(80) **"notification"** means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

(80A) **"online gaming"** *means offering of a game on the internet or an electronic network and includes online money gaming;* **[inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**

(80B) **"online money gaming"** *means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;* **[inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**

(81) **"other territory"** includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114) ;

(82) **"output tax"** in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

(83) **"outward supply"** in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

(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) society as defined under the Societies Registration Act, 1860;
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above;

(85) **"place of business"** includes –
- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

(86) **"place of supply"** means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;

(87) **"prescribed"** means prescribed by rules made under this Act on the recommendations of the Council;

(88) **"principal"** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

(89) **"principal place of business"** means the place of business specified as the principal place of business in the certificate of registration;

(90) **"principal supply"** means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

(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;

(92) **"quarter"** shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

(93) **"recipient"** of supply of goods or services or both, means –
- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

(94) **"registered person"** means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

(95) **"regulations"** means the regulations made by the Board under this Act on the recommendations of the Council;

(96) **"removal''** in relation to goods, means –
- (a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or
- (b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

(97) **"return"** means any return prescribed or otherwise required to be furnished by or under this Act or the rules made there under;

(98) **"reverse charge"** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the Integrated Goods and Services Tax Act;

(99) **"Revisional Authority"** means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

(100) **"Schedule"** means a Schedule appended to this Act;

(101) **"securities"** shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

(102) **"services"** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation.–– For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;

(102A) **"specified actionable claim"** ***means the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery or online money gaming;*** **[inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**

(103) **"State"** includes a Union territory with Legislature;

(104) **"State tax"** means the tax levied under any State Goods and Services Tax Act;

(105) **"supplier"** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims; **[inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**

(106) **"tax period"** means the period for which the return is required to be furnished;

(107) **"taxable person"** means a person who is registered or liable to be registered under section 22 or section 24;

(108) **"taxable supply"** means a supply of goods or services or both which is leviable to tax under this Act;

(109) **"taxable territory"** means the territory to which the provisions of this Act apply;

(110) **"telecommunication service"** means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means;

(111) **"the State Goods and Services Tax Act"** means the respective State Goods and Services Tax Act, 2017;

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

(113) **"usual place of residence"** means –
(a) in case of an individual, the place where he ordinarily resides;
(b) in other cases, the place where the person is incorporated or otherwise legally constituted;

(114) **"Union territory"** means the territory of –
(a) The Andaman and Nicobar Islands;
(b) Lakshadweep;
(c) Dadra and Nagar Haveli and Daman and Diu;
(d) Ladakh;
(e) Chandigarh; and
(f) Other territory.

Explanation : For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

(115) **"Union territory tax"** means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act;

(116) **"Union Territory Goods and Services Tax Act"** means the Union Territory Goods and Services Tax Act, 2017;

(117) **"valid return"** means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;

(117A) **"virtual digital asset"** ***shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961;*** **[inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**

(118) **"voucher"** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

(119) **"works contract"** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

(120) words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

(121) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

Sub-sec.	Particulars
(1)	Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter- State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
	Provided that the integrated tax on goods ***other than the goods as may be notified by the Government on the recommendations of the Council*** imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962. **[Bold & italic words inserted by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**
(2)	The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
(3)	The Government may, on the recommendation of the council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this act shall apply to such recipient as if he is the person liable for paying tax in relation to the supply of such goods or services or both.
(4)	The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.
(5)	The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax: Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

ANALYTICAL VIEW OF THE TOPIC

1. **Analysis of Section 5(1) :**

   (i) A Tax called Integrated Goods and Services Tax (IGST) shall be levied on all inter-state supplies of goods or services or both.

   (ii) **Goods Imported in India:** Import of goods or services are treated as inter-state supplies as per provisions of IGST Act, 2017. Therefore, on the goods imported into India (***other than the goods as may be notified by the Government on the recommendations of the Council***), the IGST shall be levied and collected as per section 3 of Customs Tariff Act, 1975 (as additional duty of Customs) and the value shall also be determined as per the said act. In other words, IGST shall be levied as additional duty of customs in addition to basic customs duty under the Customs Tariff Act, 1975. **[Bold & italic words inserted by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023].**

   Analysis:

W.e.f. 01.10.2023, the Government has notified the supply of "online money gaming" as the goods on import of which the proviso to sec. 5(1) of the said Act shall not apply, but on which IGST shall be levied and collected u/s 5(1) of the said Act. It means Customs duties shall not be levied on import of "online money gaming", but, IGST will be levied on import of "online money gaming" as per provisions of Sec. 5(1) of the IGST Act, 2017. **[As amended by IGST (Amendment) Act, 2023 and NN 03/2023 – IT, w.e.f. 01.10.2023]**

(iii) Further, inter-state supply of alcoholic liquor for human consumption is outside the purview of IGST

(iv) **Value for Levy of IGST:** Transaction value under Section 15 of the CGST Act.

(v) **Rates of IGST:** IGST is the sum total of CGST and SGST/UTGST. Maximum rate of IGST will be 40%.

(vi) The tax shall be collected in such manner as may be prescribed and shall be paid by the taxable person.

Rate of IGST = CGST Rate + SGST Rate

2. **Analysis of Section 5(2) :** However, IGST on supply of following items has not been levied immediately. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(i) Petroleum crude

(ii) High speed diesel

(iii) Motor spirit (commonly known as petrol)

(iv) Natural gas and

(v) Aviation turbine fuel

3. **Analysis of Section 5(3) and 5(4): Reverse Charge Mechanism (RCM) -** Tax payable by recipient of supply of Goods or Services or both. (Detailed discussion will be done in later chapters.)

- IGST shall be paid by the recipient of goods or services or both, on reverse charge basis, in the following cases:

  (i) Supply of goods or services or both, notified by the Government on the recommendations of the GST council.

  (ii) Supply of notified categories of goods or services or both by an unregistered supplier to notified classes of registered persons.

- All the provisions of the IGST Act shall apply to the recipient in the aforesaid cases, as if he is the person liable for paying tax in relation to the supply of such goods or services or both.

4. **Analysis of Section 5(5) : Tax payable by the Electronic Commerce Operator (ECO) on notified services:**

- The Government may notify specific categories of services, the tax on inter-State supplies of which shall be paid by the ECO, if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.
- Here, only Services (not goods) can be notified by the Government u/s 5(5).

Note : The provisions of Section 5(3), Section 5(4) and Section 5(5) are discussed in detail in chapter 7.

V. CONCEPT OF SUPPLY UNDER GST [SECTION 7 OF THE CGST ACT]

Introduction :

The taxable event is the key point of any taxation system. It determines the point at which tax would be levied. Under GST, taxable event is "Supply", i.e. GST will be levied on "Supply" of Goods or Services or both.

Sec. 7	Meaning and scope of supply	
	Schedule I	Matters to be treated as supply even if made without consideration
	Schedule II	Matters to be treated as supply of goods or as supply of services
	Schedule III	Matters or transactions which shall be treated neither as supply of goods nor as supply of services.

	(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	Actionable claims, other than ~~*lottery, betting and gambling*~~ *specified actionable claims*. **[As amended by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]** **Note:** ***As per Sec. 2(102A),*** **"specified actionable claim"** ***means the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery or online money gaming. Further, the applicable rate of GST on specified actionable claims is 28%.*** **Illustration 17 :** M/s Rohit ASREC Ltd. procured a portfolio of NPAs (of Rs. 50 crores) from Pankaj Bank Ltd. for a consideration of Rs. 7 crores (under the provisions of SRFAESI Act, 2002). Whether GST is leviable on Rs. 7 crores ? **Solution:** A transaction of procurement of a portfolio of NPAs is a transaction in actionable claim and is covered under para 6 of Schedule III of the CGST Act, 2017. Therefore, no GST would be charged on this transaction.
7.	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. [inserted by CGST (Amendment) Act, 2018, but, ***made effective retrospectively w.e.f. 01.07.2017 by Finance Act, 2023***]
8(a).	Supply of warehoused goods to any person before clearance for home consumption. Explanation: "Warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962. [inserted by CGST (Amendment) Act, 2018, but, ***made effective retrospectively w.e.f. 01.07.2017 by Finance Act, 2023***]
8(b).	Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. [inserted by CGST (Amendment) Act, 2018, but, ***made effective retrospectively w.e.f. 01.07.2017 by Finance Act, 2023***]

Clarification in respect of levy of GST on Director's remuneration [Circular No: 140/10/2020–GST, dated 10.06.2020]

1. **Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company**

The primary issue to be decided is whether or not a "Director" is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

a. the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he may be a person who is not an employee of the company.

b. the definition of "independent directors" under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that such director should not have been an employee or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

CHAPTER

03

Time of Supply

3.1 Introduction

GST is payable on supply of goods or services. At which point of time liability to pay GST arises?

Provisions relating to 'time of supply' provide answer to all the questions that arise on the timing of the liability to pay CGST and SGST/UTGST (intra-state supply) and IGST (inter-state supply) as time of supply fixes the point in time when the liability to pay tax arises.

The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13 of CGST Act. Section 14 provides for the method of determining the time of supply in case there is a change in rate of tax in supply of goods or services.

The provisions relating to time of supply essentially push the tax collection event to the earliest possible time, so that, Government can earn the tax revenue at the earliest possible time.

3.2 Time of Supply of Goods [Section 12]

I. "Time of Supply" (TOS) for Goods

1. Section 12 covers the determination of time of supply in the following situations:
   - Supply of goods by supplier where supplier is liable to pay tax;
   - Receipt of goods that are taxable under reverse charge;
   - Supply of vouchers that can be used to pay for goods;
   - Residual Cases;
   - Addition to value of supply by way of interest or free or penalty for delayed payment.

2. **The time of supply of goods where supplier is liable to pay GST (Forward charge) [Section 12(2) read with sub-sections (1), (4) & (7) and Section 31] shall be :**

   (a) Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31); or

   (b) Date of receipt of payment (to the extent payment is received),

   whichever is earlier.

3. **Assessee supplying goods is not required to pay GST on advance payment received [NN 66/2017 – CT, w.e.f. 15.11.2017] :**

   (i) The registered person who did not opt for the composition levy u/s 10 of the CGST Act, has been notified as the class of persons who shall pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) of the CGST Act [i.e. the Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31)], irrespective of the actual receipt of payment in respect of such supply.

   However, this benefit is not available to the registered persons making supply of "specified actionable claims" as defined u/s 2(102A). It means, in respect of supply of "specified actionable claims", GST shall be required to paid at the time of supply as specified in section 12(2)(a) or section 12(2)(b), whichever is earlier [i.e. Date of issue of invoice (date of actual issue or last date when it should be issued u/s 31) or Date of receipt of payment (to the extent payment is received), whichever is earlier.] In nut shell, GST will be required to be paid on advances received in respect of supply of "specified actionable claims". [Inserted by NN 50/2023 – CT, w.e.f. 01.10.2023]

(1) The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

↓

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

↓

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

↓ OR (option of the supplier)

However, where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

↓

Further, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

(2) ***Notwithstanding anything contained in sub-rule (1), the value of supply of services by a supplier to a recipient who is a related person, by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be 1% of the amount of such guarantee offered, or the actual consideration, whichever is higher.*** **[Sub-rule (2) inserted by NN. 52/2023 – CT, w.e.f. 26.10.2023]**

Illustration 18 : Mr. Raj located in Delhi buys Machine for Rs. 5,00,000 from Rani Ltd. located in Mumbai. Mr. Raj's daughter Ms. Rajrani is an employee in Rani Ltd. The open market Price of such Machine is Rs. 5,50,000. Rani Ltd. Charge additionally Rs. 15,000 for delivering the Machine to the place of business of Mr. Raj.

Solution : Mr. Raj and Rani Ltd. would not be treated as related persons merely because the daughter of Mr. Raj is an employee of the supplier. Therefore, in this case, Actual transaction value (i.e. Rs. 5,00,000) plus delivery charges (i.e. Rs. 15,000) shall be the value of the machine i.e. Rs. 5,15,000/-.

Illustration 19 : PQR manufacturers is the only Indian company making and selling product - P to buyers using this as a raw material. However, the international prices of product - P dropped, and the buyers began to import it rather than buying it from PQR manufacturers. Having regard to market scenario, the owners of the firm formed another firm ABC manufacturers, which had a manufacturing unit requiring product - P as raw material. ABC manufacturers has common management. PQR manufacturers began to supply product - P to this related concern ABC manufacturers at low margins. ABC manufacturers was not eligible for full ITC of GST paid on the price charged by PQR manufacturers. Was the value adopted by PQR manufacturers for product - P to its related concern, correct?

Solution : The actual transaction value adopted by PQR manufacturers is not correct as per section 15(1) of the CGST Act, 2017, because, PQR manufacturers and ABC manufacturers are related persons in terms of explanation to Section 15 of the CGST Act, 2017. Further, as per second proviso to Rule 28 of the CGST Rules, 2017, actual transaction value can not be deemed to be the open market value of the goods, because, buyer is not eligible for full ITC of GST paid on these purchases.

Therefore, value of such supply will have to be determined using provisions of Rule 28 of the CGST Rules, 2017. As per Rule 28(a) of the CGST Rules, the open market value of product - P shall be the value of the taxable supply of product - P to the related concern.

the Official Gazette by the organising State, whichever is higher.

(3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

[Rule 31A inserted by NN 03/2018 – CT, w.e.f. 23.01.2018]

RULE 31B : VALUE OF SUPPLY IN CASE OF ONLINE GAMING INCLUDING ONLINE MONEY GAMING

Notwithstanding anything contained in this chapter, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets (like Cryptocurrencies, etc.), by or on behalf of the player.

However, any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

[Rule 31B inserted by NN 51/2023 – CT, w.e.f. 01.10.2023]

RULE 31C : VALUE OF SUPPLY OF ACTIONABLE CLAIMS IN CASE OF CASINO

Notwithstanding anything contained in this chapter, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

(i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or

(ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

However, any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

Explanation.- For the purpose of rule 31B and rule 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

[Rule 31C inserted by NN 51/2023 – CT, w.e.f. 01.10.2023]

RULE 32 : DETERMINATION OF VALUE IN RESPECT OF CERTAIN SUPPLIES

(1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, **at the option of the supplier**, be determined in the manner provided hereinafter.

(2) The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-

Option 1 : [Rule 32(2)(a)]

If RBI reference rate for a currency is available when exchanged from, or to, Indian Rupees	**Value shall be** = {[Buying rate/Selling rate] – [RBI reference rate for that currency at that time]} × Total Units of currency exchanged
If RBI reference rate for a currency is not available	**Value shall be =** 1% of the gross amount of Indian Rupees provided or received, by the person changing the money
Where neither of the currencies exchanged is Indian Rupee	**Value shall be =** 1% of the lesser of the two amounts receivable if the two currencies are converted into Indian Rupee on that day at the reference rate provided by RBI

Further, a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

(b) supply of goods or services or both to a Special Economic Zone (SEZ) developer or a Special Economic Zone unit [Section 16(1) of IGST Act].

Conveyance includes a vessel, an aircraft and a vehicle [Section 2(34)].

Non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India [Section 2(77)].

Tax period means the period for which the return is required to be furnished [Section 2(106)]

5.3 Eligibility and Conditions for taking Input Tax Credit [Section 16]

Statutory Provisions		
Sec. 16	**Eligibility and conditions for taking input tax credit**	
Sub-sec.	**Particulars**	
(1)	Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.	
(2)	Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, –	
	(a)	he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
	(aa)	the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;
	(b)	he has received the goods or services or both.
	Explanation – For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services–– *(i)* where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; *(ii)* where the services are provided by the supplier to any person on the direction of and on account of such registered person.	
	(ba)	the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;
	(c)	subject to the provisions of section 41 the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
	(d)	he has furnished the return under section 39:
	Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:	
	Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be ~~***added to his output tax liability, along with interest thereon***~~ ***paid by him along with interest payable under section 50***, in such manner as may be prescribed: **[As amended by Finance Act, 2023, w.e.f. 01.10.2023]**	
	Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him ***to the supplier*** of the amount towards the value of supply of goods or services or both along with tax payable thereon. **[As amended by Finance Act, 2023, w.e.f. 01.10.2023]**	

(c) GST should actually have been paid to the Government in respect of the goods/services for which ITC is being taken; and

(d) he has furnished the return under section 39.

III. Goods received in lots: ITC available only on receipt of last lot [First proviso to section 16(2)]

In case the goods covered under an invoice are not received in a single consignment but are received in lots/instalments, the ITC can be taken only upon receipt of the last lot/instalment.

Illustration 5 :

XYZ makes an advance payment in August and orders 10 MT of a particular chemical which is in short supply. The supplier of the chemical raises a bill for the entire amount in August and collects GST from XYZ on the advance paid. The chemical is delivered in lots over a period of three months and the supply is completed in November. Though XYZ paid tax in advance as early as August, he can take the ITC only on receipt of last instalment of the chemical in the month of November.

Illustration 6 :

Abhinav Nathany, a registered manufacturer of Bhilwara, entered into a contract with a supplier for supply of Inputs in the month of August, 2018. As per contract, it was agreed that 15,000 kgs of Inputs will be supplied for Rs. 5,90,000 (inclusive of CGST and SGST @ 9% each) in 3 lots of equal quantity. Invoice of Rs. 5,90,000 has been issued with first lot supply on 11/08/2018. Further second and third lot of inputs were supplied on 15/09/2018 & 01/10/2018 respectively. Briefly explain whether Abhinav Nathany is eligible to take credit on proportionate basis.

Answer : As per first proviso to Section 16(2), where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment. Therefore, in the given case, Abhinav Nathany is not eligible to take credit on proportionate basis, because inputs have been received in lots. Hence, the credit of tax of Rs. 90,000 i.e. (Rs. 5,90,000 x 18 ÷ 118) paid on such inputs shall be taken by Abhinav Nathany only after receipt of Third lot i.e., on 01-10-2018.

IV. Payment for the invoice to be made within 180 days [Second proviso to section 16(2) read with rule 37 of CGST Rules]

If the recipient, who has availed input tax credit on any inward supply of goods or services or both, fails to pay to the supplier, the value of the goods and/or services***, whether wholly or partly,*** along with the tax within 180 days from the date of issue of invoice, then, such ITC availed by the recipient in respect of such supply, ***proportionate to the amount not paid to the supplier,*** would be ***paid or reversed by him*** along with applicable interest while furnishing the return in Form GSTR-3B for the tax period in which the said 180 days expired.

Exception: This condition of payment of value of supply plus tax within 180 days does not apply to the supplies on which tax is payable under reverse charge mechanism.

Note:

1. The value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of this provision.
2. The value of supplies on account of any amount added in accordance with the provisions of section 15(2)(b) shall be deemed to have been paid for the purposes of this provision.
3. Interest will be payable @ 18% p.a. from the date of utilising the ITC till the date when it is reversed or paid to the Government after adding it to the output tax liability.

However, subsequently, when the recipient makes the payment to the supplier, the recipient will be entitled to re-avail the credit again without any time limit specified u/s 16(4). In case, if part payment has been made, proportionate credit will be allowed.

Illustration 7 :

M/S PQR Pvt. Ltd. availed services of a contractor. And, it withheld 10% retention money from the invoice value of the contractor for 1 year as per terms of the contract and made payment of only 90% of the invoice amount.

M/S PQR Pvt. Ltd. withheld 10% of the amount payable as retention money for 1 year (i.e. more than 180 days) as per the terms of the contract which is not a failure in making payment on the part of recipient. Therefore, in such case, No

ITC is required to be reversed or paid. Because, as per terms of the contract, recipient did not failed to make payment to the supplier within 180 days.

Illustration 8 :

Due to a quality dispute, ABC Ltd. withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by ABC on the invoice would be reversed or paid by ABC. Only after the vendor rectified the machine and ABC released the payment, could ABC take the credit again.

Illustration 9 :

Ankush Ltd., a registered supplier of auto parts, supplied auto parts valued @ Rs. 2,83,200 (inclusive of GST @ 18%) to Amar Ltd. on 06-10-2022 for which tax invoice was also issued on the same date. The inputs were also received by Amar Ltd. on 06-10-2022. Amar Ltd. availed the credit and utilised it on 20-11-2022 while paying liability for the month of October 2022. But, Amar Ltd. fails to make any payment towards such supply to Ankush Ltd. Is Amar Ltd. eligible to avail input tax credit on such supply? Discuss ITC implications, if Amar Ltd. makes full and final payment to Ankush Ltd. on 14-02-2024.

Answer : Yes, Amar Ltd. can avail input tax credit on receipt of taxable supply of goods. But, it is required to pay the consideration along with tax within 180 days from the date of issue of invoice.

If Amar Ltd. Failed to make payment within 180 days from the date of invoice: As per Rule 37 of CGST Rules, 2017, a registered person, who has availed input tax credit on any inward supply of goods or services or both, fails to pay to the supplier, the value of the goods and/or services, whether wholly or partly, along with the tax within 180 days from the date of issue of invoice, then, such ITC availed by the registered person, proportionate to the amount not paid to the supplier, would be reversed or paid by it along with applicable interest while furnishing the return in Form GSTR-3B for the tax period in which the said 180 days expired.

In this case, since, Amar Ltd. fails to make any payment within 180 days from date of invoice i.e. up to 04-04-2023, therefore, amount equal to input tax credit availed by Amar Ltd. shall be reversed or paid by it along with applicable interest while furnishing the return in Form GSTR-3B for April, 2023.

Interest shall be calculated @ 18% p.a. [as given u/s 50] for the period starting from the date of utilising the credit (i.e. 20.11.2022) till the date when input tax credit added to the output tax liability is paid.

Particulars	**Amount (Rs.)**
Amount of Input Tax	43,200
Date of utilising credit	20.11.2022
Date of payment of ITC added to output tax liability (assuming liability for the month of April, 2023 is paid on 20.05.2023)	20.05.2023
No. of days for which interest is to be paid [days from 21-11-2022 to 20-05-2018] [i.e. 10+31+31+28+31+30+20 days]	181 days
Interest @ 18% to be paid on 20-05-2023 (Rs. 43,200 x 18% x 181/365)	3,856

Note: If Amar Ltd. makes the payment to the supplier on 14-02-2024, then, it shall be entitled to re-avail the credit of input tax of Rs. 43,200 which was reversed earlier.

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

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

VI. Time limit for availing ITC: 30th November of succeeding financial year or actual date of filing of annual return, whichever is earlier [Section 16(4)]

ITC on invoices pertaining to a financial year or debit notes ~~relating to invoices~~[1] pertaining to a financial year can be availed any time till 30th November ~~due date of filing of the return for the month of September~~[2] of the

(f)	goods or services or both received by a non-resident taxable person except on goods imported by him;
(fa)	***goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;*** **[inserted by Finance Act, 2023, w.e.f. 01.10.2023]**
(g)	goods or services or both used for personal consumption;
(h)	goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
(i)	any tax paid in accordance with the provisions of sections 74, 129 and 130.
Explanation : For the purposes of this Chapter and Chapter VI, the expression **"plant and machinery"** means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes -	
(i)	land, building or any other civil structures;
(ii)	telecommunication towers; and
(iii)	pipelines laid outside the factory premises.
Explanation (1) to Rule 45 of CGST Rules, 2017: The expression "Capital Goods" shall include "Plant and Machinery" for the purposes of CGST Rules, 2017.	

ANALYTICAL VIEW OF THE TOPIC

Blocked Credits [Section 17(5)]

ITC of tax paid on almost every inputs and input services used for supply of taxable goods or services or both is allowed under GST except a small list of items provided u/s 17(5). The negative list covers mainly items of personal consumption, inputs use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes. The detailed list is given hereunder:

(a) ITC related to Motor Vehicles, Vessels and Aircrafts

I. Analysis of ITC on Motor Vehicles [Sec. 17(5)(a)]:

1. ITC of GST paid on motor vehicles designed for transportation of persons having approved seating capacity of not more than 13 persons (including the driver) shall not be allowed, even if such vehicles are used in the course or furtherance of business [e.g. Cars, etc. used for transportation of employees, directors, etc.], except when they are used for making the **following taxable supplies**, namely:—

   (A) further supply of such motor vehicles; or

   (B) transportation of passengers; or

   (C) imparting training on driving such motor vehicles;

   Examples:

   (i) A car dealer is allowed ITC on cars purchased for resale;

   (ii) a cab service is allowed ITC on cars purchased for use as cabs;

   (iii) a driving school is allowed ITC on cars purchased for use in teaching driving.

2. Since, there is no restriction u/s 17(5) on motor vehicles designed for transportation of persons having approved seating capacity of more than 13 persons (including the driver), therefore, ITC of GST paid on motor vehicles designed for transportation of persons having approved seating capacity of more than 13 persons (including the driver) shall be allowed, if such vehicles are used in the course or furtherance of business. [e.g. Buses used for transportation of employees, etc.]

3. Since, there is no restriction u/s 17(5) on motor vehicles designed for transportation of goods, therefore, ITC of GST paid on motor vehicles designed for transportation of goods shall be allowed, if such vehicles are used in the course or furtherance of business. [e.g. Trucks, loading autos, etc. used for transportation of goods for business purposes]

(viii)	Works Contractor's services used for repairs and renovation of own office building which is debited to profit and loss account (i.e. not capitalized in the books of accounts) [WN 3]	50,000
(ix)	Cement and other goods used in providing works contract services for repairs, renovation and new constructions of buildings of some of the clients [WN 1]	8,00,000
(x)	Sub-contractor's works contract services used in providing works contract services, for repairs, renovation and new construction of buildings of some of the clients [WN 2]	2,80,000
	Total ITC Available	**13,20,000**

Working Notes :

1. No ITC is admissible in respect of any goods used in construction, repairs, renovation, etc. of any building, etc. as per section 17(5)(d) except when such goods are used in providing construction services or works contract services or except when such goods are used in installation or construction of plant & machinery.
2. No ITC is admissible in respect of any works contract service or any service used in construction, repairs, renovation, etc. of any building, etc. except when such services are used in providing the said works contract or construction services or except when such services are used in installation or construction of plant & machinery [as per section 17(5)(c) and 17(5)(d)].
3. As per explanation given below Section 17(5)(d), the expression "construction" includes re-construction, renovation, additions or alteration or repairs, to the extent of capitalization, to the said immovable property. It means, if any input or input services are used for repairing, etc. of immovable property, which is revenue expenditure in nature (i.e. not capitalized in the books of accounts), then, ITC of GST paid on such inputs and input services shall be available to the registered person.

(e) Inward supplies on which tax has been paid under the composition scheme

(f) Inward supplies received by a non-resident taxable person (NRTP) except goods imported by him

Note: ITC of GST paid on any goods and/or services received by any NRTP is not available. However, ITC of GST paid on goods imported byNRTP is allowed. Further, ITC of GST paid on services imported by him is also blocked.

(fa) ***Goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013*** **[inserted by Finance Act, 2023, w.e.f. 01.10.2023]**

(g) Goods and/or services used for personal consumption

Example: Mr. X owns a grocery store. He procures rice, wheat and biscuits for being sold in its store. Out of the inventory so purchased, he gives 10 kgs each of rice and wheat to his wife for household use. Being used for personal consumption, ITC on 10 kg of rice and 10 kg of wheat is blocked.

(h) Goods that are lost, stolen, destroyed, written off or disposed of by way of gift or free samples

ITC in respect of goods that are disposed of by way of gift or free samples is not available. Also, ITC is blocked on lost goods, stolen goods, destroyed goods and goods that are written off. This is because principally, ITC is available only for payment of tax on output supply. If no tax is payable on output supply, ITC on inputs/input services/capital goods relating to such output supply is not eligible. Hence, ITC on gifts and free samples is blocked as no tax is payable on its outward supply. In case of lost/destroyed/stolen written off goods also, ITC is not available as these goods cannot be said to have been used for making a taxable supply.

(i) Tax paid under sections 74, 129 and 130: These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.

Illustration 19 :

ABC Co. Ltd. is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

	land and, subject to clause (b) of paragraph 5 of Schedule II, sale of **building.** **Explanation.—**For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, ~~***except those specified in paragraph 5 of the said Schedule***~~ ***except, -*** ***(i) the value of activities or transactions specified in paragraph 5 of the said schedule; and*** ***(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said schedule. [As amended by Finance Act, 2023, w.e.f. 01.10.2023]***	
	Explanation to Rule 45 - For the purposes of this Chapter, - 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.
(4)	A banking company or a financial institution including a non- banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the **option** to either comply with the provisions of **sub-section (2), or avail of, every month,** an amount equal to **fifty per cent** of the eligible input tax credit on **inputs, capital goods and input services** in that month and the rest shall lapse:	
	Provided that the option once exercised shall **not be withdrawn** during the remaining part of the **financial year:** Provided further that the restriction of **fifty percent** shall **not apply** to the tax paid on supplies made by one registered person to another registered person having the **same Permanent Account Number**.	
(6)	The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.	
Chapter V of the CGST Rules: Input Tax Credit		
Rule 38	**Claim of credit by a banking company or a financial institution**	
	A banking company or a financial institution, including a non- banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following **procedure,** namely, -	
	(a)	the said company or institution shall **not avail** the credit of, -
		(i) the tax paid on inputs and input services that are used for **non-business purposes**; and (ii) the credit attributable to the supplies specified in **sub-section (5) of section 17**;
	(b)	the said company or institution **shall avail** the credit of tax paid on inputs and input services referred to in the **second proviso** to sub-section (4) of section 17 and not covered under clause (a);
	(c)	fifty percent of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution;
Rule 42	**Manner of determination of input tax credit in respect of inputs or input services and reversal thereof**	
(1)	The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely, -	
	(a)	the total input tax involved on inputs and input services in a tax period, be denoted as T;
	(b)	the amount of input tax, out of T, attributable to inputs and input services intended to be used **exclusively** for the purposes **other than business,** be denoted as T_1;

	(g)	the amount of common credit attributable towards exempted supplies, be denoted as T_e, and calculated as **$T_e = (E \div F) \times T_r$** where, E is the aggregate value of **exempt supplies**, made, during the tax period, and F is the **total turnover** in the state of the registered person during the tax period:
		Provided furtherthat where the registered person **does not have any turnover** during the said tax period or the aforesaid information is not available, the value of E/F shall be calculated by taking values of E and F of the **last tax period** for which the details of such turnover are available, **previous to the month** during which the said value of E/F is to be calculated;
		Explanation: For the purposes of this clause, it is hereby clarified that the aggregate **value of exempt supplies and the total turnover shall exclude** the amount of any **duty or tax** levied **under entry 84 and entry 92A of List I** of the Seventh Schedule to the Constitution and **entry 51 and 54 of List II** of the said Schedule;
	(h)	the amount T_e along with the **applicable interest** shall, during every tax period of the useful life of the concerned capital goods, be added to the **output tax liability** of the person making such claim of credit.
	(i)	The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.

Explanation: For the purposes of rule 42 and Rule 43, it is hereby clarified that the **aggregate value of exempt supplies shall exclude:**

(a)	[Omitted by NN 03/2019 – CT, w.e.f. 01.02.2019]
(b)	the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and
(c)	~~*the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India; and*~~ *[Omitted by NN 38/2023 – CT, w.e.f. 04.08.2023]*
(d)	the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017.

Explanation: ***For the purpose of rule 42 and this rule, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.*** **[Inserted by NN 38/2023 – CT, w.e.f. 01.10.2023]**

Explanation to Rule 45 - For the purposes of this Chapter, the expressions capital goods shall include plant and machinery as defined in the Explanation to section 17.

ANALYTICAL VIEW OF THE TOPIC

I. Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of CGST Rules]

Where goods and/or services are used partly for non-business purposes and partly for business purposes, ITC attributable only to business purposes can be taken by the registered person. Similarly, where goods and/or services are partly used for making taxable supplies including zero rated supplies (exports) and partly for exempt supplies, ITC attributable to taxable supplies and zero rated supplies can be taken by the registered person.

Note : Section 16(2) of the IGST Act specifies that ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply. Zero-rated supply is an expression that covers two kinds of supplies: (i) exports, and (ii) supplies to a SEZ or SEZ developer. Therefore, ITC is available on goods and/or services used for supplies made in the course of export or to an SEZ unit or SEZ developer.

D1 = (E/F) x C2

Where, E = Aggregate value of exempt supplies during the tax period

F = Total turnover in the State during the tax period

Notes :

(i) If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.

(ii) Exempt supplies include outward supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority or its first occupation, whichever is earlier.

Note :

1. For this purpose, the value of exempt supply in following cases shall be:

   (a) the value of land and building supplied (i.e. exempt supply) shall be taken as the same as adopted for the purpose of paying stamp duty; and

   Removal of Difficulty Order No. 04/2018 – CT, dated 01.04.2019

   For the removal of difficulties, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, the amount of credit attributable to the taxable supplies including zero rated supplies and exempt supplies shall be determined on the basis of the area of the construction of the complex, building, civil structure or a part thereof, which is taxable and the area which is exempt.

   (b) the value of security sold (i.e. exempt supply) shall be taken as 1% of the sale value of such security.

2. For this purpose, the expression 'value of exempt supply' shall not include the value of activities or transactions specified in Schedule III, ~~*except those specified in paragraph 5 of the said Schedule*~~ *except, -*

   (i) ***the value of activities or transactions specified in paragraph 5 of the said schedule (i.e sale of land, & sale of building when entire consideration is received after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier); and***

   (ii) ***the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said schedule. (i.e. Supply of warehoused goods to any person before clearance for home consumption). [Further, for this purpose, the Value of Exempt supply shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers. (Explanation inserted by NN 38/2023 – CT, w.e.f. 01.10.2023)]***

   [As amended by Finance Act, 2023, w.e.f. 01.10.2023]

   Analysis: It means, in respect of activities & transactions which are covered under Schedule III of the CGST Act, ITC shall not be reversible, although such activities & transactions are not leviable to GST. But, transactions of "sale of land & building" and "Supply of warehoused goods to any person before clearance for home consumption" which are not chargeable to GST, will be treated as exempt supply and accordingly ITC will not be available for these particular transactions of Schedule III.

(iii) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, VAT and CST.

Presently, (i) central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas (ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and (iii) VAT/CST is leviable on sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor. Petroleum crude, diesel, petrol, ATF, natural gas are presently not taxable under GST and alcoholic liquor is outside the ambit of GST. Thus, supply of both these products (petrol/petroleum products and alcoholic liquor) being non-taxable under GST, will be exempt supplies u/s 2(47) and taxes/duties leviable thereon will be excluded from the value thereof for the purpose of apportionment of credit.

(iv) The aggregate value of exempt supplies shall exclude the following:

(a) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

(b) ~~*the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.*~~ ***[Omitted by NN 38/2023 – CT, w.e.f. 04.08.2023)]***

(c) the value of supply of Duty Credit Scrips [e.g. – RoDTEP, RoSCTL, MEIS, SEIS Duty Credit Scrips] [inserted by NN 14/2022 – CT, dated 05.07.2022].

Example on how to apportion common credit into credit attributable to exempt supplies

Ezee Footwear, which manufactures two varieties of exempt Hawai slippers and five varieties of taxable sandals and shoes, has the following turnover in October and has Rs. 1,15,000 common credit that has to be apportioned:

Turnover of Hawai 1 plus Hawai 2 : Rs. 3 crores (This is E)

Turnover of all varieties of taxable shoes and sandals : Rs. 2 crore

Total turnover of all footwear during the month : Rs. 5 crores (This is 'F')

No inputs/input services are used for non-business purposes.

(3,00,00,000 /5,00,00,000) x 1,15,000 = Rs. 69,000 is the input tax that pertains to exempt supply (D1).

- **Compute credit attributable to non-business purposes D_2 as under:**

  D_2 = 5% of C_2 (common credit)

Step 3 : Compute eligible credits

Compute C_3 i.e. common eligible ITC attributable to business purposes and taxable supplies including zero rated supplies as under:

$C_3 = C_2 – (D_1 + D_2)$

Step 4 : Restrict ineligible credits

ITC amount equal to $[D_1 + D_2]$ shall be reversed in form GSTR-3B.

Note :

- Compute C3 separately for ITC of CGST, SGST/ UTGST and IGST.
- Compute ∑ (D1 + D2) for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September of the following financial year.
- If ∑ (D1 + D2) > the amount already reversed every month, the differential amount has to be reversed in any month till the month of September of the following financial year and interest @ 18% p.a. should be paid on such differential amount from 1st April of succeeding year till the date of payment.
- If the amount reversed every month > ∑ (D1 + D2), the additional amount paid has to be claimed back as ITC in the return of the month not later than September of the next financial year.

Illustration 28 : Apportionment of credit on input and input services [Rule 42]

Pankaj Ltd., a registered person, supplies taxable as well as exempted goods. Turnover of Pankaj Ltd. during the month of January, 2018 is as under :

Particulars	**Amount (Rs.)**
Value of exempted supply of goods	10,00,000
Value of taxable supply of goods	25,00,000
Value of Zero rated supply of goods	15,00,000
Total	**50,00,000**

(b) ~~*the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.*~~ ***[Omitted by NN 38/2023 – CT, w.e.f. 04.08.2023)]***

(c) the value of supply of Duty Credit Scrips [e.g. – RoDTEP, RoSCTL, MEIS, SEIS Duty Credit Scrips].

(iv) Exempt supplies include outward supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority or its first occupation, whichever is earlier.

Note : For this purpose, the value of exempt supply in following cases shall be:

(a) the value of land and building supplied (i.e. exempt supply) shall be taken as the same as adopted for the purpose of paying stamp duty; and

Removal of Difficulty Order No. 04/2018 – CT, dated 01.04.2019

For the removal of difficulties, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, the amount of credit attributable to the taxable supplies including zero rated supplies and exempt supplies shall be determined on the basis of the area of the construction of the complex, building, civil structure or a part thereof, which is taxable and the area which is exempt.

(b) the value of securities sold (i.e. exempt supply) shall be taken as 1% of the sale value of such securities.

(v) For this purpose, the expression 'value of exempt supply' shall not include the value of activities or transactions specified in Schedule III, ~~*except those specified in paragraph 5 of the said Schedule*~~ *except, -*

(a) ***the value of activities or transactions specified in paragraph 5 of the said schedule (i.e sale of land, & sale of building when entire consideration is received after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier); and***

(b) ***the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said schedule. (i.e. Supply of warehoused goods to any person before clearance for home consumption). [Further, for this purpose, the Value of Exempt supply shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers. (Explanation inserted by NN 38/2023 – CT, w.e.f. 01.10.2023)]***

[As amended by Finance Act, 2023, w.e.f. 01.10.2023]

Analysis: It means, in respect of activities & transactions which are covered under Schedule III of the CGST Act, ITC shall not be reversible, although such activities & transactions are not leviable to GST. But, transactions of "sale of land & building" and "Supply of warehoused goods to any person before clearance for home consumption" which are not chargeable to GST, will be treated as exempt supply and accordingly ITC will not be available for these particular transactions of Schedule III.

(vi) Amount of Te has to be computed separately for CGST, SGST/UTGST and IGST.

(vii) Explanation to Rule 45- For the purposes of this Chapter, the expressions capital goods shall include plant and machinery as defined in the Explanation to section 17.

Step 4 : Restrict ineligible credit : Add T_e to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods concerned.

Illustration 30 : Apportionment of Input Tax Credit on Capital Goods [Rule 43]

Pankaj Ltd., a registered person, supplies taxable as well as exempted goods. Turnover of Pankaj Ltd. during the month of January, 2018 is as under:

Particulars	Amount (Rs.)
Value of exempted supply of goods	10,00,000
Value of taxable supply of goods	25,00,000

(d) Person supplying ~~*goods or*~~ services through an **electronic commerce operator**, who is required to **collect tax at source** under section 52. **[Words "goods or" omitted by Finance Act, 2023, w.e.f. 01.10.2023]**

(e) **Manufacturer** of such goods as may be **notified** by the Government on the recommendations of the Council.

(f) He is a **casual taxable person or a non-resident taxable person**.

Analytical Notes:

(i) Any Supplier opting for composition scheme (including Restaurant & Outdoor Catering service supplier), can supply services of value not exceeding 10% of turnover in a State or Union territory in the preceding financial year or Rs. 5,00,000/-, whichever is higher. But, if turnover of services (other than Restaurant & Outdoor Catering service) is more than this limit, then, such supplier will not be eligible for composition scheme from the date when he cross this limit. However, this limit does not apply to Restaurant & Outdoor Catering service.

(ii) There is no restriction on Composition Supplier to procure goods or services inter-State.

(iii) **Clarifications by CBIC [CGST (Removal of Difficulties) Order No. 01/2019 – C.T., w.e.f. 01.02.2019) :**

For the removal of difficulties, it is hereby clarified that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account –

(a) for determining the eligibility for composition scheme under second proviso to sub-section (1) of section 10;

(b) in computing aggregate turnover in order to determine eligibility for composition scheme.

(iv) What will be the rate of tax under composition scheme for bakery items supplied where eating place is attached. Will it quality as manufacturer for the purpose of composition levy?

Answer : [Circular No. 27/01/2018 – GST, dated 04.01.2018]

Any service by way of serving of food or drinks including by a bakery qualifies under section 10(1)(b) of CGST Act and hence GST rate of composition levy for the same would be 5%.

(v) The **manufacturer** of the following goods which are not eligible for Composition Scheme, have been notified u/s 10(2)(e) vide Notification No. 14/2019 - C.T.:

HSN Code	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
2202 10 10	Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.]
Chapter 24	All goods, i.e. Tobacco and manufactured tobacco substitutes
6815	Fly ash bricks; fly ash aggregates; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

(vi) **Clarification regarding the classification of Services by Cloud Kitchens/Central Kitchens [Circular No. 164/20/2021 – GST, dated 06.10.2021]**

1. The word "Restaurant Service" is defined in NN 11/2017 – CT (R) as follows: "Restaurant Service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

the CGST Act from the date of issue of the order. Provisions of section 18(1)(c) of the CGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

Composition Levy for Supplier of Services [Section 10(2A) read with NN. 02/2019 – CT (R)]

Turnover limit for Composition Levy [Section 10(2A)] : Section 10(2A) of the CGST Act provides the aggregate turnover limit of Rs. 50 lakh for composition levy for supplier of services. [Sec. 10(2A), inserted by Finance (No. 2) Act, 2019, w.e.f. 01.01.2020]

Explanation – For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression **"aggregate turnover"** shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall **not include** the amount of **interest** or discount earned on loans, advances or deposits extended.

Persons eligible for the composition levy [Section 10(2A)] : A registered person, who is not eligible to opt for composition levy scheme under section 10(1) or 10(2), can opt for composition levy scheme under Section 10(2A), if his **aggregate turnover in the preceding financial year did not exceed Rs. 50 lakhs**. Such assessee may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding 3% (CGST) of the turnover in State or turnover in Union territory.

Tax payable under the Scheme as notified by NN 02/2019 – CT (R) :

Description of Supply	Rate of GST (CGST + SGST)
First supplies of goods or services or both upto an aggregate turnover of **Rs. 50 Lakhs** made on or after the 1st day of April in any financial year, by a registered person.	3% + 3% = 6% of value of all outward supplies (including exempt supplies) of goods or services or both irrespective of actual rate of tax. [Same rate of tax is prescribed by Rule 7 of the CGST Rules, 2017 vide NN. 50/2020 – C.T., w.e.f. 01.04.2020. Wordings used in Rule 7 are 3% + 3% = 6% of the turnover of supplies of goods and services in the State or Union Territory.]

Explanation – For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:––

(i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and

(ii) amount of interest or discount earned on loans, advances or deposits extended.

Persons, not eligible for the composition levy [Section 10(2A) read with NN 02/2019 – CT(R)] :

Any assessee can opt for composition levy scheme under section 10(2A), if–

(a) his aggregate turnover in the preceding financial year was fifty lakh rupees or below;

(b) he is not eligible to pay tax under sub-section (1) of section 10 of the said Act;

(c) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;

(d) he is not engaged in making any inter-State outward supplies of goods or services;

(e) he is not engaged in making any supply of ~~*goods or*~~ services through an electronic commerce operator who is required to collect tax at source under section 52; **[Words "goods or" omitted by Finance Act, 2023, w.e.f. 01.10.2023]**

(f) he is neither a casual taxable person nor a non-resident taxable person; and

Pepper & Salt Ltd., registered in Madhya Pradesh has the turnover amounting to Rs. 80 lakh in the financial year 2018-19. It wants to avail the benefit of composition scheme in the year 2019-20. You are required to advise Pepper and Salt Ltd. regarding the availability of composition scheme in the year 2019-20.

Will your answer change, if Pepper & Salt Ltd. is registered in Arunachal Pradesh? ***(5 Marks)***

Answer :

Pepper & Salt Ltd. can avail the benefit of the composition scheme in the year 2019-20 as the threshold for composition scheme is Rs. 1.50 Crore of aggregate turnover in the preceding financial year* under section 10(1) of CGST Act, 2017. The benefit of composition scheme can be availed up to the turnover of Rs. 1.50 Crore in current financial year*. However, it has to be ensured that Pepper & Salt Ltd. fulfills the following conditions as given under section 10(2) of CGST Act, 2017:

(i) Pepper & Salt Ltd. should not be engaged in supply of services (other than restaurant & outdoor caterers) of value in excess of Rs. 5,00,000/- or 10% of turnover in a State or Union territory in the preceding financial year, whichever is higher.

(ii) It is not engaged in making any supply of goods or services which are not taxable under the CGST Act/SGST Act/ UTGST Act.

(iii) Pepper & Salt Ltd. do not make any inter-State outward supplies of goods or services.

(iv) It does not supply services through an electronic commerce operator who is required to **collect tax at source** u/s 52.

(v) It does not manufacture ice cream & other edible ice, pan masala, tobacco, aerated water, Fly ash bricks, fly ash aggregates, Fly ash blocks, Bricks of fossil meals or similar siliceous earths, Building bricks and Earthen or roofing tiles.

*Rs. 75 lakhs for 8 special category states viz 1. Arunachal Pradesh, 2. Uttarakhand, 3. Manipur, 4. Meghalaya, 5. Mizoram, 6. Nagaland, 7. Sikkim and 8. Tripura.

If Pepper & Salt Ltd. is registered in Arunachal Pradesh, it can not avail the benefit of composition in the year 2019-20 as its turnover in the preceding financial year (Rs. 80 lakhs) exceeds the threshold limit (Rs. 75 lakhs).

Illustration 10 :

M/s. Dayal a registered trader under GST located in Surat, Gujrat has opted for composition scheme for the F.Y. 2019-20. Determine GST payable by M/s. Dayal. Details of supplies including inward supplies taxable under reverse charge basis is as follows-

Particulars	**Amount (Rs.)**
Intra State Supplies of Marker chargeable @ 18% GST	25,00,000
Intra State Supplies of Computer parts chargeable @ 28% GST	10,00,000
Intra State Supplies made which are chargeable to GST at Nil Rate	45,00,000
Intra state supplies which are wholly exempt from GST	11,45,000
Value of inward supplies on which tax is payable under RCM (GST Rate 28 %)	15,00,000

Answer : **Computation of Aggregate Turnover and Composite Tax**

Particulars	**Amount (Rs.)**
Intra State Supplies of Marker chargeable @ 18% GST	25,00,000
Intra State Supplies of Computer Parts chargeable @ 28% GST	10,00,000
Intra State Supplies made which are chargeable to GST at Nil Rate	45,00,000
Intra state supplies which are wholly exempt from GST	11,45,000

	India; or (c) any co-operative society established by or under any law; or (d) any person registered under GST; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person		(c) any **co-operative society** established by or under any law; or (d) any **person registered** under GST; or (e) any **body corporate** established, by or under any law; or (f) any **partnership firm** whether **registered or not** under any law **including association of persons**; or (g) any **casual taxable person** registered under GST located in the taxable territory.
	However, RCM on GTA service shall **not apply** (i) to services provided by a GTA to, - (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under GST only for the purpose of deducting TDS u/s 51 and not for making a taxable supply of goods or services. (ii) where, - (a) the supplier (GTA) has taken registration under GST and exercised the option to pay GST under forward charge mechanism on the services of GTA; and (b) the supplier (GTA) has issued a tax invoice to the recipient charging GST at the applicable rates and has made following declaration on such invoice issued by him: "I/we have taken registration under the CGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us *from the Financial Year _____ under forward charge and have not reverted to reverse charge mechanism.*" **[as amended by NN 08/2023 – CT (R), w.e.f. 27.07.2023]** *(c) Further, the option exercised by GTA to itself pay GST on the services supplied by it during a Financial Year shall be deemed to have been exercised for the next and future financial years unless the GTA files a declaration to revert under reverse charge mechanism on or after the 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year.* **[Proviso inserted by NN 06/2023 – CT (R), w.e.f. 27.07.2023]** *(d) Further, a GTA who commences new business or crosses threshold for registration during any Financial Year, may exercise the option to itself pay GST on the services supplied by it during that Financial Year by making a declaration before the expiry of 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration, whichever is later.* **[Proviso inserted by NN 05/2023 – CT (R), w.e.f. 09.05.2023]** **[also refer analysis given at the end of this table]**		
2.	Services provided by an individual **advocate** including a senior advocate or firm of advocates by way of legal services, directly or indirectly Explanation.- "legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any	An individual advocate including a senior advocate or firm of advocates	Any **business entity** located in the taxable territory.

	court, tribunal or authority" [also refer analysis given at the end of this table]		
3.	Services supplied by an **arbitral tribunal** to a business entity	An arbitral tribunal	Any **business entity** located in the taxable territory.
4.	Services provided by way of **sponsorship** to any body corporate or partnership firm	Any person	Any **body corporate** or partnership **firm** located in the taxable territory.
5.	Services supplied by the **Central Government, State Government, Union territory or local authority** to a business entity excluding, - (1) renting of immovable property, and (2) Services specified below - (i) services by the Department of Posts ***and the Ministry of Railways (Indian Railways)***; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers. **[As amended by NN. 14/2023 - CT (R), w.e.f. 20.10.2023]**	Central Government, State Government or Union territory or local authority	Any **business entity** located in the taxable territory.
5A.	Services supplied by the **Central Government** ***excluding the Ministry of Railways (Indian Railways)*****, State Government, Union territory or local authority** by way of **renting of immovable property** to a person registered under GST **[As amended by NN. 14/2023 - CT (R), w.e.f. 20.10.2023]**	Central Government, State Government, Union Territory or Local Authority	Any **person registered** under GST
5A A.	Service by way of **renting of residential dwelling to a registered person**	Any person	**Any Registered person**
5B.	Services supplied by any person by way of **transfer of development rights (TDR) or Floor Space Index (FSI)** (including additional FSI) for construction of a project by a promoter [also refer analysis given at the end of this table]	Any person	**Promoter**
5C.	**Long term lease of land (30 years or more)** by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter [also refer analysis given at the end of this table]	Any person	**Promoter**
6.	Services supplied by a **director** of a company/body corporate to the said company/ body corporate	A director of a company or a body corporate	The **company** or a **body corporate** located in the taxable territory.
7.	Services supplied by an **insurance agent** to any person carrying on insurance business	An insurance agent	Any person carrying an insurance business, located in the taxable territory.
8.	Services supplied by a **recovery agent** to a	A recovery agent	A **banking company** or a financial

notified for reverse charge under IGST Act. Further, following two services are additionally included under RCM for IGST purposes:

S.N.	Category of Supply of Service	Supplier of Service	Recipient of Service
1	Any service **supplied by any person who is located in a non taxable territory** to any person, other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory, other than non taxable online recipient.
2	~~*Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.*~~	~~*A person located in non-taxable territory*~~	~~*Importer, as defined in section 2(26) of the Customs Act, 1962, located in the taxable territory.*~~ **[Omitted by NN 13/2023 – IT(R), w.e.f. 01.10.2023]**

Explanation: For purpose of this notification, -

(a) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013. As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include -

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.

(b) The words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.

(c) A **"Limited Liability Partnership"** formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be **considered as a partnership firm** or a firm.

(d) "renting of immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

(e) provisions of Reverse Charge Mechanism, in so far as they apply to the Central Government and State Governments, shall also apply to the Parliament, State Legislatures, ***Courts and Tribunals*** [***Words 'Courts and Tribunals' inserted by NN 02/2023 – CT (R), w.e.f. 01.03.2023***]

(f) The term "apartment", "promoter" and "Real Estate Project (REP)" shall have the same meaning as assigned in section 2 of the Real Estate (Regulation and Development) Act, 2016.

(g) the term "project" shall mean a Real Estate Project (REP) or a Residential Real Estate Project (RREP);

(h) The term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.

(i) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

7.2 Sec. 9(5) of CGST Act : Tax Payable by the Electronic Commerce Operator (ECO) on Notified Services

The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State

(i) "floor space index (FSI)" shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built.

7.2 Sec. 9(5) of CGST Act : Tax Payable by the Electronic Commerce Operator (ECO) on Notified Services

The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator as if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

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

ANALYTICAL VIEW OF THE TOPIC

- As per Sec. 2(45) of the CGST Act, 2017 **"electronic commerce operator"** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
- **Electronic Commerce Operators (ECO) :** ECO display products as well as services which are actually supplied by some other person to the consumer, on their electronic portal. The consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to the consumer. The price/consideration for the product/service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.
- The Government may notify specific categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator (ECO) if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.
- Notification No. 17/2017 CT (R) and Notification No. 14/2017 IT (R) dated 28.06.2017, as amended, has notified the following categories of services supplied through ECO for this purpose –

(i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, ~~*omnibus*~~ or any other motor vehicle ***except omnibus*** (e.g. OLA, Uber, Rapido, etc.) ***[as amended by NN 16/2023-CT(R), w.e.f. 20.10.2023]***;

(ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company or [inserted by NN 16/2023 – CT(R), w.e.f. 20.10.2023];

Analysis of Amendment for Bus Operators:

The representation was filed by the bus operator's association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take GST registration and meet GST compliances.

Therefore, w.e.f. 01.01.2022, the liability to pay GST on bus transportation services supplied through ECOs has been placed on the ECO under section 9(5) of the CGST Act, 2017. But, at the same time, due to this provision, the larger organized entities were unable to avail Input Tax Credit (ITC) on inward goods and services, because they were not liable to pay GST on the aforesaid services.

Therefore, in order to strike a balance between the requirement for simplifying business operations for small operators and the necessity for larger organized entities to avail ITC on inward goods and services, the government specifically excluded "Company" omnibus operators from the scope of section 9(5) of the CGST Act, 2017. [Further, "Company" means Company as defined u/s 2(20) of the Companies Act, 2013.]

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

(7) **"Fixed establishment"** means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;

(8) **"Goods and Services Tax (Compensation to States) Act"** means the Goods and Services Tax (Compensation to States) Act, 2017;

(9) **"Government"** means the Central Government;

(10) **''Import of goods"** with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

(11) **''Import of services"** means the supply of any service, where –

(i) the supplier of service is located outside India;

(ii) the recipient of service is located in India; and

(iii) the place of supply of service is in India;

(12) **"Integrated tax"** means the integrated goods and services tax levied under this Act;

(13) **"Intermediary"** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

(14) **"Location of the recipient of services"** means, –

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient;

(15) **"Location of the supplier of services"** means,–

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

(16) **"Non-taxable online recipient"** ***means any unregistered person receiving online information and database access or retrieval services located in taxable territory.***

Explanation : ***For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the CGST Act, 2017; [as amended by Finance Act, 2023, w.e.f. 01.10.2023]***

(17) **"Online information and database access or retrieval services"** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply

~~*essentially automated and involving minimal human intervention and*~~ impossible to ensure in the absence of information technology and includes electronic services such as, -

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) ~~*online gaming*~~ ***online gaming, excluding the online money gaming as defined in section 2(80B) of the CGST Act, 2017*** **[As amended by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**;

(18) **"Output tax"**, in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

(19) **"Special Economic Zone"** shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

(20) **"Special Economic Zone developer"** shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;

(21) **"Supply"** shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;

(22) **"Taxable territory"** means the territory to which the provisions of this Act apply;

(23) **"Zero-rated supply"** shall have the meaning assigned to it in section 16;

(24) Words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

(25) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

8.2 Chapter II : Administration

Sec. 3 : The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

Sec. 4 : Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

8.3 Chapter III : Levy and Collection of Tax

Sec. 5 : Refer Chapter 2

SEC. 6 : POWER TO GRANT EXEMPTION FROM TAX

(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1 : For the purposes of this Act, where a person has, -

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

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

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

Explanation 2: A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

SEC. 9 : SUPPLIES IN TERRITORIAL WATERS

Notwithstanding anything contained in this Act, -

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

8.5 Chapter V : Place of Supply of Goods or Services or Both

Illustration 1 : Explain the significance of the place of supply of goods and services under GST.

Answer : The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may at the point of consumption. So, place of supply provision determines the place i.e. taxable jurisdiction where the tax should reach. The place of supply determines whether a transaction is intra-state or inter-state. In other words, the place of Supply of goods or services is required to determine whether a supply is subject to SGST plus CGST in a given State or union territory or else would attract IGST if it is an inter-state supply.

PLACE OF SUPPLY OF GOODS

SECTION 10 OF IGST ACT, 2017

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,

(a) where the **supply involves movement of goods**, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(b) where the **goods are delivered** by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such (third) person;

(c) where the **supply does not involve movement of goods**, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

(ca) where the supply of goods is made to a person other than a registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Explanation.— For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;

Supply 1 : Supply from the supplier of goods (Mr. A) to the person to whom the goods are delivered (Mr. B) on the instruction of a third person (Mr. C) – ***Place of supply shall be the principal place of business of the person on whose instruction goods are delivered (Mr. C) to the receiver of goods (Mr. B).***

[Illustration On Supply 1]

Case	Location of Supplier - Mr. A	Place of delivery of goods - Office of Mr. B	Principal place of Mr. C who instructed delivery to Mr. B	Place of supply for Mr. A	Type of tax payable by Mr. A
1	Gujarat	Gujarat	Maharashtra	Maharashtra	IGST at Gujarat
2	Gujarat	Maharashtra	Gujarat	Gujarat	CGST + Gujarat GST at Gujarat
3	Gujarat	Karnataka	Karnataka	Karnataka	IGST at Gujarat
4	Gujarat	Madhya Pradesh	Rajasthan	Rajasthan	IGST at Gujarat

Supply 2: Deemed supply of goods by the person on whose instruction (Mr. C) the goods were delivered by the original supplier (Mr. A) to the receiver of goods (Mr. B) – ***Place of supply shall be the location of the goods at the time of delivery to the recipient:***

[Illustration On Supply 2]

Case	Location of Supplier - Mr. A	Place of delivery of goods - Office of Mr. B	Principal place of Mr. C who instructed delivery to Mr. B	Place of supply for Mr. C	Type of tax payable by Mr. C
1	Gujarat	Gujarat	Maharashtra	Gujarat	IGST at Maharashtra
2	Gujarat	Maharashtra	Maharashtra	Maharashtra	CGST + MH GST
3	Gujarat	Karnataka	Karnataka	Karnataka	CGST + Kar GST
4	Gujarat	Madhya Pradesh	Rajasthan	Madhya Pradesh	IGST at Rajasthan

Illustration 4 : Section 10(1)(c) - Supply does not involve movement of goods

Particulars	Location of Supplier	Location of Recipient	Location of Goods	Place of Supply	Tax Payable
Sale of pre-installed DG Set	Delhi	Uttar Pradesh	Uttar Pradesh	Uttar Pradesh	IGST payable at Delhi
Manufacture of moulds by job worker (supplier), sold to the Principal, but retained in job worker's premises	Tamil Nadu	Kerala	Tamil Nadu	Tamil Nadu	CGST + TN GST

Illustration 4A : Section 10(1)(ca) - Supply made to unregistered person

Case	Location of Supplier	Location of Recipient (as recorded on Invoice)	Delivery of Goods	Place of Supply	Tax Payable
1	Delhi	Uttar Pradesh	Delhi	Uttar Pradesh	IGST payable at Delhi
2	Delhi	Not Available	Delhi	Delhi	CGST + Delhi GST

Illustration 5 : Section 10(1)(d) - Supply of goods assembles/ installed at site

Particulars	Location of Supplier	Registered office of Recipient	Installation/ Assembly Site	Place of Supply	Tax Payable

Illustration 27 :

Mr. Murthy, an unregistered person and a resident of Pune, hires the services of M/s Sun Ltd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru.

(i) Determine the place of supply of services provided by M/s Sun Ltd.

(ii) What would your answer be in case the product launch takes place in Bangkok?

(iii) What would your answer be in case Mr. Murthy is a registered person and product launches take place in Bengaluru and Bangkok? ***[CA Final, May 2018 - New] (5 Marks)***

Solution :

As per section 12(7) of IGST act, 2017 (as both recipient and supplier are in India), the place of supply of services provided by way of assigning of sponsorship to such events place of supply shall be as follows -

(i) if recipient of service is an unregistered person and event is held in India, then, place of supply = Place where event is actually held i.e. Bengaluru.

(ii) if recipient of service is an unregistered person and event is held outside India, then, place of supply is location of the recipient i.e. Pune.

(iii) if recipient of service is a registered person, then, place of supply = location of such person = Pune (in both the cases viz. whether product launch takes place in Bengaluru and Bangkok).

(8) The place of supply of services by way of **transportation of goods,** including by mail or courier to,

(a) a registered person, shall be the location of such person;

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

~~***Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.***~~ **[proviso omitted by Finance Act, 2023, w.e.f. 01.10.2023]**

Illustration 28:

A goods transportation agency ABC located in Delhi, transports a consignment of new motorcycles of XYZ in Gurgaon (Haryana), from a Dealer based in Patna, Bihar to the premises of another dealer in Bhopal, Madhya Pradesh. Say, XYZ is a registered assessee, the place of supply of the service of transportation of goods will be the location of XYZ, i.e. Haryana. But, if XYZ is not a registered assessee, the place of supply will be the location where the goods are handed over for their transportation, i.e. Patna, Bihar.

(9) The place of supply of **passenger transportation service** to, -

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey.

However, where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

Explanation : For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

Illustration 29 :

If Mr. Rohit, a registered taxable person based in Udaipur, purchases air ticket from Flights Ltd., an airline company based in Kolkata, for travel from Mumbai to USA via Dubai, then the place of supply of passenger transportation shall be Udaipur. If Mr. Rohit is not a registered person then the place of supply of passenger transportation shall be Mumbai.

Illustration 30 :

A ticket/pass for anywhere travel in India is issued by M/s GoAir India to a person. What will be the place of supply?

M/s Mangal Architects located in India, takes a Loan from Bank of America in USA. The Bank charges loan processing charges. The place of supply of service will be USA.

Illustration 52 :

ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer. The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

For the month of December, 20XX, the company has charged US $ 1,00,000 (exclusive of GST) to its foreign customer. With reference to the provisions of GST law, examine whether the company is liable to pay IGST or CGST and SGST.

Note: GST @ 18% is applicable on supply of the support services provided by ABC Pvt. Ltd. Rate of exchange is Rs. 65 per US $. ***[RTP - May 2018]***

Answer :

Section 2(13) of the IGST Act, 2017 defines "intermediary" to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services.

If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of section 13 of the IGST Act, 2017. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of section 13 of the IGST Act, 2017.

As per section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier i.e., the location of ABC Pvt. Ltd. which is New Delhi. Further, as per section 8(2) of the IGST Act, 2017, supply of services where the location of the supplier and the place of supply of services are in the same State is treated as intra-State supply.

Therefore, since in the given case, both the location of ABC Pvt. Ltd. and the place of supply of the service provided by it are in New Delhi, the supply of service will be an intra-State supply leviable to CGST & SGST.

Assuming that the given rate of exchange is prevailing on the date of time of supply of services, the CGST and SGST liability will be worked out as under:

CGST = Rs. 5,85,000 (1,00,000 x 65 x 9%) SGST = Rs. 5,85,000 (1,00,000 x 65 x 9%)

(9) ~~*The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods*~~. **[Omitted by Finance Act, 2023, w.e.f. 01.10.2023]**

(10) The place of supply in respect of **passenger transportation** services shall be the place where the *passenger embarks on the conveyance for a continuous journey.*

(11) The place of supply of services provided **on board a conveyance** during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the *first scheduled point of departure of that conveyance for the journey.*

Illustration 53 :

- A video game or a movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. The Place of Supply of this service will be Bangkok (outside taxable territory).
- If the above service is provided on a Delhi-Kolkata-Bangkok-Jakarta flight during the Bangkok-Jakarta leg, then the Place of Supply will be Delhi (in the taxable territory, hence liable to tax).
- But, in the same case, in respect of passenger transportation service (i.e. Ticket of the passenger), the place of provision shall be the place where the passenger embarks on the conveyance for a continuous journey.

(12) The place of supply of **online information and database access** or retrieval services shall be the *location of the recipient of services.*

(a) Export of services is defined in IGST Act in section 2(6) where the following 5 conditions have been prescribed as necessary for a supply to qualify as export of service:

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8 of IGST Act;

One of the five conditions for a supply of service to be considered as "export of service" is that the place of supply of service is outside India.

(b) Section 13(9) of the IGST Act provides that where location of supplier of services or location of recipient of services is outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. However, where location of supplier and recipient of services is in India, then the place of supply is governed by section 12(8) of the IGST Act, which stipulates that place of supply will be the location of the recipient of services provided he is registered; if not registered, then the place of supply will be the place where goods are handed over for their transportation.

2. In view of the above, place of supply of satellite launch services supplied by ANTRIX Corporation Limited to international customers would be outside India in terms of section 13(9) of IGST Act, 2017 and such supply which meets the requirements of section 2(6) of IGST Act, thus constitutes export of service and shall be zero rated in accordance with section 16 of the IGST Act. Where satellite launch service is provided by ANTRIX Corporation Limited to a person located in India, the place of supply of satellite launch service would be governed by section 12(8) of the IGST Act and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.

Clarification on Satellite launch services provided by NSIL to international customers – Whether Export of Service or not [Circular No. 164/20/2021 – GST, dated 06.10.2021]

1. It has been clarified vide Circular No. 2/1/2017-IGST dated 27.09.2017 that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated.

2. As recommended by the Council, it is clarified that as the satellite launch services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST, dated 27.09.2017, is applicable to them also.

Important Note: "Satellite launch services" is exempted from GST vide Entry No. 19C of NN 12/2017 CT (R).

Clarification on export of services under GST [Circular No. 78/52/2018-GST, dated 31.12.2018]

Issue : In case an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter? There may be instances where the full consideration for the outsourced services is not received by the exporter in India.

Clarification :

1. Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place:-

(i) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value;

(ii) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

(1) On supply of online information and database access or retrieval services **by any person located in a non-taxable territory and received by a non-taxable online recipient,** *the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax* on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely :

(a) the **invoice** or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly **identifies the service** in question **and its supplier** in non-taxable territory;

(b) the intermediary involved in the supply **does not authorise** the charge to the customer or take part in its charge which is that the intermediary **neither collects or processes payment** in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(c) the intermediary involved in the supply **does not authorise delivery**; and

(d) the **general terms and conditions** of the supply are **not set by the intermediary** involved in the supply but by the supplier of services.

(2) The supplier of online information and database access or retrieval services referred to in sub-section(1) shall, for payment of integrated tax, take a **single registration** under the **Simplified Registration Scheme** to be notified by the Government:

Provided that any person located in the taxable territory **representing** such supplier for any purpose in the taxable territory shall **get registered** and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does **not have a physical presence** or does **not** have a **representative** for any purpose in the taxable territory, he may **appoint a person** in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Notes :

1. As per Sec. 2(17) of the IGST Act, 2017, **"Online information and database access or retrieval services"** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply ~~*essentially automated and involving minimal human intervention and*~~ impossible to ensure in the absence of information technology and includes electronic services such as, -

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) ~~*online gaming*~~ *online gaming, excluding the online money gaming as defined in section 2(80B) of the CGST Act, 2017* **[As amended by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**;

2. **Who is a Non-Taxable Online Recipient?** : **"Non-taxable online recipient"** *means any unregistered person receiving online information and database access or retrieval services located in taxable territory.*

Explanation : *For the purposes of this clause, the expression "unregistered person" includes a person registered solely in terms of clause (vi) of section 24 of the CGST Act, 2017 (i.e. persons registered only for the purpose of deducting TDS u/s 51 of the CGST Act, 2017); [as amended by Finance Act, 2023, w.e.f. 01.10.2023]*

Illustration 58 : What could be or could not be OIDAR services. The inclusive part of the definition of OIDAR services is only indicative and not exhaustive. To determine if a particular service is an OIDAR service, the following test can be applied:

Service	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is automated and impossible to ensure in the absence of information technology	Online information and database access or retrieval service
PDF document manually e-mailed by provider	YES	NO	NO
PDF document automatically e-mailed by provider's system	YES	YES	YES
PDF document automatically e-mailed by provider's system	YES	YES	YES
Stock photographs available for automatic download	YES	YES	YES
Online course consisting of pre-recorded videos and downloadable PDFs	YES	YES	YES
Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor	YES	NO	NO
Individually commissioned content sent in digital form e.g., photographs, reports, medical results	YES	NO	NO

8.7A Special Provision for specified actionable claims supplied by a person located outside taxable territory (A)

SECTION 14A OF IGST ACT, 2017 [Inserted by IGST (Amendment) Act, 2023, w.e.f. 01.10.2023]

(1) A supplier of online money gaming as defined in section 2(80B) of the CGST Act, 2017, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay IGST on such supply.

(2) For the purposes of complying with provisions of sub-section (1), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in section 14(2) of this Act.

However, any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the IGST on behalf of the supplier.

Further, if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for payment of such tax.

(3) In case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.

8.8 Chapter VI : Refund of Integrated Tax to International Tourist

SECTION 15 : REFUND OF INTEGRATED TAX TO INTERNATIONAL TOURIST

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.

Explanation.–For the purposes of this section, the term **"tourist"** means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

8.9 Chapter VII : Zero Rated Supply

SECTION 16 : ZERO RATED SUPPLY

(1) "Zero rated supply" means any of the following supplies of goods or services or both, namely :

(a) export of goods or services or both; or

(b) supply of goods or services or both *for authorized operations* to a Special Economic Zone developer or a Special Economic Zone unit. **[Bold & italic words inserted by Finance Act, 2021, w.e.f. 01.10.2023]**

(2) Subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero-rated supplies, **notwithstanding that such supply may be an exempt supply.**

(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made there under, subject to such conditions, safeguards and procedure as may be prescribed.

However, the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty 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.

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by 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 of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Note: ***As per NN 01/2023 – IT, as amended by NN 05/2023 – IT, w.e.f. 01.10.2023, the Government has notified***

(i) all goods or services (except some specified goods like Tobacco based goods, pan-masala, etc.) as the class of goods or services which may be exported on payment of integrated tax and on which the supplier of such goods or services may claim the refund of tax so paid; and

(ii) all suppliers to a Developer or a unit in Special Economic Zone undertaking authorised operations as the class of persons who may make supply of goods or services (except some specified goods like Tobacco based goods, pan-masala, etc.) to such Developer or a unit in Special Economic Zone for authorised operations on payment of integrated tax and on which the said suppliers may claim the refund of tax so paid.

[Sub-sections (3) & (4) substituted by Finance Act, 2021, w.e.f. 01.10.2023]

(Also refer exemption N.N. 40/2017 - CT (R), dated 23-10-17, given at the end of chapter 9.)

Illustration 59 : Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?

Solution: As per section 7(5)(b) of the IGST Act, 2017, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2 : 'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which 'C' may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

Illustration 3 : An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4 : 'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing/ processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, ''B' is not an intermediary.

Further, the above illustrations are only indicative and not exhaustive.

Clarification on the entitlement of ITC where the Place of Supply is determined in terms of the proviso to section 12(8) of the IGST Act [Circular No. 184/16/2022-GST, dated 27.12.2022]

Now, this circular is not relevant due to amendment made in Sec. 12(8) of the IGST Act, 2017. — (A)

	(2) Prior to 01.06.2016, this exemption was available to such transport by aircraft as well as vessel. But, now, this exemption is available only in case of transport by aircraft. W.e.f. 01.06.2016, such transport by vessels is made taxable.
6.	Services by way of transportation of goods by an **aircraft** from customs station of clearance in India **to a place outside India**. Nothing contained in this entry shall apply after the ~~30.09.2018~~ ~~30.09.2019~~ ~~30.09.2020~~ ~~30.09.2021~~ 30.09.2022. [Exemption extended till 30.09.2022 by NN 07/2021 - CT (R) w.e.f. 01.10.2021] **[Entry No. 19A of NN 12/2017 CT (R)]** **Analysis:** W.e.f. 01.10.2022, this service is made **taxable**, because, this exemption is not extended beyond 30.09.2022.
7.	Services by way of transportation of goods by a **vessel** from customs station of clearance in India **to a place outside India**. Nothing contained in this entry shall apply after the ~~30.09.2018~~ ~~30.09.2019~~ ~~30.09.2020~~ ~~30.09.2021~~ 30.09.2022. [Exemption extended till 30.09.2022 by NN 07/2021 - CT (R) w.e.f. 01.10.2021] **[Entry No. 19B of NN 12/2017 CT (R)]** **Analysis:** W.e.f. 01.10.2022, this service is made **taxable**, because, this exemption is not extended beyond 30.09.2022.
8. (A)	**Satellite launch services** ~~*supplied by Indian Space Research Organisation (ISRO), Antrix Corporation Limited or New Space India Limited*~~. **[Entry No. 19C of NN 12/2017 CT (R), as amended by NN 07/2023 CT (R), w.e.f. 27.07.2023]** **Analysis of Amendment:** ***W.e.f. 27.07.2023, the exemption to Satellite launch services has been extended to all the organisations including private organisations to encourage start-ups.***
9.	Services by way of **transportation by rail or a vessel** from one place in India to another of the following goods: (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (b) defence or military equipments; (c) newspaper or magazines registered with the Registrar of Newspapers; (d) ~~railway equipments or materials;~~ [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022] (e) agricultural produce; (f) milk, salt and food grain including flours, pulses and rice; or (g) organic manure. **[Entry No. 20 of NN. 12/2017 CT (R)]**
10.	Services provided **by a goods transport agency,** by way of transport in a goods carriage of – (a) agricultural produce; (b) ~~goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500;~~ [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022] (c) ~~goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750;~~ [Omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022] (d) milk, salt and food grain including flour, pulses and rice; (e) organic manure; (f) newspaper or magazines registered with the Registrar of Newspapers; (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or (h) defence or military equipments. **[Entry No. 21 of NN. 12/2017 CT (R)]** **Illustration 14 : (GTA Service)** Calculate the value of taxable service of 'X' Transport Company engaged in the business of transport of goods by road. Give reasons for taxability or exemption of each item. Freight is received from persons registered in GST. Suitable assumptions may be made wherever required. Rate of GST = 12%.

2. Being refundable, the advance is in the nature of security deposit which does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value.

3. Being an expenditure incurred by the supplier, the same is not includible in the value, assuming that such taxes are not charged to the recipient.

	Government Related Services
1.	**Services by Government :** Services by the Central Government, State Government, Union territory or local authority **excluding** the following services – (a) services by the **Department of Posts** ***and the Ministry of Railways (Indian Railways)*** ~~by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory~~; [Omitted words, omitted by NN 04/2022 – CT (R), w.e.f. 18.07.2022] **[As amended by NN. 13/2023 - CT (R), w.e.f. 20.10.2023]** (b) services in relation to an **aircraft or a vessel,** inside or outside the precincts of a port or an airport; (c) **transport of goods or passengers;** or (d) **any service, other than** services covered under entries **(a) to (c)** above, **provided to business entities.** **[Entry No. 6 of NN. 12/2017 CT (R)]** **Analysis:** (1) Any service provided by the Central Government, State Government, Union territory or local authority will not be chargeable to GST except aforesaid 4 categories of services [covered under (a) to (d) above] i.e. in case of these 4 categories of services, GST will be leviable. (2) The basic idea behind taxing certain activities of the Government or local authorities is to provide equal competition to private entities in these areas and to avoid break in Input Tax Credit chain as the taxable services provided by the Government are normally in the nature of intermediary services. (3) As per clause (d) of this entry, any service, (other than services covered under clauses (a) to (c) above), provided to business entities by Government or local authority, are taxable as these are excluded from the exemption list. But, in this case, if the service recipient is other than business entity, then, GST shall not be payable as it is not excluded from the exemption list. (4) As per clause (n) under this notification, **'Business entity'** means any person carrying out business. (5) Further, various other services of government and local authority are also exempted from GST by adding various other entries in this Exemption List, which is discussed in following paras of this chapter. (6) Furthermore, some services provided to Government, etc. are also exempt from GST by adding various other entries in this Exemption List, which is also discussed in following paras of this chapter. (7) As per the settled position of law, the term 'Government' include various departments of the Government (e.g. Income tax department, Police Department, etc.), but, various government companies registered under the Companies Act, 2013, corporations formed under Central Acts or State Acts or autonomous institutions set up by a special Act are not included in the term 'Government'. Therefore, services provided by/to such entities are not entitled for exemptions given in various exemption entries relating to the 'Government'. It would also not include regulatory bodies. (8) For the services provided by the Government to business entities [covered under clause (d) above, except Renting of Immovable Property to unregistered person], the government departments will not have to get themselves registered under GST for paying GST, because, in these services GST will be payable by the service recipient (i.e. the business entities receiving the service) under reverse charge mechanism. However, for the services covered under clauses (a), (b) & (c) above provided by the Government, etc. to any person and Renting of Immovable Property provided by the Government, etc. to business entities not registered in GST, the GST will be payable by the concerned department itself (i.e. by the service provider, as here reverse charge mechanism does not apply).
1A.	Services by the Department of Posts by way of **post card, inland letter, book post and ordinary post (envelopes weighing less than 10 grams)**.

	to GST.
	Clarification on whether supply of pure services and composite supplies by way of horticulture / horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to Central Public Works Department (CPWD) are eligible for exemption from GST under Sr. No. 3 and 3A of NN 12/2017 – CT (R) [Circular No. 206/18/2023 – GST, dated 31.10.2023] 1. *Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.* 2. *Maintenance of community assets, urban forestry, protection of the environment and promotion of ecological aspects are functions entrusted to Panchayats and Municipalities under Article 243G and 243W of the constitution.* 3. *Accordingly, it is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of NN 12/2017 - CT (R).*
33A	*Services provided to a Governmental Authority by way of -* *(a) Water supply; (b) Public health; (c) Sanitation conservancy; (d) Solid waste management; and (e) Slum improvement and upgradation.* **[Entry No. 3B of NN. 12/2017 CT (R), inserted by NN. 13/2023 - CT (R), w.e.f. 20.10.2023]** **Clarification on whether District Mineral Foundations Trusts (DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority [Circular No. 206/18/2023 – GST, dated 31.10.2023]** *DMFTs work for the interest and benefit of persons and areas affected by mining related operations by regulating receipt and expenditure from the respective Mineral Development Funds created in the concerned district. They provide services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment, etc.* *These activities are similar to activities that are enlisted in 11th Schedule and 12th Schedule of the Constitution. The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, Self Help Groups of the mining affected areas etc. The services/supplies out of DMF fund are provided free of charge and no consideration is realized from the beneficiaries by DMF against such services.* *Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.*
34.	~~Services of **leasing of assets** (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation **to Indian Railways.**~~ **[Entry No. 43 of NN. 12/2017 CT (R), omitted by NN 07/2021 – CT (R), w.e.f. 01.10.2021]**
35.	~~Services provided by the Goods and Services Tax Network [GSTN] to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.~~ **[Entry No. 51 of NN. 12/2017 CT (R), omitted by NN 04/2022 CT (R), w.e.f. 18.07.2022]**
36.	Services provided to the Central Government, State Government, Union territory under any **insurance scheme** for which **total premium is paid by** the Central **Government**, State Government, Union territory. **[Entry No. 40 of NN. 12/2017 CT (R)]** **Clarifications regarding applicability of GST [Circular No. 16/16/2017-GST, dated 15.11.2017]** **Issue:** Is GST leviable on General Insurance policies provided by a State Government to employees of the State government/Police personnel, employees of Electricity Department or students of colleges/ private schools, etc. (a) where premium is paid by State Government and (b) where premium is paid by employees, students, etc.? **Clarification:** (a) It is hereby clarified that services provided to the Central Government, State Government, Union territory

5.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7,500/- per month per member? Is the GST payable only on the amount exceeding Rs. 7,500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7,500/- per month per member. In case the charges exceed Rs. 7,500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9,000/- per month per member, GST @ 18% shall be payable on the **entire amount** of Rs. 9,000/- and not on [Rs. 9,000 - Rs. 7,500] = Rs. 1,500/- .

7. Services provided by an **unincorporated body or a non-profit entity** registered under any law for the time being in force, engaged in,-

(i) activities relating to the welfare of **industrial or agricultural labour or farmers**; or

(ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of one thousand rupees **(Rs 1000/-) per member per year**.

[Entry no. 77A of NN 12/2017 CT(R), inserted by NN 14/2018 CT(R) w.e.f. 27.07.2018]

Clarification on whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators, etc. from their lessees / occupants [Circular No. 206/18/2023 – GST, dated 31.10.2023]

Issue: *Applicability of GST on supply of electricity by the real estate companies, malls, airport operators, etc., to their lessees or occupants.*

Clarification: *It is clarified that whenever electricity is being supplied bundled with renting of immovable property and/or maintenance of premises, it forms a part of composite supply and shall be taxed accordingly. The principal supply is renting of immovable property and/or maintenance of premise and the supply of electricity is an ancillary supply. Even if electricity is billed separately, the supplies will constitute a composite supply and therefore, the rate of the principal supply i.e., GST rate on renting of immovable property and/or maintenance of premise would be applicable.*

However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations (RWAs), Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

Illustration 30 : Services Provided by Unincorporated Association

Compute value of taxable services from the following receipts (exclusive of GST) of an unincorporated association for the financial year 20XX-XY :

1. Collections from members for medical camp Rs. 12 lakhs.
2. Collections from 100 members @ Rs. 8,000 per month per members for maintenance of residential complex.
3. Collections from 80 members @ Rs. 7,500 per month per members in a commercial complex for maintenance of commercial complex.

Answer : [Refer Entry No. 77 of NN. 12/2017 CT (R)]

S.N.	Particulars	Rs.
1.	Collection from members for medical camp (since, medical services are exempt, hence medical camp by such association is also exempt)	Exempt
2.	Collection from 100 members @ Rs. 8,000 per month per members for maintenance of a residential complex [Since, amount upto Rs. 7,500 per month per member is exempt. Hence, entire Rs. 8,000 per month per member is taxable] (100 members x Rs. 8,000 × 12 months) [Circular No. 109/28/2019 - GST, dated 22.07.2019]	96,00,000

	[The same was collected from members and remitted to the Board on behalf of member]	
5)	Other Services to non-members	4,95,000

Compute the value of taxable supply of RWA of Gokul Dham Society for the month of Oct., 20XX.

Notes:

i. Wherever applicable, GST is not included in the receipts of RWA.

ii. Wherever applicable, the time of supply falls in the month of Oct., 20XX.

Answer: Computation of Value of taxable supply and GST liability

SN	Particulars	(Rs.)
1)	Electricity charges levied by State Electricity Board on the RWA in respect of electricity consumed for common use of lifts and lights in common area. [Bill was raised in the name of RWA. RWA collected the said charges by apportioningthem equally among 100 families and then, remitted the same to the Board.] [Note 1]	-
2)	Proceeds from sale of entry tickets to a musical performance conducted by the RWA in the park of Gokul Dham Society [Where the consideration for admission is not more than Rs. 500 per person.] [Note 2]	-
3)	Monthly subscription collected from member families (Rs. 8,500 each from 100 families) [Note 3]	8,50,000
4)	Electricity charges levied by State Electricity Board on the members of RWA [The same was collected from members and remitted to the Board on behalf of member] [Note 4]	-
5)	Other Services to non-members	4,95,000
Value of taxable supply		**13,45,000**

Notes:

1) In the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts and lights in common area, etc., GST would be exempt as these are collected for the provision of carrying out any activity which is exempt from GST [Entry No. 77 (b)].

2) Entry to entertainment events where the consideration for admission is not more than Rs. 500 per person is exempt as per Entry No. 81 of NN 12/2017 - CT (R).

3) If per month per member contribution of any or some members of a RWA exceeds Rs. 7,500 entire contribution of such members whose per month contribution exceeds Rs. 7,500 would be ineligible for the exemption under the said notification. GST would then be leviable on the aggregate amount of monthly contribution of such members.

4) Services provided by a RWA in the name of its members, acting as a "pure agent" of its members, are excluded from value of taxable supply.

8. Services received from a **provider** of service **located in a non- taxable territory** by –

(a) the Central **Government**, State Government, Union territory, a local authority, a governmental authority or an **individual** in relation to **any purpose other than commerce**, industry or any other business or profession;

(b) an **entity** registered under **section 12AA** of the Income-tax Act, 1961 for the purposes of providing **charitable activities**; or

(c) a **person** located in a **non-taxable territory**.

Provided that the exemption shall **not apply** to -

(i) online information and database access or retrieval (**OIDAR**) services received by persons specified in item (a) or item (b);

(ii) ~~*services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry*~~.

[Entry No. 10 of NN. 09/2017 IT (R), as amended by NN 12/2023 – IT (R), w.e.f. 01.10.2023]

9. ~~Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees~~. **[Entry no.**

Goods directly supplied from the job worker's premises (by the principal) [Not includible in value of job-worker viz. assessee; However , it would be included in the 'Aggregate turnover' of the principal]	Nil
Export supply to England (U.K.) (export supplies are specifically included in aggregate turnover)	5,00,000
Supply to its own additional place of business in Rajasthan [supply made without consideration to units within the same state (under same registration) is not a supply]	Nil
Outward supply on which GST is to be paid by recipient under reverse charge. (Aggregate turnover excludes value of inward supplies on which tax is payable by a person on reverse charge basis. However, outward supplies on which tax is payable by recipient are not excluded)	1,00,000
Aggregate Turnover	**7,00,000**

10.4 Compulsory Registration in Certain Cases [Section 24]

Sec. 24	**Compulsory registration in certain cases**
Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, –	
(i)	persons making any inter-State taxable supply (also refer Note 1);
(ii)	casual taxable persons making taxable supply;
(iii)	persons who are required to pay tax under reverse charge;
(iv)	person who are required to pay tax under sub-section (5) of section 9;
(v)	non-resident taxable persons making taxable supply;
(vi)	persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
(vii)	persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
(viii)	Input Service Distributor, whether or not separately registered under this Act;
(ix)	persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
(x)	every electronic commerce operator who is required to collect tax at source under section 52;
(xi)	every person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person;
(xia)	***every person supplying online money gaming from a place outside India to a person in India; and*** **[inserted by CGST (Amendment) Act, 2023, w.e.f. 01.10.2023]**
(xii)	such other person or class of persons as may be notified by the Government on the recommendations of the Council.

ANALYTICAL VIEW OF THE TOPIC

Notes:

(1) In exercise of the powers conferred by Sec. 20 of IGST Act read with Sec. 23(2) of the CGST Act, the Central Government, on the recommendation of the council, has exempted the persons making inter-state supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding Rs. 20 lakhs in a financial year from obtaining registration under GST Act. [Aggregate turnover limit is Rs. 10 lakhs, in case of "Special Category States" other than the state of Jammu and Kashmir. and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand. In these states, it is Rs. 20 lakhs. [Sec. 23(2) of CGST Act, 2017.]

Illustration 3: Whether homestays providing accommodation through an Electronic Commerce Operator, below threshold limit are exempt from taking registration?

Answer: Notification No. 17/2017-Central Tax (Rate), has been issued under section 9(5) of CGST Act, 2017, making ECOs liable for payment of GST in case of accommodation services provided in hotels, inns, guest houses or other commercial places meant for residential or lodging purposes provided by a person having turnover below Rs. 20 lakhs (Rs. 10 lakhs in special category states) per annum and thus, such homestays providing accommodation are not required to take registration under section 22(1) of CGST Act. Such persons, even though they provide services through ECO, are not required to take registration in view of section 24(ix) of CGST Act, 2017, as this service is taxable under section 9(5) of the CGST Act, 2017. **[Circular No. 27/01/2018 – GST, dated 04.01.2018]**

10.5 Persons Not Liable For Registration [Section 23]

Statutory Provisions		
Sec. 23	**Persons not liable for registration**	
Sub-sec.	**Particulars**	
(1)	The following persons shall not be liable to registration, namely :	
	(a)	any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the IGST Act
	(b)	an agriculturist, to the extent of supply of produce out of cultivation of land
(2)	***Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act. [as substituted by Finance Act, 2023, retrospectively w.e.f. 01.07.~~2023~~ 2017]***	

ANALYTICAL VIEW OF THE TOPIC

1. **Persons not liable for registration :**

   (i) Person engaged exclusively in supplying goods/services/both **not liable to tax**

   Example: Madhur Oils, Punjab, is exclusively engaged in supplying petrol. Supply of petrol is not leviable to GST. Thus, Madhur Oils is not liable for registration as it is engaged exclusively in supplying goods not leviable to tax.

   (ii) Person engaged exclusively in supplying goods/services/both **wholly exempt from tax**

   Example: Bhavyajyoti Foundation, a charitable trust registered under section 12AA of the Income-tax Act, 1961, is exclusively engaged in supply of services by way of charitable activities. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. Thus, Bhavyajyoti Foundation is not liable for registration as it is exclusively engaged in supplying services exempt from tax.

   (iii) **Agriculturist** to the extent of supply of produce out of cultivation of land

   (iv) **Specified category of persons** notified by the Government**

2. As per Sec. 2(7) of CGST Act, 2017, **Agriculturist** means an individual/HUF who undertakes cultivation of land -

   (a) by own labour, or

   (b) by the labour of family, or

   (c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

Example: Ashoka of Manipur is exclusively engaged in intra-State supply of paper. Its aggregate turnover in the current financial year is Rs. 12 lakh. Since Ashoka is making taxable supplies from Manipur which is a Special Category State, the applicable threshold limit for registration for Ashoka in the given case is Rs. 10 lakh. Thus, he is liable to get registered under GST.

If in above example, all other things remaining the same, Ashoka is exclusively engaged in supply of taxable services instead of toys, the applicable threshold limit for registration will still be Rs. 10 lakh. Thus, Ashoka will be liable to get registered under GST.

Further, if Ashoka is engaged in supply of both taxable goods and services, the applicable threshold limit for registration in that given case will be Rs. 10 lakh only. Thus, Ashoka will be liable to get registered under GST.

Example: Raghav of Assam is exclusively engaged in intra-State supply of readymade garments. Its turnover in the current FY from Assam showroom is Rs. 28 lakh. It has another showroom in Tripura with a turnover of Rs. 11 lakh in the current FY. Since, Raghav is engaged in supplying garments from a Special Category State, the applicable threshold limit for him gets reduced to Rs. 10 lakh. Further, Raghav is liable to get registered under GST in both Assam and Tripura on his aggregate turnover crossing the threshold limit of Rs. 10 lakh.

5. ****Exemption from obtaining compulsory registration to supplier of services supplying services through an E-Commerce operator (ECO), if such service provider is having aggregate turnover upto Rs. 20 Lakhs in a financial year [NN 65/2017 – CT, dated 15.11.2017]:**

   Persons making supplies of services, other than supplies specified u/s 9(5) of the said Act, through an ECO who is required to collect tax at source u/s 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding Rs. 20 lakhs in a financial year are exempted from obtaining registration under GST. [Aggregate turnover limit is Rs. 10 lakhs in the States of Manipur, Mizoram, Nagaland and Tripura.]

6. ****Exemption from obtaining compulsory registration to supplier of goods supplying goods through an E-Commerce operator (ECO), if such supplier is having aggregate turnover upto Rs. 20 Lakhs in the preceding & current financial year [NN 34/2023 – CT, w.e.f. 01.10.2023]:**

   Persons making supplies of goods through an ECO who is required to collect tax at source u/s 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding Rs. 20 lakhs in the preceding & current financial year, are exempted from obtaining registration under GST. [Aggregate turnover limit is Rs. 10 lakhs in the States of Manipur, Mizoram, Nagaland and Tripura.] But, this exemption is subject to the following conditions, namely :—

   (i) ***Such persons shall not make any inter-State supply of goods;***

   (ii) ***Such persons shall not make supply of goods through ECO in more than one State or Union territory;***

   (iii) ***Such persons shall be required to have a Permanent Account Number issued under the Income Tax Act, 1961;***

   (iv) ***Such persons shall, before making any supply of goods through ECO, declare on the common portal their Permanent Account Number, address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal;***

   (v) ***Such persons have been granted an enrolment number on the common portal on successful validation of the Permanent Account Number declared as per clause (iv);***

   (vi) ***Such persons shall not be granted more than one enrolment number in a State or Union territory;***

   (vii) ***No supply of goods shall be made by such persons through ECO unless such persons have been granted an enrolment number on the common portal; and***

   (viii) ***Where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration.***

Illustration 4: AB Pvt. Ltd., Pune provides house-keeping services. The company supplies its services exclusively through an e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd., Pune. The turnover of AB Pvt. Ltd. in the current financial year is Rs. 18 lakh.

Advise AB Pvt. Ltd. as to whether they are required to obtain GST registration. Will your advice be any different if AB Pvt. Ltd. sells readymade garments exclusively through the e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd.? ***[Modified] [MTP - Nov. 2018], [MTP - May 2018]***

Answer: As per section 22 of the CGST Act every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds Rs. 20 lakh [Rs. 10 lakh in case of specified Special Category States] in a financial year.

However, sec. 24 of the said Act enlists certain categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such electronic commerce operator (ECO), who is required to collect tax at source under sec. 52, is one such person specified u/s 24(ix).

However, where the ECO is liable to pay tax on behalf of the suppliers of services under a notification issued under section 9(5), the suppliers of such services are entitled for threshold exemption. [Persons making supplies of services, other than supplies specified under section 9(5) through an ECO who is required to collect tax at source under section 52, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of Rs. 20 lakh (Rs. 10 lakh for specified special category States) in a financial year, have been exempted from obtaining registration vide Notification No. 65/2017 CT dated 15.11.2017.]

Section 2(45) of the CGST Act defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined u/s 2(44) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since, Hi-Tech Indya Pvt. Ltd. owns and manages a website for e commerce where both goods and services are supplied, it will be classified as an ECO u/s 2(45).

Notification No. 17/2017 CT (R) dated 28.06.2017 issued under section 9(5) specifies services by way of house-keeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the suppliers.

In the given case, AB Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Hi-Tech Indya is an ECO which is required to collect tax at source under section 52. However, house-keeping services provided by AB Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than Rs. 20 lakh, is a service notified under section 9(5). Thus, AB Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

In the second case, AB Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Such suppliers are required to get registration compulsorily in terms of section 24(ix). But, w.e.f. 01.10.2023, as per NN 34/2023 – CT, the suppliers making supplies of goods through an ECO who is required to collect tax at source u/s 52 of the said Act, and having an aggregate turnover not exceeding threshold limit for registration in the preceding & current financial year, are exempted from obtaining registration under GST, subject to fulfilment of certain conditions. In the current case, since, turnover of AB Pvt. Ltd. is less than the threshold limit for registration, therefore, it is not required to obtain registration even if it is selling readymade garments through ECO. [Assuming all other conditions are fulfilled.]

Illustration 5: Determine whether registration has to be obtained under GST in case of the following as per provisions contained under CGST Act, 2017.

(1) Fine oils is engaged in the business of machine oil as well as petrol and diesel. The total turnover on supply of machine oil is only Rs. 8 lakhs and in case of petrol and diesel is Rs. 8 crores.

(2) Ramlal, an agriculturist, for supply of produce out of cultivation of land amounting to Rs. 21 lakhs.

Answer:

(1) Supply of petrol and diesel is not leviable to GST, but supply of machine oil is taxable. In order to determine whether Fine oils is liable for registration, turnover of both the supplies, non taxable as well as taxable would be taken into account for the threshold of Rs. 20 lakhs. Here the turnover of machine oil, petrol and diesel exceeds Rs. 20 lakhs (Rs. 8.08 crores). Thus, Fine oils is liable for registration.

(2) As per section 23 of the CGST Act, an agriculturist, to the extent of supply of produce out of cultivation of land is not liable for registration under GST. In the case of Mr. Ramlal, even though the turnover of produce out of cultivation has exceeded Rs. 20 lakhs, he will not be liable for registration

10.6 Procedure For Registration [Sections 25, 26 and 27]

- Procedure for registration is governed by section 25 of the CGST Act read with Chapter III - Registration of Central Goods and Services Tax (CGST) Rules, 2017. Relevant provisions of CGST Rules, 2017 have been incorporated at the relevant places. Further, special provisions have been provided for registration of casual taxable person and non-resident taxable person under section 27. Concept of deemed registration has been elaborated under section 26.

8. Unique Identity Number (UIN) [Section 25(9) & (10) read with rule 17]:

(a) Any specialized agency of the United Nations Organization or any Multilateral Financial institution and organization as notified under the United Nations (Privileges and Immunities) Act, 1947, consulate or embassy of foreign countries and any other person notified by the Commissioner, is required to obtain a UIN from the GSTN portal.

(b) This UIN is needed for claiming refund of taxes paid on notified supplies of goods and/or services received by them, and for such other purpose as may be notified.

(c) Such person shall file an application in a different prescribed form. UIN shall be assigned and registration certificate shall be issued within 3 working days from the date of submission of application.

(d) Rule 17(1A): The Unique Identity Number granted to a person under clause (a) of sub-section (9) of section 25 shall be applicable to the territory of India.

9. Suo-Moto Compulsory registration (Temporary Registration) by the proper officer [Section 25(8) read with rule 16]: Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act** has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in prescribed form.

**Such person shall either:

(i) submit an application for registration in prescribed form **within 90 days** from the date of grant of temporary registration, or

(ii) file an appeal against such temporary registration.

In case of (ii), if the Appellate Authority upholds the liability to registration, application for registration shall be submitted within **30 days** from the date of issuance of such order of the Appellate Authority.

Provisions relating to verification and issue of registration certificate [as contained in rules 9 and 10] [discussed in subsequent paras] shall, mutatis mutandis, apply to such application submitted by the person granted temporary registration. GSTIN thereafter granted shall be effective from the date of order of proper officer granting temporary registration.

10. Procedure for registration [Section 25 read with rules 8, 9 & 10]: Provisions relating to procedure for application for registration, verification of the application and approval & issue of registration certificate are contained in the rules 8, 9 and 10 of the CGST Rules, 2017 respectively. The same have to be read in conjunction with section 25 provisions. However, procedure so laid down will not apply to:

- Non-resident taxable person
- A person required to deduct tax at source under section 51
- A person required to collect tax at source under section 52
- A person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 ***or a person supplying online money gaming from a place outside India to a person in India referred to in section 14A*** of IGST Act. ***[Bold & italic words inserted by NN 51/2023 – CT, w.e.f. 01.10.2023]***

Thus, procedure for registration prescribed under rules 8, 9 and 10 are also applicable to a person paying tax under composition levy, every person seeking voluntary registration under section 25(3) as well as a casual taxable person. Such persons shall apply for registration in Form GST REG 01. The application for registration in GST Form REG 01 is divided into two parts – Part A and Part B.

In order to cater to the needs of tax payers who are not IT savvy, Facilitation centres have been established which help the taxpayer in submitting the application for registration, amending the registration certificate, submitting application for cancellation of registration, revocation of cancellation of registration, etc. Facilitation Centre shall be responsible for the digitization and/or uploading of the forms and documents.

11. Application for registration by Special Economic Zone (SEZ):

- A person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.
- Thus, there may be a case where two units of a tax payer are located in same State – one in SEZ and another outside SEZ. Separate registrations have to be obtained for each of the two units as separate business vertical.
- SEZ is a geographically bound zone where the economic laws relating to export and import are more liberal as compared to other parts of the country. SEZ is considered to be a place outside India for all tax purposes.

12. Application for registration by Input Service Distributor (ISD) [Second proviso to Rule 8(1)]:

- Every person being an input Service Distributor shall make a separate application for registration as such Input Service Distributor. There is no threshold limit for registration for an ISD. An ISD is required to obtain a separate registration even though it may be otherwise registered, though the application shall be made in Form GST REG 01 only. Different offices like marketing division, security division etc. may apply for separate ISD registration.

Procedure for Registration

Every Person liable to get registered and person seeking voluntary registration shall, before applying for registration, declare his Permanent Account Number (PAN), ~~***mobile number, e-mail address,***~~ State/UT in **Part A** of **FORM GST REG-01** on GST Common Portal (www.gst.gov.in). ***[Omitted words, omitted by NN 26/2022 – CT, w.e.f. 26.12.2022]***

The Permanent Account Number shall be validated online by the common portal from the CBDT database ***and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number.***

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

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

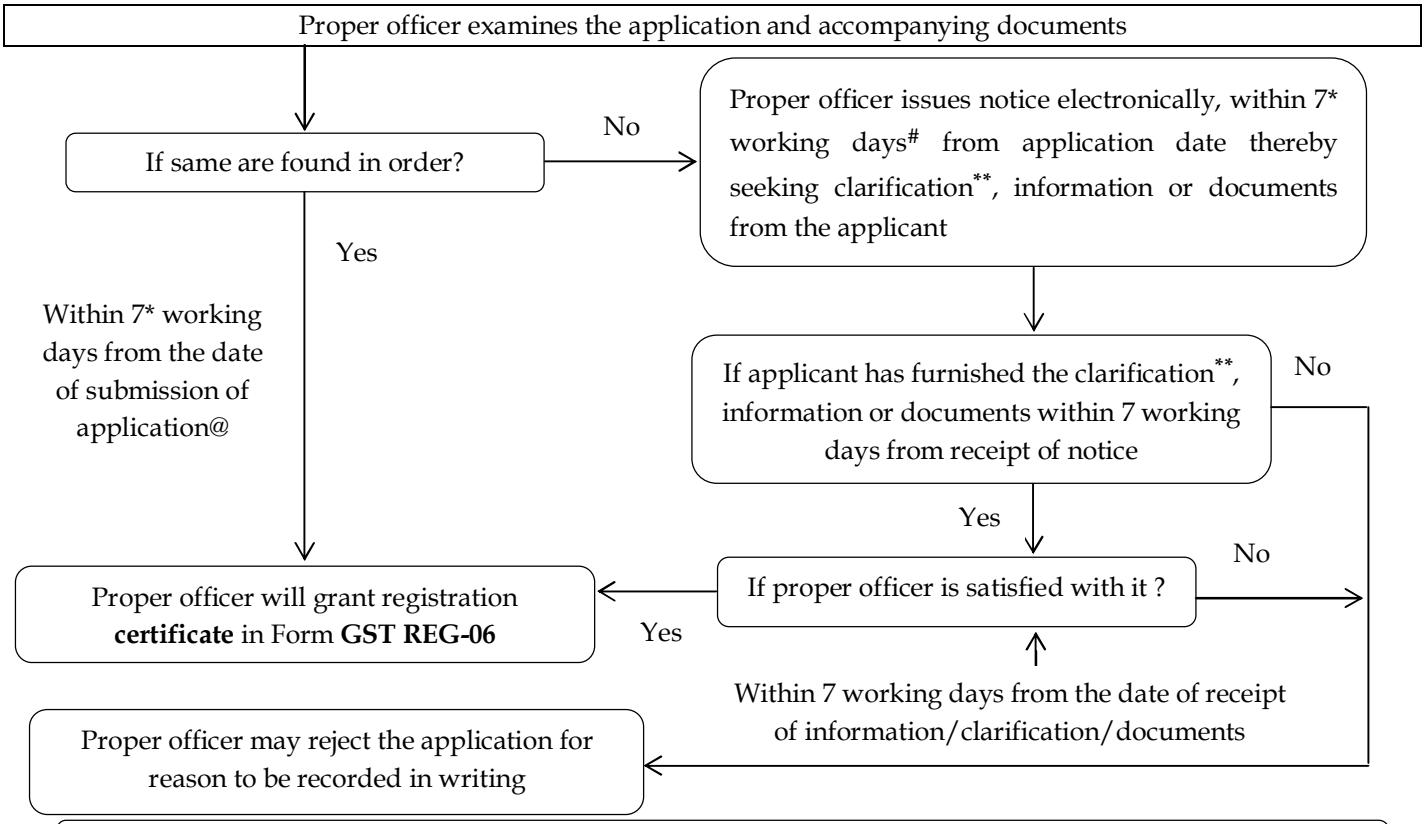
Rule 8(4A): Where an applicant, other than a person notified u/s 25(6D), opts for authentication of Aadhaar number, he shall, while submitting the registration application, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or 15 days from the submission of the application in Part B of FORM GST REG-01, whichever is earlier.

Further, w.e.f. 26.12.2022, if the applicant is applying for GST registration in the State of Gujarat or Puducherry, then, the following additional procedure needs to be followed by the applicant:

Every registration application made by a person, other than a person notified u/s 25(6D), who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified u/s 25(6C) where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso. [Proviso inserted by NN 04/2023 – CT, w.e.f. 26.12.2022] [The applicability of this additional procedure is also extended to the state of Puducherry vide NN 31/2023 – CT, w.e.f. 31.07.2023]

On receipt of such application, an acknowledgement in the form GST REG-02 shall be issued to the applicant electronically. A Casual Taxable Person (CTP) applying for registration get a TRN for making an advance deposit of tax in his electronic cash ledger and an acknowledgement is issued only after said deposit.

Application shall be forwarded to the proper officer.



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

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

@ However, where -

(a) a person, other than a person notified u/s 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A) or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in rule 8(4A), is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or [inserted by NN 26/2022 – CT, w.e.f. 26.12.2022]

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the registration shall be granted within 30 days of submission of application, after physical verification of the place of business ~~***in the presence of the said person***~~, in the manner provided u/r 25 and verification of such documents as the proper officer may deem fit. [Proviso to Rule 9(1)] ***[Omitted words, omitted by NN 38/2023 – CT, w.e.f. 04.08.2023]***

#However, where-

(a) a person, other than a person notified u/s 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A) or does not opt for authentication of Aadhaar number; or

(aa) a person, who has undergone authentication of Aadhaar number as specified in rule 8(4A), is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or [inserted by NN 26/2022 – CT, w.e.f. 26.12.2022]

(b) the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business,

the notice may be issued not later than 30 days from the date of submission of the application. [Proviso to Rule 9(2)]

(c) a local authority; or

(d) a statutory body; or

(e) a Public Sector undertaking; or

(f) a person applying for Unique Identity Number (i.e. any specialised agency of the UNO, etc.).

Aadhaar Authentication for Registered Person [Rule 10B]:

The registered person, other than a person notified u/s 25(6D), who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory, in order to be eligible for the following purposes:

1. For filing of application for revocation of cancellation of registration in FORM GST REG 21 under Rule 23
2. For filing of refund application in FORM RFD-01 under rule 89
3. For refund under rule 96 of the integrated tax paid on goods exported out of India

However, if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely: –

(a) her/his Aadhaar Enrolment ID slip; and

(b) (i) Bank passbook with photograph; or

(ii) Voter identity card issued by the Election Commission of India; or

(iii) Passport; or

(iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988:

Further, such person shall undergo the authentication of Aadhaar number within a period of 30 days of the allotment of the Aadhaar number.

Physical verification of business premises in certain cases [Rule 25] [As substituted by NN. 38/2023 – CT, w.e.f. 04.08.2023]:

(1) Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded on the common portal within a period of 15 working days following the date of such verification.

(2) Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub-rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded on the common portal at least 5 working days prior to the completion of the time period specified in the said proviso.

How Aadhaar Authentication is done?

Once registration application is submitted, GST system sends "link" to the concerned persons at their GST registered mobile numbers and email ids mentioned in the GST application, for the Aadhaar Authentication.

On clicking the verification link, a window for Aadhaar Authentication will open where they have to enter Aadhaar Number and the OTP received by them on the mobile number linked with Aadhaar.

Taxpayers need to complete Aadhaar Authentication of all Promoters/ Partners/ Authorized Signatories/ Karta, etc. as mentioned in the application to avail this option.

On successful authentication, demographic data of the persons is fetched from Aadhaar to GST System.

Issuance of registration certificate [Rule 10] : Where the application for grant of registration has been approved, a certificate of registration [duly signed or verified through EVC by the proper officer] in FORM GST REG-06 showing the principal place of business (PPoB) and additional place(s) of business (APoB) is made available to the applicant on the Common Portal and a Goods and Services Tax Identification Number (hereinafter referred to as "GSTIN") i.e. the GST registration no. is communicated to applicant, within 3 days after the grant of registration.

15 Digit GSTIN Format

State Code		PAN										Entity Code	Check sum character	

Display of registration certificate and GSTIN on the name board [Rule 18] : Every registered person shall display his registration certificate in a prominent location at his PPoB and at every APoB. Further, his GSTIN also has to be displayed on the name board exhibited at the entry of his PPoB and at every APoB.

13. Effective date of registration [Rule 10] :

Where an applicant submits application for registration	Effective date of registration is
within 30 days from the date he becomes liable to registration	the date on which he becomes liable to registration
after 30 days from the date he becomes liable to registration	date of grant of registration

Example: Mangal Industries Ltd. is engaged in taxable supply of services in Jharkhand. The turnover of Mangal Industries Ltd. exceeded Rs. 20 lakh on 1st January. It is liable to get registered by 31st January [30 days] in the State of Jharkhand. It applies for registration on 20th January and is granted registration certificate on 2nd February. The effective date of registration of Mangal Industries Ltd. is 1st January.

Example: In above example, if Mangal Industries Ltd. applies for registration on 5th February and is granted registration certificate on 14th February. The effective date of registration of Mangal Industries Ltd. will be 14th February.

14. Furnishing of Bank Account Details [Rule 10A]: After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a GSTIN has been assigned, the registered person shall ***furnish information with respect to details of bank account on the common portal***

- ***within 30 days from the date of grant of registration, or***
- ***before furnishing the details of outward supplies in FORM GSTR-1 or using invoice furnishing facility,***

whichever is earlier. **[As amended by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

However, this rule does not apply to the following persons:

(i) Persons who have been granted registration under rule 12 (TDS/TCS);

(ii) Persons who have been granted registration under rule 16 (Compulsory / Suo-Motu Registration by Proper officer).

Analysis :

While applying for registration on GST portal, a person is required to furnish the details of his bank account. This requirement has been relaxed to a limited extent, by inserting a new rule 10A to the CGST Rules. In pursuance to the same, the registered person is allowed to furnish information with respect to details of bank account on the common portal within 30 days from the date of grant of registration, or before furnishing the details of outward supplies in FORM GSTR-1 or using invoice furnishing facility, whichever is earlier.

This relaxation is not available for those who have been granted registration as TDS deductor / TCS collector under rule 12 or who have obtained suo-motu registration under rule 16.

- Further, rejection of application for registration/UIN under SGST Act/UTGST Act is deemed to be rejection of application for registration under CGST Act.

17. Special Provision for grant of Registration in case of Person required to deduct tax at source (TDS) u/s 51 or to collect tax at source (TCS) u/s 52 [Rule 12]:

- Application for registration has to be submitted by such person in a different prescribed form at GST common portal. They would be granted registration within 3 working days from the date of submission of application after due verification.
- Registration will be cancelled if proper officer is satisfied that such person is no longer liable to deduct tax at source or collect tax at source. Cancellation of registration will be communicated to such person electronically in prescribed form. Proper officer shall follow the procedure laid down for cancellation of registration prescribed under this act and rules therein.

18. Special Provision for grant of Registration in case of Person supplying online information & database access or retrieval services [OIDAR Services] from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India [Rule 14]:

- Application for registration has to be submitted by such person in a different prescribed form at GST common portal. They would be granted registration subject to such conditions and restrictions by such officer as may be notified by the Central Government on the recommendations of the Council.

19. Special procedure for Corporate Debtors undergoing the Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016:

- As per Insolvency Bankruptcy Code (IBC), 2016, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (CIRP) gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (IRP) or resolution professional (RP). The IRP/RP continues to run the business and operations of the said entity as a going concern and is responsible for compliance with all the laws till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (NCLT). The definitions of the terms, corporate debtor, CIRP, IRP and RP can be referred from IBC, 2016.
- The Government has prescribed special procedure under section 148 of the CGST Act for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP.
- **Registration:** The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within 30 days of the appointment of the IRP/RP. The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period.
- However, Corporate Debtor / IRP / RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).
- **Registration in case of change in IRP/RP midway:** Further, in cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an amendment in the registration form. Changing the authorized signatory is a non- core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory.
- The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment.

~~reasonable opportunity of being heard,~~ suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration [Omitted words, omitted by NN 94/2020 – CT, w.e.f. 22.12.2020, giving power to the proper officer to suspend the registration without giving opportunity of being heard to the registered person].

(2A) **Analysis by Department leading to Suspension:** Where,

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

(i) the details of outward supplies furnished in FORM GSTR-1; or

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

or such other analysis, as may be carried out on the recommendations of the Council, show that there are **significant differences or anomalies** indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or

A ***(b)*** ***there is a contravention of the provisions of rule 10A by the registered person,***

his registration shall be **suspended** and the said person shall be intimated electronically, on the common portal, or by sending a communication to his e-mail address, highlighting the said differences, anomalies or non-compliances and asking him to **explain**, within a period of **30 days**, as to why his registration shall not be cancelled. **[As amended by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

(3) **No Taxable Supply/Return during Suspension:** A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2) or sub-rule (2A), shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

Explanation: For the purposes of this sub-rule, the expression "**shall not make any taxable supply**" shall mean that the registered person shall **not issue a tax invoice** and, accordingly, not charge tax on supplies made by him during the period of suspension.

(3A) **No Refund during Suspension:** A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.

(4) **Revocation of Suspension:** The suspension of registration under sub-rule (1) or sub-rule (2) or sub-rule (2A) shall be deemed to be revoked upon completion of the proceedings by the proper officer and such revocation shall be effective from the date on which the suspension had come into effect.

However, the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

Further, where the registration has been suspended under sub-rule (2A) for contravention of the provisions contained in section 29(2) clause (b) or clause (c) (i.e. due to non-furnishing of returns by regular or composition taxpayer for prescribed tax periods) and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon furnishing of all the pending returns.

A ***Further, where the registration has been suspended under sub-rule (2A) for contravention of provisions of rule 10A and the registration has not already been cancelled by the proper officer under rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of rule 10A. [proviso inserted by NN 38/2023 – CT, w.e.f. 04.08.2023]***

(5) **Tax Invoice/Returns after Revocation of Suspension:** Where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) [i.e. **Revised Tax Invoice**] and section 40 [i.e. **First Return**] in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

- The cancellation of registration shall be effective from a date to be determined by the proper officer. He will direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5) [as discussed in the subsequent paras].

3. Reversal of credit [Section 29(5) & (6)] [also discussed in Chapter 5, Topic 5.8] :

- A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by an amount equal to

  (1) **input tax credit (ITC)** in respect of :

  stock of inputs and inputs contained in semi-finished/finished goods stock and

  capital goods or plant and machinery on the day immediately preceding the date of cancellation,

  or

  (2) the **output tax payable** on such goods,

  whichever is higher, calculated in such manner as may be prescribed.

- However, in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points **as may be prescribed** or the tax on the transaction value of such capital goods or plant and machinery under section 15, **whichever is higher.**

- The manner of determination of amount of credit to be reversed is prescribed under rule 44 of the CGST Rules, 2017. On conjoint reading of section 29(5) and rule 44, it can be inferred as follows:

- **Amount of credit to be reversed in respect of INPUTS:**

  (1) ITC in respect of inputs calculated in accordance with rule 44 of the CGST Rules, 2017 (i.e. ITC on inputs computed proportionately on the basis of corresponding invoices* on which credit had been availed on such inputs) or

  (2) Output tax payable on such goods,

  whichever is higher

  *If tax invoices are not available, the ITC to be reversed will be based on the prevailing market price of such goods on the date of cancellation.

- **Amount of credit to be reversed in respect of CAPITAL GOODS OR PLANT & MACHINERY:**

  (1) ITC in respect of capital goods or plant & machinery calculated in accordance with rule 44 of the CGST Rules, 2017 (i.e. ITC involved in the remaining useful life in months of the capital goods will be reversed on pro-rata basis, taking the useful life as 5 years) or

  (2) Tax on the transaction value of such capital goods or plant and machinery under section 15,

  whichever is higher

  Example : Capital goods have been in use for 3 years, 7 month and 10 days.

  The useful remaining life in months = 16 months, ignoring a part of the month.

  ITC taken on such capital goods = Rs. 6,00,000/-

  ITC attributable to remaining useful life = Rs. 6,00,000 x 16/60 = 1,60,000/-.

4. Other points :

(1) ~~A voluntarily registered person cannot seek cancellation before the expiry of a period of 1 year from the effective date of registration~~ [Proviso to rule 20]. [Omitted by NN 03/2018 - CT, dated 23.01.2018]

(2) A person to whom a **UIN** has been granted under rule 17 **cannot** apply for **cancellation** of registration [Rule 20].

(3) The cancellation of registration **will not affect liability** of registered person to pay tax and other dues under the Act for any period prior to the date of cancellation [Section 29(3)].

(4) The cancellation of registration under either SGST Act/UTGST Act shall be deemed to be a cancellation of registration under CGST Act [Section 29(4)].

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

P.T.O.

(1) **Application:** Where the registration of a person is cancelled suo-motu by the proper officer, such registered person may, subject to the provisions of rule 10B, apply for revocation of the cancellation to such proper officer, ***within 90 days*** from the date of service of the order of cancellation of registration, at the GST Common Portal in the prescribed manner. ***[30 days substituted by 90 days vide NN 38/2023 – CT, w.e.f. 01.10.2023]***

However, such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days (i.e. 90 + 180 days). [as amended by Finance Act, 2023 read with NN 38/2023 – CT, w.e.f. 01.10.2023]

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

(3) **Revocation on Application:** If the proper officer is satisfied that there are sufficient grounds for revocation of cancellation, he may revoke the cancellation of registration, by an order **within 30 days** of receipt of application and communicate the same to applicant.

(4) **Notice:** Otherwise, he may reject the revocation application. However, before rejecting the application, he has to first issue Show Cause Notice **(SCN)** to the applicant who shall furnish the clarification **within 7 working days** of service of SCN. The proper officer shall dispose the application (accept/reject the same) **within 30 days** of receipt of clarification.

(5) **Deemed Revocation:** The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act.

(6) **Returns after Revocation:** In case of Revocation of cancellation, all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of **30 days** from the date of order of revocation of cancellation of registration.

Example: The registration of Naman Associates was cancelled by the proper officer by an order dated 1st June for its failure to furnish returns. The registration was cancelled with effect from 1st June itself. It applied for revocation of cancellation of registration and the order for revocation of cancellation of Naman Associates is passed on 31st July. In this case, Naman Associates shall be required to furnish all the returns for the period from 1st June to 31st July within a period of 30 days from 31st July, i.e. by 30th August.

(7) **Returns after Revocation:** In case of Revocation of cancellation, where the registration was cancelled with retrospective effect, the registered person shall furnish all returns relating to period from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of **30 days** from the date of order of revocation of cancellation of registration.

Example: The registration of Naman Associates was cancelled by the proper officer by an order dated 1st June for its failure to furnish returns. The registration was cancelled with effect from 1st January itself. It applied for revocation of cancellation of registration and the order for revocation of cancellation of Naman Associates is passed on 31st July. In this case, Naman Associates shall be required to furnish all the returns for the period from 1st January to 31st July within a period of 30 days from 31st July, i.e. by 30th August.

Note:

- UIN Holders (i.e. UN Bodies, Embassies and Other Notified Persons), GST Practitioner cannot apply for revocation of cancelled registration.
- In case the registration is cancelled on the request of the taxpayer or his legal heir, one cannot apply for revocation of cancelled registration.
- The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act.

Clarification in respect of transfer of input tax credit in case of death of sole proprietor [Circular No. 96/15/2019-GST, dated 28.03.2019]

Sec. 52	extend to **Rs. 25,000/-**.
(15) A	***The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement:*** ***Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement. [sub-sec. (15) inserted by Finance Act, 2023, w.e.f. 01.10.2023]***
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.	

ANALYTICAL VIEW OF THE TOPIC

- TCS refers to the tax which is collected by the electronic commerce operator (ECO) when a supplier supplies some goods or services through its portal and the payment for that supply is firstly collected by the ECO and then, it is paid by the ECO to the supplier.
- But, the provisions of TCS will not apply, if the payment in respect of supply of goods or services through ECO is directly received in the account of the supplier (i.e. not through ECO).
- The nature of working of ECO can be better understood with the following example:

  Example: There are many e-commerce operators (hereinafter referred to as an operator) like Amazon, Flipkart, Meesho, etc. operating in India. These operators display on their portal products as well as services which are actually supplied by some other person to the consumer.

  The goods and services belonging to the other supplier are displayed on the portals of the operators and consumers buy such goods/services through these portals. On placing the order for a particular product/service, the actual supplier supplies the selected product/service to the consumer.

  The price/consideration for the product/service is collected by the Operator from the consumer and passed on to the actual supplier after the deduction of commission by the operator.

  – It may be noted that section 20 of IGST Act provides that in case of tax collected at source, the operator shall collect tax at such rate not exceeding 2%, as may be notified on the recommendations of the council, of the net value of the taxable supplies.

  – Further, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services tax (Compensation to States) Act, if charged separately by the supplier.

  – Further, the power conferred on the e-commerce operator to collect tax at source, is without prejudice to other modes of recovery from operator. This Sub-section establishes that the powers of e-commerce operator are restricted only to the extent of tax collection at source under circumstances specified therein and nothing more. [Sub-section (2)]

Who is liable to collect TCS?

Every electronic commerce operator (ECO), not being an agent, has been mandated to collect tax at source (TCS) from the net value of the taxable supplies made through it by the other suppliers, whenever the ECO collects the consideration on the behalf of the supplier.

Rate of TCS = 0.5 % of the net value of intra-State taxable supplies. 1% of the net value of inter-State taxable supplies.

Example: Suppose a certain product is sold at Rs. 1,120 [including GST @ 12%] through an Operator by a supplier. The operator would collect tax @ 1% of the net value of Rs. 1,000 i.e. Rs. 10 in case of inter - State supplies.

Net Value of the Taxable Supplies

Net Value of the Taxable Supplies	=	Aggregate value of taxable supplies of goods and /or services [other than notified services u/s 9(5) by all registered persons through ECO]	(–)	Taxable supplies returned to suppliers

Deposit of TCS by ECO to Government

The TCS amount collected by the ECO has to be remitted to the Government Treasury within 10 days after the end of the month in which the collection was made. [Sub-section (3)]

Example: If the TCS has been collected in the month of December, the amount has to be remitted into the government Treasury on or before 10th January.

Filing of Monthly & Annual Statement by ECO

- An electronic statement [in Form GSTR - 8] has to be filed by ECO containing details of the outward supplies of the goods/or services effected through it, including the supplies returned through it and the amount collected by it as TCS during the month within 10 days after the end of each month in which supplies are made. [Sub - section(4)]
- Additionally, the ECO is also mandated to file an Annual Statement [in Form GSTR – 9B] on or before 31st day of December following the end of financial year. [Sub-section (5)]
- The Commissioner has been empowered to extend the due date for furnishing of monthly and annual statement by the person collecting tax at source.
- ***Further, the ECO shall not be allowed to furnish GSTR - 8 after the expiry of a period of 3 years from the due date of furnishing the said statement, except where the Government allows. [Sec. 52(15) inserted by Finance Act, 2023, w.e.f. 01.10.2023]***

Rectification in Monthly Statement by ECO

If the ECO discovers any discrepancy on his own, not being the result of any scrutiny, inspection or enforcement proceeding, he has to rectify the statement along with payment of applicable interest.

However, the time limit for rectification is the :

1. 30th day of November following the end of the financial year

   or
2. The actual date of furnishing of relevant annual statement,

Whichever is earlier.

Claim of TCS amount by the supplier

The supplier who has supplied the goods or services or both through the e-commerce operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in TCS Statement (viz. the TCS amount) furnished in Form GSTR-8 by such operator.

Matching of the Details of Supplies

Every electronic commerce operator (ECO), required to collect TCS under section 52, would furnish TCS Statement in Form GSTR-8 containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount of tax collected during a month, within 10 days after the end of such month.

In return, the supplier is also required to furnish the details of outward supplies made though e-commerce operator in GSTR-1.

The details of supplies furnished by every e-commerce operator in his statement for the month will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return for the same month or any preceding month.

Details to be matched: The following details shall be matched:

(a) State of place of supply; and

(b) Net taxable value

Where the details of outward supplies declared by the operator in his statement do not match with the corresponding details declared by the supplier, the discrepancy shall be communicated to both persons.

The amount in respect of which any discrepancy is communicated 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.

The concerned supplier in whose output tax liability any amount has been added, shall be liable to pay the tax along with interest @ 18% p.a. on the amount so added from the date such tax was due till the date of its payment.

Notice to Operator

- An officer not below the rank of deputy commissioner can issue notice to an operator, asking him to furnish detail relating to volume of the goods/services supplied, stock of the goods lying in the warehouse/godowns, etc. [Sub-section (12)].
- The operator is required to furnish such details within 15 working days [Sub-section (13)].
- In case an operator fails to furnish the information, besides being liable for penal action under section 122, it shall also be liable for penalty up to Rs. 25,000 (CGST) [Sub-section (14)].

Other Key Points Relating to Registration under GST

- Section 24(x) of CGST Act, 2017 makes it mandatory for every e-commerce operator who is required to collect tax at source to get registered under GST. The threshold limit of Rs. 20 lakhs (Rs. 10 lakhs for special category states) is not applicable to them.
- Further, section 24(ix) of the CGST Act, 2017 makes it mandatory for every person who supplies goods or services through such operator to get registered under GST.
- However, service suppliers supplying services through such ECOs have been exempted from registration until their turnover crosses threshold limit for registration.
- Similarly, suppliers supplying goods through such ECOs have also been exempted from registration until their turnover crosses threshold limit for registration in the preceding and current financial year, subject to fulfillment of certain specified conditions.

Special procedure to be followed by ECO in respect of supply of goods made through it by the persons exempted from obtaining registration (hereinafter referred to as the said person) [NN. 37/2023 – CT, w.e.f. 01.10.2023]

(i) the ECO shall allow the supply of goods through it by the said person only if enrolment number has been allotted on the common portal to the said person;

(ii) the ECO shall not allow any inter-State supply of goods through it by the said person;

(iii) the ECO shall not collect TCS u/s 52(1) in respect of supply of goods made through it by the said person; and

(iv) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

Further, where multiple ECOs are involved in a single supply of goods through ECO platform, "the ECO" shall mean the ECO who finally releases the payment to the said person for the said supply made by the said person through him.

Special procedure to be followed by ECO in respect of supply of goods made through it by the persons opted for Composition Scheme (hereinafter referred to as the said person) [NN. 36/2023 – CT, w.e.f. 01.10.2023]

(i) the ECO shall not allow any inter-State supply of goods through it by the said person;

(ii) the ECO shall collect TCS u/s 52(1) in respect of supply of goods made through it by the said person and pay to the Government as per provisions of 52(3); and

(iii) the ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

~~Rule 79 – Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier~~ **– [Omitted by NN 19/2022 – CT, w.e.f. 01.10.2022]**

Clarification regarding Collection of tax at source by Tea Board of India [Circular No. 74/48/2018 – GST, dated 05.11.2018]

1. Tea Board of India (hereinafter referred to as the, "Tea Board"), being the operator of the electronic auction system for trading of tea across the country including for collection and settlement of payments, admittedly falls under the category of electronic commerce operator liable to collect Tax at Source (TCS) in accordance with the provisions of section 52 of the CGST Act.

2. The participants in the said auction are the sellers i.e. the tea producers and auctioneers who carry out the auction on behalf of such sellers and buyers.

3. It has been represented that the buyers in the said auction make payment of a consolidated amount to an escrow Account maintained by the Tea Board. The said consolidated amount is towards the value of the tea, the selling and buying brokerages charged by the auctioneers and also the amount charged by the Tea Board from sellers, auctioneers and buyers. Thereafter, Tea Board pays to the sellers (i.e. tea producers), from the said escrow account, for the supply of goods made by them (i.e. tea) and to the auctioneers for the supply of services made by them (i.e. brokerage). Under no circumstances, the payment is made by the Tea Board to the auctioneers on account of supply of goods i.e., tea sold at auction.

4. A representation has been received from Tea Board, seeking clarification whether they should collect TCS u/s 52 of the CGST Act from the sellers of tea (i.e. the tea producers), or from the auctioneers of tea or from both.

5. The matter has been examined. In exercise of the powers conferred under sub-section (1) of section 168 of the CGST Act, for the purpose of uniformity in the implementation of the Act, it is hereby clarified, that TCS at the notified rate, in terms of section 52 of the CGST Act, shall be collected by Tea Board respectively from the -

   (i) sellers (i.e. tea producers) on the net value of supply of goods i.e. tea; and

   (ii) auctioneers on the net value of supply of services (i.e. brokerage).

Frequently Asked Questions on TCS under GST as clarified by Law Committee of GST Council

Sl.	Question	Answer
1.	Is it mandatory for every e-commerce operator to obtain registration?	No. As per section 24(x) of the CGST Act, 2017, every ECO who is required to collect TCS u/s 52 (not every ECO) has to obtain compulsory registration irrespective of the value of supply made by him.
2.	Whether a supplier of goods or services supplying through e-commerce operator would be entitled to threshold exemption?	As per Section 24(ix) of the CGST Act, 2017, every person supplying goods or services through an ECO who is required to collect TCS u/s 52 shall be mandatorily required to register irrespective of the value of supply made by him. However, service suppliers supplying services through such ECOs have been exempted from registration until their turnover crosses threshold limit for registration. Similarly, suppliers supplying goods through such ECOs have also been exempted from registration until their turnover crosses threshold limit for registration in the preceding and current financial year, subject to fulfillment of certain specified conditions.
3.	Whether TCS is required to be collected by ECOs on supply of goods or services by unregistered suppliers through their portal?	No. In respect of supplies made by the suppliers who are not liable for registration, ECOs are not required to collect TCS on supplies being made by such suppliers through their portal.
4.	Whether ECO is required to obtain registration in every State/UT in which suppliers listed on their e-commerce platform are located to undertake the necessary compliance as mandated under the law?	As per the extant law, registration for TCS would be required in each State/UT as the obligation for collecting TCS would be there for every intra-State or inter-State supply. In order to facilitate the obtaining of registration in each State/UT, the ECO may declare the Head Office as its place of business for obtaining registration in that State/UT where it does not have physical presence. It may be noted that each State/UT has indicated one administrative jurisdiction where all ECOs having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has

		also been notified by each State/UT.
5.	Foreign ECO do not have place of business in India since they operate from outside. But their supplier and customers are located in India. So, in this scenario will the TCS provision be applicable to such ECO and if yes, how will foreign ECO obtain registration?	Where registered supplier is supplying goods or services through a foreign ECO to a customer in India, such foreign ECO would be liable to collect TCS on such supply and would be required to obtain registration in each State/UT. It may be noted that each State/UT has indicated one administrative jurisdiction where all ECOs having business (but not having physical presence) in that State/UT shall register. The proper officer for the purpose of registration of ECOs has also been notified by each State/UT. If the foreign ECO does not have physical presence in a particular State/UT, he may appoint an agent on his behalf.
6.	Is it necessary for ECOs who are already registered under GST and have GSTIN, to have separate registration for TCS as well?	ECO has to obtain separate registration for TCS irrespective of the fact whether ECO is already registered under GST as a supplier or otherwise and has GSTIN.
7.	At what time should the ECO collect TCS?	TCS is to be collected once supply has been made through the ECO and where the business model is that the consideration is to be collected by the ECO irrespective of the actual collection of the consideration. For example, if the supply has taken place through the ECO on 30th October, 2020 but the consideration for the same has been collected in the month of November, 2020, then TCS for such supply has to be collected and reported in the statement for the month of October, 2020.
8.	Whether TCS to be collected on exempt supplies?	No, TCS is not required to be collected on exempt supplies.
9.	Whether TCS to be collected on supplies on which the recipient is required to pay tax on reverse charge basis?	No, TCS is not required to be collected on supplies on which the recipient is required to pay tax on reverse charge basis.
10.	Whether TCS is to be collected in respect of supplies made by the composition taxpayer?	Yes. TCS is required to be collected on supplies of goods made by a composition taxpayer supplying goods through ECO. Further, as per section 10(2)(d) of the CGST Act, 2017, a composition taxpayer cannot supply services through ECO liable to collect TCS.
11.	Whether TCS is to be collected on import of goods or services or both?	TCS is not liable to be collected on any supplies on which the recipient is required to pay tax on reverse charge basis. As far as import of goods is concerned since same would fall within the domain of Customs Act, 1962, it would be outside the purview of TCS. Thus, TCS is not liable to be collected on import of goods or services.
12.	Whether payment of TCS through Input Tax Credit available with ECO for depositing TCS as per Sec. 52(3) of the CGST Act, 2017 is allowed?	No, payment of TCS is not allowed through Input Tax Credit of e-Commerce operator.
13.	It is very common that customers of e-commerce companies return goods. How these sales returns are going to be adjusted?	An e-commerce company is required to collect tax only on the net value of taxable supplies made through it. In other words, value of the supplies which are returned (supply return) may be adjusted from the aggregate value of taxable supplies made by each supplier (i.e. on GSTIN basis). In other words, if two suppliers "A" and "B" are making supplies through an e-commerce operator, the "net value of taxable supplies" would be calculated separately in respect of "A" and "B". If the value of returned supplies is more than supplies made on behalf of any of such supplier during any tax period, the same would be ignored in his case.
14.	U/s 52, e-commerce operator collects TCS on the net of returns. Sometimes	Negative amount cannot be declared. There will be no impact in next tax period also. In other words, if returns are more than the supplies made

	sales return is more than sales and hence can negative amount be reported?	during any tax period, the same would be ignored in current as well as future tax period(s).

Clarification regarding GST on Services Supplied by Restaurants through E-Commerce Operators [Circular No. 167/23/2021 – GST, dated 17.12.2021]

Sl.	Issue	Clarification
1.	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	As 'restaurant service' has been notified u/s 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided w.e.f. 01.01.2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS in terms of section 52 of CGST Act, 2017 in the same manner at present.
2.	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified u/s 9(5)] through them even though they are registered to pay GST on services on their own account?	As ECOs are already registered in accordance with rule 8 (in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service u/s 9(5) of the CGST Act, 2017.
3.	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in sec. 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
4.	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	ECO is required to pay GST on services Notified u/s 9(5), besides the services/other supplies made on his own account. On any supply that is not notified u/s 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies. Thus, present dispensation continues for ECO, on supplies other than restaurant services. On such supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.

Clarification on TCS liability in case of multiple E-commerce Operators in one transaction, in the context of Open Network for Digital Commerce (ONDC) [Circular No. 194/06/2023 - GST, dated 17.07.2023]

1. ***In the current platform-centric model of e-commerce, the buyer interface and seller interface are operated by the same ECO. This ECO collects the consideration from the buyer, deducts the TCS u/s 52 of the CGST Act, credits the deducted TCS amount to the GST cash ledger of the seller and passes on the balance of the consideration to the seller after deducting their service charges.***

2. ***In the case of the ONDC Network or similar other arrangements, there can be multiple ECOs in a single transaction - one providing an interface to the buyer and the other providing an interface to the seller. In this setup, buyer-side ECO could collect consideration, deduct their commission and pass on the consideration to the seller-side ECO.***

A

Issue: *Which ECO should deduct TCS and make other compliances under section 52 of CGST Act in such situations, as in such models having multiple ECOs in a single transaction, both the Buyer-side ECO and the Seller-side ECO qualify as ECOs as per Section 2(45) of the CGST Act.*

Case 1: *In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier in the said supply, who is liable for compliances u/s 52 including collection of TCS?*

Buyer ⇒ Buyer-side ECO ⇒ Supplier-side ECO ⇒ Supplier

Clarification: *In such a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and where the supplier-side ECO himself is not the supplier of the said goods or services, the compliances u/s 52 of CGST Act, including collection of TCS, is to be done by the supplier-side ECO who finally releases the payment to the supplier for a particular supply made by the said supplier through him.*

e.g.: Buyer-side ECO collects payment from the buyer, deducts its fees/commissions and remits the balance to Seller-side ECO. Here, the Seller-side ECO will release the payment to the supplier after deduction of his fees/commissions and therefore will also be required to collect TCS, pay the same to the Government and also make other compliances u/s 52 of CGST Act.

In this case, the Buyer-side ECO will neither be required to collect TCS nor will be required to make other compliances in accordance with section 52 of CGST Act with respect to this particular supply.

Case 2: *In a situation where multiple ECOs are involved in a single transaction of supply of goods or services or both through ECO platform and the Supplier-side ECO is himself the supplier of the said supply, who is liable for compliances u/s 52 including collection of TCS?*

Buyer ⇒ Buyer-side ECO ⇒ Supplier (also an ECO)

Clarification: *In such a situation, TCS is to be collected by the Buyer-side ECO while making payment to the supplier for the particular supply being made through it.*

e.g. Buyer-side ECO collects payment from the buyer, deducts its fees and remits the balance to the supplier (who is itself an ECO as per the definition in Sec 2(45) of the CGST Act). In this scenario, the Buyer-side ECO will also be required to collect TCS, pay the same to the Government and also make other compliances u/s 52 of CGST Act.

Sapne mat dekho,

Sapne dekhe jate hai...

Aim rakho kyuki

AIM achieve kie jaate hai...

Clarification on charging of interest in cases of wrong availment of IGST credit and reversal thereof [Circular No. 192/04/2023 - GST, dated 17.07.2023]

Issue: *Clarification regarding charging of interest u/s 50(3) of the CGST Act in the cases where IGST credit has been wrongly availed by a registered person. Clarification is being sought as to whether such wrongly availed IGST credit would be considered to have been utilized for the purpose of charging of interest u/s 50(3) of CGST Act, read with rule 88B of CGST Rules, in cases where though the available balance of IGST credit in the electronic credit ledger of the said registered person falls below the amount of such wrongly availed IGST credit, the total balance of input tax credit in the electronic credit ledger of the registered person under the heads of IGST, CGST and SGST taken together remains more than such wrongly availed IGST credit, at all times, till the time of reversal of the said wrongly availed IGST credit.*

Case 1: *In the cases of wrong availment of IGST credit by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.*

Clarification: *Since, the amount of input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST, it is the total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest u/r 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit.*

Thus, in the cases where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability u/s 50(3) of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit. However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest.

Case 2: *Whether the credit of compensation cess available in electronic credit ledger shall be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest u/r 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.*

Clarification: *As per proviso to section 11 of GST (Compensation to States) Act, 2017, input tax credit in respect of compensation cess on supply of goods and services leviable under section 8 of the said Act can be utilised only towards payment of compensation cess leviable on supply of goods and services. Thus, credit of compensation cess cannot be utilized for payment of any tax under CGST or SGST or IGST heads and/ or reversals of credit under the said heads.*

Accordingly, credit of compensation cess available in electronic credit ledger cannot be taken into account while considering the balance of electronic credit ledger for the purpose of calculation of interest u/r 88B(3) of CGST Rules in respect of wrongly availed and utilized IGST, CGST or SGST credit.

Illustration 4 : Mr. Alok, a registered supplier of taxable goods, filed GSTR-3B for the month of January, 2021 on 15th April, 2021. The prescribed due date to file the said GSTR-3B was 20th February, 2021. The amount of net GST payable, in Cash i.e. Electronic Cash Ledger on supplies made by him for the said month worked out to be Rs. 36,500 which was paid on 15th April, 2021. Briefly explain the related provisions and compute the amount of interest payable under the CGST Act, 2017 by Mr. Alok.

Solution: Interest is payable in case of delayed payment of tax @ 18% per annum from the date following the due date of payment to the actual date of payment of tax.

Thus, the amount of interest payable by Mr. Alok is as under:

Period of delay = 21st February, 2021 to 15th April, 2021 = 54 days

Hence, amount of interest = 36,500 x 18% x 54/365 = Rs. 972

Therefore, in the given case, Bhumika Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

Illustration 2: M/s Mangal Industries supplies goods to M/s Garg Industries. The goods were removed from its factory on 5th August. M/s Mangal Industries needs to issue a tax invoice on or before 5th August.

Illustration 3: M/s Mangal Associates provide Consultancy Services to M/s Garg Industries on 5th August. M/s Mangal Associates needs to issue a tax invoice within 30 days of supply of Consultancy Services, i.e. on or before 4th September.

Illustration 4: M/s Mangal Industries entered into an annual maintenance contract with M/s Garg Services Ltd. for 1 year [Jan.-Dec., 2018] for the water purifiers fitted in their factories. As per the contract, payment for said services had to be made on first 5th of each quarter. For the quarter Jan. - March, 2018, Mangal Industries made the payment on 20th February. Since, services provided by M/s Garg Services Ltd. to M/s Mangal Industries is a continuous supply of services and due date of payment is ascertainable from the contract, therefore, M/s Garg Services Ltd. had to issue a tax invoice on or before such due date, viz. 5th January for quarter Jan. - March, 2018 and so on for every quarter.

2. **Where supply of services ceases before its completion [Section 31(6)] :** In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

3. **Goods sent on Approval basis [Section 31(7)] :** Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:

(a) before/at the time of supply or

(b) 6 months from the date of removal

whichever is earlier.

4. **Particulars of a tax invoice [Sections 31(1) & (2) read with rule 46] :** As discussed earlier, there is no format prescribed for an invoice, but rules make it mandatory for an invoice to have the following fields (only applicable fields are to be filled) :

(a)	Name, address and GSTIN of the supplier;	
(b)	A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets numerals/special characters hyphen or dash and slash, and any combination thereof, unique for a F.Y.;	
(c)	Date of its issue;	
(d)	**If recipient is registered -** Name, address and GSTIN or UIN of recipient	
(e)	**If recipient is unregistered and value of supply is**	**Particulars of invoice**
	Rs. 50,000 or more	Name and address of the recipient and the address of delivery, along with the name of State and its code
	less than Rs. 50,000	unregistered recipient may still request the aforesaid details to be recorded in the tax invoice
	However, in cases involving supply of online money gaming or in cases where any taxable service is supplied by or through an ECO or by a supplier of OIDAR services to a recipient who is un- registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain ~~the name and address of the recipient along with its PIN code and~~ the name of the State of the recipient and the same shall be deemed to be the address on record of the recipient. [Proviso inserted by NN 26/2022 – CT, w.e.f. 26.12.2022 and amended by NN. 38/2023 – CT, w.e.f. 04.08.2023 & NN. 51/2023 – CT, w.e.f. 01.10.2023]	
(f)	HSN code for goods or services;	
(g)	Description of goods or services;	
(h)	Quantity in case of goods and unit or Unique Quantity Code thereof;	
(i)	Total value of supply of goods or services or both;	
(j)	Taxable value of supply of goods or services or both taking into account discount or abatement, if any;	
(k)	Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);	

(iii) Value charged in invoice no. 8 was Rs. 3,20,000 as against the actual value of Rs. 4,20,000 due to wrong quantity considered while billing.

Kartik & Co. asks you to answer the following:

(1) Who shall issue a debit/credit note under CGST Act?

(2) Whether debit note or credit note has to be issued in each of the above circumstances?

(3) What is the maximum time-limit available for declaring the credit note in the GST Return?

Answer:

(1) The debit/credit note shall be issued by the registered person who has supplied the goods and/or services, i.e. Kartik & Co.

(2) Yes, debit/credit note need to be issued in each of the circumstances as under:

(i) A credit note is required to be issued as the taxable value in invoice no. 1 exceeds the actual taxable value.

(ii) A debit note is required to be issued as the tax charged in the invoice no. 4 is less than the actual tax payable.

(iii) A debit note is required to be issued as the value of supply charged in the invoice no. 8 is less than the actual value.

(3) The details of the credit note cannot be declared later than 30th November following the end of the financial year in which such supply was made or the date of furnishing of the relevant annual return, whichever is earlier.

12.4 E-invoice through Govt. notified website [Sub-rules (4), (5) & (6) of Rule 48, applicable w.e.f. 01.10.2020]

As per Rule 48(4) of the CGST Rules, the registered person whose aggregate turnover in any preceding financial year from 2017-18 onwards **exceeds** ~~Rs. 500 Rs. 100 Rs. 50 crores Rs. 20 crores~~ ***~~Rs. 10 crores~~ Rs. 5 crores***, shall, in respect of supply of goods or services or both to a registered person (i.e. B2B) or for exports, prepare invoice and other prescribed documents, by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common GST Electronic Portal. [Aggregate Turnover limit reduced from Rs. 500 crores to Rs. 100 crores w.e.f. 01.01.2021 by NN 88/2020 – CT, which is further reduced to Rs. 50 crores w.e.f. 01.04.2021 by NN 05/2021 – CT, which is further reduced to Rs. 20 crores w.e.f. 01.04.2022 by NN 01/2022 – CT, which is further reduced to Rs. 10 crores w.e.f. 01.10.2022 by NN 17/2022 – CT, ***which is further reduced to Rs. 5 crores w.e.f. 01.08.2023 by NN 10/2023 – CT***]

However, this provision is not applicable to the following persons:

(i) A Special Economic Zone unit [Not SEZ Developer];

(ii) Insurer, Banking Company, financial institution including a NBFC;

(iii) Goods Transport Agency;

(iv) Passenger Transport Service Supplier;

(v) Supplier of services by way of admission or exhibition of cinematograph films in multiplex screens;

(vi) A Government Department or a Local Authority.

However, the Commissioner may, on the recommendations of the Council, by notification, exempt a person or a class of registered persons from issuance of invoice under this sub-rule for a specified period, subject to such conditions and restrictions as may be specified in the said notification.

Further, as per rule 48(5) of the CGST Rules, if any person to whom sub-rule (4) applies, issues any invoice in any manner other than the manner specified in the said sub-rule, then, such invoice shall not be treated as an invoice.

Further, as per rule 48(6) of the CGST Rules, the provisions of sub-rules (1) and (2) [i.e. issue of invoice in triplicate / duplicate copies] shall not apply to an invoice prepared in the manner specified in sub-rule (4).

- Bulk uploading of invoices to IRP is also possible.
- Further, e-invoicing is also not applicable to invoices issued by Input Service Distributor (ISD).
- If the invoice issued by a notified person is in respect of supplies made by him tax on which is payable under reverse charge under section 9(3), e-invoicing is applicable.

  Example: A taxpayer (say a firm of advocates) having aggregate turnover in a FY of more than Rs. 5 crores is supplying services to a company (who will be discharging tax liability as recipient under reverse charge mechanism), such invoices have to be reported by said tax payer (since it is a notified person) to IRP.
- On the other hand, where specified category of supplies are received by notified person from unregistered persons [attracting reverse charge under section 9(4)] or through import of services, e-invoicing doesn't arise/ not applicable. E-invoicing is also not applicable for import of goods (Bills of Entry).
- **Example:** Maharaja Private Limited has an SEZ unit and a regular DTA unit (both having same PAN). The aggregate total turnover of Maharaja Private Limited is more than Rs. 5 crores (considering both the GSTINs). However, the turnover of DTA unit is below Rs. 5 crores. In this scenario, SEZ unit is exempt from e-invoicing. However, e-invoicing will be applicable to DTA Unit because the aggregate turnover of the legal entity in this case is > Rs. 5 crores. The eligibility is based on aggregate annual turnover on the common PAN.

Clarification on applicability of e-invoicing w.r.t an entity [Circular no. 186/18/2022 - GST, dated 27.12.2022]

Issue: ***Whether the exemption from mandatory generation of e- invoices is available for the entity as whole, or whether the same is available only in respect of certain Supplies made by the said entity?***

Clarification: ***Certain entities/sectors have been exempted from mandatory generation of e-invoices as per rule 48(4). It is hereby clarified that the said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.***

Illustration: ***A Banking Company providing banking services, may also be involved in making supply of some goods, including bullion. The said banking company is exempted from mandatory issuance of e-invoice for all supplies of goods and services and thus, will not be required to issue e-invoice with respect to any supply made by it.***

Clarification on applicability of e-invoice w.r.t supplies to made to TDS deductors [Circular no. 198/10/2023 - GST, dated 17.07.2023]

Issue: ***Whether e-invoicing is applicable for supplies made by a registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, to Government Departments or establishments / Government agencies / local authorities / PSUs which are registered solely for the purpose of deduction of TDS as per provisions of sec. 51 of the CGST Act?***

Clarification: ***Government Departments or establishments / Government agencies / local authorities / PSUs, etc. registered solely for the purpose of deduction of TDS under GST, are to be treated as registered persons under the GST law as per provisions of sec. 2(94) of CGST Act. Accordingly, the registered person, whose turnover exceeds the prescribed threshold for generation of e-invoicing, is required to issue e-invoices for the supplies made to such Government Departments or establishments/Government agencies/ local authorities/ PSUs, etc u/r 48(4) of CGST Rules.***

12.5 Tax invoice to have Dynamic Quick Response (QR) code

The Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code. [6th proviso in rule 46]

Using this power, vide NN 14/2020 – CT, w.e.f. 01.12.2020, the Government has notified that an invoice issued by a registered person, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 500 crores, to an unregistered person (i.e. B2C invoice), shall have Dynamic Quick Response (QR) code.

However, this provision is not applicable to the following persons:

(i) Insurer, Banking Company, financial institution including a NBFC;

(ii) Goods Transport Agency;

Further, such person furnishing quarterly GSTR-1, may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the 1st & 2nd months of a quarter, up to a cumulative value of Rs. 50,00,000 in each of the months,- using **Invoice Furnishing Facility (IFF)** electronically, from the 1st day of the month succeeding such month till the **13th day** of the said month.

Further, the details of outward supplies furnished using the IFF, for the 1st & 2nd months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.

Notes :

(1) A taxpayer cannot file GSTR-1 before the end of the current tax period. However, following are the exceptions to this rule:

(a) Casual taxpayers, after the closure of their business

(b) Cancellation of GSTIN of a normal taxpayer

(2) A taxpayer who has applied for cancellation of registration will be allowed to file GSTR-1 after confirming receipt of the application.

4. Bar on filing of GSTR-1 or using IFF [Rule 59(6) of the CGST Rules, 2017, inserted by NN 01/2021 – CT, w.e.f. 01.01.2021] : Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B ~~for preceding 2 months~~ for the preceding month; [Omitted words substituted by NN 35/2021 – CT, w.e.f. 01.01.2022]

(b) a registered person, required to furnish quarterly return, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) [clause (c) omitted by NN 35/2021 – CT, w.e.f. 01.01.2022];

(d) ***a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C; [clause (d) inserted by NN 26/2022 – CT, w.e.f. 26.12.2022]***

(e) ***a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88D in respect of a tax period or periods, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either paid the amount equal to the excess input tax credit as specified in the said intimation or has furnished a reply explaining the reasons in respect of the amount of excess input tax credit that still remains to be paid, as required under the provisions of sub-rule (2) of rule 88D;*** **[Inserted by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

(f) ***a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the details of the bank account as per the provisions of rule 10A.*** **[Inserted by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

5. What kind of details of outward supplies are required to be furnished in GSTR-1 ? [Explanation to section 37 read with Rule 59 of CGST Rules] : The registered person is required to furnish details of invoices and revised invoices issued in relation to supplies made by him to registered and unregistered persons during a month/quarter and debit notes and credit notes in GSTR-1 in the following manner :

SN	Invoice-wise Details of ALL	Consolidated Details of ALL	Debit and Credit Notes
(i)	Inter-State and Intra-State supplies made to registered persons.	Intra-State supplies made to unregistered persons for each rate of tax.	Issued during the month for invoices issued previously
(ii)	Inter-State supplies with invoice value exceeding Rs. 2,50,000	State-wise Inter-State supplies with invoice value upto Rs. 2,50,000 made to	

– Date of **filing of** the relevant **annual return**

Example : In the above example, the last day upto which a supplier can make amendments/ corrections pertaining to financial year 2022-23 will be 30th November, 2023 or the date of filing annual return for the financial year 2022-23, whichever is earlier.

10. Nil GSTR-1 :

Filing of GSTR-1 is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-1 is required to be filed.

A Nil GSTR-1 does not have any entry. For example, a Nil GSTR-1 for a tax period cannot be filed, if the taxpayer has made any outward supply (including exempt, nil rated or non-GST supplies), or it has received supplies on which tax is payable under reverse charge or an amendment needs to be made to any of the supplies declared in an earlier return or any credit or debit notes is to be declared / amended etc.

A Nil GSTR-1 can be filed through an SMS using the registered mobile number of the taxpayer. GSTR-1 submitted through SMS is verified by registered mobile number-based OTP facility.

A taxpayer can file Nil GSTR-1, anytime from 1st of the month subsequent of the tax period onwards. For example, GSTR-1 for the calendar month of April, can be filed from 1st May onwards. GSTR-1 for the quarter of April to June can be filed from 1st July onwards.

11. What are the precautions that a taxpayer is required to take for a hassle-free compliance under GST :

One of the most important things under GST is the timely uploading of the details of outward supplies in GSTR-1. How best this can be ensured will depend on the number of B2B invoices that the taxpayer issues. If the number is small, the taxpayer can upload all the information in one go. However, if the number of invoices is large, the invoices (or debit/ credit notes) should be uploaded on a regular basis.

12. Regular uploading of invoices :

GST common portal allows regular uploading of invoices. Till the statement is actually submitted, the system also allows the taxpayer to modify the uploaded invoices. Therefore, it would always be beneficial for the taxpayers to regularly upload the invoices. Last minute rush makes uploading difficult and comes with higher risk of possible failure and default.

13. Follow up with suppliers to upload the invoices of inward supplies :

The second thing would be to ensure that taxpayers follow up on uploading the invoices of their inward supplies by their suppliers. This would be helpful in ensuring that the ITC is available without any hassle and delay. Recipients can also encourage their suppliers to upload their invoices on a regular basis instead of doing it on or close to the due date. The system would allow recipients to see if their suppliers have uploaded invoices pertaining to them.

14. Notes :

- Furnishing of GSTR-1 for the current tax period is not allowed, if GSTR-1 for any of the previous tax periods has not been furnished. However, the Government may allow a registered person or a class of registered persons to furnish GSTR-1, even if he has not furnished GSTR-1 for one or more previous tax periods.
- ***Further, the registered person shall not be allowed to furnish GSTR – 1 for a tax period after the expiry of a period of 3 years from the due date of furnishing the said statement, except where the Government allows. [Sec. 37(5) inserted by Finance Act, 2023, w.e.f. 01.10.2023]***
- All values like invoice value, taxable value and tax amounts in GSTR-1 are to be declared up to 2 decimal digits. The rounding off of the self-declared tax liability to the nearest rupee will be done in GSTR 3B.
- Taxpayer opting for voluntary cancellation of GSTIN will have to file GSTR-1 for active period.
- In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer, GSTR 1 will be available for filing only for the period during which the taxpayer was registered as normal taxpayer. The GSTR 1 for the said period, even if filed with delay would accept invoices for the period prior to conversion.

Illustration 1 : Mr. Anand Kumar, a regular taxpayer, furnished his statement of outward supply (GSTR-1) for the month of August, 2022 before the due date. Later on, in February, 2023 he discovered error in the GSTR-1 of August,

		(including a casual taxable person)		of month)	month
		GSTR-3B is not required to be filed by following category of persons: (a) Supplier of OIDAR services located in non-taxable territory (b) Composition taxpayer (c) Non-resident taxable person (d) Input Service Distributor (ISD) (e) Person deducting tax at source (TDS) (f) ECO, requiring to collect TCS			
3.	Section 39(2) and Rule 62	Registered person paying tax under Composition Scheme	Statement GST CMP – 08 (For payment of liability)	Quarterly (or a part of quarter) • Even if no supplies have been effected, a nil return is required to be filed mandatorily.	18th of the month next to relevant Quarter
			GSTR – 4 (Return)	• Even if no supplies have been effected, a nil return is required to be filed mandatorily.	30th day of April following the end of the F.Y.
4.	Section 39(5) and rule 63	Registered non-resident taxable person	GSTR-5	Monthly (or a part of month)	13th of the next month or 7th day after the last day of the validity of registration, whichever is earlier.
5.	Rule 64	Supplier of OIDAR services or ***online money gaming services*** located outside India [as amended by NN 51/2023 – CT, w.e.f. 01.10.2023]	GSTR-5A	Monthly (or a part of month)	20th of the next month
6.	Section 39(4) read with rule 65	Input Service Distributor (ISD)	GSTR-6	Monthly (or a part of month)	13th of the next month
7.	Section 39(3) read with rule 66	Registered person deducting tax at source [TDS]	GSTR-7	Monthly	10th of the next month
8.	Section 52(4) read with rule 67	E-Commerce operator (not being an agent) [TCS]	GSTR-8	Monthly	10th of the next month

Exception: It is important to note that section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by the tax authorities. Hence, assessee may not be able to pass on the ITC to the receiver in respect of tax payments made by him in pursuance of account of any of the aforementioned situations.

Time limit for making rectification: The maximum time limit within which the rectification of errors/omissions is permissible is **earlier of** the following dates:

- **30th November** following the end of the financial year to which such details pertain **or**
- Actual date of **filing of** the relevant **annual return**.

Hence, if annual return for the year 2022-23 is filed before 30th November 2023, then no rectification of errors/ omissions in returns pertaining to F.Y. 2022-23 would be permitted thereafter.

7. **Nil GSTR-3B:** Filing of GSTR-3B is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. For such tax period(s), a Nil GSTR-3B is required to be filed. A taxpayer may file Nil Form GSTR-3B, anytime on or after the 1st of the subsequent month for which the return is being filed for.

8. **Rule 67A - Manner of furnishing of return or details of outward supplies by short messaging service facility:** Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in FORM GSTR-3B or a Nil details of outward supplies under section 37 in FORM GSTR-1 or a Nil statement in FORM GST CMP–08 for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password (OTP) facility.

   Explanation - For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1 or FORM GST CMP-08, as the case may be.

9. **Signing the Return while filing:**
   - A taxpayer needs to electronically sign the submitted returns otherwise it will be considered not-filed.
   - Taxpayers can electronically sign their returns using a DSC (~~mandatory for all types of companies~~), E-sign (Aadhaar-based OTP verification), or EVC (Electronic Verification Code sent to the registered mobile number and E-mail ID of the authorized signatory). [omitted words, omitted by NN 32/2021 – CT, w.e.f. 01.11.2021]

10. **Sec. 39(10)**: A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies u/s 37(1) for the said tax period has not been furnished by him.

    However, the Government may allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies u/s 37(1) for the said tax period.

11. **Sec. 39(11)**: ***A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of 3 years from the due date of furnishing the said return, except where the Government allows. [Sec. 39(11) inserted by Finance Act, 2023, w.e.f. 01.10.2023]***

12. **Rule 88C – Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return:**

    (1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address, highlighting the said difference and directing him to—

    (a) pay the differential tax liability, along with interest u/s 50, through FORM GST DRC-03; or

    (b) explain the aforesaid difference in tax payable on the common portal,

    within a period of 7 days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,-

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC- 01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B,

within a period of 7 days.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

13. **Rule 88D – Manner of dealing with difference in input tax credit available in auto- generated statement containing the details of input tax credit and that availed in return [Inserted by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

(1) Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference, electronically, highlighting the said difference and directing him to, either,

(a) pay an amount equal to the excess ITC availed in the said FORM GSTR-3B, along with interest, or

(b) explain the reasons for the aforesaid difference in ITC,

within a period of 7 days.

(2) Such registered person shall, either,

(a) pay an amount equal to the excess ITC, fully or partially, along with interest and furnish the details thereof, or

(b) furnish a reply, electronically, incorporating reasons in respect of the amount of excess ITC that has still remained unpaid, if any,

within a period of 7 days.

(3) Where any amount remains unpaid within the period of 7 days and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74.

Illustration 2: Ms. Pragya, a taxpayer registered under regular scheme (Section 9), furnished GSTR-1 & GSTR-3B for the month of October. After furnishing the same, she discovers that the value of a taxable supply has been under-reported therein. Ms. Pragya now wants to file a revised GSTR-1 & GSTR-3B. Examine the scenario and give your comments.

Answer: Under GST law, a statement/return once filed cannot be revised. However, the details of those transactions that are required to be amended can be amended in any of the future GSTR- 1s. For this purpose, specific tables are provided in GSTR-1 to amend previously declared details.

Thus, Ms. Pragya cannot revise GSTR-1 & GSTR-3B filed by her for the month of October. However, she can amend the details of the taxable supply, which was under-reported, in GSTR-1 for the month of November. The tax payable on account of such error will be paid along with interest in GSTR-3B for the month of November.

Illustration 3: Explain the provisions of section 39(9) of the CGST Act, 2017 with reference to rectification of returns.

Answer: As per section 39(9) of the CGST Act, 2017, if any registered person after furnishing a return discovers any omission or incorrect particulars therein, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest.

C. **TCS details made available to suppliers** : The details of TCS furnished by the ECO in Form GSTR-8 shall be made available electronically to each of the ***registered*** suppliers on the common portal after filing of Form GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation. **[As amended by NN. 38/2023 – CT, w.e.f. 01.10.2023]**

6. Filing of return by an Input Service Distributor [Section 39(4) read with rule 60(5) and rule 65 of CGST Rules, 2017]

A. **Monthly Return** : ISD is not required to file separate statements of outward and inward supplies with its return. It needs to file only a monthly return in Form GSTR-6 electronically through the common portal. Form GSTR-6 contains the details of input tax credit received for distribution, total ITC/eligible/ ineligible ITC to be distributed for the tax period, distribution of ITC, details of debit/ credit notes, etc.

B. **Last date of filing return :** The details in GSTR-6 should be furnished on/ before 13th of the month succeeding the calendar month. GSTR-6 can only be filed after 10th of the month and before 13th of the month succeeding the tax period.

C. **Auto-population of input tax credit received for distribution :** The details of input tax credit received for distribution by an ISD will be auto populated in Form GSTR-6A. Such details are auto-populated in Form GSTR-6A when the registered suppliers file their GSTR-1.

ISD can view the auto-populated details of ITC received for distribution in GSTR-6A and, where required, after adding, correcting or deleting the details, furnish GSTR-6.

D. **ISD will not have reverse charge supplies :** An ISD cannot accept any invoices on which tax is to be discharged under reverse charge mechanism. If ISD wants to take reverse charge supplies, in that case it has to separately register as a Normal taxpayer. This is because the ISD mechanism is only to facilitate distribution of credit of taxes paid. The ISD itself cannot discharge any tax liability (as person liable to pay tax) and remit tax to Government account. ISD will have late fee and any other liability only.

E. **Details of GSTR-6 to be available in GSTR-2B of the recipients** : The details of invoices furnished by an ISD in his return will be made available to the respective registered recipients of credit in their GSTR 2B (Form GSTR 4A in case of composition supplier).

13.5 First Return [Sec. 40]

When a person becomes liable to registration as per provisions of section 22 or 24, he may apply for registration within 30 days of so becoming liable. Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate.

During the intervening period, such person might have made the outward supplies, i.e. after becoming liable to registration but before grant of the certificate of registration. Now, in order to enable such registered person to declare the taxable supplies made by him for the period between the date on which he became liable to registration till the date on which registration has been granted so that ITC can be availed by the recipient on such supplies, firstly, the registered person may issue Revised Tax Invoices against the invoices already issued during said period within 1 month from the date of issuance of certificate of registration [Section 31(3)(a) read with rule 53 of CGST Rules, 2017]. Further, section 40 provides that registered person shall declare his outward supplies made during said period in the first return furnished by him after grant of registration. The format for this return is the same as that for regular return.

13.6 Annual Return [Sec. 44 read with Rule 80]

1. Who are required to furnish Annual Return…?

Every registered person shall furnish an annual return for every financial year. However, the following persons are not required to furnish annual return:

(i) Casual Taxable Persons;

(ii) Non- resident taxable person;

(iii) Input Service Distributors;

(iv) Persons authorized to deduct/collect tax at source under section 51/52;

(v) Any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force; and

(vi) Persons supplying online information and data base access or retrieval services from a place outside India to a person in India.

Further, the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section.

A ***Using this power, the Commissioner, on the recommendations of the Council, has exempted the registered persons whose aggregate turnover in the financial year 2022-23 is upto Rs. 2 Crores, from filing annual return for the said financial year. [NN 32/2023 – CT, dated 31.07.2023]***

2. What is the due date of furnishing Annual Return…?

This return needs to be furnished by 31st December of the next Financial Year.

3. What is the prescribed form for Annual Return…?

Normal Suppliers: Annual Return is to be filed electronically in Form GSTR-9 through the common portal.

ECO required to collect TCS u/s 52: Annual Statement is to be filed electronically in Form GSTR-9B through the common portal.

4. Who is required to furnish a Reconciliation Statement…?

Every registered person who is required to furnish annual return and whose aggregate turnover during a financial year exceeds Rs. 5 Crores, shall also furnish a self-certified reconciliation statement in Form GSTR-9C along with the annual return on or before 31st December of the next financial year electronically through the common portal.

However, for the financial year 2020-2021, the said self-certified reconciliation statement shall be furnished on or before the 28.02.2022. [Rule 80(1A) inserted by NN 40/2021 – CT, dated 29.12.2021]

Further, Section 35(5) has been omitted w.e.f. 01.08.2021 which was as follows:

~~Sec. 35(5): Every registered person whose aggregate turnover exceeds Rs. 5 crores shall get his accounts audited by a Chartered Accountant or a Cost Accountant and shall submit a copy of the audited annual accounts and the reconciliation statement along with annual return~~.

Analysis of Amendment: By making these amendments, instead of GST Audit and submission of reconciliation statement in Form GSTR-9C by a Chartered Accountant or a Cost Accountant, now, every registered person who is required to furnish annual return and whose aggregate turnover during a financial year exceeds Rs. 5 Crores, shall be required to furnish a self-certified reconciliation statement in Form GSTR-9C.

5. A ***Further, the registered person shall not be allowed to furnish an annual return for a financial year after the expiry of a period of 3 years from the due date of furnishing the said annual return, except where the Government allows. [Sec. 44(2) inserted by Finance Act, 2023, w.e.f. 01.10.2023]***

13.7 Final Return [Sec. 45]

1. Who are required to furnish Final Return? [Section 45 read with rule 81]

Every registered person who is required to furnish return u/s 39(1) and whose registration has been surrendered or cancelled shall file a Final Return electronically in **Form GSTR-10** through the common portal.

2. What is the time-limit for furnishing Final Return? [Section 45]

Final Return has to be filed within **3 months** of the:

(i) date of cancellation or

(ii) date of order of cancellation

whichever is **later.**

13.8 Default in Furnishing Return [Sec. 46 & 47]

the corresponding payment order for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

- **Rule 92(1A):** Where, upon examination of the application of refund of any amount paid as tax, the proper officer is satisfied that a refund u/s 54(5) of the Act is due and payable to the applicant, then, he shall make order sanctioning the amount of refund to be paid.

  Further, the proper officer will divide the amount refundable in 2 portions [one refundable in cash and another refundable in electronic credit ledger]. This proportion shall be done on the basis of the amount utilized from electronic cash ledger and electronic credit ledger while discharging total tax liability for the relevant period.

  Note:

  1. Amount refundable in cash shall be refunded after making adjustment of any outstanding demand under the Act or under any existing law.
  2. In respect of amount refundable in electronic credit ledger, the proper officer shall issue order re-crediting the said amount as Input Tax Credit in the electronic credit ledger.
  3. This sub-rule is not applicable in following 2 cases:
     (i) refund of tax paid on zero-rated supplies or
     (ii) refund of tax paid on deemed export.

- **Grant of provisional refund [Section 54(6) read with rule 91]**

  In the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, the proper officer may refund 90% of the total amount so claimed on a provisional basis, ~~*excluding the amount of ITC provisionally accepted*~~ and thereafter make an order under section 56(5) for final settlement of the refund claim after due verification of documents furnished by the applicant. ***[as amended by Finance Act, 2023, w.e.f. 01.10.2023]***

14.4 Principle 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. Under GST law, related provisions are contained under section 54(8).
- 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 refund 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 accumulated ITC, refund on account of exports, refund of payment of wrong tax (IGST instead of CGST + SGST and vice versa), refund of tax paid on a supply, which is not provided or when refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person [Listed 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.
- Cases where refundable amount shall be paid to the applicant [Exceptions to Doctrine of Unjust Enrichment]: Section 54(8) stipulates that the refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to –

  (a) Refund of tax paid on ~~zero-rated supplies~~ export of goods or services or both or on inputs or input services used in making such ~~zero-rated supplies~~ exports; [as amended by CGST (Amendment) Act, 2018]

(b) refund of unutilized ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a **refund voucher** has been issued;

(d) refund of tax in pursuance of **section 77**, i.e. tax paid tax on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had **not passed on the incidence** of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of **applicants** as the Government may, on the recommendations of the Council, by **notification, specify**.

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules made there under or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8). Instead, refundable amount shall be credited to Consumer Welfare Fund [Section 54(9)].

Illustration 1:

State five cases where refundable amount shall be paid to the applicant, instated of being credited to Consumer Welfare Fund under CGST Act, 2017. ***[CA Final, May 2018 - New] (5 Marks)***

Solution:

Section 54(8) stipulates that the refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to —

(a) Refund of tax paid on export of goods or services or both or on inputs or input services used in making such export.

(b) refund of unutilized ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;

(c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77, i.e. tax paid tax on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

14.5 No Refund of Advance tax by casual or NR persons [Sec. 54(13)]

Notwithstanding anything to contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person u/s 27(2), shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the return required u/s 39.

Refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him u/s 27 at the time of registration, shall be claimed ***only after the last return required to be furnished by him has been so furnished*** ~~***in the last return required to be furnished by him***~~. [Rule 89(1), 3rd proviso] **[As amended by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

14.6 Withholding of Refund Claim [Section 54(10), (11) & (12)]

Sec. 54(10): Where any refund is due to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority till the last date for filing an appeal, 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;

- An amount equivalent to 50% of the amount of IGST determined under section 54(5) of the CGST Act, read with section 20 of the IGST Act, shall be deposited in the Fund [Proviso to rule 97(1)].
- An amount equivalent to 50% of the amount of compensation cess determined under section 54(5) of the CGST Act, read with section 11 of the GST (Compensation to States) Act, shall be deposited in the Fund. [Second Proviso to rule 97(1)]
- Any amount, having been credited to the Consumer Welfare Fund, ordered or directed as payable to any claimant by orders of the proper officer, Appellate Authority or Appellate Tribunal or Court, shall be paid from the Fund [Rule 97(2)].

14.13 Interest on Delayed Refunds [Section 56 of CGST Act]

A. Interest on amount refundable consequent to order passed by Proper Officer [Sec. 56]

- 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. [as notified vide NN. 13/2017 CT dated 28.06.2017].
- Interest is payable ***for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed*** **[as amended by Finance Act, 2023, w.e.f. 01.10.2023].**

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. [as notified vide NN. 13/2017 CT dated 28.06.2017]
- 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].

Note: 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]

- **Rule 94(1):** Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in prescribed form.
- Such order shall specify therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and 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.
- **Rule 94(2) [Inserted by NN. 38/2023 – CT, w.e.f. 01.10.2023]:** ***Further, the following periods shall not be included in the period of delay, namely:-***

  (a) any period of time beyond 15 days of receipt of notice (i.e. notice for rejecting the amount of refund claimed) that the applicant takes to furnish a reply or submit additional documents or reply; and

  (b) any period of time taken either by the applicant for furnishing the correct details of the bank account to which the refund is to be credited or for validating the details of the bank account so furnished, where the amount of refund sanctioned could not be credited to the bank account furnished by the applicant.

D. [Circular No. 125/44/2019 – GST, dated 18.11.2019]: Any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order and the payment order within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

14.14 Refund of Integrated Tax Paid on Supply of Goods to Tourist Leaving India [Section 15 of IGST Act]

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

f. "**Relevant period**" means the period for which the claim has been filed.

Explanation [inserted by NN 14/2022 – CT, w.e.f. 05.07.2022] – For the purposes of this sub-rule, **"the value of goods exported out of India"** shall be taken as lower of the followings –

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export; or

(ii) the value declared in tax invoice or bill of supply

Note: ***"The value of goods exported out of India" to be included while calculating "adjusted total turnover" will be same as being determined as per the aforesaid Explanation inserted in the said sub-rule.*** **[Circular No. 197/09/2023 - GST, dated 17.07.2023]**

Note: Where the application relates to refund of ITC, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed [Rule 89(3)].

The manner of calculation of Adjusted Total Turnover under Rule 89(4) of CGST Rules, 2017 [Circular No. 147/03/2021 – GST, dated 12.03.2021]

The same value of zero-rated/ export supply of goods, as calculated as per amended definition of "Turnover of zero-rated supply of goods", need to be taken into consideration while calculating "turnover in a state or a union territory", and accordingly, in "adjusted total turnover" for the purpose of sub-rule (4) of Rule 89. Thus, the restriction of 150% 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" in Rule 89(4) of the CGST Rules, 2017.

Illustration: Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below [Net admissible ITC = Rs. 270]:

Outward Supply	Value per unit (Rs.)	No. of units supplied	Turnover (Rs.)	Turnover as per amended definition (Rs.)
Local (Quantity 5)	200	5	1000	1000
Export (Quantity 5)	350	5	1750	1500 (200 x 5 x 1.5)
Total			2750	2500

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) x Net ITC ÷ Adjusted Total Turnover

Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500

Adjusted Total Turnover = Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750]

Net ITC = Rs. 270 (Given in illustration)

Refund Amount = Rs. 1500 x 270/2500 = Rs. 162

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

Determination of refundable amount in case of refund of unutilised ITC on account of (i) exports without payment of tax, (ii) supplies made to SEZ Unit / SEZ Developer without payment of tax or (iii) accumulation due to inverted tax structure, clarified [Master Circular on Refunds – Circular No. 125/44/2019 GST dated 18.11.2019]

b. the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962; or

c. the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

(5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of GST electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962, then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission.

(5C) The application for refund in FORM GST RFD-01 transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of Rule 89.

(9) 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.

(10) The refund under this rule is not allowed to the persons who have claimed the following benefits:

(i) Receipt of supplies under "deemed export" benefits (except receipt of capital goods under EPCG Scheme)

(ii) Receipt of supplies under benefit of NN 40/2017 – CT (R) or NN 41/2017 – IT (R) [i.e. inward supplies at concessional rate of 0.1%(IGST or CGST+SGST)]

(iii) Import of goods without payment of IGST & GST Compensation Cess, if imported by EOU or under Advance Authorisation or EPCG Scheme (except receipt of capital goods under EPCG Scheme).

Explanation: However, this restriction shall not apply where the registered person has paid IGST and GST Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD).

Export of goods or services under bond or Letter of Undertaking (LUT) [Rule 96A]

- **Rule 96A(1):** 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 @ 18% p.a. within a period of:

  (a) 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

  (b) 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the RBI.

- All registered persons who intend to supply goods or services for export without payment of IGST shall be eligible to furnish a LUT in place of a bond except those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds Rs. 2,50,00,000.

Clarification in respect of admissibility of Refund where an exporter applies for refund subsequent to compliance of the provisions of rule 96A(1) [Circular No. 197/09/2023 - GST, dated 17.07.2023]

Issue: *References have been received citing the instances where exporters have voluntarily made payment of due integrated tax, along with applicable interest, in cases where goods could not be exported or payment for export of*

services could not be received within time frame as prescribed in clause (a) or (b) of rule 96A(1) of CGST Rules. Clarification is being sought as to whether subsequent to export of the said goods or realization of payment in case of export of services, the said exporters are entitled to claim not only refund of unutilized input tax credit on account of export but also refund of the integrated tax and interest so paid in compliance of the provisions of rule 96A(1) of CGST Rules.

Clarification: ***The above clarifications imply that as long as goods are actually exported or payment is realized in case of export of services, even if it is beyond the time frames as prescribed in rule 96A(1), the benefit of zero-rated supplies cannot be denied to the concerned exporters. Accordingly, it is clarified that in such cases, on actual export of the goods or on realization of payment in case of export of services, the said exporters would be entitled to refund of unutilized input tax credit in terms of sub-section (3) of section 54 of the CGST Act, if otherwise admissible.***

It is also clarified that in such cases subsequent to export of the goods or realization of payment in case of export of services, the said exporters would be entitled to claim refund of the integrated tax so paid earlier on account of goods not being exported, or the payment not being realized for export of services. It is further being clarified that no refund of the interest paid in compliance of rule 96A(1) shall be admissible.

Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realized [Rule 96B]

(1) Where any refund of unutilised input tax credit on account of **export of goods** or of IGST paid on export of goods has been paid to an applicant but the **sale proceeds** in respect of such export goods have **not** been **realised**, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 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-realisation of sale proceeds, along with applicable interest **within 30 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:

However, where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999, 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 **3 months** from the date of realisation of sale proceeds, the **amount so recovered shall be refunded** by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.

14.18 Imports by SEZ

Import of goods by SEZ exempt from IGST [NN. 64/2017- Customs New Delhi, 05.07.2017]:

All goods imported by a unit or a developer in the Special Economic Zone for authorized operations are exempt from whole of IGST leviable u/s 3(7) of Customs Tariff Act, 1975.

Imports of services by SEZ exempt from IGST [NN. 18/2017- IT (R) dated 05.07.2017]:

The Central Government has exempted services imported by a unit or a developer in the Special Economic Zone For authorised operations from the whole of the integrated tax leviable thereon u/s 5 of IGST Act, 2017.

14.19 Refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

Section 77 of the CGST Act, 2017 : Tax wrongfully collected and paid to Central Government or State Government

(1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is ***subsequently held*** *to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.*

4. In case, **satisfactory explanation is not obtained within 30 days** of being informed or such **further period** as permitted by proper officer **or after accepting discrepancies,** registered person **fails to take corrective measures,** in his return for the month in which the discrepancy is accepted by him, the proper officer, may, **take recourse after issuance of notice** to any of the following provisions:

   (i) Conduct **audit** at the place of business of registered person in a manner Provided in Section 65 of the Act; or

   (ii) Direct such registered person by notice in writing to get his records including books of accounts examined and **audited by a Chartered Accountant or Cost Accountant** under Section 66 of the Act; or

   (iii) Undertake procedures of **inspection, search and seizure under** Section 67 of the Act; And

   (iv) Proceed to determine dues under **sections 73 & 74** of the CGST Act.

Illustration 2 : Mr. Venkateshwara, the taxable person under GST filed the prescribed tax return. During the course of scrutiny of the tax returns, the proper officer detected certain discrepancy in the return filed by Mr. Venkateshwara and asked him to explain the same. However, Mr. Venkateshwara could not offer any proper explanation for the said discrepancy within the prescribed time.

Examine the scenario and offer your views/comments on as to what recourse may be taken by the proper officer in such a case.

Answer : Section 61 of the CGST Act, 2017 inter alia provides that if during scrutiny of returns, the taxable person does not provide a satisfactory explanation within 30 days of being informed (extendable by the officer concerned) or after accepting discrepancies, fails to take corrective action in the return for the month in which the discrepancy is accepted, the proper officer may take recourse to any of the following provisions:

(a) Proceed to conduct audit under section 65 of the Act;

(b) Direct the conduct of a special audit under section 66 which is to be conducted by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner; or

(c) Undertake procedures of inspection, search and seizure under section 67 of the Act; or

(d) Initiate proceeding for determination of tax and other dues under section 73 or 74 of the Act.

Thus, in view of the above mentioned provisions, the proper officer may take any of the recourse mentioned above against Mr. Venkateshwara.

15.4 Sec. 62: Assessment of Non-Filers of Returns [Best Judgement Assessment by Proper Officer]

(1) 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 **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.

(2) Where the registered person furnishes a **valid return within** ~~*30 days*~~ *60 days* of the service of the assessment order under sub-section (1), the said **assessment order shall be deemed to have been withdrawn** but the liability for payment of **interest** u/s 50(1) or for payment of **late fee** u/s 47 shall continue.

However, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order under sub-section (1), he may furnish the same within a further period of 60 days on payment of an additional late fee of Rs. 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest u/s 50(1) or to pay late fee u/s 47 shall continue. [as amended by Finance Act, 2023, w.e.f. 01.10.2023]

Rule 138F : Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof

ICAI → X

(1) Where -

(a) a Commissioner of State tax or Union territory tax mandates furnishing of information regarding intra-State movement of gold, precious stones, etc. specified against serial numbers 4 and 5 in the Annexure appended to rule 138(14), in accordance with rule 138F(1) of the SGST/UTGST Rules, and

(b) the consignment value of such goods exceeds such amount, not below Rs. 2,00,000, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorised by him,

notwithstanding anything contained in Rule 138, every registered person who causes intra-State movement of such goods, -

(i) *in relation to a supply; or*

(ii) *for reasons other than supply; or*

(iii) *due to inward supply from an un-registered person,*

shall, before the commencement of such movement within that State or Union territory, furnish information relating to such goods electronically, as specified in Part A of FORM GST EWB-01, against which a unique number shall be generated:

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

(2) The information as specified in PART B of FORM GST EWB-01 shall not be required to be furnished in respect of movement of goods referred to in the sub-rule (1) and after furnishing information in Part-A of FORM GST EWB-01, the e-way bill shall be generated in FORM GST EWB-01, electronically on the common portal.

(3) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in FORM GSTR-1.

(4) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-waybill, the e- way bill may be cancelled, electronically on the common portal, within 24 hours of generation of the e-way bill.

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

(5) Notwithstanding anything contained in this rule, no e-way bill is required to be generated -

(a) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;

(b) where the goods are being transported -

(i) *under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or*

(ii) *under customs supervision or under customs seal.*

(6) The provisions of sub-rule (10), sub-rule (11) and sub-rule (12) of rule 138, rule 138A, rule 138B, rule 138C, rule 138D and rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

Consignment Value of Rs. 50,000 includes GST amount also:

For the purposes of this rule, the consignment value of goods shall be the value, determined in accordance with the provisions of section 15, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State tax or Union territory tax charged in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Illustration 2 :

CHAPTER

22

Appeals and Revision

22.1 Sec. 107 : Appeals to Appellate Authority

Introduction :

(a) This section pertains to appeals to appellate authority by any person who is aggrieve against decision or order passed by adjudicating authority.

(b) This section also provides for appeal by revenue against decision or order passed by adjudicating authority.

1. Filing of appeal by Assessee [Sec. 107(1) read with Rule 108]:

(i) The appeal is to be filed by the assessee within a period of **3 months** from the date of communication of decision or order in FORM GST APL 01 electronically along with relevant documents and a provisional acknowledgement shall be issued to the appellant immediately.

However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if-

(i) the Commissioner has so notified, or

(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately. **[Inserted by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

(ii) The grounds of appeal and form of verification must be duly signed.

(iii) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

(iv) However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of 7 days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

(v) Further, where the said self-certified copy of the decision or order is not submitted within a period of 7 days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal. [Rule 108(3) substituted by NN 26/2022 – CT, w.e.f. 26.12.2022]

(vi) Further, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.

2. Filing of appeal/application by the Department [Sec. 107(2) & (3) read with Rule 109]:

(i) The Commissioner of Central / State or any Union territory with a view to satisfying himself about the legality or propriety of any order or decision direct a subordinate officer to file an application before the Appellate Authority within **6 months** from the date of communication of decision or order *in FORM APL GST 03 electronically along with relevant documents and a provisional acknowledgement shall be issued to the appellant immediately.*

However, an appeal to the Appellate Authority may be filed manually in FORM GST APL-03, along with the relevant documents, only if-

(iii) the Commissioner has so notified, or

(iv) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,

and in such case, a provisional acknowledgement shall be issued to the appellant immediately. **[Inserted by NN. 38/2023 – CT, w.e.f. 04.08.2023]**

(ii) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

(iii) However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of 7 days from the date of filing of FORM GST APL-03 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.

(iv) Further, where the said self-certified copy of the decision or order is not submitted within a period of 7 days from the date of filing of FORM GST APL-03, the date of submission of such copy shall be considered as the date of filing of appeal.

[Rule 109 substituted by NN 26/2022 – CT, w.e.f. 26.12.2022]

3. The appellate authority in **either of the above cases** is empowered to **condone the delay upto a period of 1 month**.

4. **Rule 109A –** Appointment of Appellate Authority:

   The appellate authority in both the above cases shall be:

   (a) the **Commissioner (Appeals)** where the decision or order is passed by the Additional or Joint Commissioner;

   (b) **any officer not below the rank of Joint Commissioner (Appeals)** where the decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.

5. Appeal is to be filed along with :

   - Amount of tax, interest, fine, fee and penalty, as is admitted, in full;
   - **pre-deposit** of sum equal to **10%** of remaining amount of **tax in dispute** arising from the said order, **subject to a maximum of Rs. 25 crores** (under CGST); and
   - **pre-deposit** of a sum equal to **25% of the penalty** imposed, in case of appeal to be filed against an order passed **u/s 129(3)**. [Sec. 129 - Detention, seizure and release of goods and conveyances in transit]

6. On payment of above amount, the **recovery** proceedings for balance amount are **stayed.**

7. Maximum **3 adjournments** shall be granted to a party on showing reasonable cause to be recorded in writing.

8. Appellate authority may **allow** any **additional grounds** not specified in the grounds of appeal on being satisfied that the omission was not wilful or unreasonable.

9. Appellate authority to pass the order confirming, modifying or annulling the decision or order appellate against but **shall not remand the case back** to the adjudicating authority. [But in customs, appellate authority can remand the case back].

10. **Opportunity** of being heard to be granted in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit after **issuing show cause notice**. [Sec. 107(11)]

11. The **appellate authority has power to issue show cause notice** in case it is of the **opinion** that any tax has not been paid or **short paid** or erroneously refunded or input tax credit is wrongly availed or utilised. [Sec. 107(11)]

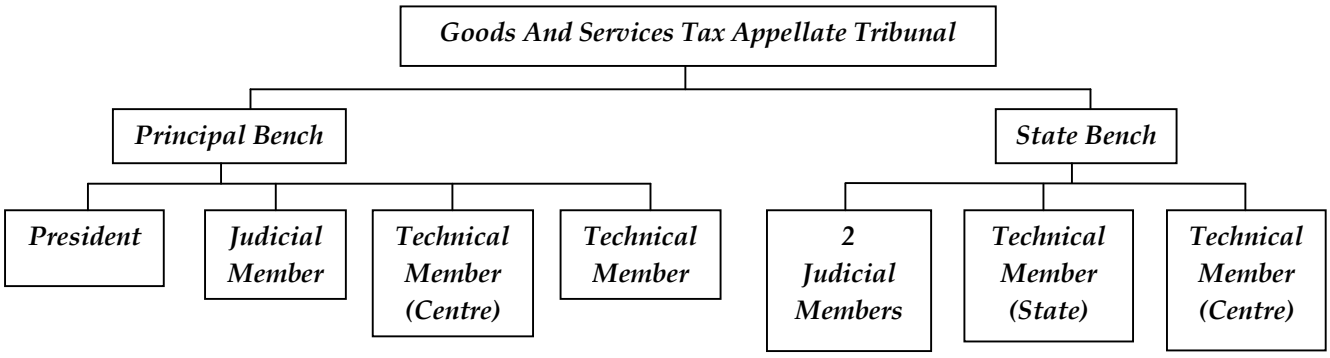
12. Appellate authority to hear and decide the appeal, **wherever possible**, within a **period of 1 year** from the date of filing. [Sec. 107(11)]

Constitution of Appellate Tribunal and Benches thereof [Section 109] *[as substituted by Finance Act, 2023, w.e.f. 01.08.2023]*

The Government shall, on the recommendations of the Council, by notification, establish with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches.

Composition of the Appellate Tribunal



Jurisdiction:

- *The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority.*
- *However, the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.*

Single member bench :

The cases can be heard by a bench consisting of a single member, if following conditions are fulfilled:

- *Amount of tax or ITC involved or the amount of fine, fee or penalty determined does not exceed Rs. 50,00,000,*
- *Matter does not involve any question of law and*
- *Prior approval of the President has been obtained*

And all other cases shall be heard together by one Judicial Member and one Technical Member.

Majority rule in case of difference of opinion

If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,—

- *where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;*
- *where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,*

and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.

Defect in constitution not to render proceedings invalid

No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

The President and members of Appellate Tribunal, their qualification, appointment, conditions of service, etc. shall be in the manner prescribed u/s 110 of the CGST Act.

22.7 Sec. 115 : Interest on Refund of Amount Paid for Admission of Appeal

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

ANALYTICAL VIEW OF THE TOPIC

(i) Interest at the rates specified in Section 56 shall be payable on refund of pre-deposit.

(ii) Such interest to be calculated from the date of payment of such pre-deposit till the date of refund.

22.8 Sec. 116 : Appearance by Authorised Representative

Introduction :

This section provides for appearance by authorised representative in proceedings or appeals except in circumstances where personal appearance is required for examination or oath or affirmation.

Analysis :

(i) "Authorised representative" means -
- Relative or regular employee
- Practising Advocate
- Practising CA, CMA or CS
- A retired government officer who had worked for not less than 2 years in a post not lower in rank than Group-B gazetted officer
- Goods and Services Tax Practitioner

(ii) Any person, who has retired or resigned after serving more than 2 years in the indirect tax departments of Government of India or any State Government as a gazetted officer, shall not be entitled to appear as authorised representative for a period of 1 year from the date of retirement or resignation.

(iii) Any person,
- who has been dismissed or removed from government service
- who is convicted of an offence under CGST Act, SGST Act, IGST Act, UTGST Act or under existing laws
- who is found guilty of misconduct by the prescribed authority,

shall not be qualified as authorised representative.

(iv) Any person, who has become insolvent, shall not be qualified as authorized representative during the period of insolvency.

(v) Any disqualification under SGST Act or UTGST Act shall be construed as disqualification under CGST Act.

22.9 Sec. 117 : Appeal to High Court

Introduction :

This section provides for appeal to High Court by any person aggrieved by an order passed by ***State Benches***.

Analysis :

(i) High Court may admit an appeal if it is satisfied that the case involves a **substantial question of law**.

(ii) No appeal shall lie to High Court if such order is passed by ***Principal Bench***.

(iii) Appeal to be filed in the form of appeal memorandum, precisely stating the substantial question of law involved, **within 180 days** from the date of receipt of order appealed against accompanied by prescribed fee.

(iv) High Court is empowered to condone the delay in filing appeal.

(v) On being satisfied, High Court shall formulate a substantial question of law.

(vi) Appeal to be heard only on the question so formulated and the respondent shall be allowed to argue that the case does not involve such question.

(vii) The High Court may hear the appeal on any other substantial question of law not formulated by it after satisfying, for reasons to be recorded, of involvement of such question in the case.

(viii) The High Court may determine any issue which has not been determined or has been wrongly determined by the Appellate Tribunal.

(ix) Appeal to be heard by a Bench of **not less than 2 Judges** of High Court and shall be decided in accordance with the majority of opinion of such Judges.

(x) Difference of opinion on any point shall be referred to one or more of the other Judges of High Court and such point shall be decided according to the opinion of majority of Judges who have heard the case including those who first heard it.

(xi) The effect of judgment of High Court shall be given on the basis of a certified copy of the judgment.

(xii) The provisions of Code of Civil Procedure relating to appeals to High Court shall apply to appeals under this section.

Illustration 5 : Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved related to place of supply. The order of Appellate Tribunal is also in favour of the Department. Mr. A now wants to file an appeal against the decision of the Appellate Authority as he feels the stand taken by him is correct.

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal. ***[RTP - May 2018]***

Answer : As per section 117(1) of the CGST Act, 2017, an appeal against orders passed by the State Benches of the Tribunal lies to the High Court, if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the Principal Bench of the Tribunal lies to the Supreme Court and not High Court. As per section 109(5) of the Act, only the Principal Bench of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the Principal Bench of the Tribunal.

Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

22.10 Sec. 118 : Appeal to Supreme Court

An appeal can lie with the Supreme Court in case of :

(i) Any judgement or order passed by ***Principal Bench*** of Appellate Tribunal or High Court.

(ii) When an appeal is reversed, or varied, the effect shall be given to the order of the Supreme Court on the question of law so formulated and delivered.

(iii) The said judgement shall clearly indicate the grounds on which the decision is founded.

(iv) Apart from this, the Supreme Court is empowered to frame any substantial question of law not formulated by any lower authority if it is satisfied that the case before it involves such question of law.

22.11 Sec. 119 : Sums Due to be Paid Notwithstanding Appeal, etc.

The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding that an appeal has been preferred to High Court or Supreme Court, as the case may be.

22.12 Sec. 120 : Appeal Not to be Filed in Certain Cases

1. **Board's power to issue instructions regulating filing of appeal/revision by Department:** The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.

2. **Non filing of appeal, etc. as per aforesaid instructions, No bar on department to file appeal in future:** Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has

under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (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.

(1B) Any electronic commerce operator who —

(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(iii) fails to furnish the correct details in the statement to be furnished u/s 52(4) (i.e. ~~GSTR-7~~ GSTR-8) of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of Rs. 10,000, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax u/s 10, whichever is higher. **[Sub-Sec. (1B) inserted by Finance Act, 2023, w.e.f. 01.10.2023]**

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised, -

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent of the tax due from such person, whichever is higher;

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who -

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to twenty-five thousand rupees.

ANALYTICAL VIEW OF THE TOPIC

At the outset, the section declares the offences that attract penalty as a consequence, apart from the requirement to pay the tax and applicable interest. Some of the offences listed under this section may also attract prosecution under section 132 but that depends on the gravity of the offence defined in that section.

The Section is divided in four main parts:

(i) The first sub-section prescribes 21 types of offences, any one of which if committed, can attract penalty equal to amount of tax involved or Rs. 10,000 (under CGST), whichever is higher.

(ii) **Section 122(1A):** Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (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.

Analysis: This sub-section is introduced to penalize the actual offender who used to retain the benefit of the transaction conducted by someone else. Prior to this amendment, the penal provisions were for a person who

commits an offence but the amended provision has expanded the scope to include a person who causes to commit and retains the benefits arising out of offences covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1).

(iii) **Section 122(1B):** ***Any electronic commerce operator who —***

(a) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(b) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or

(c) fails to furnish the correct details in the statement to be furnished u/s 52(4) (i.e. ~~GSTR-7~~ GSTR-8) of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of Rs. 10,000, or an amount equivalent to the amount of tax involved had such supply been made by a registered person (other than a person paying tax u/s 10), whichever is higher. **[Sub-Sec. (1B) inserted by Finance Act, 2023, w.e.f. 01.10.2023]**

(iv) The second sub-section deals with two situations, first is where certain offences committed are not due to either fraud or wilful misstatement or suppression of facts. In such a case, penalty will get reduced to 10% of tax involved subject to a minimum of Rs. 10,000 (under CGST). And then, where the offence committed is due to either fraud or any wilful misstatement or suppression of facts to evade tax will result in a penalty equal to tax involved subject to a minimum of Rs. 10,000 (under CGST).

(v) The third sub-section deals with offences where the person is not directly involved in any evasion but may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a case would be upto Rs. 25,000 (under CGST).

Illustration 1 : Answer the following questions:

(i) Shagun started supply of goods in Vasai, Maharashtra from 01.01.20XX. Her turnover exceeded Rs. 20 lakh on 25.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Shagun on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is Rs. 1,26,000.

(ii) Sagar, managing director of Telecom Solutions Ltd., is issued a summon to appear before the central tax officer to produce the books of accounts of Telecom Solutions Ltd. in an inquiry conducted on said company. Determine the amount of penalty, if any, that may be imposed on Sagar, if he fails to appear before the central tax officer. ***[RTP - May 2018]***

Answer :

(i) Where the aggregate turnover of a supplier making supplies from a State/UT exceeds Rs. 20 lakh in a financial year, he is liable to be registered in the said State/UT. The said supplier must apply for registration within 30 days from the date on which he becomes liable to registration. However, in the given case, although Shagun became liable to registration on 25.01.20XX, she didn't apply for registration within 30 days of becoming liable to registration.

Section 122(1)(xi) of the CGST Act, 2017 stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

(a) Rs. 10,000; Or

(b) an amount equivalent to the tax evaded [Rs. 1,26,000 in the given case], whichever is higher.

Thus, the amount of penalty that can be imposed on Shagun is Rs. 1,26,000.

(ii) Section 122(3)(d) of the CGST Act stipulates that any person who fails to appear before the CGST officer, when issued with a summon for appearance to give evidence or produce a document in an inquiry is liable to a penalty which may extend to Rs. 25,000. Therefore, penalty upto Rs. 25,000 can be imposed on Sagar, in the given case.

23.2 Sec. 125 : General Penalty

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to Rs. 25,000 (under CGST).

Market Value of Goods	20,00,000
GST on such goods	3,60,000

You are also required to explain relevant legal provisions in brief. ***[CA Final, May 2018] (5 Marks) [MTP - Nov. 2018]***

Answer:

(1) As per section 130(2) of the CGST Act, 2017, in case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, the maximum fine leviable = Rs. 20,00,000 - Rs. 3,60,000 = Rs. 16,40,000. Further, the aggregate of fine and penalty shall not be less than the penalty equal to 100% of the tax payable on such goods.

(2) In case of conveyance used for carriage of such goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is equal to tax payable on the goods being transported thereon [3rd proviso to section 130(2) of the CGST Act, 2017].

Therefore, the fine leviable = Rs. 3,60,000

23.8 Sec. 131 : Confiscation or Penalty Not to Interfere With Other Punishments

This Section provides that in addition to confiscation of goods or penalty already imposed, all /any other proceedings may also be initiated or continued under the GST law or any other law, as applicable. This could be prosecution, arrest, cancellation of registration etc., as applicable and provided for the relevant non-compliances.

23.9 Sec. 132 : Punishment for Certain Offences

This section talks about cases of tax evasion and penal actions applicable on specific events subject to amount of tax sought to be evaded. This provision speaks of prosecution of offenders and the punishment initiated on them.

A. In this section the law makers have identified situations whereby there can be a leakage or revision of government revenue. This section enables institution of prosecution proceedings against all those persons whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences:

(a) Supply of goods or services or both without the cover of invoice with an intent to evade tax;

(b) Issue of any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of ITC or refund of tax;

(c) Avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) Collection of taxes without payment to the government for a period beyond 3 months of due date;

(e) Evasion of tax or obtaining refund with an intent of fraud where such offence is not covered in clause (a) to (d) above;

(f) Falsifying records or production of false records/accounts/documents/information with an intent to evade tax;

(g) ~~***Obstructs or prevents any officer from doing his duties under the act***~~;

(h) Acquires or transports or in any manner or deals with any goods which he knows are liable for confiscation under this Act;

(i) Receives or in any way, deals with any services or has reason to believe are in contravention of any provisions of this law;

(j) ~~***Tampers with or destroys any material evidence or documents***~~;

(k) ~~***Fails to supply any information which he is required to supply under this law or supply false information***~~;

(l) Attempts to commit, or abets the commission of any of the offences mentioned above.

[Clauses (g), (j) & (k) omitted by Finance Act, 2023, w.e.f. 01.10.2023]

This section enables institution of prosecution proceedings against the persons who are involved in these offences and the period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence listed below.

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment*
Exceeding Rs. 5 Crores	Yes	Upto 5 years
Exceeding Rs. 2 Crores - Upto 5 Crores	Yes	Upto 3 years
Exceeding Rs. 1 Crores - Upto 2 Crores ***[in the case of an offence specified in clause (b)]*** ***[As amended by Finance Act, 2023, w.e.f. 01.10.2023]***	Yes	Upto 1 year

*The imprisonment referred to shall be for a **term not less than 6 months** in the absence of special and adequate reasons to the contrary to be recorded in the judgement of the court.

B. If any person commits or abets the commission of an offence specified in clause (f), ~~***(g) or (j)***~~, he shall be punishable with imprisonment for a term which may extend to **6 months** or with fine or with both.

C. Where any person convicted of an offence under this section is **again convicted** of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to **5 years** and with fine.

D. All offences mentioned in this section are **non-cognizable and bailable except** the following cases: Instances covered by **(a) to (d) where the amount exceeds Rs. 5 Crores**

E. Every prosecution proceeding initiated requires **prior sanction of the Commissioner**.

Illustration 6:

Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period December, 2017 under CGST Act, 2017;

(i) 'X' collects Rs. 245 lakh as tax from its clients and deposits Rs. 241 lakh with the Central Government. It is, found that he has falsified financial records and has not maintained proper records.

(ii) 'Y' collects Rs. 550 lakh as tax from its clients but deposits only Rs. 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution, of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

It may be assumed that offences are proved in the court. ***[CA Final, May 2018 - New] (5 Marks)***

Solution :

The position is as follows-

Offence	Amount involved	Bailability	Punishment	Punishment for repeat offence
Falsifying financial records	4 lakh	Bailable & Non-cognizable	Imprisonment for upto 6 months or with fine or both	Imprisonment for a term which may extend to 5 years and with fine
Non-payment of collected tax	520 lakh i.e. > 5 crore	Non-Bailable & cognizable assuming dues are pending for more than 3 months	Imprisonment for upto 5 years and with fine	Imprisonment for a term which may extend to 5 years and with fine

Illustration 7:

What are cognizable and non-cognizable offences under Section 132 of CGST Act, 2017?

[CA Final, May 2018 - Old] (Marks 4)

Solution:

As per section 132(4) notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

Under section 132(5) the offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

23.10 Sec. 69 : Power to Arrest

Introduction :

This section deals with power to arrest persons whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of sec 132 of CGST Act.

(a) Supplies any goods or services or both without issue of invoice with the intention to evade tax;

(b) Issue of any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of ITC or refund of tax;

(c) Avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;

(d) Collects any amount as tax but fails to pay the same beyond the period of 3 months from the due date.

Analysis :

- The **Commissioner** is vested with the power to authorise, by an order, any Officer to arrest a person, where there is a reason to believe that such person has committed the specified offences.
- The person committing any offence under clauses (a) or (b) or (c) or (d) u/s 132(1) cited supra and punishable under Section 132(1)(i) or 132(1)(ii) or 132(2) can be arrested by the authorized officer.
- Section 132(1) clause (i) tax evasion above Rs. 500 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above Rs. 200 Lakhs attracting imprisonment upto 3 years and fine or offence or section 132(2) [repeated offence – second and subsequent offence attracting imprisonment upto 5 years with fine]
- **Such person** is required to be **informed** about the **grounds of arrest** and be produced before the **Magistrate within 24 hours in case of cognizable offences** and in case of **non-cognizable and bailable offences** the **Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station** subject to the provisions of Code of Criminal Procedure, 1973.
- All arrests should be made as per the provisions of **Code of Criminal Procedure, 1973**.

List of Related provisions of Section 132 for ready reference for which person can be arrested :

Section	Description
132(1)(a)	Whoever supplies any goods or services or both without issue of invoice with the intention to evade tax.
132(1)(b)	Whoever issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of ITC or refund of tax.
132(1)(c)	Whoever avails input tax credit using invoice or bill referred to in (b) above or fraudulently avails input tax credit without any invoice or bill.
132(1)(d)	Whoever collects any amount as tax but fails to pay the same beyond the period of 3 months from the due date.
132(1)(i)	Prosecution where tax evaded exceeds Rs. 500 lakhs. Imprisonment upto 5 years with fine.
132(1)(ii)	Prosecution where tax evaded exceeds Rs. 200 lakhs. Imprisonment upto 3 years with fine.
132(1)(iii)	Prosecution where tax evaded exceeds Rs. 100 lakhs, in the case of an offence specified in clause (b).

provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.

(4) Nothing contained in this section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation : For the purposes of this section, -

(i) "company" means a body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

ANALYTICAL VIEW OF THE TOPIC

This section states that where an offence is committed by companies, every person/director/manager/secretary or any other officer who at the time of commitment of the offence, 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 such offence and proceeded against and punished accordingly.

Where such offences are committed by the person being Partnership Firm, LLP, HUF or trust, AOP or BOI, then, the partner or Karta or Managing Trustee (as the case may be) shall be deemed to be guilty and liable to be proceeded against and punished.

Further if the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

23.15 Sec. 138 : Compounding of Offences

1. As per the provisions of Section 138(1), Any offence may be compounded by the **Commissioner**, **either before or after the institution of prosecution**, upon payment of such compounding amount in such manner as may be prescribed, by the person accused of the offence, to the Central Government or the State Government, as the case be.

   However, the compounding of offence is **not permissible** in case of the following offences:

   (a) ***a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132; [as amended by Finance Act, 2023, w.e.f. 01.10.2023]***

   (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 Rs. 1 crore;***~~ ***[Omitted by Finance Act, 2023, w.e.f. 01.10.2023]***

   (c) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132; [as substituted by Finance Act, 2023, w.e.f. 01.10.2023]

   (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 clause (g) or clause (j) or clause (k) of sub-section (1) of section 132;***~~ ***[Omitted by Finance Act, 2023, w.e.f. 01.10.2023]*** and

   (f) any other class of persons or offences as may be prescribed.

   Further, any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law.

   Furthermore, compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

2. The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ***25% of the tax involved and the maximum amount not being more than 100% of the tax involved [as amended by Finance Act, 2023, w.e.f. 01.10.2023].***

   As per Rule 162(3A), the Commissioner shall determine the compounding amount as per the Table below:-

Sl.	Offence	Compounding amount if offence	Compounding amount if offence

		is punishable u/s 132(1)(i)	is punishable u/s 132(1)(ii)
1.	*Section 132(1)(a)*	*Minimum 50% and Maximum 75% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.*	*Minimum 40% and Maximum 60% of the amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.*
2.	*Section 132(1)(c)*		
3.	*Section 132(1)(d)*		
4.	*Section 132(1)(e)*		
5.	*Section 132(1)(f)*	*Amount equivalent to 25% of tax evaded.*	*Amount equivalent to 25% of tax evaded.*
6.	*Section 132(1)(h)*		
7.	*Section 132(1)(i)*		
8.	*Attempt to commit the offences or abets the commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and (i) of Sec. 132(1)*	*Amount equivalent to 25% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.*	*Amount equivalent to 25% of such amount of tax evaded or the amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.*

However, where the offence committed by the person falls under more than one category specified in the Table above, the compounding amount, in such case, shall be the amount determined for the offence for which higher compounding amount has been prescribed.

Further, the applicant shall pay the compounding amount as ordered by the Commissioner within a period of 30 days from the date of the receipt of the compounding order and shall furnish the proof of such payment to him.

3. On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices [Circular No. 171/03/2022 - GST, dated 06.07.2022]

A number of cases have come to notice where the registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both (hereinafter referred to as "fake invoices"), in order to enable the recipients of such invoices to avail and utilize input tax credit fraudulently. This circular is issued for clarification on the issues relating to applicability of demand and penalty provisions under the CGST Act, in respect of such transactions involving fake invoices.

S.N.	Issues	Clarification
1.	In case where a registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply" under section 7 of CGST Act and whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74 of CGST Act. Also, whether any penal action can be taken against registered person 'A' in such cases.	Since, there is only been an issuance of tax invoice by the registered person 'A' to registered person 'B' without the underlying supply of goods or services or both, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7 of the CGST Act. As there is **no supply** by 'A' to 'B' in respect of such tax invoice in terms of the provisions of section 7 of CGST Act, **no tax liability arises** against 'A' for the said transaction, and accordingly, no demand and recovery is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act in respect of the same. Besides, **no penal action under** the provisions of **section 73 or section 74** is required to be taken against 'A' in respect of the said transaction. The registered person 'A' shall, however, be liable for **penal action under section 122(1)(ii)** of the CGST Act for issuing tax invoices without actual supply of goods or services or both.
2.	A registered person "A" has issued tax invoice to another registered person "B" without any underlying	Since the registered person 'B' has availed and utilized fraudulent ITC on the basis of the said tax invoice, without receiving the goods or services or both, in **contravention** of the provisions of section

- To require the officer to give evidence before it in relation to matters which cannot be disclosed (covered above in Point (i))

Exceptions to non-disclosure : The following details can be disclosed :

- **Situation 1 – required under other Law:** Statement, return, accounts, documents, evidence, affidavit or deposition, for prosecution under the Indian Penal Code/the Prevention of Corruption Act, 1988/or any other law in force.
- **Situation 2 – for verification purposes:** Particulars which are to be given to the Central/State Government or to any person discharging his functions under this Act, for the purpose of carrying out the object of the Act.
- **Situation 3 – for service of notice / demand:** If such disclosure is necessary for the service of notice or the recovery of demand.
- **Situation 4 - for Civil Court / Tribunal proceeding:** Particulars to be disclosed to a Civil Court.

Note: The disclosure is in relation to any suit or proceeding. In such proceeding, the Government or any authority under the Act is a party. The disclosure relates to any proceeding as per the Act or under any other law authorising any such authority to exercise such powers.

- **Situation 5 – for Audit:** Particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax levied under the Act.
- **Situation 6 – for inquiry on any GST Officer:** Particulars relevant for any inquiry into the conduct of any GST officer, to any person(s) appointed as an inquiry officer under any relevant law.
- **Situation 7 – to levy or realise tax / duty:** Such facts to an officer of the Central /State Government as necessary for the purpose of enabling that Government to levy or realise any tax or duty.
- **Situation 8 – to public servant:** Such particulars, if such disclosure is necessary before a public servant or any statutory authority, due to his or its powers under any law.
- **Situation 9 – to conduct inquiry on professionals:** Such particulars as relevant to any inquiry under the Act conducted into a charge of misconduct against a practicing advocate / cost accountant / a chartered accountant, company secretary / tax practitioner to the authority empowered to take disciplinary action against the members practicing such profession. (i.e. ICAI / ICAI (CWA) / ICSI / Bar Council).
- **Situation 10 – to data entry agency for department:** Disclosures to any agency appointed for the purposes of data entry on any automated system or for operating, upgrading or maintaining any automated system (if such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes).
- **Situation 11 – to Government:** Particulars to an officer of the Central/State Government necessary for any law for the time being in force.
- **Situation 12 – for publication:** Information relating to any class of taxpayers/transactions for publication, if, in the opinion of the Competent authority, it is desirable in the public interest, to publish such information.

24.14A Sec. 158A : Consent based Sharing of Information furnished by Taxable Person [inserted by Finance Act, 2023, w.e.f. 01.10.2023]

(1) The following details furnished by a registered person may be shared by the common portal with such other systems as may be notified by the Government, namely :—

(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;

(b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;

(c) such other details as may be prescribed.

(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of —

(a) *the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and*

(b) *the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient.*

(3) *Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.*

Rule 163 : Consent based sharing of information

(1) *Where a registered person opts to share the information furnished in—*

(a) *FORM GST REG-01 as amended from time to time;*

(b) *return in FORM GSTR-3B for certain tax periods;*

(c) *FORM GSTR-1 for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time,*

with a requesting system referred to in section 158A(1), the requesting system shall obtain the consent of the said registered person for sharing of such information and shall communicate the consent along with the details of the tax periods to the common portal.

(2) *The registered person shall give his consent for sharing of information under clause (c) of sub-rule (1) only after he has obtained the consent of all the recipients, to whom he has issued the invoice, credit notes and debit notes during the said tax periods, for sharing such information with the requesting system and where he provides his consent, the consent of such recipients shall be deemed to have been obtained.*

(3) *The common portal shall communicate the information referred to in sub-rule (1) with the requesting system on receipt from the said system-*

(a) *the consent of the said registered person, and*

(b) *the details of the tax periods or the recipients, as the case may be, in respect of which the information is required.*

Note [NN. 33/2023 – Central Tax, w.e.f. 01.10.2023]:

The Central Government has notified "Account Aggregator" as the systems with which information may be shared by the common portal based on consent u/s 158A of the CGST Act, 2017.

Explanation : For the purpose of this notification, "Account Aggregator" means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the RBI u/s 45JA of the RBI Act, 1934 and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

24.15 Sec. 159 : Publication of Information in Respect of Persons in Certain Cases

Powers to publish details:

(i) The Competent Authority may ensure that the following details are published:

- Names of any person (and)
- Other particulars relating to proceedings or prosecutions under the Act, if related to such person.

(ii) The decision to publish is based on the opinion of the Competent Authority that it is essential or beneficial in the public interest to do so.

(iii) As the provision indicates that the Competent Authority *"can decide to publish in such manner as it thinks fit"*, Competent Authority can decide:

- the category of proceedings/prosecution cases to be published

A

Latest Selected Circulars issued under GST

Clarification on taxability of shares held in a subsidiary company by the holding company [Circular No. 196/08/2023 – GST, dated 17.07.2023]

Issue: *Whether the activity of holding shares by a holding company of the subsidiary company will be treated as a supply of service or not and whether the same will attract GST or not.*

Clarification: *Securities are considered neither goods nor services under GST. Further, securities include 'shares' as per definition of securities. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act.*

It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act.

Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Clarification regarding applicability of GST on certain services [Circular No. 201/13/2023 – GST, dated 01.08.2023]

Issue 1: Whether services supplied by director of a company in his personal or private capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism or not.

Clarification: *It is hereby clarified that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate.*

Issue 2: Whether supply of food or beverages in cinema hall is taxable as restaurant service which attract GST at the rate of 5% or not.

1. *As per Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017, "Restaurant Service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."*
2. *Eating joint is a wide term which includes refreshment or eating stalls/ kiosks/ counters or restaurant at a cinema also.*
3. *The cinema operator may run these refreshment or eating stalls/ kiosks/ counters or restaurant themselves or they may give it on contract to a third party. The customer may like to avail the services supplied by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines etc. which a customer may or may not avail.*
4. *It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:*
    a. *the food or beverages are supplied by way of or as part of a service, and*
    b. *supplied independent of the cinema exhibition service.*

5. *It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.*

Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST [Circular No. 204/16/2023 - GST, dated 27.10.2023]

Issue 1: *Whether the activity of providing personal guarantee by the Director of a company to the bank/ financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not.*

Clarification:

1. *As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per section 7(1)(c) of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration. Accordingly, the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration.*
2. *Rule 28 of CGST Rules prescribes the method for determining the value of the supply of goods or services or both between related parties. In terms of Rule 28 of CGST Rules, the taxable value of such supply of service shall be the open market value of such supply.*
3. *RBI has provided guidelines for obtaining personal guarantee of promoters, directors & other managerial personnel of the borrowing concerns. As per mandate provided by RBI in terms of Para 2.2.9 (C) of RBI's Circular No. RBI/2021-22/121 dated 09.11.2021, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits.*
4. *As such, when no consideration can be paid for the said transaction by the company to the director in any form, directly or indirectly, as per RBI mandate, there is no question of such supply/ transaction having any open market value. Accordingly, the open market value of the said transaction/ supply may be treated as zero and therefore, taxable value of such supply may be treated as zero. In such a scenario, no tax is payable on such supply of service by the director to the company.*
5. *There may, however, be cases where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly. In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.*

Issue 2: *Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/ financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services.*

Clarification:

1. *Where the corporate guarantee is provided by a company to the bank/financial institutions for providing credit facilities to the other company, where both the companies are related, the activity is to be treated as a supply of service between related parties as per provisions of Schedule I of CGST Act, even when made without any consideration.*
2. *Similarly, where the corporate guarantee is provided by a holding company, for its subsidiary company, those two entities also fall under the category of 'related persons'. Hence the activity of providing corporate guarantee by a holding company to the bank/financial institutions for securing credit facilities for its subsidiary company, even when made without any consideration, is also to be treated as a supply of service by holding company to the subsidiary company, being a related person, as per provisions of Schedule I of CGST Act.*

3. *In respect of such supply of services by a person to another related person or by a holding company to a subsidiary company, in form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value will be determined as per rule 28 of CGST Rules.*

4. *Sub-rule (2) has been inserted in rule 28 of CGST Rules, for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee. Accordingly, in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution, the taxable value of such supply of services, will henceforth be determined as per the provisions of the sub-rule (2) of Rule 28 of CGST Rules, irrespective of whether full ITC is available to the recipient of services or not.*

5. *It is clarified that the sub-rule (2) of Rule 28 shall not apply in respect of the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies and the same shall be valued in the manner provided in issue no. 1 above.*

Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period [Circular No. 195/07/2023 - GST, dated 17.07.2023]

1. *As a common trade practice, the original equipment manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement. Clarification is required in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers.*
2. *The matter has been examined and CBIC hereby clarifies as follows:*

S.N.	Issue	Clarification
1	*There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services.* *Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?*	*The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.* *As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period.* *However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.*
2	*Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?*	*In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period.* *Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.*
3	*Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on*	*There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.*

	behalf of the manufacturer?	*In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer.* *However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.*
4	*In the above scenario where the distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?*	*a. There may be cases where the distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.* *b. There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty.* *In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.* *c. There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.*
5	*Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?*	*In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017.* *Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.*
6	*Sometimes companies provide offers of Extended warranty to the customers which can be availed at*	*a. If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the*

	the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	*value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.* *b. However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)*

Clarification regarding taxability of services provided by an office of an organisation in one State to the office of that organisation in another State, both being distinct persons [Circular No. 199/11/2023 – GST, dated 17.07.2023]

1. *Various representations have been received seeking clarification on the taxability of activities performed by an office of an organisation in one State to the office of that organisation in another State, which are regarded as distinct persons u/s 25 of the CGST Act.*

2. *Let us consider a business entity which has Head Office (HO) located in State-1 and a branch offices (BOs) located in other States. The HO procures some input services e.g. security service for the entire organisation from a security agency (third party). HO also provides some other services on their own to branch offices (internally generated services).*

3. *The issues that may arise with regard to taxability of supply of services between distinct persons in terms of sub-section (4) of section 25 of the CGST Act are being clarified in the Table below: -*

S.N.	Issues	Clarification
1.	*Whether HO can avail the ITC in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs, issue tax invoices u/s 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor ('ISD') mechanism for distribution of ITC in respect of common input services procured by them from a third party but attributable to both HO and BOs or exclusively to one or more BOs?*	*It is clarified that in respect of common input services procured by the HO from a third party but attributable to both HO and BOs or exclusively to one or more BOs, HO has an option to distribute ITC in respect of such common input services by following ISD mechanism. However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such ITC by ISD mechanism. HO can also issue tax invoices u/s 31 of CGST Act to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject to the provisions of section 16 and 17 of CGST Act.* *In case, the HO distributes or wishes to distribute ITC to BOs in respect of such common input services through the ISD mechanism, HO is required to get itself registered mandatorily as an ISD in accordance with Section 24(viii) of the CGST Act.* *Further, such distribution of the ITC in respect a common input services procured from a third party can be made by the HO to a BO through ISD mechanism only if the said input services are attributable to the said BO or have actually been provided to the said BO. Similarly, the HO can issue tax invoices u/s 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for or on behalf of a BO, only if the said services have actually been provided to the concerned BOs.*
2.	*In respect of internally generated services, there may be cases where HO is providing certain services to the BOs for*	*The value of supply of services made by a registered person to a distinct person needs to be determined as per rule 28 of CGST Rules. The second proviso to rule 28 of CGST Rules provides*

	which full ITC is available to the concerned BOs. However, HO may not be issuing tax invoice to the concerned BOs with respect to such services, or the HO may not be including the cost of a particular component such as salary cost of employees involved in providing said services while issuing tax invoice to BOs for the services provided by HO to BOs. Whether the HO is mandatorily required to issue invoice to BOs u/s 31 of CGST Act for such internally generated services, and/ or whether the cost of all components including salary cost of HO employees involved in providing the said services has to be included in the computation of value of services provided by HO to BOs when full ITC is available to the concerned BOs.	*that where the recipient is eligible for full ITC, the value declared in the invoice shall be deemed to be the open market value of the goods or services. Accordingly, in respect of supply of services by HO to BOs, the value of the said supply of services declared in the invoice by HO shall be deemed to be open market value of such services, if the recipient BO is eligible for full ITC.* *Accordingly, in cases where full ITC is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.* *Further, in such cases where full ITC is available to the recipient, if HO has not issued a tax invoice to the BO in respect of any particular services being rendered by HO to the said BO, the value of such services may be deemed to be declared as NIL by HO to BO, and may be deemed as open market value in terms of second proviso to rule 28 of CGST Rules.*
3.	*In respect of internally generated services provided by the HO to BOs, in cases where full ITC is not available to the concerned BOs, whether the cost of salary of employees of the HO involved in providing said services to the BOs, is mandatorily required to be included while computing the taxable value of the said supply of services provided by HO to BOs.*	*In respect of internally generated services provided by the HO to BOs, the cost of salary of employees of the HO, involved in providing the said services to the BOs, is not mandatorily required to be included while computing the taxable value of the supply of such services, even in cases where full ITC is not available to the concerned BO.*

Clarification relating to Export of Services – Section 2(6)(iv) of the IGST Act 2017 [Circular No. 202/14/2023 – GST, dated 27.10.2023]

Issue: *Various representations have been received requesting for clarification regarding admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services as per the provisions of clause (6) of section 2 of the IGST Act.*

Clarification:

1. *One of the conditions mentioned in sub-clause (iv) of Section 2(6) of the IGST Act is that the payment for export of service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the RBI.*
2. *In this regard, it is clarified that when the Indian exporters, undertaking export of services, are paid the export proceeds in INR from the Special Rupee Vostro Accounts of correspondent bank(s) of the partner trading country, opened by Authorised Dealer (AD) banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of section 2(6) of the IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars and without prejudice to the permissions / approvals, if any, required under any other law.*

Clarification regarding determination of Place of Supply in various cases [Circular No. 203/15/2023 - GST, dated 27.10.2023]

Matter 1: Place of supply in case of supply of service of transportation of goods, including through mail and courier

Issue: *Sub-section (9) of section 13 of IGST Act has been omitted vide section 162 of Finance Act, 2023 w.e.f. 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation*

of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined as per sub-section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act.

Clarification:

1.1 *Place of supply of services where location of supplier or location of recipient is outside India is determined as per section 13 of the IGST Act. Sub - section (9) of section 13 of IGST Act provided that where one of the supplier of the services or the recipient of services is located outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. The said sub-section has been omitted vide section 162 of Finance Act, 2023 w.e.f. 01.10.2023. It is hereby clarified that after the said amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.*

1.2 *Further, it is also mentioned that the place of supply in case of service of transportation of goods by mail or courier was not covered under the provisions of sub-section (9) of section 13 before the said sub-section was amended/ omitted. Therefore, on the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.*

Matter 2: *Place of supply in case of supply of services in respect of advertising sector*

Issue: *Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers ("vendors") for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:*

Case 1: *There may be a case wherein there is supply (sale) of space or supply (sale)of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?*

Case 2: *There may be another case where the advertising company wants to display its advertisement on hoardings/ billboards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure. In this case, what will be the place of supply of such services provided by the vendor to the advertising company?*

Clarification:

Place of supply in Case 1: *The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co- ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding /structure is located.*

Place of supply in Case 2: *In this case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said*

service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is infact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.

Matter 3: *Place of supply in case of supply of the "co-location services"*

Issue: *Co-location is a data center facility in which a business/company can rent space for its own servers and other Computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.*

A business/company who avails the co-location services primarily seek security and up keep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers.

In this respect, various doubts have been raised as to

i. *whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping /storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub- section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or*

ii. *whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2)of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire*

Clarification:

3.1 *It is clarified that the Co-location services are in the nature of "Hosting and information technology (IT) infrastructure provisioning services" (S.No. 3 of Explanatory notes of SAC- 998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of co-location services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.*

3.2 *In such cases, supply of co-location services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the co-location services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.*

3.3 *However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.*

(iv) in any other manner, whereby the countervailing duty so imposed is rendered ineffective

it may extend the countervailing duty to such other article also from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

(d) Amount of countervailing duty on subsidized articles: The amount of countervailing duty shall not exceed the amount of subsidy paid or bestowed as aforesaid.

(e) Points which merit consideration

(i) This duty is in addition to any other duty chargeable under this Act or any other law for the time being in force.

(ii) Countervailing duty shall not be levied unless it is determined that -

- The subsidy relates to export performance;
- The subsidy relates to the use of domestic goods over imported goods in the export article; or
- The subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

(f) Duration of countervailing duty on subsidized articles: Unless revoked earlier, the duty imposed under this section shall be in force for a period of **5 years** from the date of its imposition.

(g) Extension of period: Central Government may extend the period of such imposition from the date of such extension provided it, ***on consideration of a review***, is of the opinion that such cessation is likely to lead to continuation or recurrence of such subsidization and injury ***[as amended by Finance Act, 2023, retrospectively w.e.f. 01.01.1995]***.

However, the extension can be for a maximum period **upto 5 years**.

If the review is not completed before the expiry of the period of imposition (5 years), then, the duty may continue to remain in force pending the outcome of such review for a further period not exceeding 1 year.

However, if the said duty is revoked temporarily, the period of such revocation shall not exceed 1 year at a time.

(h) Provisional countervailing duty on subsidized articles

(a) When the determination of the amount of subsidy is pending, the Central Government may impose a provisional countervailing duty not exceeding the amount of such subsidy as provisionally estimated by it.

(b) If the final subsidy determined is less than the subsidy provisionally determined, then the Central Government shall reduce such duty and also refund the excess duty collected.

(i) Retrospective imposition of countervailing duty

Conditions to be satisfied: The following conditions should be satisfied for imposition of countervailing duty with retrospective effect.

(a) The injury to domestic industry, which is difficult to repair, is caused by massive imports in a relatively short period, of the articles benefiting from subsidies.

(b) In order to preclude recurrence of such injury, it is necessary to levy countervailing duty retrospectively.

Note: The **retrospective** date from which the duty is payable shall **not be beyond 90 days** from the date of notification.

(j) Applicability of all machinery provisions of Customs Act, 1962: The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(j) As per Section 9AA, where an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty, in excess of the actual margin of dumping, then the Central Government shall reduce such anti-dumping duty and the importer shall be entitled to refund of such excess duty.

Refund of Anti-Dumping Duty (Paid in Excess of Actual Margin of Dumping) Rules, 2012 :

(i) Application to AC/DC of Customs at the port of importation.

(ii) **Time limit - 3 months** from the date of publication of notification or date of judgement, decree, order or direction of authority reducing the anti-dumping duty.

(iii) Deficient claims to be returned within 1 month and deficiency in the application are to be removed within 1 month of receipt of returned deficient claim.

(iv) Refund will be granted within 90 days of the receipt of application, only if incidence of duty is not passed on to others, otherwise amount refundable shall be credited to Consumer Welfare Fund.

[Also read numericals regarding Anti-Dumping Duty given in Valuation chapter for better understanding.]

14. Circumstances where anti-subsidy or anti-dumping duties cannot be levied: [Sec. 9B of CTA]

(i) Duty against subsidy and anti dumping duty do **not exist together.**

(ii) Article imported from the member country of the **World Trade Organisation** or from a country with whom Government of India has a most favoured nation **agreement** unless a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India**.**

(iii) The provisional countervailing and anti-dumping duties shall not be levied on any article imported from specified countries unless **preliminary findings** have been made of subsidy or dumping and **consequent injury** to domestic industry and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation.

(iv) Articles that enjoys exemptions from duties or taxes or refund of duties or taxes when meant for **consumption in the country of origin or exportation.**

(v) Where CG receives an **undertaking from the Government of the exporting country** to eliminate or limit the subsidy or take other measures to revise the price of the article.

(vi) Where CG receives an **undertaking from the exporter** to revise its price or to cease the exports to the area at dumped price.

15. Appeal [Sec. 9C]

(1) An appeal against the ~~order of~~ imposing / reviewing thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal (Appellate Tribunal / CESTAT), in respect of the existence, degree and effect of—

(i) any subsidy or dumping in relation to import of any article; or

(ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.

(2) Every appeal under this section shall be filed **within 90 days** of the date of ***determination or review*** under appeal.

However, the CESTAT may entertain any appeal after the **expiry** of the said period of 90 days, if it is satisfied that the appellant was prevented by **sufficient cause** from filing the appeal in time.

(3) The CESTAT may, after giving the parties to the appeal, an **opportunity of being heard**, pass such orders thereon as it thinks fit, confirming, modifying or annulling the ***determination or review*** appealed against.

Explanation.—For the purposes of this section, "determination" or "review" means the determination or review done in such manner as may be specified in the rules made under sections 8B, 9, 9A and 9B [Sec. 9C, as amended by Finance Act, 2023, retrospectively w.e.f. 01.01.1995].

16. Anti-absorption Review in respect of Anti-Dumping duty or Countervailing duty on subsidised articles [Sec. 9(1B) and Sec. 9A(1B) of CTA]

Goods Exported from India brought back to India

By way of Resale (Sec. 20)

- In this case such goods will be treated at par with other imported goods.
- Liable to pay duty and subject to all conditions to which goods of like kind and value, are liable on the importation thereof.

Otherwise than by way of resale

Not treated as imported goods (Sec. 26)

- If the goods are returned to India within 1 year since export otherwise than by way of resale
- The importer shall be entitled for refund of export duty, if any, paid by him. Refund will be allowed only on an application for refund within 6 months from the import of such goods.

Re-imports are entitled for following concessions as have been notified by the Government:

S.N.	Condition	Importer will be liable to pay customs duties equal to
1.	Goods exported under claim of duty drawback, refund of IGST paid on export goods or under bond without payment of IGST, etc. and re-imported within 3 years (extendable to 5 years) without being re-manufactured/re-processed through melting, recycling or recasting abroad.	The amount of benefit availed when the goods were exported.
1A.	***Goods exported under claim for RoDTEP (Remission of Duties and Taxes on Exported Products) or RoSCTL (Rebate of State and Central Taxes and Levies as notified by the Ministry of Textiles) under Foreign Trade Policy*** and re-imported within 3 years (extendable to 5 years) without being re-manufactured/re-processed through melting, recycling or recasting abroad.	***Amount of RoDTEP or RoSCTL allowed at the time of export. [inserted by NN 46/2023 – Cus, w.e.f. 27.07.2023]***
2.	Goods exported under duty exemption scheme (DEEC / Advance Authorisation / DFIA) or Export Promotion Capital Goods Scheme (EPCG) and re-imported within 1 year (extendable to 2 years) without being re-manufactured/re-processed through melting, recycling or recasting abroad.	Amount of IGST and Compensation Cess leviable at the time and place of importation of goods subject to specified conditions.
3.	Goods exported for repairs abroad and re-imported by the same person within 3 years (extendable to 5 years) without being re-manufactured / re-processed through melting, recycling or recasting abroad. Further, ownership of the goods should also not have changed.	**Duty, tax or cess** leviable on a value = Fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) + Insurance & freight charges, both ways. It is clarified that IGST and Compensation Cess are also leviable along with customs duty on the aforesaid value and the exemption is only from the amount of said duty, tax and cess over and above the amount so calculated.
4.	Goods other than those falling under Sl. No. 1, 2 & 3 above	NIL

However, the concessions covered under Sl. No. 1, 2, 3 & 4 above would not be applicable, if:

- the imported goods had been exported by 100% EOU or a unit in FTZ
- the imported goods had been exported from a public or private warehouse under customs

- Further, as per section 156(2)(b), the CG has power to make rules for providing the due date and the manner of making deferred payment of duties, taxes, cesses or any other charges u/s 47 and 51.
- **Deferred Payment of Import Duty Rules, 2016 read with Circular no. 52/2016 – Customs, dated 15.11.2016:**

  Note: The approved AEO Tier 2/3 or approved Authorised Public Undertakings shall not be required to send any intimation regarding the intent to avail the facility of deferred payment of Customs import duty to the Principal Commissioner/Commissioner, DIC and/or the Principal Commissioner/Commissioner having jurisdiction over the port(s) of clearance.

  Due dates for deferred payment of import duty [Rule 4] : The eligible importer shall pay the duty by the following specified due dates for the following specified period as hereunder:

Sr. No.	Goods corresponding to bill of entry returned for payment from	Due date of payment of duty (excluding holidays)
1.	1st day to 15th day of any month	16th day of that month
2.	16th day till the last day of any month other than march	1st day of the following month
3.	16th day till the 31st day of march	31st march

  However, the Central Government may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date. [Proviso inserted by NN 58/2023 – Customs (N.T.), w.e.f. 03.08.2023]

  Electronic payment of duty [Rule 5] : The eligible importer shall pay the duty electronically. However, the Assistant/ Deputy Commissioner of customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

  Deferred payment not to apply on certain cases [Rule 6] : If there is default in payment of duty by due date more than once in 3 consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

  However, the eligible importer shall be permitted to make the deferred payment if he has-

  1. ***paid the duty for a bill of entry within due date in terms of rule 4; and***
  2. ***paid the differential duty for the same bill of entry along with the interest on account of reassessment within one day (excluding holidays).***

  [Proviso inserted by NN 58/2023 – Customs (N.T.), w.e.f. 03.08.2023]

  Exemption in respect of certain goods [Rule 7] : The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the Bill of Entry.

- **Note :** If the Board is satisfied that it is necessary in the public interest so to do, it may, by order waive the whole or part of any interest payable under this section, after recording the reasons for the same.
- **The following classes of importers shall pay Customs duty electronically :**

  (i) Importers registered under Authorised Economic Operator Programme.

  (ii) Importers paying customs duty of Rs. 10,000/- or more per BOE.

  The dedicated payment gateway set up by the Board is called 'ICEGATE'. [Indian Customs Electronic Commerce / Electronic Data Interchange (EC/EDI) Gateway]

- Proper officer shall pass an order after satisfaction & payment of Duty.
- For Clearances of Goods for Home Consumption "Out of Customs Charge order" is passed.
- When a BOE is **filed for Warehousing,** the warehousing procedure shall be followed.
- If the Goods are not removed **within 30 days** since unloading then **demurrage** becomes payable.

Section 51A : Payments of Duty, Interest, Penalty, etc. Through Electronic Cash Ledger

A new system to leverage payments-automation is enabled in Customs clearance (imports or exports) by way of insertion of section 51A. It provides for advance deposit which would enable payment of duties, taxes, fee, interest, and penalty through electronic cash ledger. This is a welcome measure that will avoid delays in payment of duty or amounts being transferred to CHA towards payment of duty. With this ECL, money can be transferred in advance and appropriated in respect of each demand.

With the use of an authorized mode of payment, persons who regularly make payment of duty, interest and even penalty, if any, are permitted to 'deposit' a certain amount of money. And then when the occasion to make payment arises, they can pay by debit to the balance in this deposit account (electronic cash ledger balance). Person who may be required to regularly make payment are importer, exporter (of dutiable goods) or Customs Brokers.

(1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.

(2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.

(3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.

(4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.

Important Note: ***The CBIC has exempted the deposits pertaining to all classes of persons and all categories of goods, from the provisions of section 51A from 01.06.2022 till ~~29.11.2022~~ 31.03.2023. [NN 47/2022 – Cus (N.T.), dated 31.05.2022, as amended by NN 98/2022 – Cus (N.T.), dated 29.11.2022]***

Specified deposits exempted from provisions of Electronic Cash Ledger [NN. 19/2022 - Cus (N.T.), dated 30.03.2022, NN 99/2022 – Cus (N.T.), dated 29.11.2022, NN 18/2023 – Cus (N.T.), dated 30.03.2023, NN 19/2023 – Cus (N.T.), dated 30.03.2023, NN 30/2023 – Cus (N.T.), dated 26.04.2023, NN 31/2023 – Cus (N.T.), dated 26.04.2023, NN 48/2023 – Cus (N.T.), dated 30.06.2023, NN 49/2023 – Cus (N.T.), dated 30.06.2023, NN 69/2023 – Cus (N.T.), dated 27.09.2023, NN 70/2023 – Cus (N.T.), dated 27.09.2023]

The CBIC has exempted following deposits from all of the provisions of Sec. 51A (i.e. exempted from payment through electronic cash ledger):

(i) deposits with respect to goods imported or exported in customs stations where customs automated system is not in place;

(ii) deposits with respect to goods imported or exported in International Courier Terminals [exempted only till 30.11.2023] (In other words, payments relating to Courier shipments would be required to be done through ECL from 01.12.2023 onwards);

(iii) deposits with respect to accompanied baggage;

(iv) deposits other than those used for making electronic payment of,-

- ***(a) any duty of customs, including cesses and surcharges levied as duties of customs;***
- ***(b) IGST;***
- ***(c) GST Compensation Cess;***
- ***(d) interest, penalty, fees or any other amount payable under the Customs Act, or the Customs Tariff Act, 1975.***

Section 51B : Electronic Duty Credit Ledger

Duty Credit Ledger is a step in the right direction to streamline the processes of availment of export benefits by removing the physical interface and also usher transparency by avoiding fraudulent claims.

always be deemed to have been exempted from whole of the customs duty leviable on such mineral oils and accordingly, notwithstanding anything contained in any judgement, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils shall be maintained or continued in any court, tribunal or other authority.

Sec. 25(8): Notwithstanding the exemption provided under sub-section (7), no refund of duties of customs paid in respect of the mineral oils specified therein shall be made. **[Analysis :** If any person has already paid customs duty in respect of such mineral oils, then he will not be allowed refund of such duty although customs duty has been exempted. It means the benefit of exemption shall be allowed to those, who have not paid customs duty on such mineral oils.] [Sub-sections (7) and (8) of Sec. 25 of Customs Act, 1962, inserted by FA (No. 2), 2014, w.e.f. 6-8-2014.]

5. The exemption notifications are meant for exempting the goods validly imported into India; they are not meant to exempt the smugglers. So, if any goods are smuggled into India, then such goods cannot be regarded as validly "imported goods" under exemption notification. Hence, exemption from duty on such smuggled goods shall not be available. [CC v. M. Ambalal & Co. (2010) (SC)].

   However, it must be noted that the situation would be different if the Customs Tariff Act provides for 'NIL' rate of duty. If that is the case, then, no duty can be charged even on the smuggled goods.

6. **Sec. 25(4A):** Where any conditional exemption is granted, such exemption shall, unless otherwise specified or varied or rescinded, be valid upto 31st day of March falling immediately after 2 years from the date of such grant or variation.

   However, nothing contained in this sub-section shall apply to any such exemption granted to, or in relation to,—

   (a) any multilateral or bilateral trade agreement;

   (b) obligations under international agreements, treaties, conventions or such other obligations including with respect to United Nations agencies, diplomats and international organisations;

   (c) privileges of constitutional authorities;

   (d) schemes under the Foreign Trade Policy;

   (e) the Central Government schemes having validity of more than 2 years;

   (f) re-imports, temporary imports, goods imported as gifts or personal baggage;

   (g) any duty of customs under any law for the time being in force, including IGST leviable u/s 3(7) of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

   [Proviso inserted by Finance Act, 2023, w.e.f. 01.04.2023]

Illustration 1

Smuggled goods were seized from Mr. Das by Customs authorities in Airport on his arrival from Dubai. During adjudication proceedings, he claimed before the adjudicating authority exemption under a Customs Notification applicable for imported goods. Examine whether benefit of exemption notification available for imported goods can be extended to smuggled goods. Answer in two sentences. ***(2 Marks) (Nov. 2017, Q.6 (d)(i))***

Answer

No exemption benefit available. If the smuggled goods and imported goods are treated as the same, there will be no need for two different definitions under the Customs Act, 1962. Since one of the principal functions of the Customs Act is to curb the ills of smuggling in the economy, it will be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods as held in *CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) ELT 487 (SC).*

32.2 Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 [NN. 74/2022 - Customs (N.T.), dated 09.09.2022]

Rule 2 : Application

CHAPTER

34

Ethical Aspects Under GST

34.1 Meaning of Ethics

The Oxford Dictionary defines the term "Ethics" as the moral principle that governs a person's behavior or how an activity is conducted. Ethics provides a framework for distinguishing between right and wrong, guiding decision-making, and determining what is considered morally acceptable in a given context.

Ethics are fundamental to the effective functioning of any taxation system; this also holds true for the Goods and Services Tax (GST) regime in India. Ethical conduct contributes to increased regulatory compliance and reduced tax evasion which in turn leads to increased Government revenue collection. This tax revenue can be used for public welfare and development projects. It also helps in creating a fair, transparent, and trustworthy tax environment and reduces uncertainty that supports economic growth and development. Unethical practices like issuing bogus invoice without underlying supply, wrongful availment of ITC, etc. not only undermine the tax revenues, but also create an uneven playing field for honest taxpayers. Ethical behavior may also reduce tax-related disputes and litigations.

34.2 Role of Chartered Accountant in ensuring Ethics under GST

The professional behaviour of a Chartered Accountant is governed by a set of ethical guidelines and principles - known as Code of Ethics - laid down by the ICAI. Every Chartered Accountant has to abide by this code of ethics. It encourages the Chartered Accountants to be honest, fair, and professional in their working and advocates to follow the rules to ensure that they are doing the right thing for their clients and the public at large.

The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

The Chartered Accountants Act, 1949 prescribes the disciplinary action if a Chartered Accountant is found guilty of any Professional or Other Misconduct (as defined in Schedules to the Chartered Accountants Act). The same have been discussed in detail in Chapter 19 - Professional Ethics & Liabilities of Auditors in Paper 3 - Advanced Auditing, Assurance and Professional Ethics at Final level.

A Chartered Accountant in practice would be deemed to be guilty of professional misconduct under clause (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. Further, as per clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

A Chartered Accountant needs to follow ethical conduct while discharging his professional duties under the Goods and Services Tax (GST) law, namely, compliance functions, furnishing certifications/reports and advisory roles, by adhering to a set of principles and practices that promote integrity, transparency, and compliance.

He should maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on latest applicable positions of GST law. In case of any violation of law in performing the compliance, certifications/reporting and advisory functions, he shall also be liable to applicable penalty and prosecution (in some cases) under GST law.

Chartered Accountants play a crucial role in ensuring GST compliance within their clients' organizations. This involves assisting in the process of obtaining registration, structuring the transactions and conditions stipulated in agreements for making /receiving supply, optimizing tax positions, ensuring the necessary GST compliances including e-way bill, payment of taxes, TDS/TCS compliances, compliances with anti-profiteering provisions and timely filing of periodic returns.

Generally, Chartered Accountants are responsible for ensuring the maintenance of accurate and detailed records of all GST-related transactions. This includes invoices, receipts, and other relevant documents. Such meticulous record-keeping is a legal requirement as well as an ethical duty of the Chartered Accountant.

Another major responsibility of a Chartered Accountant in the realm of GST is to act as a tax advisor to their clients. This entails a comprehensive understanding of the client's business operations and goals.

Chartered Accountants must assess the impact of GST on various aspects of the business, including supply chain, pricing strategies and financial reporting.

A Chartered Accountant, who holds a certificate of practice and who has not been debarred from practice, can also appear on behalf of his client before a GST officer, GST Appellate Authority or GST Appellate Tribunal in connection with any proceedings under GST law, as an authorised representative of the client.

Furthermore, Chartered Accountants play a vital role in the GST ecosystem by providing certifications that affirm compliance with GST laws and regulations. These certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.

They primarily aim at curbing the unethical practices and preventing the leakage of revenue. Thus, it is the duty of every Chartered Accountant to exercise utmost care and due diligence while granting these certifications.

While providing said certification, the Chartered Accountant has to comply with the ethical requirements of the Code of Ethics issued by the ICAI, the relevant applicable requirements of the Standard on Quality Control (SQC - 1), Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

The certifications/reports required to be furnished by a Chartered Accountant under GST law have been explained in detail hereunder:

34.3 Certifications/Reports to be furnished by a Chartered Accountant required under the GST law

1. Certification of the amount of ITC claimed at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-section (1) of section 18 read with rule 40]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax / tax-paying status is available in the following manner :

Section No.	Persons eligible to take credit	Goods entitled to ITC	
		Inputs held in stock/ capital goods	as on
(1)	(2)	(3)	(4)
Section 18(1)(a)	Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock.	The day immediately preceding the date from which he becomes liable to pay tax
Section 18(1)(b)	Person who is not required to register, but obtains voluntary registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration
Section 18(1)(c)	Registered person who ceases to pay composition tax and switches to regular scheme	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme
Section 18(1)(d)	Registered person whose exempt supplies become taxable supplies	Inputs held in stock and inputs contained in semi-finished or	The day immediately preceding the date from

		finished goods held in stock relatable to such exempt supply and capital goods exclusively used for such exempt supply	which such supply becomes taxable

In all the above cases, the registered person has to make an electronic declaration in Form ITC-01 on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi- finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within 30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds Rs. 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant or Cost Accountant.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the amounts declared in the Form GST ITC- 01 have been accurately drawn from the books of accounts and other relevant documents / records of the taxpayer and is claimed as ITC.

2. Certification that the sale, merger, demerger, amalgamation, lease or transfer of business done with a specific provision for the transfer of liabilities [Section 18(3) read with rule 41]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. The registered person should furnish the details of change in constitution in Form ITC - 02 on the common portal. Further, he needs to submit a certificate from practicing Chartered Accountant or Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities.

A Chartered Accountant is required to examine the books of accounts and other relevant documents / records of the taxpayer and to provide a reasonable assurance that the sale, merger, demerger, amalgamation, lease or transfer or business has been done with a specific provision for the transfer of liabilities.

3. Certification that in case of refund claim exceeding Rs. **2 lakh by the applicant, there is no unjust enrichment [Section 54 read with rule 89(2)(m)]**

A certificate in Annexure 2 of Form GST RFD-01 is to be issued by a Chartered accountant or Cost Accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person (i.e., there is no unjust enrichment in the case of the applicant) in a case where the amount of refund claimed exceeds Rs. 2 lakh.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records supporting the refund claim thereby providing a reasonable assurance that the incidence of tax, interest or any other amount claimed as refund, has not been passed on to any other person.

4. Certification of the amount of ITC to be reversed on cancellation of registration or on switching to composition levy/exit from tax- paying status, in respect of inputs for which tax invoices are not available [Section 29(5)/section 18(4) read with rule 44(5)]

Section 29(5) requires reversal of ITC on cancellation of registration of a registered person. Similarly, section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.

ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption/cancellation of registration. The details so furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant or Cost Accountant.

The certification by the Chartered Accountant should be based on meticulous examination of the books of accounts and other relevant documents / records of the taxpayer thereby providing a reasonable assurance as regards the correctness of the quantum of the amount of ITC to be reversed in case where the tax invoices related to the inputs held in stock are not available.

5. Audit report under section 66

Section 66 provides that 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 (of goods and/or services) has not been correctly declared; or
- The credit availed is not within the normal limits,

he may, with the prior approval of the Commissioner, issue a direction to the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner and specified in the said direction.

The Chartered Accountant or Cost Accountant shall submit a report of such audit duly signed and certified by him within the period of 90 days to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

The Assistant Commissioner may extend the said period 90 days by a further period of 90 days −

- On an application made to him in this behalf by the registered person or the Chartered Accountant or Cost Accountant; or
- For any material and sufficient reason.

The expenses of the examination and audit of records including the remuneration of such Chartered Accountant or Cost Accountant, shall be determined and paid by the Commissioner and such determination shall be final. On conclusion of special audit, the registered person shall be informed of the findings of special audit.

Upon the conclusion of special audit under section 66, the registered person is communicated the proposed tax, interest and other liabilities, if any, along with the audit findings and the registered person is called upon to discharge the liabilities.

In case the registered person discharges the liabilities as proposed, no further action is taken. Otherwise, the authorities may initiate the proceedings against the registered person under sections 73 or 74 for determination of the tax liability of the person audited.

A Chartered Accountant must approach the Special Audit with an unbiased and impartial mindset, free from any external influences or conflicts of interest. This ensures that the audit findings are based on factual evidence and professional judgment, rather than personal biases. He should first go through the terms of reference provided by the GST authorities to understand the scope and objectives of the special audit. This document outlines the specific areas and tax periods to be audited. He should conduct a comprehensive review of all relevant documents, including financial statements, invoices, transaction records, and any other documentation provided by the taxpayer. This ensures that the audit findings are based on accurate and reliable information. He should take steps to identify and mitigate any potential conflicts of interest that may arise during the special audit. This includes refraining from engaging in any activities or relationships that could compromise their objectivity or independence. If a conflict of interest does arise, it should be promptly disclosed to the relevant parties.

Apart from the aforesaid specific roles defined in the GST Law for Chartered Accountants, there may be specific scenarios where the attested documents, certificates issued by the Chartered Accountants are relied during the proceedings under GST Law by the tax authorities and also judicial forums, as a general practice while dealing with the GST Law related disputes.

34.4 CASE STUDIES

Case Studies have been incorporated to exemplify some of the ethical considerations that a Chartered Accountant should bear in mind when issuing various certificates/reports under relevant GST provisions as well as while giving GST related advise to the client, ensuring GST compliances at the same time. This is intended to encourage the students to act ethically while discharging any GST related function and abstain themselves from inadvertently indulging in any unethical practices. We have discussed the significant implications that would arise under the GST law in such cases. Students may also refer the relevant provisions of demands and recovery, offences, penalties and prosecution under the GST law for ascertaining the consequences of the unethical practices being followed. Further, a Chartered Accountant in

practice may be deemed to be guilty of the professional misconduct in such cases, primarily under clause (7) /clause (8) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, in such cases.

Case Study 1

Facts of the case

M/s L and Co., a partnership firm with two partners – Mr. X and Mr. Y, is registered under GST in Kolkata, West Bengal. It is engaged in supplying the materials used for construction related activity. Mr. X and Mr. Y are friends and each of them also have their own separate sole proprietorship firms engaged in supplying construction material; these firms are registered under GST. Mr. A is the tax consultant of the firm - M/s L and Co. [Mr. A is not a Chartered Accountant].

Mr. X gets an offer from a customer - M/s W Pvt. Ltd., (hereinafter referred to as WPL) - to issue some supply related bills to meet the budget allocated to WPL by their management in relation to civil works. Mr. X shall earn a commission of 20% of the value of supply charged in the supply bills accepted by WPL. Mr. X agrees to share 50% of his earnings with Mr. Y for undertaking the above project. M/s L and Co. needs a bank loan for expanding its business operations and the supply bills issued to WPL will inflate the turnover of M/s L and Co. Mr. X and Mr. Y sought advice from their tax consultant Mr. A as to how to execute the above project for the supply bills to be issued to WPL. Based on the guidance provided by Mr. A, it is executed as follows:

- M/s L and Co. shall issue supply related bills for steel, jelly stone and cement for Rs. 280 lakh to Mr. X wherein the delivery site shall be of WPL (Bill to Ship to Model).
- Mr. X shall avail and utilise the input tax credit (ITC) on the bill of Rs. 280 lakh and shall separately enter into a contract with WPL for supply of steel, jelly stone and cement (to be used for construction of foundation of Plant and Machinery) for Rs. 280 lakh. Further, Mr. X, in his individual capacity, shall issue labour work related bills for Rs. 40 lakh for the assembly and erection work relating to construction of foundation of Plant and Machinery undertaken at the site of WPL, without actually providing any service. WPL will avail and utilise the ITC on the bills of Rs. 280 lakh and Rs. 40 lakh used for underlying supply of goods.
- All inventory registers are updated duly by M/s L and Co. without any actual movement/supply of the material and some e-way bills are also generated on behalf of Mr. X for the supplies made to the work site of WPL.

Mr. A assures Mr. X and Mr. Y that:

- Inventory registers are up to date for material movement.
- Compliances pertaining to e-way bill have been taken care of.
- Money shall be duly realised as per the bills issued.

Mr. X approached his friend - Mr. P, a practicing Chartered Accountant, for seeking his help in above arrangement. However, Mr. P makes Mr. X conversant with the following GST implications that may arise in above arrangement :

GST implications

1. **Issue of invoice by M/s L and Co. to Mr. X :** Since there has only been an issuance of tax invoice by the registered person - M/s L and Co. - to registered person 'Mr. X' without the underlying supply of steel, jelly stone and cement, therefore, such an activity does not satisfy the criteria of "supply", as defined under section 7. As there is no supply by M/s L and Co. to Mr. X in respect of such tax invoice in terms of the provisions of section 7, no tax liability arises against M/s L and Co. for the said transaction, and accordingly, no demand and recovery is required to be made against M/s L and Co. under the provisions of section 74 in respect of the same. The registered person - M/s L and Co. - shall, however, be liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1) (ii).
2. **Issue of invoice by Mr. X to WPL :** The registered person - Mr. X has availed and utilized fraudulent ITC on the basis of the tax invoice issued in contravention of the provisions of section 16(2)(b), without receiving the supply of steel, jelly stone and cement. Further, there was no supply of steel, jelly stone and cement and labour work related services by Mr. X to WPL. Thus, in respect of the said transactions, no tax was required to be paid. In these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by Mr. X in such case or tax liability in respect of the said outward transaction by Mr. X to WPL is required to be made from Mr. X under the provisions of

section 74. However, in such cases, Mr. X shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

WPL will be liable for the demand and recovery of the ITC availed and utilised by it, along with penal action under section 74 along with applicable interest under provisions of section 50, for taking/ utilizing ITC without actual receipt of steel, jelly stone and cement and without receiving the assembly and erection services, used for underlying supply of goods. This offence is also punishable with imprisonment for a term which may extend to 3 years and with fine in terms of section 132(1)(ii) subject to specified conditions.

3. **GST implications on Mr. A :** Mr. A who advised for designing the above business practice shall also be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence is also punishable with imprisonment subject to specified conditions.

   Mr. P apprised Mr. X that if any Chartered Accountant advises Mr. X on above arrangement, then he will also be punishable with penalty in terms of the provisions of 122(3) for aiding/abetting the offences specified above and may also be punishable with imprisonment subject to specified conditions. Further, he may also be held guilty of professional misconduct.

Case Study 2

Facts of the case

Doodle LLC is an entity registered in Germany and is engaged in providing online services across multiple countries including India. The service offerings include certain services which are covered within the purview of online information and database access or retrieval services i.e. OIDAR services liable to GST in India. Since Doodle LLC does not have any place of business in India, it appointed one of its employee - Mr. X as its authorized representative for all the purposes in India which includes undertaking GST compliances and also as an authorized signatory for any other regulatory compliances in India [Mr. X is not a Chartered Accountant]. Mr. X is a partner in XYZ & Associates LLP. Post appointment of Mr. X, following chain of events unfolded:

1. Mr. X, being an authorized representative of Doodle LLC, made an application for registration as an OIDAR service provider in India and undertook other GST compliances. Subsequently, Mr. X started filing the monthly GST returns and made payment of applicable GST in India on behalf of Doodle LLC. In lieu of such services, Mr. X was being remunerated a fixed sum on monthly basis as professional fee. The appointment of Mr. X was in his personal capacity and not a professional service contract with his partnership firm - XYZ & Associates LLP. However, for recovery of amount of fixed monthly remuneration from Doodle LLC, the invoices as 'export of services' were issued by Mr. X in the name of his partnership firm. The corresponding refund benefit was claimed by the partnership firm of Mr. X for input tax credit against such export of service invoices.
2. Doodle LLC appointed influencers in India to promote its services in India. The tax invoices of such influencers were received by Mr. X in name of XYZ & Associates LLP and input tax credit was availed by the partnership firm for such services. Said ITC was utilized for further supply of services. However, the actual service recipient in such case was Doodle LLC.
3. Subsequently, Doodle LLC was required to submit certain affidavits and accounting records before the office of the Enforcement Directorate. Being an authorized representative/ signatory of Doodle LLC, Mr. X approached Mr. P, a practicing Chartered Accountant, to prepare the affidavits and accounting records which included critical financial information and data of Doodle LLC. He elaborated the entire arrangement among Doodle LLC, Mr. X and XYZ & Associates LLP to Mr. P. He further requested Mr. P to certify and attest such records, which would be prepared and compiled by Mr. P in capacity of a practicing Chartered Accountant for submission before Enforcement Directorate.

Mr. P apprised Mr. X of the following GST implications :

GST implications

1. **Incorrect issuance of invoice for export of services and claim of refund of input tax credit on the basis of such export of service related invoices**

Mr. X was appointed as authorized representative and signatory of Doodle LLC in his personal capacity to undertake the compliances enumerated under the GST law in India. However, the consideration for such services was received at the behest of invoices issued in the name of his partnership firm. Further, such invoices were issued as 'export of service' invoices and corresponding refund of input tax credit was claimed by the firm of Mr. X. This act of Mr. X along with his firm is punishable as follows:

- Since Mr. X supplied services to Doodle LLC without any invoice, he shall also be liable for the demand and recovery of tax on said supply, along with penal action under section 74. Even if the contention is made that invoice was issued for such services by the firm of Mr. X, the same shall be treated as an incorrect invoice or false invoice as both, Mr. X and XYZ & Associates LLP are separate persons as per GST Law.
- Since both, Mr. X and XYZ & Associates LLP are different persons, the invoice issued by the firm shall be construed as issuance of invoice without supply of services viz. an offence punishable under section 122(1)(ii).
- Incorrect refund was claimed by XYZ & Associates LLP for input tax credit on the basis of incorrect invoice for export of services to Doodle LLC. This is an offence under section 122(1)(viii).
- All the above offences may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

2. Availment of input tax credit without actual receipt of services

XYZ & Associates LLP received invoices from the influencers who were actually providing services to Doodle LLC. Further, the input tax credit related to such invoices was availed by XYZ & Associates LLP in contravention of the provisions of section 16. Accordingly, the input tax credit availed and utilised by XYZ & Associates LLP for further supply of services is incorrect. Thus, XYZ & Associates LLP will be liable for the demand and recovery of the said ITC, along with penal action under section 74 along with interest under section 50 as the actual service recipient was Doodle LLC and not XYZ & Associates LLP.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. GST implications on Mr. X

Mr. X was fully involved in wrongdoings in terms of the business transactions of Doodle LLC in India. Further, he was the authorized representative and signatory of Doodle LLC in India. Mr. X is liable to penalty under section 122(1A) and section 122(3) since he is involved in aiding and abetting the offences committed hereunder at his instance and has also derived monetary benefits from such practices. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant takes up the assignment offered by Mr. X and also attests/certifies the Doodle LLC's accounting records that would be prepared by him, for submission before the Enforcement Directorate in India, he may be held guilty of professional misconduct.

Case Study 3

Facts of the Case :

ABC & Associates LLP (ABC), a firm of Chartered Accountants, was empanelled with the Commissioner of GST for appointment as Special Auditor under section 66. X Ltd., a registered person under GST, was selected by the Office of the Commissioner for special audit under section 66 for a financial year on account of irregularities noticed during scrutiny of returns. ABC was nominated by the Office of the Commissioner for special audit of X Ltd. Assume that the following events unfolded in relation to the appointment and audit procedure:

1. The appointment of special auditor was based on the undertaking furnished by the firm that the partners of the firm or any of their relatives are not directly or indirectly related to the auditee. However, while submitting the declaration in relation to such appointment, if ABC fails to disclose the fact that spouse of one of the partners of ABC is working under full time employment as a Head of Tax Department of the auditee i.e. X Ltd., what will be its implications?

2. Material discrepancies in the valuation of stock transfer to related parties by the auditee were noticed by ABC. If ABC fails to disclose these material discrepancies in the audit report submitted to the Office of Commissioner, what will be its implications?

3. The input tax credit claim by X Ltd. i.e. the auditee, under Form GST ITC- 01, was certified by one of the associate firms of ABC in favour of X Ltd. Such certificate was based on incorrect facts and against the eligibility criteria for input tax credit as per section 18. However, if ABC fails to exercise the due diligence and the certificate is taken on record by ABC as an audit procedure and is relied upon at the time of finalization of audit report and submission of findings, what will be its implications ?

4. ABC receives a consideration of Rs. 5 lakh from X Ltd. in the name of special audit conducted.

GST implications

Following implications may arise in the above cases:

1. **False undertaking submitted before the Office of Commissioner GST and the audit engagement undertaken on the basis of such undertaking**

   The essential terms of the appointment as special auditor included that the partners or any of the relatives of the partners are not directly or indirectly linked to X Ltd. i.e. the auditee. If the spouse of one of the partners of ABC is working as Head of Tax Department of the auditee. Non-disclosure of said fact in the undertaking and other engagement documents and accepting such engagement tantamount to submission of false undertaking by a Chartered Accountant firm to the Government Authorities. Further, a question may be raised about the independence of the audit team considering the fact that spouse of one of the partners of the firm is holding a key position in X Ltd. i.e. the auditee.

2. **Non-reporting of material discrepancies noticed during the audit procedure and reliance upon incorrect certificates and information**

   ABC audit team did not exercise due diligence to ascertain that the input tax credit availed by X Ltd. is not in compliance with the GST provisions. Instead, ABC relied on the certificate issued by its own associate firm which justified the incorrect input tax credit claim by X Ltd. In such a scenario both ABC and the associate firm, which issued the certificate to justify the input tax credit claim, were aiding and abetting X Ltd. in wrongful availment of credit, which is an offence punishable with penalty under 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions. Further, ABC as well as its associate firm may be held guilty of professional misconduct.

3. **Receiving consideration for special audit from the auditee**

   The consideration for special audit under section 66 is payable by the Office of Commissioner and cannot be directly recovered from the auditee. In the present case the receipt of Rs. 5 lakh from the X Ltd., i.e. the auditee by ABC is an offence under GST provisions. The same is liable to penalty under general penalty under section 125 apart from other penal provisions under the GST Law. Further, this will also have an impact on the independence of the auditor – ABC.

Case Study 4

Facts of the Case :

A Ltd. is engaged in the business of manufacturing cotton yarn, wherein cotton is the principal raw material in the manufacturing process. The price of cotton varies depending upon the market conditions and is dependent on various external factors. Mr. X is tax consultant of A Ltd. Mr. X advises A Ltd. on GST compliances [Mr. X is not a Chartered Accountant].

In order to meet expansion related expenditure, A Ltd. sought a term loan and working capital loan from banks. As per the bank, the turnover and profitability criteria of A Ltd. were not meeting the benchmarks of bank for sanction of any loan facility. Accordingly, following actions were undertaken by Mr. X being the tax consultant of A Ltd.:

1. A separate entity i.e. B Ltd. was incorporated and the Directors of A Ltd. were appointed as Directors in B Ltd. This ensured that the control of B Ltd. remains with the Directors of A Ltd. Further, B Ltd. obtained GST registration as a manufacturer of yarn wherein Mr. X assisted B Ltd. in obtaining such GST registration. Mr. X obtained registration providing fake documents for registration.

2. Subsequently, A Ltd. started issuing tax invoices for supply of yarn to B Ltd. However, there was no actual movement of goods by A Ltd. to B Ltd. The tax invoices were issued and the same were reported in the GST returns by A Ltd. Further, B Ltd. availed the input tax credit of all such tax invoices reported by A Ltd. The finished goods related to such tax invoices were sold in the local market by A Ltd. in cash without charging any GST and without issuance of tax invoice.
3. B Ltd. issued tax invoices for provision of certain services to A Ltd. in form of testing of cotton, repairs and maintenance of machinery installed at A Ltd. apart from other services. However, no such services were actually provided by B Ltd. to A Ltd. The input tax credit appearing in the books of B Ltd. (which was availed on the basis of fake yarn invoices) was utilized by B Ltd. at the time of discharging GST liability in relation to the alleged tax invoices issued against provision of services to A Ltd.
4. Further, B Ltd. issued tax invoices for sale of yarn (allegedly purchased from A Ltd.) to other group entities to ensure that the stock of yarn becomes zero in the books of accounts at the year end. The tax invoices were issued at a rate lowered by 90% of the actual tax invoice received from A Ltd. contending that the quality of yarn had deteriorated during the storage.
5. Mr. X was aware of the aforesaid actions of A Ltd. and B Ltd. Further, the GST returns were filed by Mr. X for both the companies.
6. A Ltd. approached Mr. P, a practicing Chartered Accountant to issue relevant certificates to the bank certifying the turnover of A Ltd. and B Ltd. as genuine turnover to ensure that the required loan amount is sanctioned to A Ltd. A Ltd. elaborated the entire arrangement made by it with regard to B Ltd.

Mr. P apprised A Ltd. of the following GST implications that may arise in the given case :

GST implications

1. GST registration of B Ltd. sought on the basis of fake documents

As per section 122(1)(xii), furnishing of false information with regard to registration particulars is an offence liable to penalty under GST Law. Thus, B Ltd is liable to penalty under section 122(1)(xii).

2. Issuance of tax invoice without actual supply of goods or services

Following instances happened wherein there was no actual supply of goods or services, however, tax invoice was issued:

- Fake issuance of tax invoice for supply of yarn by A Ltd. to B Ltd. (Para 2)
- Fake issuance of tax invoice for supply of services by B Ltd. to A Ltd. (Para 3)
- Fake issuance of tax invoice for supply of goods by B Ltd to group entities (Para 4)

The aforesaid actions are liable for penal action under section 122(1)(ii) for issuing tax invoices without actual supply of goods and services. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

3. Fraudulent input tax credit availment

B Ltd. availed fraudulent input tax credit of the goods (yarn) which were not at all received by B Ltd. and the same was used in discharge of the tax liability related to invoices issued without any underlying supply of goods or services.

B Ltd. has availed and utilized fraudulent ITC on the basis of the said tax invoice, in contravention of the provisions of section 16(2)(b), without receiving the supply of goods and accordingly. In this case, there was no supply of by B Ltd. to A Ltd. in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either input tax credit wrongly/ fraudulently availed by B Ltd. in such case or tax liability in respect of the said outward transaction by B Ltd. to A Ltd. is required to be made from B Ltd. under the provisions of section 74. However, in such cases, B Ltd. shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii), for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

4. Incorrect information in GST returns and falsification of books of accounts

The GST returns filed by A Ltd. and B Ltd. were not backed by correct information in terms of supply of goods and services. Knowing that there was no supply of goods or services and input tax credit is not available, the returns were filed by both the companies. The books of accounts and financial records were also falsified in terms of information related to sales and inventory. This act of furnishing incorrect information in GST return and falsifying financial records is an offence under section 122(1)(x). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

5. GST implications on Mr. X

Mr. X, being a consultant of A Ltd., had adequate knowledge of the fraud and wilful misrepresentation of the facts in terms of maintaining the financial records and submission of information in GST returns. In fact, Mr. X himself was filing the GST returns and was aware of the fake invoices and ineligible input tax credit availment by the companies. Mr. X shall be liable to a penalty in terms of the provisions of 122(3) since in the given case, he has aided or abetted the offences specified above. This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.

If a Chartered Accountant undertakes the assignment of issuing relevant certificates to the bank thereby certifying the turnover of A Ltd. and B Ltd., he may be held guilty of professional misconduct. Further, he shall also be liable to a penalty in terms of the provisions of 122(3). This offence may also be punishable with imprisonment and fine under section 132(1) depending on the amount of default involved and subject to specified conditions.