

However, if the said document does not contain all the specified particulars but contains atleast the following details

- (i) amount of tax charged,
- (ii) description of goods or services,
- (iii) total value of supply of goods or services or both,
- (iv) GSTIN of the supplier and recipient and
- (v) place of supply in case of inter-State supply,

then, the input tax credit may be availed by such registered person. [Proviso inserted by NN 39/2018 CT, w.e.f. 04.09.2018]

Note: Section 16 and the CGST Rules do not specify that which particular copy of the invoice will form the basis of taking ITC. However, rule 48 of the CGST Rules specifies that the original copy is for the recipient of goods. The original copy may preferably be kept for record to support the credit entry.

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~~ **Furnished** by the suppliers u/s 37(1) **in FORM GSTR - 1 or using the invoice furnishing facility**, shall not exceed **5% 10% 20%** of the eligible credit available in respect of invoices or debit notes the details of which have been ~~uploaded~~ **Furnished** by the suppliers u/s 37(1) [Rule 36(4) inserted by NN 49/2019 - CT, w.e.f. 09.10.2019]. [20% substituted by 10% vide NN 75/2019 - CT, w.e.f. 01.01.2020] **[10% is substituted by 5% vide NN 94/2020 - CT, w.e.f. 01.01.2021] [Further, green words amended by NN 94/2020 - CT, w.e.f. 01.01.2021].**

Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above. [Proviso inserted by NN 30/2020 - CT, w.e.f. 03.04.2020]

Analysis:

It means even if some invoices (in respect of which amount of ITC does not exceed 5% of total eligible ITC) are not getting auto-populated/reflected in GSTR - 2A, then also, assessee can avail the input tax credit in respect of those invoices.

Further, due to late filing of GSTR - 1 due to COVID 19, temporarily, it has been provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

Analytical Example [ITC is available only to extent of 105% of the ITC (eligible) of GSTR2A] :

S. No.	Particulars	Amount INR	Amount INR
A	ITC as per books		2000
B	ITC as per GSTR2A		1500
C	Invoices not uploaded by vendor (A-B)		500
D	Eligible ITC	(B*105%) = 1500*105%	1575
E	ITC reversed	A - D	425

Hence, Even though we have a tax invoice for total tax of Rs. 2,000/-, then also, we cannot claim it completely, as the vendors have not furnished the GSTR1.

The ITC of the same can be again taken when it gets reflected in GSTR2A.

Hence, ITC will be allowed only to the extent of 105% of the total eligible ITC, in case when the vendors have not furnished their GSTR1.

Highlights

- This restriction will actually mean that the Companies need to monitor whether the suppliers are uploading their GSTR 1 on regular basis or not.
- Most Companies are likely to feel the pinch of the amendment.
- The amendment has introduced another set of compliance on a monthly basis for the assessee, i.e. checking of GSTR 2A to keep a check that ITC availed doesn't exceed 105% of the eligible ITC and also determine the credit which are 'eligible' out of the total ITC as per GSTR 2A before applying this 5% rule.

Restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017 [Circular No. 123/42/2019 - GST, Dated 11-11-2019]

1. Sub-rule (4) to rule 36 of the CGST Rules, 2017 has been inserted vide notification No. 49/2019-CT, dated 09.10.2019. The said sub-rule provides restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37 of the CGST Act in FORM GSTR - 1 or using the invoice furnishing facility (IFF).
2. The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder. This being a new provision, the restriction is not imposed through the GST portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers.

3. Various issues relating to implementation of the said sub-rule have been examined and the clarification on each of these points is as under: -

Sl. No.	Issue	Clarification
1.	What are the invoices/debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?	The restriction of availment of ITC is imposed only in respect of those invoices/debit notes, details of which are required to be furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR - 1 or using the invoice furnishing facility (IFF) and which have not been furnished. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37 , provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices/debit notes on which credit is availed after 09.10.2019.
2.	Whether the said restriction is to be calculated supplier wise or on consolidated basis?	The restriction imposed is not supplier wise . The credit available under sub-rule (4) of rule 36 is linked to total eligible credit from all suppliers against all supplies whose details have been furnished by the suppliers. Further, the calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 5% of the eligible credit available.
3.	FORM GSTR-2A being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices/ debit notes whose details	The amount of input tax credit in respect of the invoices/debit notes whose details have not been furnished by the suppliers shall not exceed 5% of the eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub- section (1) of section 37 as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period. The taxpayer may have to ascertain the same from his auto populated FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.



	have not been furnished by the suppliers?				
4.	How much ITC a registered taxpayer can avail in his FORM GSTR-3B in a month in case the details of some of the invoices have not been furnished by the suppliers under subsection (1) of section 37.	<p>Sub-rule (4) of rule 36 prescribes that the ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under subsection (1) of section 37 in FORM GSTR - 1 or using the invoice furnishing facility (IFF), shall not exceed 5% of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR - 1 or using the invoice furnishing facility (IFF). The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below.</p> <p>In the illustrations, say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving eligible ITC of Rs. 10 lakhs, from various suppliers during the month of January, 2021 and has to claim ITC in his FORM GSTR-3B of January, to be filed by 20th Feb., 2021.</p>			
			<p>Details of supplier's invoices for which recipient is eligible to take ITC</p>	<p>5% of eligible credit where invoices are uploaded</p>	<p>Eligible ITC to be taken in GSTR 3B to be filed by 20th Feb.</p>
		Case 1.	Suppliers have furnished in FORM GSTR-1 80 invoices involving ITC of Rs. 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 30,000/-	Rs. 6,00,000 (i.e. amount of eligible ITC available, as per details furnished by the suppliers) + Rs. 30,000 (5% of amount of eligible ITC available, as per details uploaded by the suppliers) = Rs. 6,30,000/-
		Case 2.	Suppliers have furnished in FORM GSTR-1 80 Invoices	Rs. 35,000/-	Rs. 7,00,000 + Rs. 35,000 = Rs. 7,35,000/-

			involving ITC of Rs. 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.		
		Case 3.	Suppliers have furnished in FORM GSTR-1 75 invoices having ITC of Rs. 9.7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 48,500/-	Rs. 9,70,000/- + Rs. 30,000/-* = Rs. 10,00,000 *The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.
5.	When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?	<p>The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are furnished by the suppliers. He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not furnished (under sub-section (1) of section 37) remains under 5% of the eligible input tax credit, the details of which are furnished by the suppliers. Full ITC of balance amount may be availed, in present illustration by "R", in case total ITC pertaining to invoices the details of which have been furnished reaches Rs. 9,52,381 (Rs. 10 lakhs / 1.05). In other words, taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent Eligible ITC/ 1.05. The same is explained for Case No. 1 and 2 of the illustrations provided at Sl. No. 4 above as under:</p>			
		Case 1.	"R" may avail balance ITC of Rs. 3,70,000 in case suppliers furnish details of some of the invoices for the tax period involving ITC of Rs. 3,52,381 out of invoices involving ITC of		

			Rs. 4,00,000 details of which had not been uploaded by the suppliers. [Rs. 6,00,000 + Rs. 3,52,381 = Rs. 9,52,381]
		Case 2.	"R" may avail balance ITC of Rs. 2,65,000 in case suppliers furnish details of some of the invoices involving ITC of Rs. 2,52,381 out of outstanding invoices involving Rs. 3 lakhs. [Rs. 7,00,000 + Rs. 2,52,381 = Rs. 9,52,381]

Illustration 2 :

Explain the conditions necessary for obtaining input tax credit? *(IPCC MTP May 2018, 5 Marks)*

Solution : The following four conditions are to be satisfied by the registered taxable person for obtaining input tax credit:

- (i) he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;
- (ii) he has received the goods or services or both;
- (iii) the supplier has actually paid the tax charged in respect of the supply to the Government; and
- (iv) he has furnished the return under section 39.

(b) Receipt of the goods and / or services [Section 16(2)(b)] : The person taking the ITC must have received the goods and/or services.

"Bill to Ship to" Model also included : Under this model, the goods are delivered to a third party on the direction of the registered person who purchases the goods from the supplier. Receipt of goods u/s 16(2)(b) includes delivery to another person on the direction of the registered person by way of transfer of documents of title to goods or otherwise either before or during the movement of goods. It would be deemed that the registered person has received the goods in such scenario. So, ITC will be available to the registered person on whose order the goods are delivered to third person.

Further, where the services are provided by the supplier to any other person (like employee, agent or otherwise) on the direction of and on account of such registered person, then also, it shall be deemed that the registered person has received the services for the purposes of claiming ITC [inserted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019].

Illustration 3 :

Y places an order on M for supply of a machinery. Y receives a buying order from A for the same machinery. Y instructs M to deliver the machinery to A, and in turn Y raises an invoice on A. Though the goods are not physically received at the premises of Y, the condition of section 16(2)(b) is satisfied, and Y is entitled to ITC on the consignment.

Author's Note : No ITC is required to be added to the output tax liability in this case. Because, as per terms of the contract, recipient did not failed to make payment to the supplier within 180 days.

Illustration 8 :

Due to a quality dispute, ABC Ltd. withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by ABC on the invoice got added to the output tax liability of ABC and thus, it had to pay back the credit. Only after the vendor rectified the machine and ABC released the payment, could ABC take the credit again.

V. If depreciation claimed on GST component of Capital Goods, then, ITC not allowed [Section 16(3)]

If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed. Thus, in respect of the tax paid on such items, dual benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously. In other words, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws.

VI. Time limit for availing ITC: Due date of filing of return for the month of September of succeeding financial year or actual date of filing of annual return, whichever is earlier [Section 16(4)]

ITC on invoices pertaining to a financial year or debit notes ~~relating to invoices~~ pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial year or the actual date of filing of the relevant annual return, whichever is earlier. [omitted words, omitted by Finance Act, 2020, w.e.f. 01.01.2021]

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[Analysis of Amendment: After amendment made by Finance Act, 2020, the date of issue of invoice relating to debit note is of no relevance for determining time limit to take ITC of GST charged on Debit Note.]

It may be noted that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

So, the upper time limit for taking ITC is 20th October of the next financial year or the actual date of filing of annual return, whichever is earlier. The underlying reasoning for this restriction is that no change in return is permitted after September of next financial year. If annual return is filed before the month of September, then, no change can be made after filing of annual return.

Exception : The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

Illustration 10 : (Analytical illustration to understand the amendment made by FA, 2020):

Nitish delivered a machine to Vihaan in February 2021 under Invoice no. 12 dated 5th February, 2021 for Rs. 50,000 plus GST and undertook trial runs of the machine as per the requirements of

(A) Vihaan. The amount chargeable for the post-delivery activities was covered in a debit note raised in May 2021 for Rs. 10,000 plus GST. Vihaan filed its annual returns for financial years 2020-21 and 2021-22 in the month of December, 2021 and December, 2022 respectively. What is the time limit to take ITC of GST charged on Invoice and Debit Note issued in this case?

Solution : In this case, the time limit to take ITC of GST charged on Invoice of Rs. 50,000 shall be 20th October, 2021 (being earlier of the date of actual filing of the annual return for 2020-21 or the due date for filing return for Sept. 2021 month). Further, the time limit to take ITC of GST charged on Debit Note of Rs. 10,000 shall be 20th October, 2022 (being earlier of the date of actual filing of the annual return for 2021-22 or the due date for filing return for Sept. 2022 month), because the Debit Note was issued in the financial year 2021-22. [Note: After amendment made by Finance Act, 2020, the date of issue of invoice relating to debit note is of no relevance for determining time limit to take ITC of GST charged on Debit Note.]

[Before Amendment made by Finance Act, 2020, the answer would had been as under:

Though the debit note was received in the next financial year, it relates to an invoice received in the financial year 2020-21. Therefore, the time limit for taking ITC of GST charged on Invoice of Rs. 50,000 as well as on Debit Note of Rs. 10,000 shall be 20th October, 2021 (being earlier of the date of actual filing of the annual return for 2020-21 or the due date for filing return for Sept. 2021)].

Illustration 11 : Section 16(2)(a)

In January, 2019, inputs purchased and received, on which Rs. 2,00,000/- GST was paid. But, 1 invoice for GST of Rs. 50,000/- paid was received by the assessee on 03.02.2019. What will be the eligible amount of ITC on the inputs in the month of January, 2019?

Solution :

Since, the invoice for Rs. 50,000 was not received till 31.01.2019, therefore, the ITC of Rs. 50,000 cannot be availed in the month of January, 2019 as per Section 16(2)(a) of the CGST Act, 2017. Hence, eligible amount of ITC on the inputs in the month of January, 2019 will be Rs. 1,50,000/-.

Illustration 12 : Section 16(2)(b)

M/s PQR Ltd. purchased 1,00,000 units of inputs on which Rs. 10,00,000/- GST was paid (as indicated on the invoice). But, due to some abnormal loss, during transportation, it could receive only 60,000 units of inputs. What will be the eligible amount of ITC on the inputs ?

Solution :

As per Section 16(2)(b) of the CGST Act, 2017, ITC of only Rs. 6,00,000/- (i.e. on the quantity of inputs received) can be availed by M/s PQR Ltd.

Illustration 14 :

Compute the amount of Input tax credit admissible to RIL Pvt. Ltd. in respect of various inputs purchased during the month of July, 2019.

Restrictions on use of amount available in electronic credit ledger [Rule 86B] [inserted by NN 94/2020 – CT, w.e.f. 22.12.2020]

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of 99% of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds Rs. 50,00,000:

Provided that the said restriction shall not apply where –

- (a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than Rs. 1,00,000 as income tax under the Income-tax Act, 1961 in each of the last two financial years for which the time limit to file return of income under sub-section (1) of section 139 of the said Act has expired; or
- (b) the registered person has received a refund amount of more than Rs. 1,00,000 in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54 [i.e., Zero Rated Supply made without Payment of tax]; or
- (c) the registered person has received a refund amount of more than Rs. 1,00,000 in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54 [i.e., cases of Inverted Duty Structure]; or
- (d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or
- (e) the registered person is –
 - (i) Government Department; or
 - (ii) a Public Sector Undertaking; or
 - (iii) a local authority; or
 - (iv) a statutory body

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

Persons not eligible to opt for composition scheme

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whichever is higher. Thus, he can supply services upto a value of Rs. 8 lakh in current FY. If the value of services supplied exceeds Rs. 8 lakh, he becomes ineligible for the composition scheme and has to opt out of the composition scheme. However, interest or discount earned during current financial year on loans, advances or deposits shall not be taken into account while computing limit of Rs. 8 lakhs in current financial year.

- (A) (b) Supplier of goods **or services** which are not leviable under the CGST Act/SGST Act/UTGST Act. [words "or services" inserted by Finance Act, 2020, w.e.f. 01.01.2021]
- (A) (c) Supplier of inter-State outward supplies of goods **or services**. [words "or services" inserted by Finance Act, 2020, w.e.f. 01.01.2021]
- (A) (d) Person supplying goods **or services** through an electronic commerce operator, who is required to collect tax at source under section 52. [words "or services" inserted by Finance Act, 2020, w.e.f. 01.01.2021]
- (e) **Manufacturer** of such goods as may be **notified** by the Government on the recommendations of the Council.
- (f) He is a casual taxable person or a non-resident taxable person. [clause (f), inserted by Finance (No. 2) Act, 2019, w.e.f. 01.01.2020]

Analytical Note :

- (i) Any Supplier opting for composition scheme, can supply services of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or Rs. 5,00,000/-, whichever is higher. But, if turnover of services (other than Restaurant & Outdoor Catering service) is more than this limit, then, such supplier will not be eligible for composition scheme from the date when he cross this limit. However, this limit does not apply to Restaurant & Outdoor Catering service providers.
- (ii) There is no restriction on Composition Supplier to procure goods from inter-State suppliers.
- (iii) ~~Clarifications by CBEC [CGST (Removal of Difficulties) Order, 2017 (Order No. 01/2017-CT, dated 13.10.2017)]:~~

- ~~(a) It is hereby clarified that if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme u/s 10 subject to the fulfillment of all other conditions specified therein.~~
- ~~(b) It is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including 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.~~

Intra State Supplies made which are chargeable to GST at Nil Rate	45,00,000
Intra state supplies which are wholly exempt from GST	11,45,000
Value of inward supplies on which tax is payable under RCM (GST Rate 28 %)	Nil
Aggregate Turnover	91,45,000
Tax payable under composition Scheme @ 1% of taxable supplies of goods [i.e. 1% of Rs. 35,00,000]	35,000
Tax payable under reverse RCM (15,00,000 × 28%)	4,20,000
Total GST payable	4,55,000

Illustration 12 :

Mr. X availing composition scheme during a financial year crosses the turnover of Rs. 1.50 crore during the course of the year i.e. say he crosses the turnover of Rs. 1.50 crore in December. Will he be allowed to pay tax under composition scheme for the remainder of the year i.e. till 31st March?

Answer :

No. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds Rs.1.50 Crore vide section 10(3) of CGST Act, 2017.

Illustration 12 :

Ramaswamy, a registered supplier, is an interior decorator. His registered office is located in Gujarat and he is not engaged in making any inter-State supply of services. His aggregate turnover in the FY 2019-20 is Rs. 90 lakhs. With reference to the provisions of the CGST Act, 2017, examine whether Ramaswamy can opt for the composition scheme in the FY 2020-21 ?

Will your answer be different if Ramaswamy is engaged in supplying restaurant services and procures food items required for his restaurant from neighbouring State of Maharashtra?

(IPCC MTP May 2018, 4 Marks)

Solution :

Section 10(2A) of the CGST Act, 2017 read with NN 02/2019 – CT (R) provides for Composition Scheme for service suppliers whose aggregate turnover in the preceding financial year was Rs. 50 lakhs or below. But, turnover of Ramaswamy during previous financial year was Rs. 90 lakhs (i.e. more than Rs. 50 lakhs). Therefore, Ramaswamy is not eligible to apply for composition scheme under section 10(2A) read with NN 02/2019 –CT (R).

However, if Ramaswamy is engaged in supplying restaurant services, he will be eligible for composition scheme u/s 10(1) of the CGST Act, 2017 in the current financial year (2020-21). A registered person cannot opt for composition scheme if, inter-alia, he is engaged in making any

inter-State outward supplies of goods **or services**, but there is no restriction on procurement of goods **or services** inter-State.

(A)

Hence, in this case, Ramaswamy (engaged in supplying restaurant services) is eligible for composition scheme u/s 10(1), as his turnover in the preceding FY 2019-20 does not exceed Rs. 1.50 crore, even though he procures food items required for his restaurant from neighbouring State of Maharashtra.

How's the JOSH...?

Question 1 : Sultan & Sons, a partnership firm, in Nagpur, Maharashtra is a wholesaler of a taxable product 'P' and product 'Q' exempt by way of a notification, in the State of Maharashtra. Its aggregate turnover in the preceding financial year is ₹ 130 lakh. The firm wishes to opt for composition scheme under sub-sections (1) & (2) of section 10 of the CGST Act. However, its accountant is of the view that a person engaged in making supply of exempt goods is not eligible for the said scheme. Discuss.

Note: Assume that Sultan & Sons is not engaged in manufacture of goods as notified under section 10(2)(e).

Answer : The view taken by the accountant of Sultan & Sons is not valid in law. A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy, under section 10(1) & 10(2), in Delhi. Further, such person must not be engaged in making any supply of goods **or Services** which are not leviable to tax under this Act and must not be engaged in making any inter-State outward supplies of goods **or Services**, for being eligible to pay tax under said scheme.

(A)

In the given case, the aggregate turnover of Sultan & Sons does not exceed ₹ 1.5 crore. Further, it is engaged in making only intra-State supply of goods and Product P supplied by it is taxable and Product Q supplied by it is leviable to tax though exempted by way of notification. Therefore, it is eligible for composition levy under section 10(1) & 10(2) in the current year.

Question 2 : A person availing composition scheme, under sub-sections (1) & (2) of section 10 of the CGST Act, in Haryana during a financial year crosses the turnover of Rs. 1.5 crore in the month of December. Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March? Please advise.

Answer : No. The option to pay tax under composition scheme lapses from the day on which the aggregate turnover of the person availing composition scheme for goods during the financial year exceeds the specified limit (₹ 1.5 crore). Once he crosses the threshold, he is required to file an

intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.

Every person who has furnished such an intimation, may electronically furnish at the common portal, a statement in prescribed form containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn, within a period of 30 days from the date from which the option is withdrawn.

Question 3 : Determine whether the suppliers in the following cases are eligible for composition levy, under section 10(1) & 10(2) of the CGST Act, 2017, provided their turnover in preceding year does not exceed ₹ 1.5 crore:

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

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

Answer : (i) A supplier engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY is not eligible for composition scheme under section 10(1) and 10(2). Ice cream and other edible ice, whether or not containing cocoa, Pan masala, Tobacco and manufactured tobacco substitutes and aerated waters are notified under this category. However, in the given case, since Mohan Enterprises is engaged in trading of pan masala and not manufacture and his turnover does not exceed ₹ 1.5 crore, he is eligible for composition scheme subject to fulfilment of specified conditions.

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

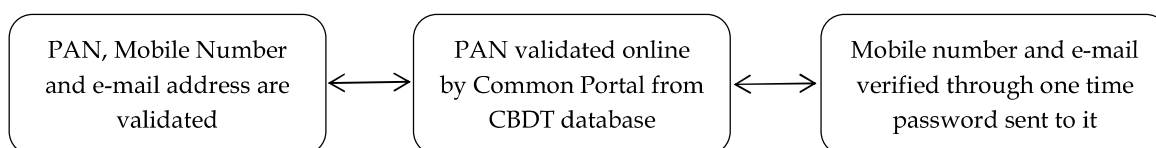
Question 10 : Subramanian Enterprises has two registered places of business in Delhi. Its aggregate turnover for the preceding year for both the places of business was ₹ 120 lakh. It wishes to pay tax under composition levy, under section 10(1) & 10(2) of the CGST Act, 2017, for one of the places of business in the current year while under normal levy for other. You are required to advise Subramanian Enterprises whether he can do so?

Answer : A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy, under section 10(1) & 10(2), in Delhi. Since the aggregate turnover of Subramanian Enterprises does not exceed ₹ 1.5 crore, it is eligible for composition levy in the current year. However, all registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme. Thus, Subramanian Enterprises either have to opt

- As per Sec. 2(61) of the CGST Act, 2017, **“Input Service Distributor”** means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office.
- Every person being an input Service Distributor shall make a separate application for registration as such Input Service Distributor. There is no threshold limit for registration for an ISD. An ISD is required to obtain a separate registration even though it may be otherwise registered, though the application shall be made in Form GST REG 01 only. Different offices like marketing division, security division etc. may apply for separate ISD registration.

Procedure for Registration *P.T.O*

Every Person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN), mobile number, e-mail address, State/UT in **Part A** of **FORM GST REG-01** on GST Common Portal.



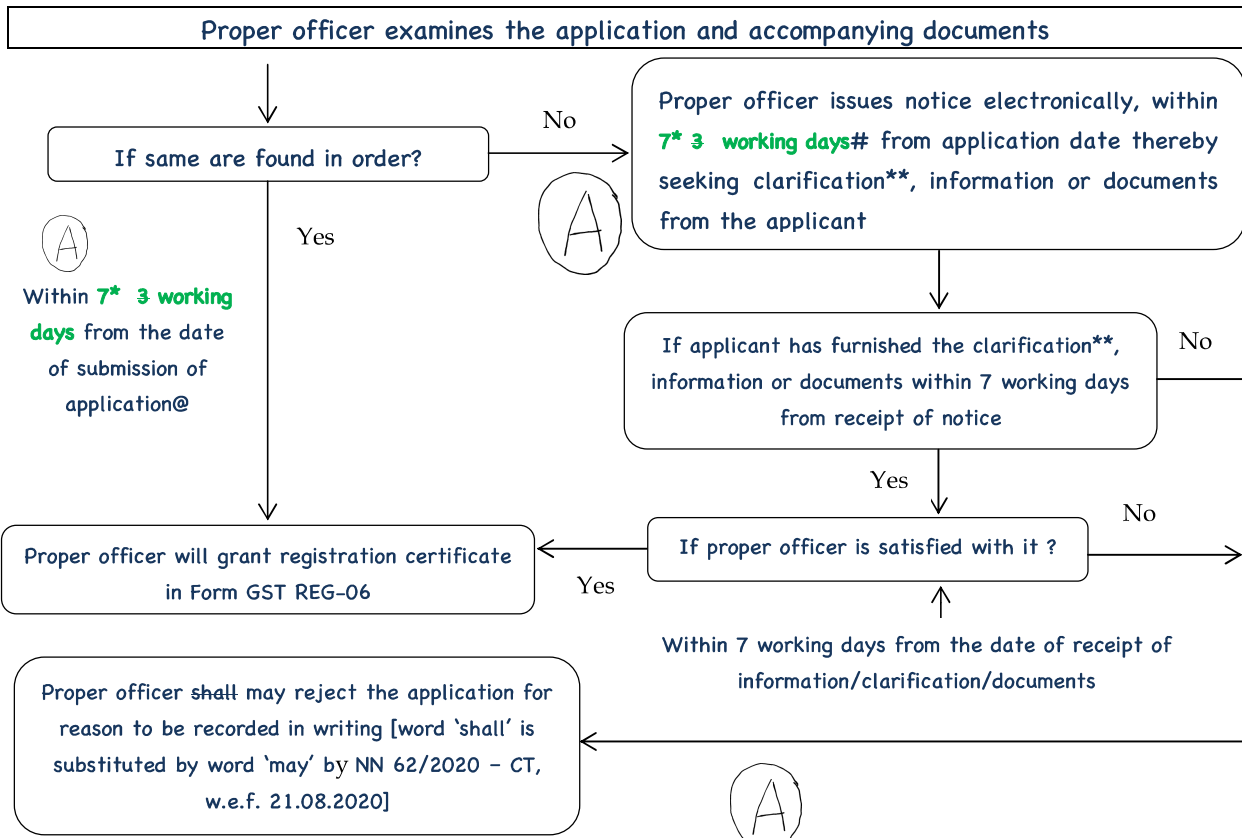
Temporary Reference Number (TRN) is generated and communicated to the applicant on the validated mobile number and e-mail address.

Using TRN, applicant shall electronically submit application in **Part B** of application form, along with specified documents at the Common Portal.

Rule 8 (4A): *Where an applicant, other than a person notified u/s 25(6D), opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), w.e.f. 21.08.2020, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or 15 days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier. [Rule 8(4A), inserted by NN. 16/2020 – CT, w.e.f. 01.04.2020, as amended by NN. 62/2020 – CT., w.e.f. 01.04.2020]*

On receipt of such application, an acknowledgement in the prescribed form shall be issued to the applicant electronically. A Casual Taxable Person (CTP) applying for registration get 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.



*Time limit is increased to 7 working days from of 3 working days by NN 94/2020 - CT, w.e.f. 22.12.2020

**Clarification includes modification / correction of particulars declared in the application for registration, other than PAN, state, mobile no. and e-mail address

@ However, where - (Handwritten 'A' next to this section)

- (a) a person, other than a person notified u/s 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A) or does not opt for authentication of Aadhaar number; or
- (b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the registration shall be granted within 30 days of submission of application, after physical verification of the place of business in the presence of the said person, in the manner provided u/r 25 and verification of such documents as the proper officer may deem fit. [Proviso to Rule 9(1), as substituted by NN 94/2020 - CT., w.e.f. 22.12.2020]

#However, where- (Handwritten 'A' next to this section)

- (a) a person, other than a person notified u/s 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A) or does not opt for authentication of Aadhaar number; or
- (b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the notice may be issued not later than 30 days from the date of submission of the application. [Proviso to Rule 9(2), as substituted by NN 94/2020 - CT., w.e.f. 22.12.2020]

Deemed Approval of Application [Rule 9(5)] [as substituted by NN. 94/2020 – CT., w.e.f. 22.12.2020]

If the proper officer fails to take any action, –

- (a) within a period of 7 working days from the date of submission of the application in cases where the person is not covered under proviso to sub-rule (1); or
- (b) within a period of 30 days from the date of submission of the application in cases where a person is covered under proviso to sub-rule (1); or
- (c) within a period of 7 working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

the application for grant of registration shall be deemed to have been approved.

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Information required while filing application for Registration:

- (i) Valid PAN
- (ii) Valid Indian Mobile Phone Number
- (iii) Valid E-mail Address
- (iv) Prescribed documents & information on all mandatory fields of registration application
- (v) Place of Business
- (vi) Jurisdiction Details
- (vii) Valid Bank Account Number from India
- (viii) Indian Financial system code (IFSC) number of the same bank and branch
- (ix) Atleast one proprietor/partner/director/trustee/karta/member with corresponding PAN
- (x) An authorized signatory who is resident of India with valid details, including PAN

Aadhaar Authentication [Sec. 25(6A), (6B), (6C) & (6D) (inserted by Finance (No. 2) Act, 2019) and NN 16, 17, 18 & 19 of 2020 – CT, w.e.f. 01.04.2020]:

In exercise of the powers conferred by Sec. 25(6B) and (6C) of the CGST Act, 2017, w.e.f. 01.04.2020, while applying for registration, the following persons shall undergo authentication of Aadhaar number, as specified in Rule 8 of the CGST Rules, 2017, in order to be eligible for registration:

- (c) Individual;
- (d) Authorized signatory of all types;
- (e) Managing and Authorised Partner; and
- (f) Karta of an HUF.

However, if Aadhaar number is not assigned to the said persons, then, the registration shall be granted only after physical verification of the principal place of business in the presence of the said person. The said physical verification would be completed within 60 days from the date of registration application, in the manner provided under rule 25. Further, the provisions of Rule 9(5) [i.e. deemed approval of registration application] will not be applicable in this case.

Note: As per Sec. 25(6A) of the CGST Act, 2017, every person who is already Registered under GST shall also be required to undergo such authentication. But, this sub-section is not yet made applicable because this is not yet notified.

Aadhaar Authentication Not Required in following cases [Sec. 25(6D) read with NN 03/2021 – CT, w.e.f. 23.02.2021]:

In exercise of the powers conferred by Sec. 25(6D) of the CGST Act, 2017, while applying for registration, the Aadhaar Authentication is not required for a person who is, –

1. not a citizen of India; or
2. a Department or establishment of the Central Government or State Government; or
3. a local authority; or
4. a statutory body; or
5. a Public Sector undertaking; or
6. a person applying for Unique Identity Number (i.e. any specialised agency of the UNO, etc.).



Physical verification of business premises in certain cases [Rule 25]:

Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with other documents, including photographs, shall be uploaded in the prescribed form on the GST Common Portal within 15 working days following the date of such verification. [Rule 25 substituted by NN. 16/2020 – CT, w.e.f. 01.04.2020, as amended by NN 62/2020 – CT, w.e.f. 21.08.2020]

Analysis of Amendment:

Rule 25 substituted to give additional power to proper officer to do physical verification of place of business even before the grant of registration in case of failure of Aadhaar Authentication or due to not opting for Aadhaar authentication, in addition to the existing power to do physical verification of the place of business after grant of registration due to any other reason.

How Aadhaar Authentication is done?

If the proper officer fails to take any action,-

- (a) within a period of fifteen working days from the date of submission of the application, or
- (b) within a period of seven working days from the date of the receipt of the reply to the show cause notice,

the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.

Example:

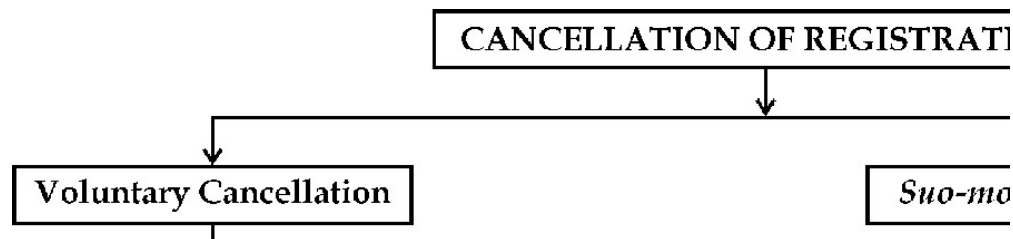
Varun Enterprises, a sole proprietorship firm, is engaged in supply of electrical goods in Delhi. The firm is registered under GST. Varun is the proprietor of the firm. He wishes to expand his business and his friend - Arun - approaches him to provide additional capital for his business if he is made a partner in Varun's business.

Varun agrees and changes the constitution of his business and form a partnership firm - Varun Arun & Co. Since the change in constitution of business from sole proprietorship firm to partnership firm results in change in PAN of the registered person, the partnership firm has to apply for fresh registration. The reason for the same is that GSTIN is PAN based. Any change in PAN would warrant a new registration.

P.T.O

10.8 Cancellation, Suspension of Registration And Revocation of Cancellation [Section 29 & 30]

The provisions relating to cancellation of registration and its revocation are contained in sections 29 & 30 respectively read with rules 20 to 23 of the CGST Rules, 2017:



1. Circumstances where registration is liable to be cancelled [Section 29(1) & (2)] :

A. Circumstances when the registration can be cancelled either suo motu by proper officer or on an application of the registered person or his legal heirs (in case of death of such person)

(i) Business discontinued

- Transferred fully for any reason including death of the proprietor
- Amalgamated with other legal entity
- Demerged or

- Demerged or
 - Otherwise disposed of
- (ii) Change in the constitution of the business
- (iii) The taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under section 25(3) [Green words inserted by Finance Act, 2020, w.e.f. 01.01.2021].

However, 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. [inserted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019]

B. Circumstances when the proper officer can cancel registration on his own : In the following cases, registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit:

- (i) Following contraventions done by the registered person **[Rule 21]** :
- (a) He does not conduct any business from the declared place of business; or
 - (b) He issues invoice/bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder [words "or both" inserted by NN 94/2020 – CT, w.e.f. 22.12.2020]; or
 - (c) If he violates the provisions of section 171 of the CGST Act (i.e. provisions relating to anti-profiteering measure). [Anti-profiteering measure shall be discussed at Final Level.]
 - (d) If he violates the provisions of Rule 10A [i.e. Furnishing of Bank Account Details] [inserted by NN. 31/2019 – CT, w.e.f. 28.06.2019]
 - (e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
 - (f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
 - (g) violates the provision of rule 86B [i.e. Restriction on use of amount available in electronic credit ledger in excess of 99% of the output tax liability].

[Clauses (e) to (g) inserted by NN 94/2020 – CT, w.e.f. 22.12.2020]

- (ii) A registered person has not filed returns for continuous 6 months.

- (iii) A registered person who has opted for composition levy, has not filed returns for 3 consecutive tax periods.
- (iv) Voluntarily registered person has not commenced the business within 6 months from the date of registration.
- (v) Registration was obtained by means of fraud, willful misstatement or suppression of facts.

However, 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. [inserted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019]

2. Procedure for cancellation of registration : [Rule 20, 21A and 22]

- 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.
- **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 the SCN furnished u/r 22(2) **or in response to the notice issued u/r 21A(2A)** is satisfactory proper officer shall drop the proceedings and pass an order in prescribed form. 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 issued u/r 22(1) **or u/r 21A(2A)** [Green words inserted by NN 94/2020 – CT, w.e.f. 22.12.2020].
- Provided that where the person, instead of replying to the notice, 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 in prescribed form. [as amended by NN 39/2018 CT w.e.f. 04.09.2018]
- **Rule 21A. Suspension of registration [inserted by NN 03/2019 – CT, w.e.f. 01.02.2019] :**

(1) Where a registered person has applied for cancellation of registration, 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.

(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, ~~after affording the said person a reasonable opportunity of being heard~~, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration [Omitted words omitted by NN 94/2020 – CT, w.e.f. 22.12.2020, giving power to the proper officer to suspend the registration without giving opportunity of being heard to the registered person].

(2A) Where, a comparison of the returns (i.e. GSTR – 3B) furnished by a registered person under section 39 with

(a) the details of outward supplies furnished in FORM GSTR-1; or
(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated electronically, on the common portal, or by sending a communication to his e-mail address, highlighting the said differences and anomalies and asking him to explain, within a period of 30 days, as to why his registration shall not be cancelled.

[Sub-Rule (2A) inserted by NN 94/2020 – CT, w.e.f. 22.12.2020]

(3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2) or sub-rule (2A), shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39 [Words “or sub-rule (2A)” inserted by NN 94/2020 – CT, w.e.f. 22.12.2020].

Explanation : For the purposes of this sub-rule, the expression “shall not make any taxable supply” shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension. [Explanation inserted by NN 49/2019 – CT, dated 09.10.2019]

(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration. [Sub-rule (3A) inserted by NN 94/2020 – CT, w.e.f. 22.12.2020].

- (4) The suspension of registration under sub-rule (1) or sub-rule (2) **or sub-rule (2A)** shall be deemed to be revoked upon completion of the proceedings by the proper officer and such revocation shall be effective from the date on which the suspension had come into effect **[Words "or sub-rule (2A)" inserted by NN 94/2020 – CT, w.e.f. 22.12.2020].**

(A)

Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit [Proviso inserted by NN 94/2020 – CT, w.e.f. 22.12.2020].

- (5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [i.e. **Revised Tax Invoice**] and section 40 [i.e. **First Return**] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply [Rule 21A(5) inserted by NN 49/2019 – CT, dated 09.10.2019].
- 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) [as discussed in the next para].

3. Reversal of credit [Section 29(5) & (6)] [also discussed in Chapter 5, Topic 5.6] :

- A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount equal to
 - (1) **input tax credit (ITC)** in respect of :
 - stock of inputs and inputs contained in semi-finished/finished goods stock and
 - capital goods or plant and machinery on the day immediately preceding the date of cancellation,

or
 - (2) the **output tax payable** on such goods,
whichever is higher, calculated in such manner as may be prescribed.
- However, in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points **as may be prescribed** or the tax on the transaction value of such capital goods or plant and machinery under section 15, **whichever is higher**.
- The manner of determination of amount of credit to be reversed is prescribed under rule 44 of the CGST Rules, 2017. On conjoint reading of section 29(5) and rule 44, it can be inferred as follows:

5. Revocation of cancellation of registration [Section 30 read with rule 23] :

(1) 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.

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However, such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,—

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding 30 days (i.e. 30 + 30 days);

(b) by the Commissioner, for a further period not exceeding 30 days, beyond the period specified in clause (a) (i.e. 30 + 30 + 30 days).

[Proviso inserted by Finance Act, 2020, w.e.f. 01.01.2021]

(2) However, in case registration was cancelled for failure of registered person to furnish returns, before applying for revocation the person has to rectify the defaults (by filing all pending returns, making payment of all dues in terms of such returns alongwith interest, penalty, late fee, etc.) for which the registration was cancelled by the officer.

(3) 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.

(4) Otherwise, he may reject the revocation application. However, before rejecting the application, he has to first issue Show Cause Notice (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.

(5) 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.

(6) In case of Revocation of cancellation, 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 thirty days from the date of order of revocation of cancellation of registration.

Example: The registration of Naman Associates was cancelled by the proper officer by an order dated 1st June for its failure to furnish returns. The registration was cancelled with effect from 1st June itself. It applied for revocation of cancellation of registration and the order for revocation of cancellation of Naman Associates is passed on 31st July. In this

(n)	Address of delivery where the same is different from the place of supply;
(o)	Whether the tax is payable on reverse charge basis;
(p)	Signature or digital signature of the supplier or his authorized representative; and However, the signature or digital signature of the supplier or his authorized 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. [Proviso inserted by NN 74/2018 - CT, w.e.f. 31.12.2018]
(q)	Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of rule 48. [Inserted by NN 72/2020 - CT, dated 30.09.2020]

5. Number of HSN digits required on tax invoice and class of registered person not required to mention HSN [First proviso of Rule 46, as substituted by NN 79/2020 - CT, w.e.f. 15.10.2020]: Board may, on the recommendations of the Council, by notification, specify -

- (i) the number of digits of HSN code for goods or services, that a class of registered persons shall be required to mention for such period as may be specified in the said notification; or
- (ii) a class of supply of goods or services for which specified number of digits of HSN code shall be required to be mentioned by all registered taxpayers; and
- (iii) the class of registered persons that would not be required to mention the HSN code for goods or services for such period as may be specified in the said notification.

As per NN. 12/2017 - CT, as amended by NN. 78/2020 - CT, dated 15.10.2020, the requirement to mention the HSN Code for goods or services w.e.f. 01.04.2021 is as under:

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S. No.	Aggregate Turnover (AT) in the preceding F.Y.	Number of Digits of HSN Code
1.	Upto Rs. 5 crores	4
2.	More than Rs. 5 crores	6

Further, it is provided that a registered person whose aggregate turnover in the preceding financial year is upto Rs. 5 crores, may not mention the number of digits of HSN Codes as specified in the table above, in a tax invoice issued by him in respect of supplies made to unregistered persons.

Above provisions are also applicable to Bill of Supply [The concept of Bill of Supply is discussed in subsequent paras].

6. Manner of issuing the invoice [Sections 31(1) & (2) read with rule 48] :

In case of taxable supply of goods		In case of taxable supply of services	
Invoice shall be prepared in TRIPLICATE		Invoice shall be prepared in DUPLICATE	
Original Copy	For Recipient	Original Copy	For Recipient
Duplicate Copy	For Transporter	Duplicate Copy	For Supplier