ 8,98,560 [Ans: (b)]

*Hint Answer: Computation of GST liability (amount in ₹):*

Price of machine	64,00,000
Handling and loading charges	1,60,000
Installation and commissioning charges	4,80,000
Transportation cost	Nil
Grant from Dharma Ltd.	3,20,000
<b>Total price of the machine</b>	<b>73,60,000</b>
Less: 2% cash discount on price of machinery = ₹ 64,00,000 × 2%	1,28,000
<b>Taxable value of supply</b>	<b>72,32,000</b>
<b>Tax liability for the month of January : IGST @ 12%</b>	<b>8,67,840</b>

- (iii) The GST liability of DEPL for the month of March is \_\_\_\_\_ (approx.).
- (a) 36,343
  - (b) 36,504
  - (c) 35,314
  - (d) Nil [Ans: (a)]

*Hint Answer: Computation of GST liability (amount in ₹):*

<b>Tax liability for the month of March :</b>	
Interest collected @ 3% on ₹ 70,40,000	2,11,200
Cash discount recovered	1,28,000
<b>Cum-tax value of interest and cash discount</b>	<b>3,39,200</b>
<b>IGST = (₹ 3,39,200/112) × 12%</b>	<b>36,343</b>

- (iv) Supply of machinery and supply of installation and commissioning services is \_\_\_\_\_ supply. Time of supply of interest received by DEPL and cash discount recovered on account of delayed payment of consideration is \_\_\_\_\_.

- (a) composite, 31<sup>st</sup> March
- (b) composite, 1<sup>st</sup> January
- (c) mixed, 1<sup>st</sup> January
- (d) mixed, 31<sup>st</sup> March

[Ans: (a)] [The given supply is a composite supply involving supply of goods (machinery) and services (handling and loading and installation and commissioning) where the principal supply is the supply of goods.]

- (v) If the grant of ₹ 3,20,000 received by DEPL had been received from Central Government instead of its holding company Dharam Ltd., with other facts remaining the same, the GST liability of DEPL for the month of January would have been \_\_\_\_\_ (approx.).

- (a) ₹ 9,46,660
- (b) ₹ 8,67,840
- (c) ₹ 9,06,153
- (d) ₹ 8,98,560 (Correct Answer : ₹ 8,29,440)

[Ans: (d)]

Hint Answer:

Price of machine	64,00,000
Handling and loading charges	1,60,000
Installation and commissioning charges	4,80,000
Transportation cost	Nil
Grant received from Central Government	Nil
<b>Total price of the machine</b>	<b>70,40,000</b>
Less: 2% cash discount on price of machinery = ₹ 64,00,000 × 2%	1,28,000
<b>Taxable value of supply</b>	<b>69,12,000</b>
<b>Tax liability for the month of January : IGST @ 12%</b>	<b>8,29,440</b>

- (3) Shree Ram Seva Trust is a charitable institution registered under section 12AA of the Income-tax Act, 1961. It has organized a skill development programme relating to persons over the age of 65 years residing in a well-planned city, in the month of April. It has received following amounts under the programme :

Particulars	(₹)
Subscription fees for the programme	50,000
Sponsorship fees	1,00,000
Consideration for supply of goods	3,00,000

Besides, the trust has received the donations of ₹ 2,00,000 in April. Hanuman, accountant of Shree Ram Seva Trust, is not able to determine the taxability of the above amounts received under GST law. He seeks your expertise in determining the same.

Determine the value of taxable supply of Shree Ram Seva Trust, for the month of April.

- (a) Nil
- (b) ₹ 6,50,000
- (c) ₹ 6,00,000
- (d) ₹ 4,50,000

[Ans: (d)] [It will not get the benefit of Entry 1 of Notification No. 12/2017-CT (Rate) as skill development services not provided to persons over the age of 65 years residing in a rural area, hence value of taxable supply is ₹ 4,50,000. Donation is not consideration for service.]

- (4) Happy Singh is the lawful owner of a residential house situated in Chandigarh. The property has four floors constructed on it. Out of the four floors in his house, first and second floor are self-occupied and third and fourth floor have been let out for residential purposes. Ratanjot Singh, who is a tenant on third floor, has surrendered his tenancy rights to Parminder Singh for a tenancy premium of ₹ 5,00,000 on 1st June. Parminder Singh has paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Parminder Singh will pay a monthly rent of ₹ 50,000 to Happy Singh from June.

Determine the value of taxable supply, in the given case, for the month of June.

- (a) Happy Singh: ₹ 5,50,000; Ratanjot Singh: Nil
- (b) Happy Singh: Nil; Ratanjot Singh: ₹ 5,00,000
- (c) Happy Singh: ₹ 50,000; Ratanjot Singh: Nil

(d) Happy Singh: ₹ 50,000; Ratanjot Singh: ₹ 5,00,000

[Ans: (b)] [Services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST – Circular No. 44/18/2018 CGST dated 02-05-2018. Hence, taxable for Ratanjot Singh. Services by way of renting of residential dwelling for use as residence are exempt vide Entry 12 of Notification No. 12/2017-CT (Rate) - Hence Exempt for Happy Singh]

(5) Mr. Kala is a proprietor of M/s. Kala & Associates (registered under GST) which deals in sale/purchase of second hand cars. During the current financial year, he effected following intra-State transactions:

Particulars	Purchase Price	Sale Price
Car 1	₹ 5,00,000	₹ 7,50,000
Car 2	₹ 3,00,000	₹ 2,75,000
Car 3	₹ 6,00,000	₹ 6,50,000
Car 4	₹ 8,00,000	₹ 9,50,000

Mr. Kala purchased Car 4 from another registered person who charged GST of ₹ 1,30,000 and accordingly, Mr. Kala has availed the input credit of the same.

Determine the GST liability of Mr. Kala assuming the applicable rate of tax as 18%.

- (a) ₹ 95,000  
 (b) ₹ 1,08,000  
 (c) ₹ 1,30,500  
 (d) Exempt Supply, No GST

[Ans: (a)]

Hint Answer:

Particulars	₹
Car 1 (₹ 7,50,000 – ₹ 5,00,000)	2,50,000
Car 2 (₹ 2,75,000 – ₹ 3,00,000) (Since value is negative hence taken is nil)	Nil
Car 3 (₹ 6,50,000 – ₹ 6,00,000)	50,000
Car 4 (Since purchased from registered person, sale price will be taxable value)	9,50,000
<b>Total Value of supply</b>	<b>12,50,000</b>
GST @ 18%	2,25,000
Less: ITC in respect of Car 4	1,30,000
<b>Total GST payable</b>	<b>95,000</b>

(6) Lucky Singh, a resident of Noida, U.P., went to Himachal Pradesh for a family vacation via Delhi-Chandigarh-Himachal Pradesh in his own car. After entering Chandigarh, his car broke down due to some technical issue. He called 'ONROARDS' - an emergency roadside car assistance company (registered under GST in Delhi) to repair the car. The car was repaired by the staff of 'ONROARDS'. The value of supply amounted to ₹ 50,000 (being labour charges ₹ 40,000 and spares ₹ 10,000). The bill was supposed to be generated online though the server, but due to some technical issue, it was not so generated.

Determine the place of supply in the given case.

- (a) Delhi  
 (b) Chandigarh  
 (c) Noida, U.P.  
 (d) Himachal Pradesh

[Ans: (a)] [The POS shall be determined as per provisions of Section 12(2), since recipient is unregistered person and his address on record is not available with the supplier of service, the POS shall be the location of the supplier of service.]

(7) Outline the stepwise procedure of import of goods into India.

- (i) Filing of Import General Manifest  
 (ii) Arrival of vessel  
 (iii) Grant of entry inwards to vessel  
 (iv) Unloading of goods  
 (v) Assessment of goods  
 (vi) Filing of Bill of Entry  
 (vii) Payment of duty



- (a) (i), (ii), (iii), (iv), (v), (vi) and (vii)
- (b) (ii), (iii), (i), (iv), (v), (vi) and (vii)
- (c) (iii), (ii), (i), (vi), (v), (vii) and (iv)
- (d) (ii), (i), (iii), (iv), (vi), (v) and (vii)

[Ans: (d)]

(8) Which of the following is not correct in relation to claim of duty drawback under section 75 of the Customs Act, 1962?

- (i) The upper limit for drawback is one third of market price of export product.
- (ii) Countervailing duties and safeguard duties are included in all industry rates of drawback.
- (iii) Countervailing duties and safeguard duties are included while determining all industry rates of drawback and thus can be claimed in application for fixing brand rate.
- (iv) Provisions of section 75 are not applicable on goods exported by post.

- (a) (i), (ii) and (iv)
- (b) (i), (iii) and (iv)
- (c) (ii) and (iv)
- (d) (iii) and (iv)

[Ans: (c)]

**Q. 9 :** Skylark Pvt. Ltd., Noida (Uttar Pradesh) is engaged in various kinds of commercial activities. It manufactures taxable goods as also provides certain services. The company has branch office in New Delhi. The Head office at Noida and the branch office in New Delhi are registered under GST. The branch office at New Delhi is eligible for full input tax credit.

The company has reported a total turnover of ₹ 256 crore (exclusive of GST) for the month of August 2019. The following information is provided by the company in relation to such turnover:

- (i) The turnover includes ₹ 45 crore from sale of securities which were purchased for ₹ 30 crore in the month of January last year.
- (ii) The company supplied goods worth ₹ 50 crore to ABC Ltd. in UK under a letter of undertaking (LUT). The total export proceeds are received in the month of August 2019 itself; ₹ 30 crore in foreign currency and balance ₹ 20 crore in Indian rupees.
- (iii) The company provided consulting services to Sherpa & Sons in Nepal for ₹ 30 crore under a LUT. The entire consideration is received in Indian rupees in the month of August 2019 itself, with the permission of RBI.
- (iv) The turnover includes supply of goods worth ₹ 10 crore to Shanghai Jianguo Trading Company Ltd., a company based in China. As per the sale contract, the goods were to be assembled at Shanghai Jianguo Trading Company Ltd.'s office in Gurugram, Haryana. The payment of the goods is received in convertible foreign exchange in the month of August 2019 itself.
- (v) Goods worth ₹ 20 crore are supplied under a LUT to DEF Pvt. Ltd. located in a SEZ in the State of Uttar Pradesh.
- (vi) Goods worth ₹ 40 lakh were being procured from a vendor in Japan. While the goods were in transit, the company secured an order for the said goods for ₹ 50 lakh from a buyer in Thailand. Thus, the goods were directly sent to Thailand without entering India.
- (vii) The company owns three immovable properties in Noida. The first building is let out for running a printing press at ₹ 10 lakh per month. The second building is let out for residential purpose at ₹ 5 lakh per month. The third building is let out to a Cold Storage operator at ₹ 5 lakh per month. The cold storage operator sub-lets the building as a warehouse to store potatoes.
- (viii) The remaining turnover comprised of taxable goods sold within the State and outside the State in the ratio of 3:2.

Total turnover of ₹ 256 crore includes the turnover referred to in points (i) to (vii) above.

In addition to above -

- (i) the company transferred its stock (taxable goods) from Noida to Delhi branch without any consideration; the value declared in the invoice is ₹ 4.5 crore (exclusive of GST). The cost of production of such goods is ₹ 10 crore. Such stock is sold to independent buyers at ₹ 15 crore (exclusive of GST).
- (ii) the company had sent goods worth ₹ 12 crore (exclusive of GST) to M/s. Sharma Traders in Haryana on approval basis on 15<sup>th</sup> January, 2019, 15<sup>th</sup> February 2019 & 15<sup>th</sup> March 2019 (₹ 4 crore each month). Goods sent during all the three months are approved in the month of September 2019.

Compute the GST liability [CGST & SGST or IGST, as the case may be] of Skylark Pvt. Ltd., Noida for the month of August 2019. Make suitable assumptions wherever required.

Assume the rates of taxes to be as under:

	CGST	SGST	IGST
Goods	6%	6%	12%
Services	9%	9%	18%

**Solution:** Computation of GST liability of Skylark Pvt. Ltd. for the month of August 2019 :

S. No.	Particulars	Value (₹ in crores)	CGST @ 6% (₹ in crores)	SGST @ 6% (₹ in crores)	IGST @ 12% (₹ in crores)
<b>Goods</b>					
(i)	Export of goods to ABC Ltd. in UK under a letter of undertaking (LUT) [WN-1]	50.00	-	-	Nil
(ii)	Supply of goods to Shanghai Jianguo Trading Company Ltd. [WN-2]	10.00	-	-	1.20
(iii)	Goods supplied to DEF Pvt. Ltd. located in a SEZ [WN-3]	20.00	-	-	Nil
(iv)	Sale within the State [WN-4]	60.18	3.6108	3.6108	-
(v)	Sale outside the State [WN-4]	40.12			4.81440
(vi)	Stock transfer from Noida to Delhi [WN-5]	4.50			0.54
(vii)	Goods sent for sale on approval basis on 15 <sup>th</sup> February, 2019 [WN-6]	4.00			0.48
<b>Total tax liability on goods [A]</b>			<b>3.6108</b>	<b>3.6108</b>	<b>7.0344</b>
<b>Services</b>					
			<b>CGST @ 9%</b>	<b>SGST @ 9%</b>	<b>IGST @ 18%</b>
			<b>(₹ in crores)</b>	<b>(₹ in crores)</b>	<b>(₹ in crores)</b>
(i)	Export of services to Nepal under a LUT [Note 7]	30.00			Nil
(ii)	Receipts from renting of buildings [Note 8]	0.15	0.0135	0.0135	
<b>Total tax liability on services [B]</b>			<b>0.0135</b>	<b>0.0135</b>	
<b>Neither goods nor services</b>					
(i)	Sale of securities [Note 9]	45.00	Nil	Nil	Nil
(ii)	Goods procured from vendor in Japan and supplied to buyer in Thailand [Note 10]	0.50			Nil
<b>Total tax liability on goods and services [(A) + (B)]</b>			<b>3.6243</b>	<b>3.6243</b>	

**Working Notes:**

(1) **Export of goods is zero rated – exported under LUT without payment of tax :** As per section 2(5) of the IGST Act, 2017, export of goods means taking goods out of India to a place outside India. Receipt of consideration in foreign exchange is not a pre-requisite for export of goods. Export of goods is a zero rated supply in terms of section 16(1) (a) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.

(2) **Supply of goods China based company – POS is place of installation :** As per section 2(5) of the IGST Act, 2017, export of goods means taking goods out of India to a place outside India. Since, in the given case, the goods are being assembled in India (Gurugram, Haryana), the same are not exported.

Hence, the place of supply thereof will be governed by section 10 of the IGST Act, 2017 which prescribes the provisions for determining the place of supply of goods other than supply of goods imported into or exported from India. As per section 10(1)(d) of the IGST Act, 2017, where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. Therefore, in the given case, the place of supply will be Gurugram, Haryana.

**Interstate supply :** Since the location of the supplier (Uttar Pradesh) and the place of supply (Haryana) are in two different States, the same is an inter-State supply liable to IGST [Section 7(1)(a) of the IGST Act, 2017 read with section 5(1) of that Act].

(3) **Goods supplied to SEZ – deemed interstate supply :** As per section 7(5)(b) of the IGST Act, 2017, supply of goods and/or services to a special economic zone (SEZ) unit is treated to be a supply of goods and/or services in the course of inter-State trade or commerce. Therefore, supply of goods to a SEZ unit located within the same State shall be liable to IGST [Section 5(1) of the IGST Act, 2017].

**Zero rated supply** : Supply of goods and/or services to a SEZ unit is a zero rated supply in terms of section 16(1) (b) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.

- (4) **Computation of remaining turnover** : Remaining turnover will be calculated as under

₹ 256 crore – (₹ 45 crore + ₹ 50 crore + ₹ 30 crore + ₹ 10 crore + ₹ 20 crore + ₹ 0.50 crore + ₹ 0.10 crore + ₹ 0.05 crore + ₹ 0.05 crore) = ₹ 100.30 crore

Supply within the State – ₹ 100.30 crore × 3/5 = ₹ 60.18 crore

Supply outside the State – ₹ 100.30 crore × 2/5 = ₹ 40.12 crore

Supply within the State is intra-State supply in terms of section 8(1) of IGST Act, 2017 and thus, chargeable to CGST and SGST. Supply outside the State is inter-State supply chargeable to IGST [Section 7(1) of IGST Act, 2017 read with section 5(1) of the said Act].

- (5) **Stock Transfer between distinct persons – Deemed supply** : As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act, 2017 specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25 of the CGST Act, 2017, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

**Nature of supply – Inter state supply** : In the given case –

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of such goods at the time at which the movement thereof terminates for delivery to the recipient *i.e.*, Delhi, in terms of section 10(1)(a) of the IGST Act, 2017.

Therefore, the stock transfer by Noida office to Delhi branch is an inter -State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

**Valuation - Invoice Value deemed to be open market value as recipient entitled to full ITC** : Rule 28 of the CGST Rules, 2017 prescribes the provisions to determine the value of supply of goods or services or both between distinct or related persons, other than through an agent. Second proviso to the said rule lays down that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Therefore, the value of supply in this case will be ₹ 4.5 crore and open market value and cost of production of the goods will be irrelevant.

- (6) **Sale on approval – deemed supply after 6 months** : As per section 31(7) of the CGST Act, 2017, where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

In the given case, the time period of six months for goods sent on 15<sup>th</sup> February, 2019 expires on 15-08-2019. Therefore, the invoice for the said goods shall be issued on 15-08-2019 and in terms of section 12(2)(a) of the CGST Act, 2017 read with Notification No. 66/2017-CT dated 15-11-2017, this date would also be the time of supply of such goods. Thus, such goods will be liable to tax in the month of August 2019. Goods sent in the month of January would have been taxed in the month of July and goods sent in the month of March would be taxed in the month of September.

**Nature of supply – Inter state supply** : Here,–

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of the goods at the time at which the movement thereof terminates for delivery to the recipient *i.e.*, Haryana in terms of section 10(1)(a) of the IGST Act, 2017.

Since the location of the supplier (Uttar Pradesh) and the place of supply (Haryana) are in two different States, the same is an inter-State supply liable to IGST [Section 7(1)(a) of the IGST Act, 2017 read with section 5(1) of that Act].

- (7) **Export of services** : The given case is an export of service as per section 2(6) of the IGST Act, 2017, as-

- (i) the supplier of service is located in India (Noida);
- (ii) the recipient of service is located outside India (Nepal);
- (iii) the place of supply of service is outside India (Place of supply of consulting service will be the location of recipient, *i.e.* Nepal);

- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India (Receipt of export consideration in Indian rupees is permitted by RBI in the given case); and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Export of services is a zero rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero rated supply is supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.

- (8) **Letting for commercial purpose liable to GST while for residential purpose – Exempt :** Letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of service in terms of para 2(b) of the Schedule II to the CGST Act, 2017. Services by way of renting of residential dwelling for use as residence is exempt from tax [Notification No. 12/2017-CT (R) dated 28-06-2017]. Therefore, rent of ₹ 10 lakh received from letting out of building for printing press will be liable to tax and rent of ₹ 5 lakh received from letting out of building for residential purposes will be exempt from tax.

Further, services by way of loading, unloading, packing, storage or warehousing of agricultural produce is exempt from tax [Notification No. 12/2017 CT (R) dated 28.06.2017]. However, in the given case, the Cold Storage Operator and not Skylark Pvt. Ltd. is engaged in warehousing of agricultural produce. Therefore, the Cold Storage Operator providing warehousing services for potatoes, being an agricultural produce, will be eligible for such exemption and services provided by Skylark Pvt. Ltd., being services of renting of immovable property (₹ 5 lakh), will be liable to tax.

**Nature of supply – Intrastate supply :** In case of letting out of first and third buildings,

- the location of the supplier is in Noida (Uttar Pradesh); and
- the place of supply is the location of the immovable property, i.e. Noida in terms of section 12(3)(a) of the IGST Act, 2017.

Since the location of the supplier (Uttar Pradesh) and the place of supply (Noida) are in the same State, the same is an intra-State supply in terms of section 8(1) of the IGST Act, 2017 and is thus, liable to CGST and SGST.

- (9) **Transaction in securities – not liable to GST :** GST is leviable on supply of goods and/or services [Section 9(1) of the CGST Act, 2017]. Securities are specifically excluded from the definition of goods and services as provided under clause (52) and clause (102) respectively of section 2 of the CGST Act, 2017. Therefore, sale of securities will not be liable to GST.
- (10) **Merchant trading transactions – not liable to GST :** Paragraph 7 of the Schedule III to CGST Act, 2017 provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (third country shipments) is treated neither as a supply of goods nor a supply of services. Thus, there is no GST liability on such sales. Further, since such goods do not enter India at any point of time, customs duty and IGST leviable on imported goods will also not be leviable on such goods.

**Q. 10 :** 'PQ', a statutory body, deals with the all the advertisement and publicity of the Government. It has issued a release order to 'Moon Plus' channel (registered in State 'A') for telecasting an advertisement relating to one of the schemes of the Government in the month of September 2019. The advertisement will be telecasted in the States of 'A', 'B', 'C', 'D' and 'E'. The total value of the service contract entered into between 'Moon Plus' and 'PQ' is ₹ 10,00,000 (exclusive of GST).

You are required to determine the place of supply of the services in the instant case as also the value of supply attributable to the States of 'A', 'B', 'C', 'D' and 'E'.

Further, compute the GST liability [CGST & SGST or IGST, as the case may be] of 'Moon Plus' as also advise it as to whether it should issue one invoice for the entire contract value or separate State-wise invoices.

The other relevant information is given hereunder:

Table 1

States	Viewership figures of 'Moon Plus' channel in the last week of June 2019 as provided by the Broadcast Audience Research Council
A	50,000
B + C	1,00,000
D + E	50,000

Table 2

States	Population as per latest census (in crores)
A	50
B	180
C	20
D	100
E	25

The applicable rate of tax is as under:

CGST	SGST	IGST
9%	9%	18%

**Solution: Determination of POS in case of advertisement services to Government :** As per section 12(14) of the IGST Act, 2017, the place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement is taken as being in each of such States or Union territories (where the advertisement is broadcasted/ run /played/disseminated).

Therefore, in the given case, the place of supply of advertisement service is in the States of 'A', 'B', 'C', 'D' and 'E'.

The value of the supply of such advertisement services specific to each State/Union territory is in proportion to the amount attributable to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard.

In the absence of such a contract or agreement between the supplier and recipient of services, the proportionate value of advertisement services attributable to different States/Union territories (where the advertisement is broadcasted/ run/played/ disseminated) is computed in accordance with rule 3 of the IGST Rules, 2017.

As per rule 3(f) of the IGST Rules, 2017, in the case of advertisement on television channels, the amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely: -

- (i) the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;
- (ii) the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter ;
- (iii) where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;
- (iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Therefore, value of supply attributable to 'A', 'B', 'C', 'D' and 'E', will be computed as under :

States	Viewership figures of 'Moon Plus' channel as provided by the Broadcast Audience Research Council in the last week of June 2019	Viewership ratio of 'Moon Plus' channel in the States 'A', ('B' + 'C') and ('D' + 'E')	Proportionate value of advertisement services for States A', ('B' + 'C') and ('D' + 'E')
A	50,000	50,000 : 1,00,000 : 50,000 = 1:2:1	₹ 10,00,000 × 1/4 = ₹ 2,50,000
B + C	1,00,000		₹ 10,00,000 × 2/4 = ₹ 5,00,000
D + E	50,000		₹ 10,00,000 × 1/4 = ₹ 2,50,000

States	Population as per latest census (₹ in crores)	Population ratio in the States 'B' & 'C' and 'D' & 'E'	Proportionate value of advertisement services in the States 'A', 'B', 'C', 'D' & 'E'
A	50	B:C = 180:20 = 9:1	₹ 2,50,000
B	180		₹ 5,00,000 × 9/10 = ₹ 4,50,000
C	20		₹ 5,00,000 × 1/10 = ₹ 50,000
D	100	D:E = 100:25 = 4:1	₹ 2,50,000 × 4/5 = ₹ 2,00,000
E	25		₹ 2,50,000 × 1/5 = ₹ 50,000

**Different tax invoices to be issued for different POS :** Since, there are five different places of supply in the given case, 'Moon Plus' channel will have to issue five separate invoices for each of the States namely, 'A', 'B', 'C', 'D' & 'E' indicating the value pertaining to that State. The GST liability of 'Moon Plus' channel will, therefore, be worked out as under:

**Computation of GST liability of 'Moon Plus' :**

States	Proportionate value of advertisement services (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
A	2,50,000	22,500	22,500	
B	4,50,000			81,000
C	50,000			9,000
D	2,00,000			36,000
E	50,000			9,000

**Nature of supply :** Only in case of supply of services in State 'A', the location of supplier (State 'A') and the place of supply are in the same State, hence the same is an intra-State supply in terms of section 8(1) of the IGST Act, 2017 and is thus, liable to CGST and SGST. In all the remaining cases of supply of services, the location of the supplier (State 'A') and the places of supply (States 'B', 'C', 'D' & 'E') are in two different States, hence the same are inter-State supplies liable to IGST [Section 7(1)(a) of the IGST Act, 2017 read with section 5(1) of that Act].

**Q.11 :** Pethalal has obtained registration in the current financial year in Uttar Pradesh. His turnover in the preceding financial year was ₹ 19,90,000. He has received the following amounts in respect of the activities undertaken by him in the month of September:

	Particulars	(₹)
(i)	Funeral services	8,80,000
(ii)	Services of warehousing of jaggery	50,000
(iii)	Electrically operated buses given on hire to Municipal Corporation	5,00,000
(iv)	Service provided to recognized sports body as commentator	2,00,000
(v)	Commission received as an insurance agent from insurance company	65,000
(vi)	Commission received as business facilitator for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts	15,000
(vii)	Security services (supply of security personnel) provided to Damodar Engineering College (DEC)* [registered under GST] for the security of the college premises *All the engineering courses run by DEC are recognised by the law [The All India Council for Technical Education (AICTE)]	28,000

Further, he has received following services in the month of September:

	Particulars	(₹)
(a)	Freight paid to unregistered goods transport agency for his business activities relating to serial number (i) above	1,00,000
(b)	Legal advice received from M/s. Kanoon Associates, a partnership firm, seeking advice in relation to a tax dispute of the business	50,000

All the transactions stated above are intra-State transactions and amounts given are exclusive of GST, wherever applicable.

You are required to calculate net GST payable by Pethalal for the month of September. There was no opening balance of input tax credit. Rate of CGST and SGST is 9% each for all the outward supplies made by Pethalal.

**Solution: Computation of net GST payable by Pethalal (amount in ₹):**

Particulars	Amount	CGST	SGST
<b>Supplies on which Pethalal is liable to pay GST under forward charge</b>			
Funeral services [WN-1]	8,80,000	-	-
Services of warehousing of jaggery [WN-2]	50,000	-	-
Services by way of giving on hire electrically operated buses to Municipality [WN-3]	5,00,000	-	-
Service provided to recognized sports body as commentator [CGST @ 9% and SGST @ 9%] [WN-4]	2,00,000	18,000	18,000
Commission received as an insurance agent from insurance company [WN-5]	65,000	-	-
Commission received as business facilitator for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [WN-6]	15,000	-	-
Security services (supply of security personnel) provided to DEC for the security of the college premises [WN-7]	28,000	-	-
<b>Value of taxable supply</b>	<b>2,00,000</b>		



Total tax liability on outward supplies (A)		18,000	18,000
<b>Supplies on which Pethalal is liable to pay GST under reverse charge</b>			
Services received from GTA	[WN-8]	2.5%	2.5%
		1,00,000	2,500
Legal services received	[WN-9]	50,000	-
<b>Value of taxable supply</b>		<b>1,00,000</b>	
Total tax liability on inward supplies under reverse charge (B) - payable in cash	[WN-10]	2,500	2,500
	[WN-8]		
ITC available on input services		Nil	Nil
<b>Net GST payable (A) + (B)</b>		<b>20,500</b>	<b>20,500</b>

**Working Notes:**

- (1) Funeral services being covered in entry 4 of Schedule III to the CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.
- (2) Services by way of storage/ warehousing of, *inter alia*, jaggery are exempt from GST *vide* Exemption Notification No. 12/2017-CT(R) dated 28-06-2017 (hereinafter referred to as exemption notification). Thus, services of warehousing of jaggery are exempt.
- (3) Services by way of giving on hire to a local authority, an Electrically operated vehicle (EOV) meant to carry more than 12 passengers are exempt *vide* exemption notification. Buses are EOVs meant to carry more than 12 passengers. Hence, services of giving electrically operated buses on hire to Municipal Corporation are exempt from GST.
- (4) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST *vide* exemption notification. Thus, service provided as commentator is liable to GST.
- (5) Though commission for providing insurance agent's services to any person carrying on insurance business is liable to GST, the tax payable thereon is to be paid by the recipient of service *i.e.*, insurance company, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017 (hereinafter referred to as reverse charge notification). Thus, Pethalal will not be liable to pay GST on such commission.
- (6) Services provided by a business facilitator to a banking company with respect to accounts in its rural area branch are exempt from GST *vide* exemption notification.  
Thus, services provided by him in respect of urban area branch of the bank will be taxable. However, the tax payable thereon is to be paid by the recipient of service *i.e.*, banking company, under reverse charge in terms of reverse charge notification. Hence, Pethalal will not be liable to pay GST on commission received for said services.
- (7) Services provided to an educational institution, by way of security services performed in such educational institution are exempt from GST only when said services are provided to an institution providing services by way of pre-school education and education up to higher secondary school or equivalent, *vide* exemption notification. Thus, in the given case, security services provided to DEC are not exempt. Further, the tax on security services (supply of security personnel) provided by any person other than a body corporate to a registered person is payable by the recipient of service under reverse charge in terms of reverse charge notification. Hence, Pethalal will not be liable to pay GST in the given case.
- (8) GST on services provided by a GTA (not paying tax @ 12%) to, *inter alia*, a registered person is payable by the recipient of service *i.e.*, the registered person, under reverse charge in terms of reverse charge notification. Since in the given case, GTA is unregistered, Pethalal is liable to pay tax under reverse charge @ 5% (CGST @ 2.5% and SGST @ 2.5%).  
Further, since said input services are being exclusively used for effecting non-taxable supplies [funeral services], input tax credit of the GST paid on the same will not be available.
- (9) Legal services provided by a partnership firm of advocates to a business entity (with an aggregate turnover up to such amount in the preceding FY as makes it eligible for exemption from registration under the CGST Act, 2017) are exempt from GST *vide* exemption notification. Since the aggregate turnover of Pethalal did not exceed ₹ 20 lakh [the applicable threshold limit for registration for Pethalal being a supplier of services] in the preceding FY, legal services received by him are exempt from GST.
- (10) As per section 49(4) of the CGST Act, 2017, amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.

(11) Since all the transactions given hereunder are intra-State, CGST and SGST are payable in terms of section 9(1) of the CGST Act, 2017

Q.12 : Arise India Pvt. Ltd., a company engaged in manufacturing of various goods, has its corporate office at Mumbai and manufacturing units in Pune and Chennai and service centres in Kolkata and Bengaluru. The manufacturing units at Pune and Chennai and service centres at Kolkata and Bengaluru are registered in Maharashtra, Tamil Nadu, West Bengal and Karnataka respectively. The corporate office is registered as an input service distributor. All the units and centres of Arise India Pvt. Ltd. are operational in the current year. The corporate office intends to distribute input tax credit (ITC) for the month of October 2019. The following details are available for such distribution:

Table 1

Unit/centre	Turnover for the quarter ending September 2019* (₹)	Eligible ITC on input services attributable to a specific unit/centre, for the month of October 2019 (₹)
Pune	20,00,000	IGST – ₹ 3,00,000; CGST – ₹ 30,000; SGST – ₹ 30,000
Chennai	30,00,000	IGST – ₹ 24,000; CGST – ₹ 6,000; SGST – ₹ 6,000
Kolkata	10,00,000	Nil
Bengaluru	40,00,000	Nil

\*Note: Turnover excludes all taxes and duties.

Table 2

S.No.	Particulars	CGST	SGST	IGST
(i)	Input services used by all units and centres			
	(a) Eligible ITC under the provisions of the GST law	1,20,000	1,20,000	2,40,000
	(b) Ineligible ITC in terms of section 17(5) of the CGST Act, 2017	40,000	40,000	80,000
(ii)	Inputs used by Pune unit and Kolkata centre	60,000	60,000	
(iii)	Input services used by Chennai unit and Bengaluru centre (ITC pertaining to such invoices is eligible ITC under the provisions of the GST law)	30,000	30,000	10,000

Chennai unit manufactures exempted products.

Compute the amount of ITC to be distributed to each of the units and centres.

**Solution: Computation of ITC to be distributed by ISD (amount in ₹):**

S. No.	Particulars	Pune unit	Chennai unit	Kolkata centre	Bengaluru centre
(i)	IGST credit of ₹ 3,00,000, CGST credit of ₹ 30,000 and SGST credit of ₹ 30,000 specifically attributable to Pune unit [WN-1]	3,00,000 (IGST) 30,000 (CGST) 30,000 (SGST)			
(ii)	IGST credit of ₹ 24,000, CGST credit of ₹ 6,000 and SGST credit of ₹ 6,000 specifically attributable to Chennai unit [WN-2]		36,000 (IGST)		
(iii)	Eligible ITC pertaining to input services used by all units and centres [WN-3]	24,000 (CGST) 24,000 (SGST) 48,000 (IGST)	1,44,000 (IGST)	48,000 (IGST)	1,92,000 (IGST)
(iv)	Ineligible ITC pertaining to input services used by all units and centres [WN-4]	8,000 (CGST) 8,000 (SGST) 16,000 (IGST)	48,000 (IGST)	16,000 (IGST)	64,000 (IGST)
(v)	Inputs used by Pune unit and Kolkata centre [WN-5]	Nil	Nil	Nil	Nil
(vi)	Input services used by Chennai unit and Bengaluru centre [WN-6]		30,000 (IGST)		40,000 (IGST)

**Working Notes:**

- IGST credit of ₹ 3,00,000, CGST credit of ₹ 30,000 and SGST credit of ₹ 30,000 specifically attributable to Pune unit will be distributed as IGST credit of ₹ 3,00,000, CGST credit of ₹ 30,000 and SGST credit of ₹ 30,000 respectively, only to Pune unit, since recipient is located in the same State in which ISD is located [Section 20(2)(c) of the CGST Act, 2017 read with clauses (e) & (f)(i) of sub-rule (1) of rule 39 of the CGST Rules, 2017].
- Total GST credit (CGST+ SGST + IGST) of ₹ 36,000 specifically attributable to Chennai unit will be distributed as IGST credit of ₹ 36,000, only to Chennai unit, since recipient and ISD are located in different States [Section 20(2)(c) of the CGST Act, 2017 read with clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

- (3) Eligible ITC of CGST [₹ 1,20,000], SGST [₹ 1,20,000] and IGST [₹ 2,40,000] will be distributed among the units and centres in the ratio of their turnover of the last quarter [Section 20(2)(e) of the CGST Act, 2017 read with clause (a) (ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].

Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:

= ₹ 20 lakh : ₹ 30 lakh : ₹ 10 lakh : ₹ 40 lakh

= 2: 3: 1: 4

Therefore,

Pune unit will get - ₹ 24,000 [₹ 1,20,000 × (2/10)] as CGST credit, ₹ 24,000 [₹ 1,20,000 × (2/10)] as SGST credit and ₹ 48,000 [₹ 2,40,000 × (2/10)] as eligible IGST credit [Clauses (e) & (f)(i) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Chennai unit will get - ₹ 1,44,000 [₹ 4,80,000 × (3/10)] as IGST credit [Clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017]. The credit attributable to a recipient is distributed even if such recipient is making exempt supplies [Clause (d) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Kolkata centre will get - ₹ 48,000 [₹ 4,80,000 × (1/10)] as IGST credit [Clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

Bengaluru will get - ₹ 1,92,000 [₹ 4,80,000 × (4/10)] as IGST credit [Clauses (e) & (f)(ii) of sub-rule (1) of rule 39 of the CGST Rules, 2017].

- (4) Ineligible ITC of CGST [₹ 40,000], SGST [₹ 40,000] and IGST [₹ 80,000] will also be distributed among the units and centres in the ratio of their turnover of the last quarter [Section 20(2)(e) of the CGST Act, 2017 read with clause (a) (ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].

Ratio of the turnover of the units and centres in last quarter, previous to the month during which ITC is to be distributed:

= ₹ 20 lakh : ₹ 30 lakh : ₹ 10 lakh : ₹ 40 lakh

= 2: 3: 1: 4

Therefore,

Pune unit will get - ₹ 8,000 [₹ 40,000 × (2/10)] as CGST credit, ₹ 8,000 [₹ 40,000 × (2/10)] as SGST credit and ₹ 16,000 [₹ 80,000 × (2/10)] as eligible IGST credit.

Chennai unit will get - ₹ 48,000 [₹ 1,60,000 × (3/10)] as IGST credit.

Kolkata centre will get - ₹ 16,000 [₹ 1,60,000 × (1/10)] as IGST credit.

Bengaluru will get - ₹ 64,000 [₹ 1,60,000 × (4/10)] as IGST credit.

- (5) ISD mechanism is meant only for distributing the credit on common invoices pertaining to input services only and not goods (inputs or capital goods).

- (6) Eligible ITC of CGST [₹ 30,000], SGST [₹ 30,000] and IGST [₹ 10,000] will be distributed among the Chennai unit and Bengaluru centre in the ratio of their turnover of the last quarter [Section 20(2)(d) of the CGST Act, 2017 read with clause (a)(ii) of the explanation to the said section and rule 39(1)(b) of the CGST Rules, 2017].

Ratio of the turnover of the Chennai unit and Bengaluru centre in last quarter, previous to the month during which ITC is to be distributed:

= ₹ 30 lakh : ₹ 40 lakh

= 3 : 4

Therefore,

Chennai unit will get - ₹ 30,000 [₹ 70,000 × (3/7)] as IGST credit.

Bengaluru unit will get - ₹ 40,000 [₹ 70,000 × (4/7)] as IGST credit.

**Q. 13 :** Dushyant rents out a commercial building owned by him to Bharat for the month of December, for which he charges a rent of ₹ 19,50,000. Dushyant pays the maintenance charges of ₹ 1,00,000 (for the December month) as charged by the local society. These charges have been reimbursed to him by Bharat. Further, Bharat had given ₹ 2,50,000 to Dushyant as interest free refundable security deposit. Further, Dushyant has paid the municipal taxes of ₹ 2,85,000 which he has not charged from Bharat. You are required to determine the value of supply and the GST liability of Dushyant for the month of December assuming CGST and SGST rates to be 9% each.

**Note:** All the amounts given above are exclusive of GST.

**Solution: Computation of the value of supply and the GST liability of Dushyant for the month of December :**

Particulars	Amount (₹)
Rent of the commercial building	19,50,000
Maintenance charges [Being reimbursed by the tenant - Bharat, such charges ultimately form part of the rent paid by Bharat to Dushyant and thus, will form part of the value]	1,00,000
Interest free refundable security deposit [Refundable security deposit does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value]	Nil
Municipal taxes [Since the same is not charged from the recipient, same is not includible in the value]	Nil
<b>Value of supply</b>	<b>20,50,000</b>
<b>CGST @ 9%</b>	<b>1,84,500</b>
<b>SGST @ 9%</b>	<b>1,84,500</b>

**Q. 14 :** Sacrosant Manufacturers Ltd., a manufacturer of bottle caps, is registered in Dhanbad (Jharkhand). It imports a bottle caps making machine from Japan.

Sacrosant Manufacturers Ltd. avails the services of Jhumroo Logistics, a licensed customs broker in Kolkata (West Bengal), in meeting all the legal formalities for getting the said machine cleared from the customs station.

Sacrosant Manufacturers Ltd. also authorises Jhumroo Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to its warehouse at Dhanbad. These expenses would be reimbursed by Sacrosant Manufacturers Ltd. to Jhumroo Logistics on actual basis. In addition, Sacrosant Manufacturers Ltd. will also pay the agency charges to Jhumroo Logistics for the services rendered by it.

Jhumroo Logistics raised an invoice in July as follows:

	Particulars	Amount* (₹)
(i)	Agency charges	5,00,000
(ii)	Customs duty on machine	3,80,000
(iii)	Port charges	33,000
(iv)	Dock dues	56,000
(v)	Charges for transport of machine from Kolkata port, West Bengal to Jhumroo Logistics' godown in Asansol, West Bengal	48,000
(vi)	Charges for transport of machine from Jhumroo Logistics' Asansol godown to the warehouse of Sacrosant Manufacturers Ltd. in Dhanbad, Jharkhand	67,000
(vii)	Unloading of machine at Kolkata port, West Bengal	83,000
(viii)	Hotel expenses	45,000
(ix)	Travelling expenses	50,000
(x)	Telephone expenses	2,000

\*exclusive of GST, wherever applicable

Compute the value of supply made by Jhumroo Logistics with the help of given information. Would your answer be different if Jhumroo Logistics charges ₹ 13,00,000 as a lump sum consideration for clearing the imported machine from the customs station and bringing the same to the warehouse of Sacrosant Manufacturers Ltd.?

**Solution: Meaning of pure agent :** As per explanation to rule 33 of the CGST Rules, 2017, a "pure agent" means a person who –

- 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;
- 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;
- does not use for his own interest such goods or services so procured; and
- receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The supplier needs to fulfil all the above conditions in order to qualify as a pure agent.

**Jhumroo Logistics qualifies as a pure agent :** In the given case, Jhumroo Logistics has been authorised by the recipient of supply - Sacrosant Manufacturers Ltd. - to incur, on its behalf, the expenses incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient, i.e. expenses mentioned in S.No. (ii) to (vii). Further, Jhumroo Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Jhumroo Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Jhumroo Logistics qualifies as a pure agent.

**Costs and services incurred in capacity of pure agent to be excluded :** Further, rule 33 of the CGST Rules, 2017 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of Supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

- (I) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (II) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (III) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Jhumroo Logistics as a pure agent of Sacrosant Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Jhumroo Logistics will be computed as under:

Particulars	Amount (₹)
Agency charges	5,00,000
<b>Add:</b> Customs duty	Nil
<b>Add:</b> Port charges	Nil
<b>Add:</b> Dock charges	Nil
<b>Add:</b> Charges for transport of machine from Kolkata port, West Bengal to its Jhumroo Logistics' godown in Asansol, West Bengal	Nil
<b>Add:</b> Charges for transport of machine from Jhumroo Logistics' Asansol godown to the warehouse of Sacrosant Manufacturers Ltd. in Dhanbad, Jharkhand	Nil
<b>Add:</b> Unloading of machine at Kolkata port, West Bengal	Nil
<b>Add:</b> Hotel expenses	45,000
<b>Add:</b> Travelling expenses	50,000
<b>Add:</b> Telephone expenses	2,000
<b>Value of supply</b>	<b>5,97,000</b>

**If consolidated amount is charged – GST is leviable on entire amount :** However, if Jhumroo Logistics charges ₹ 13,00,000 as a lump sum consideration for getting the imported machine cleared from the customs station and bringing the same to the warehouse of Sacrosant Manufacturers Ltd., Jhumroo Logistics would incur expenses (ii) to (vii) for its own interest (as the agreement requires it to get the imported machine cleared from the customs station and bring the same to the Sacrosant Manufacturers Ltd.'s warehouse). Thus, Jhumroo Logistics would not be considered as a pure agent of Sacrosant Manufacturers Ltd. for said services.

Consequently, in that case, value of supply will be ₹ 13,00,000 in terms of section 15 of the CGST Act, 2017.

**Q. 15 :** Inoba Bhavé is engaged in supply of taxable services. He supplies some services in the month of April and collects IGST of ₹ 15,50,000 on said supply on 18<sup>th</sup> April. However, he fails to pay the tax so collected within 30 days from the due date of payment of such tax.

No Show Cause Notice (SCN) has been issued to him so far. Inoba Bhavé decides to discharge his tax liability, before the SCN is issued to him. He is of the view that no penalty is leviable if the payment of tax is made before issue of SCN. Therefore, he self-assesses his tax liability at ₹ 15,50,000 and pays the same on 26<sup>th</sup> June. Determine the interest and penalty, if any, payable by Inoba Bhavé.

**Solution:** Computation of Interest payable

Due date of payment of tax	20 <sup>th</sup> May
Actual date of payment of tax	26 <sup>th</sup> June
Period of delay in days	37 days
<b>GST Payable</b>	<b>15,50,000</b>
Rate of Interest	18% p.a.
<b>Interest payable [₹ 15,50,000 × 18% × 37/365] (Rounded off)</b>	<b>28,282</b>

As per section 73(11) of the CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, *inter alia*, option to pay such tax before issuance of SCN to avoid penalty, is not available.

Consequently, penalty equivalent to –

- (i) 10% of tax, viz., ₹ 1,55,500 or
- (ii) ₹ 10,000,

whichever is higher, is payable in terms of section 73(9) of the CGST Act, 2017. Therefore, penalty of ₹ 1,55,500 will have to be paid by Inoba Bhawe.

**Q. 16 :** Examine whether the offences committed in each of the following independent cases are bailable. Further, determine the quantum of punishment on prosecution under the CGST Act, 2017, in each of these cases:

- (i) 'Homi Gabha' collects ₹ 240 lakh as tax from its clients and deposits ₹ 150 lakh with the Central Government. Balance amount of tax is not paid to the Central Government. It is found that he has falsified financial records and has not maintained proper records, to evade the tax.
- (ii) 'Datukeshwar Dutt' collects ₹ 630 lakh as tax from its clients, but deposits only ₹ 120 lakh with the Central Government. Balance amount of tax is not paid to the Central Government.

What would be the implications in above cases if 'Homi Gabha' and 'Datukeshwar Dutt' repeat the offences?

**Note :** It may be assumed that offences are proved in the court.

**Ans:** The implications are as under –

Registered Person	Offence	Amount Involved (₹)	Punishment	Subsequent offence	Bailable/ Non-bailable
'Homi Gabha'	➤ Failure to pay any amount collected as tax beyond 3 months	90 lakhs (₹ 240 lakh - ₹ 150 lakh)	Not punishable Since, Punishable only if amount of tax evaded exceeds ₹ 100 lakhs.		Bailable and Non-cognizable
	➤ Falsifying Financial records		Imprisonment upto 6 months or with fine or both (Minimum Imprisonment - 6 Months)	Imprisonment upto 5 years and with fine. (Minimum Imprisonment - 6 Months)	
'Datukeshwar Dutt'	Failure to pay any amount collected as tax beyond 3 months	510 lakh (₹ 630 lakh - ₹ 120 lakh)	Imprisonment upto 5 years and with fine. (Minimum Imprisonment - 6 Months)	Imprisonment upto 5 years and with fine. (Minimum Imprisonment - 6 Months)	Non-bailable and Cognizable

**Q. 17 :** An international trade exhibition is going to be held in United States of America in January. Aayaat Niryat Export House (ANEH) has participated in it. It intends to send 100 units of taxable goods manufactured by it to USA for display in the said exhibition.

ANEH is of the view that the activity of sending the goods out of India for exhibition is a zero-rated supply. However, its tax advisor does not concur with its view. Examine whether the view of ANEH is correct.

Assuming that ANEH could not sell any goods at the exhibition and brings back entire 100 units to India (i) in February, (ii) in August, Discuss the requirement to issue invoice, if any, in each of the above independent cases.

Would your answer be different if ANEH sells an aggregate of 65 units of the taxable goods in USA exhibition on different dates in January and remaining 35 units are brought back on 31<sup>st</sup> January. The tax advisor of ANEH advises ANEH that the export of 65 units qualify as zero-rated supply and it should apply for refund of the unutilized ITC in respect of the same. Examine the technical veracity of the tax advisor's advice.

**Ans: Goods sent/taken out of India for exhibition – not regarded as supply :** No, the view of ANEH that the activity of sending the goods out of India for exhibition is a zero-rated supply, is not correct. As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

- (i) it should be for a consideration by a person; and
- (ii) it should be in the course or furtherance of business.

The exceptions to the above are the activities enumerated in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, section 2(21) of the IGST Act defines "supply", wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

Section 16 of the IGST Act defines "zero rated supply" as any of the following supplies of goods or services or both, namely:-

- (a) export of goods or services or both; or



(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit. Thus, only such "supplies" which are either "export" or are "supply to SEZ unit/ developer" would qualify as zero-rated supply.

**Since not supply - it cannot be regarded as zero rated supply :** In view of the above provisions, **Circular No. 108/27/2019-GST dated 18-07-2019** clarified that the activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

**Activity- Sale on approval :** The said circular further clarified that the activity of sending/taking goods out of India for exhibition is in the nature of "sale on approval basis" wherein the goods are sent/ taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place.

**Delivery challan to be issued :** The activity of sending/ taking specified goods is covered under the provisions of section 31(7) of the CGST Act, 2017 read with rule 55 of CGST Rules, 2017. As per said provisions, in case of the goods being sent or taken on approval for sale, the invoice shall be issued before/at the time of supply or 6 months from the date of removal, whichever is earlier. The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan.

**Tax invoice not to be issued :** In view of the said provisions, ANEH is not required to issue invoice at the time of taking the goods out of India since the activity of merely sending/ taking the taxable goods out of India is not a supply. However, the goods shall be accompanied with a delivery challan. Further,

- (i) In case the entire quantity of goods (100 units) sent to USA is not sold but brought back by ANEH in February, *i.e.* within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.
- (ii) In case, the entire quantity of goods (100 units) sent to USA is not sold and brought back by ANEH in August, *i.e.* after 6 months from the date of removal, a tax invoice is required to be issued for entire 100 units of taxable goods in accordance with the provisions contained in section 12 [determining time of supply of goods] and section 31 [tax invoice] of the CGST Act, 2017 read with rule 46 [tax invoice] of the CGST Rules, 2017 within the time period stipulated under section 31(7) of the CGST Act, 2017.

**Supply on sale of goods - tax invoice to be issued :** However, if an aggregate of 65 units of the goods are sold in USA exhibition by ANEH on different dates in January (*i.e.* within the stipulated period of 6 months), a tax invoice would be required to be issued for these units, at the time of each of these sales, in accordance with the provisions contained in section 12 and section 31 of the CGST Act read with rule 46 of the CGST Rules. When the goods are sold in exhibition, actual supply from the exporter in India to the importer located abroad takes place and this supply qualifies as export. Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017.

**Sale Return within 6 months - No tax invoice to be issued :** If the remaining 35 units are brought back on 31<sup>st</sup> January, *i.e.* within the stipulated period of 6 months from the date of removal, no tax invoice is required to be issued as no supply has taken place in such a case.

**Bond/LUT not required :** Further, tax advisor's advice is technically correct. Since the activity of sending/taking specified goods out of India is not a zero-rated supply, execution of a bond/Letter of Undertaking (LUT), as required under section 16 of the IGST Act, is not required.

**Refund admissible when supply/ deemed supply takes place :** However, the sender can prefer refund claim even when the specified goods were sent/taken out of India without execution of a bond/LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) of the CGST Act, 2017 read with rule 89(4) of the CGST Rules, 2017 in respect of zero-rated supply of 65 units.

**Q. 18 :** Kankan Corp had imported a machine from USA for ₹ 365 lakh on payment of appropriate customs duty in February. However, in July, the machine had to be sent back to the supplier for repair (not amounting to manufacture) from the factory of Kankan Corp. This machine was repaired and thereafter, re-imported by Kankan Corp in November next year. The supplier has agreed to provide discount of 40% of the fair cost of repairs, resulting in Kankan Corp paying USD 12,000.

Following further particulars are available:

Particulars	Date	Rate of Duty	Inter Bank Exchange rate	Rate notified by CBEC
Bill of Entry	21 <sup>st</sup> February	12%	61.40	62
Aircraft arrival	26 <sup>th</sup> February	15%	62.50	63.25

Integrated tax is leviable @ 12%.

	Outwards (Amt. In ₹)	Inwards (Amt. In ₹)
Insurance	23,000	27,000
Air Freight	93,500	1,06,500

Determine total duty payable with appropriate notes for your computation assuming that Kankan Corp is not an EOU.

**Solution: Re-importation of goods** - Notification No. 45/2017 Cus. dated 30-06-2017 stipulates that in case of re-importation of goods exported for repairs, duty is payable on fair cost of repairs carried out, insurance and freight charges - both ways, subject to fulfillment of following conditions:-

- The time limit for re-importation is 3 years
- The exported goods and the re-imported goods must be the same.
- The ownership of the goods should not have changed.
- Since all the specified conditions are fulfilled in the given case, total duty payable will be computed as under:-

**Computation of total duty payable by Kankan Corp.**

Fair cost of repairs (in dollars) = \$ 12,000/60%		\$	20,000
Fair cost of repairs (in rupees) = \$ 30,000 × ₹ 62	[WN-1]	₹	12,40,000
<b>Add:</b> Inward and outward insurance [₹ 23,000 + ₹ 27,000]		₹	50,000
<b>Add:</b> Inward and outward air freight [₹ 93,500 + ₹ 1,06,500]		₹	2,00,000
<b>Assessable Value</b>		₹	14,90,000
<b>Add:</b> Basic customs duty (BCD) @ 15% [A]	[WN-2]	₹	2,23,500
<b>Add:</b> Social Welfare Surcharge @ 10% of BCD [B]		₹	22,350
<b>Value for computing IGST</b>		₹	17,35,850
IGST @ 12% [C]		₹	2,08,302
<b>Total duty and tax payable [A + B + C]</b>		₹	4,54,152

**Working Notes:**

- Rate of exchange notified by the CBEC on date of presentation of bill of entry would be the applicable rate in terms of third proviso to section 14(1) of the Customs Act, 1962.
- Rate of duty is the rate in force on date of presentation of bill of entry or arrival of aircraft, whichever is later in terms of proviso to section 15(1) of the Customs Act, 1962.

**Q. 19 :** Mr. Samuel, a US resident aged 35 years, has come to India on a tourist visa for a month-long vacation. He carries with him, as part of baggage, the following:

Particulars	Value in ₹
Travel souvenirs	85,000
Other articles carried on in person	1,50,000
80 sticks of cigarettes of ₹ 100 each	8,000
30 cartridges of fire arms valuing ₹ 500 each	15,000
One litre wine	15,000

With reference to the Baggage Rules, 2016, determine whether Mr. Samuel will be required to pay any customs duty?

**Solution:** As per rule 3 of Baggage Rules, 2016, tourist of foreign origin, excluding infant, is allowed duty free clearance of -

- travel souvenirs; and
- Articles up to the value of ₹ 15,000 (excluding, *inter alia*, cigarettes exceeding 100 sticks, cartridges of fire arms exceeding 50 and alcoholic liquor or wines in excess of two litres), if carried on in person.

Further, any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 2016, is chargeable to customs duty @ 35% [Notification No. 26/2016-Cus. dated 31-03-2016]. The effective rate of duty becomes 38.5% after including social welfare surcharge @ 10% on customs duty.

Accordingly, the customs duty payable by Mr. Samuel will be calculated as under :

Particulars	Value in ₹
Travel souvenirs	Nil
Other articles carried on in person	1,50,000
80 sticks of cigarettes of ₹ 100 each [Upto 100 sticks of cigarettes can be accommodated in GFA]	8,000
30 cartridges of fire arms valuing ₹ 500 each [upto 50 cartridges of fire arms can be accommodated in GFA]	15,000
One litre wine [Upto two litres of wine can be accommodated in GFA]	15,000
<b>Total Value of goods</b>	<b>1,88,000</b>
<b>Less: General free allowance [Rule 3]</b>	<b>15,000</b>
<b>Total dutiable baggage</b>	<b>1,73,000</b>
<b>Custom duty payable @ 38.5%</b>	<b>66,605</b>

**Q. 20 :** Whether all types of exports categories/sectors are eligible for duty credit scrip entitlement under Merchant Export from India Scheme (MEIS)? If your answer is no, give few examples of the export categories/sectors which are ineligible for duty credit scrip entitlement under MEIS.

Saksham exports a consignment of handicraft items through courier using e-commerce of free on board (FOB) value of ₹ 4,48,000. Determine whether the export consignment of Saksham is eligible for the MEIS benefit.

**Ans:** No, all types of exports categories/sectors are not eligible for duty credit scrip entitlement under Merchant Export from India Scheme (MEIS).

A few of the ineligible exports categories/sectors under MEIS are listed below:

- (i) Supplies made from domestic tariff area (DTA) units to special economic zone (SEZ) units
- (ii) Exports through transshipment, i.e., exports that are originating in third country but transshipped through India
- (iii) Deemed exports
- (iv) SEZ/export oriented undertaking (EOU)/ electronic hardware technology park (EHTP)/bio technology park (BTP)/ free trade warehousing zone (FTWZ) products exported through domestic tariff area units
- (v) Export products which are subject to minimum export price or export duty
- (vi) Exports made by units in FTWZ.

Export of handicraft items through courier, using e-commerce, of free on board (FOB) value up to ₹ 5,00,000 per consignment is entitled for rewards under MEIS.

Therefore, the entire consignment of handicraft items exported by Saksham (FOB value ₹ 4,48,000) is eligible for MEIS benefit.

■ ■ ■

## Additional Notifications & Circulars Applicable for May 2020 Exams

### □ Place of supply of research and development services related to pharmaceutical sector :

In order to prevent double taxation or non-taxation of supply of any service, section 13(13) of IGST Act empowers the Government to notify any service for which the place of supply shall be the place of effective use and enjoyment of service.

In this regard, **with effect from 01-10-2019**, the following research and development services related to pharmaceutical sector [as specified in columns (2) and (3) from Sl. No. 1 to 10 of the table given below] when supplied by a person located in taxable territory to a person located in the non -taxable territory, have been notified as the services for which the place of supply shall be the place of effective use and enjoyment of a service [as specified in column (4) of the table given below] :

Sl. No.	Nature of supply	General description of supply	Place of supply
(1)	(2)	(3)	(4)
1.	Integrated discovery and development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.	When research and development services related to pharmaceutical sector as specified in columns (2) and
2.	Integrated development		

3.	Evaluation of the efficacy of new chemical/biological entities in animal models of disease	This is in vivo research ( <i>i.e.</i> within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.	(3) from Sl. No. 1 to 10 of this table are supplied by a person located in taxable territory to a person located in the non-taxable territory, the place of supply shall be the location of the recipient of services subject to fulfillment of the following conditions:- (i) Supply of services from the taxable territory is provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory. (ii) Such supply of services fulfills all other conditions in the definition of export of services, except the condition that place of supply is outside India.
4.	Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	This is in vitro research ( <i>i.e.</i> outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in nontaxable territory and is evaluated in the assay under optimized conditions.	
5.	Drug metabolism and pharmacokinetics of new chemical entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.	
6.	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development.	
7.	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging configuration.	
8.	Bio-equivalence and Bioavailability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.	
9.	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage.	
10.	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological systems.	

[Notification No. 04/2019 IT dated 30-09-2019]

□ **Validity of e-way bill in case of multimodal shipment in which at least one leg involves transport by ship [Rule 138(10) of the CGST Rules] :**

Rule 138(10) of CGST Rules which provides validity period of e-way bill has been amended to provide the validity period of e-way bill for multimodal shipment in which at least one leg involves transport by ship as under –

	Distance within country	Validity period from relevant date
1.	Upto 100 km	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
2.	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
3.	Upto 20 km	One day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

It has been further amended to lay down that the validity of the e-way bill can be extended within eight hours from the time of its expiry. [Notification No. 31/2019 CT dated 28.06.2019]

- **Clarification on the effective date of insertion of explanation in notification :** Section 11(3) of CGST Act provides that the Government may insert an explanation in any notification issued u/s 11, for the purpose of clarifying its scope or applicability, at any time within 1 year of issue of the notification and every such explanation shall have effect as if it had always been the part of the first such notification.

It is hereby clarified that the explanation having been inserted u/s 11(3) of the CGST Act, is effective from the inception of the entry in notification and not from the date from which the notification (that inserted said explanation) becomes effective.

*For example*, the principal Notification No. 11/2017-CT (R) dated 28-06-2017 came into force with effect from 01-07-2017. Thereafter, a new entry - Entry no. 3(vi) is inserted w.e.f. 21-09-2017. Subsequently, an explanation is also inserted with respect to entry no. 3(vi) on 26-07-2018. Although the effective date mentioned in the notification which inserted said explanation is 27-07-2018, said explanation will be effective from the inception of entry in notification i.e. 21-09-2017 and not 27-07-2018. [Circular No. 120/39/2019 GST dated 11.10.2019]

- **Person supplying online information technology and database access retrieval [OIDAR] services not required to furnish annual return and reconciliation statement :** The Government has notified the persons compulsorily registered under section 24(xi) of the CGST Act read with rule 14 of CGST Rules supplying OIDAR services from a place outside India to a person in India, other than a registered person, as the class of registered persons who shall not be required to furnish -
- the annual return under section 44(1) of the CGST Act read with rule 80(1) of the CGST Rules, and
  - the reconciliation statement under section 44(2) of the CGST Act read with rule 80(3) of the CGST Rules
- [Notification No. 30/2019-CT dated 28-06-2019]

- **Details of tax deducted and tax collected to be made available to the deductee and collectee respectively on the common portal after filing of GSTR-7 and GSTR-8 respectively [Rule 66(2) of the CGST Rules]**

Whenever taxable goods and/or services are supplied to a department of the Central/ State Government or other specified persons, the recipient is required to deduct tax under section 51 of the CGST Act.

Earlier, the details of tax deducted furnished by the deductor in GSTR-7 was made available to each supplier in Part C of Form GSTR-2A / Form GSTR-4A (in case of registered person opting for composition levy) on the common portal after the due date of filing of Form GSTR-7 [Rule 66(2) of the CGST Rules]. The deductee could include the details of TDS reflecting in Part C of GSTR-2A in his Form GSTR-2 by accepting the same. However since, GSTR-2 has been kept in abeyance, this provision has been amended.

**Sub-rule (2) of rule 66 has been amended to lay down that the details of TDS furnished by the deductor in GSTR-7 shall be made available electronically to each of the deductees on the common portal after filing of Form GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.**

Similarly, the details of TCS furnished by operator in GSTR-8 were made available to each supplier in Part C of Form GSTR-2A on the common portal after the due date of filing of Form GSTR-8 under rule 67(2) of the CGST Rules.

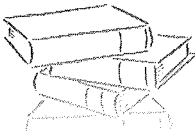
**Sub-rule (2) of rule 67 has been amended to provide that the details of TCS furnished by the deductor in GSTR-8 is made available electronically to each of the deductees on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation. [Notification No. 31/2019 CT dated 28-06-2019]**

## Our Leading Booksellers

- AHMEDABAD** : Gandhi Law House 26587666  
**ALLAHABAD** : Modern Law House 2560700, 2560616  
**BANGLURU** : Law Link Publications 9845057996, Puliani & Puliani 22254052, 22265500,  
Sri Balaji Book Shop 9880451046, Chandana Books 9483541235
- BHILAI** : Students Store 9893130334  
**CHENNAI** : C. Sitaraman & Co. 28111516, 28117069  
**DELHI** : Pooja Law House 23379103, 23370152, Commercial House 23947862,  
23971689, Krishna Law House 23969866
- ERNAKULAM** : Law Book Shop 2398484, 9447768991  
**GANDHI NAGAR** : Gahan Book Traders 9824069485  
**HYDERABAD** : Asia Law House 24742324, 24608000, Law Sales Corporation 9849179322  
**INDORE** : Khetrapal's Puja Law House 2540987, 4072316  
**JAIPUR** : Jain Professional Services 2369571, Sharma Booksellers 2571627,  
Aadhya Academy 2742850
- JAMNAGAR** : Madhavi Stationers 2750358  
**JAMSHEDPUR** : Sharda Book Depot 9431566455  
**JODHPUR** : Madhu Sharda 2636027, Book World 2640210, Prakash Law House 2627658,  
Second Hand Book Depot 2626797
- KOLKATA** : Book Corporation 22206669, 22205367, Law Point 22101821, 9433095401,  
Shivraj Book Agency 9836850838
- LUCKNOW** : Modern Law House 3010940  
**LUDHIANA** : Singh Book Traders 9988447710 Sharma Book Traders 9781031666  
**MUMBAI** : Students Book Centre 22050510, 22080668, Bhayani Book Depot 22002966,  
22050884, Books Emporium 66770474/28203894
- NAGPUR** : Shanti Law House 2438647, 2460698  
**PUNE** : Ajit Law Book Depot 66034697, 66017685  
**RAIPUR** : Central Book House 2234150  
**RAJKOT** : Raj Book Supplier 9824282799, Rohit Book Seller 2294288, 2472519  
**RANCHI** : Malhotra Book Agency 2027269, Singhai Brothers 2314653  
**SURAT** : Western India Book Corp. 2478116, 9825160820, Trishul Book Centre  
9825138347, Popular Book Centre 2474165, Lucky Book Centre 2476530
- VIJAYWADA** : Supreme Law House 6695554, 9845043546

You can purchase books online also :

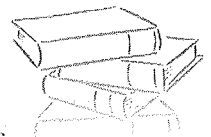
[www.aadhyas.com](http://www.aadhyas.com), [www.bookschahiye.com](http://www.bookschahiye.com), [www.cabookshop.net](http://www.cabookshop.net), [www.cabooksonline.com](http://www.cabooksonline.com),  
[www.jainbookagency.com](http://www.jainbookagency.com), [www.lawbookshop.net](http://www.lawbookshop.net), [www.law-all.com](http://www.law-all.com), [www.lawpointkolkata.com](http://www.lawpointkolkata.com),  
[www.makemydelivery.com](http://www.makemydelivery.com), [www.poojalawhouse.in](http://www.poojalawhouse.in), [www.sitaramanalliedservices.com](http://www.sitaramanalliedservices.com),  
[www.snowwhiteindia.com](http://www.snowwhiteindia.com), [www.aggarwallawhouse.com](http://www.aggarwallawhouse.com)



Place your orders with

# Aadhya Prakashan

Publishers of various books for Professionals & Students



"Kela Bhawan" 136, Vivekanand Marg, Allahabad-3 Ph : 0532-2564749  
E-mail : [sales@aadhyas.com](mailto:sales@aadhyas.com) Visit : <http://www.aadhyas.com>