consideration while calculating "turnover in a State or a Union Territory", and accordingly, in "adjusted total turnover" for the purpose of this sub-rule.

Thus, the restriction of 1.5 times of the value of like goods domestically supplied, as applied in "turnover of zero-rated supply of goods", would also apply to the value of "adjusted total turnover" here.

In short, for the purpose of rule 89(4), the value of export/ zero-rated supply of goods to be included while calculating "adjusted total turnover" <u>WILL BE SAME</u> as being determined as per the amended definition of "Turnover of zero-rated supply of goods" in this sub-rule.

The same can explained by the following example where actualvalue per unit of goods exported is more than 1.5 times the valueof same/ similar goods in domestic market, as declared by the supplier:

Example 2: Suppose a Supplier is manufacturing only one type of goods and is supplying the same goods in both domestic refund, the details of his inward supply and outward supply details are shown in the table below:

Net admissible ITC = ₹270

Outward supply	Value per unit (₹)	No of units supplied	Turnover (₹)	Turnover as per amended definition (₹)
Local	200	5	1,000	1,000
Quantity				
Export Quantity	350	5	1,750	1,500
				$[1.5 \times (5 \times 200)]$
Total			2,750	2,500

The formula for calculation of refund as per rule 89(4) is:

refund Amount = (Turnover of zero-rated supply of goods + turnover of zero-rated supply of services) × Net ITC ÷Adjusted total Turnover

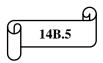
turnover of zero-rated supply of goods (as per amended definition) = ₹ 1,500 Adjusted Total Turnover= ₹ 1,000 + ₹ 1,500 = ₹ 2,500 [and not 1,000 + ₹ 1,750] Net ITC = ₹ 270

Refund Amount = ₹ (1,500 × 270)/2,500 = ₹ 162

Thus, the admissible refund amount in the instant case is ₹ 162.

- ♣ Rule 89(4A) stipulates that in the case of supplies received on which the supplier has availed the benefit of deemed exports under Notification No. 48/2017 CT dated 18.10.2017 [discussed in detail in Import and Export under GST Chapter], refund of ITC, availed in respect of other inputs/input services used in making zero-rated supply of goods or services or both, shall be granted.
  - **♣ Rule 89(4B)** stipulates that where the person claiming refund of unutilized ITC on account of zero-rated supplies without payment of tax has
    - (a) received supplies on which the supplier has availed the benefit of Notification Nos. 41/2017 IT(R) or 40/2017 CT(R) both dated 23.10.20176, or
    - (b) availed the benefit of Notification Nos. 78/20177 Cus. or 79/20178 Cus. both dated 13.10.2017, the refund of ITC, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

Existing provisions	Provisions as amended by the Finance Act, 2021	Remarks
Sub-section (1)(b)	Sub-section (1)(b)	Section 16 is being
"Zero rated supply" means any	"Zero rated supply" means any of the	amendedso as to:
of thefollowing supplies of	following supplies of goods or services or	include supply to aSpecial
goods or services or both,	both, namely :-	Economic Zone developer or
namely :-	(a)	a SpecialEconomic Zone unit
(a)	(b) supply of goods or servicesor both	in zero ratethe supplyof
(b) supply of goodsor	for authorised operations to a Special	goods orservices only when
services orboth to a Special	Economic Zone developer ora Special	the said supply isfor
Economic Zonedeveloper or a	Economic Zone unit.	authorised operations;
Special Economic Zoneunit.		



#### Sub-section (3)

person registered making zero rated supply shall be eligible to claim refund under either of the following options, namely :-

- (a) may supply he goods or both services or under bond or of Letter Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claimrefund of unutilised input tax credit; or
- he may supply goods or services or both, subject to such conditions, safeguards and procedure may be prescribed, on payment of integrated taxand claimrefund of such tax paid on goods orservices or both supplied,

(b)

accordance with the provisions of section 54 of the CGST Act or rules made thereunder.

#### Sub-section (3)

A registered person makingzero rated supply shall be eligible to claim refund ofunutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter Undertaking, of accordance with the provisions of section 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

Provided that the registered person making zero rated supply of goods shall, in case of nonrealisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with theapplicable interest under section 50 of CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

#### Sub-section (4)

The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, notification, specify—

- (i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;
- (ii) a class of goods or services which may be exported on payment ofintegrated tax and thesupplier of such goods or services may claim therefund of tax so paid

- (ii) restrict the zero-rated supply onpayment of integrated tax only toa notifiedclass of taxpayers or notified supplies of goods or services; and
- (iii) link the foreign exchange remittance in case ofexport ofgoods withrefund.

#### Do you Know?

No restriction on recipient of deemed export supplies in availing ITC of the tax paid on such supplies

In a case where recipient of deemed export supplies claims the refund on such supplies, there is no restriction on such recipient in availing ITC of the tax paid on such supplies.

[Circular No. 147/03/2021 GST dated 12.03.2021]



Goods

Value = 10,00,000

Mr. A

IGST = 1,80,000

Mr. B

**EPCG Scheme Holder** 

(Recipient ->Surat)

(Supplier)

Mumbai

Clarification:-

Mr. B claim refund of ₹ 1,80,000, & Avail ITC of ₹ 1,80,000.

**(b) INVERTED DUTY STRUCTURE:** Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies).

Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST, as the case may be], under Notification no. 40/2017 CT (R) dated 23.10.2017/ Notification No. 41/2017 IT (R) dated 23.10.2017, subject to certain conditions specified in said notifications [Discussed in detail in Import and Export under GST Chapter], are also eligible for refund on account of inverted tax structure.

Amount of refund on account of inverted duty structure shall be determined as per rule 89(5) of the CGST Rules, 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 shall be granted as per the following formula –

- **A. "Net ITC"** means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- B. "Adjusted Total turnover" has the same meaning as assigned in sub-rule (4) above.

# CLARIFICATION ON REFUND AMOUNT FOR CLAIM OF REFUND OF ACCUMULATED ITC ON ACCOUNT OF INVERTED DUTY STRUCTURE

Circular No. 79/ 53/ 2018 GST dated 31.12.2018 clarifies that refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability.

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.

The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

- (i) Suppose a manufacturing process involves the use of an input A (attracting 5 per cent GST) and input B (attracting 18 per cent GST) to manufacture output Y (attracting 12 per cent GST).
- (ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.
- (iii) Further assume that the claimant supplies the output Y having value of Rs. 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 Rs. 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be Rs. 3,000/-.
- (iv) If we assume that Input A, having value of Rs. 500/- and Input B, having value of Rs. 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to Rs. 385/- (Rs. 25/- and Rs. 360/- on Input A and Input B respectively).
- (v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of Rs. 385/-.
- (vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is Rs. 360/-, we get the maximum refund amount, as per rule 89(5) of the CGST Rules which is Rs. 25/-.

#### CLARIFICATION ON THE TERM "INPUT"

On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares 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.

**CLARIFICATION:** 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 supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. 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.

[Circular No. 79/53/2018 GST dated 31.12.2018]



# CLARIFICATION ON REFUND OF ACCUMULATED ITC OF INPUT SERVICES AND CAPITAL GOODS ARISING ON ACCOUNT OF INVERTED DUTY STRUCTURE:

Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed 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). Further, section 2(59) of the CGST Act defines inputs as any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Thus, inputs do not include services or capital goods. Therefore, clearly, the intent of the law is not to allow refund of tax paid on input services or capital goods as part of refund of unutilized input tax credit.

Accordingly, rule 89(5) of the CGST Rules defines the term 'Net ITC' [as used in the formula for calculating the maximum refund amount under said rule], to mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.

In view of the above, 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.

[Circular No. 79/53/2018 GST dated 31.12.2018]

### (c) SUPPLY OF SPECIFIED GOODS/SERVICES WHERE REFUND OF UNUTILIZED ITC ON ACCOUNT OF INVERTED DUTY STRUCTURE IS NOT ALLOWED:

Government may, on the recommendations of the Council, notify supplies of certain goods or services or both where no refund of unutilized ITC on account of inverted duty structure is allowed. For instance, supply of construction of complex services specified in para 5(b) of Schedule II of the CGST Act, woven fabrics of silk/wool/cotton, knitted or crocheted fabrics, rail locomotives powered from an external source of electricity or by electric accumulators.

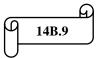
However, this restriction will not be applicable to zero rated supplies, i.e. (a) exports of goods or services or both; or (b) supply of goods or services or both to a SEZ developer/unit.

Accordingly, **as regards export of fabrics**, it is clarified that subject to the provisions of section 54(10)[discussed subsequently in this chapter], a manufacturer of such fabrics will be eligible for refund of unutilized ITC of GST paid on inputs [other than the ITC of GST paid on capital goods] in respect of fabrics manufactured and exported by him [Circular No. 18/18/2017 GST dated 16.11.2017].

#### NO refund of ITC, which is not available in GSTR – 2A

It means NO refund of ITC in respect of those Invoices, the details of which are not shown in GSTR – 2A

NO refund of ITC, in case of reduction of GST rate, where Input & Output Supply are Same



#### Circular No. 135/05/2020-GST

#### Issue:

An applicant trading in goods has purchased, say goods "X" attracting 18% GST. However, subsequently, the rate of GST on "X" has been reduced to, say 12%. Whether accumulation of ITC in such a case is also covered as accumulation on account of inverted duty structure and refund available? i.e. Refund of Accumulated ITC on account of reduction in GST Rate?

#### Clarification:

- It may be noted that refund of accumulated ITC in terms of Section 54(3)(ii) of the CGST Act is available where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies. It is noteworthy that, the input and output being the same in such cases, though attracting different tax rates at different points in time, do NOT get covered under the provisions of Section 54(3)(ii) of the CGST Act.
- It is hereby clarified that refund of accumulated ITC would NOT be applicable in such cases.

#### (d) CASES WHERE REFUND OF ITC IS NOT ALLOWED:

- (i) Refund of unutilized ITC shall not be allowed if the goods exported out of India are subjected to export duty.
- (ii) Refund of ITC shall not be allowed if the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies. While claiming refund of accumulated ITC in case of zero rated supplies without payment of tax, a supplier can avail drawback of only basic customs duty and cannot claim drawback of any of the taxes under GST (Central Tax, Integrated Tax, State/Union Territory Tax). In other words, a supplier availing drawback of only basic customs duty shall be eligible for refund of unutilized ITC of central tax/ State tax/ Union territory tax/ integrated tax/ compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier has availed of drawback in respect of central tax [Circular No.24/24/2017 GST dated 21.12.2017 and Circular No. 37/11/2018 GST dated 15.03.2018].
- (iii) Refund of tax paid on the supply of goods regarded as deemed exports may be claimed.
- (iv) Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed [Section 49(6)].
- (v) Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied, may be claimed [Section 31(3)(e)].
- (vi) Refund of tax wrongly collected and paid to the Government (i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa) [Section 77 of the CGST Act and section 19 of the IGST Act].
- (vii) Refund of the IGST paid by tourist leaving India on any supply of goods taken out of India by him [Section 15 of IGST Act].
- (viii) Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court.
- (ix) On finalization of provisional assessment, if any tax becomes refundable to assessee (on account of assessed tax on final assessment being less than the tax deposited by the assessee) [Section 60].
- (x) Refund of taxes on purchases made by UN bodies or embassies etc. [Section 54(2)].

#### **EXAMPLE:**

M/s. Kalyan Manufactures & Exports Pvt. Ltd. Furnished following information and requests to you compute the maximum refund eligible in respect of Zero-rated supplier for the relevant period:

Particulars	Rs
1) Input tax credit available on inputs	2,50,000
2) Input tax credit available on inputs service	50,000
3) Input tax credit available on capital goods	2,00,000
4) Taxable value goods exported without payment of tax	15,00,000
5) Taxable value goods supplied within India	35,00,000
6) Payment received towards services supplied for exports (include Rs. 50,000 of advance	
towards service to be supplied/ exports after the current reverent period)	5,50,000
7) Taxable value of services supplied within India	5,00,000



#### **SOLUTION:** Computation of maximum refund admissible in respected of Zero-rated supplies:

Particulars	Rs
1) Net ITC i.e. input credit availed on inputs and input service during the relevant period [Rs. 2,50,000	
+ Rs. 50,000]	3,00,000
2) 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 letter of undertaking or 1.5 times of the value of like goods domestically supplied, whichever is less	15,00,000
3) Turnover of zero-rated supply of service (advance received towards services to be supplied / exported after the current relevant period shall not be included, hence: Rs. 5,50,000-Rs. 50,000)	5,00,000
4) Adjusted Total Turnover	
Turnover in state of goods service [Rs. 35,00,000+Rs. 5,00,000] Rs. 40,00,000	60,00,000
Value of zero rated supplies of goods and services Rs. 20,00,000	1,00,000
5) Maximum refund = $[2) + 3 \div 4 ] \times 1$	

#### TIME LIMIT WITHIN WHICH REFUND CLAIM CAN BE FILED

Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of **2 years from the 'Relevant Date\*'** in prescribed form and manner [Section 54(1)]

#### \* MEANI NG OF 'REL EVANT D AT E'

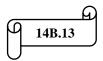
Sr. No	Case	Relevant Date
1.	In case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods and	
	(i) Goods are exported by sea or air	Date on which the ship or the aircraft in which such goods are loaded, leaves India
	(ii) Goods are exported by land	Date on which such goods pass the frontier
	(iii) Goods are exported by post	Date of dispatch of goods by the Post Office concerned to a place outside India
2.	In case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods	Date on which the return relating to such deemed exports is furnished
3.	In case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, and	
	(i) the supply of services had been completed prior to the receipt of such payment	Date of receipt of payment in convertible foreign exchange in Indian rupees wherever permitted by the Reverse Bank of India
	(ii) payment for the services had been received in advance prior to the date of issue of the invoice	Date of issue of Invoice

4.	Where tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court	Date of communication of such judgment, decree, order or direction
<mark>5a.</mark>	In case of refund of unutilised ITC in case of zero rated supplies	End of the Financial Year in which such claim for refund arises
5b.	In case of refund of unutilised ITC in case of accumulated ITC on account of inverted duty structure	Due Date for furnishing of return under section 39 for the period in which such claim for refund arises This amendment has been made to correct an inherent contradiction of the relevant date in case of refund of unutilized ITC under section 54(3) since as per Explanation (2)(e) to section 54, the relevant date means the end of the financial year in which such claim for refund arises while section 54(3) states that a registered person may claim refund of any unutilized ITC at the end of any tax period.
6.	In the case where tax is paid provisionally under this Act or the rules made thereunder	Date of adjustment of tax after the final assessment thereof
7.	In the case of a person, other than the supplier	Date of receipt of goods or services or both by such person
8.	Any other case	Date of payment of tax

In case of deficiency in refund application, limitation period of 2 yearsfor making refund claim to exclude the time period from the date offiling of the refund claim till the date of communication of the deficiencies [Rule 90(3)]

# APPLICATION FOR REFUND OF TAX, INTEREST, PENALTY, FEES OR ANY OTHER AMOUNT [RULE 89]

- 1. GENERAL PROVISION Any person, except the persons covered by notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India\*\*, may file an application in Form GST RFD-01 electronically through GST common portal [Rule 89(1)].
  - \*\*In case **of refund of IGST paid on goods exported out of India**, there is no need for filing a separate refund claim in refund application Form GST RFD 01 since the shipping bill filed by the exporter is itself treated as a refund claim. Shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India [Rule 96].



- 2. REGISTERED PERSON A registered person claiming refund of any balance in the electronic cash ledger in accordance with the provisions of section 49(6), may claim such refund in the return under section 39 in Form GSTR-3\*\*/Form GSTR-4/Form GSTR-7 as the case may be. Such return furnished shall be deemed to be a refund claim filed under section 54. [Proviso to section 54(1) read with first proviso to rule 89(1)].
  - \*\*Presently, the application for refund of balance in the Electronic Cash Ledger is also being filed in Form GST RFD-01A. Further, Electronic Cash Ledger is debited for the amount claimed as refund
- 3. SUPPLIES BY CASUAL TAXABLE PERSON/NON-RESIDENT TAXABLE PERSON Refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Refund of any amount, after adjusting the tax payable shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].
- **4. SUPPLIES REGARDED AS DEEMED EXPORTS -** In respect of supplies regarded as deemed exports, the application shall be filed by
  - (a) the recipient of deemed export supplies
  - (b) the supplier of deemed export supplies 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)]. [Third proviso to rule 89(1)].
  - **5. SUPPLIES TO SEZ Supplies to a Special Economic Zone unit or a Special Economic Zone developer:** The application for refund as endorsed by the specified officer shall be filed by the
    - (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations.
    - (b) supplier of services along with such evidence regarding receipt of services for authorised operations. [Second proviso to rule 89(1)].

#### **DOCUMENTS FOR FILING REFUND CLAIM**

Documents required for filing refund claim has been provided under the provisions of **section 54(4) read with rule 89(2).** 

Section 54(4) of the CGST Act stipulates that the application shall be accompanied by

- (a) Such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
- (b) Such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish **to establish that there is no unjust enrichment.** (i.e. the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person).

However, where the amount claimed as refund is less than ₹. 2 lakh, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that there is no unjust enrichment i.e. the incidence of such tax and interest had not been passed on to any other person.

Rule 89(2) has provided that the application for filing of refund claim shall be accompanied by any of the following documentary evidences as applicable, in Annexure 1 of Form GST RFD-01 for refund claim:

- a. 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. Where the refund is on account of export of goods: a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices. It is important to note that realization of convertible foreign exchange is one of the conditions for export of services whereas in case of export of goods, realization of consideration is not a pre-condition. Consequently, documentary evidence in the form of a statement containing no. and date of relevant BRCs/FIRCs are not required here.
- **c. Where the refund is on account of export of services:** a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be.
- **d.** In case of supply of goods made to a SEZ unit or a SEZ developer: 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.

- e. Where the refund is on account of supply of services made to a SEZ unit or a SEZ developer: a statement containing the number and date of invoices, the evidence regarding receipt of services for authorized operations as endorsed by the specified officer of SEZ, and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the SEZ Act, 2005.
- f. Where the refund is on account of supply of goods or services made to a SEZ unit or a SEZ developer: a declaration to the effect that the SEZ unit or the SEZ developer has not availed of the ITC of the tax paid by the supplier of goods or services or both.

With effect from 01.02.2019, clause (f) has been substituted with a new clause providing that a declaration to the effect that tax has not been collected from SEZ unit/SEZ developer, is required as a documentary evidence, in case where the refund is on account of supply of goods or services or both made to SEZ unit/SEZ developer.

- **g. Where the refund is on account of deemed exports:** a statement containing the number and date of invoices along with an:
  - (i) acknowledgment by the jurisdictional Tax officer of the Advance Authorisation (AA) holder or Export Promotion Capital Goods (EPCG) Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said AA/EPCG Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient EOU that said deemed export supplies have been received by it.
  - (ii) undertaking by the recipient of deemed export supplies that no ITC on such supplies has been availed of by him.
  - (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.
- h. Where the claim pertains to refund of any unutilised ITC under section 54(3) where the credit has accumulated on account of inverted duty structure, other than nil-rated or fully exempt supplies: a statement containing the number and the date of the invoices received and issued during a tax period.
- i. Where the refund arises on account of the finalisation of provisional assessment: the reference number of the final assessment order and a copy of the said order
- j. A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;
- k. A statement showing the details of the amount of claim on account of excess payment of tax;
- I. A declaration to establish that there is not unjust enrichment in the case of the applicant in a case where the amount of refund claimed does not exceed Rs. 2 lakh.
  - However, where the amount of refund claimed exceeds Rs. 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.
  - Neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant is not required to be furnished in the following cases:
    - (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;
    - (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 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.
    - (e) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify

### Rule 89 (1A):-

Any person claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to an inter-State supply may before the expiry of a period of two years from the date of payment of the tax on the inter-State supply file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner: Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force

#### **ACKNOWLEDGMENT OF REFUND CLAIM** [RULE 90]

#### 1. WHERE THE APPLICATION RELATES TO:

(a) Claim for refund from the electronic cash ledger: An acknowledgment in prescribed form shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund\*\* [Rule 90(1)].

#### (b) Other refund claims:

The application shall be forwarded to the proper officer.

The proper officer shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness.

Where the application is found to be complete in terms of rule 89, an acknowledgement in prescribed form shall be made available to the applicant through the common portal electronically [Rule 90(2)].

The acknowledgment form shall clearly indicate the date of filing\*\* of the claim for refund and the time period specified in section 54(7) [See heading H. below] shall be counted from such date of filing.

#### 2. DEFICIENCIES IN REFUND CLAIM:

Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in prescribed form through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies [Rule 90(3)].

Where deficiencies have been communicated to applicant under the SGST Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under CGST Rules, 2017 [Rule 90(4)].

#### ORDER OF REFUND [SECTION 54(5), (7) READ WITH RULE 92/92(1A)]

- Section 54(5) stipulates that if, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is applicable, he may make an order in FORM RDF-06 accordingly and the amount so determined shall be credited to the Consumer Welfare Fund.
- However, rule 92(1) provides that

where, upon examination of the application, the proper officer is satisfied that a refund under section 54(5) is due and payable to the applicant, he shall make an order sanctioning the amount of refund to which the applicant is entitled,mentioning therein the (i) amount, if any, refunded to him on a provisional basis9, (ii) amount adjusted against any outstanding demand\*\* and (iii) the balance amount refundable.

- **Rule 92(1A)** Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export. the proper officer is satisfied that a refund under subsection (5) of section 54 of the Act is due and payable to the applicant. he shall make an order in FORM RFD- 06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as input Tax Credit in electronic credit ledger.
- Refund order shall be issued by the proper officer within 60 days from the date of receipt of application complete in all respects [Section 54(7)].



The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgement.

Where the proper officer is satisfied that the amount refundable under rule 92(1)/(2) is payable to the applicant u/s 54(8)

he shall make an

- o Order in FORM GST RFD-06 and
- o Issue a payment advice for the amount of refund 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 of refund [Rule 92(4)]

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.

[Notification No. 03/2019 CT dated 29.01.2019]

Where the proper officer is satisfied that the amount refundable under rule 92(1)/(2) is not payable to the applicant u/s 54(8)

he shall make an order in **FORM GST RFD-06** and issue an advice for the amount of refund to be credited to the Consumer Welfare Fund [Rule 92(5)]

#### **POINTS TO BE NOTED:**

- 1. The amount of refund shall be first adjusted against any outstanding due from the tax payer. In cases where the amount of refund is completely adjusted against any outstanding demand, an order giving details of the adjustment shall be issued.
- 2. Where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11), he shall pass an order informing the applicant the reasons for withholding of such refund [Rule 92(2)].

#### **GRANT OF PROVISIONAL REFUND [SECTION 54(6) READ WITH RULE 91]**

The proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons (other than such category of registered persons as may be notified by the Government on the recommendations of the Council)

refund on a provisional basis, 90% of the total amount so claimed, excluding the amount of ITC provisionally accepted.

in such manner and subject to such conditions, limitations and safeguards as may be prescribed\* and

thereafter make an order u/s 56(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

#### \*CONDITIONS, LIMITATIONS AND SAFEGUARDS -

- ♣ Where the amount of tax evaded does not exceeds Rs. 2.5 crores, the person claiming refund has, not been prosecuted during any period of 5 years immediately preceding the tax period to which the claim for refund relates.
- The proper officer, after scrutiny of the claim and the evidence and on being prima facie satisfied, 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.
- ♣ A proviso is inserted in this sub-rule that the order issued under this sub-rule shall not be required to be revalidated by the proper officer. Further, rule 91(3) stipulates that the proper officer shall issue a payment advice order 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.
- new proviso has been inserted in this sub-rule also that 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.

#### PRINCIPAL OF UNJUST ENRICHMENT [SECTION 54(8) & (9)

- ♣ Theory of unjust enrichment postulates that only the person who has NOT passed the incidence of tax will be eligible to claim the refund. Where the amount of tax has been recovered from the recipient, it shall be deemed that 'THE INCIDENCE OF TAX HAS BEEN PASSED ON TO THE ULTIMATE CONSUMER'. [Explanation (ii) to rule 89]
- ♣ Under unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every refund claim if sanctioned is first transferred to the Consumer Welfare Fund.
- → If the claim of refund (barring specified exceptions) passes the test of unjust enrichment, it is paid to the applicant. The GST law makes this test inapplicable in case of refund of unutilized ITC, refund on account of zero rated supplies, refund of payment of wrong tax (IGST instead of CGST + SGST and vice versa), refund of tax paid on a supply, which is not provided or when refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person [Discussed below in detail]. In all other cases, the test of unjust enrichment needs to be satisfied for the claim to be paid to the applicant.
- ♣ For crossing the bar of unjust enrichment, if the refund claim is upto Rs. 2 lakh, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim.
- For refund claims exceeding Rs. 2 lakh, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

The refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

One such situation was zero-rated supplies of goods or services. Zero-rated supply under section 16(1) of the IGST Act means physical exports of goods or services or supplies made to an SEZ unit/SEZ developer Earlier, principle of unjust enrichment did not apply in such cases.

Section 54(8)(a) has been amended to provide that the principle of unjust enrichment will now apply in case of refund claim arising out of supplies of goods or services made to SEZ developer/unit.

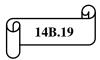
Consequently, refund of tax paid on only EXPORT of goods or services or both or on inputs or input services used in making such EXPORTS shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund

- (b) refund of unutilised input tax credit under section 54(3);
- (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;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Where the proper officer is satisfied that the amount refundable is not payable to the applicant under section 54(8), he shall make an order in Form GST RFD-06 and issue an advice for the amount of refund to be credited to the Consumer Welfare Fund [Rule 92(5)]

#### **ISSUE OF SCN AND REJECTION OF REFUND CLAIM [RULE 92(3)]**

Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant.



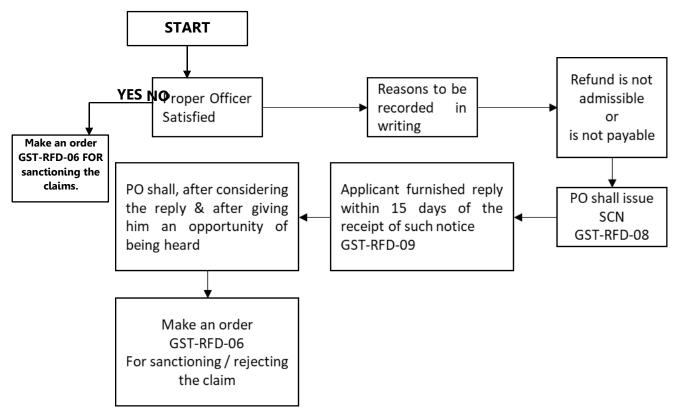
Applicant will be required to furnish a reply within 15 days of the receipt of such notice.

The proper officer shall, after considering the reply furnished by applicant and after giving him an opportunity of being heard, make an order in FORM GST RFD-06sanctioning the amount of refund in whole or part, or rejecting the said refund claim.

The said order shall be made available to the applicant electronically and the provisions of rule 92(1) relating to order sanctioning refund shall, mutatis mutandis, apply to the extent refund is allowed.

#### **POINTS TO BE NOTED:**

No application for refund shall be rejected without giving the applicant an opportunity of being heard [Rule 92(3)].



#### Facility of withdrawal of refund application by taxpayer introduced [Rule 90(5) and (6)]

Before Amendment	After Amendment
The taxpayers had no option to withdraw their refund applications, if they had committed any mistakes, while filing the application.	New Proviso- The applicant may, at any time before issuance of :-  • Provisional refund sanction order or  • Final refund sanction order or  • Payment order or  • Refund withhold order or  • Show-cause notice  in respect of any refund application filed, withdraw the said application for refund by filing an application in the prescribed form.  On submission of such withdrawal application, any amount debited by the applicant from electronic credit Ledger or electronic cash ledger, as the case may be while filing refund application, shall be credited back to the ledger from which such debit was made

#### WITHHOLDING OF REFUND CLAIM [SECTION 54(10), (11) & (12)]

Where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11), he passes an order informing the applicant the reasons for withholding of such refund [Rule 92(2)].

Where any refund is due in case of zero rated supplies or accumulated ITC on account of inverted duty structure, to a registered person who has defaulted and 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 [Section 54(10)].

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 [Section 54(11)].

Where a refund is withheld under section 54(11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to **interest @ 6% p.a.**, if as a result of the appeal or further proceedings he becomes entitled to refund [Section 54(12)].



# Order for release of withheld refund to be issued where refund no longer liable to be withheld. Order for complete adjustment of demand for refund not required to be issued [Rule 92(1) and (2)]

Before Amendment	After Amendment
. , , ,	Further, proviso to rule 92(1) has been inserted to provide that where the proper officer or the commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in prescribed form

#### **MINIMUM REFUND CLAIM [SECTION 54(14)]**

No refund shall be paid to an applicant, if the amount is less than Rs. 1,000.

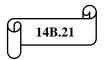
The limit of Rs. 1,000 shall apply for each tax head separately and not cumulatively. Further, the limit would not apply in cases of refund of excess balance in the electronic cash ledger.

#### CREDIT OF THE AMOUNT OF REJECTED REFUND CLAIM [RULE 93]

- ♣ Any deficiencies have been communicated under rule 90(3), the amount earlier debited under rule 89(3) shall be re-credited to the electronic credit ledger [Rule 93(1)].
- 4 Any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in prescribed form [Rule 93(2)]
- ♣ A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal

# REFUND OF INTEGRATED TAX PAID ON GOODS OR SERVICES EXPORTED OUT OF INDIA [RULE 96]

In case where the exporter of goods or services or both opts to pay IGST at the time of export and claim refund of the IGST thereof, provisions relating to refund of IGST are as follows:



#### EXPORT OF GOODS:

1) **REFUND APPLICATION:** Shipping bill filed by an exporter **of goods** deemed to be an application for refund of integrated tax paid on the goods exported out of India.

Further, such application shall be deemed to have been filed only when:

- (a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
- (b) the applicant has furnished a valid return in Form GSTR-3/Form GSTR-3B as the case maybe.

if person in charge of the conveyance carrying export of goods files a departure manifest\*; then also the application for refund of IGST paid on export of goods shall be deemed to have been filed.

#### **MEANING OF DEPARTURE MANIFEST:**

Governed by Sea Cargo Manifest and Transshipment Regulations 2018 which shall come into force on 01.08.2019

#### Note:

The applicant has undergone Aadhaar Authentic in the manner provided in Rule 10B

**REFUND OF IGST:** Upon the receipt of the information, the system designated by the Customs shall process the claim for refund in respect of export of goods.

An amount equal to the integrated tax paid in respect of each shipping bill/bill of export of goods shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

- 3) **REFUND OF IGST:** The claim for refund shall be withheld where:
- (a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of section 54(10)/(11); or
- (b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

In above case, the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

Upon transmission of said intimation, the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in prescribed form.

Where the applicant becomes entitled to refund of the amount withheld, the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order.

**4) REFUND TO THE GOVERNMENT OF BHUTAN ON THE EXPORTS TO BHUTAN:** The Central Government may pay refund of the IGST to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf. Where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax

#### **4** EXPORT OF SERVICES:

**REFUND APPLICATION:** The application for refund of IGST paid on the services exported out of India shall be filed in Form GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89.

#### **POINT TO BE NOTED:**

- 1. Person claiming refund of IGST paid on export of goods/ services should not have:
  - (i) received supplies on which the benefit of deemed exports under Notification No. 48/2017 CT dated 18.10.2017 has been availed or benefit of Notification Nos. 41/2017 IT(R) or 40/2017 CT(R) both dated 23.10.201711 has been availed, or
  - (ii) availed the benefit of Notification Nos. 78/201712 Cus. or 79/201713 Cus. both dated 13.10.2017.
  - 2. For the purpose of this provision the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs

Duty (BCD) under the said notifications.

In case of an applicant who becomes entitled to refund after being withheld, order for release of withheld refund to be passed before passing final refund sanction order [Rule 96(7)]

Before Amendment	After Amendment
Rule 96 of the CGST Rules the provisions	The concerned jurisdictional officer is required to
relating to refund of IGST paid on goods or	first pass an order for release of withheld refund
services exported out of India. In case where the	and then he will pass refund sanction order in
claim for refund was withheld for specified	case of the applicant who becomes entitled to
reasons and subsequently the applicant	refund withheld
becomes entitled to refund of the amount	
withheld the concerned jurisdictional officer	
shall proceed to refund the amount after	
passing refund sanction order	

# REFUND OF INTEGRATED TAX PAID ON EXPORT OF GOODS OR SERVICES UNDER BOND OR LETTER OF UNDERTAKING (LUT) [RULE 96A]

Any registered person availing the option to supply goods/services for export without payment of IGST shall furnish, prior to export, a bond/LUT in prescribed form to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under section 50(1) @ 18% p.a.\* within a period of:

- (a) 15 days after the expiry of 3 months or such further period as notified by Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India; or
- (b) 15 days after the expiry of one 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 [Rule 96A(1)].

#### **NOTE:**

The payment of such services can be received by the exporter in Indian rupees, wherever permitted by Reserve Bank of India

Any registered person availing the option to supply services for export without payment of integrated tax shal furnish, prior to export, a bond or LUT, binding himself to pay tax due along with interest within period of 15 days after expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of invoice for exports, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by Reserve Bank of India.

Where the goods are not exported within the time specified in rule 96A(1) and the registered person fails to pay the amount mentioned in said sub-rule, the export as allowed under bond/LUT shall be withdrawn forthwith and the said amount shall be recovered from the registered person.

# RULE 96B - RECOVERY OF REFUND OF UNUTILIZED INPUT TAX CREDIT OR INTEGRATED TAX PAID ON EXPORT OF GOODS WHERE EXPORT PROCEEDS NOT REALIZED

(1) Where any refund of unutilized input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realized. in full or in part. in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999). including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded. to the extent of non- realization of sale proceeds. Along with applicable interest within thirty days of the expiry of the said period or as the case may be. the extended period. failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act. as the case may be, as is applicable for recovery of erroneous refund. along with interest under section 50:

Provided that where sale proceeds, or any part thereof. in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act. 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits. the refund paid to the applicant shall not be recovered.

(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of Sale proceeds, the amount so recovered shall be refunded by the proper officer to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India."

#### New Rule 96B of the CGST Rules:

Recovery of Refund of Unutilised Input tax credit or IGST paid on Export of Goods, where Export proceeds not realised.



Value of Goods = Rs. 10,00,000, IGST @18%
(But exported under BOND/ LUT, without payment of IGST)

US

Suppose Refund of Unutilized ITC = Rs. 75,000

Step 1: Mr. Rahim Got refund of unutilized ITC = Rs. 75,000

Step 2: Sale proceeds of such exported goods have not been realized [Full or Partial] within time limit



permissible under FEMA Act, 1999 (Including any extension of such period).

**Step 3:** Mr. Rahim shall repay such refunded amount to the extent of non-realization with Interest @18% pa.

[Suppose realized amount is only Rs. 4,00,000 & Non-Realized amount is Rs. 6,00,000 (i.e. 60%)]

Mr. Rahim Shall repay Rs. 45,000 with interest @18%pa. to Govt.

**Step 4:** Repayment should be made within 30 days of expiry of permissible period. Otherwise proper officer will initiate action as per Sec 73/ 74 of CGST Act, 2017.

#### Points to be Noted:

If RBI writes off the requirement of sale proceeds on merits, the refund paid to the applicant, shall not be recovered.

Step 5: Realization of Sale proceeds, post repayment of Refunded Amount [Benefit of ZR's]

Within 3 Months from the date of realization, refund may be reclaimed by the applicant [Mr. Rahim]. If sale proceeds realized within such extended period as permitted by RBI.

#### ORDER SANCTIONING INTEREST ON DELAYED REFUNDS [RULE 94]

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in prescribed form.

Such order shall specify therein:

- o The amount of refund which is delayed,
- o The period of delay for which interest is payable; and
- The amount of interest payable.

Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

# REFUND TO UN BODIES, EMBASSIES, ETC. [SECTION 55 READ WITH SECTION 54(2) OF CGST ACT]

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.

However, the UN bodies and other entities notified under section 55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of 18 months\*\* from the last day of the quarter in which such supply was received. Detailed provisions have been discussed hereunder:

\*\* In exercise of power granted under section 148, period of '6 months' has been increased to '18 months'. Thus, refund claim under section 55 can be made before the expiry of 18 months from the last date of the quarter in which such supply was received.



#### A. WHO IS ENTITLED TO REFUND UNDER SECTION 55?

- **♣** Government may, on the recommendations of the Council, by notification, specify:
  - (i) any specialized agency of the United Nations Organization; or
  - (ii) any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947; or
  - (iii) Consulate or Embassy of foreign countries; and
  - (iv) any other person or class of persons as may be specified in this behalf.

who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.

- In exercise of above power, following persons have been notified, subject to fulfilment of specified conditions:
  - (i) United Nations or a specified international organization\*\*; and
  - (ii) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein
  - \*\*Specified international organisation means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply. Further, in exercise of said power, Canteen Stores Department (CSD), under the Ministry of Defence, has been notified as a person who shall be entitled to claim a refund of 50% of the applicable CGST/IGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD.

#### B. TIME LIMIT FOR FILING REFUND CLAIM [SECTION 54(2) READ WITH RULE 95(1)] -

Once in every quarter, but before the expiry of 6 months from the last day of the quarter in which such supply was received.

#### C. CONDITIONS TO BE SATISFIED FOR SANCTION OF REFUND [RULE 95(3) & (4)]

Refund of tax paid by the applicant shall be available if allsdf the following conditions are satisfied-

- (a) the inward supplies of goods or services or both were received from a registered person against a tax invoice
- (b) name and GSTIN or UIN of the applicant is mentioned in the tax invoice.
- (c) such other restrictions or conditions as may be specified in the notification are satisfied.

provided that where Unique Identification Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only in the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD - 10** 

#### D. FORM AND DOCUMENTS FOR FILING THE REFUND CLAIM [RULE 95(1)]

Persons eligible to claim refund under section 55 shall submit the application for refund:

in a different prescribed form, electronically or otherwise on the common portal, once in every quarter along with a Statement of the Inward Supplies of goods or services or both in Form GSTR-11 [discussed in detail in Returns Chapter].

#### E. ACKNOWLEDGMENT FOR REFUND CLAIM [RULE 95(2)]

An acknowledgement for receipt of the application for refund shall be issued in a prescribed form.

#### F. SUPREMACY PROVISION IN CASE OF INCONSISTENCY [RULE 95(5)]

Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of these rules, such treaty or international agreement shall prevail.

# Refund allowed to retail outlets established in the departure area of an international airport

Supply of goods by a retail outlet established in the departure area of an international airport, beyond the immigration counters, to an outgoing international tourist, is exempted from IGST.

These <u>retail outlets making tax free supply of indigenous goods to an outgoing international</u> tourist [also referred as eligible passenger] are entitled to claim refund of applicable CGST+SGST/UTGST or IGST paid on inward supply of such goods. Therefore, retail outle ts will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund.

The refund shall be subject to the following conditions, as specified in newly inserted **rule 95A of the CGST Rules:** 

Who is eligible for refund?

Retail outlet, registered under GST and holding a valid GSTIN, 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.

Application for refund

In prescribed form on a monthly/quarterly basis along with self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice.

Conditions for claiming refund

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

the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;

the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;

name and GSTIN of the retail outlet is mentioned in the tax invoice for the

inward supply; and such other restrictions or conditions, as may be specified, are satisfied.

#### **INTEREST ON DELAYED REFUNDS [SECTION 56 OF CGST ACT]**

## A. INTEREST ON AMOUNT REFUNDABLE CONSEQUENT TO ORDER PASSED BY PROPER OFFICER UNDER SECTION 54(5)

Where any tax ordered to be refunded under section 54(5) to any applicant is **not refunded within 60 days** from the date of receipt of application under section 54(1), interest shall be payable to the applicant.

Interest is payable on such refund @ 6% p.a.

Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application under the section 54(1) till the date of refund of such tax [Section 56 of CGST Act].

# B. INTEREST ON AMOUNT REFUNDABLE CONSEQUENT TO ORDER PASSED IN AN APPEAL OR FURTHER PROCEEDINGS

Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is **not refunded within 60 days from the date of receipt of application** filed consequent to such order, interest shall be payable on such refund.

Interest is payable on such refund @ 9% p.a.

Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. [Proviso to Section 56 of CGST Act]

#### **POINTS TO BE NOTED:**

For the purpose of this section, the order of refund made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under section 54(5), shall also be deemed to be an order passed under the said section 54(5) [Explanation to section 56].

#### C. ORDER SANCTIONING INTEREST ON DELAYED REFUNDS [RULE 94]

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice

Such order shall specify therein:

- 1. the **amount of refund** which is delayed,
- 2. the **period of delay** for which interest is payable and
- 3. the **amount of interes**t payable.

Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

# REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA [SECTION 15 OF IGST ACT]

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

The term "tourist" means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

#### SHORT NOTE ON CONSUMER WELFARE FUND

Consumer Welfare Fund was created to promote and protect the welfare of consumer, create consumer awareness and strengthen consumer movement in the country, particularly in rural areas. Amount of refund which is not payable to the applicant is credited to the Consumer Welfare Fund.

As already discussed in this chapter, amount of refund is paid to the applicant in case where there is no unjust enrichment; i.e. the incidence of tax has not been passed by the supplier to the recipient as also in the circumstances where the principle of unjust enrichment is not applicable [specified in section 54(8)]. Otherwise, the said amount is credited to the Consumer Welfare Fund.

#### 1) AMOUNT TO BE CREDITED TO CONSUMER WELFARE:

Section 57 of the CGST Act stipulates that the Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund:

a. Amount of refund determined by an order passed under section 54(5), b.

Any income from investment of the amount credited to the Fund; and c.

Such other monies received by it.

in such manner as may be prescribed. Such manner has been prescribed under rule 97 of the CGST Rules, 2017.

# 2) AMOUNTS TO BE CREDITED TO/PAID FROM CONSUMER WELFARE FUND [RULE 97 OF THE CGST RULES, 2017]

- a. All amounts of duty CGST/ SGST/ IGST/ UTGST/ cess and income from investment along with other monies specified in section 12C(2) of the erstwhile Central Excise Act, 1944, section 57 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017, section 21 of the UTGST Act, 2017 and section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund [discussed earlier in this chapter] [Rule 97(1)].
- b. An amount equivalent to 50% of the amount of IGST determined under section 54(5) of the CGST Act, read with section 20 of the IGST Act, shall be deposited in the Fund [Proviso to rule 97(1)]

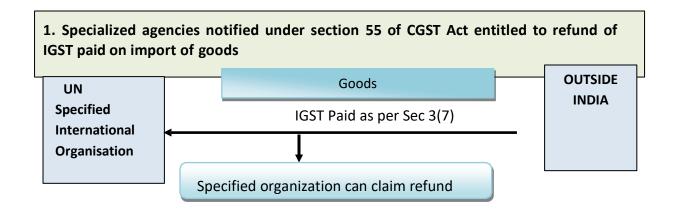
- c. An amount equivalent to 50% of the amount of compensation cess determined under section 54(5) of the CGST Act, read with section 11 of the GST (Compensation to States) Act, shall be deposited in the Fund. [Second Proviso to rule 97(1)]]
- **d.** Any amount, having been credited to the Consumer Welfare Fund, ordered or directed as payable to any claimant by orders of the proper officer, Appellate Authority or Appellate Tribunal or Court, shall be paid from the Fund [Rule 97(2)].

# 3) UTILIZATION OF CONSUMER WELFARE FUND [SECTION 58 OF THE CGST ACT, 2017 READ WITH RULE 97 OF THE CGST RULES, 2017]

Purpose of which Fund may be utilized

- 4 All sums credited to the Consumer Welfare Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed [Section 58(1) of the CGST Act].
- → The Government shall, by an order, constitute a Standing Committee who shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers [Rule 97(4)].

#### **SOME CLARIFICATIONS ISSUED BY ICAI FOR MAY/ NOV 2020**



2. Clarification on whether the refund claims can be preferred in respect of specified goods sent / taken out of India but not brought back

The activity of sending / taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent / taken out of India.

Further, the supply would be deemed to have taken place:

- (i) on the date of expiry of 6 months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or
- (ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of 6 months.



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) of 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 on the dates. It is further clarified that refund claim cannot be preferred under rule 96 of CGST Rules as supply is taking place at a time after the goods have already been sent/taken out of India earlier.

#### The above position has been explained by way of illustration below

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 subsection (3) of section 54 of the CGST Act read with sub-rule (4) of rule 89 of the CGST Rules in respect of zero-rated supply of 60 units.

#### **SOME EXAM ORIENTED MCQ's**

- 1. A registered person can claim refund any unutilised input tax credit on zero rated supplies without payment of tax or the credit accumulated on account of inverted tax rate structure:
  - (a) at the end of the tax period, but before the expiry of 2 years from the relevant date.
  - (b) before the expiry of the tax period.
  - (c) before the expiry of 3 years from the relevant date.
  - (d) before the expiry of 18 months from the relevant date.
- 2. M/s. Sunlight Associates is a management consultancy firm located in Delhi and has certain foreign clients to whom the firm provides business support services. In regard to one of the foreign client, certain services were rendered in the month of January, 2018 and the invoice was duly raised. The firm undertakes such export of services against Letter of Undertaking, i.e. without payment of integrated tax. However, it is likely that the payment against such invoice would not be received till March, 2019.
  - Is M/s. Sunlight Associates, required to pay integrated tax on such transaction if the payment is not received till March, 2019? In case integrated tax is payable, is M/s. Sunlight Associates, entitled to claim refund on this account? State which of the following option is correct-
  - (a) Integrated tax is payable by M/s. Sunlight Associates, but refund of payment of such tax is not allowed
  - (b) Integrated tax is payable by the foreign client and M/s. Sunlight Associates can claim ITC of such payment made
  - (c) Integrated tax is payable by M/s. Sunlight Associates, and refund of payment of such tax is allowed

- (d) Integrated tax is not payable and refund of accumulated ITC is allowed
- 3. M/s. Global Exports (P) Ltd. made following supplies as under:
  - (i) Exports of taxable goods made on 01-Jun-2018 with payment of tax. GST returns were duly filed in time. However, GST RFD-01 has not been filed.
  - (ii) Exports of exempted goods were made on 15-Jul-2018 under letter of undertaking. However, input tax credit in respect of manufacturing of such goods is Rs. 50,000/-. Refund application GST RFD-01 is filed on 30-Apr-2019 i.e. after end of financial year 2018-19.
  - (iii) Goods supplied to export oriented unit on 29-Jul-2018 and return for the month of July, 2018 was filed on 20-Aug-2018. Input tax credit in respect of such supply is Rs. 26,000/- and an undertaking was received from the recipient that it will not claim input tax credit and supplier may seek refund. GST RFD-01 is filed on 01-Dec-2020.
  - (iv) Supply of services outside India were made on 11-Aug-2018 and payment was received on 10- Oct-2018. Input tax credit in respect of such supply is Rs. 48,000/-. GST RFD-01 is filed on 30- Sep-2020.

Note: Payment is received in US Dollars (\$) for all transactions except transaction (i).

Determine in which of above mentioned transactions, refund is available to M/s. Global Exports (P) Ltd.?

- (a) (ii), (iii) and (iv)
- (b) (i), (ii) and (iv)
- (c) (iii) and (iv)
- (d) (i) and (ii)
- 4. M/s. Raman Plastics is a manufacturer of plastic toys. It is registered person under GST in Shimla, Himachal Pradesh.

It procures its raw materials from Punjab. During the month of April-2018, it purchased material of Rs. 35.00 Lakh and paid IGST thereon amounting to Rs. 6.30 Lakh. It supplied 30% of its production in the State of Jammu and Kashmir, whereas the 70% of its production was supplied taxable @ 0.1% to a merchant exporter during the month of Apr-2018.

The returns for the month of April, 2018 were duly filed in time. The last date upto which the taxpayer can claim refund of input tax credit on account of inverted duty structure is

- a) 20-Apr-2020
- b) 31-Mar-2021
- c) 20-Apr-2021
- d) 20-Apr-2019
- 5. In which of the following cases, the refund under section 27 of the Customs Act, 1962 is credited to the consumer welfare fund?
  - (a) If the importer proves that there is no unjust enrichment;
  - (b) Where goods are imported for non-personal use of an individual;
  - (c) If the amount of refund relates to drawback under sections 74 and 75 of the Customs Act, 1962
  - (d) If the amount relates to export duty paid on goods which have been returned to exporter as specified under section 26 of the Customs Act, 1962.
- 6. Mr. Prabhu Deva, registered under GST in Mumbai, is in the business of trading of marble handicraft items domestically as also exporting the same. His annual turnover and input tax



#### details are as follows:

**Turnover Input Tax Tax Paid on** 

Taxable Goods 1,25,00,000 12,50,000

**Exported Goods 75,00,000 5,50,000** 

Exempt Goods 50,00,000 5,00,000

Mr. Prabhu Deva exported the goods under LUT without payment of IGST.

Now, Mr. Prabhu Deva seeks your help in calculating the amount of refund of ITC, which he is eligible to claim.

- (a) 18,00,000/-
- (b) 6,75,000/-
- (c) 5,40,000/-
- (d) 6,90,000/
- 7. A registered person can claim refund of unutilised input tax credit on zero rated supplies without payment of tax or the credit accumulated on account of inverted tax rate structure:
  - (a) at the end of the tax period, but before the expiry of 2 years from the relevant date.
  - (b) before the expiry of the tax period.
  - (c) before the expiry of 3 years from the relevant date.
  - (d) before the expiry of 18 months from the relevant date.

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**Job Work** 



**CHAPTER OUTLINES** 

- [Sec. 143] Job Work Procedure.
- [Sec. 19] Taking Input Tax Credit in respect of Inputs and Capital Goods sent for Job Works.



#### **INTRODUCTION**

Job-work sector constitutes a significant industry in Indian economy. It includes outsourced activities that may or may not culminate into manufacture. The term job-work itself explains the meaning. It is processing of goods – inputs/semi finished goods - supplied by the principal, for further processing.

Many facilities, procedural concessions have been given to the job workers as well as the principal supplier who sends goods for jobwork. The whole idea is to make the principal responsible for meeting compliances on behalf of the job-worker on the goods processed by him (job worker), considering the fact that typically the job-workers are small persons who are unable to comply with the discrete provisions of the law.

The GST law makes special provisions with regard to removal of goods for job-work and receiving back the goods after processing from the job-worker without the payment of GST. The benefit of these provisions shall be available both to the principal and the job worker.

Section 2(68) of the CGST Act, 2017 defines job work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. E.g. Painting, packing, fitting, etc. The one who does the said job would be termed as 'job worker'. The job worker is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. The ownership of the goods does not transfer to the job worker, but it rests with the principal.

There may arise a doubt as to whether any inputs, other than the goods provided by the principal, can be used by the job worker for providing the services of job work. In this regard, it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

#### **SUPPLY OF JOB WORK SERVICES**

The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services as determined in terms of section 13 read with section 31 of the CGST Act.

The value of services would be determined in terms of section 15 of the CGST Act and would include not only the service charges, but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal.

The question may arise whether value of moulds and dies, jigs and fixtures or tools which have been provided by the principal to the job worker and have been used by the latter for providing job work services would be included in the value of job work services?

Section 15(2)(b) of the CGST Act [Discussed in detail in Chapter 7 – Value of Supply] stipulates that any amount that the supplier is liable to pay in relation to the supply but which has been incurred by the recipient will form part of the valuation for that particular supply, provided it has not been included in the price for such supply.

Accordingly, it is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker. It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the CGST Act. However, the said provisions have been deferred till 30.09.2019.

Provisions relating to job work are, inter alia, covered in sections 19 and 143 of the CGST Act. State GST laws also prescribe identical provisions in relation to job work. 2 Circular No. 38/12/2018 GST dated 26.03.2018

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

#### **RELEVANT DEFINITIONS**

**1. Taxable supply u/s 2(108):** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].

- 2. Place of business u/s 2(85): includes
  - a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
  - a place where a taxable person maintains his books of account; or
  - a place where a taxable person is engaged in business through an agent, by whatever name called
- **3.** Capital goods u/s 2(19): means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business [Section 2(19)].
- **4. Input u/s 2(59):** means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business.
- **5. Registered person u/s 2(94):** means a person who is registered under section 25 but does not include a person having a Unique Identity Number

#### **JOB WORK PROCEDURE [SECTION 143]**

The provisions related to job work are encapsulated under section 143 of the CGST Act, 2017. It is important to note that the provisions of said section are applicable to a registered person. Thus, it is only a registered person who can send the goods for job work under the said provisions.

It may also be noted that the registered person (principal) is not obligated to follow the said provisions. It is his choice whether or not to avail or not to avail of the benefit of these special provisions. The provisions of section 143 have been discussed as follows:

#### PRINCIPAL CAN SEND GOODS TO JOB WORKER WITHOUT PAYMENT OF TAX

- A registered person (Principal) can **send inputs/ capital goods under intimation** and subject to certain conditions **without payment of tax to a job-worker** and from there **to another job-worker** and after completion of job-work bring back such goods without payment of tax. The principal is not required to reverse the ITC availed on inputs or capital goods dispatched to job-worker.
- ♣ Principal can also send inputs/capital goods directly to the job-worker without bringing them to his premises and can still avail the credit of tax paid on such inputs or capital goods.
- However, inputs and/or capital goods [other than moulds and dies, jigs and fixtures, or tools] sent to a jobworker are required to be <u>returned to the principal within 1 year and 3 years</u> respectively, from the date of sending such goods to the job-worker. The provision of return of goods is <u>not applicable in case of moulds and dies, jigs and fixtures or tools</u> supplied by the principal to job worker.
  - The period of 1 year and 3 years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding 1 year and 2 years respectively.
  - This amendment would cover situations where the period of 1 year specified is not adequate in respect of job works such as hull construction/fabrication of vessels (for defence purposes), since these processes complete in a period of around 14 to 16 months.
- After processing of goods, the job-worker may clear the goods to
  - o another job-worker for further processing, or
  - o dispatch the goods to any of the place of business of the principal without payment of tax.

#### SUPPLY OF GOOD S DIRECT LY FROM JOB WORKER'S PLACE OF BUSINESS/PREMISES

- → After processing of goods, the principal also has the option to clear the goods, directly from job-worker's premises, on payment of tax within India or without payment of tax for export outside India on fulfilment of conditions.
- The facility of supply of goods by principal to third party directly from the premises of the job- worker, on payment of tax in India likewise with or without payment of tax for export, may be availed by principal on **declaring** premise of the job-worker as his <u>additional place of business</u> in registration. However, such declaration is not required by principal where:
  - o job worker is registered under section 25; or
  - o principal is engaged in supply of notified goods.
- In such cases, the supply of goods will be regarded as supply by the principal and not by the job worker. Resultantly, it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal. It is also clarified that in case of exports directly from the job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal. These principles would apply mutatis mutandis in case of supply of waste and scrap generated during job work.

#### **EXAMPLE**

The principal is located in State A, the job worker in State B and the recipient in State C. In case the supply is made from the job worker's place of business / premises, the invoice will be issued by the supplier (principal) located in State A to the recipient located in State C. The said transaction will be an inter-State supply. In case the recipient is also located in State A, it will be an intra-State supply

#### PROCEDURE FOR SENDING GOODS TO JOB WORKER

- Before supply of goods to the job-worker, the principal would be required to intimate the Jurisdictional Officer containing the details of the description of inputs intended to be sent by the principal and the nature of processing to be carried out by the job-worker. The said intimation shall also contain the details of the other job- workers, if any.
- The inputs or capital goods shall be sent to the job worker under the cover of a challan issued by the principal. The challan shall be issued even for the inputs or capital goods sent directly to the job worker. The challan shall contain the specified details.

#### RESPONSIBILITY FOR KEEPING ACCOUNTS FOR INPUTS/CAPITAL GOODS

The responsibility for keeping proper accounts for the inputs or capital goods lies with the principal.

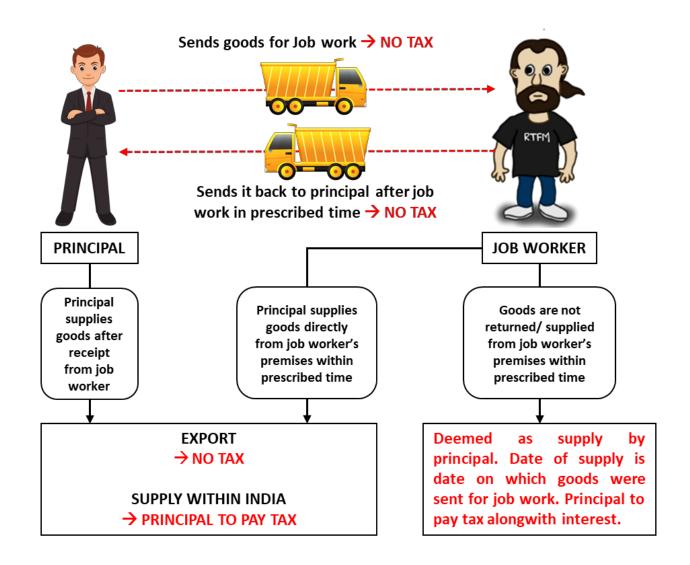
#### GOODS NOT RECEIVED WITHIN THE STIPULATED TIME DEEMED AS SUPPLY

- In case the inputs/capital goods are not received back or not supplied from the job worker's premises, within specified time limit [1 year/3 years], it shall be deemed to be a supply from Principal to the Job worker from the day when it was sent for job work. Accordingly, the principal would be liable to tax along with interest.
- Thus, goods sent for job work acquire the character of supply when the inputs/capital goods sent for job work are neither received back by the principal nor supplied further by the principal from the place of business/premises of the job worker within 1 year/3 years of being sent out. It may be noted that the responsibility for sending the goods for job work as well as bringing them back or supplying them has been cast on the principal.
- In such cases where the inputs or capital goods (other than moulds and dies, jigs and fixtures or tools) are neither returned nor supplied from the job worker's place of business/ premises within the specified time period, the principal would issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of 1 year/3 years has expired. The date of supply shall be the

date on which such inputs or capital goods were initially sent to the job worker and interest for the intervening period shall also be payable on the tax.

- If such goods are returned by the job worker after the stipulated time period, the same would be treated as a supply by the job worker to the principal and the job worker would be liable to pay GST if he is liable for registration in accordance with the provisions contained in the CGST Act read with the rules made thereunder.
- It may be noted that if the job worker is not registered, GST would be payable by the principal on reverse charge basis in terms of the provisions contained in section 9(4) of the CGST Act. However, the said provisions have been deferred till 30.09.2019.
- Further, it may be reiterated that there is no requirement of either returning back or supplying the goods from the job worker's place of business/premises as far as moulds and dies, jigs and fixtures, or tools are concerned.

The above provisions have been summarized in the diagram below:



# TAKING INPUT TAX CREDIT IN RESPECT OF INPUTS AND CAPITAL GOODS SENT FOR JOB WORK [SECTION 19]

#### **SECTION 19(1): ITC TO BE ALLOWED TO PRINCIPAL**

The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

# SECTION 19(2): PRINCIPAL TO GET CREDIT EVEN IF INPUTS SENT DIRECTLY TO JOB WORKER

Notwithstanding anything contained in section 19(2)(b) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

Analysis: It means Section 19(2) overwrites Section 16(2)(b). Under Sec 16(2)(b), goods have to be received by the purchaser. However, in case of job-work, credit will be allowed even if the job-worker receives the goods on behalf of principal. Such goods can be received directly by the job-worker and need not be first sent to the place of business of the principal.

#### **EXAMPLE**

What would your answer be in above case if inputs are sent directly to premises of registered Job Worker without being first taken to stock by Champion manufacturer. The goods were cleared from the supplier on 26/07/2017 but received by Job worker on 26/09/2017. The job worker carried out the job work of matching and supplied the goods after machining to XYZ Traders on 25/09/2018 on payment of tax on directors of Champion manufacturers. Discuss ITC implications.

#### **Solution:**

As per Section 19(2), 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. Hence, Champion Manufacturers is eligible to claim Input tax credit of Rs. 1,32,000 on receipt of inputs by the Job worker from the supplier. As per Section 143(1)(b), the Job worker can clear the goods after completion of processing with payment of tax in India or without payment of tax for export outside India provided the principal has declared job worker's premises as an additional place of business in registration or job worker is registered under Section 25 of this Act. Such supply is to be made within 1 year from date of receipt of goods by job worker. In the above case, since the supply of goods are made to XYZ Traders on 25/09/2018 which is within 1 year from the date of receipt of goods by Job worker, no reversal of input tax credit is required.

#### **SECTION 19(3): DEEMED SUPPLY OF GOODS**

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 19(1)(a) or section 19(1) (b) within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

<u>Analysis:</u> The inputs sent by the principal to the job-worker shall be returned by the job-worker to the principal within 1 year from the date when it was sent out. If such inputs are not received back, it shall be a treated as a supply from the principal to the job-worker and tax will be payable on such supplies. Along with the tax, interest will be payable from the date when it was sent till the date of payment. In case of capital goods, the duration is 3 years instead of 1 year. If the goods are sent directly to job-worker, the period of 1 year shall be counted from date of receipt of inputs by the job-worker.

#### **EXAMPLE**

Champion Manufacturers received some inputs on 21/07/2017 and immediately availed input tax credit of the CGST and SGST of Rs. 1,32,000 paid on those inputs. On 26/07/2017 it sent the inputs to a job worker outside its factory for carrying out machining on the inputs and same were received by the Job worker on 28/07/2017. The job worker returned the inputs on 07/07/2018 after carrying out the machining work on the inputs. Discuss whether Champion Manufacturers is required to take any further action with respect to the Input tax credit availed by it. What would your answer be if such inputs were received back from Job Worker on 07/10/2018.

#### **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 and manufacturer shall pay an amount equivalent to the input tax credit attributable to the inputs by debiting the Electronic credit ledger. Manufacturer is eligible to take the credit again when the inputs are received back in his factory. In this given case, the goods sent on 26/07/2017 should have been received back latest by 25/07/2018. Here, since the inputs have been received back from the job worker within 1 year, Champion Manufacturers is not required pay any amount.

However, if the inputs were received back by Champion Manufacturers on 07/10/2018, than Champion Manufactures would be required to pay the amount by debiting the Electronic Credit Ledger. However, Champion Manufactures can take the credit again when the processed inputs are received back in its factory i.e. on 07/10/2018

# SECTION 19(4): PRINCIPAL TO GET CREDIT EVEN IF CAPITAL GOODS ARE SUPPLIED TO THE JOB WORKER

The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

# SECTION 19(5): PRINCIPAL TO GET CREDIT EVEN IF CAPITAL GOODS ARE DIRECTLY SUPPLIED TO JOB WORKER

Notwithstanding anything contained in section 16(2)(b), the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

**Analysis:** This sub-section over rides Section 16(2)(b), it says that principal will be eligible claim credit even if the goods are not received by him in his place of business.

#### **EXAMPLE**

XYZ Manufactures, a registered person, instructs his supplier to send the machinery directly to RP Ltd., a job worker outside the factory premises for carrying out certain operations on his goods. The goods were sent by the supplier on 15/12/2017 and were received by RP Ltd. on 20/12/2017. The job worker, RP Ltd., carried out the job work but did return the capital goods to XYZ Manufacturers. Discuss whether XYZ manufacturers are eligible to retain the input tax credit availed by them on the capital goods. What action under the GST Act is required to be taken by XYZ manufacturers. What would your answer be 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.

#### **SOLUTION:**

As per Section 19(5) of the CGST Act, 2017, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work. If such capital goods are not received back by the principal within a period of 3 years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out and in case of direct dispatch to the job worker, the period of 3 years shall be counted from the date of receipt of capital goods by the job worker.

Applying the above provisions, in the instant case, XYZ Manufacturers can take input tax credit on such capital goods even if they are sent directly to RP Ltd.'s (job worker's) premises. Here, the 3 years period shall be counted from the date of receipt of the capital goods by the job worker i.e. 20/12/2017 and hence the capital goods should be returned before 20/12/2020, otherwise it shall be treated as deemed supply of the capital goods by the principal to the job worker as on 20/12/2017. Thus, in case the capital goods are not returned within the above mentioned time by the job worker, XYZ Manufacturers will have to pay tax along with interest on such deemed supply of capital goods to RP Ltd.

In case of supply of moulds, dies, jigs, fixtures or tools to Job worker in place of capital goods: As per Section 19(7), the time limit as given above [as given in Section 19(3)] shall not apply in case of moulds, dies, jigs and fixtures or tools sent to the job worker. Therefore, in this case, XYZ Manufacturers is not required to pay tax even if RP Ltd. has not returned the moulds and dies, jigs and fixtures, or tools

#### SECTION 19(6): DEEMED SUPPLY OF CAPITAL GOODS

Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

<u>Analysis:</u> This sub-section deals with the scenario wherein the capital goods are not received back. In case, the capital goods are not received back, it shall be deemed that the capital goods is supplied by the principal to the job worker on the day when the goods were sent out.

#### **SECTION 19(7): NO TIME LIMIT FOR MOULDS, DIES, JIGS, FIXTURES, TOOLS**

Nothing contained in section 19(3) or section 19(6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation: For the purpose of this section, "principal" means the person referred to in section 143.

# RULE 45: CONDITIONS AND RESTRICTIONS IN RESPECT OF INPUTS AND CAPITAL GOODS SENT TOTHE JOB WORKER

1. The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker:

Provided that the challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

Provided further that the challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.

- 2. The challan issued by the principal to the job worker shall contain the details specified in rule 55.
- 3. The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter or within such further period as may be extended by the Commissioner by a notification in this behalf:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

**4.** Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143,it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.

**Explanation:** For the purposes of this Chapter:

- (1) the expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17:
- (2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-
  - (a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
  - (b) the value of security shall be taken as one per cent. of the sale value of such security.

#### **ANALYSIS**

Section 19 deals with ITC on inputs and capital goods sent for job work

#### CREDIT ON GOODS SENT FOR JOB WORK [SEC 19(1), (2), (4) AND (5)]

- 4 A principal is entitled to take the credit of input tax paid on inputs and/or capital goods sent to the job-worker for the job work.
- The principal can also take ITC even when the inputs and/or capital goods have been directly sent to the job worker without being brought into his premises. The principal need not wait till the inputs and/or capital goods are first brought to his place of business [See definition of place of business].

Job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered

# TIME LIMITS FOR THE RETURN OF GOODS SENT FOR JOB-WORK OR SUPPLY FROM JOB WORKER'S PLACE OF BUSINESS [SEC 19(3), (6) AND (7) READ WITH RULE 45 OF CGST RULES]

- Inputs and capital goods sent for job work should either be returned to the principal or must be supplied from the job worker's premises within 1 year and 3 years respectively **from sending them to the job worker\*.** 
  - \*Where inputs/capital goods are sent directly to a job worker, said period shall be computed from the date of receipt of inputs/ capital goods by the job worker.
- As discussed earlier, if the above time-lines are not met, it is deemed that the inputs and capital goods were supplied by the principal to the job worker (in other words, tax will be payable on them) on the day they were sent out to the job worker.

The said supply is required to be declared in GSTR-1 [Details of Outward Supplies] and the principal is liable to pay tax along with applicable interest.

In such a case, return of the inputs and capital goods by the job worker, after the stipulated time, will be treated as a separate supply.

#### **SUMMARY**

Principal can take credit on goods (inputs and capital goods) sent for job work.

Credit can be taken even if the said goods are sent directly to job worker without being first brought to the principal's place of business

#### TIME LIMIT FOR RETURN OF GOODS SENT FOR JOB WORK/SUPPLY FROM JOB WORKER'S PLACE OF BUSINESS

Inputs - 1 year (Extendable by another one year)
Capital goods - 3 years (Extendable by another two years)

from the date of sending the same for job work or from the date of receipt of the same by the job worker.

- ♣ On failing to comply with the timelines, the goods will be deemed to have been supplied to the job worker on the day they were sent out.
- Principal is liable to pay tax along with applicable interest on such supply.
- ♣ Subsequent return of the goods by the job worker will be treated as a separate supply

Time-lines do not apply to moulds and dies, jigs and fixtures or tools sent out for job work.

#### **EXAMPLE**

A supplier of notebooks for schools sends the paper of required dimensions and GSM to a job worker for making the notebooks as per the design given by him.

However, the Government changes the specifications of notebooks for supply to its schools. The supplier sends a fresh stock of paper with fresh instructions to the job worker and instructs him to hold the earlier consignment in stock till a buyer is found. The new notebooks are easily sold, but the paper and semi-finished notebooks of the old design lie in the godown of the job worker for over a year. Here, sending of paper by the notebook supplier to the job worker in the first lot will be deemed as a supply and thus, tax would be payable on the same.

#### PROCEDURE FOR SENDING GOODS FOR JOB WORK [RULE 45 OF CGST RULES]

The procedure for sending the goods for job work, in accordance with rule 45 read with Circular No. 38/12/2018 dated 26.03.2018, has been discussed below:

#### a) WHERE GOODS ARE SENT BY PRINCIPAL TO ONLY ONE JOB WORKER:

The inputs and/or capital goods are required **to be sent to the job worker under the cover of a challan issued by the principal**. Such challan should contain the details specified in rule 55 namely, date & number of delivery challan, name, address & GSTIN of consignor & consignee, HSN code & description of goods, quantity, taxable value, tax rate and tax amount, place of supply and signature. [Refer Tax Invoice, Credit and Debit Notes Chapter for detailed discussion on rule 55].

The principal shall prepare in **triplicate**, **the challan in terms of rules 45 and 55**, for sending the goods to a job worker. Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal. **The Form GST ITC-04 will serve as the intimation as envisaged under section 143.** 

#### b) WHERE GOODS ARE SENT FROM ONE JOB WORKER TO ANOTHER JOB WORKER:

In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker. Alternatively, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent. The same process may be repeated for subsequent movement of the goods to other job workers, indicating therein the quantity and description of goods.

#### c) WHERE THE GOODS ARE RETURNED TO THE PRINCIPAL BY THE JOB WORKER:

The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work.

#### d) WHERE THE GOODS ARE SENT DIRECTLY BY THE SUPPLIER TO THE JOB WORKER:

In this case, the goods may move from the place of business of the supplier to the place of business/premises of the job worker with a copy of the invoice issued by the supplier in the name of the buyer (i.e., the principal) wherein the job worker's name and address should also be mentioned as the consignee in such invoice.

Further, the buyer (i.e., the principal) shall issue the challan [required to be issued under rule 45] and send the same to the job worker directly [as discussed in para (i) above].

In case of import of goods by the principal which are then supplied directly from the customs station of import, the goods may move from the customs station of import to the place of business/premises of the job worker with a copy of the Bill of Entry and the principal shall issue the challan under rule 45 and send the same to the job worker directly.

#### e) WHERE GOODS ARE RETURNED IN PIECEMEAL BY THE JOB WORKER:

In case the goods after carrying out the job work, are sent in piecemeal quantities by a job worker to another job worker or to the principal, the challan issued originally by the principal cannot be endorsed and **a fresh challan** is required to be issued by the job worker.

#### f) **SUBMISSION OF INTIMATION:**

It is clarified that it is the responsibility of the principal to include the details of all the challans relating to goods sent by him to one or more job worker or from one job worker to another and its return therefrom **during a quarter in Form GST ITC-04 by the 25th day of the month succeeding the relevant quarter**. This period can be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST. The Form GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act.

#### g) REQUIREMENT TO GENERATE E-WAY BILL:

In case of job work, e-way bill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/ Union territory.

Further, the e-way bill shall be generated by the principal, wherever required, in case the job worker is unregistered

#### **REGISTRATION REQUIREMENTS**

### REGISTRATION REQUIREMENTS WHEN BOTH THE PRINCIPAL AND THE JOB WORKER ARE LOCATED IN THE SAME STATE

The job worker is required to obtain registration only if his aggregate turnover, to be computed on all India basis, in a financial year exceeds the specified threshold limit (i.e., **Rs. 20 lakh or Rs. 10 lakh** in case of special category States except Jammu & Kashmir) in case both the principal and the job worker are located in the same State [Section 22(1) of the CGST Act, 2017].

### REGISTRATION REQUIREMENTS WHEN THE JOB WORKER IS LOCATED IN A STATE DIFFERENT FROM THAT OF THE PRINCIPAL

Where the principal and the job worker are located in different States, the requirement for registration flows from section 24(i) of the CGST Act, which provides for compulsory registration of suppliers making any inter-State supplies. However, exemption from registration has been granted in case the aggregate turnover of the inter-State supply of taxable services does not exceed Rs. 20 lakh or Rs. 10 lakh in case of Special Category States except Jammu & Kashmir in a financial year vide Notification No. 10/2017 IT dated 13.10.2017.

Therefore, it is clarified that a job worker, being a supplier of service, is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the

threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

# VALUE OF GOODS, AFTER COMPLETION OF JOB WORK, SUPPLIED DIRECTLY FROM THE PREMISES OF THE REGISTERED JOB WORKER NOT TO BE INCLUDED IN ITS AGGREGATE TURNOVER

As discussed earlier in this chapter, principal can supply the goods directly from the premises of the job worker without bringing it back to his own premises. It is clarified that the supply of goods by the principal from the place of business/premises of the job worker will be **regarded as supply by the principal and not by the job worker**.

Therefore, the value of such goods supplied will be included in the aggregate turnover of the principal and not job worker [Explanation (ii) to section 22 of CGST Act, 2017].

#### **CHECK YOUR KNOWLEDGE**

1. M/s. Korelal Printon (P) Ltd., a registered person under GST in the State of Jammu & Kashmir, has been engaged in the business of offset printing and has been providing services to various book publishers. A publisher situated in the State of Himachal Pradesh, a registered person under GST sent content of the books to be printed by M/s. Korelal Printon (P) Ltd., in PDF format. The publisher also sent paper worth Rs. 4.00 Lakh to the printer, free of cost for the purposes of printing its books on 10-Nov-2018. M/s. Korelal Printon (P) Ltd., raised an invoice of Rs. 1.50 Lakh against printing of books and returned the printed books through Challan to the publisher on 20-Feb-2019.

The Proper Officer, intercepted the vehicle and claimed that M/s. Korelal Printon (P) Ltd., should have sent the invoice of Rs. 5.50 Lakh, i.e. including the value of free of cost paper supplied by the publisher.

You may suitably advice which one of the following is the correct option

- a) The value of supply of paper for job work is to be included in the invoice in terms of section 15 of the CGST Act.
- b) The goods sent for job work, i.e. paper sent for printing is a composite supply
- c) M/s. Korelal Printon (P) Ltd., has entered into an agreement of printing books. Therefore, he is liable to pay tax on the gross value of Rs. 5.50 Lakh.
- d) M/s. Korelal Printon (P) Ltd., has entered into an agreement of printing books. Therefore, he is liable to pay tax on the net value of Rs. 1.50 Lakh.

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### **Electronic Commerce**



# E-COMMERCE

**CHAPTER OUTLINES** 

- Relevant Definitions.
- [Sec. 52] Collection of Tax at Source.



Notification No. (hereinafter referred as NN) 51 & 52 in place of the same.

NN 51 dated 13<sup>th</sup> September 2018 – The provisions of section 52 shall come into force from 1<sup>st</sup> October 2018.

#### **RELEVANT DEFINITIONS**

- **1. Section 2(44):** "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;
- **2. Section 2(45):** "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
- **3. Section 2(107):** "Taxable person": means a person who is registered or liable to be registered under section 22 or section 24.
  - It means any treatment or process on goods which are owned by another person, i.e. some work or process undertaken on material/goods as provided by another person. The ownership of the goods does not transfer to the job-worker but it rests with the principal. The job- worker is required to carry out the process specified by the principal on the goods. Person carrying a job work activity is termed as a Job worker. Example: Painting, packing, fitting, etc.
- **4. Section 2(108):** "Taxable supply": means a supply of goods and/or services which is chargeable to tax under CGST Act.

#### **COLLECTION OF TAX AT SOURCE [SECTION 52]**

#### SECTION 52(1): OPERATOR TO COLLECT TAX ON SUPPLIES MADE THROUGH IT

Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding 1% (2% in case of IGST), as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation: For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under 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.

#### NN 52 dated 20<sup>th</sup> September 2018

The Central Government, on the recommendations of the Council, hereby notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated as a rate of 0.5% (half percent) 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.

The same supplies if made as inter-state supplies will attract TCS Rate of 1% vide Notification No. 2/2018 dated 20th September 2018.

#### SECTION 52(2): OTHER MODES OF RECOVERY NOT TO BE AFFECTED

The power to collect the amount specified in section 52(1) shall be without prejudice to any other mode of recovery from the operator.

#### **SECTION 52(3): TIME LIMIT TO DEPOSIT TAX**

The amount collected under section 52(1) shall be paid to the Government by the operator within 10 days after the end of the month in which such collection is made, in such manner as may be prescribed.

#### **SECTION 52(4): TIME LIMIT TO FURNISH STATEMENT**

Every operator who collects the amount specified in section 52(1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under section 52(1) during a month, in such form and manner as may be prescribed, within 10 days after the end of such month.

#### **SECTION 52(5): LAST DATE TO SUBMIT ANNUAL STATEMENT**

Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the 31st day of December following the end of such financial year.

#### **SECTION 52(6): RECTIFICATION OF MISTAKE**

If any operator after furnishing a statement under section 52(4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in section 50(1).

Provided that 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.

#### SECTION 52(7): CREDIT OF TAX IN ELECTRONIC CASH LEDGER

The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under section 52(4), in such manner as may be prescribed.

#### **SECTION 52(8): MATCHING OF DETAILS**

The details of supplies furnished by every operator under section 52(4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

#### **SECTION 52(9): COMMUNICATION OF DISCREPANCY**

Where the details of outward supplies furnished by the operator under section 52(4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

#### **SECTION 52(10): TREATMENT OF DISCREPANCY**

The amount in respect of which any discrepancy is communicated under section 52(9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

#### **SECTION 52(11): INTEREST ON INCREASE LIABILITY**

The concerned supplier, in whose output tax liability any amount has been added under section 52(10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under section 50(1) on the amount so added from the date such tax was due till the date of its payment.

#### SECTION 52(12): ISSUANCE OF NOTICE TO FURNISH DETAILS OF SUPPLY AND STOCK

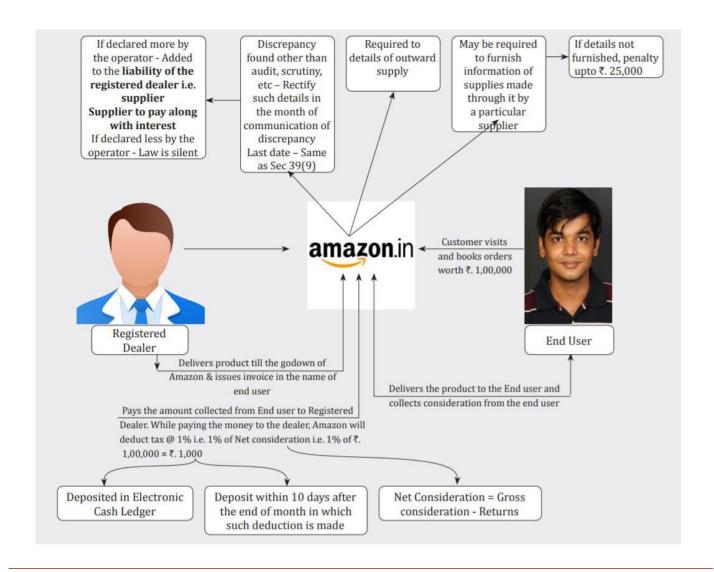
Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to— (a) supplies of goods or services or both effected through such operator during any period; or (a) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

#### **SECTION 52(13): TIME LIMIT TO FURNISH INFORMATION**

Every operator on whom a notice has been served under 52(12) shall furnish the required information within 15 working days of the date of service of such notice.

#### **SECTION 52(14)**

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 Rs. 25,000. Explanation: For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.



RULE 67: FORM AND MANNER OF SUBMISSION OF STATEMENTOF SUPPLIES THROUGH AN E- COMMERCE OPERATOR

#### **RULE 67(1): RETURN BY ECO**

Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in FORM GSTR-8 electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under subsection (1) of section 52.

#### RULE 67(2): INFORMATION TO SUPPLIER OF SUPPLIES MADE THROUGH ECO

The details furnished by the operator under sub-rule (1) 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.

### RULE 78: MATCHING OF DETAILS FURNISHED BY THE E-COMMERCE OPERATOR WITH THEDETAILS FURNISHED BY THE SUPPLIER

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1,

- (a) State of place of supply; and
- (b) net taxable value

Provided that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

### RULE 79: COMMUNICATION AND RECTIFICATION OF DISCREPANCY IN DETAILS FURNISHED BY THEE- COMMERCE OPERATOR AND THE SUPPLIER

#### **RULE 79(1): COMMUNICATION OF DISCREPANCY**

Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in FORM GST MIS-3 and to the e-commerce operator electronically in FORM GST MIS-4 on the common portal on or before the last date of the month in which the matching has been carried out.

#### **RULE 79(2): RECTIFICATION OF DISCREPANCY BY SUPPLIER**

A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

#### **RULE 79(3): RECTIFICATION OF DISCREPANCY BY OPERATOR**

An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.

Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the common portal in FORM GST MIS-3.

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### **Assessment and Audit**



#### **CHAPTER OUTLINES**

- Relevant Definitions.
- [Sec. 59] Self Assessment.
- [Sec. 60] Provisional Assessment.
- [Sec. 61] Scrutiny of Returns.
- [Sec. 62] Assessment of non filers of Returns.
- [Sec. 63] Assessment of Unregistered Persons.
- [Sec. 64] Summary Assessment in Specific Certain Cases.
- [Sec. 65] Audit by Tax Authorities.
- / [Sec. 66] Special Audit.

#### **RELEVANT DEFINITIONS**

- **1. Section2(11):** "Assessment" means determination of tax liability under this Act and includes selfassessment, reassessment, provisional assessment, summary assessment and best judgment assessment;
- 2. [Section 2(13): "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;
- **3. Section 2(23):** "Chartered Accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;
- **4. Section 2(35):** "Cost Accountant" means a cost accountant as defined in clause (c) clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;
- **5. Section 2(87):** "prescribed" means prescribed by rules made under this Act on the recommendations of the Council:
- **6. Section 2(91):** "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

#### **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.

#### PROVISIONAL ASSESSMENT [SECTION 60]

#### SECTION 60(1): CONDITIONS FOR PROVISIONAL ASSESSMENT

Subject to the provisions of section 60(2), 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.

#### **Analysis:**

When can a tax payer opt for payment of tax under provisional basis?

A tax payer can opt for payment of tax under provisional basis when

- 1. He is unable to determine the rate of tax applicable
- 2. He is unable to determine the value of good/services

The proper officer needs to pass an order within 90 days from the date of receipt of such request i.e. the provisional order needs to be passed within 90 days from the date of request.

#### **SECTION 60(2): EXECUTION OF BOND**

The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

#### **Analysis:**

A bond needs to be executed if payment is to be made on provisional basis. The bond binds the tax payer to pay the difference between the final amount of tax and the amount paid on provisional basis.

#### SECTION 60(3): ORDER UNDER PROVISIONAL ASSESSMENT

The proper officer shall, within a period not exceeding 6 months from the date of the communication of the order issued under section 60(1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment:

Provided that the period specified in this sub-section may, 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.

#### **Analysis:**

Final order needs to be passed within 6 months from the date of communication of order.

The period of 6 months may be extended by 6 months by the Joint/Additional Commissioner and further period of 4 years by the Commissioner.

Hence, the order can be passed within 5 years (6 Months + 6 Months + 4 Years)

#### SECTION 60(4): INTEREST ON PROVISIONAL ASSESSMENT

The registered person shall be **liable to pay interest** on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under section 39(7) or the rules made thereunder, at the rate specified under section 50(1), 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.

#### SECTION 60(5): REFUND UNDER PERSONAL ASSESSMENT

Where the **registered person** is **entitled to a refund** consequent to the order of final assessment under **section 60(3)**, subject to the provisions of **section 54(8)**, interest shall be paid on such refund as provided in section 56.

#### **RULE 98: PROVISIONAL ASSESSMENT**

#### **RULE 98(1): E-APPLICATION FOR PROVISIONAL ASSESSMENT**

Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of subsection (1) of section 60 shall furnish an application along with the documents in support of his request, electronically in FORM GST ASMT-01 on the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

#### **RULE 98(2): NOTICE FOR PERSONAL APPEARANCE, ETC.**

The proper officer may, on receipt of the application under sub-rule (1), issue a notice in FORM GST ASMT-02 requiring the registered person to furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in FORM GST ASMT – 03, and may appear in person before the said officer if he so desires.

#### **RULE 98(3): ACCEPTANCE OR REJECTION OF APPLICATION**

The proper officer shall issue an order in FORM GST ASMT-04 allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty five per cent. of the amount covered under the bond.

#### **RULE 98(4): EXECUTION OF BOND**

The registered person shall execute a bond in accordance with the provisions of sub- section (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub-rule (3):

Provided that a bond furnished to the proper officer under the State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of the Act and the rules made thereunder.

Explanation: For the purposes of this rule, the expression "amount" shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of the transaction.

#### **RULE 98(5): NOTICE FOR FINALIZATION OF ASSESSMENT AND FINAL ORDER**

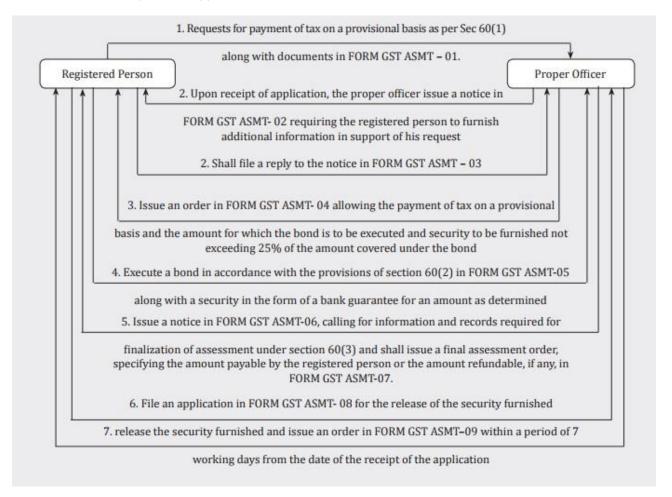
The proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.

#### **RULE 98(6): APPLICATION FOR RELEASE OF SECURITY**

The applicant may file an application in FORM GST ASMT- 08for the release of the security furnished under subrule (4) after issue of the order under sub-rule (5).

#### **RULE 98(7): RELEASE OF SECURITY**

The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in FORM GST ASMT–09within a period of seven working days from the date of the receipt of the application under sub-rule (6).



#### **SCRUTINY OF RETURNS [SECTION 61]**

#### SECTION 61(1): DISCREPANCIES TO BE INFORMED AND EXPLANATIONS TO BE SOUGHT

The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

#### SECTION 61(2): NO FURTHER ACTION IF EXPLANATIONS FOUND ACCEPTABLE

In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

### SECTION 61(3): AUDIT, INSPECTION OR NOTICE BY PROPER OFFICER IF EXPLANATIONS NOT FOUND ACCEPTABLE

In case no satisfactory explanation is furnished within a period of 30 days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

#### **Analysis:**

The proper officer may scrutinize the return and ask the tax payer for explanations.

If explanations are found to be satisfactory, no further action needed. However, if no satisfactory explanations are furnished within 30 days or if the person after accepting discrepancy fails to take proper actions, officer will initiate proper action u/s 65,66,67,73,74.

#### **RULE 99: SCRUTINY OF RETURNS**

#### **RULE 99(1): SCRUTINY NOTICE**

Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

#### **RULE 99(2): ACCEPTANCE OF DISCREPANCY AND PAYMENT OF DUES**

The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT- 11 to the proper officer.

#### **RULE 99(3): ACCEPTANCE OF EXPLANATION OF ASSESSEE**

Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

#### ASSESSMENT OF NON-FILERS OF RETURNS [SECTION 62]

#### **SECTION 62(1): BEST JUDGEMENT ASSESSMENT**

Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper



officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five 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.

### SECTION 62(2): BEST JUDGEMENT ASSESSMENT SHALL STAND WITHDRAWN IF VALID RETURN IS FURNISHED WITHIN 30 DAYS OF SERVICE OR ASSESSMENT ORDER

Where the registered person furnishes a valid return within thirty days of the service of the assessment order under section 62(1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under section 50(1) or for payment of late fee under section 47 shall continue.

#### Analysis:

If the tax payer does not respond to the notice issued u/s 46 (Notice to defaulters), the proper officer shall make the best judgment assessment within 5 years from the date specified u/s 44 (Annual Return). The proper officer shall take into account all relevant material available/gathered.

However, if the tax payer furnished a valid return within 30 days from the date of service of assessment order, no best judgment assessment to be done. If order already passed, it shall be deemed to be withdrawn but liability will have to be paid along with interest and penalty.

#### **RULE 100: ASSESSMENT IN CERTAIN CASES**

#### **RULE 100(1): ASSESSMENT ORDER**

The order of assessment made under section 62(1) shall be issued in FORM GST ASMT-13.

#### **RULE 100(2): NOTICE TO UNREGISTERED PERSON AND BEST JUDGEMENT ASSESSMENT**

The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of 15 days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15.

#### **RULE 100(3): SUMMARY ASSESSMENT ORDER**

The order of summary assessment under section 64(1) shall be issued in FORM GST ASMT-16.

#### **RULE 100(4): APPLICATION FOR WITHDRAWAL OF THE SUMMARY ASSESSMENT ORDER**

The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the summary assessment order in FORM GST ASMT–17.

#### **RULE 100(5): ACCEPTANCE OR REJECTION OF APPLICATION**

The order of withdrawal or, as the case may be, rejection of the application under sub- section (2) of section 64 shall be issued in FORM GST ASMT-18.

#### **ASSESSMENT OF UNREGISTERED PERSONS [SECTION 63]**

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or 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 such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order 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: Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

#### **SUMMARY ASSESSMENT IN SPECIAL CERTAIN CASES [SECTION 64]**

#### SECTION 64(1): WHEN SUMMARY ASSESSMENT / PROTETIVE ASSESSMENT CAN BE MADE

The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue: Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

### SECTION 64(2): WITHDRAWAL OF SUMMARY ASSESSMENT ORDER IF THE SAME IS FOUND TO BE ERRONEOUS

On an application made by the taxable person within 30 days from the date of receipt of order passed under section 64(1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

The summary of assessment orders under section 62, 63 and 64 of the CGST Act is required to be uploaded electronically in the prescribed forms.

#### **AUDIT BY TAX AUTHORITIES [SECTION 65]**

### SECTION 65(1): COMMISSIONER OR AUTHORISED OFFICER TO CONDUCT AUDIT OF REGISTERED PERSON

The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

#### **SECTION 65(2): PLACE OF AUDIT**

The officers referred to in section 65(1) may conduct audit at the place of business of the registered person or in their office.

#### **SECTION 65(3): 15 DAYS PRIOR NOTICE FOR CONDUCT OF AUDIT**

The registered person shall be informed by way of a notice not less than 15 working days prior to the conduct of audit in such manner as may be prescribed.

#### SECTION 65(4): TIME PERIOD FOR CONCLUDING AUDIT - 3 MONTHS

The audit under section 65(1) shall be completed within a period of 3 months from the date of commencement of the audit: Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within 3 months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding 6 months.

Explanation: For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

### SECTION 65(5): PROVIDING NECESSARY FACILITIES FOR VERIFICATION AND FURNISHING OF INFORMATION

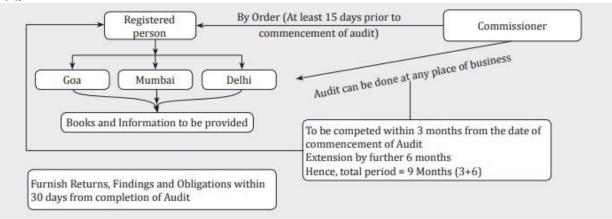
During the course of audit, the authorised officer may require the registered person,— (i) to afford him the necessary facility to verify the books of account or other documents as he may require; (ii) to furnish such information as he may require and render assistance for timely completion of the audit.

### SECTION 65(6): FINDINGS OF AUDIT TO BE INFORMED TO TAXABLE PERSON WITHIN 30 DAYS IF AUDIT

On conclusion of audit, the proper officer shall, within 30 days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

### SECTION 65(7): TAX LIABILITY IDENTIFIED – INTIATION OF ACTION AGAINST TAXABLE PERSON

Where the audit conducted under section 65(1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.



#### **RULE 101: AUDIT**

#### **RULE 101(1): AUDIT FOR FINANCIAL YEAR**

The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or multiples thereof.

The Commissioner or any officer authorised by him, by way of a general or a specific order, may now undertake audit of any registered person for part of financial year also.

#### **RULE 101(2): NOTICE FOR AUDIT**

Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.

#### **RULE 101(3): MANNER OF CONDUCTING AUDIT**

The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

#### **RULE 101(4): DISCREPANCIES TO BE INFORMED**

The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

#### **RULE 101(5): AUDIT FINDINGS**

On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

#### **SPECIAL AUDIT [SECTION 66]**

#### SECTION 66(1): SPECIAL AUDIT IF VALUE NOT CORRECTLY DECLARED/EXCESS ITC AVAILED

If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

#### **SECTION 66(2): TIME PERIOD OF AUDIT**

The chartered accountant or cost accountant so nominated shall, within the period of 90 days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified: Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of 90 days.

#### **SECTION 66(3): ACCOUNTS TO BE AUDITED EVEN ALREADY AUDITED**

The provisions of section 66(1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.



#### **SECTION 66(4): OPPORTUNITY OF BEING HEARD**

The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under section 66(1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

#### SECTION 66(5): EXPENSES TO BE BORNE BY THE DEPARTMENT

The expenses of the examination and audit of records under section 66(1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

### SECTION 66(6): INITIATION OF ACTION AGAINST TAXABLE PERSON IF TAX LIABILITY IDENTIFIED

Where the special audit conducted under section 66(1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

#### **RULE 102: SPECIAL AUDIT**

#### **RULE 102(1): DIRECTIONS FOR SPECIAL AUDIT**

Where special audit is required to be conducted in accordance with the provisions of section 66, the officer referred to in the said section shall issue a direction in FORM GST ADT-03 to the registered person to get his records audited by a chartered accountant or a cost accountant specified in the said direction.

#### **RULE 102(2): AUDIT FINDINGS**

On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

#### **CHECK YOUR KNOWLEDGE**

#### 1. A special Audit under GST is conducted by:

- a) The CGST Officials
- b) The SGST Officials
- c) Chartered Accountant or Cost Accountant
- d) Any of the above

#### 2. The time-limit for issuance of order of Best Judgment assessment is:

- (a) 5 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (b) 4 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (c) 3 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (d) None of the above

#### 3. The time-limit for issuance of order of best judgment assessment under CGST Act, 2017 is:

- (a) 5 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (b) 4 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (c) 3 years from the date specified for furnishing of the annual return for the financial year to which the tax not paid relates.
- (d) None of the above

18

Inspection, Search, Seizure and Arrest



#### **CHAPTER OUTLINES**

- [Sec. 67) Power of Inspection, Search and Seizure.
- [Sec. 68] Inspection of Goods in Movement.
- [Sec. 69) Power of Arrest.
- [Sec. 70) Power to summon Persons to give Evidence and produce Documents.
- [Sec. 71] Access to Business Premises.



#### **MEANING OF INSPECTION**

It means officers can access any place of business of a taxable person and also any place of business of a person engaged in transporting goods or who is an owner or an operator of a warehouse or godown.

#### **MEANING OF SEARCH**

In simple language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime.

#### **MEANING OF SEIZURE**

It is anact of taking possession of property by an officer under legal process

#### **MEANING OF SEARCH AND SEIZURE**

During such inspection, if any goods which are liable for confiscation under the Act are found or any documents/books of accounts are found, which may be useful for the department in the proceedings for demand of tax, the officers conducting the inspection could search and seize such goods/documents and books.

#### POWER OF INSPECTION, SEARCH AND SEIZURE [SECTION 67]

As per Section 67 of CGST Act, inspection can be carried out by proper officer only upon a written authorization given by an officer of the rank of Joint Commissioner or above.

#### CIRCUMSTANCES FOR CARRYING OUT INSPECTION

A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that:

- 1. Transaction w.r.t. supply of goods/services/ both is suppressed
- 2. Transaction w.r.t. goods (stock) in hand
- 3. Excess ITC has been claimed
- 4. Indulged in contravention of Act
- 5. Business of transporting goods
- 6. Owner/operator of warehouse/godown Storing goods which have escaped payment of tax
- 7. Maintenance of accounts likely to cause evasion of duty

#### A. CONFISCATION OF GOODS

As per section 130 of CGST Act, goods become liable to confiscation when any person does the following:

- a) supplies or receives any goods in contravention of any of the provisions of this Act or rules leading to evasion of tax;
- b) does not account for any goods on which he is liable to pay tax under this Act;
- c) supplies any goods liable to tax under this Act without having applied for the registration;
- d) contravenes any of the provisions of the CGST Act or rules made there under with intent to evade payment of tax. The person from whom documents and books of accounts are thus seized, shall have the right to take copies of such documents and books of accounts, subject to the approval of the Proper Officer.

#### **B. POWERS OF OFFICER DURING SEARCH**

An officer carrying out a search has the power to search for and seize goods (which are liable to confiscation) and documents/books/things (relevant for any proceedings under the Act) from the premises searched. However, if it is

not practicable to seize any such goods then the same may be detained. The person from whom these are seized shall be entitled to take copies/extracts of seized records. During search, the officer has the power to break open the door of the premises authorized to be searched if access to the same is denied.

Similarly, while carrying out search within the premises, he can break open any almirah or box if access to such almirah or box is denied and in which any goods, account, registers or documents are suspected to be concealed. He can also seal the premises if access to it denied.

The seized documents/books/things shall be retained only till the time the same are required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of show cause notice.

#### C. MANNER OF RELEASE OF CONFISCATED GOODS. DOCUMENTS

#### Provisional basis

On execution of bond and furnishing of prescribed amount of security or on payment of applicable tax, interest and penalty

#### Actual return of goods

In case of seizure of goods, a notice has to be issued within 6 months, if no notice is issued within a period of 6 months then all such goods shall be returned.

However, this period of 6 months can be extended by Commissioner for another 6 months on sufficient cause

#### Disposal of goods

The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, notify the goods which shall be disposed by the proper officer. The inventory of such goods shall also be prepared.

#### D. SAFEGUARDS PROVIDED FOR IN RESPECT OF SEARCH OR SEIZURE

As per section 67 of CGST Act in respect of the power of search or seizure the safeguards are as follows:

- 1. Seized goods or documents should not be retained beyond the period necessary for their examination.
- 2. Photocopies of the documents can be taken by the person from whose custody documents are seized.
- 3. For seized goods, if a notice is not issued within 6 months of its seizure, goods shall be returned to the person from whose possession it was seized. This period of 6 months can be extended on justified grounds up to a further period of maximum 6 months.
- 4. An inventory of seized goods shall be made by the seizing officer.
- 5. Certain specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure.

### Commissioner Proper officer is empowered to disposal of Seized Goods or things perishable or hazardous in nature. [Rule 141(2)]

lf,

- 1. Where the goods or things seized are of perishable or hazardous nature, and 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 by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by AN ORDER in FORM GST INS-OS, on proof of payment.
- 2. Where the taxable person fails to pay the amount Tax, Interest & Penalty in respect of the said goods or things, the Commissioner Proper Officer may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

#### **INSPECTION OF GOODS IN MOVEMENT [SECTION 68]**

Inspection can also be done of the conveyance, carrying a consignment of value exceeding specified limit. The person in charge of the conveyance has to produce prescribed documents/devices for verification and allow inspection. Eway Bill has been prescribed for the said purpose. Inspection during transit can be done even without authorisation of Joint Commissioner.

#### **ARREST**

#### ARREST AND ITS RELATED PROVISIONS [SEC 69]

The term 'arrest' has not been defined in the GST Act.

However as per judicial pronouncements, it denotes 'the taking into custody of a person under some lawful command or authority'.

As per Sec 69, Arrests can be carried out only where the person is accused of offences specified\* for this purpose and the tax amount involved is more than specified limit.

Further, the arrests under GST Act can be made only under authorization from the Commissioner. Whenever the Commissioner has reason to believe that any person has committed any such offence, he can authorize any other officer subordinate to him, to arrest such person.

The nature of offences which are thus punishable with imprisonment are as per Section 132 of the Act.

#### SPECIFIED OFFENCES

- → Supplies with/without invoice with the intention to evade tax
- → Issues incorrect invoice
- → Avails credit on incorrect bill
- → Collects amount but does not pay to the Government beyond a period of three months

#### **AUTHORIZATION OF ARREST BY PROPER OFFICER**

The commissioner can Authorize an officer to arrest a person if he has reasons to believe that the person has committed an offence attracting a punishment prescribed under section 132 of the CGST Act.

This essentially means that a person can be arrested only where the tax evasion is more than Rs. 2 Crore.

However, the Monetary Limit shall not be applicable if the offences are committed again even after being convicted earlier i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

#### POINTS TO BE NOTED:

#### If a person is arrested for a cognizable offence

→ He must be informed in writing of the grounds of arrest and he must be produced before a magistrate within 24 hours of his arrest

#### If a person is arrested for a non-cognizable and bailable offence

The Deputy / Assistant Commissioner can release him on bail and he will be subject to the same provisions as an officer in-charge of a police station u/s 436 of the Code of Criminal Procedure, 1973.

NOTE: All arrest must be in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to arrest.

#### **CATEGORIES OF OFFENCES**

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

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.

A bailable offence is a criminal offence in which the accused shall be offered to be released on suitable bail upon his arrest by the police or the court informing about his right to be so released.

A non-bailable offence is an offence in which the accused person shall not be automatically entitled to be released on bail. However, it does not mean that the court may not order him to be released on a suitable bail – with or without any conditions.

#### COGNIZABLE AND NON-COGNIZABLE OFFENCES UNDER CGST ACT

In section 132 of the 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 Rs. 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.

#### POWER TO ISSUE SUMMONS [SECTION 70]

#### RESPONSIBILITIES OF A PERSON SO SUMMONED

As per Sec 70, 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/

#### IMPORTANT GUIDELINES TO BE CONSIDERED WHILE ISSUE OF SUMMONS

The Central Board of Excise and Customs (CBEC) in the Department of Revenue, Ministry of Finance has issued guidelines from time to time to ensure that summons provisions are not misused in the field. Some of the important highlights of these guidelines are given below:

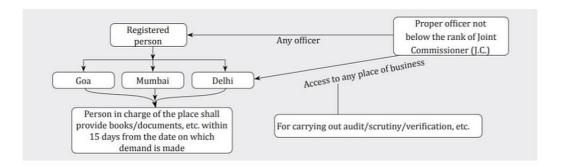
- d summons are to be issued as a last resort where assesses are not co-operating and this section should not be used for the top management;
- the language of the summons should not be harsh and legal which causes unnecessary mental stress and embarrassment to the receiver;
- d summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing;
- **d** where for operational reasons, it is not possible to obtain such prior written permission, oral/ telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity;
- d in all cases, where summons is issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issuance of summons
- Senior management officials such as CEO, CFO, General Managers of a large company or a Public Sector Undertaking should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue.

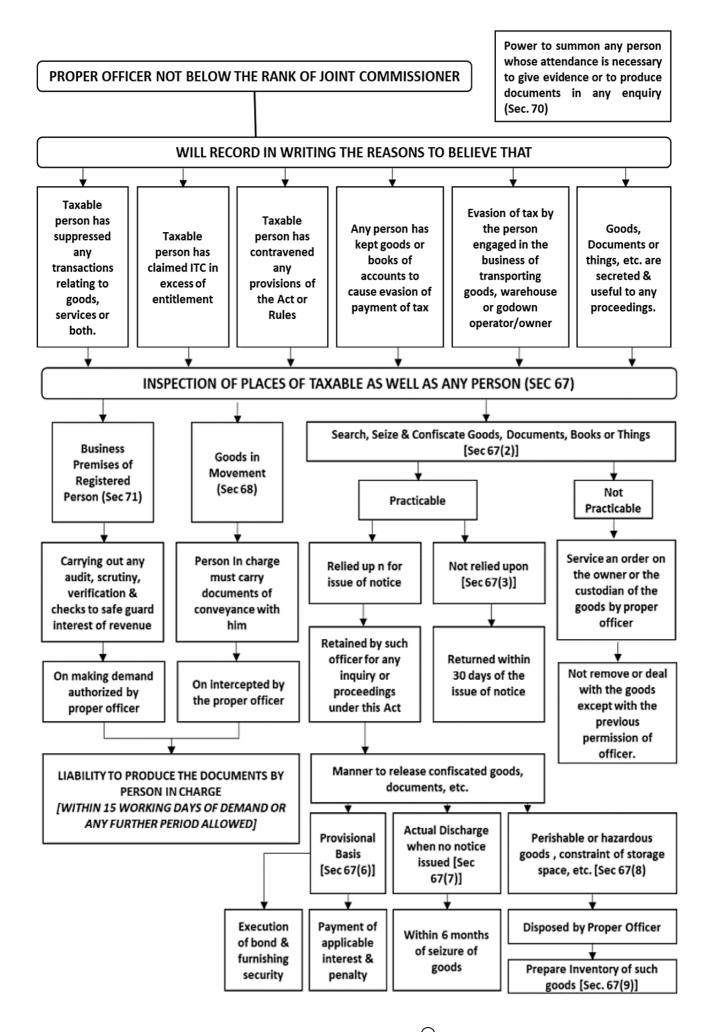
#### PRECAUTIONS TO BE OBSERVED WHILE ISSUING SUMMONS

The following precautions should generally be observed when summoning a person:

- (i) A summon should not be issued for appearance where it is not justified. The power to summon can be exercised only when there is an inquiry being undertaken and the attendance of the person is considered necessary.
- (ii) Normally, summons should not be issued repeatedly. As far as practicable, the statement of the accused or witness should be recorded in minimum number of appearances.
- (iii) Respect the time of appearance given in the summons. No person should be made to wait for long hours before his statement is recorded except when it has been decided very consciously as a matter of strategy.
- (iv) Preferably, statements should be recorded during office hours; however, an exception could be made regarding time and place of recording statement having regard to the facts in the case.

### ACCESS TO BUSINESS PREMISES [SECTION 71]





#### **CHECK YOUR KNOWLEDGE**

- 1. If a taxable person has done the following act, inspection can be ordered:
  - (a) Suppression of any transaction of supply of goods or services
  - (b) Suppression of stock of goods in hand
  - (c) Contravention of any provision of the GST law to evade tax
  - (d) All of the above
- 2. Inspection under CGST Act, 2017 can be ordered if the taxable person has:
  - (a) suppressed any transaction of supply of goods or services
  - (b) suppressed stock of goods in hand
  - (c) contravened any provision of the GST law to evade tax
  - (d) All of the above

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### **Demand and Recovery**



UNDERGST

#### **CHAPTER OUTLINES**

- [Sec. 73] Non Payment/Short Payment, etc. on account of reasons other than Fraud, Willful Misstatement or Suppression of Facts.
- / [Sec. 75] General Provisions relating to Determination of Tax.
- [Sec. 76] Tax collected but not deposited.
- [Sec. 77] tax wrongfully collected and paid to Central Government or State Government.
- [Sec. 78 & 79] Recovery Proceedings.
- [Sec. 80] Payment of Tax and Other Amounts in Installments.
- [Sec. 81] Transfer of Property to be void in certain cases.
- [Sec. 83] Provisional Attachment to protect Revenue.
- [Sec. 84] Continuation and Validation of certain Recovery Proceedings.

#### **CATEGORY OF SITUATIONS FOR RECOVERY OF TAX**



The incidence of short payment/non-payment of tax or erroneous refund orwrong availment/utilisation of ITC may be because of an inadvertent bonafide mistake (**Normal Cases**) or it may be a deliberate attempt (**Fraud Cases**).

#### **ADJUDICATING AUTHORITY**

It means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal.

#### SHOW CAUSE NOTICE (SCN) U/S 73 & 74 of CGST Act, 2017

Before raising any tax demand, a notice has to be issued (generally referred to as Show Cause Notice), by adjudicating Authority why the specified amount of tax should not be demanded from him.

- 1. The person to whom such notice has been issued can contest the demand by filing a reply to the show cause notice and also by appearing before the adjudicating authority personally.
- 2. After considering the reply filed by the person as well as the submissions made during the personal hearing, the adjudicating authority shall pass a speaking order, either confirming the tax demand or dropping the same.

### NON-PAYMENT/SHORT PAYMENT ETC. ON ACCOUNT OF REASONS OTHER THAN FRAUD, WILFUL MISSTATEMENT OR SUPPRESSION OF FACTS [SECTION 73]

#### A. ISSUE OF SCN [Section 73(1)]

The notice would specify the amount of tax along with interest payable thereon under section 50 [@ 18% p.a.\*] and a penalty leviable under the provisions of this Act or the rules made thereunder, liable to be paid by him. The notice should state the grounds based on which such demand is raised.

SR. NO	NATURE OF CASE	TIME FOR ISSUANCE OF NOTICE	TIME FOR ISSUANCE OF ORDER
1.	Normal Cases	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund

2.	Fraud Cases	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	
3.	Any amount collected as tax but not paid	No Time Limit	Within 1 year from the date of issue of notice	
4.	Non-payment of Self-Assessment Tax	No need to issue a SCN	Recovery proceedings can be started directly	

SR.	ACTION BY TAX PAYER	AMOUNT OF PENALTY PAYABLE		REMARKS
NO.	ACTION DE TAXEATER	NORMAL CASES	FRAUD CASES	KLMAKKS
1.	Tax amount, along with the interest, paid before issuance of notice	No penalty and no notice shall be issued	15% of the tax amount payable as penalty and no notice shall be not be issued	
2.	Tax amount, along with the interest, paid within 30 days of issuance of notice	No penalty. All proceedings deemed to be concluded	25% of the tax amount payable as penalty. All proceedings deemed to be concluded.	The penalty shall also be not chargeable in cases where the self-assessed tax or any amount
3.	Tax amount, along with the interest, paid within 30 days of communication of order	10% of the tax amount or Rs. 10,000/-, whichever is higher	50% of the tax amount payable as penalty. All proceedings deemed to be concluded.	collected as tax is paid (with interest) within 30 days from the due date of payment.
4.	Tax amount, along with the interest, paid after 30 days of communication of order	10% of the tax amount or Rs. 10,000/-, whichever is higher	100% of the tax amount	

### CLARIFICATION ON LEVY OF PENALTY UNDER SECTION 73 OF THE CGST ACT IN CASE OF DELAYED FILING OF RETURN

**ISSUE:** Whether penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in Form GSTR-3B has been filed after the due date of filing such return?

**Clarification:** As per the provisions of section 73(11) of the CGST Act, penalty is payable in case 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.

The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked and the provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid.

It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

#### Monetary limits prescribed for issuance of SCNs by different level of officers

Board has assigned the officers mentioned in table below, the functions as the proper officers in relation to issue of SCNs and orders under sections 73 and 74<sup>1</sup>, up to the prescribed monetary limits of tax (including cess) not paid/short paid/ erroneously refunded/ ITC of CGST wrongly availed/utilized for issuance of SCNs and passing of orders under sections 73 and 74:

CGST officer	Monetary limit of CGST	Monetary Limit of IGST	Monetary limit of CGST and IGST
Superintendent of Central	Not exceeding	Not exceeding	Not exceeding
Tax	₹ 10 lakh	₹ 20 lakh	₹ 20 lakh
DeputyorAssistant	Above ₹ 10 lakhand	Above ₹ 20 lakhand	Above ₹ 20 lakh
Commissioner of	not	not exceeding	and not exceeding
Central Tax	exceeding ₹ 1crore	₹ 2 crores	₹ 2 crores
Additional or Joint Commissioner of Central Tax	Above ₹ 1 Crore without any limit	Above ₹ 2 Crore without any limit	Above ₹ 2 Crore without any limit

#### GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX [SECTION 75]

General provisions relating to determination of tax are contained in section 75 of CGST Act. These provisions are applicable both in case of determination of tax not paid/short paid/ erroneously refunded/ITC wrongly availed/ utilised whether by reason of fraud/any wilful misstatement/suppression of facts or otherwise.

These provisions have been discussed are as follows:

#### A. Period of stay order to be excluded in computing the limitation period [Section 75(1)]

Where the service of notice or issuance of orderis stayed by an order of a Court or Appellate Tribunal, the period of such stay shall be excluded in computing the *period for issuance of notice and issuance of adjudication order\*\**, as the case may be.

\*\*period as specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74

# B. In case charges of fraud/any wilful misstatement/suppression of facts are not established for a notice issued in a fraud case, tax tobe determined deeming the demand notice to be issued in normalcase [Section 75(2)]

Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under section 74(1) is not sustainable for the reason thatthe charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the noticewas issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under section 73(1).

### C. Adjudication order issued in pursuance of Appellate Authority/ Appellate Tribunal/ Court's direction be issued with 2 years [Section 75(3)]

Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within 2 years from the date of communication of the said direction.

#### D. Opportunity of being heard [Section 75(4)]

An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

#### Adjournment of hearing to grant time to person chargeable with tax [Section 75(5)]

The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearingfor reasons to be recorded in writing.

However, such adjournment shall be granted for a <u>maximum of 3 times</u> to a person during the proceedings.

#### E. Adjudication order should be a speaking order [Section 75(6)]

The proper officer, in his order, shall set out therelevant facts and the basis of his decision.

#### F. Tax, interest and penalty demanded in order not to exceed amount specified in notice [Section 75(7)]

The amount of tax, interest and penalty demanded in the order shall not bein excess of the amount specified in the notice and no demand shall beconfirmed on the grounds other than the grounds specified in the notice.

### G. In case of modification of tax by the Appellate Authority/Tribunal/Court, penalty and interest to be modified accordingly [Section 75(8)]

Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount oftax so modified.

#### H. Payment of interest mandatory even if not specified in the adjudication order [Section 75(9)]

The interest on the tax short paid or not paid shall be payable whether ornot specified in the order determining the tax liability.

#### I. Adjudication order to be passed mandatorily within stipulated time [Section 75(10)]

The GST law ensures timely disposal of cases by providing that if the adjudication order is not issued within the stipulated time limit of 3 years in normal cases or 5 years in fraud cases, as the case may be, the adjudication proceedings shall be deemed to be concluded.

# J. In case of appeal filed by Department against prejudicial decision of the Appellate Authority/Appellate Tribunal/High Court, period between the date of decision of the higher authority and that of the lower authority to be excluded [Section 75(11)]

An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunalor the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the time limit for passing adjudication order, where proceedings are initiated by way of issue of a SCN under the sections 73 and 74.

K. Amount of self-assessed tax or interest remaining unpaid to berecovered under section 79 [Section 75(12)]

Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be directly recovered under the provisions of section 79 [discussed subsequently in this chapter].

L. In case of penalty being imposed under section 73/74, no otherpenalty to be imposed for the same act/omission [Section 75(13)]

Where any penalty is imposed under section 73 or section 74, no penalty forthe same act or omission shall be imposed on the same person under anyother provision of this Act.

Student Note:	

#### TAX COLLECTED BUT NOT DEPOSITED [SECTION 76]

#### A. <u>ISSUE OF SCN</u> [Section 76(2)]

#### B. DETERMINATION OF AMOUNT DUE [Section 76(3)]

The proper officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

#### C. INTEREST PAYABLE ON THE AMOUNT DUE [Section 76(4)]

Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

#### D. <u>OPPORTUNITY OF BEING HEARD</u> [Section 76(5)]

An opportunity of hearing shall be granted where a request is received in writing from the person to whom SCN was issued.

#### E. <u>TIME LIMIT FOR ISSUANCE OF ORDER</u> [Section 76(6)& (7)]

The proper officer shall issue an order within 1 year from the date of issue of the notice.

Where the issuance of order is stayed by an order of the Court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of 1 year.

#### F. ORDER MUST BE A SPEAKING ORDER [Section 76(8)]

The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

G. ADJUSTMENT OF AMOUNT PAYABLE UNDER SECTION 76(1) AND (3) SHALL EITHER BE CREDITED TO THE CONSUMER WELFARE FUND OR REFUNDED TO THE PERSON WHO HAS BORNE THE INCIDENCE OF SUCH AMOUNT [Section 76(9), (10) & (11)]

### TAX WRONGFULLY COLLECTED AND PAID TO CENTRAL GOVERNMENT OR STATE GOVERNMENT [SECTION 77]

Such amount shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

#### SOME CLARIFICATIONS ISSUED BY ICAI FOR MAY/ NOV 2020

### Tax, interest and penalty payable to be intimated by the proper officer before issuance of show cause notice



With effect from 09.10.2019, the proper officer shall May, before serving of such a notice, communicate the details of any tax, interest and penalty as ascertained by him, in the prescribed form, to the person chargeable with tax, interest and penalty under section 73 or section 74. Further, where such person has made partial payment of amount communicated to him or desires to file any submission against the proposed liability, he may make such submission in the prescribed form. Taxpayer will be able to take advantage of nil or reduced penalty under sections

73(5) and 74(5) of the CGST Act.



#### **RECOVERY PROCEEDINGS [SECTION 78 & 79]**

#### A. INTIMATION OF RECOVERY PROCEEDINGS [Section78]

Any amount payable by a taxable person in pursuance of an order passed under this Act must be paid by such person within a period of 3 months from the date of service of such order.

If a taxable person fails to do so, recovery proceedings are initiated against him.

#### **RECOVERY OF TAX [Section79] – MODES OF RECOVERY OF TAX**

#### 1. RECOVERY BY DEDUCTION FROM ANY MONEY OWED [SECTION 79(1)(a) READ WITH RULE 143]

The proper officer may recover the amount so payable from any money owing to such person [referred as 'defaulter'] which may be under the control of the proper officer.

### 2. <u>RECOVERY BY SALE OF GOODS UNDER THE CONTROL OF PROPER OFFICER</u> [SECTION 79(1)(b) READ WITH RULE 144]

Recovery by detaining and selling any goods [through a process of auction, including e-auction] belonging to such person which are under the control of the proper officer or such other specified officer.

The proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.

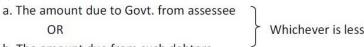
**The process of Recovery can be cancelled,** where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.

#### 3. GARNISHEE PROCEEDINGS [SECTION 79(1)(c) READ WITH RULE 145]



- (b) Any person who holds money for or on account of such person.
- (c) Any person who may subsequently hold money for or on account of such person.

#### (1) AMOUNT OF RECOVERY



- b. The amount due from such debtors
- (2) Every person to whom such notice is issued will be bound to comply with notice.
- (3) In case of failure to make the payment against the notice then the assessee (debtor) deemed to be assessee in default.

#### **NOTE:**

- Where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.
- The officer issuing such notice may, at any time, amend or revoke the notice or extend the time for making any payment in pursuance of the notice.
- Where the third person makes the payment of the amount specified in the notice, the proper officer shall issue a certificate in prescribed form to the third person clearly indicating the details of the liability so discharged.

### 4. <u>RECOVERY BY SALE OF MOVABLE/IMMOVABLE PROPERTY</u> [SECTION 79(1)(d) READ WITH RULES 147, 148, 149, 150 AND 154]

- The proper officer shall prepare a list of movable and immovable property belonging to the defaulter, estimate their value as per the prevalent market price and issue an order of attachment or distraint and a notice for sale prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due.
- Stamp duty/any other tax/fee payable on transfer of such property shall be paid by the transferee to the Government.
- Where any claim is preferred/any objection is raised with regard to the attachment/distraint of any property by a person claiming that he had some interest in/was in possession of, the property in question, proper officer shall investigate the same and postpone the sale till such time.
- If proper officer finds merit in his claims/objection upon investigation, proper officer will release the property, wholly or partly. Otherwise, the proper officer will reject the claim and proceed with the process of sale through auction.
- Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice for auction, the proper officer shall cancel the process of auction and release the goods.
- The amounts so realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,:
  - a) first, be appropriated against the administrative cost of the recovery process;
  - b) next, be appropriated against the amount to be recovered;
  - c) next, be appropriated against any other amount due from the defaulter under the CGST Act or the IGST Act or the UTGST Act or any of the SGST Act and the rules made thereunder; and
  - d) any balance, be paid to the defaulter.
- Where the property to be sold is a negotiable instrument or a share in a corporation, the proper officer may, sell such instrument or a share through a broker and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission.
- Any officer/other person who has a duty to perform in connection with such sale will not acquire any interest in property sold. No such sale will take place on Sundays/other general holidays recognized by Government. Proper officer may seek assistance from jurisdictional police station.

#### 5. RECOVERY AS ARREARS OF LAND REVENUE

The proper officer may prepare a certificate to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

#### 6. RECOVERY AS FINE IMPOSED BY MAGISTRATE

The proper officer may file an application to the appropriate Magistrate in prescribed form to recover from the person concerned the amount specified thereunder and such Magistrate shall proceed to recover from such person amount specified thereunder as if it were a fine imposed by him.

#### 7. RECOVERY THROUGH EXECUTION OF A DECREE, etc. [RULE 146]

Where any amount is payable to the defaulter in the execution of a decree of a Civil Court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

#### 8. RECOVERY THROUGH SURETY [RULE 157]

Where any person has become surety for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

#### 9. RECOVERY FROM COMPANY IN LIQUIDATION [RULE 160]

Where the company is under liquidation as specified in section 88, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in prescribed form.

#### NOTE: TAXES CAN BE RECOVERED FROM DISTINCT PERSONS ALSO [SECTION 79 OF THE CGST ACT]

Section 79 of CGST Act stipulates the provisions relating to recovery of taxes. An explanation has been inserted to section 79 to clarify that for the purposes of this section, the word person shall include "distinct persons" as referred to in subsection (4) or, as the case may be, sub-section (5) of section 25.

Thus, recovery of taxes under GST law can now be made from distinct persons present in different States / UTs also.

#### PAYMENT OF TAX AND OTHER AMOUNTS IN INSTALLMENTS [SECTION 80]

- A person can avail this benefit of payment in instalments, by making an application to the Commissioner by specifying reasons for such request.
- On receipt of application, the Commissioner may allow the payment of amount in instalments, subject to maximum 24 monthly instalments and on payment of applicable interest.
- If there is default in payment of any one instalment then the whole outstanding balance shall become due and payable immediately.

#### **FACILITY OF PAYMENT IN INSTALLMENTS NOT ALLOWED IN CERTAIN CASES:**

The facility of payment in instalments shall not be allowed where -

- a) the taxable person has already defaulted on the payment of any amount under the CGST Act or IGST Act or UTGST Act or any of the SGST Act, for which the recovery process is on;
- b) the taxable person has not been allowed to make payment in instalments in the preceding financial year under the Act or the IGST Act or UTGST Act or any of the SGST Act;
- c) the amount for which instalment facility is sought is less than Rs. 25,000.

#### TRANSFER OF PROPERTY TO BE VOID IN CERTAIN CASES [SECTION 81]

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

#### PROVISIONAL ATTACHMENT TO PROTECT REVENUE [SECTION 83]

#### SEC 83(1): Provisional attachment to protect revenue in certain cases

Where after the initiation of any proceeding under Chapter XII (Advance Ruling), Chapter XIV revenue (Transitional provisions), Chapter XV (Anti-profiteering), the commissioner is of the opinion that for the purpose of protecting the interest the government it is necessary so to do he may by order in writing, attach provisionally, any property including bank account belonging to the taxable person or any person specified in U/S 122 (1A) in such manner as may be prescribed.

SEC 83(2): Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).

#### Rule 159 Provisional attachment of property-

- (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.
- (2) The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.
- (3) 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, by an order in FORM GST DRC-23, on proof of payment.
- (4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.

### CONTINUATION AND VALIDATION OF CERTAIN RECOVERY PROCEEDINGS [SECTION 84]

### Where any notice of demand in respect of "Government Due."

Is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such government dues, then

Enhancement of Dues in Appeal	Serving additional notice by Commisioner	Continuation & Validation of proceeding
Where such Government dues are enhanced in such appeal, revision or other proceedings	the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and	any recovery proceedings in relation to such Government dues as are covered by notice of demand served upon him before disposal of such appeal, revision or other proceedings may, without the service of any fresh
		notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal

Where such Government dues are reduced in such appeal, revision or in other proceedings –

- (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand.
- (ii) The Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending.
- (iii) Any recovery proceedings initiated on the basis of the demand served upon him prior to 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.

#### DIFFERENTIATION IN GST & CUSTOMS WITH RESPECT TO DEMAND & RECOVERY

	GST u/s 73/74	CUSTOMS u/s 28
CASES	Short Payment Non-Payment Erroneous Refund Wrongly Availed or Wrong Utilization of Credit	Short Levy Non-Levy Erroneous Refund

	-	CEC 72 MICTAVE	
	+	SEC 73 MISTAKE	<b>MISTAKE Show Cause Notice to be</b>
		Show Cause Notice Issued within 2 Years & 9 Months	served within <u>2 Years</u> from Relevant Date*
		from  Due Date of Filing of Annual Return  or Date of Erroneous Refund (in case of Erroneous Refund)	FRAUD / COLLUSION / WILLFUL MISSTATEMENT / SUPPRESSION OF FACTS / CONTRAVENTION OF PROVISION (FCWSP) Show Case Notice to be served within 5 Years from Relevant Date*
TIME	4	SEC 74 FRAUD / COLLUSION / WILLFUL MISSTATEMENT / SUPPRESSION OF FACTS / CONTRAVENTION OF	*RELEVANT DATE Provisional Assessment Date of finalization
		PROVISION (FCWSP)	Erroneous Refund
		Show Cause Notice Issued	Date of refund
		within 4 Years & 6 Months from  Due Date of Filing of Annual	Non-Levy / Short Levy, Non- Payment / Short Payment or Non Charging of Interest
		Return or Date of Erroneous Refund (in case of Erroneous Refund)	Date on which the Proper Officer makes an order for clearance of Goods.
WAIVER OF NOTICE		If the Assessee makes Voluntary payment before issue of Show Cause Notice & intimation should be given to Department (in writing) after such Payment.	Same as GST, If Amount involved is less then Rs. 100.
BASIS OF DEMAND SHOULD BE SPECIFIED	4	Show Cause Notice should specify the basis on which Demand has been raised	<b>♣</b> Same as GST
SHOW CAUSE NOTICE ISSUED IN CASE OF FRAUD / COLLUSION / WILLFUL MISSTATEMENT / SUPPRESSION OF FACTS / CONTRAVENTION OF PROVISION (FCWSP)		If Show Cause Notice is issued within Extended period (FCWSP) then it should also justify what is being considered as Fraud, Misrepresentation, etc.	Same as GST
SPECIFIC AMOUNT	4	Show Cause Notice should also Contain a specific amount for which Demand has been raised & the liability determined by the officer after hearing the parties	<b>♣</b> Same as GST

TIME PERIOD FOR ISSUE OF ORDER	<ul> <li>♣ NORMAL CASE within 3 Years</li> <li>♣ FRAUD within 5 years</li> <li>From the due date of filing of Annual Return or Date of Erroneous Refund</li> </ul>	NORMAL CASE within 6 Months  FRAUD within 1 Year  From the date of Service of Notice
CHARGES NOT ESTABLISHED. IT WILL BE TREATED AS NORMAL CASE.	♣ In case charges against FCWSP are not established for a notice issued in a FCWSP Cases, then tax will be determined deeming the demand notice to be issued in normal case.	<b>♣</b> Same as GST
MODIFICATION IN PENALTY	♣ In case of Modification of Tax by AA / Tribunal / Court Penalty & Interest to be modified accordingly.	Same as GST
PAYMENT OF INTEREST	Payment of Interest is mandatory even if not specified in the Adjudicating order.	<b>♣</b> Same as GST
SPEAKING ORDER	Order should be speaking order	Same as GST

#### **PENALTIES**

	GST u/	s 73/74	CUSTOMS u/s 28	
	MISTAKE	FCWSP	MISTAKE	FCWSP
If payment of Tax & Interest paid before issue of Show Cause Notice	No Penalty	<b>15%</b> of Tax Amount	No Penalty	-
If Tax & Interest paid within 30 days of issue of Show Cause Notice (Receipt of SCN in case of Customs)	No Penalty	25% of Tax Amount	No Penalty	<b>15%</b> of Duty Amount or Interest
Other Cases	10% of Tax Amount or Rs. 10,000 whichever is Higher	100% of Tax Amount  *If Tax & Interest paid within 30 days of Communication of Order  50% of Tax Amount		100% of Duty Amount or Interest  *If Duty & Interest paid within 30 days from the Communication of Order 25% of Duty or Interest

#### **CHECK YOUR KNOWLEDGE**

- 1. Which of the following is a correct method of serving notice?
  - (i) By giving it to any adult member of the family residing with the taxable person
  - (ii) By making it available on the common portal
  - (iii) By sending a courier to a person regularly employed by him in connection with the business
  - (iv) By registered post with acknowledgement due to his authorised representative
  - (v) Affixing a copy on the notice board of the office of the concerned officer who issued such notice
  - (a) (ii), (iv)
  - (b) (i), (iii), (v)
  - (c) (i), (ii), (iii), (iv)
  - (d) (i), (ii), (iii), (iv) and (v)
- 2. Time-limit for issuance of show cause notice in case of non-payment of ITC is on account of reasons other than fraud, wilful misstatement or suppression of facts, etc. is:



- (a) 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains.
- (b) 3 years from the due date of filing Annual Return for the Financial Year to which the demand pertains.
- (c) 4 years and 6 months from the due date of filing Annual Return for the Financial Year to which the demand pertains.
- (d) 5 years from the due date of filing Annual Return for the Financial Year to which the demand pertains.
- 3. Rochester Private Limited has been issued a show cause notice (SCN) on 31.08.2021 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. As per section 73(1), in the given case, SCN can be been issued latest by \_\_\_\_\_\_\_.
  - (a) 31.12.2021
  - (b) 30.09.2021
  - (c) 30.06.2021
  - (d) 31.12.2020
- 4. Time-limit for issuance of show cause notice in case of any amount collected as tax but not paid to the Central Government is:
  - (a) 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains.
  - (b) 3 years from the due date of filing Annual Return for the Financial Year to which the demand pertains.
  - (c) 4 years and 6 months from the due date of filing Annual Return for the Financial Year to which the demand pertains.
  - (d) None of the above

**20** 

### Liability to pay in Certain Cases



Relevant Definitions.

**CHAPTER OUTLINES** 

- [Sec. 85] Liability in case of Transfer of Business.
- [Sec. 86] Liability of Agent and Principal.
- [Sec. 87] Liability in case of Amalgamation or Merger of Companies.
- [Sec. 88] Liability in case of Company in Liquidation.
- [Sec. 89] Liability of Directors at Private Company.
- [Sec. 90] Liability of Partners of Firm to pay Tax.
- [Sec. 91] Liability of Guardians, Trustees, etc.
- [Sec. 92] Liability of Court of Words, etc.
- [Sec. 93] Special Provisions regarding Liability to pay Tax, Interest or Penalty in certain cases.
- [Sec. 94] Liability in other cases.



#### **RELEVANT DEFINITIONS:**

**1. Section 2(5):** "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

Meaning of Arhatia – It means middleman of agricultural produce Del Crede Agent – Agent who sells on behalf on principal on credit.

- **2. Section 2(88)of the CGST Act:** "principal place of business" means the place of business specified as the principal place of business in the certificate of registration;
- **3. Section 2(24) of the CGST Act:** "Commissioner" means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;
- 4. Section 2(84): "person" includes—
  - (a) an individual;
  - (b) a Hindu Undivided Family;
  - (c) a company;
  - (d) a firm;
  - (e) a Limited Liability Partnership;
  - (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
  - (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
  - (h) any body corporate incorporated by or under the laws of a country outside India;
  - (i) a co-operative society registered under any law relating to co-operative societies;
  - (j) a local authority;
  - (k) Central Government or a State Government;
  - (l) ociety as defined under the Societies Registration Act, 1860;
  - (m) trust; and
  - (n) every artificial juridical person, not falling within any of the above;

#### 5. Section 2(17): "business" includes:

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a license to book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

#### **LIABILITY IN CASE OF TRANSFER OF BUSINESS [SECTION 85]**

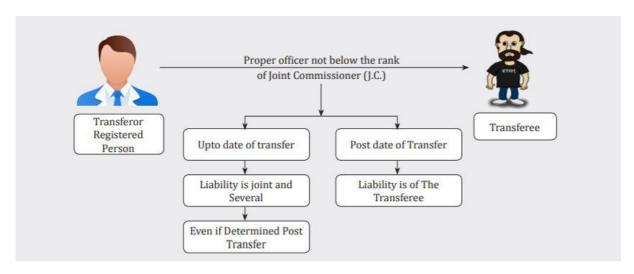
# SECTION 85(1): JOINT AND SEVERAL LIABILITY OF TRANSFEROR AND TRANSFEREE IN CASE OF LIABILITY ARISING PRIOR TO TRANSFER

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.

The transferee/ successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor

# SECTION 85(2): TRANSFEREE LIABLE FOR TAX DUES IN CASE OF LIABILITY ARISING POST TRANSFER

Where the transferee of a business referred to in section 85(1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect rom the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration



#### **LIABILITY OF AGENT AND PRINCIPAL [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 [SECTION 87]**

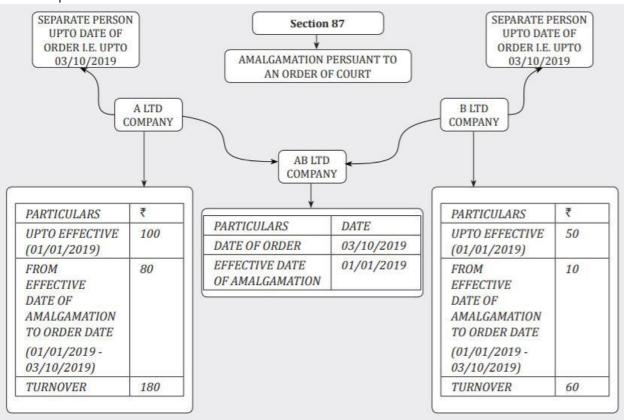
#### **SECTION 87(1): DEEMED DIFFERENT ENTITIES**

When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period

commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

#### **SECTION 87(2): CANCELLATION OF DIFFERENT ENTITIES**

Notwithstanding anything contained in the said order, for the purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order.



#### **LIABILITY IN CASE OF COMPANY IN LIQUIDATION [SECTION 88]**

# SECTION 88(1): INITITATION BY LIQUIDATOR OF A COMPANY OF HIS APPOINTMENT TO COMMISSIONER

When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereafter in this section referred to as the "liquidator"), shall, within 30 days after his appointment, give intimation of his appointment to the Commissioner.

#### SECTION 88(2): COMMISSIONER TO NOTIFY THE AMOUNT DUE FROM SUCH COMPANY

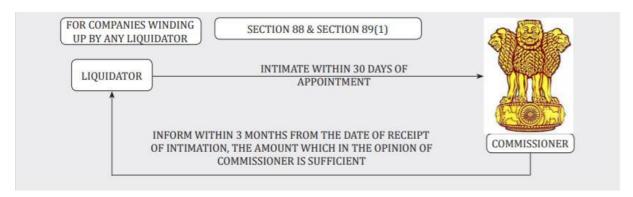
The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within 3 months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

#### SECTION 88(3): DIRECTOR LIABLE IN CASE OF PRIVATE COMPANIES IN LIQUIDATION

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, unless 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 OF PRIVATE COMPANY [SECTION 89]

# SECTION 89(1): DIRECTORS JOINTLY AND SEVERALLY LIABLE IN CASE TAX DUES CANNOT BE RECOVERED FROM COMPANY

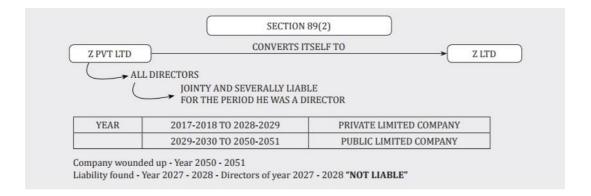
Notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company



#### **SECTION 89(2): LIABILITY DISPENSED OFF ON CONVERSION OF PRIVATE COMPANY**

Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company:

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director

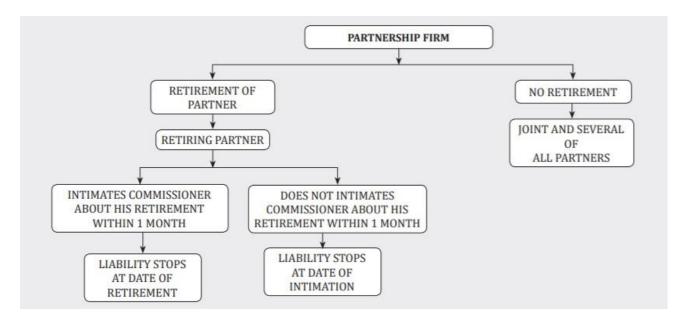


#### **LIABILITY OF PARTNERS OF FIRM TO PAY TAX [SECTION 90]**

Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment:

Provided that 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:

Provided further that 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.



#### **LIABILITY OF GUARDIANS, TRUSTEES, ETC. [SECTION 91]**

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such



minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

**Analysis:** Guardian/Trustee/Agent of a Trust is liable to pay tax made for the benefit of minor/incapacitated.

#### **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 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.

**Analysis:** Same like Guardian/Trustees, etc.

### SPECIAL PROVISIONS REGARDING LIABILITY TO PAY TAX,INTEREST OR PENALTY IN CERTAIN CASES [SECTION 93]

#### SECTION 93(1): LIABILTY 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:

- (a) 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; and
- (b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

The transferee/ successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor

## SECTION 93(2): MEMBERS OR GROUP OF MEMBERS JOINTLY OR SEVERALLY LIABLE IN CASE OF PARTITION OF HUF OR AOP

Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act up to the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

# SECTION 93(3): PARTNERS AT THE TIME OF DISSOLUTION SHALL BE JOINTLY AND SEVERALLY LIABLE IN CASE OF DISSOLUTION OF FIRM

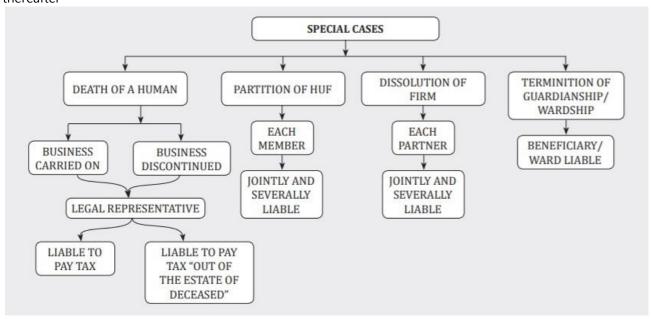
Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then, every person who was a partner shall,

jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

## SECTION 93(4): WARD OR THE BENEFICIARY SHALL BE LIABLE IN CASE OF TERMINATION OF GURADIANHIP OR TRUSTEESHIP

Same as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a taxable person liable to pay tax, interest or penalty under this Act,:

- (a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or
- (b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter



#### **LIABILITY IN OTHER CASES [SECTION 94]**

# SECTION 94(1): LIABILITY OF PARTNERS OF FIRM OR MEMBERS OF AOP OR HUF ON DISCONTINUATION OF BUSINESS

Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business—

- (a) the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and
- (b) 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.

### SECTION 94(2): LIABILITY OF PARTNERS OF FIRM OR MEMBERS OF AOP IN CASE OF CHANGE IN CONSTITUTION OF FIRM/AOP

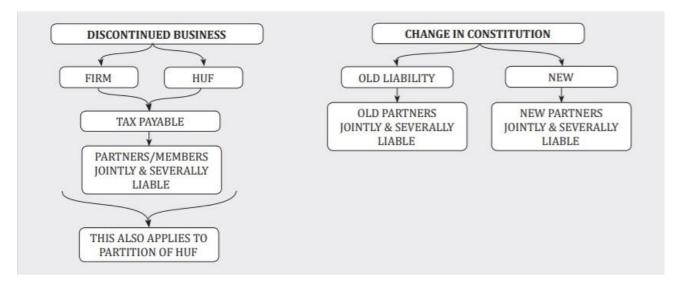
Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest or penalty due from such firm or association for any period before its reconstitution.

### SECTION 94(3): DISCONTINUANCE TO INCLUDE DISSOLUTION OF FIRM OR ASSOCIATION AND PARTITION IN CASE OF HUF

The provisions of section 94(1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or to partition.

**Explanation:** For the purposes of this Chapter:

- (i) a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm;
- (ii) "court" means the District Court, High Court or Supreme Court.



#### **CHECK YOUR KNOWLEDGE**

#### 1. Where any agent supplies goods on behalf of his principal:

- (a) Such agent shall be jointly and severally liable to pay the GST payable on such goods.
- (b) The principal shall be jointly and severally liable to pay the GST payable on such goods.
- (c) Both (a) and (b)
- (d) None of the above

#### 2. Which of the following statements are true in case of retirement of a partner from the firm?

- (a) Retiring partner and not the firm shall intimate the date of his retirement to the Commissioner. Retiring partner shall be liable to pay tax, interest or penalty due up to the date of such intimation.
- (b) The firm and not the retiring partner shall intimate the date of retirement of such partner to the Commissioner. Retiring partner shall be liable to pay tax, interest or penalty due up to the date of such intimation.
- (c) Either retiring partner or the firm, shall intimate the date of retirement of such partner to the Commissioner. Retiring 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.

(d) Either retiring partner or the firm, shall intimate the date of of retirement of such partner to the Commissioner. Retiring partner shall be liable to pay tax, interest or penalty due up to the date of such intimation.

#### 3. Where any agent supplies goods on behalf of his principal:

- (a) Such agent shall be jointly and severally liable to pay the GST payable on such goods.
- (b) The principal shall be jointly and severally liable to pay the GST payable on such goods.
- (c) Both (a) and (b)
- (d) None of the above.

21

### **Offences and Penalties**



### **CHAPTER OUTLINES**

- Relevant Definitions.
- Detention, Seizure and Release of Goods and Conveyance in Transit.
- Confiscation of Goods or Conveyance or Levy of Penalty.
- Offences and Prosecution.
- Compounding of Offences.

#### **RELEVANT DEFINITIONS**

- 1. Section 2(34): "conveyance" includes a vessel, an aircraft and a vehicle;
- **2. Section 2(94):** "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;
- **3. Section 2(95):** "regulations" means the regulations made by the Board under this Act on the recommendations of the Council;
- **4. Section 2(91):** "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;
- **5. Section 2(91)**: Confiscation: The word 'confiscation' has not been defined in the Act. The concept is derived from Roman Law wherein it meant seizing or taking into the hands of emperor, and transferring to Imperial "fiscus" or Treasury. The word "confiscate" has been defined in Aiyar's Law Lexicon as to "appropriate (private property) to the public treasury by way of penalty; to deprive of property as forfeited to the State."

In short it means transfer of the title to the goods to the Government.

#### [SECTION 122]: PENALTY FOR CERTAIN OFFENCES:

SECTION NO.	OFFENCES	PENALTIES
122(1)	<ol> <li>Supplies of goods / services made without invoice or false invoice, invoices or bills issued without any supply of goods/services, transports taxable goods without document cover.</li> <li>Collects tax but fails to pay to Government within 3 months from due date of payment.</li> <li>Fails to deduct any tax or collect any tax, deduct or collect any lesser amount of tax, fails to pay same to the Government.</li> <li>Takes or utilizes ITC or distributes ITC in contravention of the Act.</li> <li>Obtains refund fraudulently.</li> <li>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.</li> <li>Fails to obtain registration/ furnishes false particulars with regard to registration/ issues invoices using registration number of another person.</li> <li>Obstructs or prevents officer in discharge of his duties.</li> <li>Fails to keep, maintain or retain books of accounts.</li> <li>Fails to furnish information or documents/ furnishes false information during any proceedings.</li> <li>Supplies, transports or stores goods which person has reason to believe are liable for confiscation.</li> <li>Tampers with or destroys any material</li> </ol>	Rs. 10,000 An amount equivalent to any of the following (applicable as the case may be)-  The tax evaded, or  The tax not deducted under section 51 or short deducted or deducted but not paid to the Government, or  Tax not collected under action 52 or short collected or collected but not paid to the Government, or  Input tax credit availed of or passed on or distributed irregularly, or  The refund claimed fraudulently, whichever is higher.

	evidence or documents. Disposes off or tampers any goods that have been detained, seized or attached.  (13) Transporting any taxable goods without cover of document.	
122(2)	Supplies on which tax has not been paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized.	- 10.000
	(a) For any reason, other than the (reason of fraud) or any willful misstatement or suppression of facts to evade tax.	Rs 10,000 or 10% of the tax due from such person, whichever is higher.
	(b) For reason of fraud or any willful misstatement or suppression of facts to evade tax.	Rs. 10,000 or 100% of the tax due from such person, whichever is higher.
122(3)	Any person other than taxable person: Aids or abets offences specified u/s 122(1); Acquires possession/ concerns in dealing goods which he knows or reason to believe are in contravention such as transport, remove, keeps, conceals, supply or purchase. Receives/ deals with supply of services which he knows or reasons to believe are liable to contravention of Act/ Rules. Fails to appear when summon is issued to give evidence/ produce a document. Fails to issue invoice or account for in accordance with provisions.	Penalty upto Rs. 25,000
123	Failure to furnish information return. Failures to furnish information return within the period as specified in notice.	Rs. 100 for each day of the period during which failure to furnish information return continues subject to maximum of Rs. 5,000.
124	Fine for failure to furnish statistics. Fails to furnish statistics without reasonable cause/ willfully furnishes or causes to furnish fake information.	Rs. 10,000 or. In continuing offence Rs. 100 per day subject to maximum of Rs. 25,000.
125	General penalty Contravention for which no penalty is separately provided.	Amount which may extend to Rs. 25,000.

Any person who retains the benefits of a transaction covered under below mentioned clauses of subsection (1) and at whose instance such transaction is conducted shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on [Section 122 (1A)]

(i) Supply of any goods or services or both without issue of any invoice orissue of an incorrect or false invoice with regard to any such supply.

The essence of GST law is documentation and reporting. The law prescribes that in case of supply of goods, invoice needs to be raised before or at the time of removal of goods, and within 30 days in case of supply of services. Any transaction without an invoice or invoice with incorrect particulars will fall under this category.

21.3

- (ii) Issue of any invoice or bill without supply ofgoods or services or both in violation of the provisions of this Act or the rules made thereunder.
  - This might be a case where the invoices are raised for a non-existent transaction (Bogus invoices).
- (vii) Takes or utilises input tax credit without actual receipt of goods or ervices or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder.
  - This clause covers the situation where the invoice is received in advance and the goods have not been received/ partially received. The registered person cannot avail the input without receipt of goods/ partial receipt of goods in terms of section 16 of the CGST Act.
- (ix) Takes or distributes input tax credit in contravention of section 20, or therules made thereunder.

  Section 20 prescribes the manner in which the credit is distributed by an Input Service Distributor. Availing or distributing credit in contravention of the provisions of the Act shall attract penalty.

The scope of penal provision has been expanded to include a personwho causes to commit and retains the benefits arising out of any ofthe following offences: -

- (i) Supply of any goods or services or both without issue of any invoice or issue of an incorrect or false invoice with regard to any such supply.
- (ii) Issue of any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder.
- (vii) Takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder.
- (ix) Takes or distributes input tax credit in contravention of section 20, or the rules made thereunder.

#### **ISECTION 126]: GENERAL DISCIPLINES RELATED TO PENALTY:**

- (a) Penalty shall not be imposed for minor breaches or omission or mistakes 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.

#### **[SECTION 128]: POWER TO WAIVE PENALTY OR FEE OR BOTH:**

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 mitigation circumstances as may be specified therein, on the recommendation of the Council.



#### DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCE IN TRANSIT [SECTION 129]

**Section 129(1) Penalty: -** When any person, transports any goods while they are in transit in contravention of the provisions of this Act, then all such goods, and conveyance used, shall be liable to detention or seizure. The detained or seized goods or conveyance shall be released:

#### a) When the owner of the goods accepts the liability (Owner Come Forward)

- Payment of tax and penalty equal to 200% of the tax payable.
- In case of exempted goods, on payment of
  - i.) Amount equal to 2% of the value of the goods, or
  - ii.) ₹ 25,000. [Whichever is less]

#### b) When the owner does not accept the liability (Owner does not come forward)

- Payment of tax and penalty equal to 50% of the value of the goods or **200% of the tax** payable on such goods, [Which is Higher]
- In case of exempted goods, on payment of
  - i.) Amount equal to 5% of the value of the goods, or
  - ii.) ₹ 25,000. [whichever is less]

#### c) Furnishing a security equivalent to amount payable in clauses (a) and (b).

Section 129(2) Service of order of detention or seizure  $\rightarrow$  Mandatory.

#### Section 129(3) Issue SCN within 7 Days

The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the Tax—and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c)."

The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty U/S 129 (1)(a)/(b).

#### Section 129(4) Opportunity of being heard

No Tax, Interest or Penalty **No penalty** shall be determined U/S 129(3) without giving the person concerned an opportunity of being heard.

#### Section 129(5) Proceeding deemed to be concluded

On the payment of amount referred in U/S 129(1), all proceedings in respect of the notice specified in subsection (3) shall be deemed to be concluded.

#### Section 129(6) Consequence in tax of failure to pay amount of penalty of u/s 129(1)

Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130: Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer."

#### **Disposal of Goods or Conveyance**

- 1) Rule 144A: Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under Sub-Section (1) of section 129 within fifteen days from the date of receipt of the copy of the order passed under sub-section (3) of the said Section 129, the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance:
- 2) Where the person, pays the amount of penalty under section 129(1), including any expenses incurred in safe custody and handling of such goods or conveyance but before the issuance of notice, the proper officer shall cancel the process of auction and release such goods or conveyance.
- 3) The conveyance shall be released on payment by the transporter of penalty u/s 129(3) or one lakh rupees, whichever is less.
- 4) Where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

#### Rule 154. Disposal of proceeds of sale of goods or conveyance and movable or immovable property:

- 1) The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under section 129(3) shall:
  - a) first, be appropriated against the administrative cost of the recovery process;
  - b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under section 129(3) as the case may be;
  - c) next, be appropriated against any other amount due from the defaulter under the Act (CGST/SGST/IGST/UTGST Act) and the rules made thereunder;
  - d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;
- 2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund;

#### [SECTION 130] CONFISCATION OF GOODS OR CONVEYANCES OR LEVY OF PENALTY

#### Section 130(1) Cases in which goods can be Confiscated

- 1) Notwithstanding anything contained in this Act if Where any person supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- 2) does not account for any goods on which he is liable to pay tax under this Act; or
- 3) supplies any goods liable to tax under this Act without having applied for
- 4) registration; or contravenes any of the provisions of this Act or the rules made
- 5) thereunder with intent to evade payment of tax; or
- 6) uses any conveyance as a means of transport for carriage of goods in
- 7) contravention of the provisions of this Act or the rules made thereunder unless the
- 8) owner of the conveyance proves that it was so used without the knowledge or
- 9) connivance of the owner himself, his agent, if any, and the person in charge of the
- 10) conveyance then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122

#### Section 130(2) Payment of fine in Lieu of confiscation

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, provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon Provided further that the aggregate of such fine and penalty leviable shall not be less than the [Amount of penalty leviable under sec 129(1) Penalty equal to Hundred per cent of the tax payable on such goods]

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the

owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon

Section 130(3): - Omitted (w.e.f. 1st January, 2022 vide Notification No. 39/2021-C.T., dated bys. 118(c) of The Finance Act, 2021 (No. 13 of 2021) dated 28th March, 2021 for "(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub- section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance."

#### Section 130(4) Opportunity of Being heard

No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving to the person an opportunity of being heard.

#### Section 130(5) Tittle of goods or conveyance shall vest in the government.

Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

#### **Section 130(6) Assistance of Police**

The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

#### Section 130(7) Disposal of Goods or Conveyance

The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

Student Note:	

#### [SECTION 132]: PUNISHMENT FOR CERTAIN OFFENCES

(i) Types of offences as per Section 132(1), whoever commits any of the following offences, shall be liable to punishments -

**OFFENCES AND PROSECUTION** 

- (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 there-under, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in the violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization 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 as any amount as tax but fails to pay the same to Government beyond a period of 3 months from the date on which such payments become 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 of 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 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 contraventions 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 ny information which he is required to supply under this Act or the rule 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.
- (l) attempts to commit or abets the commission of anyof the offences mentioned in clauses (a) to (k) of this section.

(ii) Punishment Punishment for the above offences is as under:

Punishment Punishment for the above offences is as under:				
OFFENCE INVOLVING	AMOUNT INVOLVED IN RS.	PUNISHMENT (IMPRISOMMENT MINIMUM 6 MONTHS IN ABSENCE OF SPECIAL AND ADEQUATE REASONS TO THE CONTRARY TO BE RECORDED IN THE JUDGMENT OF THE COURT AND EXTENDING TO -		
	Exceeds ` 500 lakhs	5 years and with fine		
Tax evaded or input tax credit wrongly availed or untitled or refund wrongly taken.	Exceeds ` 200 lakhs but does not exceed ` 500 lakh.	3 years and with fine.		
refulid wioligty taken.	Exceeds ` 100 lakh but does not exceed ` 200 lakh	1 year and with fine.		
Compliments or abets in –  Falsification or substitution of financial records or producing fake accounts, documents or furnishes any false information with intention to evade payment of tax;  Obstruction or prevention any officer in the discharge of his duties.  Tampering with or destroying any material evidence or documents;		6 months with fine or both		
For second and every subsequent offence under Section 132	No limit	5 years with fine.		

- (iii) In case of second and subsequent offence 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 second and every subsequent offence with imprisonment with the term which may extend to 5 years and with fine. However, in 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. [Section 132(2)/(3)].
- (iv) Sanction of Commissioner: A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner. [Section 132(6)]

"Tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or refund wrongly taken under the provisions of this Act, the SGST Act, the ICST Act or the UTGST Act and the ces levied under the GST (Compensation to State) Act. [Explanation]

#### [SECTION 133]: LIABILITY OF OFFENCES AND CERTAIN OTHER PERSONS:

(a) Without disclosure of any information or the contents of any returns where -

Any person engaged in connection with the collection of statisitss under section 151 or compilation or computerization 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 the service on the common portal or the agent of common portal.

Willfully discloses any information or the contents of any return furnished under this Act or the 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 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 [section 133(1)]
- (b) Previous sanction any person -
  - (i) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanctions 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. [Section 133(2)].

#### **[SECTION 134]: COGNIZANCE OF OFFENCES:**

No court shall take cognizance of any offence punishable under this Act or the rule 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.

#### [SECTION 135]: PRESUMPTION OF CULPABLE MENTAL STATE:

- (a) "Culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reasons to believe, a
- (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.

#### [SECTION 136]: RELEVANCY OF STATEMENTS UNDER CERTAIN CIRCUMSTANCES:

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 the person who made the statements 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.

#### **[SECTION 137]: OFFENCES BY COMPANIES**

Where an offence committed by a company, every person who, at the time 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 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 demed 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**

#### [SECTION 138]: COMPOUNDING OF OFFENCES:

#### [SECTION 138(1)]: COMPOUNDING OF OFFENCES BY THE COMMISSIONER:

Any offence under this Act may either befor 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 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 be compounded once in respect of any of the offences specified in Section 132(1)(a) to (f) and the offences specified in clauses (1) 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 commiting 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 personsor offences as may be prescribed.

Compounding not to effect 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.

#### [SECTION 138(2)]: COMPOUNDING AMOUNT:

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 higher of the following amounts: 50% of tax involved, or
  - Rs. 10,000
- (b) The upper limit for compounding amount is to be higher of the following amounts: 150% of tax involved, or

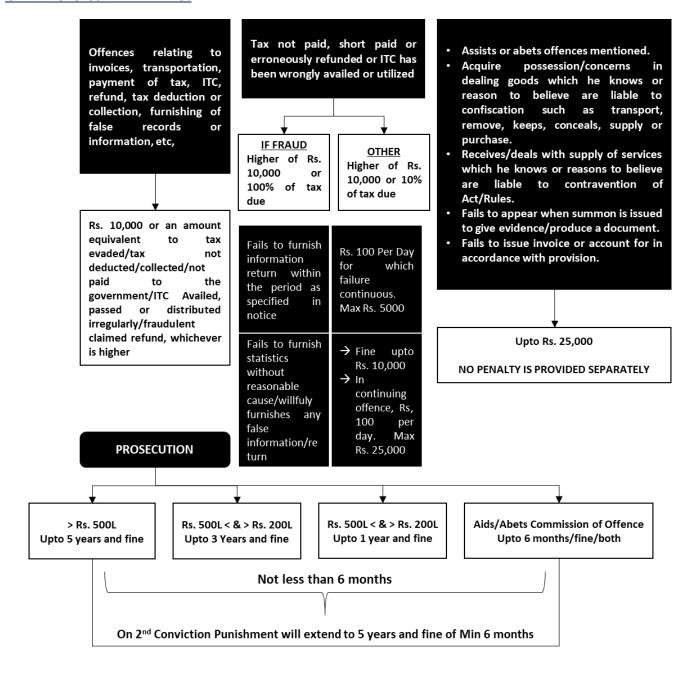
Rs. 30,000

### [SECTION 138(3)]: ABATEMENT OF PROCEEDINGS AND NON INITIATION OF CRIMINAL PROCEEDINGS:

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. [Section 138(3)].

The provisions relating to offences and penalties have been summarized by way of a diagram to help students remember and retain the provisions in a better and effective manner:

#### **OFFENCES & PENALTIES:**



#### **CHECK YOUR KNOWLEDGE**

- 1. A registered person, who is under investigation for an offence under Chapter XIX, needs to retain the books of accounts/other records pertaining to such investigation until the expiry of:
  - (a) 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.
  - (b) 1 year after final disposal of such investigation.
  - (c) (a) or (b), whichever is later
  - (d) None of the above
- 2. Mr. Motilal, a trader registered in Delhi, receives an order from Mr. Chotilal, registered in Noida, Uttar Pradesh, for supply of goods of Rs. 1,00,000/- taxable @18%. Mr. Motilal, agrees to supply the goods exfactory. Mr. Motilal, supplied goods on 3-Nov-2018 and issued a tax invoice of Rs. 1,18,000/- (Rs. 1,00,000/- + 18,000/- IGST) in the name of Mr. Chotilal. Mr. Chotilal, arranged his own vehicle for transportation of goods from Delhi to Noida. However, during transportation of goods, the vehicle of Mr. Chotilal, was stopped and checked by the Proper Officer. The Proper officers found that there was no eway bill along with the tax invoice. The owner of the goods decided to pay the penalty and got the goods released himself. According to the provisions of section 129 of the CGST Act, 2017, what is the amount to be paid for release of goods and who shall make the payment,-
  - (a) Payment of applicable tax and penalty equal to 100% of the tax payable by Mr. Motilal, i.e. Rs. 18,000/- tax + Rs. 18,000/- penalty
  - (b) Payment of applicable tax and penalty equal to 100% of the tax payable by Mr. Chotilal i.e. Rs. 18,000/- tax + Rs. 18,000/- penalty
  - (c) Payment of applicable tax and penalty equal to 100% of the value of goods by Mr. Motilal i.e. Rs. 18,000/- tax + Rs. 1,00,000/- penalty
  - (d) Payment of applicable tax and penalty equal to 50% of the value of goods by Mr. Chotilal i.e. Rs. 18,000/- tax + Rs. 50,000/- penalty
- 3. In which of the following cases, compounding of offence is not allowed under section 138 of CGST Act, 2017?
  - (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of section 132(1).
  - (b) a person who has been convicted for an offence under GST law by a Court.
  - (c) a person who has been accused of committing an offence under GST law which is also an offence under any other law for the time being in force.
  - (d) All of the above.
- 4. Sukanya, a registered supplier, failed to pay the GST amounting to Rs. 5,000 for the month of January, 20XX. The proper officer imposed a penalty on Sukanya for failure to pay tax. Sukanya believes that it is a minor breach and in accordance with the provisions of section 126 of the CGST Act, 2017, no penalty is imposable for minor breaches of tax regulations. In this regard, which of the following statements is true?
  - (a) Penalty is leviable on Sukanya since the breach is considered as a 'minor breach' only if amount of tax involved is less than Rs. 5,000
  - (b) Penalty is not leviable on Sukanya since the breach is considered as a 'minor breach' if amount of tax involved is upto Rs. 5,000
  - (c) Penalty is leviable on Sukanya since the breach is considered as a 'minor breach' only if amount of tax involved is Nil.
  - (d) None of the above

- 5. Minimum and maximum limit for amount for compounding of offences under section 138 of the CGST Act, 2017 are:
  - (a) Minimum: Higher of 50% of tax involved, or Rs. 10,000; Maximum: Higher of 150% of tax involved, or Rs. 30,000
  - (b) Minimum: Lower of 50% of tax involved, or Rs. 10,000; Maximum: Higher of 150% of tax involved, or Rs. 30.000
  - (c) Minimum: Higher of 50% of tax involved, or Rs. 10,000; Maximum: Lower of 150% of tax involved, or Rs. 30,000
  - (d) Minimum: Lower of 50% of tax involved, or Rs. 10,000; Maximum: Lower of 150% of tax involved, or Rs. 30,000
- 6. A registered person, who is under investigation for an offence under Chapter XIX of the CGST Act, 2017, needs to retain the books of accounts/other records pertaining to such investigation until the expiry of:
  - (a) 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.
  - (b) 1 year after final disposal of such investigation.
  - (c) (a) or (b), whichever is later
  - (d) None of the above

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### **Appeals and Revision**



### **CHAPTER OUTLINES**

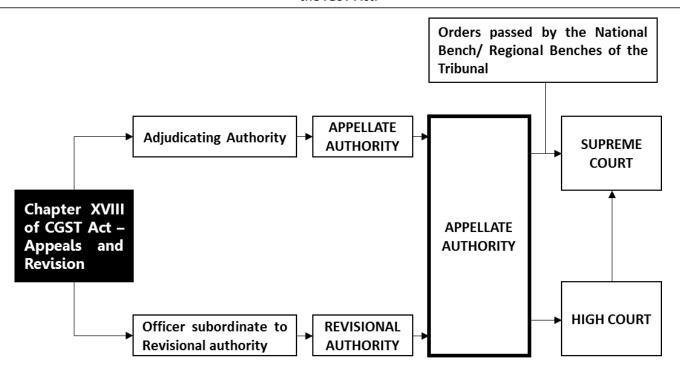
- Introduction.
- Appeal before the Appellate Authority (AA) by the Assesse.
- Application before AA by the Department.
- Appeal Process followed by AA.
- Orders which can be revised.
- [Sec. 109] Constitution and Structure of Appellate Tribunal.
- [Sec. 111] Procedure before Appellate Tribunal.
- [Sec. 112 & 113] Appeal to the Appellate Tribunal Appeal by Assesse.
- [Sec. 112 & 113] Appeal to the Appellate Tribunal Departmental Appeal.
- [Sec. 113] Order of the Appellate Tribunal.
- [Sec. 113(3)] Rectification of Errors.
- Mandatory pre-deposit.
- Production of Additional Evidence before the Appellate Authority or the Appellate Tribunal.
- [Sec. 116] Appearance by Authorised Representative.
- [Sec. 117] Appeal to the High Court.
- [Sec. 118 & 119] Appeal to the Surpeme Court.
- [Sec. 119 & 120] Appeal not to be filed in certain cases.
- [Sec. 120 & 121] Non Appealable Decisions and Orders.

#### **INTRODUCTION**

Tax law recognizes that on any given set of facts and laws, there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further channels of appeal, to both sides.

However, since the right to appeal is a statutory right, the statute also places reasonable fetters on the exercise of that right. The time limits prescribed by the statute for filing of appeals and the requirement of pre-deposit of a certain sum before the appeal can be heard by the competent authority are examples of such fetters on the statutory right.

Provisions of appeals and revision under CGST Act have also been made applicable to IGST Act vide Section 20 of the IGST Act.



#### DEFINITON OF ADJUDICATING OFFICER

"Adjudicating authority means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171.

#### APPOINTMENT OF APPELLATE AUTHORITY

- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to
  - (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;
  - (b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent,
  - within three months from the date on which the said decision or order is communicated to such person.
- (2) An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to
  - (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;



(b) the Additional Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or the Superintendent,

within six months from the date of communication of the said decision or order.

#### SECTION 107: APPEAL BEFORE THE APPELLATE AUTHORITY (AA) BY THE ASSESSEE

#### ORDERS APPEALABLE TO AA

An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/UTGST Act lies before the AA.

#### TIME LIMIT FOR FILING APPEAL

Aggrieved Person can file an appeal before the AA within 3 months from the date of communication of such decision/order.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

#### FORM FOR APPEAL TO AA BY THE ASSESSEE

The appeal to the AA shall be filed in GST APL-01 either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgement shall be issued to the appellant immediately.

#### MANDATORY PRE-DEPOSIT FOR FILING APPEAL

No appeal can be filed before the AA unless a specified amount of pre-deposit is made by the appellant.

Deposit of tax, interest, fine, fee, and penalty arising from the impugned order, as admitted by the appellant along with 10% of the "tax in dispute"

Provided that no appeal shall be filed against an order under section 129(3), unless some equal to maximum of twenty five percent of the penalty has been paid by the appellant

#### APPLICATION BEFORE AA BY THE DEPARTMENT

At times, the Department itself is not in agreement with the decision or order passed by the adjudicating authority. Section 107(2) provides that in such cases, the Department can file what is commonly known as a "review application/appeal" with the Appellate Authority.

#### ORDERS AGAINST WHICH THE APPLICATION CAN BE FILED BEFORE THE AA

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an adjudicating authority has passed any decision/order under the CGST Act or SGST Act/UTGST Act to satisfy himself about the legality or propriety of the said decision/order [Section 107(2)].

#### TIME LIMIT FOR FILING THE APPLICATION

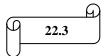
The Commissioner may, by order, direct any officer subordinate to him to apply to the AA within 6 months from the date of communication of the decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay.

#### **FORM FOR APPLICATION**

The application shall be made in GST APL-03 either electronically or otherwise as may be notified by the Commissioner.

NOTE: There is no requirement of making a pre-deposit in case of departmental appeal.



#### **APPEAL PROCESS FOLLOWED BY AA**

#### **DUTIES OF THE AA**

The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds (if found reasonable), etc.

#### ORDER OF THE AA

- The AA can also make further inquiry and pass its (Order-in-Appeal) which may confirm, modify or annul the decision/order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision/order.
- The AA can also increase the "rigour" of the order appealed against by enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or ITC, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order.
- If the AA is of the opinion that any tax has not been paid or shortpaidor erroneously refunded, or where ITC has been wrongly availed utilized, no order requiring the appellant to pay such tax or ITCshall be passed unless the appellant is given notice to show causeagainst the proposed order and the order is passed within the timelimit specified under section 73 or section 74.
- The Order-in-appeal shall be a "speaking order" i.e., it shall state the points for determination, the decision thereon and the reasons for the decision.
- On disposal of the appeal, the AA shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.
- A copy of the order passed by the AA shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional SGST/UTGST Commissioner or an authority designated by him in this behalf.
- Every order passed by the Appellate Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

#### TIME LIMIT FOR THE ORDER

The law provides an advisory time limit of 1 year from date of filing of appeal for the AA to decide the appeal. The period of stay ordered by any Court or Tribunal shall be excluded in computing the period of one year.

Example 1:- The Adjudicating authority passed the order on 23<sup>rd</sup> January 2021 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the AA on 16<sup>th</sup> February 2021. The AA should decide the appeal by 16<sup>th</sup> February 2022, where it is possible to do so.

Example 2:- The adjudicating authority passed the order on 23<sup>rd</sup> January 2021 and it was communicated to the taxpayer on the same day. The taxpayer filed the appeal against the order with the AA on 16<sup>th</sup> February 2021. The appeal proceedings before the AA are stayed by an order of a Court for the period between 1<sup>st</sup> May 2021 and 30<sup>th</sup> June 2021. The period of 61 days during which the stay was in operation will be excluded for computing the period of 1 year within which the AA should decide the appeal. Thus, the AA can pass the order by 18<sup>th</sup> April 2022.

### **APPEALS TO APPELLATE AUTHORITY [SECTION 107]** Any person aggrieved by any decision/order passed by an adjudicating authority passed under the The Commissioner may direct any Officer **GST laws** subordinate to him to apply to the AA to determine specified points relating to legality and propriety of an order of any adjudicating authority passed under the **GST laws** Time limit - Within 3 months from the Time limit - Within 6 months from the date of communication of the said date of communication of the said decision/order to the appellant. Delay decision/order. Delay of 1 month can be of 1 month can be condoned by the AA condoned by the AA Form of Appeal – GST APL 01 Form of Application – GST APL 03 Deposit of tax, interest, fine, fee, and penalty arising from the impugned order, as admitted by the appellant along with 10% of the "tax in dispute" Ceiling of Rs. 25 Crore for CGST and Rs. 50 Crore for IGST THE AA WILL GIVE THE APPELLANT A CHANCE TO BE HEARD.

The AA may allow the appellant during the hearing to go in to any ground of appeal not specified in the grounds of appeal and grant upto 3 adjournments.

The AA may confirm, modify, annul the decision or order appealed against after making further inquiry, as necessary.

### APPEALS TO APPELLATE AUTHORITY BY THE AGGREIVED PERSON:

Orders appealable to Appellate Authority [Section 107(1) read with Rule 109A of CGST Rules, 2017] [Inserted w.e.f. 15-11-2017]: Any person aggrieved by any decision or order passed under this Act or the SGST Act or the UTGST Act by an adjudicating authority or by Department may appeal to Appellate Authority as under:

### (I) Appeal by Aggrieved person

Adjudicating Authority who passed decision or order-	Appellate Authority to whom Appeal is to be filed -
Deputy Commissioner or Assisstant Commissioner or Superitendent	Joint Commissioner (Appeals)
Additional Commissioner or Joint Commissioner	Commissioner (Appeals)

### (I) Appeal by Department

Adjudicating Authority who passed decision or order-	Appellate Authority to whom Appeal is to be filed -
Deputy Commissioner or Assisstant Commissioner or Superitendent	Additional Commissioner (Appeals)
Additional Commissioner or Joint Commissioner	Not below the rank of JC (A) i.e.  Joint Commissioner (Appeals) / Commissioner appeals

Q1) An assessee received an order of the Assistant Commissioner of CGST dated 20-10-2017 in relation to adjudication of a demand on 26-10-2017. However, he was aggrieved by the said order, hence he filed an appeal to Appellate Authority (AA) on 25-01-2018. The AA, in response, rejected the appeal as he was of the opinion that it was time barred. Discuss.

**Solution:** Section 107 of the CGST Act, 2017 provides that an assessee aggrieved by the order of adjusting authority may appeal to the Commissioner (Appeals) within 3 months from the date of the communications to him of such decision or order.

In the given case, the assessee received the order of Assistant commissioner on 26-10-2017, hence he could file the appeal to Commissioner (Appeal) within 3 months from the said date which expires on 25-01-2018. Therefore, the assessee has made the appeal within time and the opinion of the Commissioner (Appeal) is not tenable.

- Q2) Compute the quantum of pre-deposit required to be made under section 107 of the CGST Act, 2017 in each of the following independent cases :
  - 1. In an order dated 18-10-2018 issued to M/s. RM Ltd., the Joint Commissioner of central tax has confirmed a tax demand of 45,00,000. M/s. RM Ltd. has admitted 5,00,000 as tax liability and intends to file an appeal with the Appellate Authority against tax demand of 40,00,000.
  - 2. In an order dated 18-10-2018 issued to M/s. KS Ltd., the Joint Commissioner of central tax has confirmed a tax demand of 45,00,000 and imposed a penalty of 5,00,000. M/s. RM Ltd. intends to file an appeal with the Appellate Authority against the said order.

#### **SOLUTION:**

- **1.** Section 107(6) of the CGST Act, 2017 require an appellant before Appellate authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order. Thus, RM Ltd. has to pre-deposit 5,00,000 (admitted tax) and 10% of 40,00,000 (tax in dispute) = 9,00,000.
- 2. Section 107(6) of the CGST Act, 2017 require an appellant before Appellate authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order. In this case since entire amount of tax demanded is in dispute, hence KK Ltd. has to pre-deposit 10% of 45,00,000 = 4,50,000.

### **SECTION 108: ORDERS WHICH CAN BE REVISED**

- The GST laws also provides for the mechanism of revision, by the Revisional Authority (RA), of the orders passed by its subordinate officers.
- The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings.
- if RA is of the view that the decision or order passed under the CGST Act/ SGST Act/ UTGST Act by any officer subordinate to him is erroneous, in so far as it is prejudicial to the interest of the revenue, and is illegal or improper or has not taken into account material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India he may, if necessary, stay the operation of such decision or order for such period as he deems fit.
- The RA, after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.
- Every revision order shall be, subject to further appeal to the Tribunal, High Court or Supreme Court, be final and binding on the parties.

The RA shall not exercise the power of revision if:

- (a) the order has been subject to an appeal before AA or Tribunal or High Court or Supreme Court (However, issue not covered in appeal can be taken in revision); or
- (b) the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or
- (c) the order has already been taken for revision under this section at an earlier stage; or
- (d) the order sought to be revised is a revisional order in the first place (Once revisional order is passed, further revision is not possible).

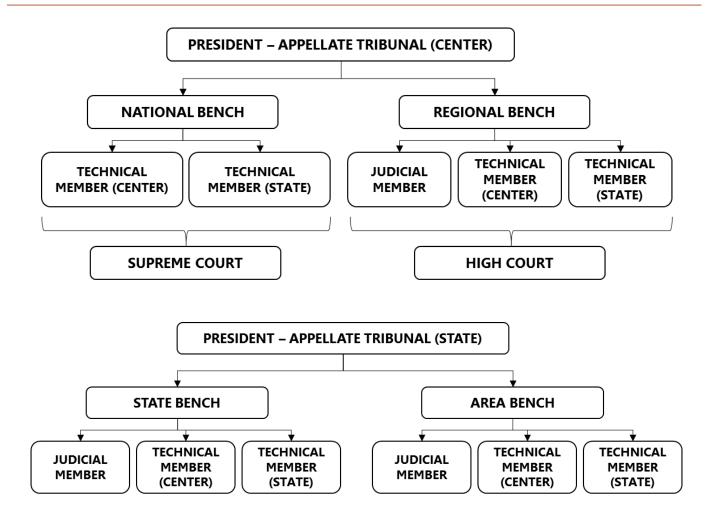
### PRIOR NOTICE TO PERSON IN CASE OF ADVERSE ORDER BY REVISIONAL AUTHORITY

If the Revisional Authority decides to pass an order in revision under section 108 of the CGST Act which is likely to affect the person adversely, an obligation has been cast on the Revisional Authority to serve a notice on such person and give him a reasonable opportunity of being heard. Along with the order under section 108(1), the Revisional Authority will also issue a summary of the order clearly indicating the final amount of demand confirmed. [Notification No. 74/ 2018 CT dated 31.12.2018]

### Note: -

Revisional Authority		
If the order passed by the:	Revisional Authority:	
(1) Assistant Commissioner or Deputy Commissioner or Superintendent	(1) Additional Commissioner or Joint Commissioner of CGST	
(2) Additional Commissioner or Joint Commissioner	(1) Principal Commissioner or Commissioner of CGST	

### **CONSTITUTION AND STRUCTURE OF APPELLATE TRIBUNAL [SECTION 109]**



### **ISSUE**

**If the issue is related to Place of supply,** then the National Bench/ Regional benches of the Tribunal will have jurisdiction to hear the appeal.

**Otherwise**, the State/Area Benches will have the jurisdiction to hear the appeal.

However, any appeal where the tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed `5,00,000 and which does not involve any question of law may, with the approval of the President, be heard by a bench consisting of a single member.

### PROCEDURE BEFORE APPELLATE TRIBUNAL [SECTION 111]

The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;

- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.

### APPEAL TO THE APPELLATE TRIBUNAL [SECTION 112 & 113] – APPEAL BY ASSESSEE

### ORDER APPEALABLE TO APPELLATE TRIBUNAL

Any person aggrieved by an order passed against him by an AA or RA under CGST Act/SGST Act/ UTGST Act may appeal to the Appellate Tribunal.

### **TIME LIMIT FOR FILING APPEAL**

Within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay

#### FORM FOR APPEAL

The appeal shall be filed in GST APL-05 either electronically or otherwise as may be notified.

### POWER OF TRIBUNAL TO REFUSE TO ADMIT AN APPEAL

The Appellate Tribunal can refuse to admit an appeal if

the tax or ITC involved or

the difference in tax or ITC involved or

the amount of fine, fee or penalty determined by such order,

does not exceed Rs. 50,000.

### **MEMORANDUM OF CROSS OBJECTIONS**

It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding, that he may not have appealed against such order or any part thereof, file within 45 days a memorandum of cross-objections in GST APL-06 against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified for the initial appeal.

The Tribunal can condone the delay of up to 45 days beyond the specified time period of 45 days, if it is satisfied that there was sufficient cause for the delay.

### **FEES FOR FILING APPEAL**

The fees for filing of appeal or restoration of appeal shall be Rs. 1,000 for every Rs. 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed Rs. 25,000.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

#### MANDATORY PRE-DEPOSIT FOR FILING APPEAL

No appeal can be filed before the Appellate Tribunal unless a specified amount of pre-deposit is made by the appellant.

- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- (b) 20% of the remaining amount of tax in dispute,

Where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amoung payable shall be Rs. 50 crore (in case of CGST) and Rs. 100 crore (in case of IGST). Section 20 of the IGST Act specifies the provisions of the CGST Act which are applicable in case of IGST Act as well.

### APPEAL TO THE APPELLATE TRIBUNAL [SECTION 112 & 113] - DEPARTMENTAL APPEAL

- The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any order passed by the AA or RA under the CGST Act/SGST Act/ UTGST Act for the purpose of satisfying himself as to the legality or propriety of the said order.
- The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified him.
- The application shall be made in GST APL-07 either electronically or otherwise on the common portal.
- Such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order of the AA or RA.

NOTE: There is no requirement of making a pre-deposit in case of departmental appeal.

### **ORDERS OF THE APPELLATE TRIBUNAL [SECTION 113]**

The Tribunal, after hearing both sides may

pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or

refer the case back to the AA or to the RA, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

### **ADJOURNMENT**

For reasons of natural justice (reasonable opportunity) it is also provided that the Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to hearing of appeal to either side.

### **TIME LIMIT**

The law provides an advisory time limit of 1 year from the date of filing of appeal for the Tribunal to decide the appeal.

### **COPY OF ORDER**

The Tribunal shall send a copy of its order to

AA/RA/Original adjudicating authority

Appellant

Jurisdictional Commissioner or the SGST/UTGST Commissioner

Every order passed by the Tribunal shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.

### **RECTIFICATION OF ERRORS [SECTION 113(3)]**

- The Tribunal can correct its own order for any apparent mistakes but it has no power of review.
  - TIME LIMIT 3 months from date of order
- The Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is noticed in the order by its own accord, or is brought to its notice by the Commissioner or SGST/UTGST Commissioner or the other party to the appeal within a period of 3 months from the date of the order.

No amendment which has the effect of enhancing an assessment or reducing a refund or ITC or otherwise increasing the liability of the other party, shall be made, unless the party has been given an opportunity of being heard.

### **MANDATORY PRE-DEPOSIT**

Section 107(6) provides that no appeal shall be filed before the AA, unless the appellant has paid—

- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order.

The payment of pre-deposit ensures staying of the recovery proceedings for the balance amount.

Section 112(8) lays down that no appeal can be filed before the Tribunal, unless the appellant deposits

- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- (b) 20% of the remaining amount of tax in dispute,

in addition to the amount deposited before the AA, arising from the said order, in relation to which appeal has been filed.

NOTE: Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

<u>AUTHORITY</u>	<u>PRE-DEPOSIT</u>	
	When the tax involved is CGST When the tax involved is IGST	
AA	Admitted CGST liability in full plus 10% of the CGST in dispute, Subject to Maximum of 25 Crore Rupees	Admitted IGST liability in full plus 10% of the IGST in dispute, Subject to Maximum of 50 Crore Rupeess
APPELLATE TRIBUNAL	Admitted CGST liability in full plus 20% of the CGST in dispute, in Addition to the amount deposited before AA as per deposit, subject to a maximum of 50 crore Rupees	Admitted IGST liability in full plus 20% of the IGST in dispute, in addition to the amount deposited before AA as pre deposit subject to a maximum of 100 crore Rupees

### **INTEREST ON REFUND OF PRE-DEPOSIT [SECTION 115]**

If the pre-deposit made by the appellant before the AA or the Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest as provided under section 56 shall be payable from the date of payment of the amount (and not from the date of the order of the AA or of the Tribunal) till the date of refund of such amount.

### **EXAMPLE:**

Q1) M/s. SG Associates deposits Rs. 8,00,000 as pre-deposit on 15-10-2017 and files an appeal with CESTAT (Appellate Authority). CESTAT decides the appeal in favour of M/s. SG Associates on 25-12-2017. M/s. SG Associates submits a letter seeking refund of the pre-deposit on 30-01-2018. The pre-deposit is refunded to M/s. SG Associates on 28-02-2018. Compute the amount of interest payable on refund of such pre-deposit, if any.

**SOLUTION:** Section 115 of CGST Act, 2017 provides for payment of interest at rate specified in section 56 i.e. @ 6% per annum on the refund of such pre-deposit from the date of its payment to the date of refund. Thus, interest payable on refund of pre-deposit of 7,50,000 will be 17,885 (rounded off) [ 8,00,000 x 6% x 136/365].

### PRODUCTION OF ADDITIONAL EVIDENCEBEFORE THE APPELLATE AUTHORITY ORTHE APPELLATE TRIBUNAL

The rule provides exceptional circumstances where the production of additional evidence before the AA or the Tribunal will be allowed as under:

22.11

- (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.

### **APPEARANCE BY AUTHORISED REPRESENTATIVE [SECTION 116]**

### WHO CAN BE AUTHORISED REPRESENTATIVE?

Broadly an authorised representative can be

- 1. a relative,
- 2. a regular employee,
- 3. an advocate,
- 4. a chartered accountant,
- 5. a cost accountant,
- 6. a company secretary, or
- 7. a GST Practitioner
- 8. Indirect tax gazetted officers after one year from retirement/resignation.

### **DISQUALIFICATION FOR AUTHORISED REPRESENTATIVE**

- a) who has been dismissed or removed from Government service; or
- b) who is convicted of an offence connected with any proceedings under the CGST Act/ SGST Act/ UTGST Act/IGST Act or under the earlier law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods and/or services; or
- c) who is found guilty of misconduct by the prescribed authority;
- d) who has been adjudged as an insolvent

Any person who has been disqualified under the provisions of the SGST Act/ UTGST Act shall be deemed to be disqualified under the CGST Act also.

### **APPEAL TO THE HIGH COURT [SECTION 117]**

#### APPEALABLE ORDERS

If aggrieved by any order passed by the State Bench or Area Bench of the Tribunal, may file an appeal to the High Court.

The High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

### TIME LIMIT FOR FILING APPEAL

Within 180 days from the date on which the order appealed against is received by the aggrieved person.

However, the High Court has the power to condone the delay on being satisfied of sufficient cause for the same (No Time Limit)

### **FORM OF APPEAL**

The appeal shall be filed in GST APL 08

### **DECISION OF THE HIGH COURT**

### ISSUES THAT CAN BE DECIDED [SECTION 117(5):

- (a) has not been determined by the State Bench or Area Bench; or
- (b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law.

### ATLEAST 2 JUDGE BENCH TO HEAR APPEAL [SECTION 117(6):

Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

### DECISION BY MAJORITY OR REFERENCE TO ADDITIONAL JUDGES [SECTION 117(7):

Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

### **EFFECT TO BE GIVEN TO HIGH COURT [SECTION 117(8):**

Where the High Court delivers a judgement in an appeal filed before it under this section, effect shall be given to such judgement by either side on the basis of a certified copy of the judgement.

### PROVISION OF CPC TO APPLY [SECTION 117(9):

Same as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

### **APPEAL TO THE SUPREME COURT [SECTION 118 & 119]**

- The law provides for appeals to the Supreme Court from any judgment or order passed by the High Court, in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one, for appeal to the Supreme Court.
- A (direct) appeal shall also lie to the Supreme Court from any orders passed by the National/Regional Bench of the Tribunal.
- The provision of the Code of Civil Procedure relating to appeals to the Supreme Court shall apply to appeals before the Supreme Court under this section. Pre–deposit of all tax dues will be required unless stay is obtained from the Supreme Court pending the disposal of the appeal.
- The Supreme Court can vary, confirm or reverse the judgement of the High Court or the Tribunal as the case may be and may award costs. It can also remand the matter for fresh consideration.

### **APPEAL NOT TO BE FILED IN CERTAIN CASES [SECTION 120]**

### FIXATION OF MONETARY LIMIT FOR REGULATING THE FILING OF APPEAL

The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.

### **CENTRAL TAX OFFICER MAY FILE APPEAL**

Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.

### **NO CONTENTION OF CONSENT BY CENTRAL TAX OFFICER**

No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).

### REGARDS TO THE CIRCUMSTANCES IN WHICH APPEAL ETC. IS NOT FILED

The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

### **NON-APPEALABLE DECISIONS AND ORDERS [SECTION 121]**

Section 121 lays down that no appeals whatsoever can be filed against the following orders:-

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under the Act; or
- (d) an order passed under section 80 (payment of tax in instalments).

# APPEAL TO AA GST COMM. (A) CUSTOMS

	AATIF D <sub>2</sub> A HOT PC <sub>2</sub>	
		CUSTONAS
	GST	CUSTOMS
Authority	APPEAL TO APPELATE AUTHORITY	APPEAL TO COMMISSIONER (APPEAL)
<b>A</b> = Applicant	<ol> <li>Person aggrieved by any decision / order passed by adjudicating authority under CGST / SGST / UTGST Act, 2017</li> <li>The commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority (AA)</li> </ol>	Aggrieved Party (Assessee)
	AGGRIEVED PARTY	<u>ASSESSEE</u>
	ORDER PASSED BY AA	
A = Appeal by	1) Ad. Comm. / Jt. Comm. Comm. (A) 2) AC/DC or Supr. Jt. Comm. (A)	Appeal by Aggrieved Party against the order passed by
	<u>DEPARTMENT</u>	Adjudicating Authority (Lower the rank of Commissioner)
	1) Ad. Comm. / Jt. Comm. Jt. Comm. (A) / Comm. (A) 2) AC/DC or Supr. Ad. Comm. (A)	,, ,, ,, ,, ,, ,, ,, ,, ,, ,, ,,,,,
TI = Time Limit for	For assesse: 3 months + 1 month (extension in case of valid reason for delayed filing) from the date of communication of the decision / order.	Appeal to Comm(A) within 60 days from the date of communication to him of such decision of order.
Application	For department: 6 month + 1 month (extension in case of valid reason for delayed filing) from the date of communication of decision / order.	Condonation of delay in filing appeal: The Comm. (A) may condone the delay for a further period of 30 days
<b>F</b> = Form	For assesse GST APL 01 For Department GST APL 03	Form C.A1

### $D_1$ = Decision Submission of Copy of Decision / order issued by adjudicating authority within 7 days of filing the appeal, then a final acknowledgement will be issued in FORM APL 02 by the appellate authority. Appeal is treated filed only when final acknowledgement is issued **ANALYSIS** Effective date of filing the appeal copy of the decision / order submitted within time limit **YES** Date of issue of the provisional Date of Submission of Such Copy acknowledgement Eg. 29<sup>th</sup> June 18 Adjudicating Authority passed an order with demand notice. 1<sup>st</sup> July 18 Such order communicated to A'ee 29<sup>th</sup> Sept 18 A'ee filed appeal against the order of adjudicating authority & AA issued. Case 1: 1<sup>st</sup> Oct 18 A'ss submits a copy of order to AA Case 2: 4th Nov 18 AA will issued final acknowledgement in form APL 02 **Analysis of Case:** Case 1 Effective date of filing of Appeal = 29<sup>th</sup> Sept 18 Case 2 Time Barred date of filing of Appeal = 4th Nov 18 **7.5% of Duty** Pre Deposit: 10% of tax in Dispute + 100% of the admitted (If either duty or duty and penalty liability (tax, interest, fine, fee, penalty) in dispute) $D_2$ = Deposit Note: Where the appellant has made the pre-deposit the 7.5% of Penalty recovery proceeding for the balance amount shall be (If only Penalty is in dispute) deemed to be stayed till the disposal of the appeal. The appellate authority may allow an application to add any **A** = Additional additional grounds of appeal at the time of hearing. If AA is **SAME** Grounds satisfied that omission is not wilful / unreasonable. The AA may allow a reasonable adjournment (but not more **SAME** Adjournment than 3) Opportunity of being heard to assessee. If AA passed an **H** = Hearing Adverse Order against the assesse then he will give an **SAME** opportunity of being heard to assesse. Comm. (A) shall pass Appellate Authority shall pass a) Just and Proper order, after making necessary a) Just and Proper order, after O = Order inquiries. making necessary inquiries. b) Order may confirm, modify or annul the order / Confirming, modifying decision but shall not refer the case back to the annulling the decision or

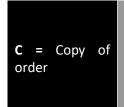
	adjudicating authority.	order appealed against; or c) Referring the matter back to Adjudicating Authority with directions for fresh adjudication or decision, as the case may be.
<b>T</b> = Time Limit for Order	The law provides an advisory time limit of 1 year from date of filing of appeal to the appellate authority to decide the appeal.  Note: The period of stay order by any court or tribunal shall be excluded in computing the period of 1 year.	6 months from the date on which it is filed.
<b>P</b> = Power of AA / Comm. (A)	Same as in order	Same as in order
<b>C</b> = Communication	On disposal of the appeal, the appellate authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.	On the disposal of the appeal, the Comm. (A) shall communicate the order passed by him to the appellant, the adjudicating authority, the Principal Chief Commissioner or Chief Commissioner and the Principal Commissioner of Customs.
<b>C</b> = Copy of order	A copy of the order passed by the appellate authority shall also be sent to the Jurisdictional Commissioner or the Authority designated by him in this behalf and Jurisdictional SGST / UTGST Commission or any authority designated by him.	-

# APPEAL TO APPELLATE TRIBUNAL GST CESTAT CUSTOMS

NO AATIF₂ DDAM HOT C		
	GST	CUSTOMS
		<ol> <li>Discretionary Power of CESTAT to refuse to admit an appeal in following cases:</li> </ol>
NO = NO APPEAL	Power of Tribunal to refuse to admit an appeal in following cases:  1) The tax or ITC involved or the difference of tax or ITC involved or the amount of fine, fee or penalty determined by such order does not exceed Rs. 50,000.  Note: In the above case revisionary authority can handle this type of cases.	<ul> <li>(a) In any disputed case, (except rate of duty and valuation), the difference in duty involved or the duty involved; or</li> <li>(b) Fine and Penalty; or</li> <li>(c) Value of goods confiscated. Does not exceed Rs. 2,00,000</li> <li>2) Case of Baggage;</li> <li>3) Short unloaded or not unloaded of Goods</li> <li>4) Case of Duty Drawback</li> </ul>
<b>A</b> = Applicant	Any person aggrieved by an order passed against him by an appellate authority or revisionary authority.  The Commissionary may, by order, direct any officer subordinate to him to apply to the appellate tribunal	Assessee Department
<b>A</b> = Authority		JUDICIAL MEMBER  (Who has for at least 10 years held a judicial office in India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least 3 years, or who has been an advocate for at least 10 years.)  TECHNICAL MEMBER
	<ol> <li>Note: State Government may designate the senior most JM in a state as the state president.</li> <li>Central Govt. has power to appoint Appellate Tribunal of one state to another state.</li> <li>Hearing by 2 member Generally every bench contains 3 members, but in case of absence of any</li> </ol>	(Who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Principal Commissioner or Commissioner of Customs or Central Excise or any equivalent or higher post for at least 3 years.)

	member in bench due to vacancy or otherwise. Hearing by 2 members is allowed only if approval of president is taken.  4) Hearing by 1 member Allowed only if amt. involved is less than or equal to Rs. 5,00,000 and does not involve matter of question of law.	
TI =	<b>For assesse:</b> 3 months from the date of communication of decision or order + 3 month extension if tribunal satisfied that there was sufficient cause for the delay.	For Assesse / Department:  3 months from the date of communication of decision or order
Time Limit for Application	For department: within 6 months from the date on which the said order has been passed for determination.	(Condonation of delay in filing appeal without time limit)
<b>F</b> <sub>1</sub> = Form	For assesse GST APL 05 For Department GST APL 07	For Assesse C.A3 For Department C.A5 For filing of MOCO C.A4
<b>D</b> = Decision	Same as Appellate Authority	-
<b>D</b> = Deposit	Pre Deposit: 20% of tax in Dispute + 100% of the admitted liability (tax, interest, fine, fee, penalty)  Note: Where the appellant has made the pre-deposit the recovery proceeding for the balance amount shall be deemed to be stayed till the disposal of the appeal.	7.5% of Duty (If either duty or duty and penalty in dispute) 7.5% of Penalty (If only Penalty is in dispute)  FOR SECOND APPEAL:  10% of Duty (If either duty or duty and penalty in dispute)  10% of Penalty (If only Penalty is in dispute)

		(Maximum Limit for Pre-Deposit Rs. 10 Crore)
	Where the adjudicating authority / appellate authority has referred to admit evidence which ought to have been admitted.	
<b>A</b> = Additional Grounds	Where the appellant was prevented by sufficient cause from producing the evidence	SAME
	Where the adjudicating authority / appellate authority has made the order appealed against without giving sufficient opportunity to the appellant to Adduce (present) evidence related to any grounds of appeal.	
<b>A</b> = Adjournment	Same as Appellate Authority	SAME
M = Memorandum of Cross Objection	The party against whom the appeal has been filed may file within 45 days a memorandum of cross objection (in GST APL 06) against any part of the order appealed against.  Note: The tribunal can condon the delay of upto 45 days beyond the specified time period of 45 days in case of sufficient cause for the delay.	To be filed within 45 days of the receipt of the notice.  Note: Condonation of delay in filing  MoCO without time limit
<b>H</b> = Hearing	Any adverse order shall not be passed unless the appellant has been given a reasonable opportunity of being heard.	SAME
<b>O</b> = Order	<ul> <li>Appellate Tribunal shall pass <ul> <li>a) Just and Proper order, after making necessary inquiries.</li> <li>b) Order may confirm, modify or annul the order / decision of AA</li> </ul> </li> <li>NOTE: The Tribunal can refer the case back to the appellate authority or to the revisionary 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.</li> </ul>	<ul> <li>Comm. (A) shall pass</li> <li>a) Just and Proper order, after making necessary inquiries.</li> <li>b) Confirming, modifying or annulling the decision or order appealed against; or</li> <li>c) Referring the matter back to Adjudicating Authority with directions for fresh adjudication or decision, as the case may be.</li> </ul>
<b>T</b> = Time Limit for Order	The law provides an advisory time limit of 1 year from date of filing of appeal for the tribunal to decide the appeal.  Note: The period of stay order by any court or tribunal shall be excluded in computing the period of 1 year.	If possible, within 3 years from the date on which appeal is filed.



A copy of the order passed by the appellate authority shall also be sent to the Jurisdictional Commissioner or the Authority designated by him in this behalf and Jurisdictional SGST / UTGST Commission or any authority designated by him.

### **RECTIFICATION OF ERROR [SEC 113(3)]**

The tribunal may amend any order passed by it so as to rectify any error apparent on the face of the records if such error is noticed by its own accord, or is brought to its notice by the Commissioner or Commissioner of SGST / UTGST or the other party.

### **TIME LIMIT**

Appeal within a period of 3 months from the date of the order (passed)

### **MANDATORY PRE-DEPOSIT**

Already Discussed

#### **INTEREST ON REFUND OF PRE-DEPOSIT**

If the pre-deposit made by the appellant before the appellate authority or the tribunal is required to be refunded consequent to any order of the appellate authority or of the tribunal. Interest as per Sec 56 i.e. 6% shall be payable from the date of payment of the amount (not from the date of order of the appellate authority or if the tribunal) till the date of refund of such amount.

### **APPEAL TO HIGH COURT [SEC 117]**

Refer Pg. 485

### **APPEAL TO SUPREME COURT [SEC 118, 119]**

Refer Pg. 486

### **NON APPEALABLE DECISION AND ORDER [SEC 121]**

Sec 121 lays down that no appeal can be filed against the following orders

- 1) An order of the commissioner or other authority empowered to direct transfer of proceeding from one officer to another officer.
- 2) An order pertaining to the seizure or retention of books of accounts, registered and other documents.
- 3) An order sanctioning prosecution under the Act.
- 4) An order passed u/s 80 (payment of tax in instalments)

### **CHECK YOUR KNOWLEDGE**

- 1. Mr. A, a sole proprietor, has to appear before the Appellate Authority. He decides to appear by an authorized representative. Which of the following persons can be appointed as 'authorized representative' of Mr. A under GST law?
  - (a) Sohan, his son, who has been dismissed from a Government service lately.
  - (b) Rohan, a Company Secretary, who has been adjudged insolvent.
  - (c) Mukul, a practicing High Court advocate.
  - (d) All of the above.

- 2. Rupam wishes to file an appeal to Appellate Tribunal. In which of the following cases, the Appellate Tribunal cannot refuse to admit his appeal?
  - i. Amount of tax/ ITC or difference in tax/ difference in ITC involved exceeds Rs. 50,000
  - ii. Amount of fine, fee or penalty determined by the order exceeds Rs. 50,000
  - iii. Amount of tax/ ITC or difference in tax/ difference in ITC involved is Rs. 50,000
  - iv. Amount of fine, fee or penalty determined by the order is Rs. 50,000
  - v. Amount of tax/ ITC or difference in tax/ difference in ITC involved is less than Rs. 50,000
  - vi. Amount of fine, fee or penalty determined by the order is less than Rs. 50,000
  - (a) i. and ii.
  - (b) i. and iii.
  - (c) ii. and iv.
  - (d) v. and vi.
- 3. A show cause notice was adjudicated by Commissioner of Customs. The assessee wants to file an appeal against the adjudication order. The appeal would lie to:
  - (a) Commissioner (Appeals)
  - (b) CESTAT
  - (c) High Court
  - (d) Review to be filed before Commissioner only
- 4. Some decisions of Appellate Tribunal are directly appealable to Supreme Court depending upon the nature of dispute involved. Which of the following is not directly appealable to Supreme Court?
  - (a) Classification of goods;
  - (b) Rate of duty;
  - (c) Value of goods;
  - (d) None of the above

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### **Advance Ruling**

# ADVANCE RULING



### **CHAPTER OUTLINES**

- /[Sec. 97] Matters in which Advance Ruling can be obtained.
- [Sec. 98] Procedure for obtaining Advance Ruling.
- [Sec. 100 & 101] Appeal against Order of AAR to the Appellate Authority.
- [Sec. 102] Rectification of Mistakes.
- [Sec. 103] Applicability of Advance Ruling.
- [Sec. 104] Advance Ruling to be void in certain Circumstances.
- [Sec. 105 & 106] Powers of Procedures of AAR and AAAR.
- Some Differences under GST and Customs.

### QUALIFICATION AND APPOINTMENT OF MEMBERS OF THE AUTHORITY FOR ADVANCE RULING.

The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling.

### MATTERS IN WHICH ADVANCE RULING CAN BE OBTAINED [SECTION 97]

Advance Ruling can be sought for the following questions:-

- (a) classification of any goods or services or both
- (b) applicability of a notification issued under the provisions of CGST Act (c)

determination of time and value of supply of goods or services or both (d)

admissibility of input tax credit of tax paid or deemed to have been paid (e)

determination of the liability to pay tax on any goods or services or both (f)

whether applicant is required to be registered

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

### **PROCEDURE FOR OBTAINING ADVANCE RULING [SECTION 98]**

### **APPLICATION**

The applicant should make application to AAR in a prescribed form and manner.

### **CALLING FOR RECORDS**

Upon receipt of an application, the AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records.

### ORDER OF EITHER ADMITTING OR REJECTING THE APPLICATION

The AAR may then examine the application along with the records and may also hear the applicant. Thereafter he will pass an order either admitting or rejecting the application.

#### SIMILAR SUBJECT MATTER PENDING OR DECIDED

Application for advance ruling will not be admitted in cases where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

### **SPEAKING ORDER IN CASE OF REJECTION**

If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.

### **TIME PERIOD**

If the application is admitted, the AAR shall pronounce its ruling within 90 days of receipt of application.

### **OPPORTUNITY OF BEING HEARD**

Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST.

### **DIFFERNCE OF OPINION IN BETWEEN THE 2 MEMBERS OF AAR**

If there is a difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.

### **COPY OF ADVANCE RULING**

A copy of the advance ruling duly signed by members and certified in prescribed manner shall be sent to the applicant, the concerned officer and the jurisdictional officer.

### APPEAL AGAINST ORDER OF AAR TO THE APPELLATE AUTHORITY [SECTION 100 & 101]

- If the applicant is aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST does not agree with the finding of AAR, he can also file an appeal with AAAR.
- Any appeal must be filed within 30 days from the receipt of the advance ruling. The Appellate Authority may allow for an additional 30 days for filing an appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.
- The appeal has to be in the prescribed form and has to be verified in the prescribed manner.
- The Appellate Authority must pass an order after hearing the parties to the appeal within a period of 90 days of the filing of an appeal.
- If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.
- The said authority can either confirm or modify the ruling appealed against.
- A copy of the advance ruling pronounced by the Appellate Authority should be signed by the members, certified in the prescribed manner, and communicated to the applicant, the concerned officer, the jurisdictional officers and to the Authority.

### **RECTIFICATION OF MISTAKES [SECTION 102]**

- The law gives power to AAR and AAAR to amend their order to rectify any mistake apparent from the record within a period of 6 months from the date of the order.
- Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the concerned or the jurisdictional officer.
- If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant must be heard before the order is passed.

### **APPLICABILITY OF ADVANCE RULING [SECTION 103]**

An advance ruling pronounced by AAR or AAAR shall be binding only on the applicant and on the concerned officer or the jurisdictional officer in respect of the applicant.

### **ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 104]**

- Section 104 states the circumstances under which the ruling would be considered as void and hence would lose its binding value.
- If the Authorities (AAR and Appellate Authority) find that the advance ruling pronounced has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio.
- Consequently, all the provisions of the CGST Act shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued).

### **NOTE**

- (1) An order declaring advance ruling to be void can be passed only after hearing the applicant/appellant.
- (2) A copy of the order so made shall be sent to the applicant, the concerned officers and the jurisdictional officer.

### **POWERS AND PROCEDURE OF AAR AND AAAR [SECTION 105 AND 106]**

Both the AAR and AAAR are vested with the powers of a civil court under Code of Civil Procedure, 1908, for

- a) discovery and inspection,
- b) enforcing the attendance of a person and
- c) examining him on oath,

and compelling production of books of account and other records.

#### FEES FOR ADVANCE RULING

CGST = Rs. 5,000 SGST = Rs. 5,000

OR

IGST = Rs. 10,000



The applicability or otherwise of such amendment for November 2022 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
"advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	"advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	New clause (f) is being inserted in section 95 of the CGST Act to define the "National Appellate Authority for Advance Ruling". Definition of advance ruling is being amended to provide that the decision given by the National Appellate Authority will also be an advance ruling.

### Section 101A. Constitution of National Appellate Authority for Advance Ruling.

- 1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B
- 2) The National Appellate Authority shall consist of-
- a. The President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;
- b. A Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
- c. a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.
- 3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee: Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

  Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.
- 4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.
- 5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.
- 6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.
- 7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed: Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.
- 8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.
- 9) The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.

- 10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office: Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
- 11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who-
- a) has been adjudged an insolvent; or
- b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- c) has become physically or mentally incapable of acting as such President or Member; or
- d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or
- e) has so abused his position as to render his continuance in office prejudicial to the public interest: **Provided** that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.
- 12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.
- 13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (12).
- 14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

### Section 101B. Appeal to National Appellate Authority.

- 1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such Advance Ruling, may prefer an appeal to National Appellate Authority:
  - Provided that the officer shall be from the States in which such Advance Rulings have been given.
- 2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:

**Provided** that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:

**Provided** further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.

**Explanation:** For removal of doubts, it is clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

### Section 101C. Order of National Appellate Authority.

- 1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.
- 2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.
- 3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.

4) A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.

### **SOME DIFFERENCES UNDER GST AND CUSTOMS**

GST		CUSTOMS	
APPLICANTS	Any person registered or desirous of obtaining registration under this Act	<ol> <li>A non-resident setting up a joint venture in India in collaboration with a non-resident or a resident; or</li> <li>A resident setting up a joint venture in India in collaboration with a non-resident; or</li> <li>A wholly owned subsidiary Indian Company, of which he holding company is a foreign company.</li> <li>A joint venture in India</li> <li>Notified Resident by CG         <ul> <li>Public Sector Company – Resident Public Ltd.</li> <li>Resident Pvt. Ltd.</li> </ul> </li> <li>Additional Case         <ul> <li>Importer proposing to import claiming for assessment under Heading 98 01 (Project Import)</li> </ul> </li> </ol>	
THE MATTER IN WHICH THE ADVANCE RULING CAN BE OBTAINED	<ul> <li>(i) Classification of any goods or services or both</li> <li>(ii) Applicability of a notification issued under the provisions of this Act</li> <li>(iii) Determination of time and value of supply of goods</li> <li>(iv) Admissibility of input tax credit of tax paid or deemed to have been paid</li> <li>(v) Determination of the liability to pay tax</li> <li>(vi) Whether applicant is required to be on any goods or services or both registered</li> <li>(vii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.</li> </ul>	<ul> <li>(iii) The principles to be adopted for the purposes of determination of value of the goods</li> <li>(iv) Applicability of notification issued under this Act or CTA, 1975</li> <li>(v) Determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975</li> </ul>	
FEE FOR FILING APPLICATION	CGST Rs. 5,000 SGST Rs. 5,000 <b>OR</b> IGST Rs. 10,000	Rs. 10,000	
TIME LIMIT FOR PRONOUNCING AR	Within 90 days of Receipt of Application.	Within 3 months of Receipt of Application	

APPEAL TO
APPELLATE
AUTHORITY

Sec 100 & Sec 101

TIME LIMIT FOR APPEAL
Within 30 days from the date of receipt of
AR

+
30 Days

SECTION
Sec 28KA

TIME LIMIT FOR APPEAL
Within 60 days from the date of communication of order
+
30 Days

### **SOMETHING TO KNOW:**

An appeal against the ruling of AAR shall be filed in the jurisdictional office of the respective State AAAR.

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

The Finance (No. 2) Act, 2019 had come into force from 01.08.2019. However, the amendments made in the advance ruling provisions of the CGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2021. Therefore, the applicability or otherwise of such amendment for May 2022 and/or November 2022 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the relevant existing provisions<sup>1</sup> of the advance ruling are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunderin place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended bythe Finance (No. 2) Act, 2019	Remarks
Section 95(a)  "advance ruling" means a decision provided by the Authority or the AppellateAuthority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section  (1) of section 100, in relationto the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	"advance ruling" means a decision provided by the Authority or the Appellate Authority or the National Appellate Authority to an applicant on matters or on questions specified in subsection (2) of section 97 or sub-section (1) of section 100 or ofsection 101C, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant;	New clause (f) is being inserted in section 95 of the CGST Act to define the "National Appellate Authority for Advance Ruling". Definition of advance ruling is being amended to provide that the decision given by the national appellate Authority will also be an advance selling.

### New clause (f) in section 95

National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to insection 101A.

New section 101A: Constitution of National AppellateAuthority for Advance Ruling

- (1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.
- (2) The National Appellate Authority shall consist of -
- (i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;
- (ii) a Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen yearsof service in Group A;
- (iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the fieldof finance and taxation.
- (3) The President of the National Appellate Authority shallbe appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act tofill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.

- (4) The Technical Member (Centre) and Technical Member(State) of the National Appellate Authority shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.
- (5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.
- (6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.
- (7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:

New sections 101A, 101B and 101C are being inserted in the CGST Act so as to Provide for constitution, qualification, appointment, tenure, conditions services of the National Appellate

Authority forAdvance Ruling; to provide for procedures to be followed for hearing appeals against conflicting advance rulingspronounced on the same question by the Appellate Authorities of two or more States or Union territories in case of distinct persons; and to provide that the National Appellate Authority shall pass order withina period of ninety days from the date of filing of the appealrespectively.

Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.

- (8) The President of the National Appellate Authority shall hold office for a term of three years from the date onwhich he enters upon his office, or until he attains the ageof seventy years, whichever is earlier and shall also be eligible for reappointment.
- **(9)** The Technical Member (Centre) or Technical Member (State) of the National Appellate Authority shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment.
- (10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

- (11) The Government may, after consultation with the Chief Justice of India, remove from the office such President or Member, who-
- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Presidentor Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest: Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.
- (12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their officeexcept by an order made by the Government on the ground of proven misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.
- (13) The Government, with the concurrence of the ChiefJustice of India, may suspend from office, the President or Technical Members of the National Appellate Authority inrespect of whom a reference has been made to the Judgeof the Supreme Court under sub-section (12).
- (14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

### New section 101B: Appeal to National Appellate Authority

(1) Where, in respect of the questions referred to in sub-section (2) of section 97, conflicting Advance Rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub-section (3) of section 101, any officer authorised by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority:

Provided that the officer shall be from the States in which such advance rulings have been given.

(2) Every appeal under this section shall be filed within aperiod of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:

Provided that the officer authorised by the Commissionermay file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:

Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the saidperiod of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further periodnot exceeding thirty days.

Explanation. - For removal of doubts, it is clarified that theperiod of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

### New section 101C: Order of National Appellate Authority

- (1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorised by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such orderas it thinks fit, confirming or modifying the rulings appealed against.
- (2) If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.
- (3) The order referred to in sub-section (1) shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B.

A copy of the Advance Ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement.

### Section 102

The Authority or the Appellate Authority may amend any order passed byit under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, iurisdictional officer, the applicant or the appellant within a period of six months from the date of theorder:

### Section 102

The Authority or the Appellate Authority or the National Appellate Authority may amend any order passed by it under section 98 or section 101or section 101C, respectively, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority or the National Appellate Authorityon its own accord, or is broughtto its notice by the concerned officer, the jurisdictional officer, the applicant, appellant, the Authority or the Appellate Authority within a period of six months from the date of the order:

### Section 102

The Authority or the Appellate Authority or the National Appellate Authority amend any order passed by it under section 98 or section 101 or section 101C, respectively, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority or the National Appellate Authority on its own accord, or is broughtto its notice by the concerned officer, the iurisdictional officer. the applicant, appellant, Authority or the Appellate **Authority** within a period of six months from the date of the order:

### New sub-section (1A) of section 103

- (1A) The Advance Ruling pronounced by the NationalAppellate Authority under this Chapter shall be binding on
- (a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961):
- (b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961.

### **Section 103(2)**

The advance ruling referred to in sub-section (1) shall bebinding unless the law, factsor circumstances supporting the original advance ruling have changed.

### Section 103(2)

The advance ruling referred to in subsection (1) **and sub-section (1A)** shall be binding unless the law, facts or circumstances supporting theoriginal advance ruling have changed.

Section 103 of the CGST Act is being amended so as to provide that the advance ruling pronounced by the National Appellate Authority shall be binding, unlessthere is a changein law or facts, onthe applicants, being distinctperson and allregistered persons havingthe same Permanent Account Number and on theconcerned officers or theiurisdictional officers in respectof the said applicants and the registeredpersons havingthe same Permanent Account Number.

### **Section 104(1)**

Where the Authority or the Appellate Authority finds that advance rulingpronounced by it under sub-section (4) of section 98or under sub-section (1) of section 101 has been obtained by the applicant orthe 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 provisionsof this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advanceruling had never been made:

#### **Section 104(1)**

Where the Authority or the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 or under section 101C has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Section 104 of the CGST Act is being amended so as to provide that advance ruling pronounced by the National Appellate Authority shall be void where the ruling has been obtained by fraud or suppression of material facts or misrepresentation of facts.

# Section105:Powers ofAuthorityandAppellateAuthority

- (1) The Authority or the Appellate Authority shall, forthe purpose of exercising itspowers regarding—
- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining him on oath;
- (c) issuing commissions and compelling production ofbooks of account and otherrecords,

have all the powers of a civil court under the Code of Civil Procedure, 1908.

The Authority or the Appellate Authority shall bedeemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section

196 of the Indian PenalCode.

# Section 105: Powers of Authority, Appellate

### <u>Authority and National Appellate</u> <u>Authority</u>

- (1) The Authority or the Appellate Authority or the National Appellate Authority shall, for the purpose of exercising its powers regarding—
- (a) discovery and inspection;
- (b) enforcing the attendance of any person and examining himon oath;
- (c) issuing commissions and compelling production of books of account and other records,

have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority or the National Appellate Authorityshall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI ofthe Code of Criminal Procedure, 1973, and everyproceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian PenalCode.

Section 105 of the CGST Act is beingamended so as to provide that the National Appellate Authority shall

have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of exercising itspowers under the Act.

<u>Section</u> 106: Procedure of Authority and Appellate Authority.

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

Section 106: Procedure of Authority,
Appellate Authority and National
Appellate Authority.

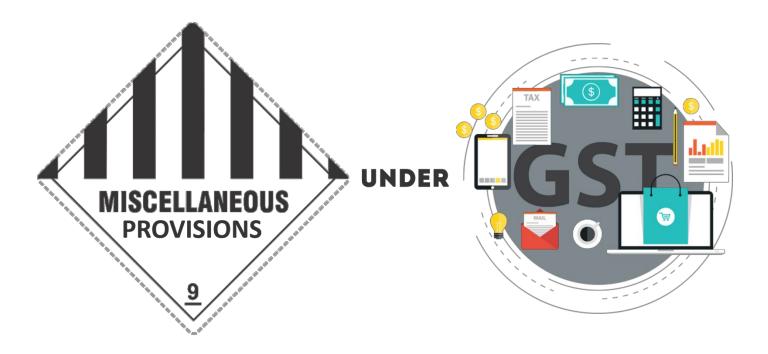
The Authority or the Appellate Authority or the National Appellate Authority shall, subject to the provisions of this Chapter, have power toregulate its own procedure.

Section 106 of the CGST Act is being amended so as to provide that the National Appellate Authority shall have power toregulate its own procedure.

Student Note:	

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### **Miscellaneous Provisions**



### **CHAPTER OUTLINES**

- [Sec. 149] Goods and Service Tax Compliance Rating.
- [Sec. 159] Publication of Information in respect of Persons in certain cases.
- [Sec. 160] Assessment Proceedings, etc. not to be invalid on certain grounds.
- [Sec. 169] Service of notice in certain circumstances.
- [Sec. 174] Repeal and Savings.
- Anti-Profiteering Measures.

### **GOODS AND SERVICE TAX COMPLIANCE RATING [SECTION 149]**

## SECTION 149(1): GST COMPLAINCE RATING SCORE TO BE ASSIGNED TO REGISTERED PERSON

Every registered person may be assigned a goods and service tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.

## SECTION 149(2): GST COMPLIANCE RATING SCORE TO BE DETERMINED ON BASIS OF PRESCRIBED PARAMETERS

The goods and service tax compliance rating score may be determined on the basis of such parameters as may be prescribed.

### SECTION 149(3): PERIODIC UPDATION OF GST COMPLIANCE RATING SCORE

The goods and service tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

### PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES [SECTION 159]

### **SECTION 159(1): POWER OF PUBLICATION**

If the commissioner, or any other officer authorized by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

## SECTION 159(2): NO PUBLICATION TILL APPEAL DISPOSED OFF OR TIME LIMIT FOR FILING APPEAL NOT EXPIRED

No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

### **PUBLICATION OF NAME OF DIRECTORS, PARTNERS, ETC**

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 authorized by him in this behalf, circumstances of the case justify it.

### ASSESSMENT PROCEEDINGS, ETC. NOT TO BE INVALID ON CERTAIN GROUNDS [SECTION 160]

### SECTION 160(1): ASSESSMENT PROCEEDINGS, ETC. NOT TO BE INVALID ON PROCEDURAL INFRACTIONS

No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings –

done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated In pursuance of any of the provisions of this Actshall be invalid, or deemed to be invalid

Merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

### SECTION 160(2): NOTICE ETC. DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES

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

### SECTION 168 A: POWER OF GOVERNMENT TO EXTEND TIME LIMIT IN SPECIAL CIRCUMSTANCES



The central Government has inserted Section 168A of CGST Act,2017 through the Taxation and other laws (Relaxation and Amendment of Certain Provision) Act, 2020, w.e.f 29.09.2020 which empowers it to extend the due dates for compliances. The section enables the Government to extend the time limits provided under the said Act in respect of actions which cannot be completed or complied with due to force Majeure. This power can also be exercised retrospectively. Here, force majeure means a Case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementations of any of the provision of this Act. The new section had become effective from 31.03.2020 through an Ordinance Passed by government which is now given power through Act.

**SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES [SECTION 169]** 

### **SECTION 169(1): MANNER OF SERVICE**

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:

- a. by giving or tendering it directly or by a message including a courier to the addressee or the taxable person or to his manager or authorized 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. by registered port or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorized representative, if any, at his last known place of business or residence; or
- c. by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- d. by making it available on the common portal; or
- e. 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. 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 notices.

### **SECTION 169(2): DEEMED SERVICE**

Every decision, order, summons, notice or any communication shall be deemed to have been served in the date on which it is tendered or published or a copy thereof is affixed in the manner provided in Section 169(1).

### SECTION 169(3): DEEMED SERVICE IN CASE OF REGISTERED POST OR SPEED POST

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.



### **Section 172: Removal of difficulties**

1) If any difficulty arises in giving effect to any provision of this Act, the Government May, on the recommendations of the Council, by a general or a special order published in the official Gazette, make such provision not inconsistent with the Provisions of this Act or the rules or regulations made there under, as may be necessary or expedient for the purpose of removing the said difficulty: Provide that no such order shall be made after the expiry of a period of three years Five years from the date of commencement of this Act. [Power to issue orders under this Section is extended to 5 years (earlier 3 years) by Finance Act, 2020 dated 27.03.2020, w.e.f. 30.06.2020, by NN 49/2020-C.T.]

### **REPEAL AND SAVING [SECTION 174]**

### SECTION 173: AMENDMENT OF ACT 32 OF 1994

Same as otherwise provided in this Act, Chapter V of the Finance Act, 1994 [i.e. Service Tax] shall be omitted.

### **SECTION 174(1): REPEALED ACTS**

Same as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medical and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

### **SECTION 174(2): EFFECT OF REPEAL**

The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the Section 173(1) shall not –

- a. No new effect revive anything not in force or existing at the time of such amendment or repeal; or
- b. **No effect on previous position –** affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered there-under; or
- c. **No effect on rights or liabilities under previous law –** affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or Amended Acts.
  - However, any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or
- d. **No effect on tax etc. due under previous law –** affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or
- e. **No effect on legal proceedings and tax, penalty etc. under previous law** affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;
- f. **No effect on any appellate proceeding under previous law** affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed

### **SECTION 174(3): EFFECT ON GENERAL CLAUSES ACT**

The mention of the particular matters referred to in Sections 174(1) and (2) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 with regard to effect of repeal.

### **ANTI-PROFITEERING MEASURE**

### **BACKGROUND OF ANTI-PROFITEERING MEASURES**

Anti-profiteering measure have been incorporated under GST laws to control prices of goods and/or services due to implementation of single tax system (GST) in the country.

The burden of indirect taxation ultimately falls on the consumers. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable.

### **NEED FOR ANTI-PROFITEERING MEASURES**

With learning experiences of other countries GST law makers in India has taken extra precaution and incorporated the clause of anti-profiteering measures under GST laws to control rise in prices of goods and/or services after implementation of new tax regime (CGST) in the country

The very objective of anti-profiteering measures to provide benefit of GST to the consumers in terms of reduced prices and not allow more profit margin to the businessmen in the cost of rise in prices of goods and/or services resulting inflation in the country. This will also help in instilling confidence in the citizens.

### **ANTI-PROFITEERING MEASURES**

- **a. Benefit of reduction in tax rates to be passed on to recipients [Section 171(1)]:** 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.
- **b.** Constitution of authority [Section 171(2)]: The Central Government may, on recommendation of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for 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 to him.
- **c. Powers and functions as prescribed [Section 171(3)]:** The Authority referred to in Section 171(2) shall exercise such powers and discharge such functions as may be prescribed.

### **FUNCTIONS AND DUTIES OF ANTI-PROFITEERING AUTHORITY**

- a. Power to determine the methodology and procedure [Rule 126 of CGST Rules, 2017]: The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.
- b. Duties of the Authority [Rule 127 of CGST Rules, 2017]: It shall be the duty of the Authority,
  - i. Determination whether tax reduction benefits passed on to recipients: Determine whether any reduction in the rate of tax on any supply of goods or services or benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices;
  - **ii. Identification of registered persons who has not passed the benefits:** To identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices;
  - iii. Passing of relevant order: 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 @ 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in Section 57,

Imposition of penalty as specified in the Act; and

Cancellation of registration under the Act

iv. To furnish a performance report to the Council by the 10th of the close of each quarter.

### **RULE 130 of CGST Rules, 2017: CONFIDENTIALITY OF INFORMATION**

a. **Provisions of RTI Act applicable for disclosure of information** – Notwithstanding anything contained in Rule 129(3)/(5) and Rule 133(2), 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.
- b. **Summary of non-confidential information to be furnished to Director General of Safeguards** The Director General of Safeguards may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarized, such party may submit to the Director General of Safeguards a statement of reasons as to why summarization is not possible.



### **SOME CLARIFICATIONS ISSUED BY ICAI FOR MAY/ NOV 2020**

1. Time period of 2 months available with the Standing Committee for examination of an application under rule 128 can be extended up to a further period of 1 month

Rule 128 provides that on receipt of written application from an interested party or from a Commissioner or from any other person, the Standing Committee have to examine the accuracy and adequacy of the evidence provided in the application within a period of **2 months** from the date of the receipt of application and determine whether there is *prima facie* evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

The said period of <u>2 months can now be extended up to a further period of 1 month</u> for reasons to be recorded in writing as may be allowed by the Authority.

2. Screening Committee to examine issues of local nature and those forwarded by Standing Committee within two months

Rule 128 has been amended to provide that all applications from interested parties on issue of local nature <u>as well as those forwarded by Standing Committee</u> shall first be examined by the State level Screening Committee and the Screening Committee shall, <u>within 2 months from the date of receipt</u> <u>of a written application (further extendable up to 1 month)</u>, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

Earlier, Screening Committee used to examine application on issues of local nature only and there was no time limit for forwarding the application to Standing Committee for further action.

### 3. Time limit for completing investigation by DGAP increased from 3 months to 6 months.

Rule 129 provides that where Standing Committee is satisfied that there is a *prima facie* evidence to show that the supplier has not passed on the benefit to the recipient, it shall refer the matter to the Director General of Anti-Profiteering [DGAP] for detailed investigation.

Earlier, DGAP had to complete the investigation within a period of **3 months** of the receipt of the reference from the Standing Committee. Now the said period of **3 months has been extended to 6 months**.

### 4. Authority empowered to summon persons

In addition to DGAP and an officer authorized by him in this behalf, **the Authority has also been empowered to summon any person** whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 of the CGST Act and shall have power 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 [Rule 132].

### 5. Time limit for passing the order by the Authority increased from 3 months to 6 months.

As per rule 133, the Authority had to determine as to whether the registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices, within **3 months** from the date of receipt of investigation report from DGAP. The said period of **3 months has now been extended to 6 months**.

### 6. Authority may seek clarification from DGAP on his report.

In terms of rule 133, the **Authority can now seek a clarification from DGAP on the Investigation report** submitted by it during the process of determining as to whether the benefit of reduction in rate of tax or benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices.

### 7. Profiteered amount to be deposited in Consumer Welfare Fund along with interest.

As per rule 133, the Authority may, *inter-alia*, order to deposit an amount equivalent to 50% of the amount not passed on by way of commensurate reduction in prices, in the Consumer Welfare Fund of the Centre and remaining 50% in the Consumer Welfare Fund of the concerned State\* where the eligible person does not claim return of the amount or is not identifiable.

The rule has been amended to provide that the said amount shall now be deposited along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount.

\*Here, the expression "concerned State" means the State <u>or Union Territory</u> in respect of which the Authority passes an order.

- 8. Investigation of matter other than those covered in report of DGAP.
- 9. Tenure of Authority extended from 2 years to 4 years.

As per rule 137, the Authority ceases to exist after the expiry of 2 years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise. Rule 137 has been amended to increase the said period of 2 years to 4 year