

# GIST OF GST

By - CA Rajkumar



## Gate No. 1

Goods	Services	Neither Goods nor Services
<b>EVERY KIND OF MOVABLE</b> Properties [WHICH CAN BE MOVED AS SUCH without any dismantling from one place to another] eg.: Exercise Machine, Ceiling fan, small Storage tank etc. <b>Including:</b> GROWING Crops & Grass, things attached to OR forming part OF THE Land (eg. Signage, Electricity Pole etc.) <b>ACTIONABLE CLAIM will Also be treated as Goods</b>	<b>ANYTHING OTHER THAN GOODS</b> (i.e. AN ACTIVITY- either Active / Passive i.e. Do something or Not to do something. ie <b>NEGATIVE ACTIVITIES</b> <b>Including:</b> Transaction in money & Securities with Consideration.	<ul style="list-style-type: none"> <li>• Money,</li> <li>• Securities.</li> </ul> Transaction in money & Securities Without Consideration.

## Box 9

### Miscellaneous:

#### INVOICE: and E-way Bill

- TAX INVOICE issued BY TAXABLE PERSON
- Bill of Supply: By Person Availing Composition Scheme.

#### MANNER OF PAYMENT OF GST: -

- By using: E-CASH Ledger & E-Credit Ledger on GST Portal @ Specified Frequency by DUE DATE.

#### REGISTRATION:

- TIME LIMIT: 30 DAYS From: Crossing the limit of Rs. 20 Lakhs / 10 Lakh/40 Lakhs
- However the limit is Not Applicable - For INTER STATE supply of goods / Casual Taxable Person etc.

#### RETURN:

- Outward supply Return [GSTR 1]
- Annual return,
- Periodic Return, [GSTR 3B]
- etc.

#### INPUT TAX CREDIT:

- ITC Availment
- ITC Utilisation

#### RECORDS

#### REFUNDS

## Box 8

Charge	Time of Supply of Services	Time of Supply of Goods
Normal Charge Mechanism (NCM)	Invoice date OR Payment Date [Whichever is Earlier]	Invoice date OR Payment Date [Whichever is Earlier]
Reverse Charge Mechanism (RCM)	Payment Date OR 61st Day from Invoice Date [Whichever is Earlier]	Payment Date OR 31st Day from Invoice Date OR Goods Receiving Date [Whichever is Earliest]

## Box 7

### NCM/RCM

Generally: SUPPLIER Liab to PAY GST to Govt.

In case of Supply of Specified Services / Goods : RCM will be applicable ie Recipient liable to PAY GST eg:

- Goods Transport Agency Service,
- Legal Services by advocate or firm of advocate,
- Sponsorship service,
- Govt. services
- Director's services,
- Insurance Agent's service,
- Etc.

## Box 6

### Computation of GST

Regular Scheme	Composition Scheme
Transaction Value = Assessable Value With Adjustments - I- [Include] Incidental Expenses eg Packing EXPENSES. D- [Exclude]: Cash /Bulk/ year END DISCOUNT etc. I- [Include] interest, Penalty etc O- [Include] Obligation of Supplier paid by Recipient T- [Include] Taxes other than GST and Compensation Cess eg Excise Duty etc S- [Exclude] Government Subsidy	Alternate method to pay taxes for small Taxpayers.

## Gate No. 2

### PART #1 ; Meaning of Supply

All form of supply of Goods/SERVICE such as:

- Sale
- Exchange
- Transfer
- Barter
- License
- Renting
- Lease
- Disposal

Made or to be made IN THE COURSE or furtherance of Business for a consideration

Transactions between club and members with Consideration

Importation of services with Consideration (business/Personnel).

4 specified Activities will be treated as SUPPLY even if it is WITHOUT CONSIDERATION

**For Example:** Transactions in between Related party ie Transaction between family members etc.

**For Example :** Transaction in between principal and Agent.

### PART #2 ; Some Clarification: Supply of GOODS v/s Supply of SERVICE

Movable Property (Goods)		Supply of Goods
Movable Property (Goods)	Sale of Goods	Supply of Goods
	Hire Purchase TRANSACTIONS of Goods	Supply of Goods
	Transfer of RIGHT / RIGHT to use Goods	Supply of SERVICE
Immovable Property	Permanent transfer of Business Assets (Goods)	Supply of GOODS
	Renting / Leasing of Immovable Property	Supply of Service
	Sale of Under Construction Property	Supply of Service
	Sale of Complete / Constructed Property	No Supply

### PAR T #3 NO SUPPLY: [NEW MAGIC OF W/G LIQUOR WALE]

- (i) Non Taxable Territory to Non Taxable Territory
- (ii) Activity by employee to employer
- (iii) services by Court, Tribunals
- (iv) services by Govt. officials like president, prime minister, chief minister, minister, MP, MLC, MLA,
- (v) Mortuary services
- (vi) Actionable claims, other than lottery, betting, gambling.
- (vii) Liquor license
- (viii) Sale of Land. Completed Building

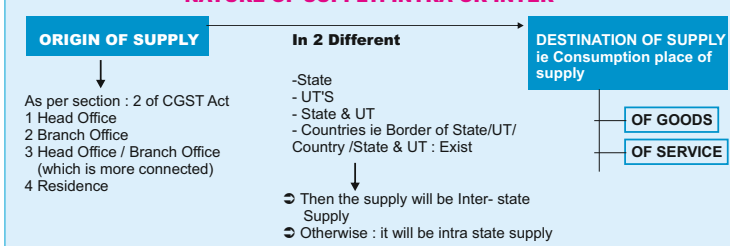
### PART #4 Bundled Supply

[A] Composite supply (NATURAL BUNDLE): shall be treated as a supply of PRINCIPAL SUPPLY;

[B] Mixed supply (Artificial bundled) - shall be treated as supply of that particular supply which attract HIGHEST tax rates.

## Gate No. 3

### NATURE OF SUPPLY: INTRA OR INTER



## Gate No. 4

**BY TAXABLE PERSON:** Any person, who is Registered or required to be Registered ie the Person liable to pay GST.

#### Step 1: No Registration

- # AN Agriculturist exclusively engaged in Agriculture (However corporate agriculturist are Taxable Person)
- # Person making EXCLUSIVE EXEMPTED SUPPLY.
- # Other Person as may be notified eg Supplier in case of RCM.

#### Step 2: Mandatory Registration

- # Inter- state supply of GOODS
- # Casual Taxable Person
- # Non Resident taxable person.

#### Step #3 Registration After Limit

#Aggregate Turnover Exceed the Applicable Limit of Rs 10/20/40 Lakh

## Gate No. 5

### Gate No. 5 100% EXEMPTIONS

**Exempted Services: Total 100 + Services are exempted**  
 #Daan, Dharm, Shiksha, Swasthya, Khel, Sarkaar, Kisaan, Manoranjan,  
 #Goods Transportation, Passenger Transportation, Renting of Immovable Property, Social Activity [P.R.S.]

**Goods: Total 150 Entries- [NOT IN SYLLABUS]:** National flag, Plastic Bangles, Live fish, fresh milk, potato, Grapes, Live bovine animals, Live sheep and goats etc.



# INDIRECT TAXATION

**Compact Book on GST**

**CA. Raj Kumar**

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## About CA RAJ KUMAR

CA Raj Kumar is a dynamic & qualified Chartered Accountant. As a brilliant student and a position holder at Graduation & Post Graduation level, during his **17 years of glorious teaching experience** in the field of Indirect Taxation he has taught **over 1,80,000 students**.

He is a favorite amongst CA Students for the astute & insightful academic inputs provided by him and for his pleasing & endearing personality and **lucid art of teaching**.

He firmly believes in **blending studies with fun** and this is quite evident in his classes wherein he goes beyond theoretical reading of the subject, makes students **solve practical problems**, gives them practical **real life examples** and pushes them to achieve their goals with full precision.

In the subject Indirect Tax Laws, his students have continued to score **AIR #1 for 10 times** and **All India Highest Marks in IDT for 11 times till now**. He has also been entrusted by Government agencies to **show the ropes to IRS Officers** in training, which is a **testament to his caliber** as a subject matter expert.

He is famous for **concepts linkage** from the very beginning till the end which helps in understanding the topic, acing the exams and in post CA life as well. **His unique use of GST portal during the class** to link theory with Practical makes him stand apart from the crowd. His **classes are practical, conceptual and concise**. He is also the author of bestselling titles 'GST Compact Book'.

# Chapter: 1 INTRODUCTION & CONSTITUTION

## What is Tax?:

A compulsory extortion of money, which is made under an Act or Law, to support the nation, is called as Tax.

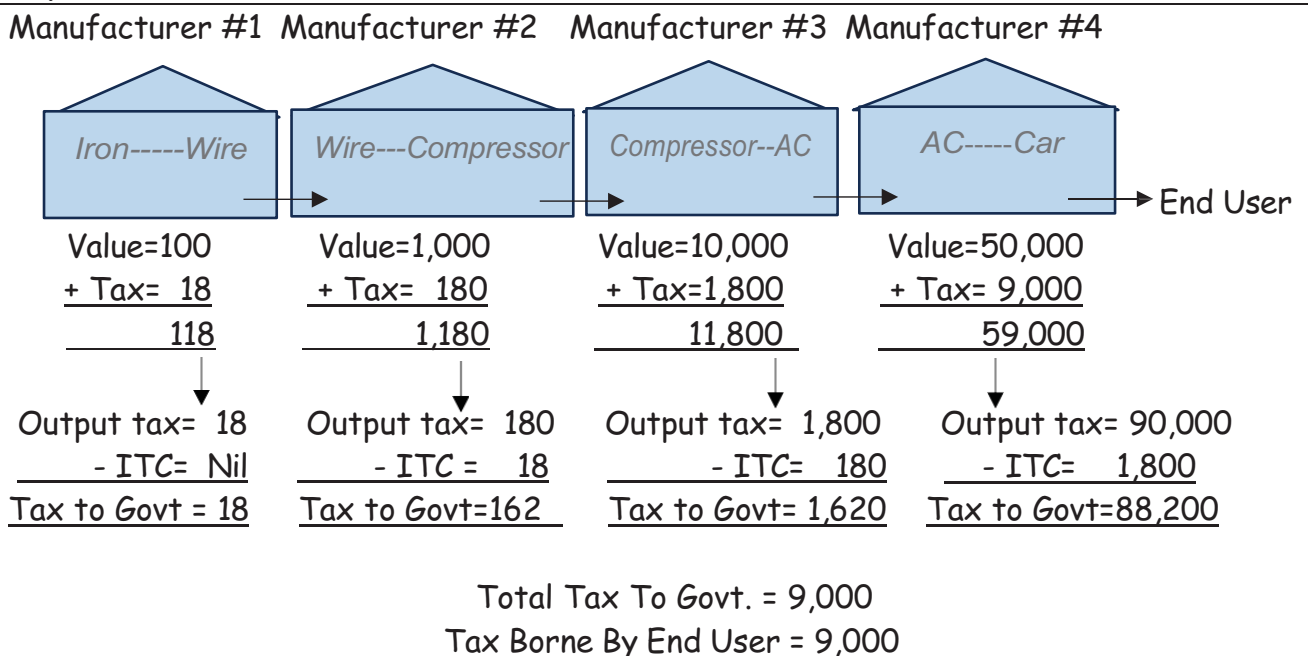
## Type of Tax:

Tax can be divided into two parts- First one is **Direct Tax** and another one is **Indirect Tax**. Where incidence of tax borne by the person on whom it is levied, is called as Direct Tax e.g. Income Tax, & Where the incidence of tax borne by another person i.e. End user, then it will be called as Indirect Tax, e.g. GST.

## Destination Principle:

According to this principle, tax will be levied and collected by that State or Country, where goods or services are consumed.

## Concept of Credit:



## Concept of GST Based On:

- (1) Value Added Tax
- (2) Continuous Chain of Credit
- (3) No Cascading (Tax on Tax)
- (4) Burden of Tax Borne by End User

## Features of Indirect Taxes:

- (I) **Important Source of Revenue:** Indirect Taxes contributes more than 50% of total tax revenue.
- (II) **Tax on Goods and Services.**
- (III) **Shifting of Burden:** Tax paid by supplier is recovered from the recipient and

# Chapter 1: INTRODUCTION & CONSTITUTION

ultimately total tax burden borne by the end user.

**(IV) No Perception of Direct Pinch:** Under Indirect Taxes, most of the time the tax payer paying the same without actually knowing that he is paying tax to Government.

**(V) Inflationary:** Indirect Taxes rate variations directly affect the prices of goods or services.

**(VI) Wider Tax Base:** It affects larger number of peoples as compared to Direct Taxes.

**(VII) Regressive in Nature:** The Indirect Taxes rates are same for rich and poor people.

**(VIII) Promotes Social Welfare:** Under Indirect Taxes, High tax rates imposed on demerit items like- Tobacco, etc. to demotivate these products.

## Difference between Direct and Indirect Taxes:

BASIS	Indirect Taxes (e.g. GST)	Direct Taxes (e.g. Income Tax)
Burden of Tax	Borne by End User	Borne by the person on whom it is levied
Nature	Regressive	Progressive
Tax Base	Wider	Narrow
Annual Collection	More than 20 lakh crores	More than 18 lakh crores
Effect on Inflation	Directly affects inflation	Does not affect Inflation
Effect on person who borne it	If affects End User indirectly	It affects taxpayer directly.

## Introduction Of GST

### Why GST?:

(1) In old taxation system, there are **multiple taxes leading to multiple acts, multiple compliances and multiple tax events**. So, to overcome with these problems, GST has been introduced.

(2) In old taxation system, there was the problem of **cascading (Tax on Tax) and double taxation** (where one thing liable to taxes twice first by treating it as goods and second by treating it as a service). So, to overcome with these problems, Govt. introduced GST.

(3) In old taxation system, Taxpayer was treated as **Manufacturer / Trader / Service provider**. But under GST, Taxpayer is treated as **Supplier** and Buyer is treated as **Recipient**.

### What is GST?:

(1) GST is a tax on **Goods or Services**.

(2) It is levied on "Supply" of Goods or Services.

(3) Supply may be **Intra-State or Inter-State**.

### Intra-State Supply:

Where origin and destination of **supplier** fall **within the same state/UT**, then it will be called as Intra-State.

On Intra-State Supplies, **CGST + SGST/UTGST** will be charged and payable to Central Government, and State Government in **CGST Fund + SGST Fund/ UTGST Fund**.

### Inter-State Supply:

Where origin and destination of supply falls in **2 different States/UTs/Countries**, one in



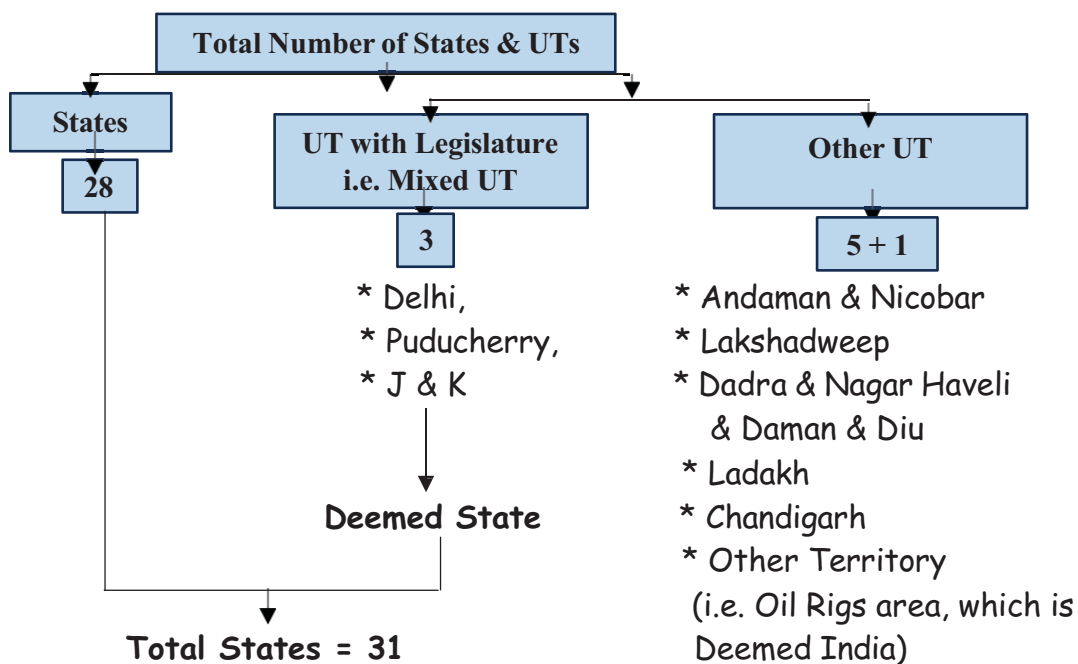
## Chapter 1: INTRODUCTION & CONSTITUTION

State and another in UT (i.e. a border exist in between), than the supply will be Inter-State Supply.

On inter-State supplies, "IGST" will be charged, which is a sum total of CGST + SGST / UTGST and payable to Central Government.

After that Central Government will transfer 50% to CGST Fund and balance 50% to Destination SGST/UTGST Fund.

### Total Number of States & UTs:



### Utilisation of ITC:

ITC shall be utilised in the following sequence:

- |                                                  |                                         |
|--------------------------------------------------|-----------------------------------------|
| (1) Credit of <b>IGST</b> will be utilised for:  | (a) IGST                                |
|                                                  | (b) CGST/S GST (Any Ratio/Any Sequence) |
| (2) Credit of <b>CGST</b> will be utilised for:  | (a) CGST                                |
|                                                  | (b) IGST                                |
| (3) Credit of <b>SGST</b> will be utilised for:  | (a) SGST                                |
|                                                  | (b) IGST                                |
| (4) Credit of <b>UTGST</b> will be utilised for: | (a) UTGST                               |
|                                                  | (b) IGST                                |

# Chapter 1: INTRODUCTION & CONSTITUTION

## Which Taxes Subsumed Or Not To Be Subsumed In GST:

<u>Taxes Subsumed in GST</u>	<u>Taxes Not Subsumed in GST</u>
<p>17 types of taxes have been subsumed in GST, which are as follows:</p> <ul style="list-style-type: none"> <li>• Central Excise Duty</li> <li>• VAT</li> <li>• Central Sales Tax</li> <li>• Entry Tax / Octroi</li> <li>• Service Tax</li> <li>• Tax on Betting, Gambling, Lottery</li> <li>• Etc.</li> </ul>	<p>Taxes which have not been subsumed in GST are as follows:</p> <ul style="list-style-type: none"> <li>• Import Duty (Customs Duty)</li> <li>• Export Duty (Customs Duty)</li> <li>• Electricity Duty</li> <li>• Road Tax &amp; Passenger Tax</li> <li>• Toll Tax</li> <li>• Etc.</li> </ul>

## Old Taxes & New Taxes Applicability:

- \* Alcoholic Liquor for Human Consumption: [State Excise Duty & State VAT]
- \* 5 Petroleum Products: [Central Excise Duty & State VAT]
- \* Tobacco: [Central Excise Duty & GST]
- \* Rest of the Goods and Services: [GST]

## Benefits of GST:

- (1) No multiple taxes, no multiple taxable events & No multiple compliances.
- (2) No Cascading.
- (3) No Double Taxation.
- (4) Uniformity and alignment in provisions of law.
- (5) Increment in Government Revenue.
- (6) Boost to "Make in India" initiative.
- (7) Beneficial for all, viz. Government, Industry & End User.

## Goods and Service Tax Network (GSTN):

- GSTN is a Company, registered under section 8 of the Companies Act, 2013, i.e. **not for profit company**.
- Both the **Governments provide fund** to GSTN.
- GSTN provides **GST Portal** for Government and Taxpayer.
- Following facilities are offered by GSTN, viz registration, filing of returns, payment of GST.
- Distribution of IGST, etc.

## Concept of GSP/ASP:

GSP= GST Suvidha Provider

ASP= Application Service Provider

- Basically, there are some softwares, which helps to **communicate with GST portal** to the small taxpayers, to fulfil various legal compliances, like return filing etc.
- It works on **pull and push mode**, that means raw data is pulled from computer system of taxpayer, and after organising that data, it push organised data to GST Portal.

## Constitution of India:

There are 4 Articles, which are relevant here:

## Chapter 1: INTRODUCTION & CONSTITUTION

- Article No 246A
- Article No 269A
- Article No 366
- Article No 279A

### Article No 246A: Power to make laws:

- For Intra-State Supplies: **Central Government and every State Government** have the simulations/ shared power to make laws.
- For Inter-State Supplies: **Central Government** has exclusive power to make laws, namely IGST Act 2017.
- 5 Petroleum Products: Petroleum Crude., Diesel, Petrol, Natural Gas, Aviation Turbine Fuel (ATF) will be covered under the ambit ~~of~~ **of** GST from the date as recommended by the GST Council.

### Article No 269A: Distribution of IGST:

- IGST will be shared in the ratio of **50-50 between Central Government and State Government**. (In case of UT, at destination balance 50% shall be transferred to UTGST fund rather than SGST fund).
- All **international transactions** will be called as **Inter-State** transactions.

### Article No 366: Definitions:

- GST Means: Tax on goods or services **excluding Alcoholic Liquor for home consumption**.
- Goods: Any kind of **movable** property.
- Services: Anything **other than Goods**.

### Article No 279A: GST Council:

- Any kind of **changes/amendments** in GST is possible on the recommendation of GST Council.
- GST Council consists of-
  - Union Finance Minister
  - Union Minister of State In-charge
  - Finance Minister / Deputy CM
  - Other Ministers of the State,Which decide present and future of GST.
- Process of Decision Making:
  - Representation of any changes before GST Council, in Industry / Department.
  - Voting in GST Council
  - On **75% or more (weighted) favourable voting**, GST Council sent the recommendation to Parliament.
  - Parliament will issue an official notification for the same.
  - Now, the changes will be effective.
  - This change will be effective from the date as mentioned in the notification,

and if no such date mentioned, effective date will be date of issue of notification.

- Calculation of 75% voting (Weighted):

## Chapter 1: INTRODUCTION & CONSTITUTION

Suppose, on a proposal, Central Government is agree and 25 States out of 31 States are also agree then:

**Central Government**

$$\left\{ \frac{1}{1} \times 100 \right\}$$

$$= (100 \% \times 1/3)$$

$$= 33.33\%$$

+

**State Government**

$$\left\{ \frac{25}{31} \times 100 \right\}$$

$$= (80.65\% \times 2/3)$$

$$= 53.77 \%$$

+

**= 87.1% i.e. Proposal Passed.**

**Chapter: 2 Definitions [Section 2]****(1) Actionable Claims:**

- Actionable claim is basically a **contingent asset**.
- Meaning thereby **any kind of Assets** may or may not be received.

Examples: - \* Specified Actionable Claims-

- Betting, Gambling, Lottery
- Online Money Gaming
- Casino, Horse Racing

\* Unsecured Debts

\* Pending Litigations in court.

**Comment:**

Actionable claims are **Goods** and only specified actionable claims are **liable** to GST. Otherwise actionable claims are **not liable** to GST.

**(2) Agent:**

- Means a person, who **works on behalf of another person**.
- Agent can be called with any name like- factor, broker, commission agent, arhatia, Del-Credere Agent or any other agent.

**(3) Principal:**

- A person, **on whose behalf agent works**.

**(4) Aggregate Turnover:**

It means-

- All outward supplies:
  - All outward supply will be the part of Aggregate Turnover. Either it is Intra State or Inter State, Export, fall under NCM or RCM, either exempted, non-taxable or taxable.
  - It means if anything which is not an outward supply, will not be the part of aggregate turnover. Anything which is not a supply, say transfer to job worker: not includible.
- No Inward Supplies:  
Inward supplies (either NCM or RCM) will be the part of aggregate turnover.
- Taxes:
  - GST and Compensation Cess: Not Includible in value.
  - Old taxes like Excise duty, VAT, CST: Includible.
- Clubbing: In calculation of Aggregate Turnover, all premises turnover under the same PAN in All over India will be clubbed.

**(5) Exempt Supply:**

Exempt Supply consists of **3 types** of supplies-

- **100% Exempted Supply** i.e. Exempt by way of Exemption Notification
- **Nil rated supply**

## Chapter 2: DEFINITIONS

	<ul style="list-style-type: none"><li>• <b>Non- Taxable Supplies</b> eg. 5 petroleum products and alcoholic liquor for human consumption.</li></ul>
	<b>Comment: (1) No corresponding ITC is allowed, in case of Exempted supplies.</b>
	<b>Comment: (2) Zero Rated Supplies (Export) is not an exempted supplies and corresponding ITC is allowed in case of Zero Rated Supplies.</b>
(6)	<b><u>Agriculturist:</u></b> Means an <b>Individual or HUF</b> who- <ul style="list-style-type: none"><li>• Actively engaged in cultivation of land <b>by own labour or by the labour of family.</b></li><li>• Passively engaged in cultivation of land <b>by servant on wages or by hired labour</b> under the personal supervision of himself or of any family member.</li></ul>
(7)	<b><u>Family:</u></b> <ul style="list-style-type: none"><li>• <b>Unconditional:</b> Spouse and Childrens always be the part of the family.</li><li>• <b>Conditional:</b> Parents, Grand Parents, Brother and sisters be the part of family, if they are wholly or mainly dependent on the said person.</li></ul>
(8)	<b><u>Authorised Bank:</u></b> Means the bank or branch of the bank, <b>authorised by Government</b> , to collect tax or any other amount under the act.
(9)	<b><u>Board:</u></b> Means- Central Board of Excise and Customs ( <b>CBIC</b> ).
(10)	<b><u>Business:</u></b>
(11)	<b><u>Capital Goods:</u></b> <ul style="list-style-type: none"><li>• Means the <b>Goods</b> which are used or intended to be used in the <b>business or furtherance</b> of Business,</li><li>• And the value of which is capitalised in the book of recipient.</li></ul>
(11A)	<b><u>Inputs:</u></b> <ul style="list-style-type: none"><li>• Means the <b>Goods</b>, which are used or intended to be used in the <b>business or furtherance</b> of business,</li><li>• And which is <b>not covered under the definition of capital goods</b> i.e. revenue expenditure.</li></ul>

## Chapter 2: DEFINITIONS

(11B)	<b><u>Input Services:</u></b>
	<ul style="list-style-type: none"> <li>Means any <b>service</b> which are used or intended to be used in the <b>business or furtherance</b> of the business.</li> </ul>
	<b><u>Comment:</u></b> GST paid on capital goods, input and input service is <b>available as ITC to the recipient.</b>
(12)	<b><u>Casual Taxable Person:</u></b>
	<ul style="list-style-type: none"> <li>Any person who <b>occasionally undertakes transactions</b> of supply of goods or services,</li> <li>In the <b>course or furtherance of business.</b></li> <li>In a <b>State or UT, where he has no fixed place of business.</b></li> </ul>
	<b><u>Comment:</u></b>
	- Registration: 5 Days in Advance
	- Estimated Net GST Payment: 5 Days in Advance
	- Life of registration certificate: 90+90 Days
(13)	<b><u>Non-Resident Taxable Person (NRTP):</u></b>
	<ul style="list-style-type: none"> <li>Any person, who occasionally undertakes transactions of supply of goods or services in the <b>course or furtherance of business</b> in India</li> <li>and he has <b>no fixed place of business or residence</b> in India.</li> </ul>
	<b><u>Comment:</u></b>
	- Registration: 5 Days in Advance
	- Estimated Net GST Payment: 5 Days in Advance
	- Life of registration certificate: 90+90 Days
(14)	<b><u>Common Portal:</u></b>
	<ul style="list-style-type: none"> <li>Common Portal is <b>owned by GSTN.</b></li> <li>GSTN is a <b>company registered under section 8</b> of Companies Act 2013 i.e. <b>not for profit Company.</b></li> <li>Both the <b>Governments provide fund</b> to GSTN.</li> <li>GSTN provides GST Portal to <b>Government and tax payer.</b></li> <li>Following <b>facilities</b> are offered by GSTN, viz. Registration, Filling of returns, Payment of GST, Distribution of IGST, etc.</li> </ul>
(15)	<b><u>Consideration:</u></b>
	<ul style="list-style-type: none"> <li><b>Something in return</b> either in monetary or non-monetary form.</li> <li>For supply of <b>Goods or Services (Active/Passive).</b></li> <li>Will be called as <b>Consideration.</b></li> <li><b>Government subsidy</b> will <b>not</b> be the part of consideration, and</li> <li><b>Security Deposit</b> will also <b>not</b> be the part of consideration. However, when security amount will be <b>adjusted against rent</b> etc., then it will become the part of consideration.</li> </ul>
(15A)	<b><u>Recipient:</u></b>
	<ul style="list-style-type: none"> <li><b><u>In case of paid supplies:</u></b> The person who is <b>liable to pay consideration</b>, will be the Recipient.</li> <li><b><u>In case of Free Supplies:</u></b> The person to <b>whom delivery of goods made or to whom service is rendered</b> will be the recipient.</li> <li>Recipient also <b>includes its agent.</b></li> </ul>
(16)	<b><u>Debit Note/ Supplementary Invoice:</u></b>
	<ul style="list-style-type: none"> <li>Debit Note is a <b>document</b>, which is required to be issued in case where there is <b>under invoicing</b> due to <b>charging lower value of supplies or lower rate of tax</b> etc.</li> </ul>

## Chapter 2: DEFINITIONS

	<ul style="list-style-type: none"> <li>Debit Note enhance the value of main invoice.</li> </ul>
	<ul style="list-style-type: none"> <li>It also enhances the liability of supplier in E-liability register, when supplier submit the debit note in upcoming GSTR-1.</li> </ul>
	<ul style="list-style-type: none"> <li>Debit Note enhance the credit of recipient on showing credit value in GSTR-2B.</li> </ul>
(16A)	<b><u>Credit Note:</u></b>
	<ul style="list-style-type: none"> <li>Credit note is a document, which is required to be issued in case where there is over invoicing, due to charging higher value of supplies or higher rate of tax or under supply of goods or services or in case of sales return of Goods or services.</li> </ul>
	<ul style="list-style-type: none"> <li>Credit note fill that gap.</li> </ul>
	<b><u>Comment:</u></b>
	<ul style="list-style-type: none"> <li>Credit note issued by supplier is only relevant in GST, if it is issued by recipient, then treatment will be there in GST.</li> </ul>
	<ul style="list-style-type: none"> <li>Credit note decreases the value of main invoice.</li> </ul>
	<ul style="list-style-type: none"> <li>It also decreases the liability of supplier in E- liability register, where supplier submit the credit note in upcoming GSTR-1.</li> </ul>
	<ul style="list-style-type: none"> <li>Credit Note decreases the credit of recipient on showing credit value in GSTR-2B.</li> </ul>
(17)	<b><u>E-Liability Register / E-Credit Ledger / E-<sup>CASH</sup>Case Ledger:</u></b>
	<ul style="list-style-type: none"> <li>Where a person get registration on GST Portal, 3 online ledgers are opened by portal for the registered person.</li> </ul>
	<ul style="list-style-type: none"> <li>E- liability register shows the GST and other liability of registered person which is updated on submission of GSTR-1.</li> </ul>
	<ul style="list-style-type: none"> <li>E-Cash Ledger shows the ITC available to the registered person and it is updated on deposit of cash amount by registered person.</li> </ul>
(18)	<b><u>India:</u></b>
	India Means-
	<ul style="list-style-type: none"> <li>Land Mass of India</li> </ul>
	<ul style="list-style-type: none"> <li>Territorial Water of India (which 12 nautical miles from the base line) including bottom and airspace.</li> </ul>
	<ul style="list-style-type: none"> <li>Oil rigs situated in Exclusive Economic Zone or Continental Shelf will be called as Deemed India.</li> </ul>
	<b><u>Comment:</u></b>
	Deemed India area (Oil rigs) will be covered under Other Territory, which means Union Territory.
(19)	<b><u>Inward Supply:</u></b>
	<ul style="list-style-type: none"> <li>Any kind of Supply either free or paid,</li> </ul>
	<ul style="list-style-type: none"> <li>Which is taken by the recipient,</li> </ul>
	<ul style="list-style-type: none"> <li>By way of purchases / acquisition etc.</li> </ul>
	<ul style="list-style-type: none"> <li>Will be called as Inward Supply.</li> </ul>
(20)	<b><u>Input Tax:</u></b>
	<ul style="list-style-type: none"> <li>GST charged or payable on any inward supply.</li> </ul>
	<ul style="list-style-type: none"> <li>Either under forward charge or reverse charge</li> </ul>
	<ul style="list-style-type: none"> <li>Will be called as Input Tax.</li> </ul>
	<ul style="list-style-type: none"> <li>Moreover, IGST charged on Import of Goods by Customs Department, will also be the Input Tax.</li> </ul>
	<ul style="list-style-type: none"> <li>However, tax paid by composite dealer @ 1%, 5%, 6% will not be the Input Tax.</li> </ul>



## Chapter 2: DEFINITIONS

(21)	<b><u>Input Tax Credit:</u></b> Credit of Input Tax will be the Input Tax credit.
(22)	<b><u>Outward Supply:</u></b> <ul style="list-style-type: none"><li>• Supply of Goods or Services provided by supplier,</li><li>• By way of sale, transfer, barter, etc.</li><li>• Either with consideration or without consideration,</li><li>• Made during the course of business or furtherance of business.</li></ul>
(23)	<b><u>Output Tax:</u></b> Tax Chargeable on outward supplies under this Act, will be called as Output Tax. <b><u>Comment:</u></b> Tax payable by recipient on inward supplies under Reverse Charge, will be called as Input Tax for Recipient.
(24)	<b><u>Job Work:</u></b> Any treatment or process undertaken by any person (Job worker), on goods belonging to others will be called as Job work. <b><u>Comment:</u></b> <ul style="list-style-type: none"><li>(a) Transfer of goods to job worker will not be a supply. Moreover, when goods will be returned from job worker premises, it will also not be a supply.</li><li>(b) Goods supplied by owner of goods from the place of job worker, after job work, will be a supply in the hands of owner.</li><li>(c) Activities performed by job worker will be treated on supply of service, and liable to GST, in the hands of job worker [Except agriculture related].</li></ul>
(25)	<b><u>Money:</u></b> The Indian Legal Tender or foreign currency, cheque, promissory note, bill of exchange, draft, pay order, traveller cheque, money order etc, i.e. Market Value and face value is equal. <b><u>Comment:</u></b> Outdated currency is not a money.
(26)	<b><u>Taxable Supply:</u></b> The supply, which fulfil the following 3 conditions- <ul style="list-style-type: none"><li>• There must be Goods/ Services,</li><li>• There Must be a Supply, and</li><li>• It is leviable to GST.</li></ul>
(27)	<b><u>Non-Taxable Supply:</u></b> The supply, which fulfil the following 3 conditions- <ul style="list-style-type: none"><li>• There must be Goods/ Services,</li><li>• There Must be a Supply, and</li><li>• It is not leviable to GST.</li></ul>
(28)	<b><u>Taxable Territory:</u></b> Means the territory, to which provisions of this act apply. For example: For CGST Act = Whole India will be Taxable territory.
(29)	<b><u>Non-Taxable Territory:</u></b> Means the territory, which is outside the taxable territory.

## Chapter 2: DEFINITIONS

	For example: For CGST Act = Any place other than India, will be Non-taxable territory.
(30)	<b><u>State:</u></b> Already discussed in Introduction chapter.
(31)	<b><u>Union Territory:</u></b> Already discussed in Introduction chapter.
(32)	<b><u>Other Territory:</u></b> Means a place, which is not covered in the definition of State/UT. For example: Oil rigs in Exclusive Economic Zone (EEZ).
(33)	<b><u>Person:</u></b> Person includes, the Individual, HUF. Company, Firm, LLP (Limited Liability Partnership), AOP or BOI (whether incorporated or not in India or outside India), Corporation (eg. Life Insurance Corporation), any Body Corporate incorporated outside India, Government Departments, Society, Trust, any other artificial person.
(34)	<b><u>Principal Business Place:</u></b> The place, which is specified in registration certificate as "Principal Business Place" (Eg. Head Office, Corporate Office).
(35)	<b><u>Principal Supply:</u></b> The supply which has "predominant element" in a Composite Supply, will be called as Principal Supply. <b><u>Comment:</u></b> Classification of composite supply goes to Principal Supply.
(36)	<b><u>Quarter:</u></b> A period of consecutive months, which is as follows will be called as a Quarter- <ul style="list-style-type: none"><li>• January + February + March</li><li>• April + May + June</li><li>• July + August + September</li><li>• October + November + December.</li></ul>
(37)	<b><u>Registered Person:</u></b> <ul style="list-style-type: none"><li>• A person, who is registered under GST will be called as Registered person.</li><li>• However, a person who has "UIN" (Unique Identification Number) for claiming refund from Department on inward supplies, eg. Embassy, will not be called as Registered person.</li></ul>
(38)	<b><u>Removal:</u></b> Dispatch of goods by supplier or collection of goods by recipient, will be called as removal.
(39)	<b><u>Return:</u></b> Periodic return (eg. GSTR-3B), Annual return (GSTR-9, 9A), Final return (GSTR-10).
(40)	<b><u>Reverse Charge Mechanism (RCM):</u></b> Where recipient of goods or service liable to pay tax to Government directly, instead of supplier, will be called as RCM.

## Chapter 2: DEFINITIONS

(40A)	<b><u>Supplier:</u></b> <ul style="list-style-type: none"><li>• The person, who is supplying goods or services will be called as Supplier, and</li><li>• An agent, who acts on behalf of supplier will also be called as Supplier.</li><li>• Moreover, organiser of specified actionable claim will be called as Supplier.</li></ul>
(41)	<b><u>Tax Period:</u></b> <p>A period for which return is required to be filed, will be called as a Tax Period.</p>
(42)	<b><u>Turnover in a State:</u></b> <p>Turnover in the state, will be calculated in the same manner as of "Aggregate Turnover". However, Origin Geographical Area will be a State. For Example: Mr. A has a business place in UP &amp; MP.</p> <p style="margin-left: 100px;">Sale from UP premise: UP to UP = 5 Lakhs                                               : UP to HR = 6 Lakhs</p> <p style="margin-left: 100px;">Sale from MP premise: MP to MP = 7 Lakhs                                               : MP to RJ = 8 Lakhs</p>
(43)	<b><u>Valid Return:</u></b> <p>Means a return (say GSTR- 3B) filed along with full repayment of tax as Self assessed by him.</p>
(44)	<b><u>Online Gaming:</u></b> <ul style="list-style-type: none"><li>• Online Money Gaming, and</li><li>• Any other kind of game on Internet.</li></ul> <p><b><u>Comment:</u></b> Online Money Gaming is an Actionable Claim, and hence will be classified as "Goods". However, any other kinds of game on internet will be covered under "Services".</p>
(45)	<b><u>Online Money Gaming:</u></b> <p>An Online Game, where players pay or deposit money or Money's worth (eg. Crypto currency), in the expectation of winning, whether it is legal or not, will be called as Online Money Gaming.</p>
(46)	<b><u>Specified Actionable Claims:</u></b> <ul style="list-style-type: none"><li>• Betting, Gambling, Lottery,</li><li>• Online Money Gaming,</li><li>• Casino, Horse Racing,</li></ul> <p>will be the Specified Actionable Claims.</p>

# ADMINISTRATIVE OF GST

# IV

## Section 3: Officers under this Act

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely:—

- (a) **Principal Chief Commissioners of Central Tax** or Principal Directors General of Central Tax,
- (b) **Chief Commissioners** of Central Tax or Directors General of Central Tax,
- (c) **Principal Commissioners** of Central Tax or Principal Additional Directors General of Central Tax,
- (d) **Commissioners** of Central Tax or Additional Directors General of Central Tax,
- (e) **Additional Commissioners** of Central Tax or Additional Directors of Central Tax,
- (f) **Joint Commissioners** of Central Tax or Joint Directors of Central Tax,
- (g) **Deputy Commissioners** of Central Tax or Deputy Directors of Central Tax,
- (h) **Assistant Commissioners** of Central Tax or Assistant Directors of Central Tax, and
- (i) **Any other class of officers** as it may deem fit:

Provided that the **officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.**

## Section 4: Appointment of Administrative Staff

**CBIC will appoint:** (1) The **Board may, (in addition to the officers** as may be notified by the Government under section 3,) appoint such persons as it may think fit to be the officers under this Act.

**CBIC may delegate the power:** (2) The Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax **below the rank of Assistant Commissioner of central tax for the administration of this Act.**

## Section 5: Internal Cross-Empowerment

**Do Your Own Work:** (1) An officer of central tax **may exercise the powers and discharge the duties conferred or imposed on him** under this Act.

**Internal Cross Empowerment** (2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any OTHER OFFICER of central tax who is subordinate to him.

**Internal Cross Empowerment** (3) The **Commissioner may delegate his powers** to any other officer who is subordinate to him.

**NO Cross Empowerment** (4) An Appellate Authority **SHALL NOT exercise the powers and discharge the duties conferred or imposed on any other officer of central tax**

## Section 6: External Cross-Empowerment

**State / UT officer can work as CGST Officer:** (1) The officers appointed under the SGST Act or the UTGST Act **are authorised to be the proper officers** for the purposes of this Act

**CGST Officer can work as State/UT officer:**(2) (a) Where any proper officer issues an order under this Act, **he shall also issue an order under the SGST Act or the UTGST Act**, as authorised by the SGST Act or the UTGST Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax.

(b) Where a proper officer under the SGST Act or the UTGST Tax Act has initiated any proceedings on a subject matter, **no proceedings shall be initiated by the proper officer under this Act on the same subject matter.**

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act **shall not lie before an officer appointed under the SGST Act or the UTGST Act.**

# INTRODUCTION TO IGST

# V

## Introduction to IGST Act, 2017

<b>PRELIMINARY</b>	
<b>Section 1</b>	: Short title, extent and commencement
<b>Section 2</b>	: Definitions.
<b>ADMINISTRATION</b>	
<b>Section 3</b>	: Appointment of officers.
<b>Section 4</b>	: Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances
<b>LEVY AND COLLECTION OF TAX</b>	
<b>Section 5</b>	: Levy and collection.
<b>Section 6</b>	: Power to grant exemption from tax.
<b>DETERMINATION OF NATURE OF SUPPLY</b>	
<b>Section 7</b>	: Inter-State supply
<b>Section 8</b>	: Intra-State supply.
<b>Section 9</b>	: Supplies in territorial waters.
<b>PLACE OF SUPPLY OF GOODS OR SERVICES OR BOTH</b>	
<b>Section 10</b>	: Place of supply of goods other than supply of goods imported into, or exported from India.
<b>Section 11</b>	: Place of supply of goods imported into, or exported from India.
<b>Section 12</b>	: Place of supply of services where location of supplier and recipient is in India
<b>Section 13</b>	: Place of supply of services where location of supplier or location of recipient is outside India.

<b>Section 14</b>	: Special provision for payment of tax by a supplier of online information and database access or retrieval services
<b>REFUND OF INTEGRATED TAX TO INTERNATIONAL TOURIST</b>	
<b>Section 15</b>	: Refund of integrated tax paid on supply of goods to tourist leaving India.
<b>ZERO RATED SUPPLY</b>	
<b>Section 16</b>	: Zero rated supply.
<b>APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS</b>	
<b>Section 17</b>	: Apportionment of tax and settlement of funds.
<b>Section 18</b>	: Transfer of input tax credit.
<b>Section 19</b>	: Tax wrongfully collected and paid to Central Government or State Government.
<b>MISCELLANEOUS</b>	
<b>Section 20</b>	: Application of provisions of Central Goods and Services Tax Act.
<b>Section 21</b>	: Import of services made on or after the appointed day.
<b>Section 22</b>	: Power to make rules.
<b>Section 23</b>	: Power to make regulations.
<b>Section 24</b>	: Laying of rules, regulations and notifications.
<b>Section 25</b>	: Removal of difficulties.

## 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.

**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 6 months for legitimate non-immigrant purposes.

## Section 16: Zero rated supply

<p style="color: red; font-weight: bold;">What is Zero Rated Supply</p>	<p>(1) <b>“Zero rated supply”</b> means any of the following supplies of goods or services or both, namely:—</p> <p style="margin-left: 40px;">(a) <b>Export</b> of goods or services or both; or</p> <p style="margin-left: 40px;">(b) <b>Supply</b> of goods or services or both, <b>for Authorised Operations</b>, to a Special Economic Zone <b>developer</b> or a Special Economic Zone <b>unit</b>.</p> <p style="text-align: center; background-color: yellow; border: 1px solid black; margin: 10px 0;"><b>Deemed Export: NOTIFICATION No. 48/2017–Central Tax</b></p> <table border="1" style="width: 100%; border-collapse: collapse; margin: 0 auto;"> <thead> <tr style="background-color: yellow;"> <th style="width: 10%; text-align: center;">SN</th> <th style="text-align: center;">Description of supply</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Supply of goods by a registered person against <b>Advance Authorisation</b></td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Supply of capital goods by a registered person against <b>Export Promotion Capital Goods Authorisation</b></td> </tr> <tr> <td style="text-align: center;">3.</td> <td>Supply of goods by a registered person to <b>Export Oriented Unit</b></td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Supply of gold by a bank or Public Sector Undertaking against Advance Authorisation.</td> </tr> </tbody> </table>	SN	Description of supply	1.	Supply of goods by a registered person against <b>Advance Authorisation</b>	2.	Supply of capital goods by a registered person against <b>Export Promotion Capital Goods Authorisation</b>	3.	Supply of goods by a registered person to <b>Export Oriented Unit</b>	4.	Supply of gold by a bank or Public Sector Undertaking against Advance Authorisation.
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4.	Supply of gold by a bank or Public Sector Undertaking against Advance Authorisation.										
<p style="color: red; font-weight: bold;">Input tax credit allowed</p>	<p>(2) <b>Credit of input tax may be availed for making zero-rated supplies, even though that such supply is an exempt supply.</b></p>										
<p style="color: red; font-weight: bold;">Claim refund of ITC or Output tax paid (As the case may be)</p>	<p>(3) <del>A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—</del></p> <p style="background-color: yellow; border: 1px solid black; margin: 5px 0;"><b>Export under Bond /LUT:</b> (a) <del>He may supply goods or services or both under <b>bond or Letter of Undertaking</b>, without payment of IGST and claim refund of unutilised input tax credit; OR</del></p> <p style="background-color: yellow; border: 1px solid black; margin: 5px 0;"><b>Export On Payment of IGST</b> (b) <del>He may supply goods or services or both, on payment of IGST and claim refund of such tax paid on goods or services or both supplied, as per section 54 of the CGST Act or the rules made thereunder.</del></p> <p style="background-color: #90EE90; border: 1px solid black; margin: 5px 0;">(3) A registered person making zero rated supply <b>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</b>, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:</p>										



	<p>Provided that</p> <ul style="list-style-type: none"> <li>■ the <b>registered person making zero rated supply</b> of goods</li> <li>■ shall, in case of <b>non-realisation of sale proceeds</b>,</li> <li>■ be liable to <b>deposit the refund</b> so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act</li> <li>■ within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999.</li> </ul> <p>for receipt of foreign exchange remittances, in such manner as may be prescribed.</p>
Notified Persons	<p>(4) The Government may and subject to such conditions, safeguards and procedures, by notification, specify–</p> <p>(i) <b>A class of persons</b> who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;</p> <p>(ii) <b>A class of goods or services</b> which may be exported on payment of IGST and the supplier of such goods or services may claim the refund of tax so paid.”</p>

**Circular No. 1/1/2017:** It is hereby clarified that provisions of [section 16](#) of the [IGST Act, 2017](#), relating to zero rated supply will also apply on Compensation Cess, wherever applicable.

## Section 17 of IGST Act, 2017: Apportionment of tax and settlement of funds

<p>Apportionment of IGST to CG</p> <p><b>[Where, Finally No ITC TO Receptient, because where ITC is available to Receptient then in Reality NO revenue to Government and accordingly no distribution ]</b></p>	<p>(1) <b>Out of the integrated tax paid to the Central Government,—</b></p> <p>(a) In respect of inter-State supply of goods or services or both <b>to an unregistered person or to a registered person paying tax under section 10</b> of the Central Goods and Services Tax Act;</p> <p>(b) In respect of inter-State supply of goods or services or both <b>where the registered person is not eligible for input tax credit;</b></p> <p>(c) In respect of inter-State supply of goods or services or both made in a financial year to a registered person, <b>where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date</b> for furnishing of annual return for such year in which the supply was made;</p> <p>(d) In respect of import of goods or services or both <b>BY an unregistered person or by a registered person paying tax under section 10</b> of the Central Goods and Services Tax Act;</p> <p>(e) In respect of import of goods or services or both <b>where the registered person is not eligible for input tax credit;</b></p> <p>(f) In respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,</p> <p><b>the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.</b></p>
<p>Apportionment of balance IGST to States/UT(CG)</p>	<p>(2) The <b>balance amount</b> of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the,—</p> <p>(a) State where such supply takes place; and</p> <p>(b) Central Government where such supply takes place in a Union territory:</p>
<p><b>(2A) 50% - 50%</b></p>	<p>The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, be apportioned at the rate of 50% to the Central Government and 50% to the State Governments or the Union territories.</p>

Apportionment of interest, penalty etc. (Same as IGST)	(3) Interest, penalty and compounding amount realised in connection with the tax so apportioned shall be apportioned in the same ratio.
Transfer of FUND to respective GOVT. account after Apportionment	(4) After apportioned the amount shall be transferred to the State tax account of the respective States, in such manner and within such time as may be prescribed.
In case refund of IGST to any person	(5) Any IGST apportioned to a State or, <b>to the Central Government on account of a Union territory</b> , if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory.

**Section 17A: Internal transfer of Funds:** Where any amount has been transferred-

- from the electronic cash ledger ***under this Act***
- to the electronic cash ledger under the ***SGST Act or the UTGST Act,***
- the Government shall transfer to the SGST account or the UTGST account,
- an amount equal to the amount transferred from the electronic cash ledger,
- **in such manner and within such time, as may be prescribed.**

**Crux:** Any amount can be transferred from E-cash Ledger [IGST] to E-cash ledger [SGST/IGST/ UTGST] and *vice versa*.

**Section 18: of IGST Act, 2017 Transfer of input tax credit**

**On utilisation of credit** of IGST availed under this Act

- (a) **For payment of CGST**, then equivalent amount shall be transferred from IGST FUND to CGST FUND.
  
- (b) **For payment of UTGST**, then equivalent amount shall be transferred from IGST FUND to UTST FUND.
  
- (c) **For payment of SGST**, then equivalent amount shall be transferred from IGST FUND to SGST FUND.

## Section 19: Tax wrongfully collected and paid to Central Government or State Government

**Claim Refund Wrongly Paid** (1) A registered person **who has paid integrated tax** on a supply considered by him to be an inter-State supply, **but which is subsequently held [by officer or taxpayer himself] to be an intra-State supply**, shall be granted REFUND of the amount of integrated tax so paid.

**Pay GST that to be paid without interest** (2) A Registered person who has paid central tax and State tax or Union territory tax, as the case may be, **on a transaction considered by him to be an intra-State supply**, but which is subsequently held **[by officer or taxpayer himself]** to be an inter-State supply, **shall not be required to pay any interest** on the amount of integrated tax payable.

## Section 20 of IGST Act, 2017: Application of Provisions of Central Goods and Services Tax Act IN IGST

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

- (i) Scope of **supply**;
- (ii) Composite supply and **mixed supply**;
- (iii) **Time and value** of supply;
- (iv) Input tax **credit**;
- (v) **Registration**;
- (vi) Tax **invoice**, credit and debit notes;
- (vii) Accounts and **records**;
- (viii) **Returns**, other than late fee;
- (ix) **Payment** of tax;
- (x) **Tax deduction at source**;
- (xi) **Collection of tax at source**;
- (xii) **Assessment**;
- (xiii) **Refunds**;
- (xiv) **Audit**;
- (xv) Inspection, **search, seizure and arrest**;
- (xvi) **Demands** and recovery;
- (xvii) Liability to pay in certain cases;

- (xviii) Advance ruling;
- (xix) Appeals and revision;
- (xx) Presumption as to documents;
- (xxi) Offences and penalties;
- (xxii) Job work;
- (xxiii) Electronic commerce;
- (xxiv) Transitional provisions; and
- (xxv) Miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

**shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:**

**TDS% -:** In the case of tax deducted at source, the deductor shall deduct tax **at the rate of 2%** from the payment made or credited to the supplier: **[LINK IT WITH SECTION 51 OF CGST ACT, 2017]**

**TCS% -:** In the 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 taxable supplies:

**A.V. FOR IGST:** For the purposes of this Act, 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:

**PENALTY AMOUNT:** In cases where the penalty is leviable under the Central Goods and Services Tax Act and the **State Goods and Services Tax Act OR the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.**

**Pre Deposit Amount:** Where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be Rs.50 crore and Rs.100 crore respectively.

## Double Amount

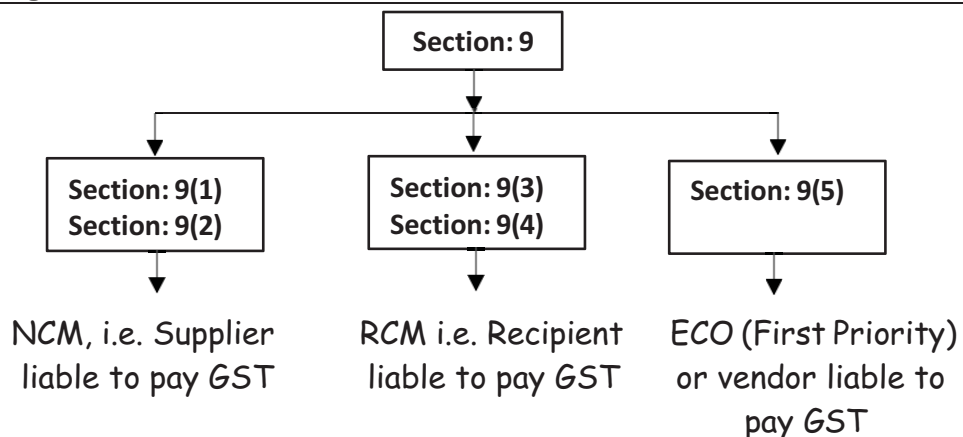
Item	CGST	SGST/UTGST	IGST
TDS (GST)	1 %	1 %	2 %
TCS (GST)	0.5%	0.5%	1 %
<b>Maximum Amount of Pre-deposit</b>			
<b>I Appeal:</b>	<b>Rs. 25cr</b>	<b>Rs. 25cr</b>	<b>Rs. 50 cr</b>
<b>II Appeal</b>	<b>Rs. 50 Cr</b>	<b>Rs. 50 Cr</b>	<b>Rs. 100 Cr</b>
<b>Penalty Amount</b>	<b>Rs. 1</b>	<b>Rs. 1</b>	<b>Rs. 2</b>

# Chapter: 3 Chargeability of GST & Goods / Services

## Section:1 Short Title, Extent, Commencement

- **Name:** CGST Act, 2017
- **Applicable:** to whole of India
- **Effective:** from 1<sup>st</sup> July 2017.

## Section:9 Charging Section



## Section 9(1)(2):

There shall be levied a tax, namely CGST-

- On Intra State
- Supply of
- Goods/ Services (Other than Alcoholic liquor for human consumption)
- On the Assessable value
- At the rate of @20% maximum, and
- Shall be collected on the basis of time of supply
- From the supplier (taxable person).

Note: 5 Petroleum products will be the part of GST from the date notified by GST Council.

## Section 9(3):

- On Notified goods/services (as notified in N/N 13/2017),
- Government has the power to collect GST,
- From recipient.

## Section 9(4):

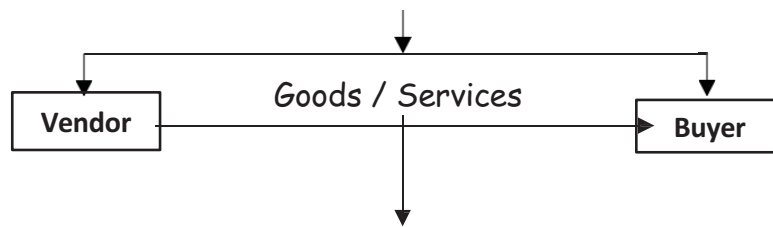
- Where unregistered person engaged in supply of Goods/services to a Registered person,
- And the supply is related to "Construction Sector", eg. Cement Concrete Mixer, Cement, Iron rod, Architect Service, etc.
- Then, Government has the power to collect tax from recipient under RCM.

## Section 9(5):

On following notified services, GST shall be collected from E-Commerce Operator, which is located in India. If not located in India, then he needs to setup a business place in India or to appoint an agent in India

ECO

## Chapter 3: CHARGEABILITY OF GST & GOODS / SERVICES



<u>Particulars</u>	<u>4 Specified Services</u>				
	<u>(H)</u>	<u>(M)</u>	<u>(T1)</u> Radio Taxi etc	<u>(T2)</u> Omnibus	<u>(R)</u>
<u>First Choice:</u> Tax paid by (OR)	ECO	ECO	ECO	ECO	ECO
<u>Second Choice:</u> Tax paid by	Vendor, if T/O in PFY exceeds the Threshold Limit	Vendor, if T/O in PFY exceeds the Threshold Limit	ECO	Vendor, if Vendor is a Company	Vendor, if restaurant is a part of Hotel + Hotel is big i.e. Room rent exceeds Rs. 7,500

### Comment:

Rest of the services and any goods transacted through E-Commerce operator will be controlled by TCS Mechanism (will be discussed in detail in the chapter of TDS/TCS).

### Some Definitions:

Radio Taxi: Having 2way radio communication, and enabled for tracking using GPS/GPRS.

Motor Cab: Maximum seat 7 (Including driver).

Omni Bus: Maximum seat 7 (Including driver).

Maxi Cab: Maximum seat 8 to 13 (Including driver).

Motor Cycle: 2 Wheeler (With or without side car).

### Charging Section:5 of IGST Act

Provisions under this section are same as given under the charging section of CGST Act, subject to following differences-

<u>Basis</u>	<u>Section 9 of CGST Act</u>	<u>Section 5 of IGST Act</u>
<b>Nature of Supply</b>	Intra State	Inter State
<b>Maximum Rate of GST</b>	14%	28%
<b>Special provision for import of goods</b>		<p><b><u>IGST on Import of Goods-</u></b> The IGST on goods imported into India shall be-</p> <ul style="list-style-type: none"> <li>Levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975,</li> <li>On the value as determined under the said act,</li> <li>At the point, when Basic Customs Duty levied on the said goods.</li> </ul>



## Chapter 3: CHARGEABILITY OF GST & GOODS / SERVICES

		However, in case of supply of online money gaming as the goods from outside India to India, IGST shall be levied and collected under section 5 of IGST Act, 2017 i.e. levied and collected by GST Department.
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### GATE: # 1

#### Goods and Services

Definition of Goods/Services is very important as GST is levied on Goods and/or services-

#### Goods:

- Every kind of moveable property will be called as Goods.
- Moreover, things attached to earth or any immovable structure will also be treated as goods e.g. Signage, Growing crops, trees, etc.
- Lastly, Actionable claims, i.e. contingent Assets like lottery/betting/gambling, unsecured debtors will also be treated as Goods.

#### Services:

- Anything other than Goods will be treated as Services.
- Service can be of two types- one is active (do something) and another is passive i.e. (not to do something e.g. non-competence contract).

#### Neither Goods nor Services:

- Money & Securities will neither be treated as Goods nor Services.
- However, Activities related to money or securities for a Consideration, will be treated as service e.g. Forex charges, Demand draft commission, Brokerage, etc.

## Chapter: 4 SUPPLY

There are two sections in this chapter read with schedules. Supply is the taxable event to levy GST i.e. It is the backbone for levying GST.

### Section 7: Defines:

**Part A-** Meaning of Supply [Read with Schedule I]

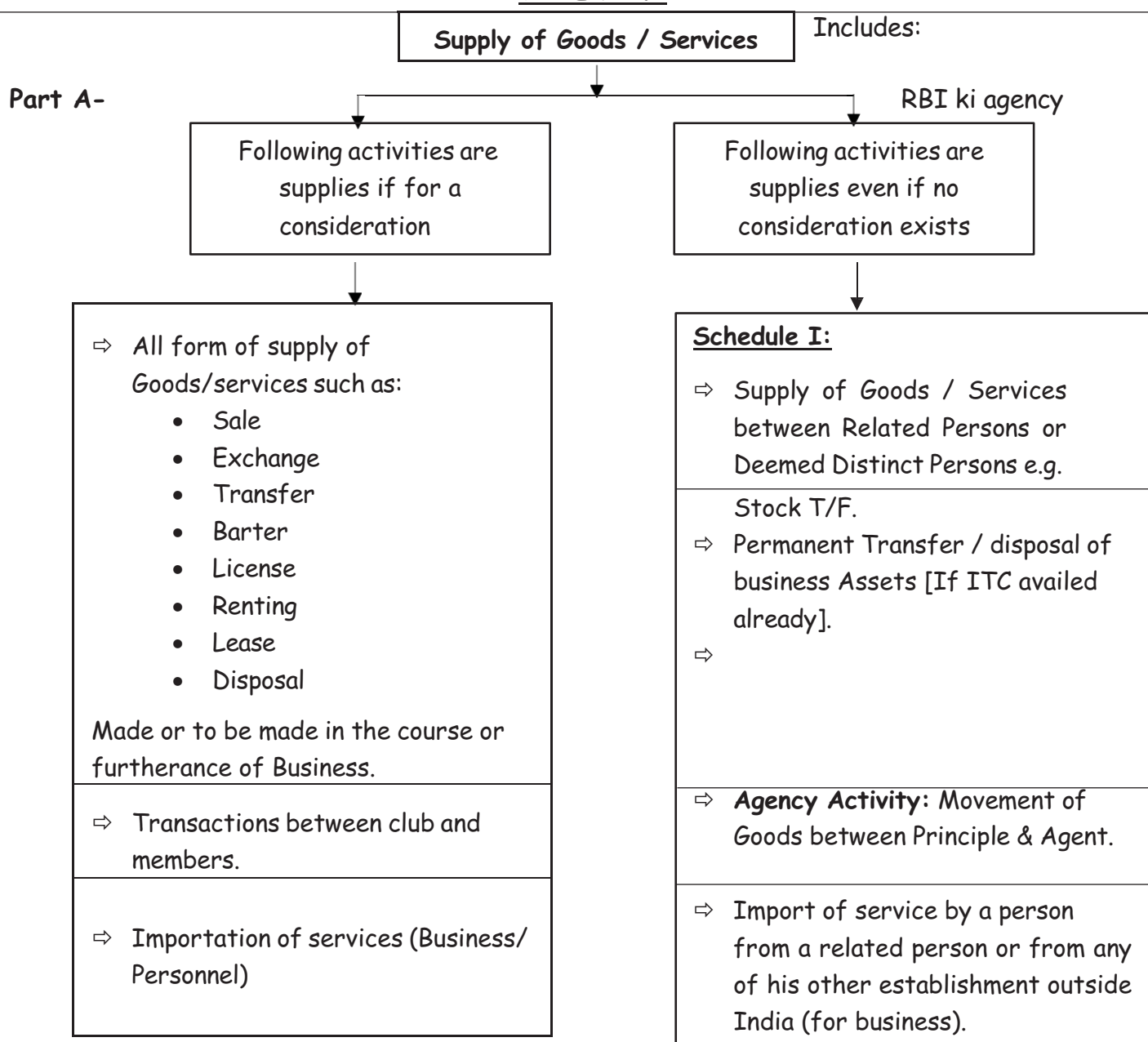
**Part B-** After being Supply- It will be supply of goods or supply of services. Such distinguishment will be discussed as per schedule-II.

**Part C-** Some of the Activities/Transactions will never be treated as supply and consequently not liable to GST as per Schedule III.

### Section 8:

**Part D-** It describes treatment of composite and mix supply treatment.

### GATE NO.2



### Part: B

**Some Clarifications: Supply of Goods v/s Supply of Services: Schedule II**

## Chapter 4: SUPPLY

Movable Property (Goods)	Sale i.e. Ownership T/F or HP Transaction	Supply of Goods
	T/F of Right / Right to use goods	Supply of Services
	Permanent Transfer of Business Assets (Goods)	Supply of Goods
	Closure of business (Business Assets)	Supply of Goods
Immovable Property	Renting / Leasing of Immovable Property	Supply of Services
	Sale of Under Construction Property	Supply of Services
	Sale of Complete / Constructed Property	No Supply
	Temporary Transfer	Supply of Services
	Permanent Transfer	Supply of Goods
	Customised	Supply of Services
	Readymade @ Temporary Transfer	Supply of Services
	Readymade @ Permanent Transfer	Supply of Goods
	Works Contract (Goods + Services), Catering (Goods + Services), Not to do something, Job work	Supply of Services
<b>Part C: Schedule III</b>		
<b>No Supply: [NEW MAGIC OF W/G Liquor Wale]-</b>		
(i) Activity by employee to employer, (ii) Services by Court, Tribunals, (iii) Services by Govt. Officials like president, prime minister, chief minister, minister, MP, MLC MLA, Part time director of Govt. Body, (iv) Mortuary Services, (v) Actionable Claims, other than lottery, betting, gambling, (vi) Sale of land, completed building, (vii) NTT to NTT, (iii) High Seas sale, sale of custom warehoused goods, (ix) Liquor license, (x) Article 243 G/W related.		
<b>Part D:</b>		
<b>Section 8:</b>		
Composite Supply (Natural Bundle): shall be treated as a supply of Principal Supply;		
Mixed Supply (Not Natural Bundle): shall be treated as a supply of that particular supply, which attract Highest tax rates.		

## Chapter 4: SUPPLY

### Section 7(1): Part-A

• For being supply any transaction needs to satisfy A/B/C test i.e. there must be an Activity (e.g. Sale, Barter, Exchange, Renting, Leasing, disposal, licensing, transfer etc.) during the Business or Related to Business for a Consideration which can be in monetary or non-monetary Form.

- THE ACTIVITIES OR TRANSACTIONS, BY A PERSON, OTHER THAN AN INDIVIDUAL, [W.E.F. 01/07/2017]-

- TO ITS MEMBERS OR VICE-VERSA,
- FOR A CONSIDERATION
- SHALL BE TREATED AS A SUPPLY.

#### Explanation:

- THE PERSON AND ITS MEMBERS
- SHALL BE DEEMED TO BE TWO SEPARATE PERSONS AND
- THE SUPPLY OF ACTIVITIES SHALL BE DEEMED
- TO TAKE PLACE FROM ONE SUCH PERSON TO ANOTHER.

- Import of Service If it is for consideration and used for business purpose will also be called as supply. Moreover, if such import of service is used for personal purpose even then it will be called as supply however later on it will be exempted by N/N: 9/2017.

### Schedule I:

Four specified Activity will also be treated as supply even if these are without consideration i.e. FREE OF COST (F.O.C.)-

(i) Permanent Transfer of Business Assets only where ITC has been availed in respect thereof, meaning thereby where ITC has not been availed with respect to that Assets then there will be no supply.

(ii) Transaction between Related persons (e.g. Brother, Sister, Spouse, Employees etc. & in between Deemed distinct persons i.e. Multiple Registration under same PAN, Head office and branch office relationship, branch to branch relationship): Related party transactions will be called as supply even if it is free of COST.

However, gift to employee upto ₹ 50,000 in a financial year shall not be treated as supply.

(iii) Supply between principal & Agent i.e. PRINCIPAL to AGENT or Agent to Principal will be called as supply even there is no consideration. [Note: Here invoicing must be in between principal and agent however invoice is made directly to Customer then that situation will not be covered here.]

(iv) Import of Service from outside India, from a related person, by a PERSON in India for Business purpose will be treated as supply even it is without consideration.

### NOW Need to discuss - Whether the given supply is a "Supply of Goods" or Supply of Service: SCHEDULE II:

#### 1- Goods Related:

Where upon a transaction "Ownership of Goods" is transferred [e.g. Sale] or ownership will be transferred at future date [e.g. Hire Purchase Transaction] then it will be called as supply of goods.

#### 2- Land & Building:

Renting/Leasing etc. of Land & Building i.e. immovable property will be called as supply of service. However, sale of Land & constructed Building will not be treated as supply.

Moreover, sale of under construction property will be treated as supply of service.

## Chapter 4: SUPPLY

<b>3- <u>Job Work:</u></b>
Any Treatment or process done by Job worker by using Goods & service will be called on service i.e. job work service.
<b>4- <u>Transfer of Business Assets:</u></b>
(i) Permanent Transfer of Business Assets, it shall be treated as supply of goods.
(ii) Temporary transfer of Business Assets for non-business purpose then it will be called as supply of service.
(iii) Sale or Succession of Running Business is a supply of service however it is exempted from GST.
(iv) On closure of Business then the Business assets shall be deemed to be supplied as goods to himself.
<b>5- <u>Following shall be treated as supply of services:</u></b>
<ul style="list-style-type: none"><li>• Temporary transfer of Intellectual property right.</li><li>• Customised software.</li><li>• Negative activities/any kind of Deal cancellation.</li><li>• Leasing of assets.</li></ul>
6- Composite supply as works contract shall be called as service i.e. works contract service.
7- Supply of food/drink (Soft Drink) for human consumption shall be treated as supply of service.
<b><u>No Supply: Section 7(2): [NEW MAGIC of W/G Liquor wale]</u></b>
(a) (i) Activities undertaken by CG/SG/LA as specified under Article number 243 G/W of constitution of India (e.g. Land Consolidation, Sanitary, Public Health etc.) shall not be treated as supply hence no GST shall be levied.
(ii) Service By SG By way of Granting Alcoholic Liquor license shall not be treated as supply.
(b) Activities/transaction as specified in Schedule - III which are as follows-
(i) Supply of Goods from NTT [Non-Taxable Territory] to another NTT without entering into India shall not be called as supply.
(ii) Service by employee (including whole time Director) to employer in the course of Employment shall not be called as supply.
(iii) Supply of "Custom Bonded Warehoused" goods to any person before clearance for home consumption from custom Department, Moreover, supply of goods by way of transferring of "ownership Documents" of Goods after the goods have been dispatched from origin port [outside India] But Before clearance for Home Consumption.
(iv) Mortuary services including transportation of deceased person shall not be called as supply.
(v) Actionable claim other than <b>specified actionable claims</b> shall not be treated as supply.
(vi) <u>Government People:</u>
<ul style="list-style-type: none"><li>• Functions performed by MP/MLA/MLC member of municipalities, shall not be called as supply.</li><li>• Duties performed the person having constitutional post (e.g. Prime Minister, Chief Minister etc.) shall not be treated as supply.</li><li>• Duties performed by Part time director of a Government body (e.g. Human Right Commission) shall not be called as supply.</li></ul>
(vii) Sale of Land, constructed property will not be treated as supply.
(viii) Services by ANY court, Tribunal ESTABLISHED Under any law shall not be treated as supply.

## Chapter 4: SUPPLY

### Section 8: Classification of Composite & Mixed Supplies-

- a) Under composite supplies: classification will be based as principal supply i.e. whole bundle will be called/classified by the name of principle supply and according GST Rate of principle supply will be applicable.
- b) Under Mixed supplies: In mixed bundle, principal supply is not identifiable. Hence classification will be based on the supply which has highest Rate of GST i.e. the whole bundle will be called/classified with the name of such supply.

### Various Clarification

#### Question 1:

Whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of or supply of services?

#### Answer:

In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the copyright owner while the paper used for printing belongs to the printer, **supply of printing is the principal supply** and therefore such supplies would constitute supply of service.

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, etc. printed with design, logo etc. supplied by the recipient but made using paper, Box, Card belonging to the printer, here principal supply will be supply of goods, therefore such supplies would constitute supply of goods.

#### Question 2:

What will be status of GST on inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance, between distinct persons?

#### Answer:

Removal of motor vehicle is as a stock transfer [Balance sheet to balance sheet Transfer] then it shall be treated as a supply of goods.

Where removal /movement of motor vehicle is just because of any other reason [where there is no balance sheet to balance sheet transfer] e.g. as a conveyance etc. then it shall never be called as supply.

#### Question 3:

LAB (Linear Alkyl Benzene) manufacturers have stated that they receive superior Kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n-Paraffin (C9-C13 hydrocarbons) from SKO and return back the remaining of SKO to the refinery. In this context, the issue has arisen as to whether in this transaction GST would be levied on SKO sent by IOC for extracting n-paraffin or only on the n-paraffin quantity extracted by the LAB manufactures. Further, doubt have also been raised as to whether the return of remaining Kerosene by LAB manufactures would separately attract GST in such transaction.

#### Answer:

LAB manufacturers generally receive superior kerosene oil [SKO] from a refinery through a dedicated pipeline; on an average about 15 to 17% of the total quantity of SKO received from refinery is retained and balance quantity ranging from 83%-85% is returned back to refinery. The retained SKO is towards extraction of Normal Paraffin, which is used in the manufacturing of LAB. In this transaction consideration is paid by LAB manufactures only on the quantity of retained SKO (n-paraffin).

## Chapter 4: SUPPLY

	In this transaction GST will be payable by the refinery on the value of net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB).
	Accordingly, it is here by clarified that, in aforesaid case, GST will be payable by the refinery only on the net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB). Though, refinery would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person.
	<b><u>Question 4:</u></b>
	Whether retreading of tyres is a supply of goods or services?
	<b><u>Answer:</u></b>
	In retreading of tyres, which is a composite supply [rubber and Retreading], the principal supply is the process of retreading which is a supply of service.
	Supply of re-treaded tyres, where the old tyres belong to the supplier of re-treaded tyres, is a supply of goods.
	<b><u>Question 5:</u></b>
	Is GST leviable on the fee/amount charged in the following situations/cases:
	(1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account.
	(2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.
	<b><u>Answer:</u></b>
	Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services.
	Consumer Disputes Redressal Commissions (National/State/District) may not be tribunals literally. However, they are clothed with the characteristics of a tribunal on account of many reasons. Hence not a supply.
	<b><u>Question 6:</u></b>
	What will be the status of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisation receiving donation or gifts from individual donors.
	<b><u>Answer:</u></b>
	Some examples of cases where there would be no taxable supply are as follows:
	(a) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
	(b) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.
	In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised (i.e. it does not lead any commercial gain) hence no GST will be there.
	<b><u>Question 7:</u></b>
	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.
	<b><u>Answer:</u></b>
	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. It cannot be said that a service is being provided by the holding company to the subsidiary company.

## Chapter 4: SUPPLY

**Question 8:**

Whether supply of food or beverages in cinema hall is taxable as restaurant service or classified with Exhibition of cinematography service?

**Answer:**

Supply of food or beverages in a cinema hall is taxable as 'restaurant service' where it is Supplied independent of the cinema exhibition service.

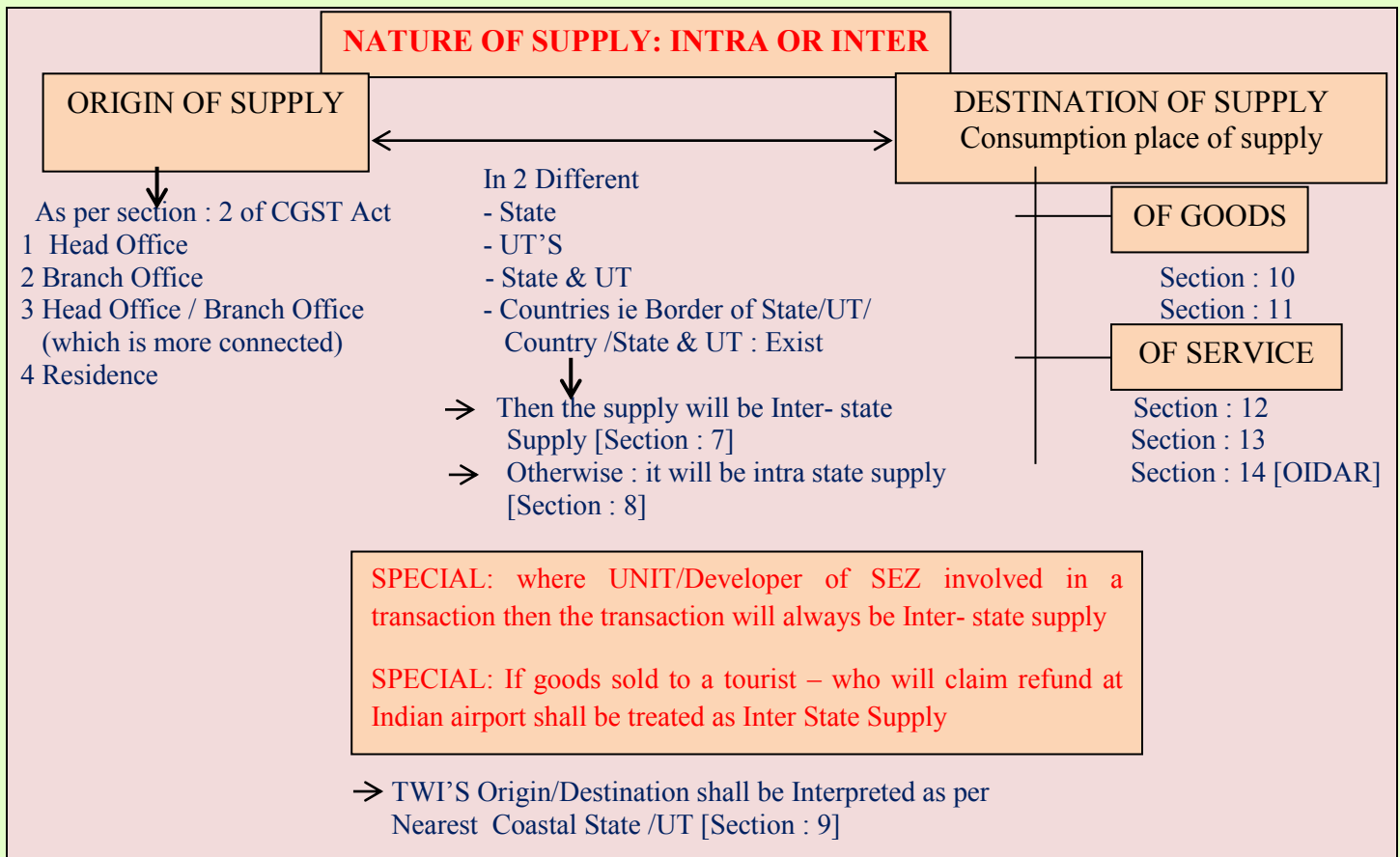
However, where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema.



# PLACE OF SUPPLY

# 3

## NATURE OF SUPPLY: Whether INTER or INTRA



SECTION: 10(1): DOMESTIC TRANSACTION	SECTION: 11: IMPORT/EXPORT
(a) <b><u>Where Movement of Goods Involved</u></b> : Destination will be consumption place/ Delivery Place.	<b>A) <u>In case of Import of Goods</u> : -</b> Destination will be the location of importer.
(b) <b><u>Bill to Ship to Model</u></b> : Destination will be the Location of buyer/ the person who place order.	
(c) <b><u>Where No Movement of Goods Involved</u></b> : Destination will be location of goods. [eg. Sale and Lease Back cases]	<b>B) <u>In Case of Export of Goods</u>: -</b> Destination will be outside India.
(ca) where the supply of goods is made to an un-registered person, the place of supply shall, notwithstanding anything contrary contained in clause (a),(c) be the: <ul style="list-style-type: none"> <li>■ Location as per the address of the said person recorded in the invoice issued in respect of the said supply and</li> <li>■ where the address of the said person is not recorded in the invoice then place of supply be the location of the supplier</li> </ul> <p><i>Explanation:</i> For the purposes of this clause,</p> <ul style="list-style-type: none"> <li>- Recording of the name of the State of the said person in the invoice</li> <li>- shall be deemed to be the recording of the address of the said person.</li> </ul>	
(d) <b><u>In Case of Assembly/Installation</u></b> : Destination of goods will be the Assembly or Installation place.	
(e) <b><u>On Board supply of Goods</u></b> : Destination will be the place where goods are taken on board.	

## Place of supply of Service

Basis	Section 12	Section 13
<b>Applicability</b>	<p><b>(1) When both the parties located in India (State to State ie Tax to UP or HR) (here need to decide in between states)</b></p>	<p><b>(1) When any of the party located outside India (Country to Country ie tax to India or USA) (So drafting thought is different as compare to sec.12)</b></p>
<b>Residuary provision</b> Eg PCA	<p><b>(2) POS = Location of Recipient</b> (if known ie either registered person or address on record exist)  <b>Otherwise it will be location of supplier.</b></p>	<p><b>(2) POS = Location of Recipient</b> (if known in ordinary course of business)  <b>Otherwise it will be location of supplier.</b></p>
<b>Immovable property linked services</b>	<p><b>(3) POS =</b> where immovable property (boat/vessel) located or intended to be located.  If it is outside India then POS will be at recipient's Location.  <i>Note: If immovable property is more than one state the POS proportionately.</i></p>	<p><b>(4) POS =</b> where immovable property located or intended to be located.</p>
<b>Performance based service</b>	<p><b>(4) Individual Related services;</b> Restaurant and catering  <b>Personal Grooming, beauty treatment, Cosmetic and plastic surgery</b>  <b>Fitness, health care</b>  POS= Actual place of performance ..... <b>(5) Services IRT Training and Performance appraisal: (eg GST Training Classes)</b>  B to B = Location of Recipient.  B to C = Actual place of performance</p>	<p><b>(3) Goods related services and Individual related services:</b>  <b>POS = actual place of performance</b> (ie location of goods)  <b>Note: Proviso to Sec 13(3)(a)</b> not applicable on temporary import of goods for repairs or for <b>any other treatment or process</b></p>
<b>Event linked services</b>	<p><b>(6) Event admission services: POS = location of Event</b></p>	<p><b>(5) POS = Location of event.</b></p>

Basis	Section 12	Section 13
	<p>(7) <b>Event Linked Services:</b> POS</p> <p><b>B to B</b> = Location of Recipient.</p> <p><b>B to C</b> = Location of event (<i>but if event is located outside India then POS will be location of Recipient</i>)</p> <p><b>Note:</b> <i>If it is held in more than one state the POS proportionately.</i></p>	
<b>Multiple Location internationally</b>		(6) Service @ multiple location including a location in TT – then POS of whole service will be TT
<b>Multiple Location domestically</b>	<i>If service is held in more than one state/UT the POS proportionately.</i>	<i>(7) POS = to be determined proportionately.</i>
<b>Transportation of Goods</b>	<p>(8) <b>B to B</b> = Location of Recipient.</p> <p><b>B to C</b> = Loading Place</p> <p><b>Note:</b> <i>Where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.</i></p>	<b>(9) POS = Destination of goods</b>
<b>Transportation of Passenger</b>	<p>(9) <b>B to B</b> = Location of Recipient.</p> <p><b>B to C</b> = Boarding Place (<i>if not identified because of journey at future date then Residuary provision shall apply</i>)</p>	(10) <b>POS</b> = Boarding Place
<b>On- Board Services</b>	(10) POS = First Departure point of conveyance	(11) <b>POS</b> = First Departure point of conveyance
<b>Telecommunication Services</b>	(11) <b>POS:</b> Location of Fixed device, Billing address, address of selling agent / Recharge Place, in case of online recharge location of Recipient.	
<b>Specified Services</b>	<p>(12) Services of Banking company</p> <p>Other Financial Services</p> <p>Stock Broker Services</p> <p><b>POS:</b> Location of recipient (if known)</p>	<p>(8). Banking company etc</p> <p>. Intermediary</p> <p>. Hiring of means of transport eg BUS, TRUCK, CAR, YACHT</p>

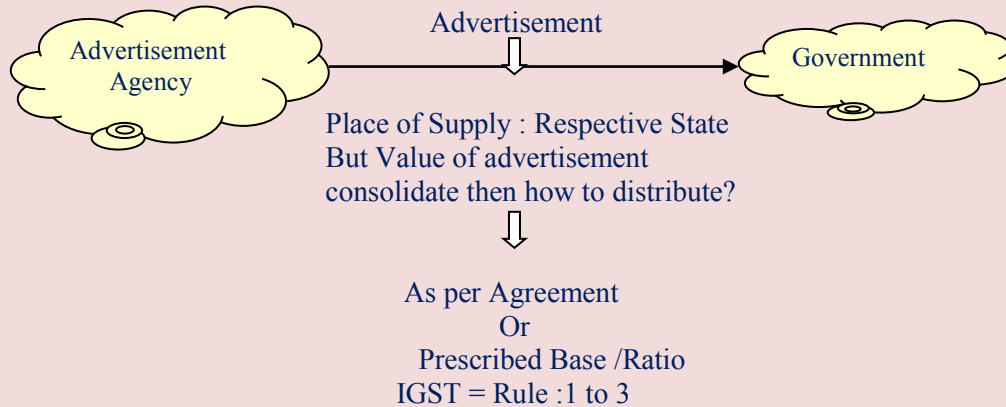
Basis	Section 12	Section 13
	Otherwise - Location of supplier.	. For maximum 1 month Except vessel and Aircraft. <b>POS = Location of Supplier</b>
<b>Insurance service</b>	(13) <b>B to B</b> = Location of Recipient. <b>B to C</b> = location of recipient	-
<b>Advertisement service to Govt.</b>	(14) <b>POS:</b> Proportionate in respective state and UT. [but in which Ratio – see table below]	-
<b>OIDAR</b>	Nothing special is given in section 12 for OIDAR Services so Provisions of Section 12 (2) shall apply.	(12) <b>POS</b> = Location of Recipient.
		(13) <b>POS:</b> In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, ----- The place of supply shall be the place of effective use and enjoyment of a service.

## IGST Rules, 2017

RULE : 1      IGST Rule, 2017

RULE : 2      Applicable    : with respect to Section : 12(14)

RULE : 3 FOR SECTION: 12(14)



ADVERTISEMENT IN ...	ALLOCATION ON THE BASIS OF ...
<b>NEWSPAPER</b>	NUMBER OF READERS
<b>PAMPHLETS</b>	NUMBER OF PAMPHLET DISTRIBUTED
<b>HOARDINGS</b>	NUMBER OF HOARDING PLACED
<b>TRAIN</b>	TRACK LENGTH
<b>RAILWAY TICKETS</b>	NUMBER OF RAILWAY STATIONS
<b>GAS BILL</b>	NUMBER OF CONSUMERS
<b>RADIO</b>	NUMBER OF LISTENERS
<b>TELEVISION</b>	NUMBER OF VIEWERS
<b>INTERNET</b>	NUMBER OF SUBSCRIBER  IN THE CASE OF ADVERTISEMENTS OVER INTERNET THE SERVICE SHALL BE DEEMED TO HAVE BEEN PROVIDED ALL OVER INDIA AND, THE AMOUNT ATTRIBUTABLE TO THE VALUE OF ADVERTISEMENT SERVICE DISSEMINATED IN A STATE OR UNION TERRITORY SHALL BE CALCULATED ON THE BASIS OF THE INTERNET SUBSCRIBERS IN SUCH STATE OR UNION TERRITORY.
<b>CINEMA HALL</b>	NUMBER OF SCREENS

Description of services or circumstances	Place of Supply
Supply of Research and Development services related to pharmaceutical sector by a person located in TT to a person located in the NTT.	<p><b>POS of services</b> = shall be the “Location of the recipient” subject to conditions:-</p> <p>(i) Supply of services from the taxable territory are <b>provided as per a contract</b> between the Supplier (TT) and Receptient located in NTT.</p> <p>(ii) Such supply of services fulfills all other conditions of definition of “<b>export of services</b>”, except –third condition as - “<i>the place of supply of service is outside India</i>”.</p>
In case of Supply of maintenance, repair or overhaul service in respect of aircrafts, <b>ships and other vessels</b> and their engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	<b>The place of supply will be Location of Receptient</b>

**Circular No. 103/22/2019: Clarification regarding determination of place of supply in certain cases**

SN	Issue	Clarification
1	<p>Various services are being provided by the port authorities to its clients in relation to cargo handling.</p> <p>Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.</p> <p>Which provision shall be applicable-Section 12(2)/13(2) or 12(3)?</p>	<p>It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property.</p> <p>Accordingly, the place of supply of such services will be determined as per the provisions contained in <u>Section 12(2)/13(2)</u>.</p>

SN	Issue	Clarification
2	What would be the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?	<p>Place of supply in case of performance based services is to be determined as per the provisions contained in <a href="#">Section 13(3)(a)</a> of the <a href="#">IGST Act</a> and generally the place of services is where the services are actually performed.</p> <p>But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.</p> <p>In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in <a href="#">Section 13(2)</a> of the <a href="#">IGST Act</a>.</p>

## CBIC Circular

### Place of supply in case of supply of service of transportation of goods, including through mail and courier

Q. 1 After deletion of Section 13(9) of IGST Act, doubts have been raised as to whether the place of supply **in case of service of transportation of goods, including through mail and courier**, will be determined under section 13(2), 13(3)?

Ans. The place of supply of services of transportation of goods, **other than through mail and courier**, will be determined under [section 13\(2\)](#) and not as performance based services under [section 13\(3\)](#).

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 [section 13\(9\)](#) 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 [section 13\(2\)](#) of [IGST Act](#).

### Place of supply in case of supply of services in respect of advertising sector

**Q.2** 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:

(i) 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?



(ii) There may be another case where the advertising company wants to display its advertisement on hoardings/ bill boards 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 advertising 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?

Ans. It is clarified that the place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below:

**Place of supply in Case (i):** 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 (ii):** 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 in fact 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](#).

### Place of supply in case of supply of the "co-location services"

**Q.3** 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 upkeep 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 [Section 12\(3\)\(a\)](#) 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 [section 12\(2\)](#) 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 protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc.

**Ans.** 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 colocation 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.

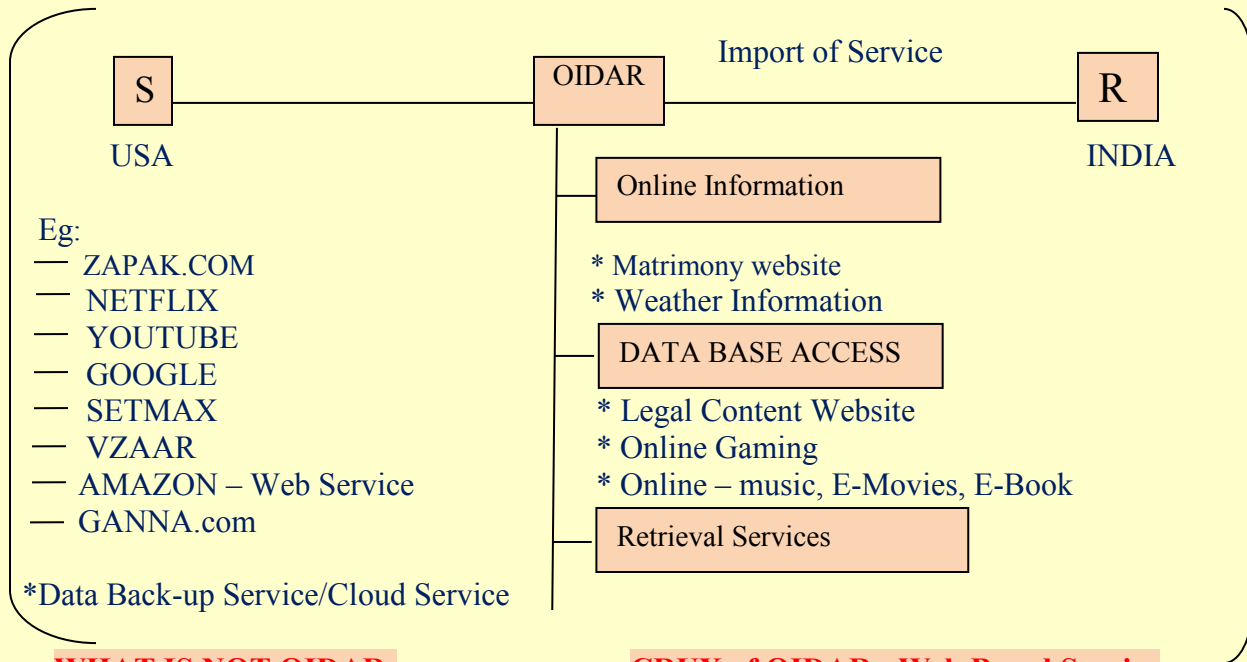
In such cases, supply of colocation services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the colocation services shall not be determined by the provisions of [Section 12\(3\)\(a\)](#) of the [IGST Act](#) but the same shall be determined by the default place of supply provision under [Section 12\(2\)](#) of the [IGST Act](#) i.e. location of recipient of co-location service.

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 [Section 12\(3\)\(a\)](#) of the [IGST Act](#) which is the location where the immovable property is located.

# OIDAR

## Online information, Database Access & Retrieval Services

### INTRODUCTION:



### WHAT IS NOT OIDAR:

- Amazon – sale of goods
- Flipkart – sale of goods
- Online Download – then play

### CRUX of OIDAR: Web Based Service

- Fully Automated
- Online Streaming
- Internet Mandatory

### Definition: [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 impossible to ensure in the absence of information technology and includes electronic services such as,—

- advertising on the internet;
- providing cloud services;
- provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- online supplies of digital content (movies, television shows, music and the like);
- digital data storage; and
- online gaming, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017.

**Import by Registered person (Aldine CA)**



GOODS/SERVICE:

OIDAR = SERVICE

IMPORT OF SERVICE

SUPPLY For consideration (Business/personal purpose) = Supply  
 — F.O.C. + Business Purpose + Related = Supply

NATURE OF SUPPLY

- ORIGIN = Sec. 2 = USA
- DESTINATION = Sec. 13(12) = Location of Recipient (Aldine CA- INDIA)  
 = Sec. 7 of IGST = INTER STATE = IGST

TAXABLE PERSON:

Import of Service = RCM  
 Aldine CA (~~20 L~~ ~~10 L~~)

OIDAR = NO Exemption

COMPUTATION:

20 Lakh \* 18% = ₹3.6 Lakh IGST (Pay through E- Cash Ledger by Aldine CA)

RCM (Aldine CA)

Time of Supply 13(3) =  $\left\{ \begin{array}{l} \text{Payment Date} \\ \text{or} \\ \text{61}^{\text{st}} \text{ Day from Invoice date} \end{array} \right.$  (Whichever is earlier)

**Procedure PART:** Normally By Aldine CA

**Import by Unregistered person**



(1) GOODS/SERVICE

OIDAR = SERVICE

(2) SUPPLY:

IMPORT OF SERVICE:

For consideration (Business/personal purpose) = Supply  
 — F.O.C. + Business Purpose + Related = Supply

(3) NATURE OF SUPPLY

ORIGIN = Sec. 2 = USA

DESTINATION = Sec. 13(12) = Location of Recipient = INDIA

But Recipient INDIA KA HAI KAISE PATA CHALEGA??

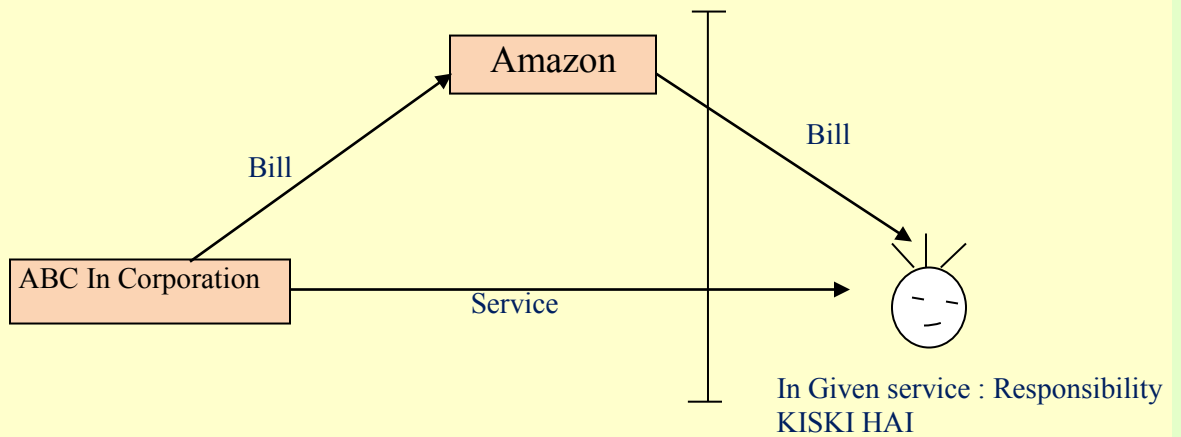


**Solution:**

Any 2  
Condition  
Fulfilled then  
Your Location  
INDIA

- Device IP Address – IN INDIA
- Debit/Credit Card – IN INDIA
- Bank Account – IN INDIA
- Fixed Land line-- IN INDIA
- SIM Card Code – IN INDIA
- Billing Address – IN INDIA
- Living Address – IN INDIA

**SPECIAL CASE: Section 14 of IGST**



ANS 1. Amazon = Amazon AANA PADEGA

ANS 2: ABC INC. = ABC INC. AANA PADEGA

**Section 14: Special provision for payment of tax by a supplier of online information and database access or retrieval services [OIDAR]**

(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:

Moreover, 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:

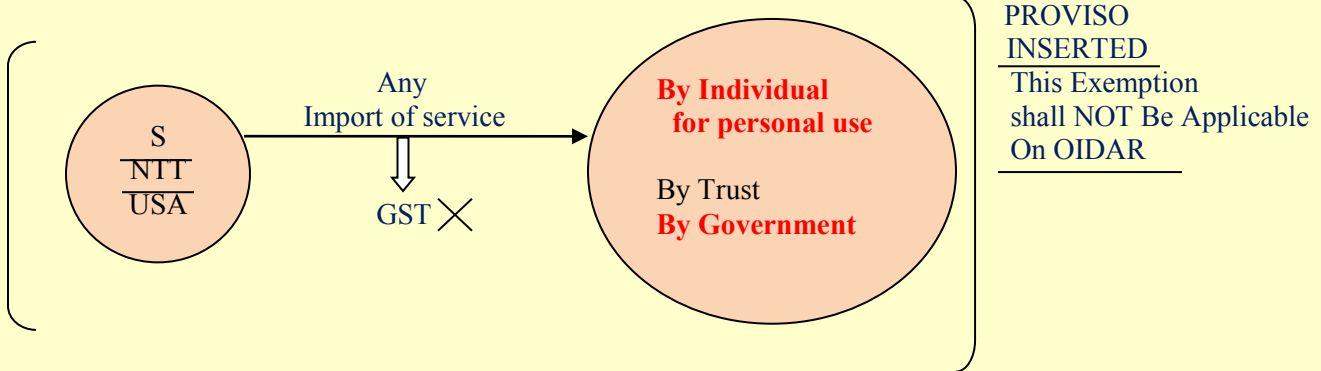
However, if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

(4) TAXABLE PERSON

Supplier of OIDAR  
ie. Say ZAPAK.COM  
N.C.M.

OIDAR SP (ZAPAK.COM):REG.  
~~XI/XL~~ Under Section: 24

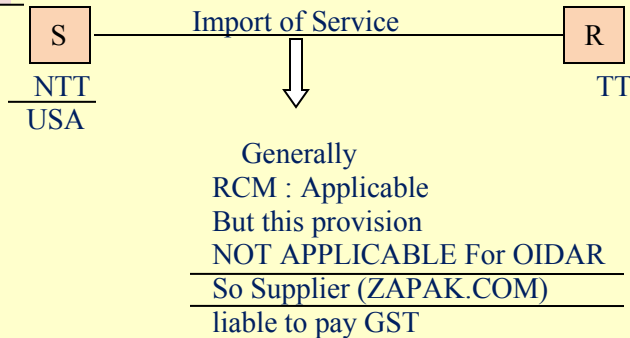
(5) EXEMPTION:IGST- E/N 9/2017



(6) COMPUTATION:

Value \* GST Rate = xxx ie. Normal calculation

(7) NCM/RCM



(8) TIME OF SUPPLY:

SECTION: 13(2)

INVOICE/COMPLETION date  
OR  
PAYMENT date

(Whichever is earlier)

(9) PROCEDURAL PART:

INVOICE – Issued by –ZAPAK.COM

(10) MANNER OF PAYMENT

Monthly: 20<sup>th</sup> through  
E – Cash ledger

**Section 14 A: Special provision for specified actionable claims supplied by a person located outside taxable territory.**

(1) **Supplier Liable to pay:** A **supplier** of **online money gaming** 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) **Single Registration:** The supplier of online money gaming shall **obtain a single registration** under the Simplified Registration Scheme. *[The Central Government hereby notifies the **Principal Commissioner of Central Tax, Bengaluru West** and all the officers subordinate to him as the officers empowered to grant registration]*

Provided that **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:**

**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 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 above provisions** 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.**



## Chapter: 6 TAXABLE PERSON

### Background:

Where supply of Goods/Service made by a Taxable person whether Intra or Inter Shall be leviable to GST i.e. where such supply made by "Non-Taxable Person" then no GST will be levied.

Now the question is this who is Taxable Person. Taxable Person has been defined U/s = 2 as the person

- "Who is Registered (i.e. who has taken voluntarily Registration) or
- Required to be registered as per Law.

Now question is this when a person required to get registered himself. The solution is given under section 22,23,24 as to when a person Require Registration & when he does not need to get Register himself.

### SECTION 23: NO REGISTRATION

Following persons are not required to get Registration i.e. such person will be called as Non-Taxable persons-

- (1) AN agriculturist (Individual/HUF),
- (2) Person Engaged only in Exempted supplies  
(Exempted supply = NIL Rated, 100% Exempted, Non-Taxable).
- (3) The Government may, by notification, specify the category of persons, who will be exempted from obtaining registration under this Act. (e.g. where a supplier supplies only RCM supplies then such supplier need not to get any Registration Under GST).

### SECTION 24: MANDATORY REGISTRATION

S. No.	Mandatory Registration	Limit Based Registration
1	Person engaged in Inter- state Taxable supplies of goods shall require mandatory registration.	However, following will Require Limit based Registration- - Inter-State suppliers of handicraft goods - Inter-state supplier of services

## Chapter 6: TAXABLE PERSON

		<del>- Inter-state movement in a transaction which is not a supply.</del>
2	Casual taxable person shall require mandatory registration @ 5 days in advance.	However, inter State supply by Casual taxable person shall require Limit based Registration
3	Non-Resident Taxable Person shall require mandatory registration @ 5 days in advance.	-
4	The recipient who is required to pay GST under RCM require mandatory registration.	-
5	Government Departments shall require mandatory registration as TDS Deductor.	-
6	<u>E-Commerce</u> Operator on whom TCS requirement is applicable shall require mandatory registration.	-
7	Supplier of online money gaming from outside India to India shall require mandatory registration.	-
8	Agent as specified in Schedule I shall require mandatory registration	-
<b>9- E-Commerce Model:</b>		
<b>Four specified services through E-commerce Operator</b>		
Hotel Accommodation	At first priority tax paid by ECO and ECO shall require mandatory registration.	Where Vendor has turnover in PFY more than threshold Limit then vendor liable to pay GST and shall require Limit based Registration.
Misc. Utilities	At first priority tax paid by ECO and ECO shall require mandatory registration.	Where Vendor has turnover in PFY more than threshold Limit then vendor liable to pay GST and shall require Limit based Registration.
Transportation of Passenger by Radio taxi etc.	At first priority tax paid by ECO and ECO shall require mandatory registration.	-
Transportation of Passenger by Omni bus	At first priority tax paid by ECO and ECO shall require mandatory registration.	Where vendor is a company then the vendor liable to pay

## Chapter 6: TAXABLE PERSON

		GST and shall require Limit based Registration.
Restaurant service	At first priority tax paid by ECO and ECO shall require mandatory registration.	Where Restaurant is the part of Hotel and Room rent of such hotel is more than 7,500 then the vendor liable to pay GST and shall require Limit based Registration.
Other Services through E-commerce Operator		
	ECO shall require mandatory registration.	vendor liable to pay GST and the Vendor shall require Limit based Registration.
Supply of Goods through E-Commerce Operator		
	ECO shall require mandatory registration.	<p><u>In General</u></p> <p>Vendor liable to pay GST and the Vendor shall require <u>Limit based</u> Registration. <b>MANDATORY</b></p> <p>But <b>A</b> relaxation relaxation available to Micro Level Goods Vendors.</p> <p># Micro level businessmen means: Turnover of the person in PFY and CFY is limited to threshold limit.</p> <p><u>Relaxation:</u></p> <p># He is required limit-based registration and only after that liable to pay GST but for the time being he is required to obtain Enrollment number on the basis of PAN etc. And make supply only after getting enrollment number and such enrollment number shall expire on getting Registration.</p> <p># Such enrolled person shall not make inter-state supply and can continue business only in one state and from one location.</p>

## Chapter 6: TAXABLE PERSON

10	Other notified persons shall require mandatory registration.	-
<b>SECTION: 22 Limit Based Registration</b>		
Where the person having aggregate turnover only up to threshold limit or below the limit then the Person not required to get registration.		
But when the person crosses the threshold limit of 10 Lakh/20 Lakh/40 Lakh then he is required to get registration "In All Those States" From where he is making "Taxable Supplies".		
<b>WHAT IS the APPLICABLE LIMIT:</b>		
(1) Where the person making "Taxable Supplies" from "ANY" of the 4 Specified states then the applicable limit of the person will be ₹ 10 LAKH for all states. [4 specified States = MANIPUR, MIZORAM, NAGALAND, TRIPURA].		
(2) Where the person making supplies from any of the 6 specified states then the applicable limit will be ₹ 20 Lakh for all the states. [6 specified States = Arunachal Pradesh, Uttarakhand, Meghalaya, Sikkim, Telangana, Puducherry].		
(3) Where the person making supplies from other states /Union territories, and		
<ul style="list-style-type: none"> <li>• Exclusively Engaged in supply of goods then the limit will be ₹ 40 Lakh for all the states.</li> <li>• However, limit of ₹ 40 lakh will not be applicable—</li> <li>• Where the supplier is making supplies of TIP [Tobacco, Ice-Cream, Pan masala, Bricks, blocks, earthen or roofing tiles (not <del>call</del> tiles), then the limit will be ₹20 lakh. <span style="color: red;">WALL</span></li> <li>• Where the Person exclusively engaged in Supplies of Service then the applicable limit will be ₹ 20 Lakhs.</li> <li>• Where the person engaged in Supplies Goods as well as services then the applicable limit will be ₹ 20 Lakhs.</li> </ul>		
Moreover, if the person supplies goods and earned Interest (Exempted supply of Service) then such Exempted supply of service shall be ignored and the applicable limit will be ₹ 40 Lakhs.		
<b>Some Other Notes:</b>		
(A) Where a going concern transferred or succeeded or change in PAN due to any Reason, then such transferee or successor or new entity shall be liable to be registered with effect from the date of such transfer/Succession.		
(B) Where there is transfer of business due to amalgamation or demerger of 2 or more persons, then the transferee shall be liable to be registered with effect from the date of Incorporation of New Entity.		
(C) In case of Transfer of goods from principal to agent the turnover shall be clubbed in the hands of Agent.		

## Chapter 6: TAXABLE PERSON

	(D) <u>Effective date of Registration:</u>
	In case of Limit based registration and Mandatory registration: Effective date of
	Registration will be the date on which the person crossed the threshold limit or
	require mandatory registration as the case may be.
	In case of voluntarily registration: Effective date of registration will be the date on
	which Registration certificate has been granted.
	(E) <u>In case of Job Work:</u> after completion of Job work goods are supplied by principal
	in open market then such supply shall be taken in computing aggregate turnover of
	Principal.

## Chapter: 7 Exemption

### CHARITABLE & RELIGIOUS

Service	Supplier and Recipient	Status
<p><b><u>Charitable Trust:</u></b> Service By way of following charitable activities</p> <p>(a) Activity by way of Public-health by way of care &amp; counselling of terminally ill persons, HIV Infected persons, and person addicted to Drugs or Alcohol.</p> <p>(b) Activity of advancement of Religion, spiritually or Yoga.</p> <p>(c) Activity of advancement of Educational-programs or skill development for Abandoned children, person residing in rural AREAS having age over 65 years.</p> <p>(d) Activities of preservation of Environment Including watershed, forest &amp; wide life</p>	by a Recognised charitable trust	will be exempted
<p><b><u>Renting of Religious Place &amp; Conduct of Religious Ceremony:</u></b></p> <p>(a) Service of conduct of religious ceremony and</p> <p>(b) Service of Renting of Religious place, where-</p> <ul style="list-style-type: none"> <li>- Room Rent limited to ₹ 999 per day,</li> <li>- Hall Rent limited to ₹ 9999 per day,</li> <li>- shop rent limited to be 9999 per month</li> </ul>	by a Recognized Trust	will be exempted
<p><b><u>Religious Journey:</u></b> A Service in respect of Kailash Mansarover Yatra (CHINA) and Haj Yatra</p>	By Kumaon Mandal Vikas Nigam Limited and HAJ Committee	will be exempted

### EDUCATION

## Chapter 7: EXEMPTION

Service	Supplier and Recipient	Status
<b>NEWS:</b> Service by way of providing news	By an "Independent Journalist", Press Trust of India (PTI) or United News of India (UNI)	will be exempted. (However, if Journalist is employee, then it will not be a supply.)
<b>LIBRARY:</b> Service of "Lending of Books etc.	By Public Libraries	will be exempted. (However, such Service by Private Libraries will also be Exempted)
<b>EDUCATIONAL INSTITUTE:</b>		
<b>Any service</b>	By Educational Institute (School/College/Institution), to student [Present /Ex/Future] to Faculty and to staff. Note: Degree course must be recognized by Indian law.	will be exempted
<b>TCS Services:</b> T.C.S. Services (Transportation facilities for student faculties & Staff, catering Including Mid-day meal, security & House - keeping)	By Government, Corporates to Schools / Anganwadi only	will be exempted
<b>Exam Related Services</b> Service Related to or conduct of Entrance/Final Examination	To educational institute (School/College/Institution)	will be exempted
<b>Online Educational Periodicals"</b> Service of supply of "Online Educational Periodicals"	To colleges	will be exempted
<b>Comments:</b> Central and State Educational Boards" are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students including any entrance examination, to the students. Hence such services will be exempted.		
<b>CORPORATE-CUM-INSTITUTE:</b> Any service	By "NSDC" (National Skill Development Corporation), SSC (Sector Skill Council), AA (Assessment Agency),	will be Exempted

## Chapter 7: EXEMPTION

	Training partner (e.g. Ambuja Cement Foundation, Hindustan Soft Education etc.)	
<p># SDI (Skill Development Initiative)                  # DDU CKY (Deen Dayal Upadhyay Gramin Kaushal Yojana)</p>		
<b>HEALTH CARE</b>		
<b>Service</b>	<b>Supplier and Recipient</b>	<b>Status</b>
<p><b><u>Veterinary Clinic:</u></b>                      Service of Health care (Diagnostic / Treatment / Care) of Birds / Animals</p>	By Veterinary Clinic	will be exempted
<p><b><u>Health Care of Human Beings:</u></b>  <b>Health care service:</b> means (Diagnostic / Treatment / Care + Food for patient + Hair transplant for CURE + Cosmetic &amp; Plastic Surgery for CURE + Ambulance service), Abnormality/ disease/ ailment of infertility, treated by IVF is also included in Health care service.  <b>Comment:</b> Any health care service which is not recognised under Indian medical world will be taxable.</p>	By Hospital, Nursing Home, Sanatorium, clinic, pathology Lab (Indoor & outdoor) Physiotherapist, Dietitians etc. However, ambulance services given by anyone.	Will be exempted
<p><b><u>ICUs Etc:</u></b>                      Services of providing ICU /CCU/ ICCU/NICU @ Any value</p>	By a Clinical Establishment etc.	Will be exempted
<p><b><u>Room Services:</u></b>                      Services of providing rooms (other than ICU /CCU/ ICCU/NICU) having room charges Upto 5,000 per day</p>	By a Clinical Establishment, to a person receiving health care services	Will be exempted
<p><b><u>Rehabilitation Centre:</u></b>                      Rehabilitation Therapy or counselling etc, provided at Medical Establishment, Educational Institutes, Rehabilitation Centre established by CG/SG/UT or Recognised TRUST.</p>	By Recognised Rehabilitation professionals	Will be exempted
<p><b><u>Public Convenience:</u></b>                      Public convenience services (Provision of facilities of bathroom, washroom, urinal, toilets etc.)</p>	By anyone	Will be exempted



## Chapter 7: EXEMPTION

### SPORTS

Service	Supplier and Recipient	Status
<b><u>FIFA:</u></b> Service Related to any Event under FIFA: U-17 World-Cup, 2017.	By or To FIFA and its subsidiaries	will be exempted
<b><u>FIFA (Women's):</u></b> Service Related to any event under FIFA U-17 women's World-Cup 2020	By or To FIFA and its subsidiaries	will be exempted
<b><u>Asian Football Confederation (AFC)</u></b>  Services directly or indirectly related to any of the events under (AFC) Women's Asia Cup 2022.	By and to AFC and its subsidiaries	will be exempted
<b><u>SPONSORSHIP:</u></b>  Service by way of sponsorship of sporting events, organised by Recognised body.	By Recognised Body	will be exempted
<b><u>INDIVIDUAL SERVICE:</u></b>  Service for participation in a sporting event, organised By a Recognised Sport Body (e.g. BCCI).	By Individuals as a Player, referee, umpire, coach or team manager	will be exempted
<b>Service</b>	By one Recognised Sports Body to another Recognised Sports Body	will be exempted

### GOVERNMENT SERVICES

Service	Supplier and Recipient	Status
<b><u>Article 243G/W:</u></b> Service specified under Article 243 G/W (e.g. Land Consolidation, Urban Town Planning, Public Health etc.)	By Governmental Authority [Note: If it is by CG/SG/LA then not a supply]	will be exempted
<b>Pure Service/Composite Service</b> (having service portion at least 75%)	By any person To CG/SG/LA	will be exempted
<b>Comment:</b> Sanitation and conservancy services supplied to Army and other CG/SG departments, which is not covered in 243G/W will be taxable.		
<b><u>SPECIFIC Services:</u></b>	To a Governmental Authority	will be exempted

## Chapter 7: EXEMPTION

Services by way of water supply, public health, sanitation conservancy, solid waste management, & slum improvement and upgradation		
<p><b><u>GOVERNMENT SERVICE (Except PVT):</u></b>            Any Service            However, followings will always be taxable to maintain parity in between Government departments and private players---</p> <p>P= Service by Department of Post &amp; Indian Railways            [But basic services of post office by way of inland letter card, post card, book pos, ordinarily post and envelop weigh less than 10 gram will be exempted]            V= Service by Government in Relation to Aircraft/ Vessel (in or outside the port or Airport)            T= Service by Government by way of transportation of Goods/Passenger.</p>	By CG/SG/UT/LA, To Non-Business Entity	will be exempted
<p><b><u>GARIB BUSINESS ENTITY:</u></b>            Any Service [Except P.V.T.]</p>	By CG/SG/UT/LA, to a Business Entity having Aggregate turnover in PFY only upto threshold limit.	will be exempted
<p><b><u>GOVERNMENT TO GOVERNMENT:</u></b>            Any Service [Except P.V.T.]</p>	By CG/SG/UT/LA, to another CG/SG/UT/LA.	will be exempted
<p><b><u>SMALL VALUE GOVERNMENT SERVICE:</u></b>            Any Service [Except P.V.T.]            Having value of service upto ₹ 5000).            [For continuous supply of service (service having life &gt; 3 month &amp; having periodic payment schedule) limit of ₹ 5000 will be checked per financial year basis]</p>	By CG/SG/UT	will be exempted
<p><b><u>GOVERNMENT GRANT:</u></b>            Any Service (consideration received in Form of Grant)</p>	By Govt. Entity To CG/SG/UT/LA	will be exempted
<p><b><u>LONG TERM LEASE:</u></b>            Service of Granting Long Term Lease (30 years or more) of Industrial plots or plot for Development of Infrastructure for Financial Business,</p>	By State Government Industrial Development Corporation or by other Entity having 20% or more ownership of Government.	will be exempted

## Chapter 7: EXEMPTION

<p><b><u>SPECTRUM:</u></b> Service By way allotting spectrum prior to 01.04.2016</p>	By CG/SG/UT/LA to Business Entity,	will be exempted
<p><b><u>GOVT. TESTING ETC.:</u></b> Service provided by way of "Registration Under any Law", Testing, Calibration, Safety check or Certification Relating to Safety of workers/ consumers/ public at large Including Fire License,</p>	By CG/SG/UT/LA,	will be exempted
<p><b><u>NON-PERFORMANCE:</u></b> Service of Non-Performance (Cancellation) of Government Contract, consideration in the form of fines/liquidated damages payable</p>	by CG/SG/UT/LA	will be exempted
<p><b><u>AGRICULTURE:</u></b> Service by way of "assignment of right" to use Natural Resources, for cultivation of Plant/Rearing of animals For Food, fibre, raw material etc. (Except Horse)</p>	By CG/SG/UT/LA to Individual Farmer.	will be exempted
<p><b><u>COAL MINE:</u></b> Service By way of "assignment of Right" to use natural Resources, Prior to 01.04.2016.</p>	By CG/SG/UT/LA	will be exempted
<p><b><u>Merchant Overtime Fee (MOT):</u></b> Service By way of "Deputing" Officers after Office hour or on holidays, for Inspection of container stuffing etc. in Relation to Import-Export Cargo, on Payment of Merchant Overtime Fee</p>	By Government Department	will be exempted
<p><b><u>RTI:</u></b> Service By way of RTI</p>		will be exempted
<p><b><u>ERCC:</u></b> Services by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders</p>	By a State Government To Excess Royalty Collection Contractor (ERCC)	will be exempted
<p><b><u>GUARANTEE BY GOVT.:</u></b> Service by way of guarantying the Loans to banks or financial institutions</p>	By CG/SG/UT To Government Undertaking or PSU's	will be exempted

## Chapter 7: EXEMPTION

<u>AGRICULTURE</u>		
Service	Supplier and Recipient	Status
<p><b><u>Electricity:</u></b> Service by way of construction, erection, commissioning or Installation of Infrastructure, for Extending Electricity distribution Network, up-to the tube-well for Agriculture use</p>	<p>By "Electricity Distribution Utility (e.g. Electricity Exchange) To the farmer or Agriculturist</p>	<p>Will be exempted</p>
<p><b><u>RICE:</u></b> Service by way of loading, unloading, packing, storage/warehousing of Rice</p>		<p>Will be exempted</p>
<p><b><u>MINOR FOREST PRODUCE:</u></b> Service by Way of warehousing of minor Forest Produce</p>		<p>Will be exempted</p>
<p><b><u>WAREHOUSING:</u></b> Service of warehousing/storage of Cereals, pulses, fruits, &amp; Vegetables [Note: Storage/warehousing of cotton in ginned &amp; or baled form will be Taxable]</p>		<p>Will be exempted</p>
<p><b><u>ELECTRICITY:</u></b> Transmission to Distribution of Electricity</p>	<p>By transmission utilities (eg. Power Grid, Electricity Exchange, Electricity Co.)</p>	<p>Will be exempted</p>
<p><b><u>AGRICULTURE RELATED:</u></b> Services relating to cultivation of plants and rearing of all life forms of animals, (except the rearing of horses), for food, fibre, fuel, raw material or other similar products or agricultural produce by way of-</p> <p>(a) Agricultural operations directly related to production of any agricultural produce;</p> <p>(b) Supply of farm labour;</p> <p>(c) Processes carried out at an agricultural farm, which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) Renting/leasing of Agro-machinery/vacant land with/without a structure incidental to its use;</p> <p>(e) Loading, unloading, packing, storage/warehousing of agricultural produce;</p> <p>(f) Agricultural extension services;</p>		<p>Will be exempted</p>

## Chapter 7: EXEMPTION

(g) Services by any Agricultural Produce Marketing Committee/ Board or services provided by a commission agent for sale / purchase of agricultural produce.		
<del>(h) Services by way of fumigation in a warehouse of agricultural produce.</del>		
<b>JOB WORK:</b> Carrying out "An Intermediate Production Process" as Job Work, in Relation to Cultivation of plant & rearing of animals (Except horse), & agriculture produce		Will be exempted
<b>Comment:</b> Milling of paddy into rice (on job work basis) will be Taxable and value will be the processing charges (not on the entire value of rice).		
<b>INSEMINATION:</b> Service of Artificial Insemination of Live Stock (except horse)		Will be exempted
<b>FRUITS &amp; VEGETABLES:</b> Services by way of pre-conditioning, precooling, ripening, waxing, retail packing, labelling of fruits and vegetables, which do not change or alter its essential characteristics		Will be exempted
<b>NCCCD:</b> Service by way of "Cold Chain Knowledge" Distribution	By "National Centre for cold chain development	Will be exempted

### TRANSPORTATION OF PASSENGERS

Service	Supplier and Recipient	Status
<b>Transportation of Passengers via-</b> <b>Jal:</b> INLAND WATER-WAYS OTHER WATER- WAYS (for Public Transport only however for tourism it will be taxable) <b>Thal:</b> By Road- Contract Carriage- Non-AC (Public Transport only) [However, AC Vehicle/ Special Bus/Tourist Vehicle = Taxable] By Road- Stage Carriage- Non-AC By Road- School Bus By Road- Metered cab Run by S.G		Will be exempted

## Chapter 7: EXEMPTION

<p>By Road- Rickshaw [However, Radio Taxi etc. will be taxable Taxable] By RAIL- Indian Rail - Other than first class or AC By Rail- Others = Metro, Mono, Tram <b><u>Vayu:</u></b> NER (North East Region, In economy class) RCS (Regional connectivity scheme) - GAP FUNDING by Government</p>		
<p><b><u>Comment:</u></b> 1- No exemption shall be allowed ie it will always be taxable if the services supplied through an ECO, &amp; notified under Section 9(5) of the CGST ACT. 2- Hiring of vehicles by firms for transportation of their employees ('charter or hire') will be taxable. 3- Private ferries (used as means of transport from one island to another in Andaman and Nicobar Islands) = If tickets purchased for transportation from one point to another= Exempt (owned by anyone) If tickets purchased for transportation (predominantly for tourism-transportation, sightseeing, food and beverages, music, accommodation) = Taxable.</p>		
<p><b><u>Embassy:</u></b> Any Service (e.g. Visa Fees)</p>	<p>By Foreign Diplomatic Mission i.e. Embassy</p>	<p>Will be exempted.</p>
<p><b><u>DRIVING LICENSE/PASSPORT etc.:</u></b> Service By way of issuance of Passport, VISA On Arrival, Driving License, Birth Certificate, Death Certificate.</p>	<p>By CG/SG/UT/LA</p>	<p>Will be exempted</p>
<p><b><u>TOUR OPERATOR SERVICES:</u></b> Tour operator service, performed partly in India &amp; partly outside India, (to the extent of the value of the tour operator service, performed outside India)</p>	<p>By a tour operator to a foreign tourist</p>	<p>will be exempted</p>
<p><b><u>Comment:</u></b> <b>Value of the tour operator service performed outside India,</b> Proportionate value Related to tour performed outside India. 50% of the total consideration charged for the entire tour, Whichever is lower will be exempted. * Day Rounding Off: 12 hours or exceeding 12 hours shall be considered as one full day and less than 12 hours shall be taken as half a day.</p>		

## Chapter 7: EXEMPTION

<u>ENTERTAINMENT / ENTRY FEES</u>		
<b>Service</b>	<b>Supplier and Recipient</b>	<b>Status</b>
<b><u>ZOO &amp; PROTECTED MONUMENTS:</u></b> Admission/Entry fees of a Museum, National Park, Wild Life Sanctuary, Tiger Reserve, ZOO and Protected Monuments		Will be exempted
<b><u>ART, CULTURE, SPORTS</u></b> Service of training/Coaching in Re-recreational Activities relating to arts or culture	by an individual,	Will be exempted
Service of training/Coaching in Sports	by Recognised Charitable Trust	Will be exempted
<b><u>ENTERTAINMENT</u></b> Services by way of right to admission to- [consideration upto ` 500 per person] (a) circus, dance, or theatrical performance (drama or ballet); (b) award function, concert, pageant, musical performance or any sporting event (other than a recognised sporting event); (c) Recognised sporting event; (d) Planetarium,		Will be exempted
<b><u>FIFA (MEN/WOMEN)</u></b> Entry Fee (Ticket to FIFA Event U-17 World Cup 2017)		Will be exempted
<b><u>AFC</u></b> Services by way of right to admission to the events organised under AFC Women's Asia Cup 2022		Will be exempted
<b><u>FOLK/CLERICAL ART</u></b> <i>CLASSICAL</i> Service by Way of Folk/ <u>Clerical</u> Performance, in Relation of "music"/Dance/Theatre, [consideration charged upto ` 1,50,000/- [If artist provides service as Brand Ambassador, then it will be taxable]	By Folk/Classical Artist	Will be exempted
<u>RENTING, ACCOMODATION @ IMMOVABLE</u>		
<b>Service</b>	<b>Supplier and Recipient</b>	<b>Status</b>
<b><u>CONSTRUCTION (PMAY):</u></b> Services by way of Pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, etc under the		Will be exempted

## Chapter 7: EXEMPTION

Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.		
<p><b><u>CONSTRUCTION (KOTHI):</u></b>          Service by way of Pure Labour contracts (i.e. only service component) of Construction, commission, Erection, Installation of original work (<del>Now</del> <b>NEW</b>) of a SINGLE Residential UNIT  <u>[Note: Above service in relation to multi-unit / Multi stories building will be taxable].</u></p>		Will be exempted
<p><b><u>LONG TERM ACCOMODATION:</u></b>          Service By way of renting of Residential Property which is intended for long term use, for Residence purpose  <b><u>Comment:</u></b>          - Where Recipient is a registered person,          - being proprietor of a proprietorship concern and          - rents the residential dwelling in his personal capacity          - for use as his own residence          Then the transaction will be B to C basis hence Exempted.</p>	on B to C basis [However, if rented on B-to-B basis then it will be taxable.	Will be exempted
<p><b><u>TDR/FSI:</u></b>          Service by way of TDR (transfer of development rights) or FSI (Floor Space Index), for construction of residential apartments, in a project, intended for sale, wholly or partly,          [except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.]</p>	By a promoter, to a buyer	Will be exempted
<p><b><u>Long Term Lease:</u></b>          Service by way of granting of long-term lease (30yrs or more) (Consideration- Premium, salami, cost, price, development charges or by any other name payable), for construction of residential apartments, in a project, intended for sale, wholly or partly,          [except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.]</p>	By a promoter To a buyer	Will be exempted
<p><b><u>Comment:</u></b>          *Location charges/Preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease = Exempt.          * Sale of land = neither a supply of goods nor a supply of services (Schedule III) = No GST.</p>		



## Chapter 7: EXEMPTION

- \* Sale of developed land (after levelling, laying down of drainage lines etc.) = sale of land = (Schedule III) = No GST.
- \* Any service provided for development of land = Taxable.

### TRANSPORTATION OF GOODS

Service	Supplier and Recipient	Status
<b>Transportation of Goods via-</b> <b>Jal:</b> INLAND WATER-WAYS only <b>Thal:</b> By Road- (Other than GTA & Courier) [However, transportation of goods by Rail will be taxable.] <b>Vayu:</b> By aircraft / vessel in relation to Import Cargo <b>Comment:</b> By aircraft / vessel in relation to Export Cargo will be taxable.		Will be Exempted
<b>Satellite Launching:</b> C By ANY) Satellite launch services		Will be Exempted
<b>National Permit:</b> Services of granting National Permit to a goods carriage to operate through-out India / contiguous States		Will be Exempted
<b>Transportation of specified Goods:</b> Transportation of specified goods by Rail / Vessel / GTA [Specified goods=Milk/Salt/Flour/Pulses/Rice/Agriculture Produce/ News Paper/ Magazines/ Relief Material/ Defence Material]		will be exempted
<b>GTA Service to Recipient (unregistered):</b> Service by way of transportation of goods	By GTA, On b to C basis i.e. To unregistered person (including CTP of handicraft who is unregistered)	will be exempted
<b>GTA Service to Govt.:</b> Service by way of transportation of goods in a goods carriage	By GTA, To a Dept./ Establishment of the CG/ SG/ UT, or to LA, or to Governmental	will be exempted

## Chapter 7: EXEMPTION

	agencies, (taken registration only as TDS deductor)	
<b>Nepal / Bhutan:</b> Supply of service associated with Transit Cargo to and From NEPAL and Bhutan eg Service of transpiration, insurance of transit cargo.)	By Indian Supplier	will be exempted
<b><u>SOCIAL WELFARE</u></b>		
<b>Service</b>	<b>Supplier and Recipient</b>	<b>Status</b>
<b><u>Old Age Home:</u></b> Service By Running Old Age home, where consideration is upto ₹ 25000 for All facilities, per month per member.	By CG/SG/ Recognised TRUST, to its Residents (60 years or more age)	will be exempted
<b><u>Fair Price Shop: (Commission)</u></b> Service By way of Sale of food grains, Kerosene etc. to public and Received commission from Government	By Fair Price shops (Rashan Ki Sarkari Dukan) to CG/SG/UT	will be exempted
<b><u>NPO's:</u></b> Service by way of reimbursement of charges or share of contribution - a) As a trade union; or b) For the provision of carrying out any activity (Exempt from GST); or c) Upto an amount of ₹7,500 per month per member for sourcing of goods/services from a third person for the common use of its members in a housing society or a residential complex.	By an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members	will be exempted
<b><u>NPO: (2)</u></b> Services engaged in— i) Activities relating to the welfare of industrial / agricultural labour/ farmers; or ii) Promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, against consideration in the form of membership fee upto an amount of one thousand rupees (₹ 1000/-) per member per year.	By an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members	will be exempted

## Chapter 7: EXEMPTION

<u>BANKING</u>		
Service	Supplier and Recipient	Status
<b>Interest / forex:</b> Interest on Loan/Advance/Deposits Discount [interest in advance] on Bill Discounting [Note: Interest involve in credit card service=Taxable.] Commission on - Sale - purchase of foreign currency amongst Bank & Authorised dealers & Vice-Versa		will be exempted
<b>JAN DHAN YOJANA</b> Service Under "PM Jan Dhan Yojana"	By Banking company to Account holder of "Basic Saving Bank Deposit"	will be exempted
<b>CARD PROCESSING (Bank Charges)</b> Service By way of Card Transaction Processing where transaction Amount is upto ₹ 2000, [CARD = Credit Card, Debit Card & Other Cards]	By Bank,	will be exempted
<b>Agency Service:</b> Any Services with respect to accounts in its rural area branch;	By Business facilitator/ correspondent to a banking company	will be exempted
<b>Any intermediary Services</b> with respect to services mentioned above	By Any person as an intermediary to a business facilitator/ correspondent [ie Agent ka Agent]	will be exempted
Any Services in a <b>rural area.</b>	By Business facilitator/correspondent to an insurance company	will be exempted
<b>IFS (Intermediary of financial services)</b> Services, in currencies other than Indian rupees (INR)]	By an intermediary of financial services (Located in a multi services SEZ with International Financial Services Centre (IFSC) status) to a customer (located outside India for international financial services)	will be exempted

## Chapter 7: EXEMPTION

<b>INSURANCE</b>		
<b>Service</b>	<b>Supplier and Recipient</b>	<b>Status</b>
<p><b><u>Annuity:</u></b> Services of life insurance business provided by way of annuity under the National Pension System</p>		will be exempted
<p><b><u>Group Insurance:</u></b> Services of life insurance business provided under the Group Insurance Schemes of the CG.</p>	By the Army, Naval & Air Force, Central Armed Police Forces Group Insurance Funds, To members of the Army, Navy and Air Force, Coast Guard, Central Armed force.	will be exempted
<p><b><u>Government Bodies Services:</u></b> Service provided [ESIC=Employee State Insurance Corporation/ EPFO= Employee Provident Fund Organisation/ CM-PFO= Coal Mines Provident Fund Organisation/ NPS=National Pension Scheme]</p>	By following Government bodies- ESIC/EPFO/CM-PFO/NPS	will be exempted
<p><b><u>General Insurance:</u></b> General Insurance Service under following specified Insurance scheme [Specified Schemes= HUT Insurance Scheme/Jan Arogya Bima Policy/ P.M. Suraksha Bima Yojana/Nirmaya Health Insurance Scheme/ Bangla SHASYA Bima Yojana]</p>	To people covered under "Below poverty line" (BPL) or marginally upto BPL Category	will be exempted
<p><b><u>Life Insurance:</u></b> Life Insurance Service (under specified Insurance Scheme) <u>Specified Insurance Scheme:</u> Jan Shree Bima Yojana/Aam Aadmi Bima Yojana/Life Micro Insurance product" (where Maximum cover is upto ₹ 200000) / Varishtha Pension Bima Yojana /PM Jan Dhan Yojana / PM Vaya Vandan Yojana</p>	To person fall under BPL Category or marginally upto BPL Category etc.	will be exempted
<p><b><u>Premium paid by Government:</u></b> Service By way of Insurance, where total premium is paid by CG/SG/UT.</p>	By insurance company To Government	will be exempted
<p><b><u>Re-Insurance:</u></b> Service By way of Re-Insurance of Insurance Service specified under above 3 rows (General</p>		will be exempted

## Chapter 7: EXEMPTION

Insurance / Life Insurance / Premium paid to Govt.)		
<b>Atal Pension:</b> Service under "ATAL Pension Yojana"		will be exempted
<b>State Pension Scheme:</b> Service under "State Pension Yojana"		will be exempted
<b><u>BUSINESS RELATED</u></b>		
<b>Service</b>	<b>Supplier and Recipient</b>	<b>Status</b>
<b>Transfer of Going Concern:</b> Service way of transfer of going concern		will be exempted
<b>Hiring of Motor Vehicle:</b> Service of Hiring of Motor Vehicle having capacity of 13 or more	to State transport Undertaking	will be exempted
Service of hiring of "E-Vehicle having capacity of 13 or more	To Local Authority	will be exempted
Service of hiring of "Goods Transport Vehicle"	To Goods Transport Agency	will be exempted
Service of Hiring of Motor Vehicle	To a person who is providing transportation service by way of Transportation of Student, Faculty, Staff to an Educational Institute i.e. school, college, Institution	will be exempted
<b>Toll:</b> Service By way of "Access to a Road or a Bridge on Payment of Toll Charges		will be exempted
<b>Comment:</b> Higher toll charges (Additional fee) from vehicles not having Fastag or in case of overload will be the part of toll charges and hence exempted from GST.		
<b>Incubatee:</b> Service by way of providing space/capital/coaching/Networking etc.	By startups from Incubator (R&D Centres e.g. Amity Noida, ITI Kharagpur, NDRI Karnal) Having Turnover in P.F.Y: Limited to ₹ 50 lakhs	will be exempted upto 50 lakh in CFY and this exemption will continue only upto 3 years

## Chapter 7: EXEMPTION

<b>Incubator:</b> Any Service	By an Incubator	will be exempted
<b>Legal Service:</b> Legal Service i.e. Any Service provided in Relation to Advice/Consultancy/Assistance and Includes Representation service <b>Comment:</b> However legal services by Senior advocate to senior / junior advocate or to firm of advocates will be taxable.	By Arbitral Tribunal/Advocates [Individual (Junior/Senior), Firm of Advocate] -To A Non-Business Entity or - To Government Department or - To a Business Entity having turnover in PFY limited to ₹ 10 lakh/20 lakh/40 Lakh	will be exempted
<b>Business Exhibition:</b> Service, in Respect of a Business Exhibition held outside INDIA.	By an organiser (e.g. footwear association of INDIA). To any person (e.g. Footwear Manufacturer,	will be exempted

### Additional Exemption Under IGST Act, 2017: N/N:9/2017 (IGST)

Service	Supplier and Recipient	Status
<b>Import of Service:</b> Import of service, where Location of supplier is outside India., & location of Recipient is in INDIA, [Specified Person =	To -- # Government (CG/SG/UT/LA/ Governmental Authority) # Individual (Using Service for Personal use) # Recognized Charitable Trust # Embassy (Use for official/ personal purpose) # United Nations/International organization (For Official use) # Special Economic Zone (Developer/Unit)	will be exempted
<b>Where supplier of service Located in India &amp; Recipient Belongs to outside INDIA.</b> Service provided, in Relation to a Tour Conducted wholly outside INDIA	By Indian Tour Operator, To a foreign Tourist,	will be exempted

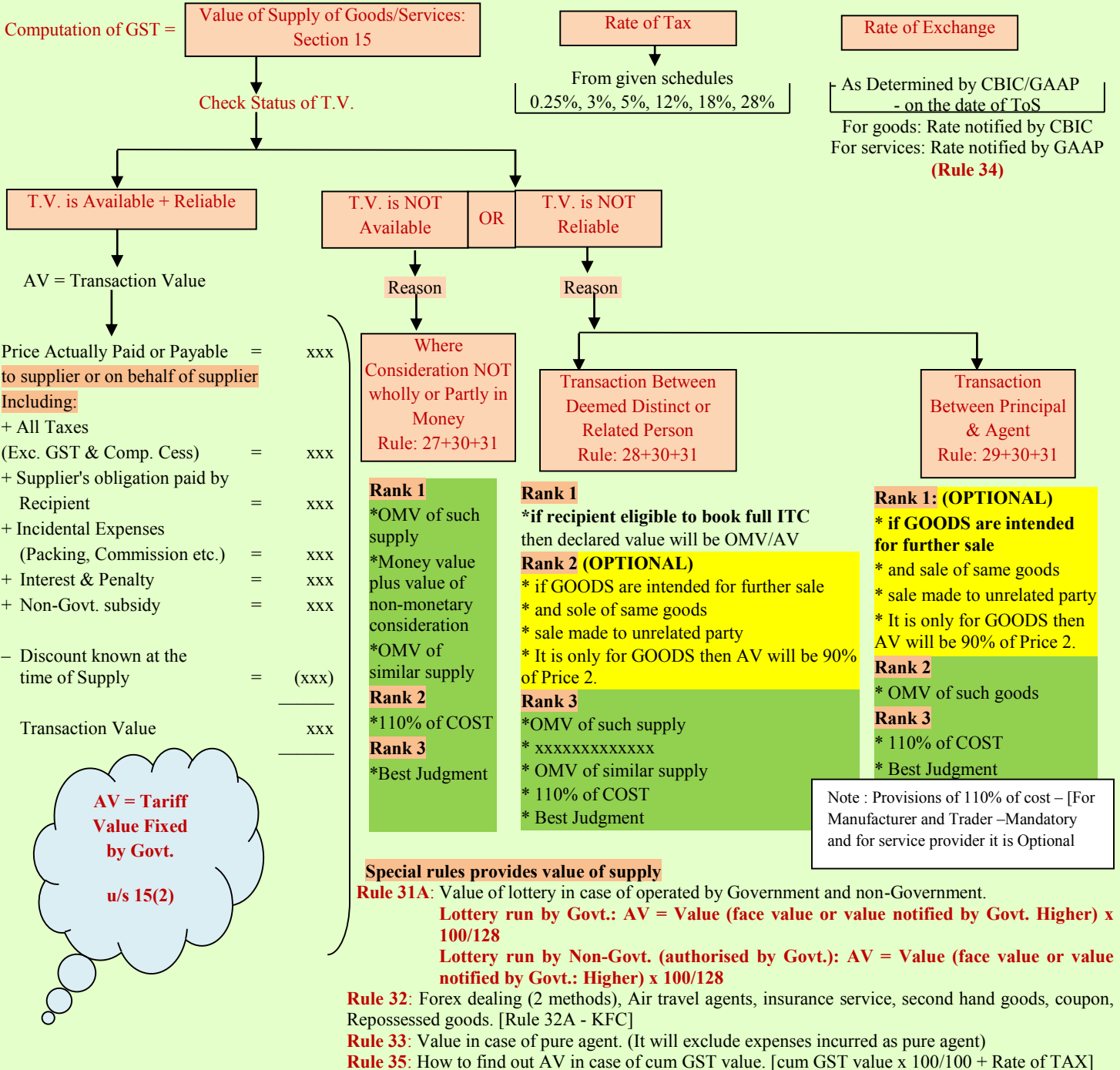
## Chapter 7: EXEMPTION

Any Service	By Branch Office/Head Office To any head office/Branch office of that person Located outside India	will be exempted
Any Service	By an Indian Intermediary where Location of supplier & Recipient of Goods is outside India.	will be exempted



# COMPUTATION OF GST

# 6





## Section 15: Value of taxable Supply

**AV=  
TRANSACTION  
VALUE**

### PRICE ACTUALLY PAID OR PAYABLE FOR THE SUPPLY:

1. The value of Taxable supply of Goods/Service will be the **PRICE Actually paid or payable** for the said supply which is also known as "Transaction" Value.
2. **Above Transaction value shall be adjusted with following –**
  - (a) **ALL OTHER TAXES: ANY Tax/Duty/CESS** will be Included in Transaction Value Except GST & Compensation CESS will be includible.
  - (b) **SUPPLIER'S LIABILITY:** ANY amount which is a liability of supplier but paid by Recipient (e.g. Goods Testing Charges) will be includible.
  - (c) **INCIDENTAL EXPENSES:** Any Incidental Expenses e.g. packing, commission, Loading, Unloading etc. will be Includible.
  - (d) **INTEREST/LATE FEE:** Any Interest/Late Fee/Penalty for Delayed Payment or Deferred payment will be Includible.

Note: Interest on Loan/Advance/Deposit is Exempted So No Question of Inclusion.

**Q. An offer given by the supplier [Mr X] that if any Receptient buy 1,00,000 or more unit in a financial year than price per unit will be reduced to ₹ 9 from 10. Mr Y purchases 1,00,000 unit over the period from April to March of that financial year. Compute the GST liability.**

**Ans:**

**Period: April to March**

**Invoices (Over the Period)**

**Value (1,00,000 \*10) = 10,00,000**

**GST@18% = 1,80,000**

**Total : = 11,80,000**

**Supplier show it in GSTR 01, accordingly output liability updated in E- liability Register: 1,80,000**

**At the end of the Year-**

**Credit Note will be issued by the supplier**

**Value (10,000 \*1) =1,00,000**

**GST = 18,000**

**Supplier show it in GSTR 01, accordingly output liability updated/Decreased in E- liability Register: By ₹18,000**

(e) SUBSIDY

- Where subsidy is given by the Govt.
- to the supplier and
- linked to unit price of the supply.
- will be Excludible.

And where all the 3 conditions related to subsidy is not satisfied then it will be "Includible in Transaction value"

**Note:** Incentive paid by Central Government to acquiring bank for promotion of Rupay card and low volume BHIM-UPI transactions under incentive scheme is considered as subsidy which is directly linked to price and does not form part of taxable value.

(f) **DISCOUNT:**

**Manner of offering Discount:**

Discount can be offered in 2 ways.

- One is “Reduction in Price”
- another is Increasing in Quantity.

**Time of Discount:**

Discount can Actually be passed at 2 times.

- One is Pre-supply or at the time of supply.
- another is Post Supply.

**Type of Discount:**

There are Various types of Discount which are as follows:-

- Cash Discount.
- Quantity Discount
- Bulk discount.
- Corporate Discount
- Holi/Diwali/Discount
- Buy one get one free
- Target Based Discount (Value or Quantity)
- Secondary Discount
- etc.

**Discount can be offered by as pre-supply or Post supply Discount.**

<b>Pre Supply Discount</b>	<b>Post Supply Discount</b>
In case pre-supply Discount it is automatically in Build in the Invoice and it is Excludible.	Post supply discount will Also be Excludible By way of issuing credit note at later date i.e. GST Liability of supplier will be reduced on the Basis of Credit Note Subject to conditions.

	<p><b><u>Condition:</u></b></p> <ul style="list-style-type: none"> <li>▪ There must be an agreement between supplier &amp; Recipient at the time of supply or Before there off regarding “Post Supply Discount”.</li> <li>▪ When credit note issued By supplier at later date Recipient must corresponding ITC on the Basis of such Credit Note.</li> </ul> <p><b><u>Note:</u></b> If both the conditions are not satisfied than supplier can not reduce the Related tax Liability even on the Basis of Credit</p>
	<p><b>No Claim Bonus</b></p> <p>No claim bonus cannot be considered as consideration from the insurance company to insured because no supply provided by the insured.</p> <p>He customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.</p> <p><b>No Claim Bonus (NCB) is a permissible deduction under section 15 for the purpose of calculation of value of supply of the insurance services provided by the insurance company to the insured</b></p> <p><b><u>Note (1)</u></b> If Transaction value is not available/Reliable – then go for valuation Rules.</p>
	<p><b><u>Note: (2)</u></b> Assessable value = Tariff value:</p> <ul style="list-style-type: none"> <li>▪ Government has power to fix value of Goods/Service for GST/Cess calculation purpose</li> <li>▪ Where such value is fixed with Respect to some goods/service than valuation of such goods/service will be Based on such value.</li> </ul>

**Explanation:** For the purposes of this Act,—

**(a) Related Person:** Persons shall be **DEEMED to be “Related Persons”** if—

- (i) Such persons are **officers or directors** of one another’s businesses;
- (ii) Such persons are legally recognised **partners** in business;
- (iii) Such persons are **employer and employee;**
- (iv) Any person directly or indirectly owns, controls or **holds 25% or more** of the outstanding voting stock or shares of both of them;
- (v) One of them directly or indirectly **controls the other;**
- (vi) Both of them are directly or indirectly **controlled by a third person;**
- (vii) Together they directly or indirectly **control a third person; or**
- (viii) They are members of the **same family;**

Section 2(49) “Family” means,—

- (i) The **spouse and children** of the person, and
- (ii) The **parents, grand-parents, brothers and sisters** of the person if they are wholly or mainly dependent on the said person.

(b) The term “**person**” also includes legal persons;

(c) Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, **shall be deemed to be related.**

### Circular No. 92/11/2019

#### A. Free samples and gifts:

- (i) It is clarified that samples which are supplied free of cost, without any consideration, do not qualify as 'supply', and accordingly corresponding ITC will not be allowed.
- (ii) However it will be treated as supply if fall under 4 specified activities done without consideration and accordingly corresponding ITC will be allowed.

#### B. Buy one get one free offer:

<b>Supply</b>	As per section 7, the goods or services which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (However it will be treated as supply if fall under 4 specified activities done without consideration.  It may appear at first glance that in case of offers like 'Buy One, Get One Free', one item is being 'supplied free of cost' without any consideration.  In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. <b><u>It can at best be treated as supplying two goods for the price of one.</u></b>
<b>Composite or mix and tax rates</b>	Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly.
<b>ITC</b>	It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

#### C. Discounts including ‘Buy more, save more’ offers: [Pre supply Discount]

- (i) For example- Get 10 % discount for purchases above ₹ 5000/-, 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-. Such discounts are shown on the invoice itself.
- (ii) For example- Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year.

Such types of post supply discounts will be excluded only if –

- There was an agreement between supplier and Receptient for above type of discount and
- Receptient reduce the corresponding credit on the basis of credit note issued by the supplier.

**D. Secondary Discounts [Post supply discount]**

These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at ₹ 10/- per packet. Afterwards M/s A re-values it at ₹ 9/- per packet. Subsequently, M/s A issues credit note to M/s B for ₹ 1/- per packet.

Post supply discounts will be excluded only if –

- There was an agreement between supplier and Receptient for above type of discount and
- Receptient reduce the corresponding credit on the basis of credit note issued by the supplier.

**Section 15(5):** The Government, notifies the following supplies under the said sub-section, namely:—

- (i) Supply of online money gaming;
- (ii) Supply of online gaming, other than online money gaming; and
- (iii) Supply of actionable claims in casinos.

### Summary of Section 15(1) with notifications and Circulars

Price actually paid or payable for supply of Goods /Services	XXX
<b>Adjustments ----</b>	
Incidental expenses eg. packing, loading etc.	Includible
Discount	
*Pre supply /At the time of supply	Excludible
*Post Supply (Provide agreement in advance for the same and Receptient reduce corresponding ITC)	Excludible
Interest on	
*Delayed consideration and on credit card	Includible
(Jab mila, jitna mila usko inclusive of GST maante hue GST Bharna hoga, if not received in actual, then no GST)	
*Loan /advances/deposits	Excludible
Obligation /Liability of supplier paid by Receptient to III party on behalf of supplier	Includible
Other taxes eg Excise duty, VAT, custom duty ie any other old taxes (However TCS is not a tax, Moreover TDS deducted by Receptient so no question at the end of supplier)	Includible
*Unit linked Subsidy given by Government to supplier	Excludible
*Otherwise subsidy	Includible
<b>Example: Given value: ₹10,000    Subsidy ₹ 1,000</b>	

Given value is after considering subsidy/ Net of subsidy	Given by Government	AV= 10,000		
	Given NON by Government	AV=11,000		
Given value is Before considering/deducting subsidy	Given by Government	AV= 9,000		
	Given NON by Government	AV=10,000		

## Rules, 2017: Determination of Value of Supply

### Rule 27: Value of supply of goods or services where the consideration is not wholly in money.

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-

#### Rank: 1

(a) Be the **Open Market Value** of such supply;

**Explanation (a) open market value** of a supply of goods or services or both means the full value in money, (*excluding GST and cess*) where the supplier and the recipient of the supply are not related and the price is the sole consideration.

(b) If the open market value is not available under clause (a) then value shall **be the Sum Total of Consideration** in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) If the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of **Like Kind and Quality**.

#### Rank 2 and 3

(d) **If the value is not determinable-**

- **under clause (a) or clause (b) or clause (c),**
- be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined
- by the application of
  - **Rule 30 or**
  - **Rule 31 in that order.**

### Rule 28: Value of supply of goods or services or both between distinct or related persons, other than through an agent

**(1)** The value of the supply of goods or services or both--

- between **Distinct Persons** or
- where the supplier and recipient are **Related**,
- (*other than where the supply is made through an agent*)

shall-

	<p><b>Rank 1</b></p> <p>Where the recipient is eligible for full input tax credit, <b>the value declared in the invoice shall be deemed to be the open market value of the goods or services.</b></p> <p><b>Rank 2 [OPTIONAL]</b></p> <p>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 <b>90% of the price charged</b> for the supply of goods of like kind and quality by the recipient to his customer not being a related person:</p> <p><b>Rank 3</b></p> <p>(a) Be the <b>Open Market Value</b> of such supply;</p> <p>(b) If the open market value is not available, be the value of supply of goods or services of <b>Like Kind and Quality</b>;</p> <p>(c) If the value is not determinable under clause (a) or (b), be the value as determined by the <b>application of</b></p> <ul style="list-style-type: none"> <li>- <b>Rule 30 or</b></li> <li>- <b>Rule 31, in that order:</b></li> </ul> <p>(2) Notwithstanding anything contained in sub-rule (1),</p> <ul style="list-style-type: none"> <li>■ the <b>value of supply of services</b> by a supplier to a recipient who is a related person,</li> <li>■ by way of <b>providing corporate guarantee</b> to any banking company or financial institution on behalf of the said recipient,</li> </ul> <p>shall be deemed to be <b>1% of the amount</b> of such guarantee offered, or the actual consideration, whichever is higher.</p>
<p><b>Rule 29: Value of supply of goods made or received through an agent</b></p>	<p>The value of supply of goods between the principal and his agent shall-</p> <p><b>Rank 1 [Optional]</b></p> <p>(a) Be the open market value of the goods being supplied, or at the option of the supplier, be <b>90% of the price charged</b> for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.</p> <p><b>Illustration:</b> A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of ₹ 5000 per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of ₹ 4550 per quintal. The value of the supply made by the principal shall be ₹ 4550 per quintal or where he exercises the option, the value shall be 90% of five thousand rupees i.e., <b>₹ 4500 per quintal.</b></p>

	<p><b>Rank 2 and 3</b></p> <p>(b) Where the value of a supply is not determinable under clause (a), the same shall be determined by the application of</p> <ul style="list-style-type: none"> <li>- <b><u>Rule 30 or</u></b></li> <li>- <b><u>Rule 31 in that order.</u></b></li> </ul>
<p><b>Rule 30: Value of supply of goods or services or both based on cost</b></p>	<p>Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be <b>110% of the cost of production or manufacture</b> or the cost of acquisition of such goods or the cost of provision of such services.</p>
<p><b>Rule 31: Residual method for determination of value of supply of goods or services or both</b></p>	<p>Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined <b>Using Reasonable Means</b>.</p> <p>HOWEVER in the case of supply of services, the supplier may opt for this rule, ignoring Rule 30.</p>
<p><b>Rule 31A: Value of supply in case of lottery, betting, gambling and horse racing</b></p>	<p>(1) The value in respect of supplies specified below shall be determined in the manner provided hereinafter.</p> <p>(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.</p> <p><b>Organising State” means</b> the State Government which conduct the lottery either in its own territory or sells its tickets in the territory of any other state.</p> <p>(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.</p>
<p><b>Rule 31B: Value of supply in case of online gaming including online money gaming</b></p>	<p><b>Notwithstanding anything</b> contained in this chapter,</p> <ul style="list-style-type: none"> <li>■ the <b>value of supply</b> of online gaming, including supply of actionable claims involved in online money gaming,</li> <li>■ shall be the <b>total amount paid or payable</b> to or deposited with the supplier by way of money or money’s worth, including virtual digital assets, <b>by or on behalf of the player:</b></li> </ul> <p>Provided that</p> <ul style="list-style-type: none"> <li>■ any <b>amount returned or refunded</b> by the supplier to the player for any reasons whatsoever,</li> <li>■ including player not using the amount paid or deposited with the supplier for participating in any event,</li> </ul> <p><b>shall not be deductible</b> from the value of supply of online money gaming.</p>



**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:

Provided that 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 32: Determination of value in respect of certain supplies**

(1) 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:-

(a)

For a currency, when exchanged from, or to, <b>Indian Rupees, (INR)</b>	The value shall be <b>equal to the difference</b> in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency.
Provided that in case where the Reserve Bank of India <b>Reference Rate for a currency is not available,</b>	The value shall be <b>1%</b> of the gross amount of Indian Rupees provided or received by the person changing the money:
Provided further that in case where <b>neither of the currencies exchanged is Indian Rupees,</b>	The value shall be equal to <b>1% of the lesser</b> of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the RBI.

**Lock in Period:** Provided also that 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) AT THE OPTION** of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be-

	<b>(i) For an amount up to ₹1,00,000</b>	<b>1% of the gross amount</b> of currency exchanged, <i>(Subject to a minimum amount of ₹ 250)</i>
	<b>(ii) For an amount exceeding ₹ 1,00,000 and up to ₹ 10,00,000</b>	<b>₹ 1000 and 0.5%</b> of the gross amount of currency exchanged and
	<b>(iii) For an amount exceeding ₹10,00,000</b>	<b>₹5,500 and 0.10%</b> of the gross amount of currency exchanged <i>(Subject to a maximum amount of ₹ 60,000)</i>

**Analysis****FOREX TRANSACTIONS****SPECIAL PROVISIONS TO DISCHARGE TAX****RULE : 32 PROVIDES : Other Options to Compute GST (OPTIONAL)****OPTION : A**

• Where INR Involved in the Transaction :	$\left[ \begin{array}{cc} \text{TV} & \text{RBI} \\ \text{(INR)} & \text{Reference Rate} \\ \text{P.U} & \text{P.U} \end{array} \right]$	* No. of Units
• Where RBI Reference Rate N/A :	$\left[ \begin{array}{cc} \text{TV} & \\ \text{(INR)} & *1\% \\ \text{P.U} & \end{array} \right]$	* No. of Units
• Where INR Not Involved :	$\text{FC}[\$] * \text{RBI Reference Rate} = \text{INR Value}$ $\text{FC}[\text{€}] * \text{RBI Reference Rate} = \text{INR Value}$	$\left. \begin{array}{l} \\ \\ \end{array} \right\} \text{Whichever is lower } [\text{INR}] * 1\%$

**Questions:** XYZ Money Changer: find AV for the Transaction held in May, 2018.

- Sold 10,000 USD @ 1 USD = 56/-  $[56 - 55] * 10000 = 10000$
- Purchase 1000 EURO @ 1 EURO = 70/-  $[70 - 71] * 1000 = 1000$
- Purchase 1000 GBP @ 1 GBP = 80/-  $[80 - 81] * 1000 = 1000$
- Sold 50,000 Unit of Currency "ABC" @ 1 "ABC" = 15/-  $[15 * 1\%] = 50,000 = 7500$
- Sold Out 10,000 USD for 6800 GBP 10000 USD \* 55 = 550,000/-

RBI Reference Rate : USD = 55  
 EURO = 71  
 GBP = 81

$6800 \text{ GBP} * 81 = 550800/-$   $\left. \begin{array}{l} \\ \\ \end{array} \right\} 550000 \times 1\% = 5500$

**Total Assessable value: 25,000**

**Air Travel Agent: (3)** The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of

- **5% of the basic fare** in the case of domestic bookings, and
- at the rate of **10% of the basic fare** in the case of international bookings of passage for travel by air.

**Explanation:** For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

**Life Insurance Business:** (4) The value of supply of services in relation to life insurance business shall be,—

(a) If such an amount is intimated to the policy holder at the time of supply of service.	The gross premium charged from a policy holder <b>reduced</b> by the amount allocated for investment, or savings on behalf of the policy holder,
(b) In case of single premium annuity policies other than (a),	<b>10% of single premium</b> charged from the policy holder; or
(c) In all other cases,	<b>25% of the premium charged</b> from the policy holder in the first year and <b>12.5% of the premium</b> charged from the policy holder in subsequent years:

**Provided that nothing contained in this sub-rule shall apply** where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

**Sale Purchase of Second Hand Goods** (5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods,

- The value of supply shall be the difference between the selling price and
- The purchase price and where the value of such supply is negative, it shall be ignored.

**Question: Mr. Kala is a proprietor of M/s. Kala & Associates registered in GST which deals in sale/ purchase of used or second hand cars. During financial year 2017-18, he effected following intra-State transactions:**

Particulars	Purchase Price	Sale Price
Car 1	₹ 5,00,000	₹ 7,50,000
Car 2	₹ 3,00,000	₹ 2,75,000
Car 3	₹ 6,00,000	₹ 6,50,000
Car 4	₹ 8,00,000	₹ 9,50,000

Mr. Kala purchased Car 4 from another registered person who charged GST of ₹ 1,30,000 and accordingly Mr. Kala has availed the input credit of the same.

Mr. Kala is not familiar with GST provisions hence he has approached you for determining his GST liability. Assume applicable rate of tax is 18%.

Ans

Particulars	Purchase Price	Sale Price	Provision	Value Addition	Tax
Car 1	₹ 5,00,000	₹ 7,50,000	Rule 32	2,50,000	45,000
Car 2	₹ 3,00,000	₹ 2,75,000	Rule 32	Negative value addition = Nil	Nil
Car 3	₹ 6,00,000	₹ 6,50,000	Rule 32	50,000	9,000
Car 4	₹ 8,00,000	₹ 9,50,000	Normal Provision as ITC has been availed	Output GST: 1,71,000 Less: ITC : 1,30,000	41,000

**Goods Repossessed:** Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by 5% points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

**Question:** Mr. X purchased a car value ₹ 40 lakh on 01/07/2017. He took a loan from HDFC Bank of ₹ 32 lakh for the same which was payable in 60 equal installment. Later on Mr. X unable to pay the Installment and the car Repossessed by the financier on 15/02/2018 and HDFC sold out such Used car on 10/09/18 for ₹ 31,00,000. Calculate the amount of GST to be paid by HDFC Bank.

Ans: Sale price of Car: = 31,00,000  
 Less: Cost Price = 30,00,000  
 Value Addition = 1,00,000

<b>Cost Price of CAR: U/R 32</b>	
Value of new car	: 40,00,000
Less: 5% Per quarter or part thereof from 01/07/17 to 10/09/18 ie 5 Quarters (40,00,000 * 5 * 5%)	= 10,00,000
Net Cost	= 30,00,000

**Voucher/coupon:** (6) The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

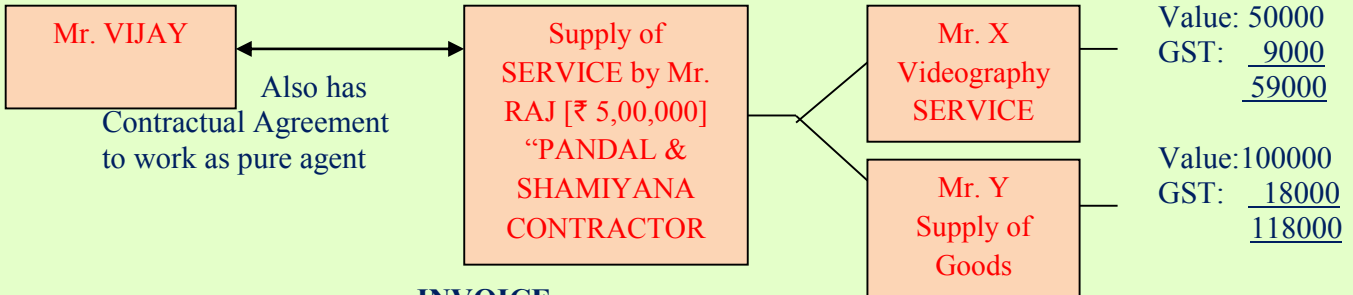
Example: Face value of coupon = ₹ 1,000  
 Purchasing power: May buy a shirt of ₹ 1,200  
 AV of coupon = ₹ 1200

**Notified service provider, where ITC availed** (7) The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act **between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.**

<b>Rule: 32A Value of supply in cases where Kerala Flood Cess is applicable</b>	The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, <b>but shall not include the said cess.</b> <b>Notes:</b> (1) Kerala was badly affected by flood in august 2018. (2) So to compensate the loss due to flood state government introduced KFC [General Rate @1%] and KFC revenue will goes to KERALA ONLY. (3) KFC applicable on all intra state supplies of goods and services within kerala @ B to C transactions under Regular Scheme to pay tax.
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	<p>(4) It will remain in force only for 2 years.</p> <p>(5) KFC need to be shown separately in the invoice.</p> <p>(6) It will be calculated as per the manner prescribed under Rule 32.</p>
<p><b>Rule 33: Value of supply of services in case of pure agent</b></p>	<p>The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply <b>shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-</b></p> <p>(i) The supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;</p> <p>(ii) The payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and</p> <p>(iii) The supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.</p> <p><b>Explanation.</b>—For the purposes of this rule, the expression <b>“Pure Agent”</b> means a person who—</p> <p>(a) Enters into a <b>Contractual Agreement</b> with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;</p> <p>(b) <b>Neither intends to hold nor holds</b> any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;</p> <p>(c) <b>Does not use for his own interest</b> such goods or services so procured; and</p> <p>(d) <b>Receives only the actual amount</b> incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.</p> <p><b>Illustration:</b> Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A’s recovery of such expenses is a disbursement and not part of the value of supply made by A to B.</p>

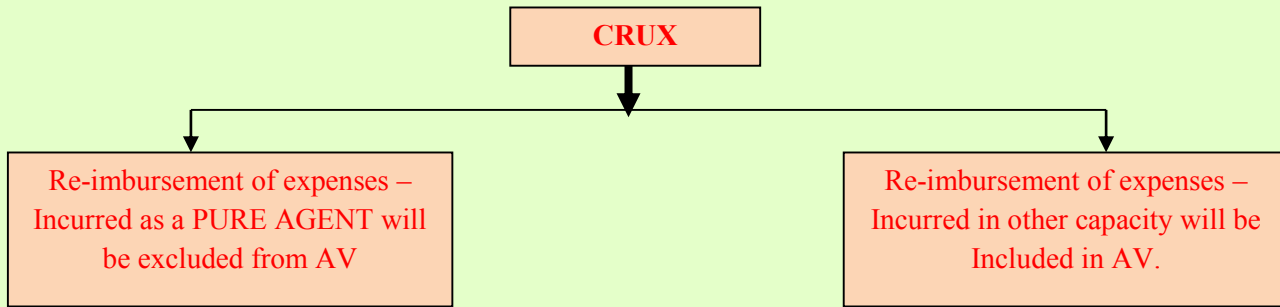
**Analysis of Rule 33: Treatment of Expenses Incurred as PURE AGENT**



**INVOICE**

Value :	500000
+ <u>Re-imburement</u>	
Service: 59,000	177000
Goods: <u>1,18,000</u>	<u>177000</u>
+ GST on ₹ 5,00,000	<u>90,000</u>
	<u>7,67,000</u>

- \* Billing By III Party (X & Y) in the name of Mr. VIJAY
- \* Mr. Vijay liable to pay ₹ 1,77,000 to III Party.
- \* Mr. Vijay requested Mr. RAJ to make payment to III Party on his Behalf –
- \* Later on Mr. Vijay Re-imbure the same ₹ 177000 to Mr. RAJ



**PURE AGENT:**

**Payment:** Arrange goods/Service for his client (Vijay) From III Party (X & Y) & make payment to III party on behalf of client & Recover such Amount without any commission.

+

**User:** Real User/Consumer of goods/Service Procured from III Party is client (Vijay)

<b>Rule 34: Rate of exchange of currency, other than Indian rupees, for determination of value</b>	<p>(1) <b>For goods:</b> The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as <b>notified by the Board under section 14 of the Customs Act, 1962</b> for the date of time of supply of such goods in terms of section 12 of the Act.</p> <p>(2) <b>For Services:</b> The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the <b>generally accepted accounting principles</b> for the date of time of supply of such services in terms of section 13 of the Act.</p>
<b>Rule 35: Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax</b>	<p>Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,—</p> <p><b>Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %)</b></p>

### Clarifications

#### Circular No. 115/34/2019: Clarification on issue of GST on Airport levies

PSF (Passenger Service Fee) and UDF (User Development Fee) being charges levied by airport operator but collected by airlines. For such collection they get collection charges from airport operator. Airport operator is liable to pay GST on PSF and UDF (value received is inclusive of GST). Airlines liable to pay GST on Collection Charges.

#### **Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisation receiving donation or gifts from individual donors**

**Issue:** Whether GST is applicable on donations or gifts received from individual donors by charitable organisation involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

**Clarification:** it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

#### **Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST:**

**Personal guarantee by the Director of a company to the bank/ financial institutions**

Q.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.



**Ans.** As per [to section 15 -Explanation \(a\)](#) of [CGST Act](#), the director and the company are to be treated as related persons.

As per [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.

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**.

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.**

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.**

**corporate guarantee by a person on behalf of another related person, or by the holding company**

**Q 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.

**Ans.** 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**.

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](#).

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](#).

Considering different practices being followed by the field formations and taxpayers in determining such taxable value, in order to provide uniformity in practices and ease of implementation, sub-rule (2) has been inserted in [rule 28](#) of [CGST Rules](#) vide [Notification No. 52/2023 dated 26.10.2023](#), for determining the taxable value of such supply of services between related persons in respect of providing corporate guarantee.

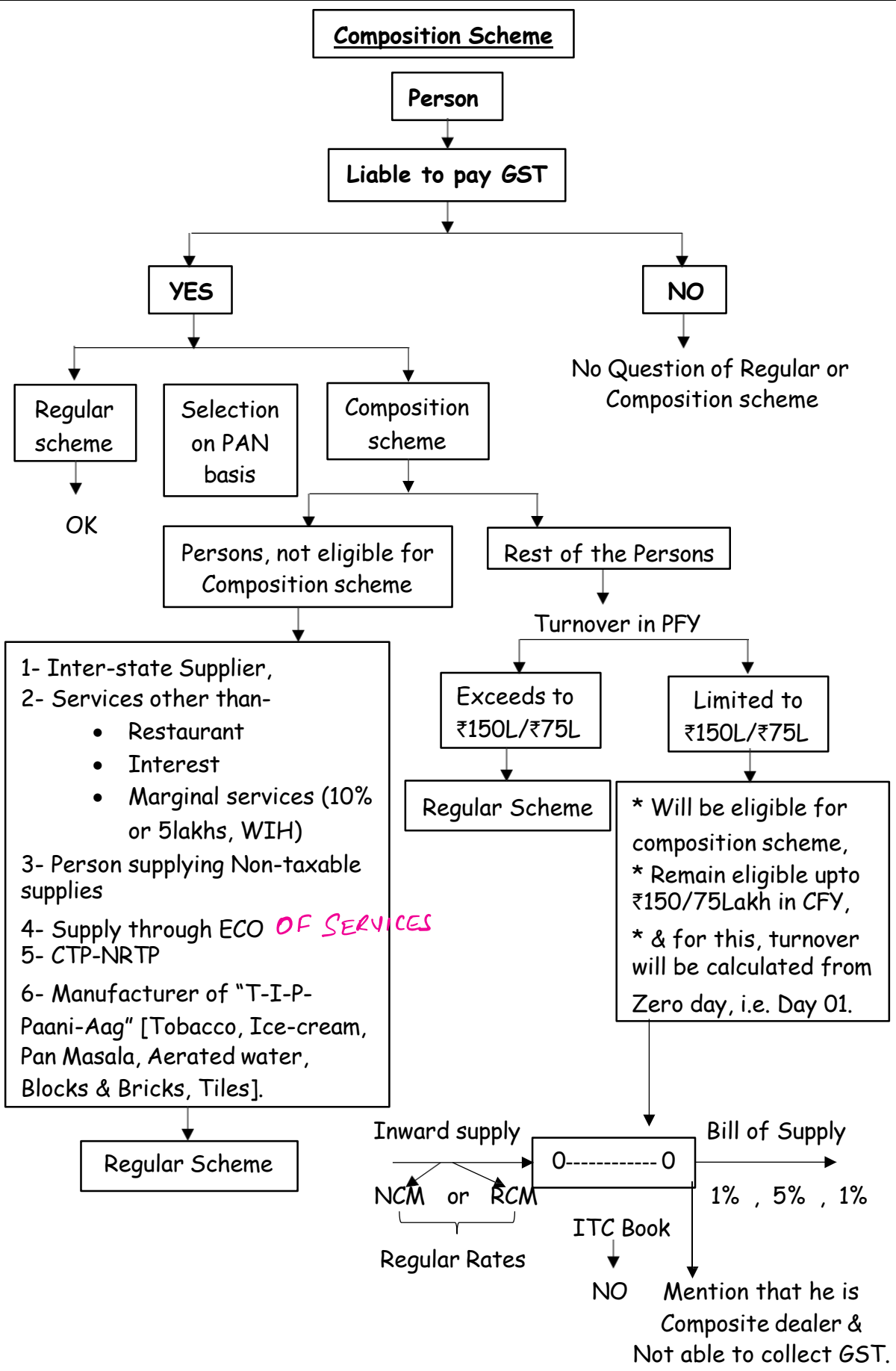
Accordingly, consequent to insertion of the said sub-rule in [rule 28](#) of [CGST Rules](#), in all such cases of supply of services by a related person to another person, or by a holding company to a subsidiary company, in the form of providing corporate guarantee on their behalf to a bank/ financial institution,

The taxable value of such supply of services, will henceforth be determined as per the provisions of [Rule 28\(2\)](#) of [CGST Rules](#), irrespective of whether full ITC is available to the recipient of services or not.

It is clarified that the [Rule 28\(2\)](#) 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 S. No. (1) above.

# Chapter 8: VALUATION

## COMPOSITION SCHEME



## Chapter 8: VALUATION

Payment: Quarterly by 18th  
 Statement: CMP08 (quarterly) by 18th  
 Return: GSTR 04 (Annually) by 30th April of next FY  
 Books of accounts: Lesser record maintenance.

### Analysis Of Concept of Composition Scheme

**What is composition scheme:** It is an alternate method to pay tax. It is an optional scheme. If a person is liable to pay tax (crossed normal threshold limit), then he can choose this option. It is PAN based scheme applicable for all registrations/ taxable persons registered under same PAN.

### **6 categories of persons are not eligible for the scheme:**

(1) Person making inter-state supply of goods/Services.

(2) Supplier of any service OTHER than-

(a) Restaurant services

(b) Limited value services along with main business. [Maximum value: 10% of turnover in state/UT or ₹ 5,00,000 whichever is higher] i.e. if value of these services exceed the maximum limit then the person not eligible for the scheme.

**Note:** Interest received on extending deposit loan and advances shall be ignored completely.

(3) Supplier of Non-taxable goods/Services.

(4) The person who supplies goods/Services through E commerce operator.

(5) Manufacturer of specified goods. [Pan masala, tobacco, ice cream, Aerated Water, bricks, earthen /roofing tiles (not wall tiles)]

(6) Casual taxable person and Non-Resident Taxable person NR. (Banjaare).

### **If a person not fall in above Six categories, then proceeds-**

Person will be eligible for composition scheme in CFY, if-

**In PFY-** Aggregate turnover (all outward supplies i.e. taxable, exempted etc) does not exceed to - ₹ 75 Lakh/150 lakh,

And he shall remain eligible upto ₹150lakh/₹75lakh in CFY.

**In CFY-** After aggregate turnover of ₹ 150 lakh/ ₹75 lakhs, the scheme will be Lapsed & the person required to pay tax as per regular scheme.

### **Notes:**

(1) ₹ 75 lakh limit applicable on 8 states: Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttarakhand.

(2) ₹ 150 lakh limit applicable on: Jammu-Kashmir, Himachal Pradesh, Assam and rest of the states &UT.

(3) Interest received on extending deposit/loan/advances shall be fully ignored.

(4) Turnover (for limit) will be calculated from Zero day (day 1).



## Chapter 8: VALUATION

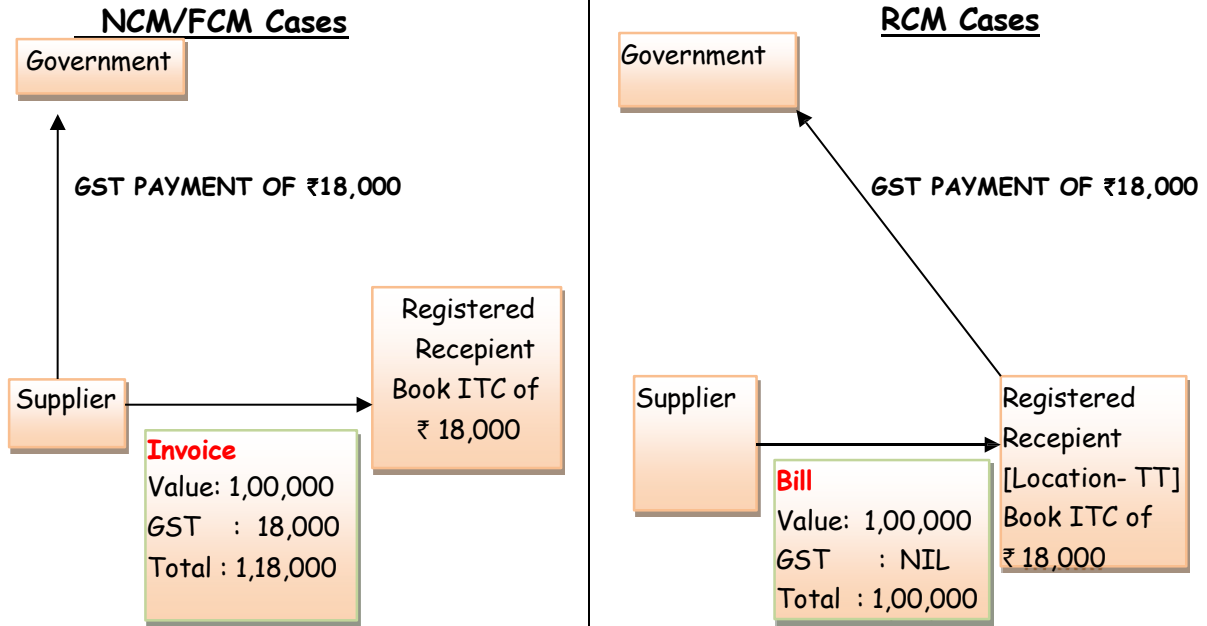
### COMPOSITION SCHEME (SERVICE FOCUSED)

Service focused scheme has the same charismatic as of goods focused scheme subject to following differences-

#### Differences between goods focused and Service focused scheme

Basis	Goods focused composition scheme	Service focused composition scheme
<b>Available for</b>	Person engaged in the business of— *Exclusive Goods	Person engaged in the business of— *Exclusive SERVICES
	*Restaurant	-
	*Goods + Service (Interest)	-
	*Goods + Other limited Value Services (10% or ₹ 5,00,000: whichever is higher)	*Goods + Other limited Value Services (Exceeding 10% or ₹ 5,00,000: whichever is higher)
<b>Negative List</b>	Person engaged in the business as— *Inter- state supply of Goods /Services *CTP/NRTP *Through E commerce Operator Goods/ services *Manufacturer of Tobacco, Ice-cream, Pan masala, Aerated Water *Non-Taxable supplies of Goods/ Services	Person engaged in the business as— *Inter- state supply of Goods /Services *CTP/NRTP *Through E commerce Operator Goods/ services *Manufacturer of Tobacco, Ice-cream, Pan masala, Aerated Water *Non-Taxable supplies of Goods/ Services
<b>Composite Rate</b>	1%, 5%,1%	6%
<b>Turnover Limit in PFY/CFY</b>	₹ 150 Lakh/₹ 75 Lakh	₹50 Lakh/₹ 50 Lakh

## Chapter: 9 Reverse Charge Mechanism



BASIS	NCM/FCM	RCM
Net Revenue to Supplier	[1,18,000 - 18,000 GST]= 1,00,000	1,00,000
Cost To Recipient	[1,18,000 - 18,000 ITC] 1,00,000	[1,00,000+GST 18,000 - ITC]=1,00,000
Revenue To Government	18,000	18,000

**Crux:**

In Both the Cases Financial Position Remains Same, Then Why RCM—

- 1) Where Government Has No Control Over the Supplier (e.g. Import of Service).
- 2) Where Government Has No trust Over the supplier (e.g. Goods Transport Agency).
- 3) Where Supplier Belongs To Un-Organised Sector Eg. Insurance Agent Service.
- 4) Important Note: Where RCM is applicable double entry shall be made in the books of Recipient-
  - Book ITC of GST in such inward supply under section 16.
  - Pay the GST under reverse charge through E - Cash Ledger only.
- 5) For applicability of RCM recipient must be located in taxable territory.

## Chapter 9: REVERSE CHARGE MECHANISM

### Section 9(3): N/No.13/2017-CGST: Specified Services under Reverse Charge

Sn	Supplier	Service	Recipient	Taxability	RCM [Recipient must be located in Taxable territory]	FCM
1.	Goods Transport Agency (GTA) <i>ie who engaged in transportation of goods, belonging to others By Road and, Required to issue Bilty-</i>	Service by way of transportation of goods belonging to others by road	Consignor or consignee who is liable to pay freight	# Goods wise exemption e.g. Transportation of Milk, salt, Flour, Pules, Rice, agriculture Produce, Newspaper & Magazines, Relief material, Defence material. # Service to Unregistered Person # Service to Unregistered CTP. # Service to Govt, Department which has TDS registration Only. Will be exempted.	# Where recipient is a Factory, society, co-operative society, GST Registered Person, Body Corporate, Partnership Firm (Registered or Not), including Association of persons, Casual Taxable Person. Then recipient liable to pay GST. <b>Note:</b> Rate of GST *5% and NO ITC to GTA	# Where GTA voluntarily Exercise the option to Pay GST under FCM. Then supplier liable to pay GST. <b>Note:</b> Rate of GST *5% and NO ITC to GTA * 12% and GTA eligible to book ITC
2	Individual Advocate (Senior or Junior), Firm of advocate	Legal Services provided in relation to advice, consultancy or assistance in any branch of law and representational service.	Business Entity having turnover more than threshold limit in PFY	#Service provided to Greeb Business entity i.e. the entity having turnover limited to Threshold Limit in PFY. #Service provided to Government Departments. Will be exempted.	Recipient / Client Liable to pay GST under RCM.	-
3	Arbitral Tribunal	Service of Justice	Business Entity having turnover more	#Service provided to Grib Business entity i.e. the	Recipient / Applicant Liable to pay	-



## Chapter 9: REVERSE CHARGE MECHANISM

			than threshold limit in PFY	entity having turnover limited to Threshold Limit in PFY. #Service provided to Government Departments. Will be exempted.	GST under RCM.		
4	Organiser of an Event	Sponsorship services	Body-corporate or partnership firm	Sponsorship of Sports Events will be exempted	Recipient liable to pay GST under RCM.	-	
5, SA 5AA	Non-Government	Renting of Residential Property	B to C	Exempted	-	-	
			B to B	Taxable	Recipient liable to pay GST under RCM.		
	Government	Renting of Residential Property	B to C	Exempted	-	-	
			B to B	Taxable	Recipient liable to pay GST under RCM.		
	Non Government	Renting of Commercial Property	B to C	Taxable	-	Supplier liable to pay GST under FCM.	
			B to B	Taxable	-	Supplier liable to pay GST under FCM.	
	Government	Renting of Commercial Property	B to C	Taxable	-	Supplier liable to pay GST under FCM.	
			B to B	Taxable	Recipient liable to pay GST under RCM.	-	
	Note: Here Indian Railway will not be considered as Government,						
	Government	P.V.T. Services # POST office # VESSEL/AIRCRAFT # Transport of Goods/Passenger	Any Person	Post office basic Services will be exempted.	-	Supplier liable to pay GST under FCM.	
Government	Other Services	Any Person	Services to Non Business Entity, Garib Business entity, Government, Driving license,	-	-		

## Chapter 9: REVERSE CHARGE MECHANISM

				death/Birth certificate etc. will be exempted		
				Rest of the services will be taxable e.g. Spectrum services	Recipient liable to pay GST under RCM.	-
5B	Any Person	Services of Transfer of development right [TDR] /Floor Space Index [FSI]	Promoter	#Where there is sale of Under construction property then property liable to GST and TDR/ FSI will be Exempted. #Where there is sale of construction property then property will not be liable to GST and TDR/ FSI will be taxable	Recipient/ Promoter liable to pay GST under RCM.	-
5C	Any Person	Long term lease of land (30 years or more) for construction of a project	Promoter	Similar to above	Recipient/ Promoter liable to pay GST under RCM.	-
6	Director	Services of Directorship	Company or a body corporate	#Directorship services given by Whole time director #Directorship services given by Part time director of Government body Will not be a supply hence NO GST.	Recipient/ company liable to pay GST under RCM.	-
7	Insurance Agent	Services of Insurance Agent	Insurance company	Service provided to Rural Area branch of insurance company will be exempted.	Recipient/ insurance company liable to pay GST on commission and incentives under RCM.	
8	Recovery Agent	Services of Recovery Agent	Banking company, financial institution,	-	Recipient/ banking company, Financial	

## Chapter 9: REVERSE CHARGE MECHANISM

			non- banking financial institution (NBFC)		institution, NBFC liable to pay GST on commission and incentives under RCM.	
9	Music composer, photographer, artist, or the like	Copyright Services relating to original dramatic, musical or artistic	Music company, producer or the like.	-	Recipient /Music company, producer or the like liable to pay GST under RCM.	
9A.	Author	Copyright relating to original literary	Publisher	-	Recipient/ Publisher liable to pay GST on Royalty under RCM.	FCM will be APPLICABLE where--the author has taken registration under GST and filed a declaration, that he will pay GST.
10	Members of Overseeing Committee constituted by the Reserve Bank of India	Services of Overseeing Committee	Reserve Bank of India	--	Recipient/ RBI liable to pay GST under RCM.	-
11	Individual Direct Selling Agents	Services of Direct Selling Agents (DSAs)	Banking company, NBFC	-	Recipient/ banking company, NBFC liable to pay GST under RCM.	However, where DSA is other than individual then FCM will be applicable.
12	Business facilitator (BF)	Services of business facilitator (BF) [Nature of Service: Refer clients, pursue the client's Proposal and facilitate the bank to carry out transactions but cannot transacts on behalf of bank.]	A banking company	Where services given to Rural Area Branch of banking company then it will be exempted.	Recipient/ banking company liable to pay GST under RCM.	
13	An agent of business correspondent (BC)	Services of Agent of business	Business correspondent, [BC: they are permitted to	Where services given to Rural Area Branch, then it	Recipient/ Business Correspondent liable to pay	-

## Chapter 9: REVERSE CHARGE MECHANISM

		correspondent (BC)	carry out transactions (Deposit / transactions) on behalf of the banks]	will be exempted.	GST under RCM.	
14	Non-Company	Security services (services provided by way of supply of security personnel)	Registered person	Indoor security Services provided to School will be exempted.	Recipient/ Registered person liable to pay GST under RCM.	<i>FCM will be applicable</i> Where Supplier is- -Body corporate, -Government Department, Local authority; Governmental agencies, registered only as TDS deductor -Composite dealer u/s10
15	Non-Company	Services provided by way of renting of any Passenger motor vehicle (jisme fuel ka amount alag se nahi dena hota)	Company		Recipient/ company liable to pay GST under RCM.  <b>Note:</b> Rate of GST *5% and NO ITC to Supplier except one input service of Renting of motor vehicle.	# in case of any other combination supplier liable to pay GST under FCM. <b>Note:</b> Rate of GST *5% and NO ITC to Supplier except one input service of Renting of motor vehicle. # Moreover where 12% Model is opted by supplier with Full ITC then FCM will be Applicable.
16	Lender	Lending of Securities	Borrower		Recipient/ borrower liable to pay GST under RCM.	-

## Chapter 9: REVERSE CHARGE MECHANISM

Note: The wordings Central Government and State Governments, shall also include Parliament, State Legislatures, Courts and Tribunals.

As per IGST LAW in addition to above following shall also be covered under: N/ N: 10/2017- Integrated Tax

Sn	Supplier	Service	Recipient	Taxability	RCM [Recipient must be located in Taxable territory]
1	Any person located outside	Import of Any service	Any person located in India	<p># Where there is an import of service for free of cost</p> <ul style="list-style-type: none"> <li>- from related person</li> <li>- For business purpose then it will be supply, otherwise not a supply.</li> </ul> <p># Moreover, Various import of services are exempted from GST such as--</p> <ul style="list-style-type: none"> <li>- Services taken by individual for personal use,</li> <li>- Government</li> <li>- Trust Etc.</li> </ul>	Recipient will be liable to pay GST under RCM.

### Specified Supplies under Section 9(4)

Sn	Supplier	Goods / Service related to Construction sector	Recipient	Taxability	RCM [Recipient must be located in Taxable territory]	FCM
1	Unregistered person	Supply of Cement	Registered Person (Promoter)	-	Promoter liable to pay GST under RCM	---
2	Unregistered person	Supply of Capital Goods	Registered Person (Promoter)		Promoter liable to pay GST under RCM	
3	Unregistered person	Supply of Input Services, Other inputs	Registered Person (Promoter)			

## Chapter 9: REVERSE CHARGE MECHANISM

			- Upto 20% FROM UNREGISTERED		NO GST	---	---
			- In Excess of 20% FROM UNREGISTERED		Liable to GST	Promoter liable to pay GST under RCM	

"RCM ON GOODS"

SN	Description of supply of Goods	Supplier of goods	Recipient of supply
1.	<b>Cashew nuts, not shelled or peeled</b>	Agriculturist	<b>Any registered person</b>
2.	<b>Bidi wrapper leaves (Tendu)</b>	Agriculturist	<b>Any registered person</b>
3.	<b>Tobacco leaves</b>	Agriculturist	<b>Any registered person</b>
4.	<b>Silk yarn</b>	Any person <b>who manufactures</b> silk yarn from raw silk or silk worm cocoons for supply of silk yarn	<b>Any registered person</b>
4A	<b>Raw Cotton</b>	Agriculturist	<b>Any registered person</b>
5.	<b>Supply of lottery.</b>	State Government, Union Territory or any local authority	<b>Lottery distributor or selling agent.</b>
6	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, Excluding Indian Railway State Government, Union territory or a local authority	Any registered person
7	<b>Priority Sector Lending Certificate</b>	<b>Any registered person</b>	<b>Any registered person</b>

**Sale by government departments to unregistered person:**

**Issue:** Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?

**Clarification:** It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under RCM provisions.

In this regard, it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority)

- shall be liable to get registered and
- pay GST on intra-State and inter-State supply
- of used vehicles, seized and confiscated goods, old and used goods, waste and scrap
- made by them to an unregistered person

subject to the provisions of [sections 22](#) and [24](#) of the [CGST Act](#)

## Chapter: 10 Invoice

Section 31	Who,when, how to issue invoice/ bill of supply, Revised Invoice etc
Section 32	only a registered person can collect in prescribed manner:
Section 33	Amount of Tax to be indicated in tax invoice and other documents:
Section 34	Debit and credit note

Tax INVOICE/ Bill of supply/Receipt Voucher: For supply of goods or services

### **Section: 31 to 34 of CGST ACT, 2017 AND CGST RULES, 2017**

**Section 32: only a registered person can collect in prescribed manner:** A person who is **not a registered taxable person** shall not collect in respect of any supply of goods and/or services any amount by way of tax under the CGST/SGST Act and the registered taxable person shall collect tax in accordance with the provisions of this Act.

**Section 33: Amount of Tax to be indicated in tax invoice and other documents:** Where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which will form part of the price at which such supply is made.

Who is required to issue /Bill off supply.	<p>Tax invoice:</p> <p>Tax invoice is required to be issued by the following persons:</p> <ul style="list-style-type: none"><li>▪ A Registered supplier paying tax under regular scheme shall issue TAX INVOICE.</li><li>▪ A Registered Recipient (RCM): Recipient liable to pay GST under reverse charge need to issue an invoice.</li></ul>
--------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



## Chapter 10: INVOICE

	<p>Bill of supply:</p> <ul style="list-style-type: none"> <li>▪ A Registered supplier making EXEMPTED supplies shall issue a BILL OF SUPPLY</li> <li>▪ A Registered taxable Person Paying Tax under COMPOSITION SCHEME shall issue a BILL OF SUPPLY.</li> </ul> <p>Note: Small value invoice /Bill of supply: Where supply is made to an unregistered person having value below ₹ 200 and buyer is not willing to get invoice / Bill of supply- then the supplier need not to mandatorily to issue Invoice or Bill of supply but need to issue a consolidated invoice/bill of supply at the end of the day and will keep that document himself.</p> <p><u>Receipt Voucher:</u> A registered Supplier shall, on receipt of advance payment with respect to any supply, issue a receipt voucher evidencing receipt of such payment.</p> <p>NOTE:No need of signature in case of computer generated documents (Invoice/ Bill of Supply/Challan etc.)</p>				
<p>When (Last date or due date)</p>	<p style="text-align: center;"><u>In case of supply of goods</u></p> <p>(a) Where supply involve Removal of goods: Then the invoice shall be issued before or at the time of removal of goods and in case where supply does not involve Removal of goods: Then the invoice shall be issued before or at the time of delivery of goods.</p> <p>(b) <u>In case of continuous supply of goods:</u></p> <table border="1" data-bbox="381 1353 1458 1689"> <tr> <td data-bbox="381 1353 883 1561">Where periodic "statements of account" are given by supplier ie Payment linked to statement of accounts</td> <td data-bbox="883 1353 1458 1561">Then invoice shall be issued on or before each such statements is issued.</td> </tr> <tr> <td data-bbox="381 1561 883 1689">Where payment made "on Account basis"</td> <td data-bbox="883 1561 1458 1689">Then invoice shall be issued on or before each payment is received.</td> </tr> </table> <p>(c) <u>In case of sale on approval basis:</u> Invoice shall be issued on or before acceptance date or 6 Months from the date of removal (whichever is Earlier)</p>	Where periodic "statements of account" are given by supplier ie Payment linked to statement of accounts	Then invoice shall be issued on or before each such statements is issued.	Where payment made "on Account basis"	Then invoice shall be issued on or before each payment is received.
Where periodic "statements of account" are given by supplier ie Payment linked to statement of accounts	Then invoice shall be issued on or before each such statements is issued.				
Where payment made "on Account basis"	Then invoice shall be issued on or before each payment is received.				

## Chapter 10: INVOICE

	<p style="text-align: center;"><u>In case of supply of Taxable Services:</u></p> <p>(a) At the time of provision of service, Before provision of service or after provision of service [within 30/ (45 days in case of Banking and Insurance)]</p> <p>(b) <i>In case of continuous supply of service:</i></p> <table border="1" data-bbox="391 427 1442 974"> <tr> <td data-bbox="391 427 792 591">Where the due date of payment is ascertainable from the contract,</td> <td data-bbox="792 427 1442 591">The invoice shall be issued on or before the due date of payment</td> </tr> <tr> <td data-bbox="391 591 792 804">Where the due date of payment is not ascertainable from the contract,</td> <td data-bbox="792 591 1442 804">The invoice shall be issued before or at the time when the supplier of service receives the PAYMENT;</td> </tr> <tr> <td data-bbox="391 804 792 974">Where the payment is linked to the completion of an event,</td> <td data-bbox="792 804 1442 974">The invoice shall be issued on or before the date of completion of that event.</td> </tr> </table> <p>(c) <u>Where the supply of services ceases</u> under a contract before the completion of the supply, the invoice shall be issued when the supply ceases and such invoice shall be issued to the extent of the supply affected before such cessation.</p> <p>NOTE: Where recipient liable to pay GST under RCM then An invoice shall be issued on the date of receipt of Goods /services</p> <p>Inovice Cum Bill of Supply: Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies.</p>	Where the due date of payment is ascertainable from the contract,	The invoice shall be issued on or before the due date of payment	Where the due date of payment is not ascertainable from the contract,	The invoice shall be issued before or at the time when the supplier of service receives the PAYMENT;	Where the payment is linked to the completion of an event,	The invoice shall be issued on or before the date of completion of that event.
Where the due date of payment is ascertainable from the contract,	The invoice shall be issued on or before the due date of payment						
Where the due date of payment is not ascertainable from the contract,	The invoice shall be issued before or at the time when the supplier of service receives the PAYMENT;						
Where the payment is linked to the completion of an event,	The invoice shall be issued on or before the date of completion of that event.						
How	<p><u>Manner of issuing:</u> Supply of goods: The invoice shall be prepared in triplicate, Supply of Services: The invoice shall be prepared in duplicate.</p>						
Revised invoice	<p>A registered taxable person may, within 1 month from the date of issuance of RC issue a revised invoice against the invoice already issued during the period:</p> <ul style="list-style-type: none"> <li>▪ Starting from the effective date of registration</li> <li>▪ Till the date of issuance of RC to him. (So that buyer can avail the credit if he is eligible)</li> </ul>						

## Chapter 10: INVOICE

Basis	Debit Note/Supplementary Invoice.	Credit Note
When to issue	Where one or more tax invoice has been issued and the taxable value or tax charged in that tax invoice is found less than the supplier shall issue to the recipient one or more debit notes.	Where- one or more tax invoice has been issued and the taxable value or tax charged in excess, or sale return or under supply then the supplier, may issue a CREDIT NOTE.
What to do after issue	Any registered person who issues a debit note shall declare the details of such debit note in the upcoming return and the tax liability shall be adjusted.	Supplier shall declare the details of such one or more credit notes in the upcoming return but max to max by 30 <sup>th</sup> November of next Financial Year or the date of filing of annual return, whichever is earlier, and the tax liability shall be adjusted.
Banking Company or a Financial Institution including NBFC/ insurer	<u>Exemption from Serial Number and ADDRESS:</u> Where the supplier of taxable service is an insurer or a banking company or a FI, NBFC the said supplier shall issue a tax invoice even if not having serial number and address of recipient.	
Goods Transport Agency Service	BILTY/CONSIGNMENT NOTE: the said supplier of service shall issue a tax invoice containing the gross weight, name, vehicle registration number details of goods transported, details of origin and destination, GSTIN of taxable person etc.	
Passenger Transportation Service & CINEMA	In case of passenger transportation service: TICKET= INVOICE: In case of cinema hall: TICKET= INVOICE:	

## Chapter 10: INVOICE

# Concept of E-INVOICE [Relevant extract from Rule 48]

The invoice shall be prepared by such class of registered persons

- whose aggregate turnover in a financial year exceeds ` 5 crore
- by including such particulars contained in FORM GST INV-01
- after obtaining an Invoice Reference Number
- by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.
- However, Commissioner may, exempt a person or a class of registered persons from issuance of invoice for a specified period.

Notification @ E Invoicing :- Hereby notifies registered person,

- Whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹5 crore, as a class of registered person
- who shall prepare invoice and other prescribed documents, in terms of Rule 48(4)
- in respect of supply of goods or services or both
  - ⇒ to a registered person [B to B supplies] or
  - ⇒ for exports.

other than a Special Economic Zone unit and the followings ....

Insurance company, Banking company/NBFC/Financial Institution
Goods transport agency
Passenger Transporter
Cinema halls
OIDAR supplier
A government department, a local authority

## Chapter 10: INVOICE

Q. 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?

Ans. Certain entities/sectors have been exempted from mandatory generation of e-invoices

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.

Q. Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued invoices in the manner prescribed under rule 48 (4) of the CGST Rules, 2017 (i.e. in cases of e-invoice).

Ans. It is clarified that there is no need to carry the physical copy of tax invoice in cases where invoice has been generated by the supplier in the manner prescribed under Rule 48(4) of the CGST Rules and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.

Q. 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 as TDS Deductor?

Ans. Registration of TDS Deductor is fall under section 24 of CGST Act, 2017 as Mandatory Registration. Therefore supplies to such persons will be called as B to B supplies.

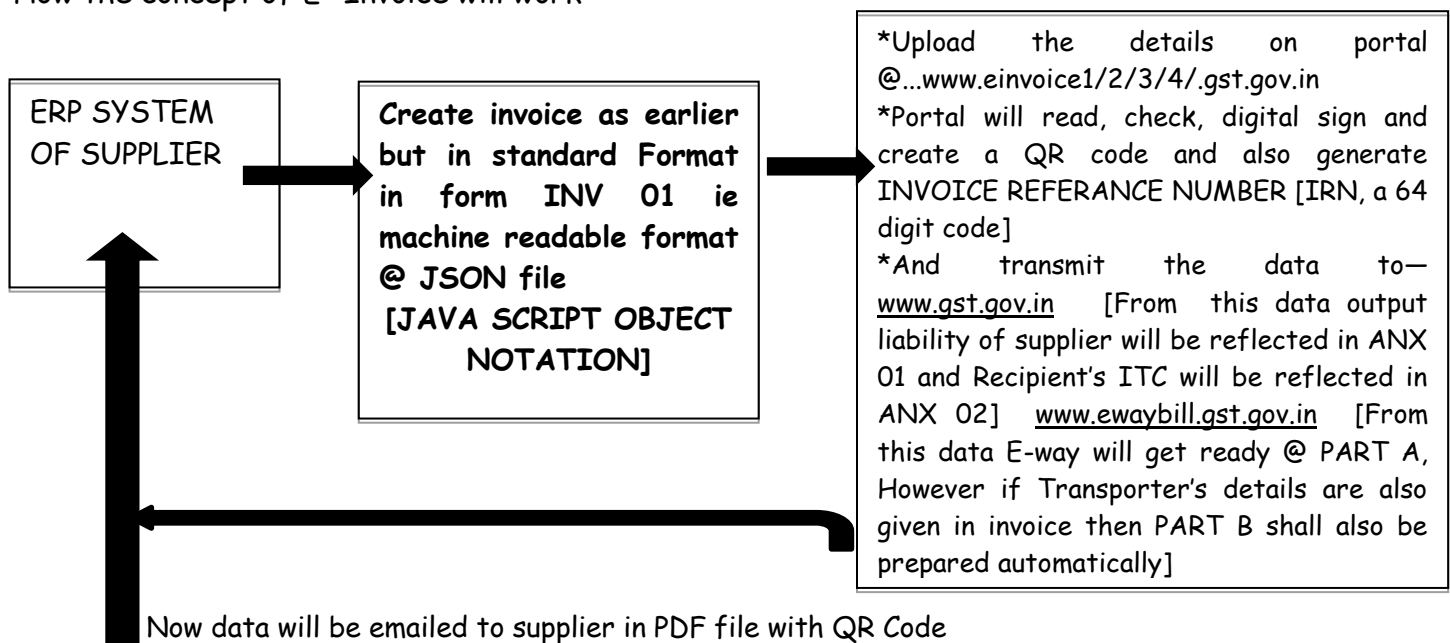
Accordingly, the registered person, whose turnover exceeds the threshold for generation of e-invoicing, is **required to issue e-invoices** for the supplies made to such Government Departments or establishments/ Government agencies/ local authorities/ PSUs, etc.

### Benefits of E- Invoice:

1. Curb tax evasion through check on fake ITC and Invoices
2. Automated Updation of GSTR = 1/2B and E way Bill.
3. Ease of compliance.
4. Enhance efficiency of tax administration.
5. Paperless work
6. Etc.

## Chapter 10: INVOICE

How the concept of E- Invoice will work



- After that PDF file / QR code will be given to transporter
- Officer will check it on the way with QR Code scanner (Specific Govt app available on e-invoice website)
- Such QR Code contains the details of supplier, Receptient, supply detail, IRN, Digital sign etc.

Concept of Dynamic QR Code [Relevant Extract From Rule 46]

IN CASE OF NORMAL INVOICING ie Other than E-Invoicing: 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.[FOR PAYMENT PURPOSE].

Dynamic QR Code: NOTIFICATION No. 71/2020:IN CASE OF NORMAL INVOICING

An invoice issued by a registered person, whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds ₹500 crore,

- to an unregistered person (hereinafter referred to as B2C invoice),
- shall have Dynamic Quick Response (QR) code:
- [other than those referred to in

Insurance company, Banking company/NBFC/Financial Institution
---------------------------------------------------------------

Goods transport agency
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Passenger Transporter
-----------------------

## Chapter 10: INVOICE

Cinema halls
OIDAR supplier

QR Code through DIGITAL DISPLAY: Where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display,

- Such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code,
- shall be deemed to be having Quick Response (QR) code.

## Chapter: 11 TIME OF SUPPLY

### Background:

**Section 12: Time of supply- in case of Goods**

**Section 13: Time of supply- in case of Services**

GST is payable on supply of goods or services. A supply consists of elements that can be separated in time, like purchase order/agreement, dispatch (of goods), delivery (of goods) or provision or performance of service, entry in the records, payment, and entry of the payment in the records or deposit in the bank.

So, at which of these points of time does GST become payable?

Does it become payable?

when an agreement to supply goods or services is made, or

when the goods are shipped or the services are provided, or

when the invoice is issued or when payment is made?

What if the goods are shipped over a period of time?

What if the service is provided over a period of time?

Provisions relating to 'time of supply' provide answer to all such and other 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.

**Note: Meaning of "Date of Payment" for supplier: Date of bookish entry by supplier or Date of Actual credit in supplier's bank, whichever is earlier.**

**Meaning of "Date of Payment" for Recipient: Date of bookish entry by Recipient or Date of Actual debit in recipient's bank, whichever is earlier.**

<u>Basis</u>	<u>TOS @ SUPPLY OF SERVICE SECTION: 13</u>	<u>TOS @ SUPPLY OF GOODS SECTION: 12</u>
<b>FCM CASES where Supplier Liable to pay GST</b>	Where invoice is issued with- in time then: Invoice date OR Payment date (Whichever is Earlier will be the time of supply)	Where invoice is issued within time then: <b>Invoice date OR Payment date —————(Earlier)</b>



## Chapter 11: TIME OF SUPPLY

			<p>However, for specified actionable claims which are Actionable claims (Goods).  <b>Invoice date OR Payment date</b>          (Whichever is Earlier will be the time of supply)</p>
		<p>Where invoice is not issued with- in time then:  <b>Completion date OR Payment date</b>          (Whichever is Earlier will be the time of supply)</p>	<p>Where invoice is not issued with- in time then:  <b>Last date of Issue of invoice OR <del>Payment date</del></b>  <b>However, for specified actionable claims which are Actionable claims (Goods).</b>  <b>Last date of Issue of invoice OR Payment date</b>          (Whichever is Earlier will be the time of supply)</p>
		<p>RESCUE Provision:          Bookish Entry Date in Recipient Books will be the time of supply.</p>	--
		<p><u>Chiller Advance:</u> IF Amount Received in Excess of Bill Amount (MAX upto ₹1000): Such "Advance Payment" then supplier has 2 options.  <b>Option 1:</b> Pay GST on Payment basis i.e. TOS will be advance payment revived  <b>Option 2:</b> Do not pay GST on such advance on payment basis but pay when it will be adjusted in next invoice i.e. TOS will be next invoice date.</p>	<p><u>Chiller Advance:</u> IF Amount Received in Excess of Bill Amount (MAX upto ₹1000): Such "Advance Payment" then supplier has 2 options.  <b>Option 1:</b> Pay GST on Payment basis i.e. TOS will be advance payment revived  <b>Option 2:</b> Do not pay GST on such advance on payment basis but pay when it will be adjusted in next invoice i.e. TOS will be next invoice date.</p>
		<p>General provision  <b>Payment date OR</b></p>	<p>General provision  <b>Payment date OR</b></p>

## Chapter 11: TIME OF SUPPLY

RCM CASES where Recipient Liable to pay GST	61th day from the date of invoice (Whichever is Earlier will be the time of supply)	31th day from the date of invoice OR Goods recd. Date (Whichever is Earliest will be the time of supply)
	<u>Rescue</u> Bookish Entry Date in the Books of Recipient will be the time of supply.	<u>Rescue:</u> Bookish Entry Date in the Books of Recipient will be the time of supply.
	<u>Associated Enterprises + Import of service +RCM</u> Payment Date OR Bookish Entry Date (Whichever is Earlier will be the time of supply)	---
Voucher/ Coupon Etc.	Where there is a specific supply is given against voucher or coupon etc., then TOS will be the date of issue of coupon or voucher. Where multiple supplies can be given against voucher or coupon etc., then TOS will be the date of Redemption of coupon or voucher.	-----Same -----
Residuary Provision Eg search and seizure matters	TOS will be the date of - - Return Filing Due Date OR Date of payment of TAX (AS the Case May be)	-----Same -----
Additional Amount like interest / Penalty	TOS will be the date of -- Actual Receipts of Interest, penalty etc.	-----Same -----

<b>Special Case: Voucher</b>	Whether the Supply is Identifiable <div style="display: inline-block; vertical-align: middle;"> <div style="border: 1px solid black; padding: 2px; margin: 2px;">Yes</div> <div style="border: 1px solid black; padding: 2px; margin: 2px;">No</div> </div>	=ToS = Date of Issue of Voucher Or =ToS=Date of Redemption of Voucher.	- Same -
<b>Residuary Provision</b>	Return Filing Due Date [if he is registered] Or Date of payment of TAX [otherwise] <i>(AS the Case May be)</i>		- Same -
<b>Special Case (Additional Value)</b>	ToS = Date of Receipts of Additional Value (Interest, penalty, Discount Recovered etc)		- Same -

**SECTION: 14 Change in rate of tax in respect of supply of goods or services**

BEFORE	AFTER	TIME OF SUPPLY
SUPPLY	Where the <b>invoice</b> for the same has been issued and the <b>payment</b> is also received after the change in rate of tax	The time of supply shall be the date of receipt of payment or the date of issue of invoice, <b>whichever is earlier</b> ;
SUPPLY Where the <b>invoice</b> has been issued prior to change in rate of tax	but the payment is received after the change in rate of tax	The time of supply shall be the date of issue of <b>invoice</b>
SUPPLY Where the <b>payment</b> is received before the change in rate of tax,	but the invoice for the same has been issued after the change in rate of tax,	The time of supply shall be the date of receipt of <b>payment</b>

BEFORE	AFTER	TIME OF SUPPLY
Where the <b>invoice</b> for the same has been issued and the <b>payment</b> is also received prior the change in rate of tax	SUPPLY .....	The time of supply shall be the date of receipt of payment or the date of issue of invoice, <b>whichever is earlier</b> ;
Where the <b>invoice</b> has been issued prior to change in rate of tax	SUPPLY but the payment is received after the change in rate of tax	The time of supply shall be the date of issue of <b>payment</b>

Where the <b>payment</b> is received before the change in rate of tax,	SUPPLY but the invoice for the same has been issued after the change in rate of tax,	The time of supply shall be the date of receipt of <b>invoice</b>
------------------------------------------------------------------------	-----------------------------------------------------------------------------------------	-------------------------------------------------------------------

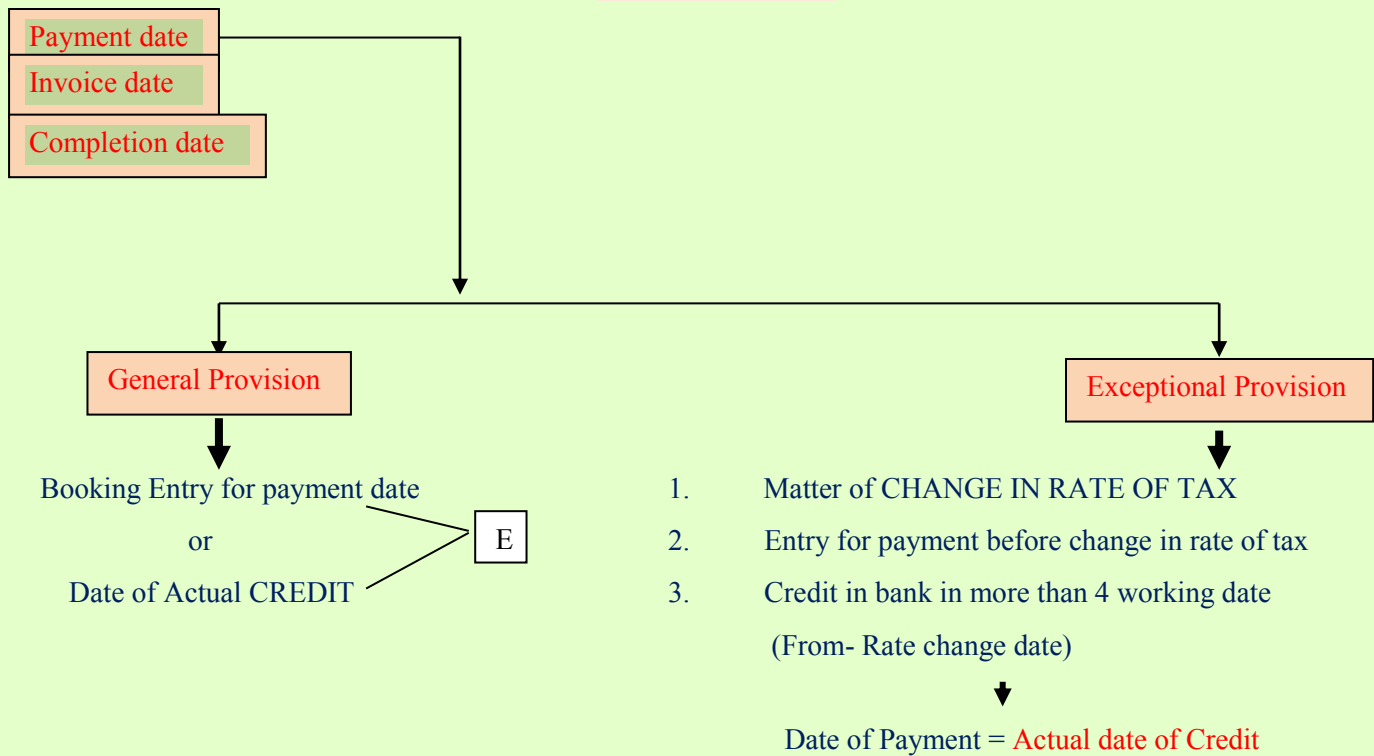
**Question: Rate change w.e.f 1/06/18 from 5% to 18%**

S.No.	Supply Date	Invoice Date	Payment Date	TOS	Due Date
1	28 May	9 June	25 July	09.06.18	20.07.18
2	28 May	28 May	25 July	28.05.18	20.06.18
3	28 May	9 June	26 May	26.05.18	20.06.18
4	10 June	28 May	25 June	25.06.18	20.07.18
5	10 June	28 May	10 May	10.05.18	20.06.18
6	10 June	9 June	28 May	09.06.18	20.07.18

**Date of Payment:** Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after 4 WORKING DAYS from the date of change in the rate of tax.

**Date of Receipts of Payment:** Explanation: For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date, on which the payment is credited to his bank account, whichever is earlier.

**PAYMENT DATE**



**Questions:** X Pvt. Ltd. Provides consultancy service as on 26.03.2018. The company received an A/c Payee cheque of ₹ 100000/- as 31.03.2018. The said cheque deposited in the bank on the same day & also entered in books of A/c. Rate of GST Changed w.e.f. 01.04.2018 @ 18% from 5%.01.04.2018:- Sunday, 06.04.2018 = Public holiday

Determine TOS in following cases.

- (i) Payment credit to Bank: 15.04.2018
- (ii) Payment Credit to Bank : 07.04.2018
- (iii) Payment Credit to Bank : 05.04.2018

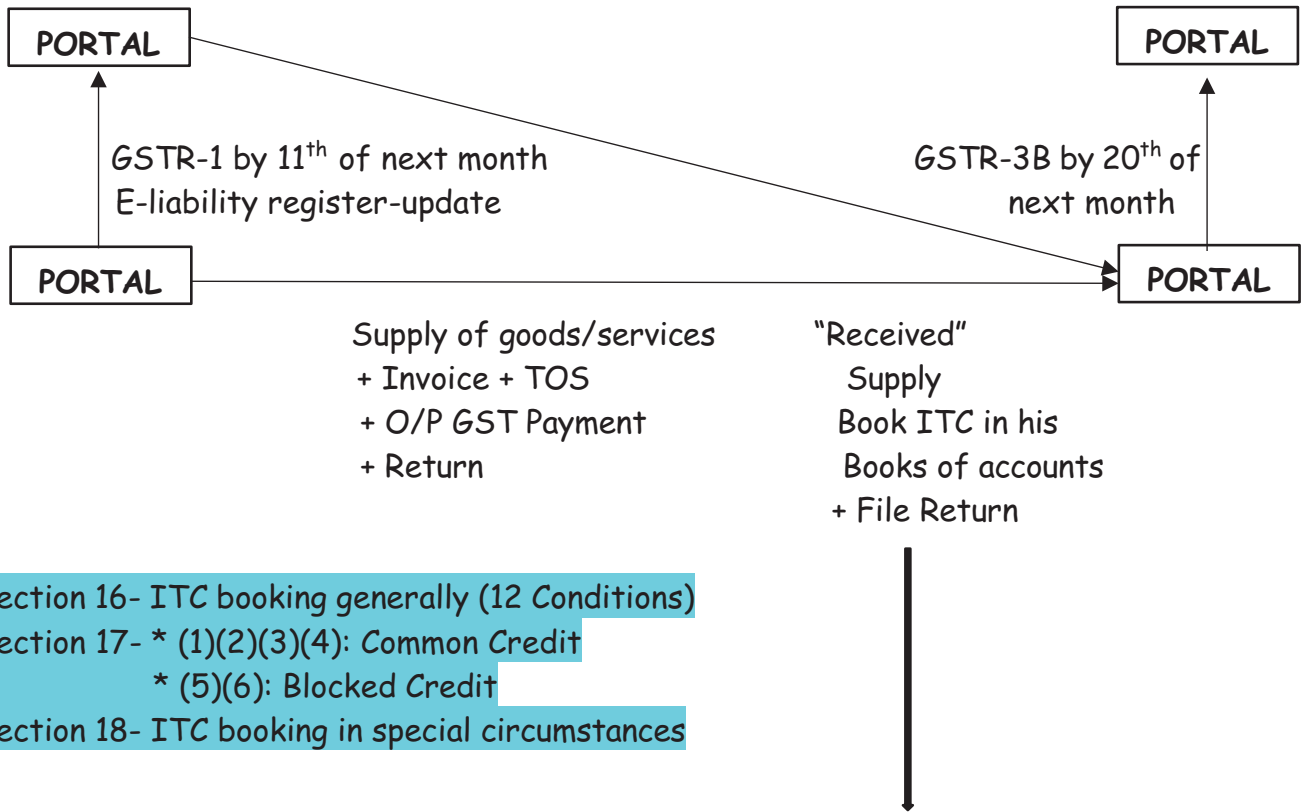
Note: Invoice is Issued on 10.04.2018 in all cases.

**Answer:**

S.No.	Completion	Invoice	Payment	TOS u/s 14
(i)	26.03.2018	10.04.2018	15.04.2018	10.04.2018
(ii.)	26.03.2018	10.04.2018	07.04.2018	07.04.2018
(iii)	26.03.2018	10.04.2018	31.03.2018	31.03.2018

# Chapter: 13 INPUT TAX CREDIT

## Analysis of Section 16: CONDITIONS FOR Claiming I.T.C.



Section 16- ITC booking generally (12 Conditions)

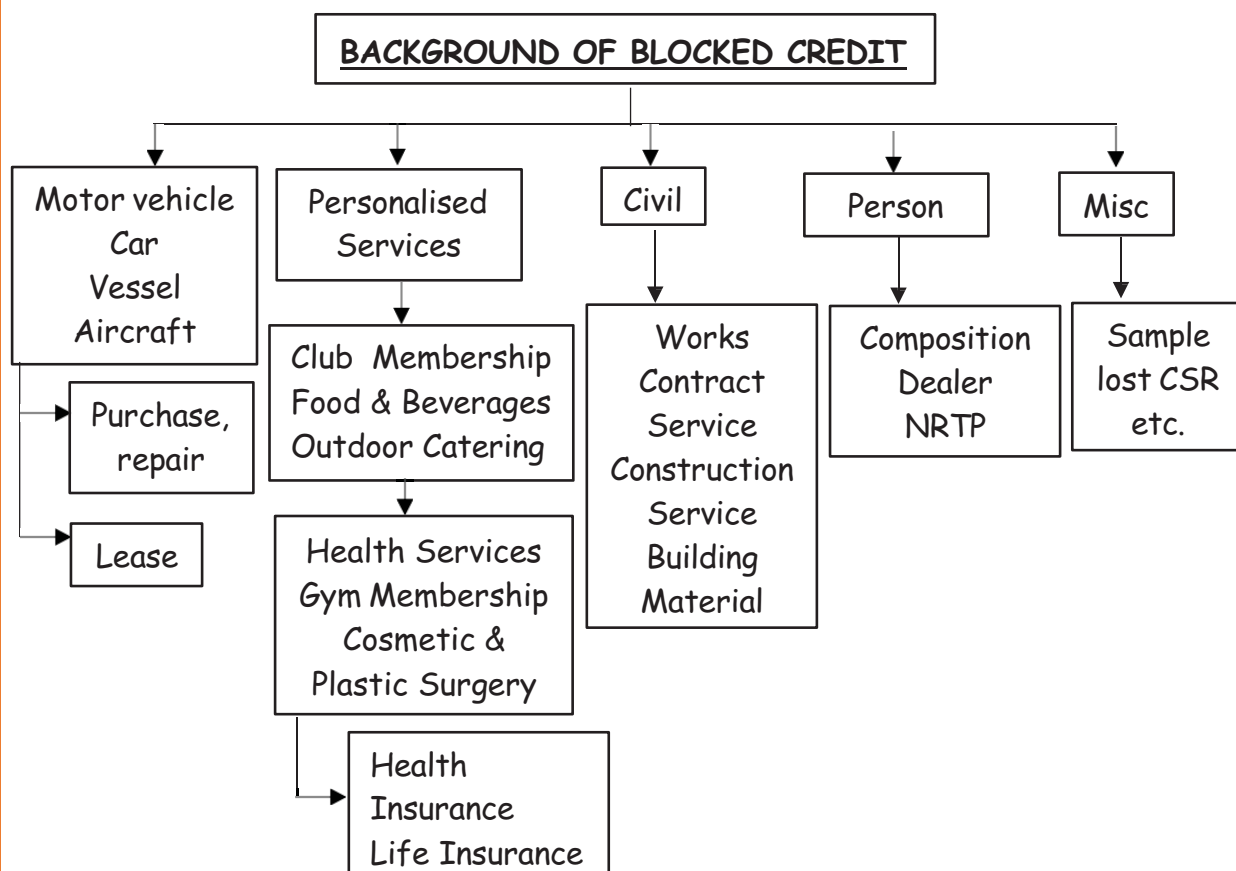
Section 17- \* (1)(2)(3)(4): Common Credit

\* (5)(6): Blocked Credit

Section 18- ITC booking in special circumstances

S.N.	<u>12 Conditions to book ITC</u>
1	Recipient should have Invoice issued by Supplier/SELF, Invoice/Debit NOTE/ISD Invoice/Bill of ENTRY to claim ITC.
2	Goods/Service-Received by Recipient himself or Received by III Party on Behalf of Recipient. <b>Note 1:</b> If Goods Received in instalment /LOTS then ITC shall be allowed on receipt of last lot. <b>Note 2:</b> where Supplier fall under the provisions of Section 38 (Discussed in Filing of Return chapter) then NO ITC shall be allowed.
3	Recipient Need to file Valid GSTR 3B on time
4	Supplier Need to file Valid GSTR 3B on time. <b>Effect of Non-payment of tax by the supplier</b> a) Inward supply taken by recipient b) GSTR 1 filed by Recipient c) ITC amount reflected in GSTR 2B of Recipient d) ITC claimed by recipient e) Supplier did not pay GST by 30 <sup>th</sup> September of next financial year f) Then Recipient need reverse or Pay Equal amount by 30 <sup>th</sup> November g) If not paid by recipient by above date, then he is liable to pay the amount with Interest under section 50. h) Now if supplier pay the amount of GST i) Then Recipient will be eligible to Re-book ITC.

5	<p><b>Condition of 180 days for bill payment-</b>                  Inward supply taken by recipient</p> <p>a) Inward supply taken by recipient                  b) ITC booked by the recipient on the basis of INVOICE.                  c) Bill amount not paid by recipient within 180 days from bill date.                  d) Then recipient is required to reverse or pay the full or proportionate amount with interest.                  e) If later on recipient pay the full or proportionate bill amount.                  f) Now recipient is eligible to Re book ITC on bill payment basis.</p> <p>Note: 1 This condition is not applicable on RCM cases and free of cost supplies.                  Note: 2 Suppliers obligation paid by Recipient then the amount shall be counted in Bill amount payment to supplier.</p>
6	INWARD Supply: USE/intended to be used for Business or Furtherance of business.
7	<p>Recipient's output Supply should be non-exempted.                  What about common USE: make it Proportionate and restricted it to non-exempted and business purpose.</p>
8	<p>Keep in mind Last date to Book ITC - Last date:  <b>30th<sup>th</sup> November of NEXT financial Year OR Annual Return Actual filing date:</b>                  whichever is Earlier [But this condition is only for original Booking of ITC i.e. not for re-availment.</p>
9	Recipient can take Either ITC or Depreciation Under Income-tax Act.
10	CAPITAL Goods must be Used for whole life, IF partly used then: Make it proportionate as per prescribed method.
11	No ITC shall be allowed of the TAX arise on Re-Assessment/ Fraud etc.
12	Received supply should not be a NEGATIVE listed supply as defined in Sec: 17(5).



# Chapter 13: INPUT TAX CREDIT

**Thumb Rule 1.** Which is not fall @ above ITC shall be allowed subject to other Conditions.

**Thumb Rule 2.**

GUD	GANNA
Yes	Yes
No	No
No	Yes

**Thumb Rule 3.** Tit For TAT (Jaise ko Vaisa).

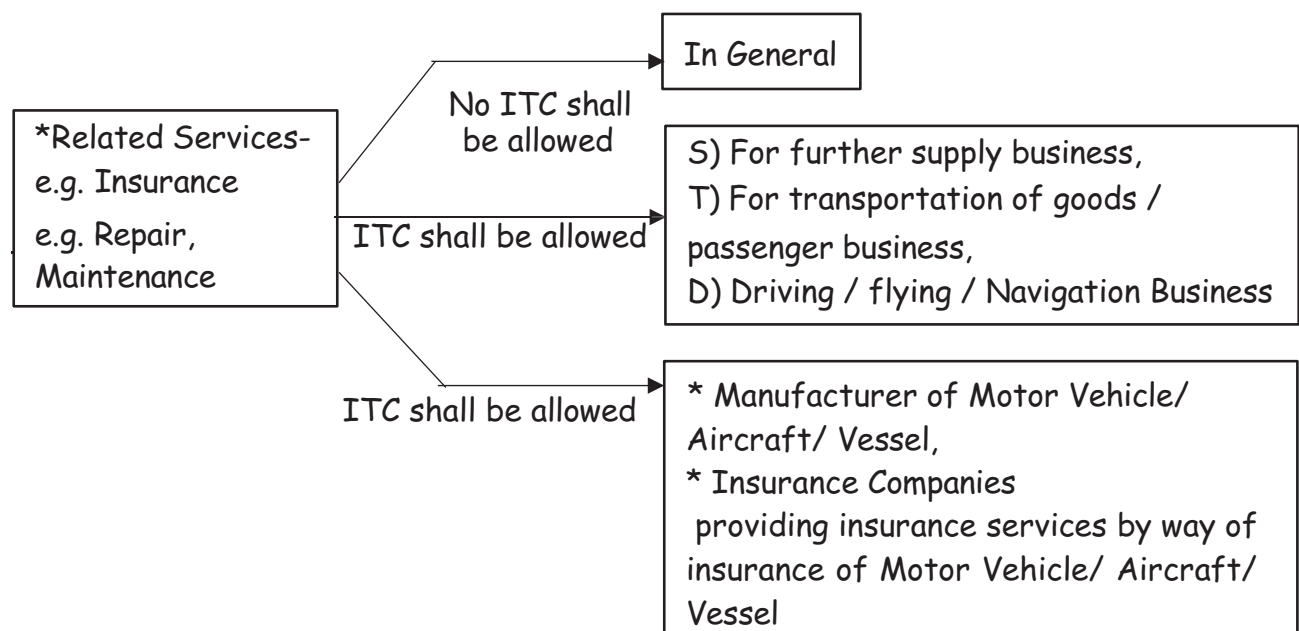
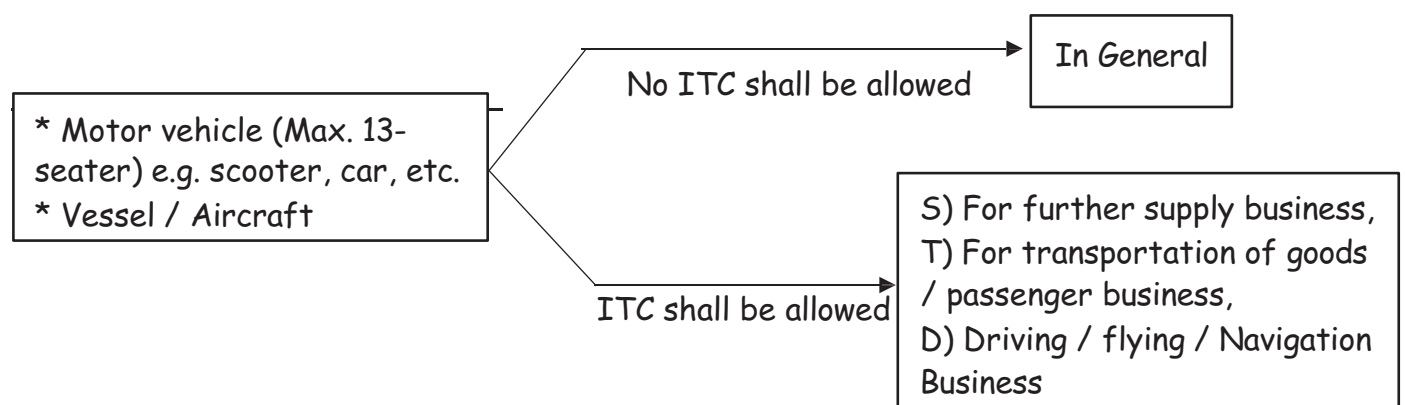
**Thumb Rule 4.** Legal Obligation.

**NOTE:**

## SECTION 17(5): Blocked Credits

**A) ITC of GST paid on:**

- Purchase of Motor Vehicle/ Aircraft/ Vessel,
- Lease Rental of Motor Vehicle/ Aircraft/ Vessel
- Related Services (e.g. Repair, Insurance, etc.)





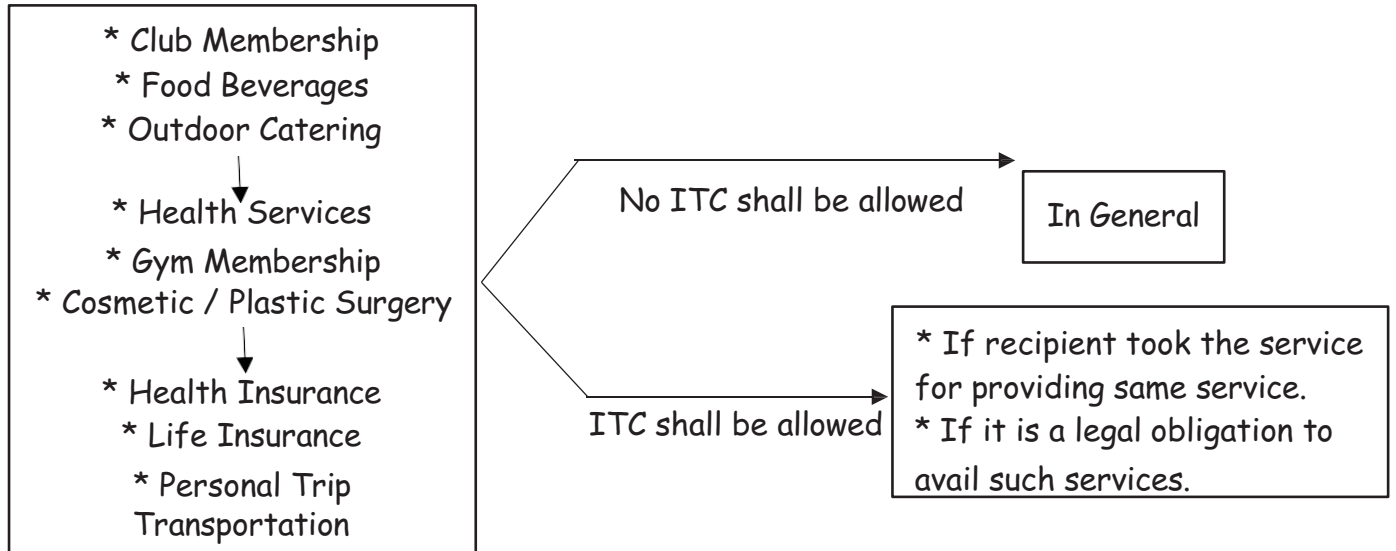
# Chapter 13: INPUT TAX CREDIT

Comment:

What about Truck, Bus??

ITC not blocked u/s 17(5), so allowed, if all the other conditions u/s/ 16 are satisfied.

**B) Personalised Services:**



**C) Works Contract Service:**

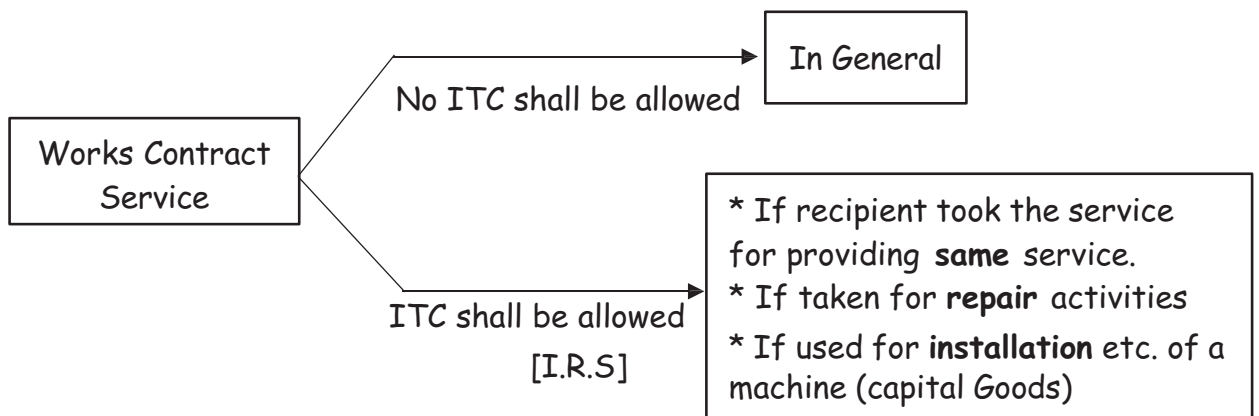
- Goods and Services @ Single Value

And

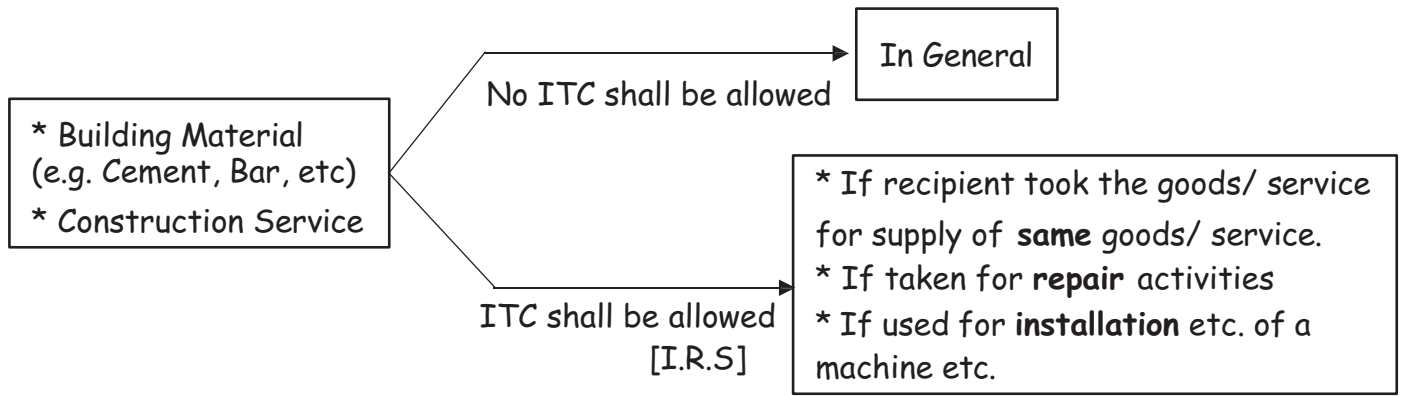
- Resultant property is an Immovable Property

Comment:

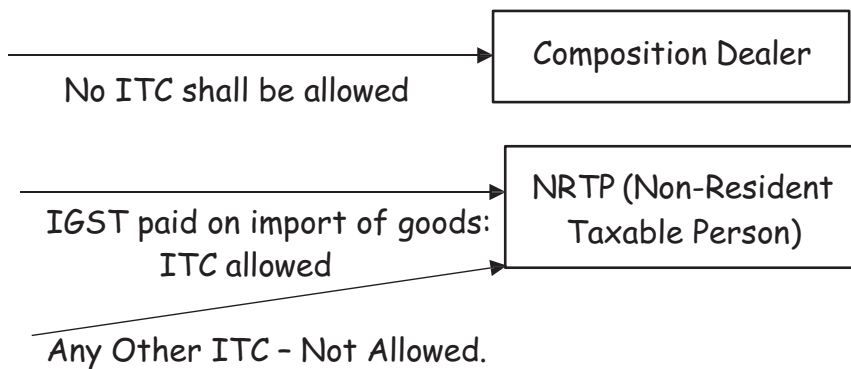
Telecommunication Tower, Pipeline laid outside the premises will also be called as immovable property.



**D) Building Material / Construction Service:**



**E) Composition Dealers / NRTP / CTP:**



**Comment:**

No such restriction for Casual Taxable Person (CTP).

**F) Free Sample Distribution / CSR Activities:**

- \* Inward Supply taken, but-
  - Lost, Destroyed, Stolen
  - Used for personal purpose (i.e. finally, not used for Business purpose)

↓

ITC shall not be allowed.
- \* Goods purchased and used for free sample distribution: => No ITC shall be allowed.
- \* Goods or services received for distribution under CSR activities (Corporate Social Responsibility): => No ITC shall be allowed.

**SECTION: 17 (1) "Business & Non-Business"**

i) Where any inward supply is used for business purpose then input tax credit to recipient shall

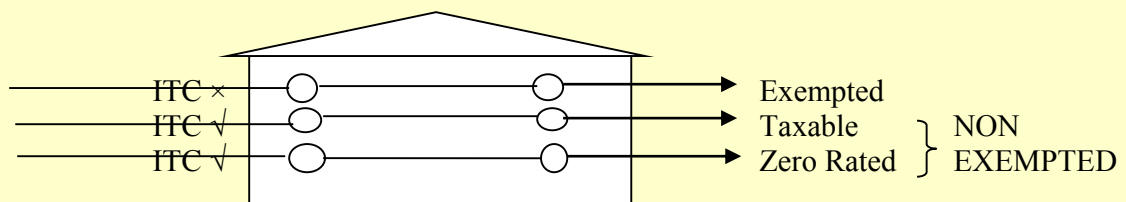
**SECTION 17(1): Business & Non Business**

- (i) **Exclusive business purpose:** Where any inward supply is used for business purpose then input tax credit to recipient shall be allowed [Section: 16]
- (ii) **Exclusive Non business Purpose:** Where any inward supply is used for “non - business” purpose then NO Input Tax Credit shall be allowed to Recipient [Section : 16]
- (iii) **Common Usage:** Where inward supply is used commonly for business as well as non -business purpose then proportionate Input Tax Credit shall be allowed [Section : 17(1)]

**SECTION : 17(2)&(3) Exempted & Non Exempted**

- (i) **Exclusive Non exempted purpose:** Where any goods are used in NON EXEMPTED [Taxable, Zero Rated] Purpose then input tax credit on such inward supply shall be allowed [Section : 16]
- (ii) **Exclusive Exempted Purpose:** Where any goods are used in exempted supplies then input tax credit as related inward supplies shall not be allowed [Section : 16]

**In other words:**



(iii) **Common Usage:** Where any inward supplies are used commonly for “Exempted as well as non- exempted purpose then input tax credit shall be allowed at proportionally”.

**Sec: 17 + Rule: 42 + Rule: 43 (FY = 19-20)**

For ITC Purpose Deemed life of capital Goods will be 5 Years ie 60 Months

**Input and Input Service**  
Sec: 17+ Rule: 42

**Capital Goods**  
Sec: 17+ Rule: 43

**Monthly Calculation [for Every Month]**

1. Book Total Common Credit = 18000  
(GST as Given in Invoice Received)
  2. Reverse [Ineligible Credit (FAT)] = 8000
- Net ITC for the month **10000**

**How to Calculate: (FAT)**

- (a) If we know the Quantity of usage for eligible and Non eligible purposes then: Calculate it on Actual Basis (OR)
- (b) Otherwise USE the formula Given by Law maker  
 → Related to exempted supplies = C.C. \* E.T/T.T.  
 (ie Proportionate in T/O Ratio)
- (T/O = T/O within the State Exc. All Taxes)  
 → Related to Non Business Purpose = 5% of C.C.:XXX (FAT)

**ANNUAL Calculation**

If the same Data Repeated for every month  
 Total C.C.will be = 18000×12=2,16,000  
 FAT(Ineligible Credit) which You have Reversed al ready  
 (8000×12) = 96000

**Now there may be some Dr/Cr.Note.....**  
 For FY: 19-20 that may affects: Reversible Amount

- (i) Now Reversible Amount = 90,000
  - (ii) Now Reversible Amount =1,00,000
- So in case (i)** we will Re-Book the Credit of ₹ 6000

**In case (ii)** Now we will have to Pay ₹ 4000 to the Department with Interest WEF: 1/4/20 till Date of Payment [Last Date will be 30/Sep/2020]

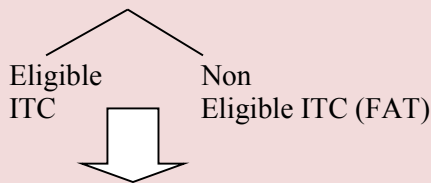
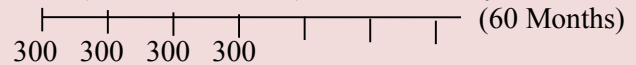
**THE END**

**Monthly Calculation [For Every Month]**

1. Book the whole common credit [ C.C ] :18000  
(as Given in Invoice Received)
2. Reverse the Ineligible Amount on Monthly Basis (Reversal :Pay AN Amount) :XXX

**How to Calculate Ineligible Amount ie FAT**

Spread the Total C.C over the deemed life (60 Months) of the C.G. (18000/60 Months) = 300 [Monthly C.C.]



On the Basis T/O Ratio - FAT =  $300 \times \frac{ET}{TT}$  (30L / 70L)  
 of that Month :₹128.57 and you need to pay this amount for that month

**Special CASE:1:**

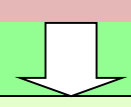
(Period=1) Cut of date (Period 2)

[USE the C.G Exclusively for Exempted]	[USE the C.G for Common purpose]
----------------------------------------	----------------------------------

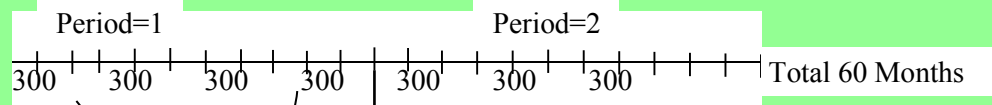
C.G. Purchased  
 GST:18,000  
 Now What will we do?

(a) Book the whole itc on cutoff date as mention in Invoice : 18000

(b) Reverse /Payment an Amount for Entire Period= 1 on Cutoff Date on the Basis of 5% Per Quarter or Part thereof [suppose in Period (1) 6 Quarters are there] so (5%×6 Quarters)=30%  
 Ineligible credit [FAT] For Period(1) = 5400



Now the Question is How to Remove FAT for Period (2)  
 Spread the whole Credit over the life of Capital Goods  
 $18000/60 = 300$  Per Months



It is Not Relevant for us Now

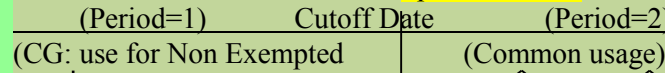
Eligible in Eligible  

$$C.C (pm) \times \frac{E.T}{T.T}$$

$$300 \times \frac{30 \text{ Lakh}}{70 \text{ Lakh}}$$

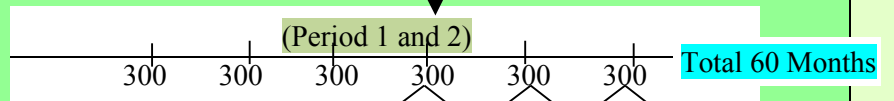
$$= ₹128.57$$
 Need to pay this Amount for a Particular in months

**Special Case: 2**



Capital Goods Purchased:  
 GST=18000  
 ↓  
 Book the whole ITC of ₹ 18000  
 ↓  
 For Period (1): ITC fully Allowed  
 For Period: 2 - have to pay monthly Amount

[First of all Spread it over the life of Capital Goods]

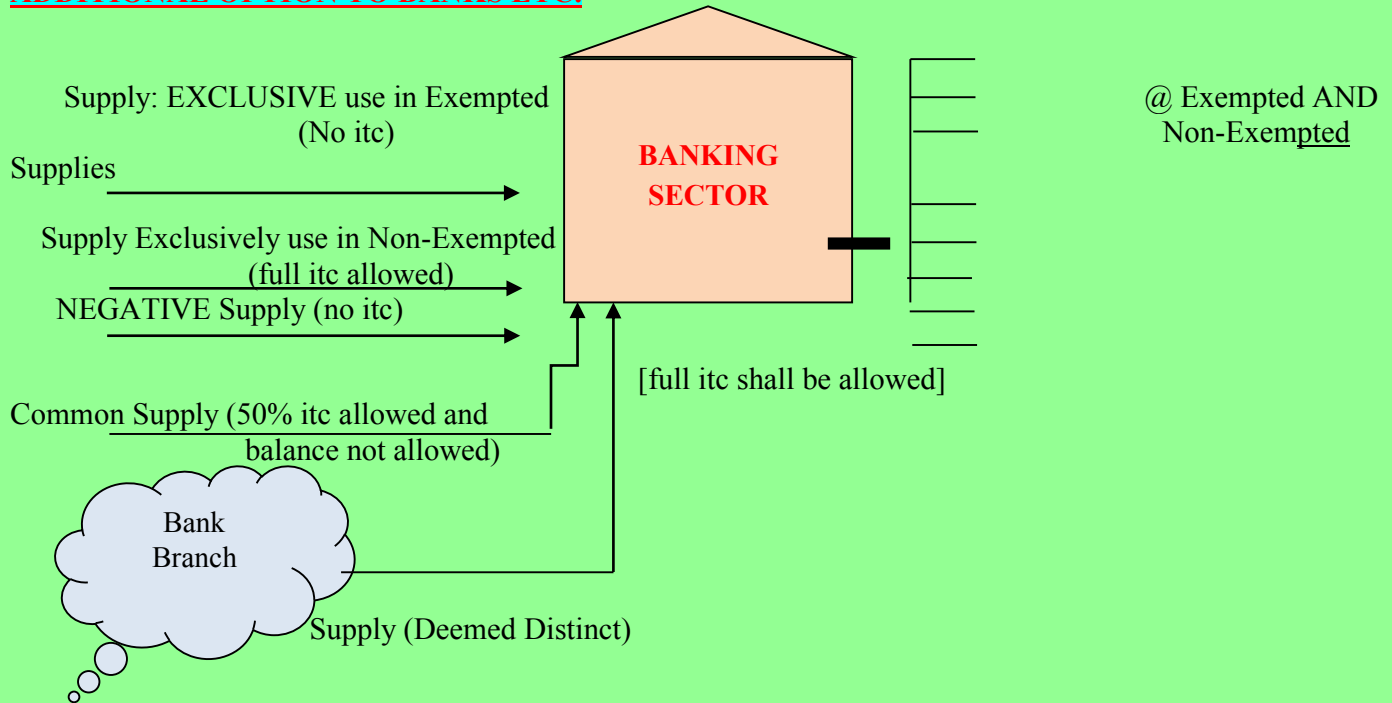


So After cutoff date we Need to pay (FAT) ie Ineligible Credit @ monthly basis  
 $300 \times ET/TT = ₹128.57$

**Meaning of Turnover [T/O] for Various Purposes**

For Common Credit purpose	For I.S.D concept	For Composition Scheme	Registration Limit	For A.V
T/O with in the state	T/o with in the state	T/o with in the state	T/O@ All India	T/O of Taxable Person
All Taxes Excludes	All Taxes Excludes	New Tax [GST and Cess] Excludes	New Taxes [GST and Cess] Excludes	New Tax Excludes

**ADDITIONAL OPTION TO BANKS ETC.**



**Note Lock in period for the option is SAME FY.**

**Note: What is exempted and what is non exempted supplies for the purpose of Rule 42 and Rule 43.**

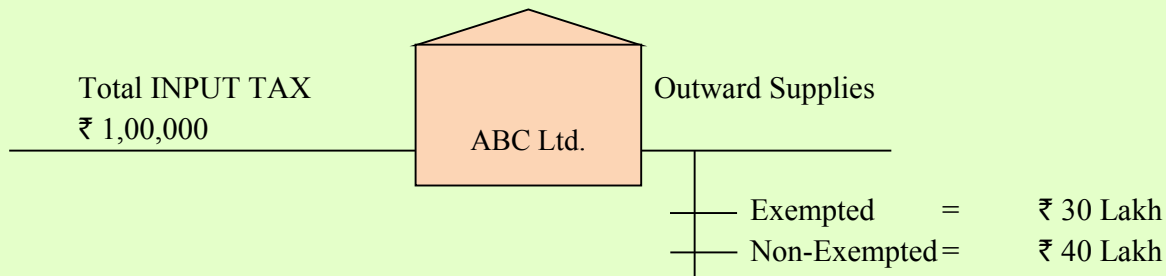
What is exempted supplies	What is not exempted supplies
1. Supplies attracting 100 % E/N	1. Supplies where consideration received in form of interest and discount (except Banking co. financial institution, NBFC)
2. NIL rated supplies	2. Transportation of goods by vessel from India to outside India.
3. Non- taxable supplies	3 Duty Credit Scrip.
4. Supplies taxable under RCM	
5. Securities trading @1%	
6. Sale of land and completed building @ circle rate	

Note: Value of Exempted supply shall not include the value of negative listed supplies. However following shall be added..

- The value of sale of land and completed Building and
- The value of sale of goods lying in custom warehouse.

**Question Based on Section : 17 (1) + (2) + (3) + (4)**

**Note: In case of mix use first of all book whole common credit ie common credit will be transferred to E-credit ledger and after that Reverse to the extent of ineligible credit.**

**Q.1**

Which Includes:- (**Note:** All above values are Exclusive of All TAXES.)

- \* Non-Eligible Input Tax [u/s 17(5)] = ₹ 6000/- [not allowed]
- \* Exclusive use in Exempted supplies ₹ 9000/- [not allowed]
- \* Exclusive use in Non-Business purpose ₹ 5000/- [not allowed]
- \* Exclusive use in Non-Exempted & Business purpose = ₹ 10,000/- [fully allowed]
- \* Balance inward supplies (Input Tax) – used on MIX/Common Use.

i.e. Use in Exempted & Non-Exempted, Business & Non-Business Purpose = ₹ 70,000/-

[Deemed itc related to non-business purpose =  $70,000 * 5\% = 3500$  and itc related to exempted purpose :  $70,000 * 30/70 = 30,000$  ie total ineligible itc out of  $70,000 = ₹ 33,500$  so it shall be reversed.

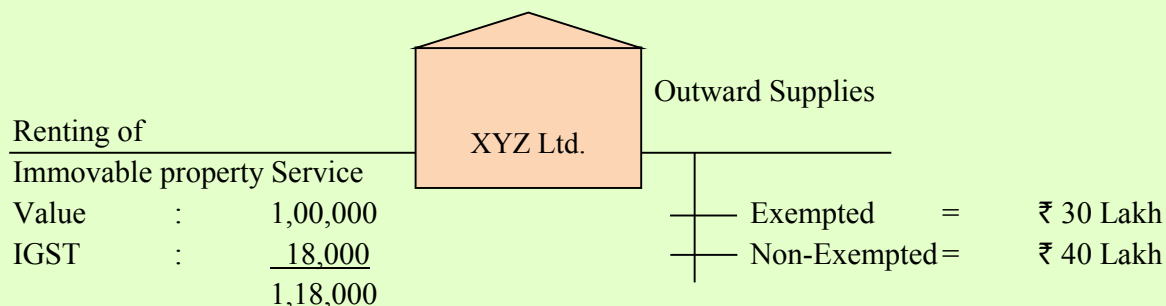
**Now take annualized figure: [ASSUMING that above data repeat for all the 12 months]**

Total common credit ₹70,000 \*12= 8,40,000

Ineligible credit to be reversed:  $33500 * 12 = 4,02,000$

- (1) Now if due to various adjustments of dr. and cr. Notes final reversal of ITC is ₹ 4,10,000 then ₹ 8000 need to be reversed with interest from 1<sup>st</sup> April of next FY till the date of payment @18% PA.[Maximum by September of next FY]
- (2) Now if due to various adjustments of dr. and cr. Notes final addition in liability is ₹ 3,95,000 then itc of ₹7000 shall be allowed.

April, 2018: DATA

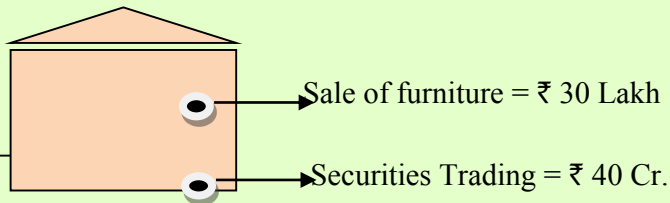
**Q.2**

Book itc of ₹ 18,000 and reverse ITC in the same tax period ₹  $(18,000 * 30/70 = ₹ 7,714$  as it is ineligible ITC)

April, 2018

**Q.3**

Renting of	
Immovable property Service	
Value	: 1,00,000
IGST	: <u>18,000</u>
	1,18,000

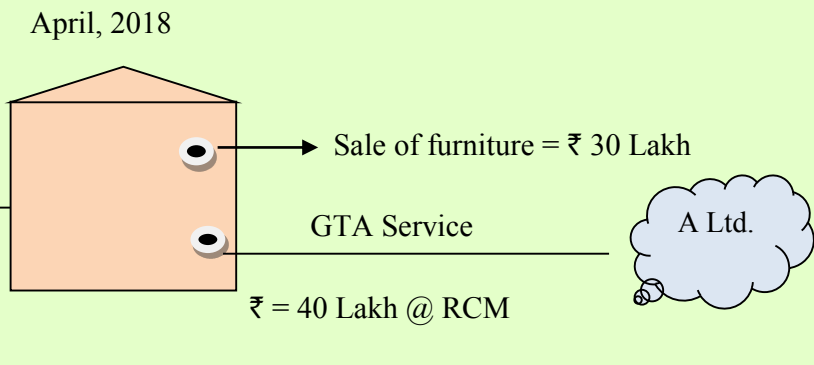


Book itc of ₹ 18,000 and reverse ITC in the same tax period ₹ (18,000 \* 40/70 = ₹ 10,286 as it is ineligible ITC)

Note: securities trading will be treated as exempted service for the purpose of section 17 and shall be valued @ 1% ie ₹ 40 lakh.

**Q.4**

Renting of	
Immovable property Service	
Value	: 1,00,000
IGST	: <u>18,000</u>
	1,18,000

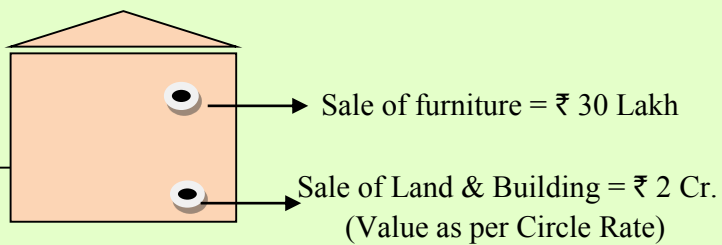


Book itc of ₹ 18,000 and reverse ITC in the same tax period ₹ (18,000 \* 40/70 = ₹ 10,286 as it is ineligible ITC)

Note: RCM supplies generally not an exempted supply but for the purpose of section 17 it shall be treated as exempted supply.

**Q.5**

Renting of	
Immovable property	



Value	: 1,00,000
GST	: <u>18,000</u>
	1,18,000

Book itc of ₹ 18,000 and reverse ITC in the same tax period ₹ (18,000 \* 200/230 = ₹ 15,652 as it is ineligible ITC)

Note: Sale of land and building (Completed) not a supply but for the purpose of section 17 it shall be treated as exempted supply.



**Q.6 : MIX/Common use of Capital Goods: Rule 43**

(A) Capital Goods Exclusively USE for : Exempted/NON Business Supply = **NO ITC**

(RELATED INPUT TAX = 20,000)

(B) Capital Goods Exclusively USE for : NON Exempted & Business Purpose = **ITC 30,000/- allowed**

(RELATED INPUT TAX = 30,000)

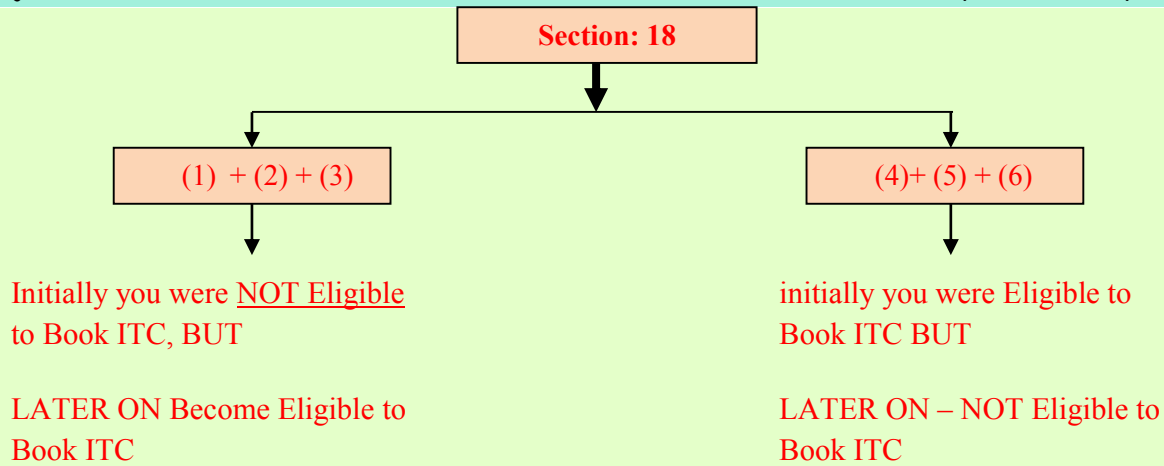
**COMMON USE OF CAPITAL GOODS :**

**Exempted supplies: 10 Lakh Others supplies: ₹40 Lakh @ Particular month**

<b>PARTICULARS</b>	<b>Common Credit (A)</b>
Capital Goods Purchase & USE for Common Purpose	60,000/- (₹ 60,000 will be transferred to E-credit Ledger)
Capital Goods Purchase Earlier & that time USE Exclusively for Exempted & NON Business purpose- NOW USE for common purpose. Input tax was ₹ 70,000  Capital Goods: after 1 Year :Common USE (Input Tax - 5% per quarter for 4 quarter) ₹ 70,000 – 20%= 56,000	@ Common Credit = ₹70,000 Transfer ₹ 70,000 to E- CREDIT LEDGER and add ₹ 14,000 in output tax liability on cut off date.
Capital Goods Purchase Earlier & that time USE for NON Exempted and Business purpose- NOW USE for common purpose Input tax was ₹ 60,000 (at that that this amount was transferred to E-credit Ledger) Capital Goods: after 1 Year: Common USE	₹ 60,000/-
	Total of Common Credit = ₹ 190,000/-

Now find out monthly common credit by spreading it over a period of 60 months ie  $190,000/60 = ₹ 3,166.67$

Now find out ineligible portion and such amount will be added to E liability register @ every month  $3166.67 * 10/50 = ₹ 633.33$



**Sec.: 18(1) (a)** : NEW REGISTRATION: Applied for with in PRESCRIBED Time (i.e. 30 Days)

(ii)

600 Kg. stock  
10-9-2020

OUTPUT TAX = NO ITC = NO	10L/ 20L/ 40L plus	OUTPUT TAX = YES ITC = YES
-----------------------------	-----------------------------	-------------------------------

i. INPUT PURCHASE

Value (1000 Kg. x 200) =	200000
GST @ 18% =	<u>36000</u>
	<u>236000</u>

↓

Purchase A/c -----Dr.	236000
To Bank	236000

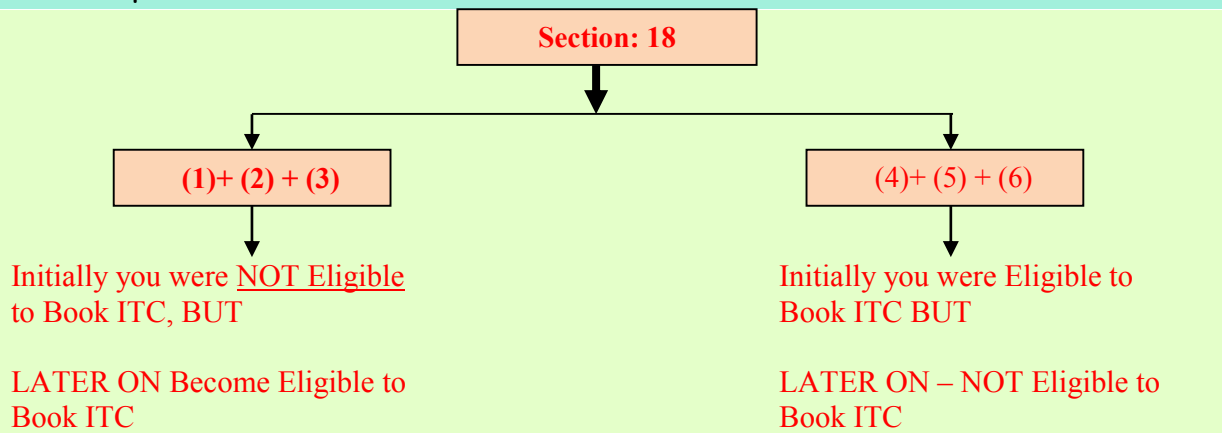
(iii) \* WE Need REG. within 30 Days from 10.09.2020  
\* then REG. will be effective from 10.09.2020

(iv) Stock as on: 09.09.2020 Ki SHAM  
i.e. Op. Stock of input on 10.09.2020

As Such Form =	100 Kg. R/M
In Form of WIP=	200 Kg R/M
In Form of "F.G."=	<u>300 Kg. R/M</u>
Lying in Stock	<u>600 Kg.</u>

36000  
----- × 600 = 21600/=  
1000 Kg.

ITC.....Dr.	21600
<u>10.09.2020:</u>	<u>To Purchase 21600</u>



**Sec. : 18(1) (b) : VOLUNTARY REGISTRATION:**

600 Kg. stock  
10-9-2020

i. INPUT PURCHASE

Value (1000 Kg. x 200) =	200000
GST @ 18% =	<u>36000</u>
	<u>236000</u>

↓

Purchase A/c -----Dr.	236000
To Bank	236000

---

(iii) \* Registration effective: 10.09.2020

(iv) Stock as on: 09.09.2020 Ki SHAM  
i.e. Op. Stock on 10.09.2020

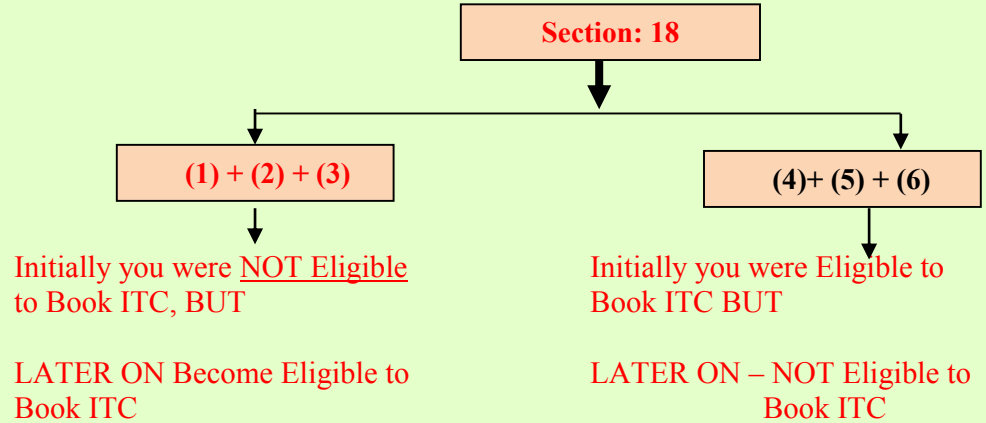
As Such Form =	100 Kg. R/M
In Form of WIP =	200 Kg R/M
In Form of "F.G." =	<u>300 Kg. R/M</u>
Lying in Stock	<u>600 Kg.</u>

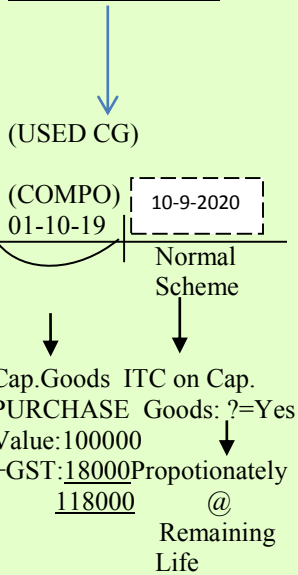
36000	
-----	x 600 = 21600/=
1000 Kg.	

ITC.....Dr.	21600
<u>10.09.2020:</u>	<u>To Purchase 21600</u>



**WHAT ABOUT CAPITAL GOODS**



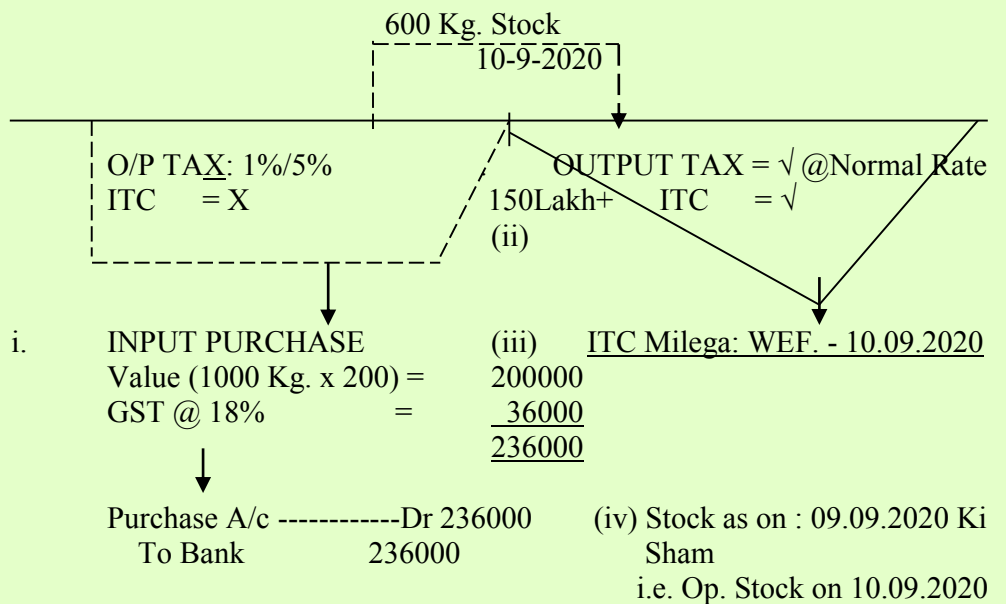
Total Tax paid = 18000

Less: ITC Related to USAGE Period = 1-10-19 to 10-9-2020

= 18000 \* 5% \* 4 Quarter = (3600)  
Balance ITC = 14400

ITC .....dr 14,400  
To capital goods 14,400

**Section: 18(1)(c) : COMPOSITION to Normal Scheme:**



As Such Form = 100 Kg. R/M  
In Form of WIP = 200 Kg. R/M  
In Form of "F.G." = 300 Kg. R/M  
Lying in Stock 600 Kg.

36000  
----- × 600 = 21600/=  
1000 Kg.

10.09.2020: ITC.....Dr. 21600  
To Purchase 21600

WHAT ABOUT CAPITAL GOODS

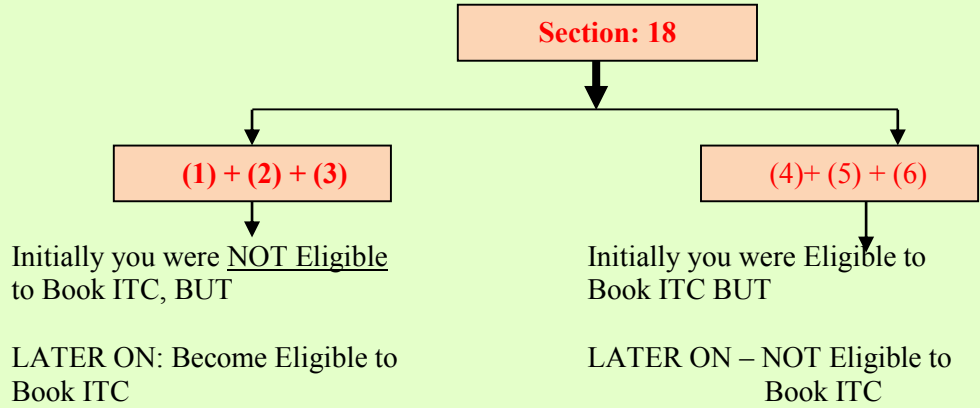
(USED CG)

(Exempted) 01-10-19 | 10-9-2020  
 Non Exempted

Cap.Goods ITC on Capital PURCHASE Goods: ?=Yes  
 Value: 100000  
 +GST: 18000 Proportionately 118000 @ Remaining Life

Total Tax paid = 18000  
 less: ITC Related To USAGE Period = 1-10-19 to 10-9-2020

= 18000\*5%\*4 Quarter = (3600)  
 Balance ITC = 14400  
 ITC .....dr 14,400  
 To capital goods 14,400



**Section: 18(1) (d) : EXEMPTED TO NON-EXEMPTED :**

10-9-2020 600 Kg. Stock

Notification-Date (ii)

O/P TAX = X  
 ITC = X

OUTPUT TAX = √ @Normal Rate  
 ITC = √

i. INPUT PURCHASE  
 Value (1000 Kg. x 200) = 200000  
 GST @ 18% = 36000  
 236000

Purchase A/c -----Dr 236000  
 To Bank 236000

(iii) ITC Milega : WEF. - 10.09.2020  
 200000  
 36000  
 236000

(iv) Stock as on : 09.09.2020 Ki sham  
 i.e. Op. Stock on 10.09.2020

As Such Form = 100 Kg. R/M  
 In Form of WIP = 200 Kg R/M  
 In Form of "F.G." = 300 Kg. R/M  
 Lying in Stock 600 Kg.

36000  
 ----- × 600 = 21600/=  
 1000 Kg.

10.09.2020: ITC.....Dr. 21600  
 To Purchase 21600

**Note:**

Section	Person: Initially	Person Lateron	Talks About Credit of
Section 18 (1)(a)	<b>Un-Registered</b>	<b>Registered</b>	<b>Input</b>
Section 18 (1)(b)	<b>Un-Registered</b>	<b>Registered</b>	<b>Input</b>
Section 18 (1)(c)	<b>Registered</b>	<b>Registered</b>	<b>Input and capital Goods</b>
Section 18 (1)(d)	<b>Registered</b>	<b>Registered</b>	<b>Input and capital Goods</b>

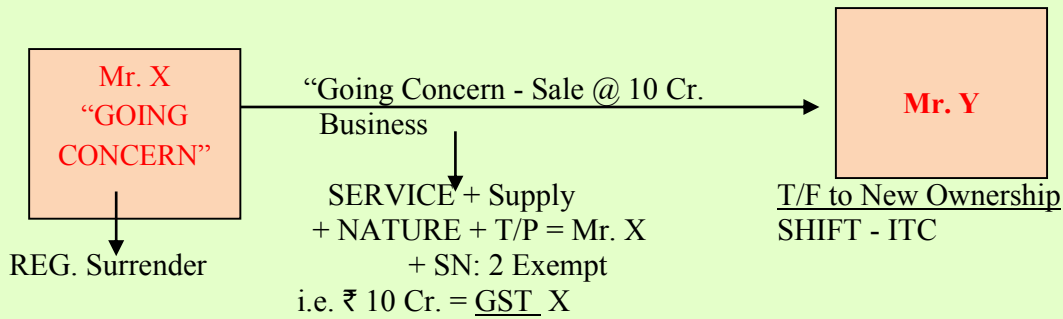
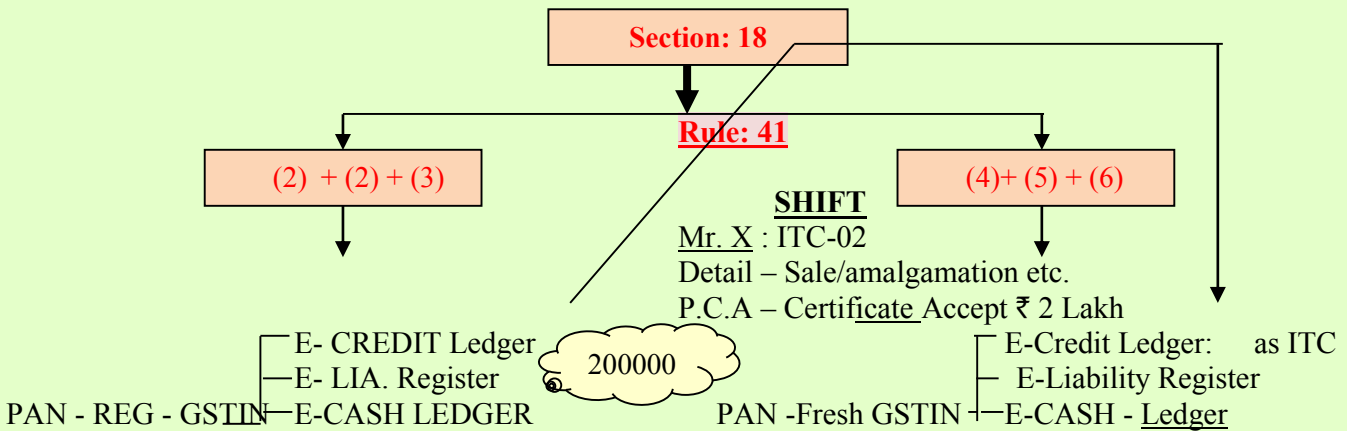
**Sec.: 18(2):** ITC Booking LAST DATE: 1Year from the Date of INVOICE of Supply of such INPUT/Capital goods.

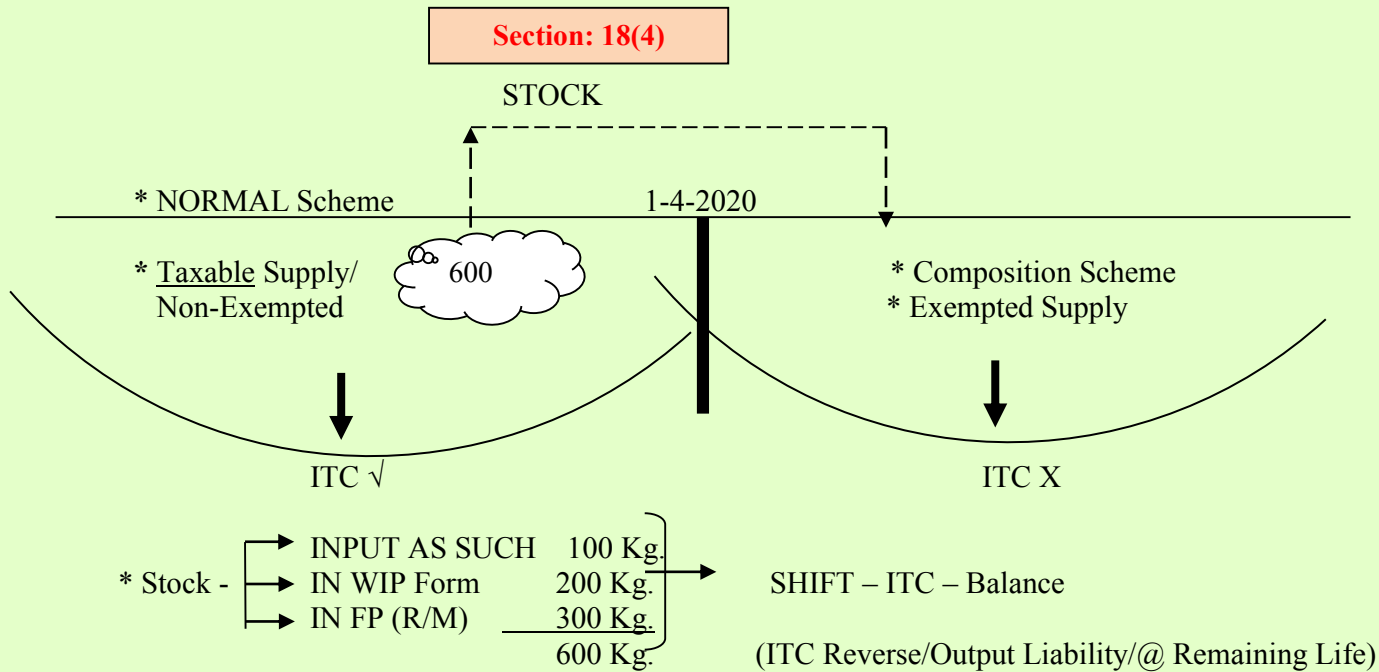
**Rule:40**

**PROCEDURAL PART: Related to ITC U/S: 18(1)**

- \* Need to file ITC-01 to effect that he is Eligible to Avail ITC.
- \* With 30 DAYS + Extension
- \* Containing Detail of Remaining INPUT & Capital Goods
- \* IF Your Claim ₹ 2,00,000/- Plus - Need P.C.A. Certificate

**Section: 18(3)**





**Q. BASED ON SECTION: 18(4):**

(A)- 1-4-2020

INPUT PURCHASE

Value @ 1000Kg x 200 = 200000

GST = @ 18% = 36000

236000

(C)- WEF: 10-9-2020

Outward Supply: Exempt

(B)- AS ON DATE OUTWARD Supply = NON-Exempted

Purchase A/c	200000	}	INPUT:
ITC-----Dr.	36000		
To Bank	<u>236000</u>		

(D)- As on : 10-9-2020 : OPENING ?

AS SUCH = 100 kg. (R/M)	}	Purchase Dr.
WIP = 200 Kg. (R/M)		
FG = 300 Kg. (R/M)		
		<u>To O/P Liability</u>
	600 Kg.	

Related TAX = 36000 x 600 = 21600

1000

↓

O/P. Liability -Increase

(B<sub>1</sub>)- CAP. Goods as on 1-4-2020

Value	:	100000	}	O/P Liability
GST	:	<u>18000</u>		
		<u>118000</u>		

To ITC

To CASH

**CAPITAL GOODS:**

CAP. Goods .....	Dr.	100000	}	ITC (Full) = 18000
ITC.....	Dr.	18000		
To Bank		180000		

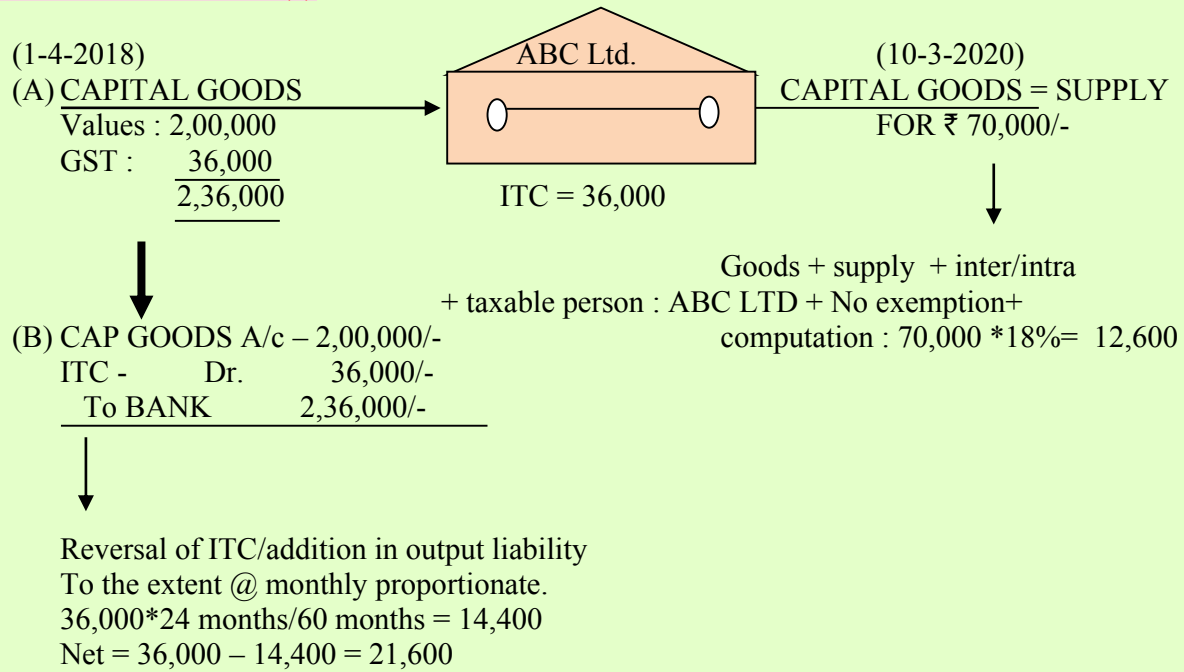
Assume: Life 5 Year = 60 Month

PRO. Month Basis (or PART thereof)

$\frac{18000 \times 6M}{60M}$

ITC Related to = USAGE Period (1-4-20 to 10.9.20)=1800

16,200

**Section 18(5): Not Relevant****Q: BASED ON = Section 18(6)**

**Now final amount to be added in output tax liability: ₹ 21,600 or 12,600 whichever is higher ie ₹ 21,600**

**Note:** Where **Refractory bricks, Moulds and dies, Jigs and fixtures** are supplied as SCRAP, the taxable person may pay tax on the transaction value of such goods determined under section 15.



## Circular No.133 03/2020

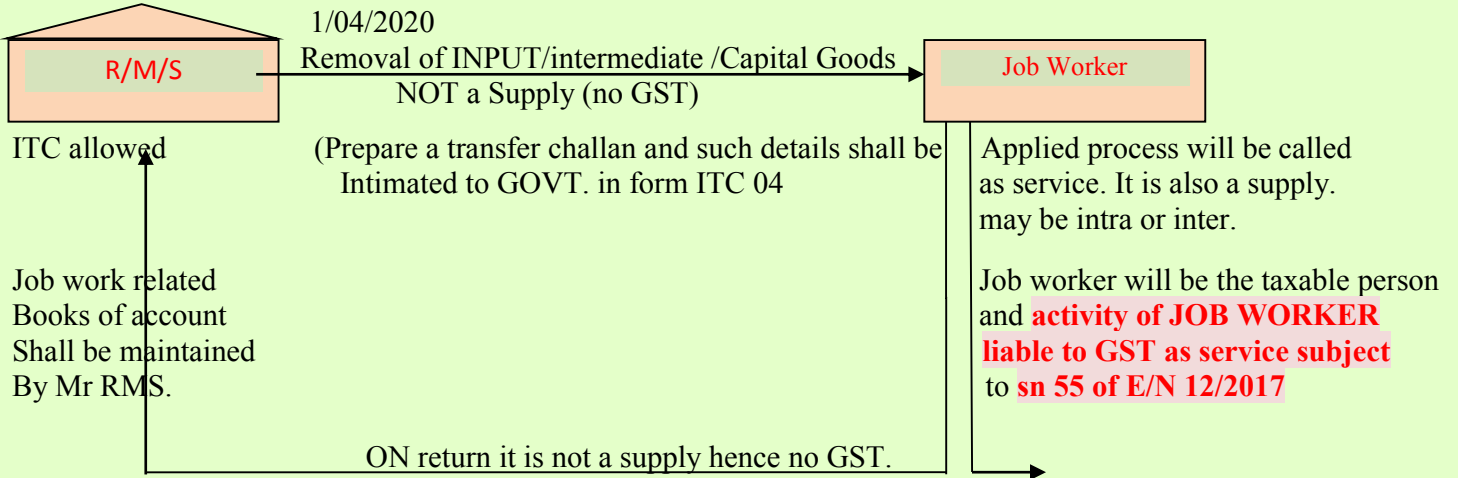
### Clarification in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules

Representations have been received from various taxpayers seeking clarification in respect of apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ownership of business. Certain doubts have been raised regarding the interpretation of [section 18\(3\)](#) of the [CGST Act, 2017](#) and [Rule 41\(1\)](#) of the [CGST Rules, 2017](#) in the context of business reorganization.

1. The ratio of value of assets of new units is to be considered at state level.
2. The transferor is required to file **FORM GST ITC-02** only in those States where both transferor and transferee are registered.
3. Such formula for apportionment of ITC, as prescribed under proviso to [Rule 41\(1\)](#) of the [CGST Rules](#), shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.
4. The ratio of value of assets shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST).
5. Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.
6. The transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.
7. Such apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of **FORM GST ITC – 02** by the transferor
8. The ratio of the value of assets should be taken as on the “appointed date of demerger”, the said ratio is to be applied on the ITC apportionment.

## Section 19: Job worker

**ITC remain with  
R/M/S**



“ Return of Goods” within 1 [+ 1] year / 3 [+2] years from 1/04/2020 ie from removal date  
Otherwise-The Removal of INPUT/Capital goods.  
**shall be treated as supply** -In the hands of R/M/S as on 1/04/2020  
and accordingly liable to pay GST with interest.  
And the transfer challan shall be deemed as invoice.

**Computation of 1 year/3 year:** 1 year / 3 year shall be counted from the date of Removal of Goods from R/M/S’s premises, But when Goods Received by Job Worker under Bill to Ship to model – such period of 1 year (+1Year) /3 year (+ 2 Year) shall be counted from the date of Receipt of Goods By JOB WORKER.

Q. What about moulds and dies, Jigs and fixtures and tools ?

Ans: No condition to bring back with in 1 year/3 year as these are one time usable things.

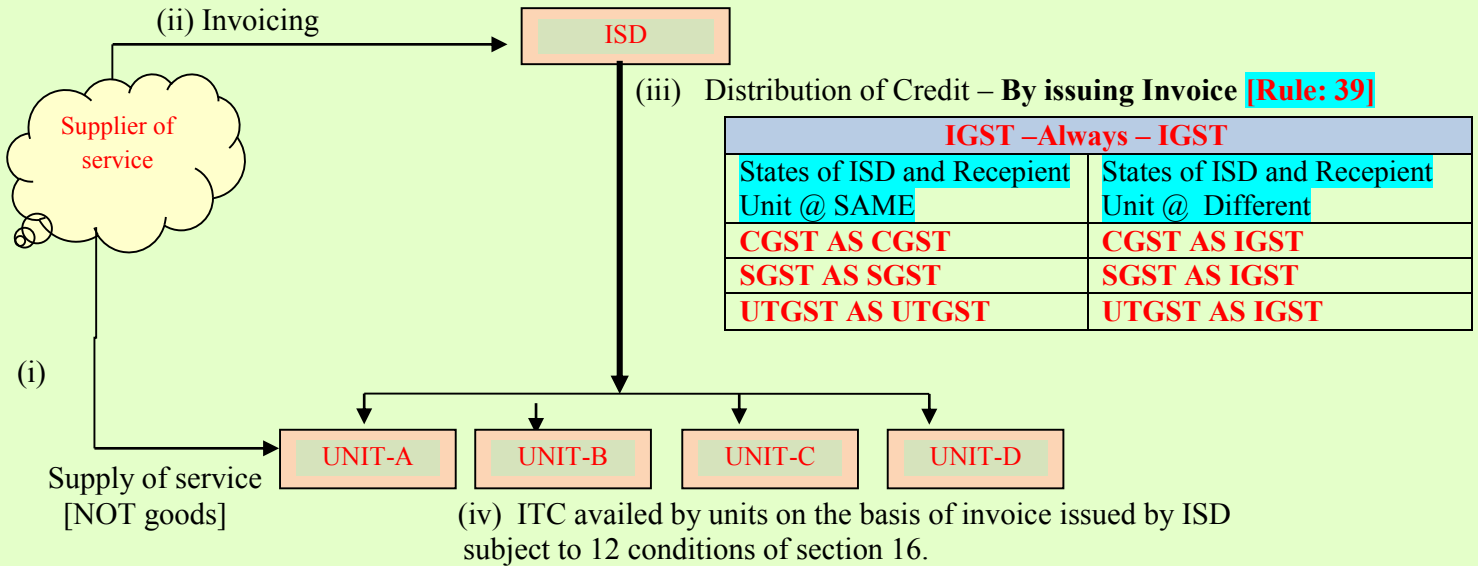
Q. waste and scrap generated during job work process ... who will be liable to pay GST?

Ans: Job worker himself liable to pay GST but if the JOB WOTRKER is unregistered then RMS liable to pay GST.

RMS= RAW MATERIAL SUPPLIER.

Note: If job worker is unregistered then Raw material supplier need to declare “job workers place” to the department.

**Section 20: Concept of Input Service Distributor**



- \* MAXIMUM Amount can be DISTRIBUTED: As mentioned in Invoice.
- \* IF EXCESS distributed to one or more Recipient: [OVER BOOKING ] Then it will be recovered along with Interest & Section 73/74 shall apply and ISD also issue Cr note to settle the Situation & also Penalty u/s 122
- \*If any Dr./Cr. Note is issued by III party to ISD then corresponding effect shall be pass on to UNITS in the same pattern/Ratio as of main invoice.

**\*Procedural part by ISD:**

- INVOICE: Received invoice from III party and issue invoice to its units.
- Manner of payment: just set off, no need to pay in cash.
- Registration: mandatory u/s 24.
- Return: in Form GSTR-6 @detail of invoice received and issued by 13<sup>th</sup> of next month.
- ITC: distribution of ITC @ same month

**IMPORTANT NOTE:**

<b>Turnover Ratio</b>	In case consolidate billing by III Party – Now how ISD will distribute to units : in the RATIO of TURNOVER of PFY OR in the RATIO of Last Quarter (When turnover of PFY not AVAILABLE or available incompletely)		
	<b>PFY</b>	<b>CFY</b>	<b>Which Ratio will be used</b>
	UNIT : A B C D	UNIT : A B D	Turnover ratio (of ABD) of PFY will be used
	UNIT : A B C	UNIT : A B C D	Ration of Turnover of PFY not available completely so use the Turnover ratio (of ABCD) of Preceding Quarter
<b>Steps to be followed in solving the question</b>	<ol style="list-style-type: none"> <li>1. <u>Find out Amount to be distributed</u></li> <li>2. <u>Convert FORM of GST if required as CGST/SGST/IGST/UTGST</u></li> <li>3. <u>Now Distribute the above amount</u></li> <li>4. <u>UNITS will take ITC if eligible under section 16</u></li> </ol>		

**Q.:1** Separate Billing by III Party to ISD

Particular	Unit A	Unit B	Unit C	Unit D	Total
Value:	1,00,000	2,00,000	3,00,000	4,00,000	10,00,000
IGST	18,000	36,000	54,000	72,000	1,80,000
<b>Total</b>	<b>1,18,000</b>	<b>2,36,000</b>	<b>3,54,000</b>	<b>4,72,000</b>	<b>11,80,000</b>
<b>Ite distribution by ISD</b>	<b>18,000</b>	<b>36,000</b>	<b>54,000</b>	<b>72,000</b>	<b>1,80,000</b>
<b>Ite by Units</b>	<b>18,000</b>	<b>36,000</b>	<b>54,000</b>	<b>72,000</b>	

**Q.:2** in above question what is UNIT-D Engaged in Exempted Supplies?

Ans:

Particular	Unit A	Unit B	Unit C	Unit D	Total
Value:	1,00,000	2,00,000	3,00,000	4,00,000	10,00,000
IGST	18,000	36,000	54,000	72,000	1,80,000
<b>Total</b>	<b>1,18,000</b>	<b>2,36,000</b>	<b>3,54,000</b>	<b>4,72,000</b>	<b>11,80,000</b>
<b>Ite distribution by ISD</b>	<b>18,000</b>	<b>36,000</b>	<b>54,000</b>	<b>72,000</b>	<b>1,80,000</b>
<b>Ite by Units</b>	<b>18,000</b>	<b>36,000</b>	<b>54,000</b>	<b>Nil</b>	

**Q.:3** Combined Supplies & Services Availed By A-B-C-D.

Particular	Unit A	Unit B	Unit C	Unit D	Total
Value	-	-	-	-	10,00,000
IGST					1,80,000
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>11,80,000</b>

Turnover in PFY of A B C D = ₹ 20 Lakhs, ₹ 30 Lakhs, ₹ 40Lakhs, ₹ 50Lakhs Respectively.

Ans: **Itc of ₹ 1,80,000 shall be distributed among A,B,C,D in the ratio of 2:3:4:5**

Particular	Unit A	Unit B	Unit C	Unit D
ITC Distribution by ISD	25,714	38,571	51,429	64,286
ITC by units	25,714	38,571	51,429	64,286

Q.:4 What if UNIT 'A' Engaged in Supplying Exempted Supply?

Ans: ITC of ₹ 25,714 shall not be availed by UNIT-A

Particular	Unit A	Unit B	Unit C	Unit D
ITC Distribution by ISD	25,714	38,571	51,429	64,286
ITC by units	Nil	38,571	51,429	64,286

Q.:5 What if Services Availed By Only UNIT C & D?

Ans: **Itc of ₹1,80,000 shall be distributed between C&D in the ratio of 4:5**

Particular	Unit A	Unit B	Unit C	Unit D
Distribution by ISD	-	-	80,000	1,00,000
ITC by units	-	-	80,000	1,00,000

Q.:6 Every Month Common Service = 10,00,000 + 1,80,000

PFY	Current Financial Year											
B L A N K	A	M	J	J	A	S	O	N	D	J	F	M
	1,80,000	1,80,000	1,80,000	1,80,000	1,80,000	1,80,000	1,80,000	1,80,000	1,80,000	1,80,000	1,80,000	1,80,000
	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-
	-	-	-	-	-	-	-	-	-	-	-	-

For the month of march: T/O of quarter 3

For the month of February :T/O of quarter 3

For the month of January: T/O of quarter 3

For the month of December :T/O of quarter 2

For the month of November: T/O of quarter 2

And so on.....

Q.:7 Common Service taken By A, B, C, D Common Billing = 10,00,000&₹1,80,000/- T/O: P.F.Y = ₹ 40 Lakh, 30Lakhs, 28Lakhs, 10Lakhs.

	<b>A</b> <b>Registered &amp; Deal in Non Exempted</b>	<b>B</b> <b>Registered &amp; Deal in Non Exempted</b>	<b>C</b> <b>Registered &amp; Deal in Exempted</b>	<b>D</b> <b>Not Registered</b>
Distribution By HO of ₹ 1,80,000/-	66,667	50,000	46,667	16,666
ITC By Units	66,667	50,000	-	-

Circular

<p>Representations have been received regarding the manner of recovery of excess credit distributed by an Input Service Distributor (ISD) in contravention of the provisions contained in <a href="#">section 20</a> of the <a href="#">CGST Act</a>.</p>	<ol style="list-style-type: none"> <li>1. According to <a href="#">Section 21</a> of the <a href="#">CGST Act</a> where the ISD distributes the credit in contravention of the provisions contained in <a href="#">section 20</a> of the <a href="#">CGST Act</a> resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest and penalty if any.;</li> <li>2. The recipient unit(s) who have received excess credit from ISD may deposit the said excess amount voluntarily along with interest if any.</li> <li>3. If the said recipient unit(s) does not come forward voluntarily, necessary proceedings may be initiated against the said unit(s) under the provisions of <a href="#">section 73</a> or <a href="#">74</a> of the <a href="#">CGST Act</a> as the case may be.</li> <li>4. It is further clarified that the ISD would also be liable to a general penalty under the provisions contained in <a href="#">section 122(1)(ix)</a> of the <a href="#">CGST Act</a>.</li> </ol>
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**Circular No. 16/16/2017****Clarifications regarding applicability of GST and availability of ITC in respect of certain services**

S N	Issue	Comment
1.	Is GST applicable on warehousing of agricultural produce such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses =(de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?	All such items are fall outside the definition of agricultural produce and therefore the exemption from GST is not available to their loading, packing, warehousing etc.
2.	Is GST leviable on inter-state transfer of aircraft engines, parts and accessories for use by their own airlines?	It is hereby clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter-state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as specified in <a href="#">section 25</a> of the <a href="#">CGST Act</a> , notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.

**Circular No. 184/16/2022: Based on Section 12 (8): [Place of supply of services by way of transportation of goods, including by mail or courier, where location of the supplier as well as the recipient of services is in India.]**

**Q.1 In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, what would be the place of supply of the said services?**

**Ans.** The place of supply is the concerned foreign destination where the goods are being transported.

**Illustration:** X is a person registered under GST in the state of West Bengal who intends to export goods to a person Y located in Singapore. X avails the services for transportation of goods by air to Singapore from an air cargo operator Z, who is also registered under GST in the state of West Bengal.

In this case, the place of supply of the services provided by Z to X is the place of destination of goods i.e., Singapore, in terms of the proviso to section 12(8) of IGST Act.

**Q.2 In the Above case, whether the supply of services will be treated as inter-State supply or intra-State supply?**

**Ans.** The aforesaid supply of services would be considered as inter-State supply in terms of [section 7\(5\)](#) of the [IGST Act](#) since the location of the supplier is in India and the place of supply is outside India. Therefore, integrated tax (IGST) would be chargeable on the said supply of services.

In respect of the above illustration, Z would charge IGST from X for supply of services by way of transportation of goods.

**Q.3 In the above case, whether the recipient of service of transportation of goods would be eligible to avail input tax credit in respect of the said input service of transportation of goods?**

Ans. [Section 16](#) of the [CGST Act](#) lays down the eligibility and conditions for taking input tax credit whereas, [section 17](#) of the [CGST Act](#) provides for apportionment of credit and blocked credits under circumstances specified therein.

The said provisions of law do not restrict availment of input tax credit by the recipient located in India if the place of supply of the said input service is outside India.

Thus, the recipient of service of transportation of goods shall be eligible to avail input tax credit in respect of the IGST so charged by the supplier, subject to the fulfilment of other conditions laid down in [section 16](#) and [17](#) of the [CGST Act](#).

In the above illustration, X would be eligible to take input tax credit of IGST in respect of supply of services received by him from Z, subject to the fulfilment of other conditions laid down in [section 16](#) and [17](#) of the [CGST Act](#).

## Circular No. 195/07/2023: Availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

**Q.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?**

Ans. 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.

**Q.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?

Ans. 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.

**Q.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 behalf of the manufacturer?**

Ans. 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.

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.

**Q.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?**

Ans: (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.

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.

**Q.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?**

Ans. In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services.

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](#).

**Q.6** Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?

Ans. (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 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).

## Circular No. 199/11/2023: Clarification regarding taxability of services provided by an office of an organization in one State to the office of that organization in another State, both being distinct persons.

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).

The issues that may arise with regard to taxability of supply of services between distinct persons in terms of section 25(4) of the CGST Act are being clarified as follows-

**Q-1** Whether HO can avail the input tax credit (hereinafter referred to as '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 under section 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 (hereinafter referred to as '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?

**Ans-** 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 laid down in Section 20 of CGST Act read with rule 39 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as 'the CGST Rules'). However, as per the present provisions of the CGST Act and CGST Rules, it is not mandatory for the HO to distribute such input tax credit by ISD mechanism. HO can also issue tax invoices under section 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 as per the provisions of section 20 of CGST Act read with rule 39 of the CGST Rules, 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 under section 31 of CGST Act to the concerned BOs, in respect of any input services, procured by HO from a third party for on or behalf of a BO, only if the said services have actually been provided to the concerned BOs.

**Q-2** In respect of internally generated services, there may be cases where HO is providing certain services to the BOs **for which full input tax credit 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 under section 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 input tax credit is available to the concerned BOs**.

**Ans-** 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, read with sub-section (4) of section 15 of CGST Act. As per clause (a) of rule 28, the value of supply of goods or services or both between distinct persons shall be the open market value of such supply. **The second proviso to rule 28** of CGST Rules provides that where the recipient is eligible for full input tax credit,

the value declared in the invoice shall be deemed to be the open market value of the goods or services. 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 input tax credit.**

Accordingly, in cases **where full input tax credit 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 input tax credit 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.

Q-3 In respect of internally generated services provided by the HO to BOs, in cases where **full input tax credit 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.

Ans- 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 input tax credit is not available to the concerned BO.**

## Chapter 12: Registration

Who is required to take Registration?: Section 22, 23, 24 [Already discussed in taxable person chapter]

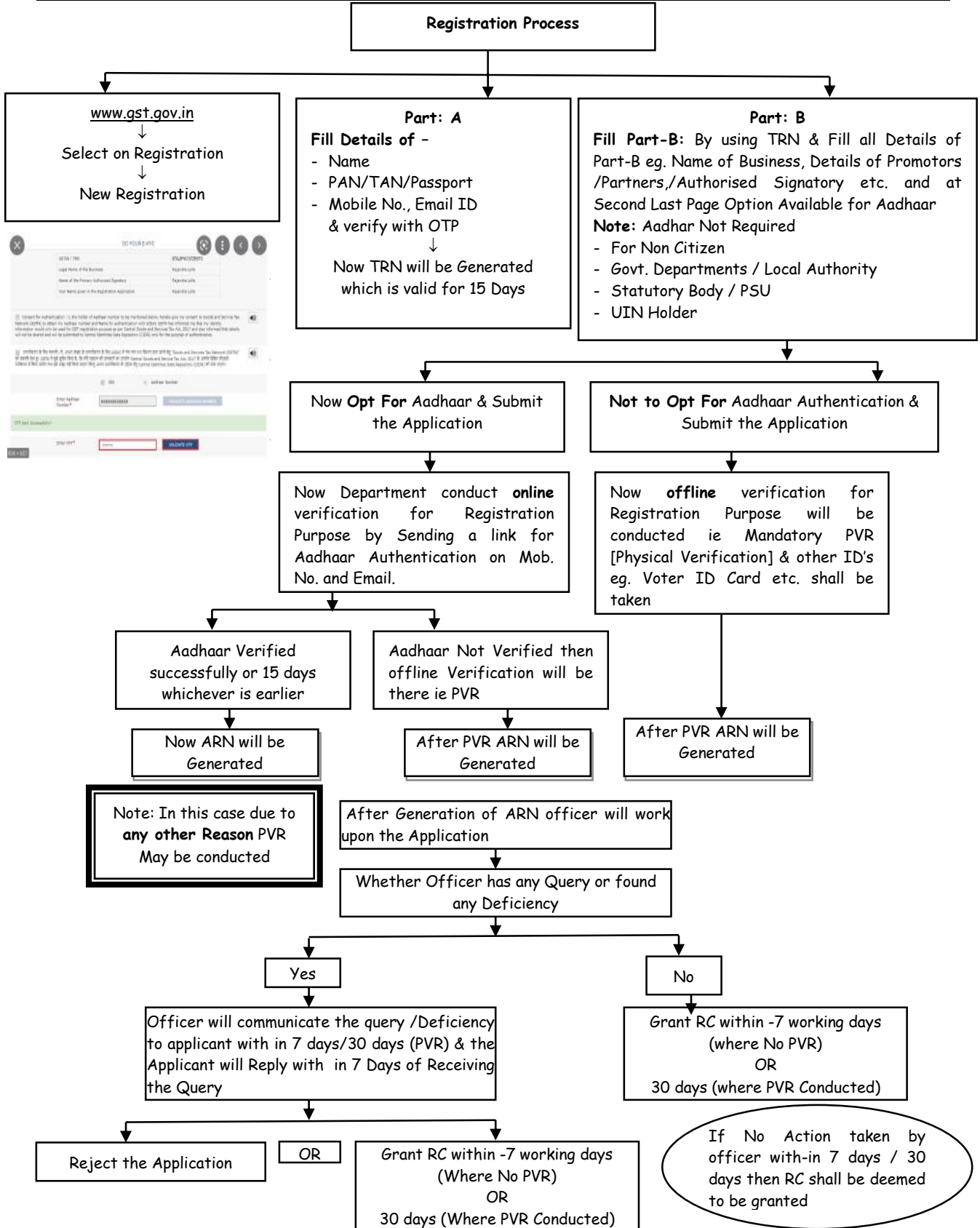
<p><b>When to take registration</b></p>	<p><b>Generally registration is required to be obtained within 30 days</b> from the date on which he becomes liable to registration.</p> <p><b>In special cases:</b></p> <p><b>Casual Taxable Person and Non Resident:</b></p> <p><b>Application for RC: (5 Days in advance)</b> The person shall apply for registration at least 5 DAYS PRIOR to commencement of business in and such person shall make taxable supplies only after issuance of RC.</p> <p><b>Period of RC:</b> (90 +90 days) RC issued to such persons shall be valid for a period of 90 days + 90 days OR as mentioned in application for registration (whichever is earlier).</p> <p><b>Advance deposit of Tax:</b> such person MAY deposit advance estimated NET tax liability [Estimated Gross Output GST - Estimated ITC ] at the time of application for registration on the basis of TRN. <b>However if applied for extension then SHALL deposit advance tax on estimation basis for such extended period.</b> Such amount shall be credited in his E- cash Ledger account.</p> <p><b>Note;</b> Where an Exhibition is for more than 180 days then applying for normal registration considering consent letter of using premises as address proof for registration.</p> <p><b>Registration after Survey/ Investigation etc.:</b> where It is found during any survey, inspection, search, enquiry or any other proceeding that- Person required registration but fails to get register himself:</p> <ul style="list-style-type: none"><li>- then such officer may register the said person on <u>a temporary basis</u> and issue an order</li><li>- and it will be effective from the date of order of Registration.[penalty etc. will also be there]</li><li>- And such person shall within 90 Days</li></ul> <p>[within 30 days of order of Appellate Authority if file appeal against grant of such temporary registration]</p>
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## Chapter 12: REGISTRATION

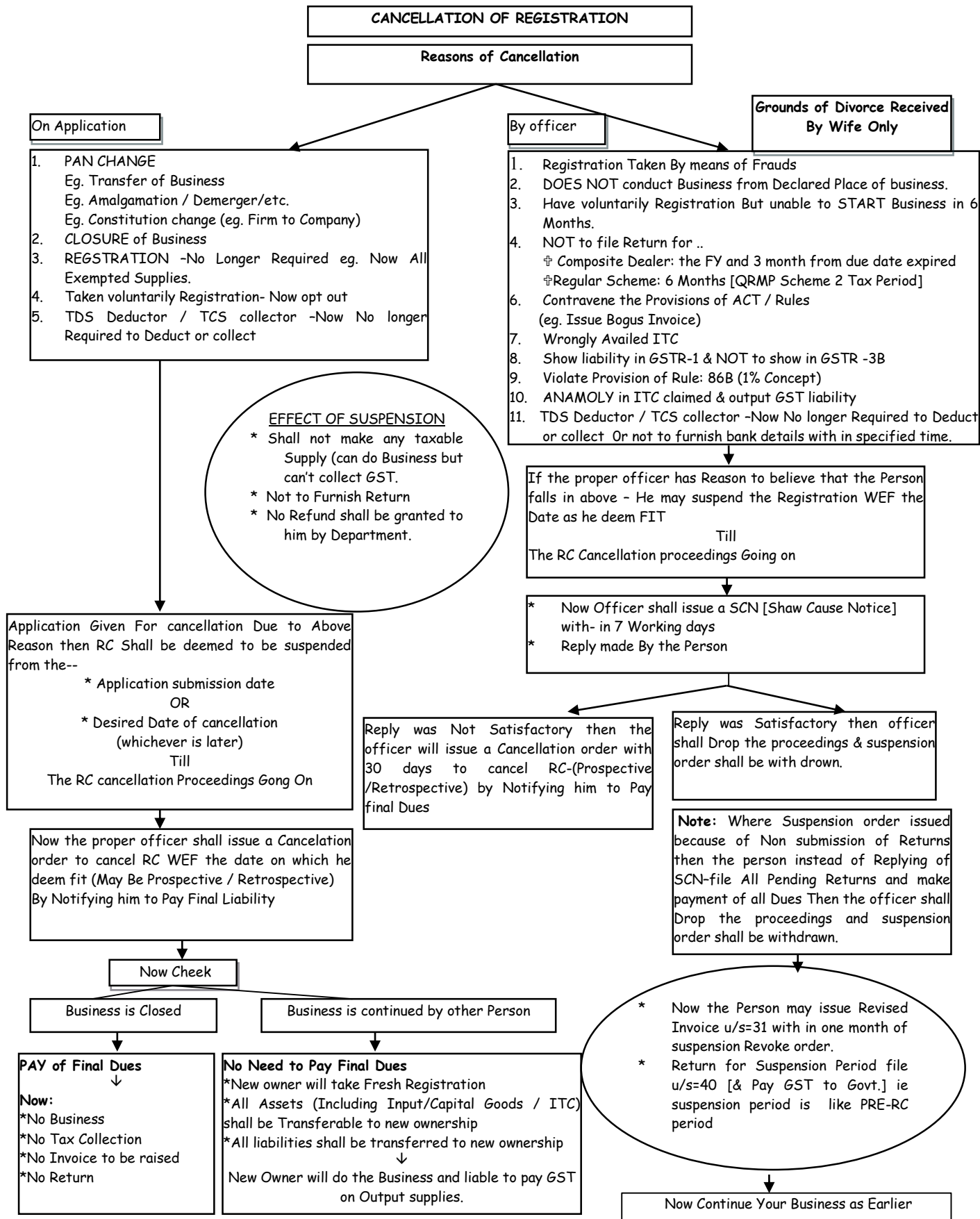
	<p>from the date of grant of such registration shall file an application for registration in prescribed form and such RC will be effective <b>from the date of ORDER</b> by officer.</p>
<p><b>Where and how many Registrations are required</b></p>	<p><b>Place of Registration:</b> Every person who is liable to be registered shall apply for registration in <b>EVERY SUCH STATE/UT</b> from where he makes a taxable supply.</p> <p><b>What about TWI:</b> Every person who makes a supply FROM the Territorial Waters of India shall obtain registration in the nearest state or Union territory.</p> <p><b>Number of Registration:</b></p> <p><b><u>One state/UT@ one Registration</u></b></p> <ul style="list-style-type: none"> <li>- In general if the person making taxable supplies from one state/ UT then he is required to take one registration.</li> </ul> <p><b><u>One state/UT @Multiple Registration:</u></b></p> <ul style="list-style-type: none"> <li>- <b>The person MAY obtain</b> a SEPARATE REGISTRATION for each <b>Place of Business</b> located <b>within the state/UT.</b></li> </ul> <p><b><u>Multiple state @ single Registration</u></b></p> <p>In case of unique identity number embassy/ UN etc./Specified actionable claim supplier located outside India is required to take only one registration which is valid for all over India.</p>
<p><b><u>Amendment in RC</u></b></p>	<p><b>Changes in Core fields:</b> [Business Name Change, Address change, change in Directors/Partners etc.]</p> <p>Every RC/UIN holder shall inform the Proper Officer ANY changes in the information furnished at the time of application or thereafter.</p> <p>However officer may approve within 15 working days or reject (after giving SCN and OPPORTUNITY OF BEING HEARD) such changes.</p> <p><b>Changes in None core fields:</b> [Change in Phone Number, E-mail id of authorised signatory]</p> <p>Every RC/UIN holder shall inform the Proper Officer ANY changes in the information furnished at the time of application of thereafter.</p>

# Chapter 12: REGISTRATION

## DIAGRAMMATIC PRESENTATION OF REGISTRATION, CANCELLATION AND REVOCATION PROCESS



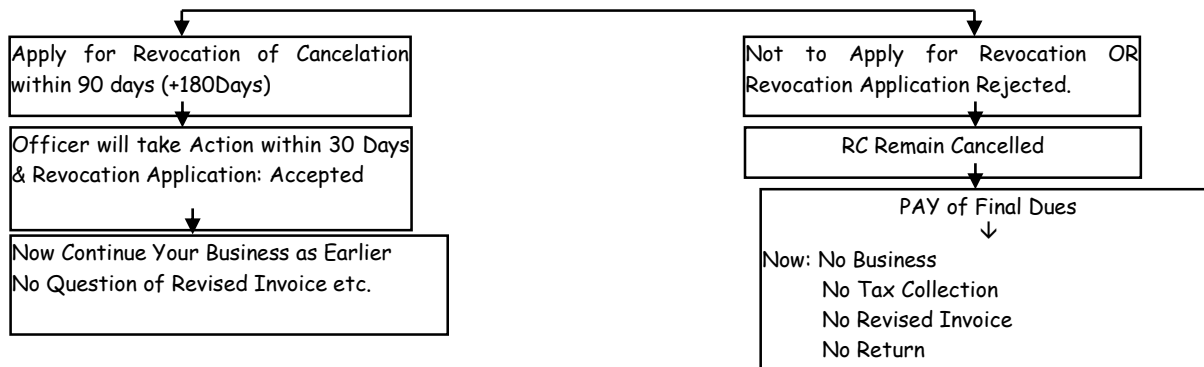
# Chapter 12: REGISTRATION





# Chapter 12: REGISTRATION

## REVOCATION/RESTORATION OF REGISTRATION



**SPECIAL NOTE**  
 Precondition to file Revocation Application in case where cancellation was due to Non-filing of Return

**CASE:1 Where Cancellations effective Prospectively**

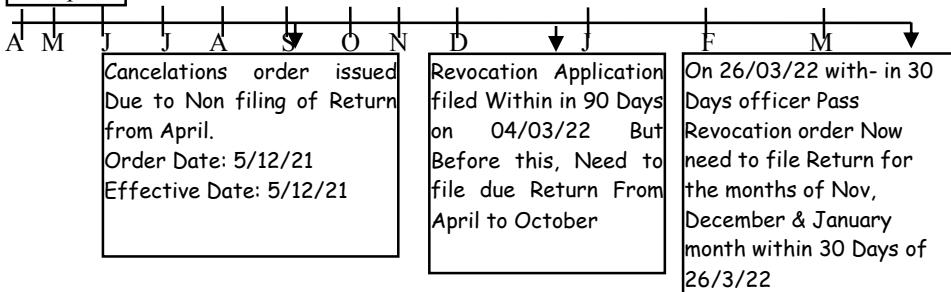
- File All pending Returns Due UPTO cancellation order
- Now file Revocation Application
- Revocation Accepted
- Now file Return Due from Cancellations order to Revocation order

**Calculation of Final Dues**

**FOR INPUTS:**  
 Corresponding ITC on Input (in Any Form, as such, WIP, contained in final product)  
 OR  
 Output GST on such Goods (as it is Deemed Supply to himself [Whichever is higher] xxx

**FOR CAPITAL GOODS**  
 \* ITC Related to Capital Goods by taking 5% per quarter or Part thereof  
 OR  
 Output GST on Transaction value u/s 15 [ichever is Higher] xxx

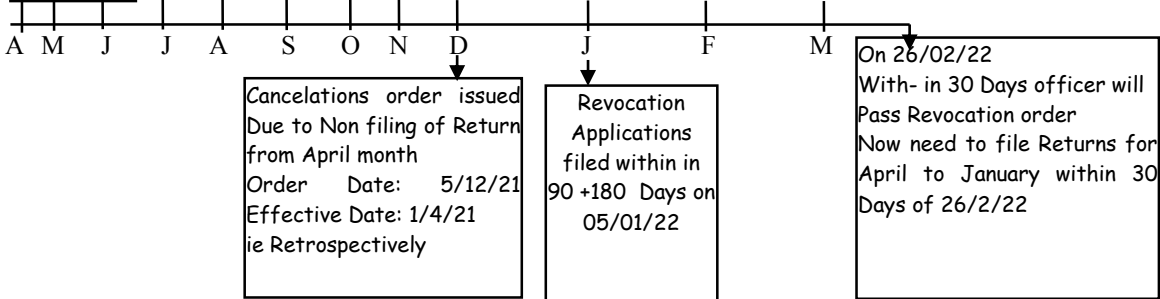
**Example**



**CASE: 2 Where Cancellation effective Retrospective (WEF:1/4/21)**

- File All pending Returns Due UPTO cancellation order
- Now file Revocation Applications
- Revocation Accepted
- Now file Return Due from April Month to Revocation order.

**Example**



## Chapter 12: REGISTRATION

### MISC:

**Biometric** : Central Government, hereby specifies that **Biometric provision** shall as of now apply in the **State of Gujarat and the State of Pudducherry**.

**Physical verification of business premises in certain cases:** [During physical Verification presence taxpayer not required]

**Physical verification\_Before Registration in case of :**

- Not to opt for Aadhaar Authentication
- Opt for, but failed
- Suggested by Artificial Intelligence
- Suggested by officer
- and maximum Time to upload report by Officer : 5 days in advance of Granting Registration.

**Physical verification After Registration in case of :**

- Suggested by Artificial Intelligence
- Suggested by officer and
- Maximum Time to upload report by Officer:15 days.

**Structure of RC**

**GSTIN: 09AALCA8207B1ZU**

State wise PAN based GSTIN--

- **First** two digits: State code
- **Next 10 digit** : PAN
- **Next digit:** SN of Registration in same state on same PAN
- **Next digit:** blank for further use

**Next digit:** Checksum digit (department use)

**RC Display:** Display RC in a prominent location at his principal and additional place (s) of business and shall display the registration number on the name board exhibited at entry of his principal place of business and any other place of business.

**All Documents/notices @ electronically and Digital signed:** Each document filed online shall be signed by person specified. All orders and notices under this chapter shall be issued electronically by proper officer.

**All applications/replies @ electronically and digitally signed:** All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as or through e signature.

**Furnishing of Bank Details:**

Furnishing bank account details within 30 days of grant of registration or before furnishing GSTR 01 (Whichever is Earlier) otherwise shall be liable to be canceled.

## Chapter 12: REGISTRATION

**Suspension and cancellation:**

**Suspension of Registration**

Where-

- Anomaly in ITC and output Liability as per Rule 21 or
- Contravention of Rule 10A

Then Notice to the person Within 30 days why registration should not be canceled.

**Withdraw of suspension:**

- Registration Suspended but not canceled due to above reason then
- Suspension shall be revoked
- after filling of return or Compliance of Rule 10A.



## Chapter 14: Manner of Payment

### Background

On GST portal, we have 3 Ledgers

E- CASH LEDGER (LIKE PAYTM WALLET)	E- CREDIT LEDGER	E- LIABILITY REGISTER
<p>WE MUST HAVE SUFFICIENT BALANCE IN E CASH LEDGER ON DUE DATE.</p> <p>IF IT IS NOT, THEN ADD SUFFICIENT AMOUNT IN IT.</p>	<p>AMOUNT WILL BE UPDATED THROUGH GSTR 3B</p> <p style="border: 1px solid red; padding: 2px; display: inline-block;">2B → 3B</p>	<p>E- LIABILITY REGISTER HAS 2 PARTS--</p> <p>PART I: SELF ASSESSED LIABILITY AS PER RETURN</p> <p>PART II: RE-ASSESSED LIABILITY BY DEPARTMENT</p>
<p>HOW TO ADD...</p> <p>1. CREATE A CHALLAN ON GST PORTAL WHICH WILL REMAIN VALID FOR 15 DAYS. PORTAL WILL GENERATE C-PIN (COMMON PORTAL IDENTIFICATION NUMBER: 14 DIGIT)</p> <p>2. MAKE PAYMENT OF AMOUNT AS GIVEN IN CHALLAN @ ONLINE /OFFLINE.</p> <p><i>NOTE: ONLINE = NET BANKING, RTGS, NEFT, DEBIT/CREDIT CARD ETC.</i></p> <p><i>NOTE: OFFLINE CAN BE DEPOSITED IN SPECIFIED SITUATIONS AS AMOUNT IS UPTO ₹ 10,000, BY GOVT. DEPARTMENT EG POST OFFICE, IN CASE OF SEARCH AND SEIZURE.</i></p> <p>3. AS THE PAYMENT CREDITED TO BANK A CHALLAN IDENTIFICATION NUMBER (CIN) WILL BE GENERATED, WHICH WILL BE A COMBINATION OF CPIN + 3/4 DIGIT OF BANK BRANCH CODE.</p>	-	<p>FIRST OF ALL, WE WILL DISCHARGE PART I LIABILITY AND OUT OF THIS</p> <p>A. PREVIOUS PERIOD LIABILITY FIRST THEN,</p> <p>B. CURRENT PERIOD LIABILITY</p> <p>AFTER THAT DISCHARGE PART II LIABILITY.</p>

## Chapter 14: MANNER OF PAYMENT

4. CIN WILL BE COMMUNICATED TO GST PORTAL BY BANK AND THE AMOUNT WILL BE REFLECTED IN E CASH LEDGER.											
-		<p>NOW FILE GSTR 3B AND USE ITC AND E CASH LEDGER TO DISCHARGE LIABILITY</p> <p>MANNER OF USING ITC—</p> <table border="1" data-bbox="1040 576 1443 821"> <tr> <td style="text-align: center;">C</td> <td></td> <td style="text-align: center;">C</td> </tr> <tr> <td style="text-align: center;">I</td> <td></td> <td style="text-align: center;">I</td> </tr> <tr> <td style="text-align: center;">S U</td> <td></td> <td style="text-align: center;">S U</td> </tr> </table>	C		C	I		I	S U		S U
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### SECTION 49 +49A+49B: PAYMENT OF TAX INTEREST, PENALTY & OTHER AMOUNT

#### E-CASH LEDGER:

- (i) **Deposit** : Every deposit towards Tax, Interest, Penalty, Fee or Other Amount of a Person Whether Online or Offline Shall be credited to E-Cash Ledger. [Deposit by making challan i.e. C-PIN]
- (ii) **Utilisation**: The amount available in E-Cash Ledger will be used for making any payment towards Tax, Interest, Penalty, Etc. and on Utilisation of Such Amount, E-Cash Ledger will be debited by that amount. [ie While File GSTR = 3B]

#### E-LIABILITY REGISTER:

- (iii) **Add on**: All Liabilities of a Taxable Person Shall be recorded in E- Liability register By way of GSTR 1 and Demand raised by Officers.
- (iv) **Pay off**: Every Taxable Person shall discharge his tax dues and Other dues in the following Order
  - (a) Self Assessed Dues- Related to Returns of Previous Period.
  - (b) Self Assessed Dues - Related to Returns of Current Period.
  - (c) Re-Assessed Dues on Determined by Offices.

## Chapter 14: MANNER OF PAYMENT

### E-CREDIT LEDGER:

- (v) Add on: Input-Tax Credit on Self Assessed in Return shall be credited to E- credit Ledger.
- (vi) **Utilization:** The amount available in E-Credit Ledger may be used for making payment of output Tax in Prescribed manners.
- (vii) Manner Prescribed for using ITC.

#### 1. Credit of IGST..

- First to be utilised for the payment of IGST
- SECOND to be utilised for the payment of- CGST, SGST / UTGST (IN ANY ORDER ANY RATIO)

#### 2. Credit of CGST..

- First to be utilised for the payment of CGST
- Second to be utilised for the payment of IGST

#### 3. Credit of SGST ...

- First to be utilised for the payment of SGST
- Second to be utilised for the payment of IGST

#### 3. Credit of UTGST ...

- First to be utilised for the payment of UTGST
- Second to be utilised for the payment of IGST

- (viii) Refund of balance

Any Balance in E-Cash Ledger or E-Credit Ledger, After payment of Tax, Interest, Penalty, Fee or Any other may be refunded.

- (ix) PRESUMPTION OF PASSING ON TAX BURDEN:

Every Taxable Person who has paid the tax shall Unless the contrary proved by him Be deemed to have passed the full incidence of Tax to the Recipient.

- (x) A registered person may transfer any amount of tax, interest, penalty, fee or any other amount
  - available in the electronic cash ledger under this Act,
  - to the electronic cash ledger for....

## Chapter 14: MANNER OF PAYMENT

(a) IGST, CGST, SGST, UTGST or cess; or

(b) IGST or CGST of a distinct person, if transferor has no unpaid Liability in E liability Register.

And such transfer shall be deemed to be a refund from transferor E cash Ledger.

### *Section 50: Interest on delayed payment of tax*

<p>Interest for belated period @ 18% [max] for belated period</p>	<p><b>Interest on Gross Liability:</b> (1) Every person who is liable to pay tax but fails to pay the tax or any part of tax by due date shall be liable to pay interest @ 18%PA after the due date till the date of payment.</p> <p><b>Interest on NET Liability:</b> [W.E.F. 01/07/2017:] The interest on tax payable in respect of</p> <ul style="list-style-type: none"><li>→ Supplies made during a tax period [Say Jan Month] and</li><li>→ Whole Return for the said period [Jan] has not been filed by due date ie filed belatedly.</li><li>→ And by that date no show cause notice has been issued by department.</li><li>→ Then interest shall be levied on net liability ie cash liability.</li></ul>
<p>How to calculate interest</p>	<p>(2) The interest shall be calculated, from next day after due date.</p>
<p>Interest @ higher % [24% maximum]</p>	<p>(3) Where the input tax credit has been wrongly availed <b>AND</b> utilised,</p> <ul style="list-style-type: none"><li>- the registered person shall pay interest</li><li>- on such input tax credit wrongly availed and utilised,</li><li>- at the rate of 18% PA.</li></ul>

## Chapter 14: MANNER OF PAYMENT

### *SECTION – 53 Transfer of Fund*

Where

→ CGST credit is used for the payment of Output IGST,

Then CG shall Transfer Equivalent amount from

→ CGST fund to IGST Fund.

[NOTE: Similar provision also contained in SGST / IGST / UTGST Act]

### *SECTION – 53A Transfer of Certain Amount*

Where any amount has been transferred from the electronic cash ledger under this Act

- to the electronic cash ledger under the SGST Act or the UTGST Act,
- the Government shall transfer
- to the SGST account or the UTGST account,
- an amount equal to the amount transferred from the electronic cash ledger.



## Chapter 14: MANNER OF PAYMENT

### CGST Rules, 2017

<p><b>Rule 86B:</b> <b>Restrictions on use of amount available in electronic credit ledger .-</b></p>	<p>Where, TAXABLE TURNOVER [other than exempted and Zero rated] of a registered person in a particular month is Rs more than 50 lakh - then the person need to pay at-least 1% from E cash ledger even if has sufficient balance of credit to pay of all output GST.</p> <p>However following persons will not be covered under the above provision.</p> <ol style="list-style-type: none"> <li>1. Owner, director, karta etc. paid income tax of ₹ More than 1 lakh each in last 2 F.Y.</li> <li>2. Claim Refund of ITC of More than 1 lakh</li> <li>3. Government Department/ PSU/local Authority/Statutory Body.</li> <li>4. If paid excess in preceding period then no need to pay in cash in current period i.e. cumulative benefit shall be allowed.</li> <li>5. Registered person may request to officer for relaxation</li> </ol>
<p><b>Rule 88B</b> Manner of calculating interest on delayed payment of tax</p>	<p><b>In case,</b></p> <ul style="list-style-type: none"> <li>▪ Where interest is payable on the amount of ITC wrongly availed and utilised,</li> <li>▪ the interest shall be calculated from the date of utilisation of such wrongly availed ITC till the date of reversal of such credit or payment of tax.</li> <li>▪ at such rate as may be notified under section 50(3).</li> </ul> <p><i>Explanation: For above purposes Good Credit [eligible credit] shall be deemed to be utilized first and after that bad credit [Ineligible Credit] shall be deemed to be utilized and accordingly interest shall be calculated.</i></p>
<p><b>Rule 88C.</b> Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return</p>	<p>(1) Where</p> <ul style="list-style-type: none"> <li>- the tax payable as per GSTR:1 /IFF</li> <li>- <b>substantially exceeds the amount of tax payable as per GSTR:3B</b></li> </ul> <p>The said registered person</p> <ul style="list-style-type: none"> <li>- shall be intimated of such difference and directing him to-             <ol style="list-style-type: none"> <li>(a) Pay the differential tax liability, along with interest or</li> <li>(b) Explain the aforesaid difference in tax payable</li> </ol>             within a period of 7 days.           </li> </ul>

## Chapter 14: MANNER OF PAYMENT

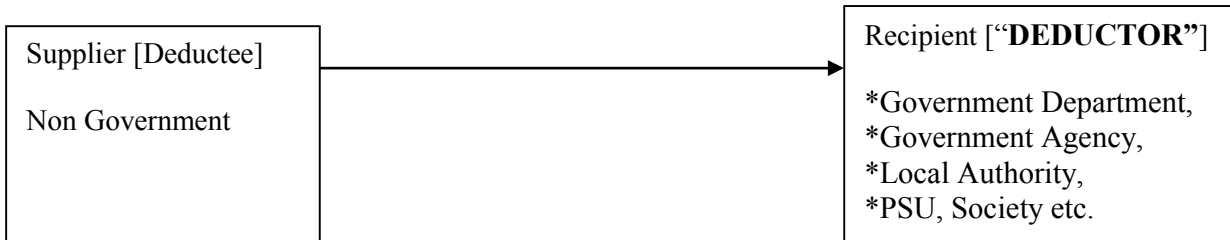
	<p>(2) The registered person shall, upon receipt of the intimation, either,- Pay the amount of the differential tax liability, fully or partially, along with interest or Furnish a reply.</p> <p>(3) Where</p> <ul style="list-style-type: none"> <li>- any amount remains unpaid and</li> <li>- No explanation is furnished by the registered person in default or</li> <li>- Explanation furnished by such person is not found to be acceptable by the proper officer,</li> </ul> <p>the said amount shall be recoverable in accordance with the provisions of section 79. [Recovery Proceedings]</p>
<p>Rule 88D. Difference in GSTR 2B and in 3B</p>	<p>(1) Where</p> <ul style="list-style-type: none"> <li>→ The amount of ITC availed in <b>FORM GSTR-3B</b></li> <li>→ <b>Substantially exceeds the ITC</b> available in FORM GSTR-2B</li> </ul> <p>-the said registered person shall be intimated of such difference and</p> <p>- and directing him to—</p> <p>(a) Pay an amount along with interest or</p> <p>(b) Explain the reasons for the aforesaid difference</p> <p>within a period of 7 days.</p> <p>(2) The registered person shall upon receipt of the intimation, either, Pay the amount fully or partially, along with interest or furnish a reply,</p> <p>(3) Where any amount</p> <ul style="list-style-type: none"> <li>- remains to be paid and</li> <li>- where no explanation is furnished by the registered person in default or - Where the explanation furnished by such person is not found to be acceptable by the proper officer,</li> <li>- the said amount shall be liable to be demanded by way of issuing Show cause Notice and Demand order.</li> </ul>

# Chapter 15: TDS, TCS

## Section 51: Tax deduction at source

**Objective of concept of TDS:** Control, Control, Control “ ie to CAPTURE A Transaction”

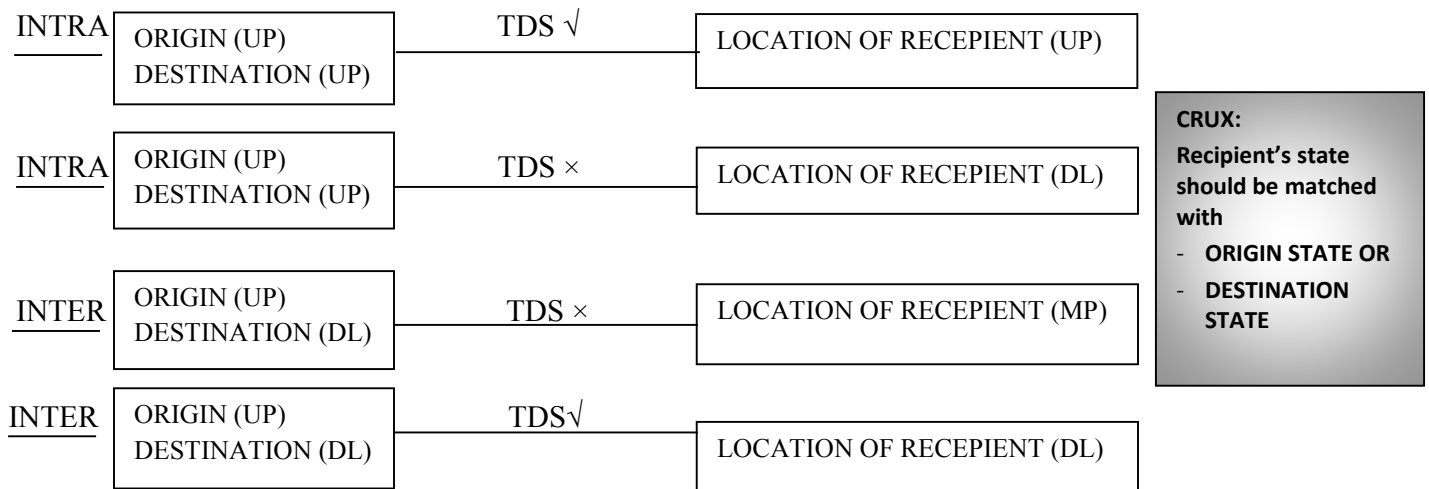
**Supplier and Recipient:**



**(i) Goods/Service:** ANY Goods/Service

**(ii) Supply:** Mandatory

**(iii) NATURE:** INTRA/INTER (Any)



**Taxable Person:** TDS is neither Output Tax nor Input Tax however is paid By Recipient to the Government.

**Exempted Supply:** TDS concepts launched to Check GST on the Transaction where no GST on the transaction then question of TDS. [Monkeys and Baboon] therefore TDS concept will be applicable on Taxable supplies.

## Chapter 15: TDS, TCS

**COMPUTATION:** Value will be Assessable value and Rate will be  $1\% + 1\% = 2\%$  [moreover Assessable Value of Contract Should be more than 2,50,000]

For example:

Value	5,00,000
IGST	90,000
Total Invoice value	5,90,000
Less: TDS @2%	(10,000)
Net Payment	5,80,000

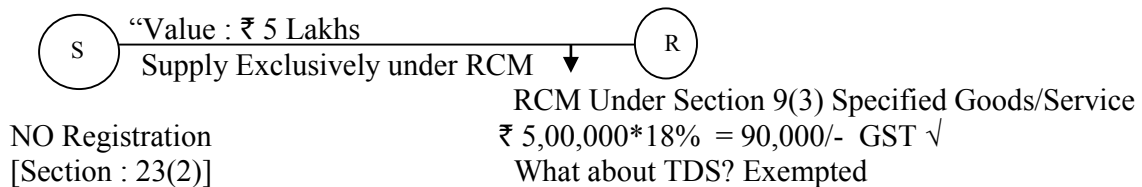
Calculation under RCM:

Value	5,00,000
IGST	Nil
Total Invoice value	5,00,000
Less: TDS @2%	(10,000)
Net Payment	4,90,000

**NCM/RCM: TDS is neither Output Tax nor Input Tax so no Question of NCM or RCM, however is paid By Recipient to the Government.**

**Note: Under RCM, Where Supplier is engaged exclusively in RCM Supplies or the transaction fall under section 9(4) then supplier is not Required to get registered, in such cases whether TDS provision will be applicable...**

**Example:**



## Chapter 15: TDS, TCS

**TIME OF SUPPLY:** TDS is neither Output Tax nor Input Tax so No question of applicability of RCM Provisions.

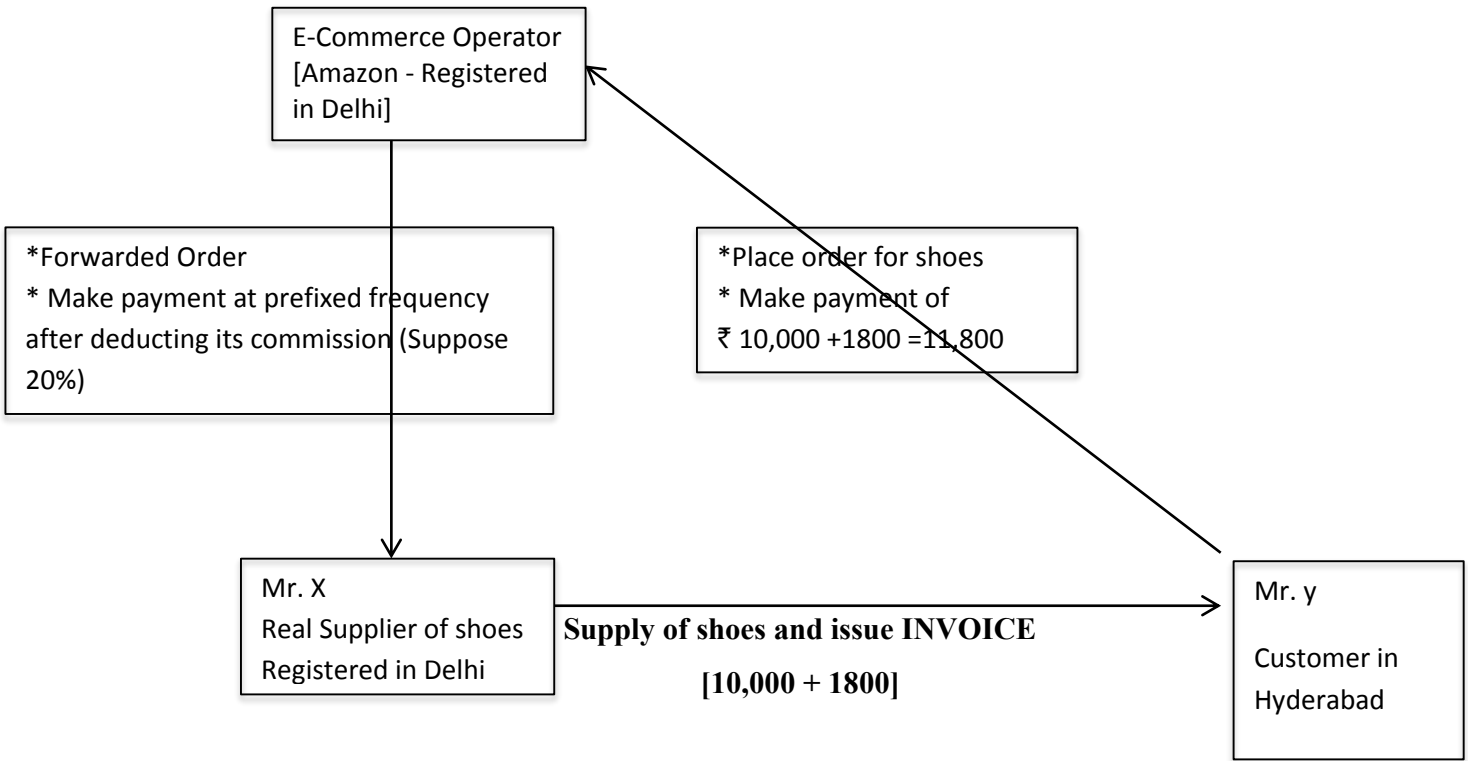
### **PROCEDURAL PART**

<b>Invoice</b>	Nil
<b>Payment</b>	By Deductor to government by 10 <sup>th</sup> of Next month
<b>Return</b>	By Deductor by 10 <sup>th</sup> of Next Month [GSTR 07]
<b>Records</b>	Maintained by Deductor
<b>Registration</b>	Additional Registration to be taken by Deductor
<b>Refund</b>	In case of excess payment of TDS Refund will be claimed
<b>Input tax credit</b>	No ITC of TDS as TDS is neither Output Tax nor Input Tax however Deductee shall claim benefit in E cash Ledger.

#### **FINAL CRUX:-**

- 1. SUPPLIER MUST BE REGISTERED NON-GOVERNMENT AND RECEIPT SHOULD BE GOVERNMENT ETC.**
- 2. SUPPLY MUST BE THERE.**
- 3. SUPPLY MAY BE INTRA OR INTER BUT RECIPIENT'S LOCATION MUST BE MATCHED WITH ORGIN OR DESTINATION STATE.**
- 4. SUPPLY SHOULD NOT BE EXEMPTED.**
- 5. VALUE (EXCLUSIVE OF GST AND CESS) MUST BE MORE THAN ₹ 2,50,000 @ PER CONTRACT.**
- 6. TDS WILL BE DEDUCTED ON PAYMENT DUE.**
- 7. AFTER DEDUCTION, TDS WILL BE DEPOSITED BY RECEIPT TO GOVERNMENT BY 10TH OF NEXT MONTH AND REQUIRED TO FILE TDS RETURN IN GSTR 07**
- 8. AFTER THAT IT WILL BE CREDITED TO E-CASH LEDGER OF SUPPLIER**

Section 52: Collection of tax at source



**Note: Where only Orders are processed (not payment) then TCS concept will not be applicable.**

## Chapter 15: TDS, TCS

Basis	Transaction Between Mr. X (Supplier) and Mr. Y (Recipient) [Transaction = 01]	Transaction Between E-Commerce Operator (Supplier) and Mr. X (Recipient) [Transaction = 02]								
Goods /Services	It is a supply of Goods (Shoes)	It is a service (GST Rate 18%), given by Amazon to Mr. X for commission @20%								
Supply	Yes, it's a supply with consideration	Yes, it's a supply with consideration								
Nature of supply	Origin : Delhi POS: u/s 10(1) of IGST Act: Hyderabad It is inter -state supply	Origin : Delhi POS: u/s 12 of IGST Act: Delhi It is intra -state supply								
Taxable Person	Mr. X, [Mandatory Registration u/s 24 ]	Amazon needs Dual Registration In the capacity of Taxpayer u/s 24 In the capacity of TCS Collector u/s 24								
Exemption	Shoes are not exempted	It is not an Exempted Service								
Computation	10,000 *18% + 1800 [IGST]	Consideration: 10,000 * 20% = 2,000 CGST: 180 SGST: 180								
FCM/RCM	FCM ie Mr. X liable to pay GST	FCM ie AMAZON liable to pay GST of ₹ 360								
Time of supply	u/s 12 : Invoice date	U/s 13: Invoice or Payment (Whichever is Earlier)								
Compliances	All Compliances to be fulfilled by Mr. X INVOICE VALUE: 10,000 IGST : 1800 TOTAL : 11,800 Output GST = 1800 Itc = 360 Net = 1440	All Compliances to be fulfilled by Mr. X INVOICE <table border="1"> <tr> <td>VALUE</td> <td>: 2,000</td> </tr> <tr> <td>CGST</td> <td>: 180</td> </tr> <tr> <td>SGST</td> <td>: 180</td> </tr> <tr> <td><b>TCS (IGST)@ 1% On ₹10,000</b></td> <td>100</td> </tr> </table> Excluding: GST and cess Excluding: Supplies Returned Excluding: Supply u/s 9(5) Nature will be Based on Transaction (01) : (Because Object Of TCS is to catch Transaction :01)	VALUE	: 2,000	CGST	: 180	SGST	: 180	<b>TCS (IGST)@ 1% On ₹10,000</b>	100
VALUE	: 2,000									
CGST	: 180									
SGST	: 180									
<b>TCS (IGST)@ 1% On ₹10,000</b>	100									

## Chapter 15: TDS, TCS

		TOTAL : 2460
		<p>Payment:</p> <p>Amazon Liabile to Pay GST of ₹ 360 and TCS of ₹ 100 to Govt. For Payment of TCS AMAZON can not use ITC as it is not an output tax.</p> <p>TCS of ₹ 100 will be reflected in E cash Ledger of Mr. X</p> <p>Filing of Return:</p> <p><b><u>In the capacity of TAXPAYER</u></b></p> <ul style="list-style-type: none"> <li>* Amazon Required to file GSTR 01/3B for ₹ 360 by 11<sup>th</sup> and 20<sup>th</sup> of NEXT month.</li> <li>* Annual Return by 31<sup>st</sup> dec. of Next Year in GSTR 09</li> </ul> <p><b><u>In the capacity of TCS COLLECTOR</u></b></p> <ul style="list-style-type: none"> <li>* GSTR 08 For TCS of ₹ 100 by 10<sup>th</sup> of Next Month</li> <li>* Annual Statement by 31<sup>st</sup> dec. of Next Year in GSTR 9B</li> </ul>
Others		<p><b>*Matching, Communication of discrepancy and Added in output liability.</b></p> <p><b>* Payment with interest in case of Mismatch.</b></p> <p><b>*Notice to operator, Reply with in 15 days and Penalty up to Rs. 25,000</b></p>
Time limit for Statement		<p>Note: The operator shall not be allowed to furnish a statement after the expiry of a period of 3 years from the due date of furnishing the said statement:</p> <p>However, Government may, allow an operator or a class of operators to furnish a statement , even after the expiry of the said period of 3 years from the due date of furnishing the said statement.</p>

### Differences between TDS and TCS

TDS u/s 51	TCS u/s 52
Supplier = other than Government Recipient = Government	Supplier = E commerce Operator Recipient = the person who supplies goods through E commerce operator
Number of transaction involved =1	Number of transaction involved =2
Rate of TDS Maximum: 1%+1%= 2%	Rate of TCS Maximum: 1%+1%= 2%

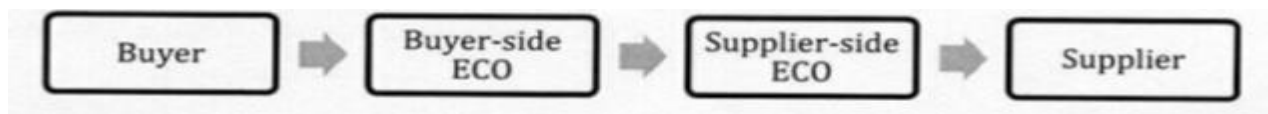


## Chapter 15: TDS, TCS

As of now: $1\%+1\%= 2\%$	As of now: $0.5\%+0.5\%= 1\%$
Return in GSTR 07	Return in GSTR 08
Annual Statement = NO	Annual Statement = YES in GSTR 9B
Late payment of TDS attract interest @18% PA	Late payment of TCS attract interest @18% PA

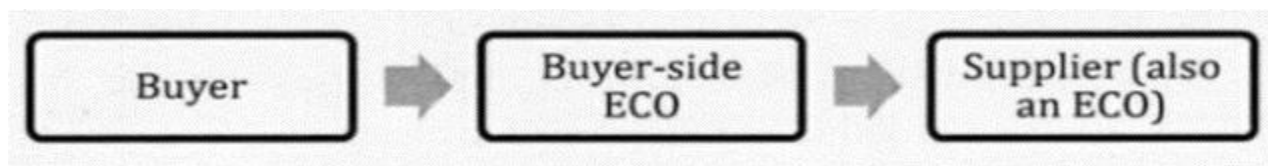
**Clarification on TCS liability under Sec 52 of the CGST Act, 2017 in case of multiple E-commerce Operators in one transaction** in the context of Open Network for Digital Commerce (ONDC)

**Issue 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 under section 52 including collection of TCS?**



**Clarification:** The compliances 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.

**Issue 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 under section 52 including collection of TCS?**



**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.

### **ECO with Composite Dealer of Goods: NOTIFICATION NO. 36/2023**

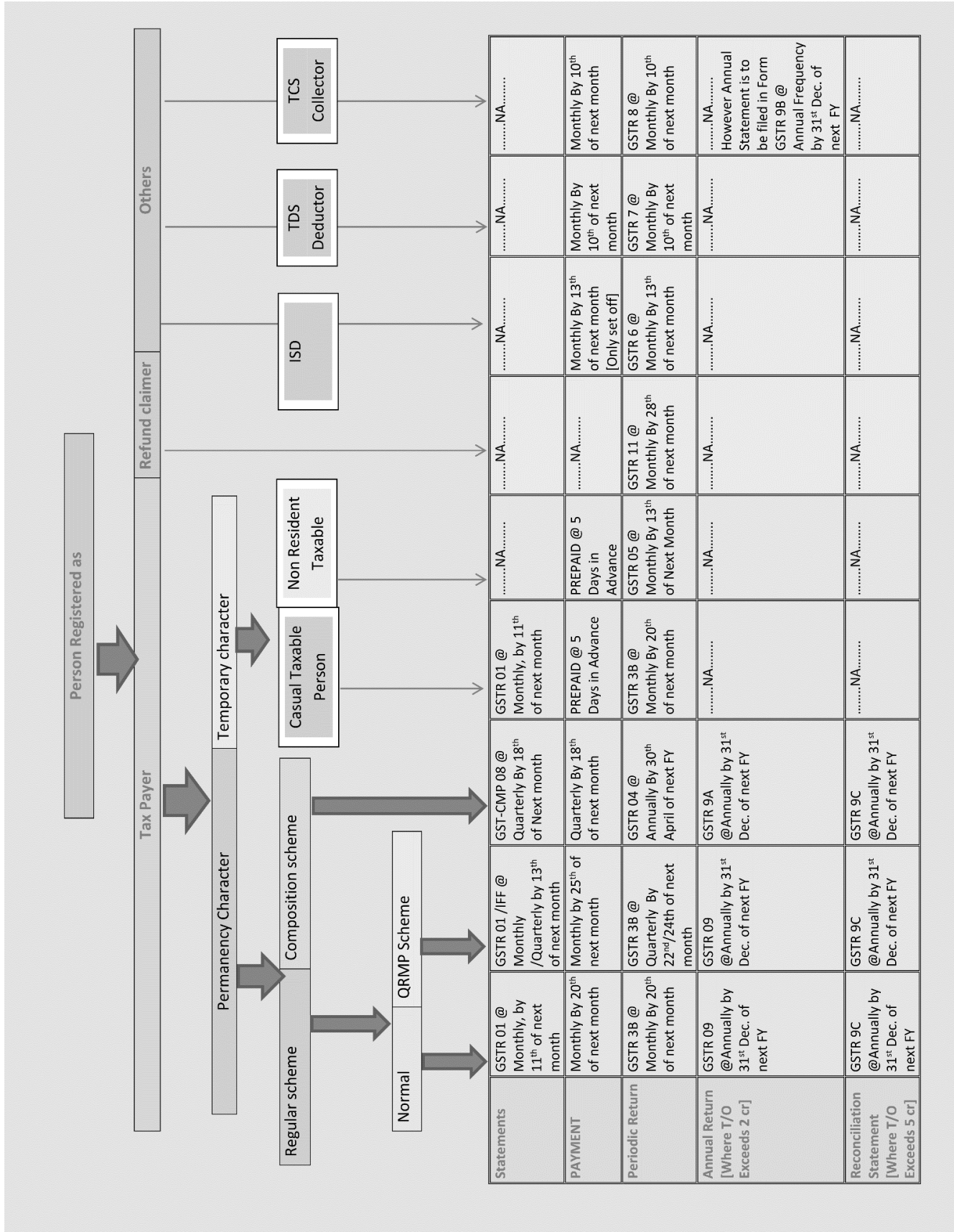
- (i) ECO shall not allow any inter-State supply of goods.
- (ii) ECO shall collect TCS and
- (iii) ECO shall furnish the details in GSTR-8.

## Chapter 16: Return

### Sections List

Section	Description	Form	Content
Section 37	Outward supply statement		
Section 38	Communication of details of inward supplies and input tax credit [GSTR 2B]	GSTR 01	Invoice issued
Section 39	Filing of Return	<del>GSTR 02</del>	<del>Invoice received</del>
Section 40	First Return	GSTR 3B	Return
Section 41	Availment of input tax credit	GSTR 04	Annual statement @ composite dealer
<del>Section 42</del>	<del>Matching / Mismatching of ITC</del>	GST CMOP 08	Quarterly Statement
<del>Section 43</del>	<del>Matching / Mismatching of ITC</del>	GSTR 05	NRTP
Section 44	Annual Return	GSTR 06	ISD
Section 45	Final Return	GSTR 07	TDS RETURN
Section 46	Notice on Non- filing	GSTR 08	TCS RETURN
Section 47	Late fees	GSTR 09	Annual Return @Regular Scheme
Section 48	GST practitioner	GSTR 9A	Annual Return @Composition Scheme
		GSTR 9B	Annual TCS Statement
		GSTR 9C	Annual Reconciliation Statement
		GSTR 10	Final Return
		GSTR 11	UIN HOLDER

# Chapter 16: RETURN



## Chapter 16: RETURN

### Annual Return and Reconciliation Statement

For Regular and composite supplier			FOR Special category no need to file these forms
Aggregate Turnover	Annual Return Form 9/9A u/s 44	Reconciliation statement @ self-certified u/s 44	CTP, NRTP, Refund claimer TDS deductor, TCS collector, ISD and Govt. Departments.
Upto 2 cr	Exempted by way of notification issued every year	No	
Above 2 cr to 5 cr	Yes	No	
Above 5 cr	Yes	Yes	

### First and Last Return

First Return	Last Return
<ul style="list-style-type: none"> <li>* GSTR ??? @ One time After grant of RC</li> <li>* Details of outward supply</li> <li>* For the period: The date on which liability of registration arises TILL the date on which Registration is granted.[Pre RC Period]</li> </ul>	<ul style="list-style-type: none"> <li>* GSTR 10 @ One time</li> <li>* Person whose RC canceled</li> <li>* With- in 3 month from (order/effective of Cancellation) whichever is later</li> </ul>
	<ul style="list-style-type: none"> <li>* GSTR 05 @ Monthly</li> <li>* Non Resident Taxable Person</li> <li>* Last Return: 13<sup>th</sup> of Next Month or within 7 days after the last day of validity of Registration Certificate - whichever is earlier.</li> </ul>

## Chapter 16: RETURN

Notes:

(1) No rectification of any omission or incorrect particulars shall be allowed after: 30<sup>th</sup> November of next FY or annual return Actual filing date (whichever is Earlier)

(2) Payment of tax mandatory to file a valid return Except QRMP Scheme.

(3) Nil return also required to be filed.

(4) **Maximum time to file Return /Statements:** GSTR 1 u/s 37, GSTR 3B and other Returns under section 39, Annual Return u/s 44, GSTR 9B (TCS Statement under section 52) Can be filed only upto 3 years from due date.

### Some other Points:

Section 46 Notice to return defaulter	Where a registered taxable person fails to furnish a return under section 39,[Combined Return] section 44[Annual Return] or section 45, [Final Return] a notice shall be issued requiring him to furnish such return within 15 days in such form and manner as may be prescribed.			
Section 47 Late fees	Periodic and Final Return	Any registered taxable person who fails to furnish the-details of outward u/s 37 or Return u/s 39,45,52 by the due date, shall be liable to pay late fee of ₹100 [Reduced to ₹25 and 10 for NIL RETURN] for every day during which such failure continues or ₹5000 [whichever if lower]		
	Annual Return	Any registered taxable person who fails to furnish the return required under section 44 by the due date shall be liable to a late fee of ₹100 for every day during which such failure continues or 0.25% of his turnover in the State/UT [whichever if lower]		
	Maximum Late Fees payable under section 47 for delayed filing	Form	Description	Late Fess under CGST
		Form GSTR 01 and 3B	Nil Return	₹250
Aggregate Turnover in PFY limited to ₹ 1.5 Cr			₹1000	
	Aggregate Turnover in PFY more than ₹ 1.5 Cr but	₹2,500		

## Chapter 16: RETURN

			upto ₹ 5 cr	
			Others	₹ 5,000
		Form GSTR 4	Nil	₹250
			Others	₹1000
		Form GSTR 7	Delayed Furnishing	₹ 25 per day for delayed period [Maximum: ₹ 1,000]

Class of registered persons	Amount
Aggregate turnover of up to Rs. 5 crore in the relevant financial year.	Rs.25 per day or 0.02 % of turnover in the State or Union territory.  [whichever is lower]
Aggregate turnover of Rs. 5 crore to 20 crore in the relevant financial year.	Rs 50 per day or 0.02 % of turnover in the State or Union territory.  [whichever is lower]

Manner of furnishing of return or details of outward supplies by short messaging service facility

- For a registered person who is required to furnish a Nil GSTR-3B or Nil GSTR-1 or Nil GST CMP-08 for a tax period,
- He may furnish such return or statement
- through a SMS 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 OTP facility.

## Section 48: GST Practitioner

<p>Why GSTP</p>	<p>GST Law is a new Law thus it is bound to raise doubts in the mind of taxpayers, concerning Registration, Filing of Return, Refund claims and other compliance under GST, by understanding this Government has introduced the concept of GSTP to assists taxpayer in GST compliances.</p>
<p>Work Profile of GSTP</p>	<p>GSTP is a person approved by Central Government / State Government to perform one or more activities as given below on behalf of Taxpayers.</p> <ul style="list-style-type: none"> <li>• Registration: GSTP can apply for Registration; can apply for amendment/ cancellation of Registration.</li> <li>• Returns: GSTP can assist in filing GSTR statements /Returns @ Monthly, Quarterly or Annual basis.</li> <li>• Composition Scheme: File an intimation to pay tax under composition scheme.</li> <li>• Payments and Refunds: GSTP can make payments of taxes or apply for Refunds including from E- cash Ledger.</li> <li>• Authorised Representative: GSTP allow to appear as an authorise Representative before Department.</li> <li>• Furnish information for Generation of E way Bill etc.</li> </ul> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><b>PLEASE NOTE THAT: THE RESPONSIBILITY OF CORRECTNESS OF ANY PARTICULARS FURNISHED IN THE RETURN OR OTHER DETAIL FILED BY GSTP SHALL CONTINUE TO REST WITH THE REGISTERED PERSON</b></p> </div> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Process:</p> <ul style="list-style-type: none"> <li>- Taxpayer will authorize GSTP in FORM PCT- 05</li> <li>- Now GSTP files detail or other work on behalf of Taxpayer</li> <li>- Now a confirmation (SMS, Email) would be required from Taxpayer by due date, if it is not given then information etc. shall be deemed to be furnished</li> </ul> </div>

## Chapter 16: RETURN

	<p>- But in case of filing of refund claim such application will not be processed until a confirmation is received from the registered person.</p>
<p>Importance of certification by GSTP Exam</p>	<ul style="list-style-type: none"> <li>- GST Practitioner submit essential Data /information on behalf of taxpayer</li> <li>- Considering the importance of work done by the GST Practitioner he must be registered with GST portal and must pass an exam to obtain certificate before he start his own practice.</li> <li>- Obtaining GST Certificate of GSTP helps in increase credibility and trust for the service provided by the Practitioner in the eyes of Taxpayer</li> </ul>
<p>Eligibility Criteria to become GSTP</p>	<p>Register on GST Portal as GSTP in form PCT 01 with necessary Details and obtain enrollment certificate in PCT 02</p> <p>Basic requirement for enrollment</p> <ul style="list-style-type: none"> <li>• Indian Citizen</li> <li>• Sound mind</li> <li>• Solvent</li> <li>• Non - convicted of an offence with imprisonment of 2 year or more.</li> </ul> <p>Qualification:</p> <ul style="list-style-type: none"> <li>• CA/CS /CWA</li> <li>• Post Graduate/ Graduate (Any stream)</li> <li>• Tax Return Preparer [TRP], Service Tax Return Preparer [STRP]</li> <li>• Retired officer of commercial tax department. [Post was Group B or more and work on such post for atleast 2 years ]</li> </ul> <p>Once a person enrolled as a GSTP- Such person must pass the GSTP Examination with- in 2 years of enrollment.</p>



## Chapter 16: RETURN

GSTP Examination Procedure	Exam Conducted by	NACIN [National Academy of Customs, Indirect Taxes and Narcotics ]
	Frequency of Exam	Exams are conducted Twice in a year across India at designated centers. Exam date notified by NACIN.
	Exam Registration	At <a href="http://www.nacinonlineregistrationform.org">www.nacinonlineregistrationform.org</a> Login with: User id : [Enrollment number] Password [xxxxxxxx]
	Pattern of Exam	MCQ Based
	Result	Declared by NACIN IN one month of exam
	Passing Criteria	50% and No restriction of Attempts in 2 years
	Don't's	<ul style="list-style-type: none"><li>- Arriving Late</li><li>- Carrying mobile phone, Bluetooth device in examination hall</li><li>- Use unfair means or practices during the examination.</li></ul>

## Chapter 16: RETURN

# QRMP scheme (Quarterly Return Monthly Payment ) [Optional]

1. What is QRMP scheme: Filing of GSTR 3B on Quarterly Basis but payment of Tax on Monthly Basis.

2. Who is eligible:

(a) Aggregate Turnover in PFY (as per GST portal) limited to ₹ 5 cr and the person will remain eligible in CFY till the Quarter in which the person cross the turnover of ₹ 5cr.

Example:

Quarter	Turnover	Cumulative Turnover	Scheme
A M J	₹ 1 cr	₹ 1 cr	QRMP
J A S	₹ 1 cr	₹ 2 cr	QRMP
O N D	₹ 4 cr [upto 30 <sup>th</sup> Nov 3 cr]	₹ 6 cr	QRMP
J F M	₹ 1 cr	₹ 7 cr	Monthly

(b) Last return which was due on the date of exercising the option must be filed.

November	December	January 2022
Return due on 20 <sup>th</sup> DEC	Return due on 20 <sup>th</sup> Jan	The person want to opt for QRMP scheme WEF 1/1/22 then all returns due by this date must be filed ie return upto the months of Nov (due on 20 <sup>th</sup> dec.) must be filed.

(c) The person should not be OIDAR service provider to non- taxable person in India.

3. When to exercise the option: 2 months before and 1 month later ie if any of the person want to exercise the option from April 2021 then he can opt for from 01/02/2021 to 30/04/2021.

## Chapter 16: RETURN

Example: Want to start from April then [ 2 + 1 months ]

Jan	Feb	March	April	May	June	July	Aug	Sep
	1/2/22		30/4/22					

4. How to avail the option: Eligible person may opt for manually on the GST Portal ...services...Return...opt in...

[Default setting on Portal:]

Turnover	GSTR 1 to be filed	GSTR 3 B to be filed
Turnover upto ₹ 1.5 Cr	Quarterly	Quarterly (QRMP)
	Monthly	Monthly
More than ₹ 1.5 Cr to ₹ 5 cr	Monthly	Monthly

5. How to make payment:

(a) Fixed Sum Method:

Preceding Quarter/Month	April	May	June
If Preceding Tax Period was a Quarter	35% of cash GST paid in preceding Quarter and to be paid on 25 <sup>Th</sup> may	35% of cash GST paid in preceding Quarter and to be paid on 25 <sup>Th</sup> june	Balance amount on the basis of Final Amount in the return and to be paid on 25 <sup>Th</sup> july
If Preceding Tax Period was a Month	100% of cash GST paid in preceding Month and to be paid on 25 <sup>Th</sup> may	100% of cash GST paid in preceding Month and to be paid on 25 <sup>Th</sup> june	Balance amount on the basis of Final Amount in the return and to be paid on 25 <sup>Th</sup> july

## Chapter 16: RETURN

(b) Self- Assessment Method:

Preceding Quarter/Month	April	May	June
.....	Calculate Tax on Actual Basis	Calculate Tax on Actual Basis	Calculate Tax on Actual Basis
<p><i>Note1: No tax is required to be deposited- Where tax liability is nil OR Have already sufficient balance in E cash Ledger</i></p>			
<p><i>Note 2: Return under QRMP to be filed on 24th [for Northern and eastern States] and on 22nd For rest of India. In case of other taxpayers Return [GSTR 3B] date will be 20<sup>th</sup> of next month.</i></p>			
<p><i>Note 3: Date for filing GSTR 1: under QRMP Scheme ; 13<sup>th</sup> , in others cases : 11th</i></p>			

6. How the registered buyer will get the credit:

Supplier will file return on quarterly basis after that it will be reflected in GSTR 2B to Recipient....but Recipient need credit on monthly basis ..now what is the solution ?

- Supplier MAY furnish B to B invoices [Dr/Cr note] under invoice furnishing facility (IFF) for first 2 months in a quarter.
- Now for THE quarter (ie all 3 months) file GSTR 1 except the invoices furnished under IFF.
- Under IFF net value of invoices that can be uploaded is restricted to ₹ 50 lakh per month [by keeping in mind the limit of ₹5 cr]

7. Interest calculation:

- JAB JITNA MAANGA UTNA DIYA THEN NO INTEREST,
- JAB JITNA MAANGA USSE KAM DIYA THEN JITNA KAM DIYA UTNE AMOUNT PAR INTEREST LAGEGA @ 18% PA.

*Example: Suppose in last quarter cash GST Paid was ₹ 100 [Total actual tax for the Quarter known in July month ₹ 102]*

## Chapter 16: RETURN

Particulars	April	May	June
Tax to be paid on due date as per the given method	35 [Based on fixed %]	35 [Based on fixed %]	32 [Balance on the basis of actual calculation]
Tax Actually paid on due date	35	35	30
Short payment	-	-	2
Interest	-	-	Interest on ₹ 2 after expiry of due date till the date of payment

## Chapter 16: RETURN

### **SECTION:38: Communication of details of inward supplies and input tax credit.**

(1)The GSTR:1furnished by the registered persons under section 37 and of such other supplies as may be prescribed, and

- an auto-generated statement containing the details of input tax credit
- shall be made available electronically to the recipients of such supplies in Specified form.

(2)The auto-generated statement shall consist of:

- a. Details of inward supplies in respect of which ITC may be available.
- b. Details of supplies in respect of which ITC CAN NOT be available either wholly or partially where
  - Where Return not submitted by Supplier on Time.
  - Non payment of tax by supplier
  - Short payment of tax by supplier
  - Excess credit availed by supplier
  - Supplier not to follow Rule of 1%.
  - Any other reason

### **SECTION: 41 : AVAILMENT OF INPUT TAX CREDIT**

(1) Every registered person shall be entitled to avail Eligible ITC and ITC amount shall be credited to his electronic credit ledger.

(2) The ITC availed by a registered person but the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest.

However, where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in.

## Chapter 16: RETURN

### CGST Rules 2017

<p>Rule: 59 Form and manner of furnishing details of outward supplies [FORM: GSTR 1]</p>	<p>(1) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the-</p>	
	<p>(a) Invoice wise details of all -</p>	
	Inter-State and intra-State supplies	Made @ B to B basis
	Inter-State supplies with invoice value more than ₹2,50,000	Made @ B to C basis.
	Debit and credit notes, if any, issued during the month	For invoices issued previously.
	<p>(b) Consolidated details of all -</p>	
	Intra-State supplies	Made @ B to C basis.
	State wise inter-State supplies with invoice value upto ₹2,50,000	Made @ B to C basis.
	Debit and credit notes, if any, issued during the month	For invoices issued previously
	<p>(2) The details of outward supplies of goods or services or both furnished using the IFF shall include the -</p>	
Invoice wise details of inter-State and intra-State supplies	Made @ B to B basis	
Debit and credit notes, if any, issued during the	Made @ B to B basis	

## Chapter 16: RETURN

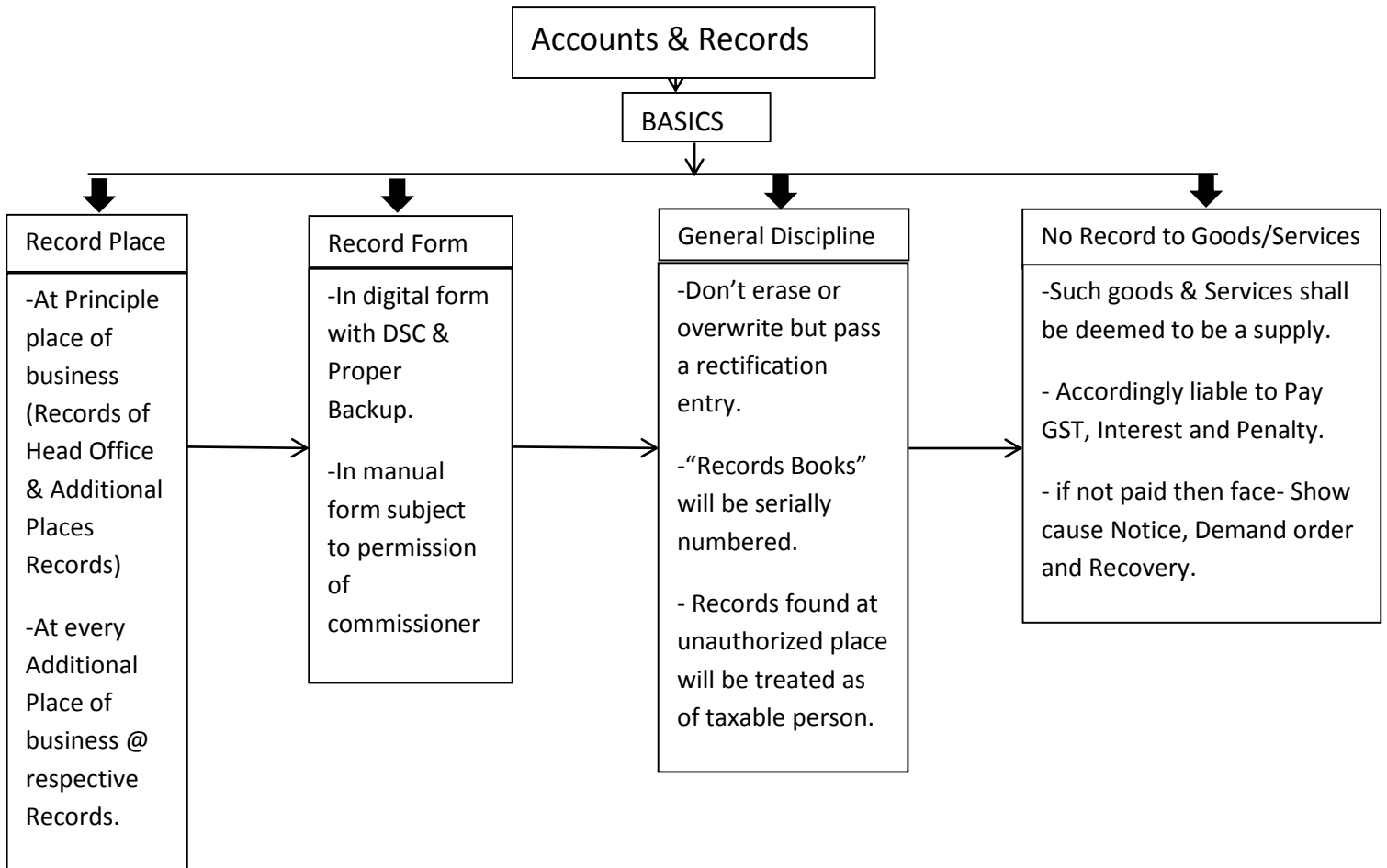
	<p>month for such invoices issued previously.”.</p>	
<p>(3) Restrictions on filing GSTR-1</p>		
<p>(a) where taxable person has not furnished GSTR-3B for preceding month;</p>	<p>Then he shall not be allowed to furnish GSTR 01/IFF for a subsequent tax period,</p>	
<p>(b) Where taxable person has not furnished GSTR-3B for preceding Quarter:[QRMP]</p>	<p>Then he shall not be allowed to furnish GSTR 01/IFF for a subsequent tax period,</p>	
<p>(c) A Registered person, to whom an intimation has been issued under the provisions of Rule 88C(1) in respect of a tax period,</p>	<p>Then he shall not be allowed to furnish GSTR 01/IFF 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.</p>	
<p><b>(d) A registered person, to whom an intimation has been issued under Rule 88D (1) in respect of a tax period or periods,</b></p>	<p>Then he shall not be allowed to furnish GSTR 01/IFF for a subsequent tax period,  <b>unless he has either paid the amount equal to the excess ITC 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.</b></p>	
<p><b>(e) Where a registered person has not furnished the details of the bank account as per the provisions of rule 10A.</b></p>	<p>Then he shall not be allowed to furnish GSTR 01/IFF.</p>	



## Chapter 16: RETURN

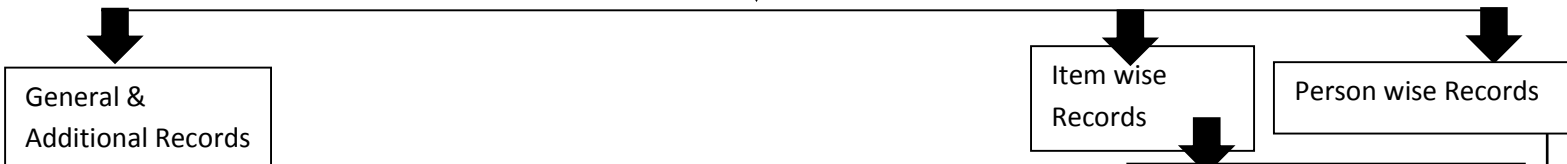
<b>Rule 64: Form and manner of submission of return by persons providing online information and data base access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India</b>	Every registered person <ul style="list-style-type: none"><li>■ either providing online money gaming from a place outside India to a person in India,</li><li>■ or providing online information and data base access or retrieval services from a place outside India</li><li>■ to a non-taxable online recipient referred to in section 14 of the IGST Act, 2017 or</li><li>■ to a registered person other than a non-taxable online recipient,</li><li>■ shall file return in FORM GSTR-5A</li><li>■ on or before the 20th day of the month succeeding the calendar month or part thereof.</li></ul>
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# Chapter 17: Accounts and Records

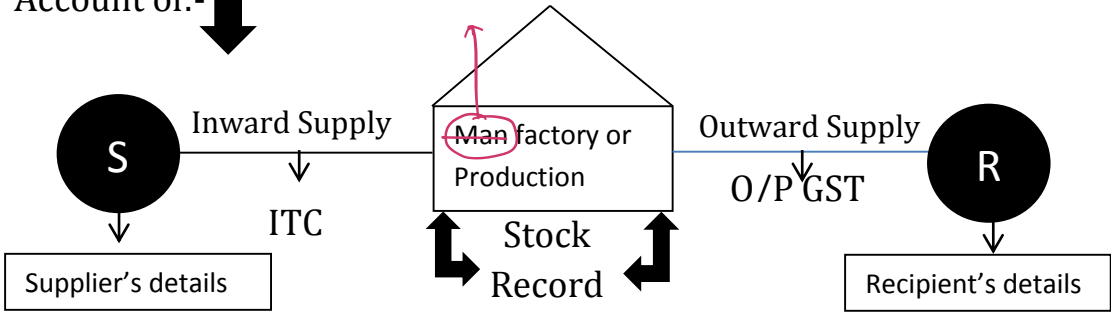


# Chapter 17: ACCOUNTS AND RECORDS

RECORDS



True & Correct Account of:-



**-Stock Records [Other than composite dealer]:-**

"Stock of Raw material, stock of final product, wastage etc."

Opening Balance	xxx
+ Receipts	xxx
- Goods Lost, destroyed, Written off, dispose off, sample, gift	(xxx)
Closing balance	xxx

**Record of Advances**

**Maintain separate Accounts for**

- Advances Received
- Advances Paid
- Adjustment there off.

**TDS/TCS/ITC Records**

Every Registered Person [other than composite dealer, ]TDS,TCS,ITC with All relevant documents.

<i>IMPORT Records</i>	<i>Supported with; Invoice Dr/Cr. Note, Bill of Supply, All Vouchers</i>	<i>Export Records</i>
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## Chapter 17: ACCOUNTS AND RECORDS



### Records by Warehouse Keeper

- Record for warehousing period.
- Into & Out Related
- Store goods item wise and owner wise
- Allow physical verification

### Records by Agent

- Authorization to be an agent
- Detail of goods Received
- Detail of statement (Hissab to principal)
- Tax Paid

### Records by Manufacturer

Monthly Production Accounts Showing –

- Input Used
- Input Service Used
- Final Product
- Wastage

### Records by Service Provider

- Shall Maintain Accounts Related to
  - Input Used
  - Input Service Used
  - Output Service

### Record by Works Contractor

- Detail of the person on whose behalf work done
- Detail of goods received for work contract
- Used in goods contract
- Payment receive @ each, vendor detail

### Record by unregistered Person

- Person Required to maintain Records
  - Submit Detail of his business in GST ENR=01 and
  - A unique enrolment number shall be generated & given to the person.

## Chapter 17: ACCOUNTS AND RECORDS

### Record by Transporter

- Shall maintain record of
  - Goods Transported
  - Goods Delivered
  - Goods stored in transit

Along with GSTIN of Consigner & Consignee

Note : Multiple Registration in multiple Stages



May Apply for UEN in ENR = 02

Note: As per section 36: RECORD maintenance period:

- \* 72 MONTHS FROM the due date of filing of relevant ANNUAL RETURN. OR
- \* 1 year from finalisation of Appeal / Revision etc (IF ANY)  
(WHICH EVER IS LATER)





# 15

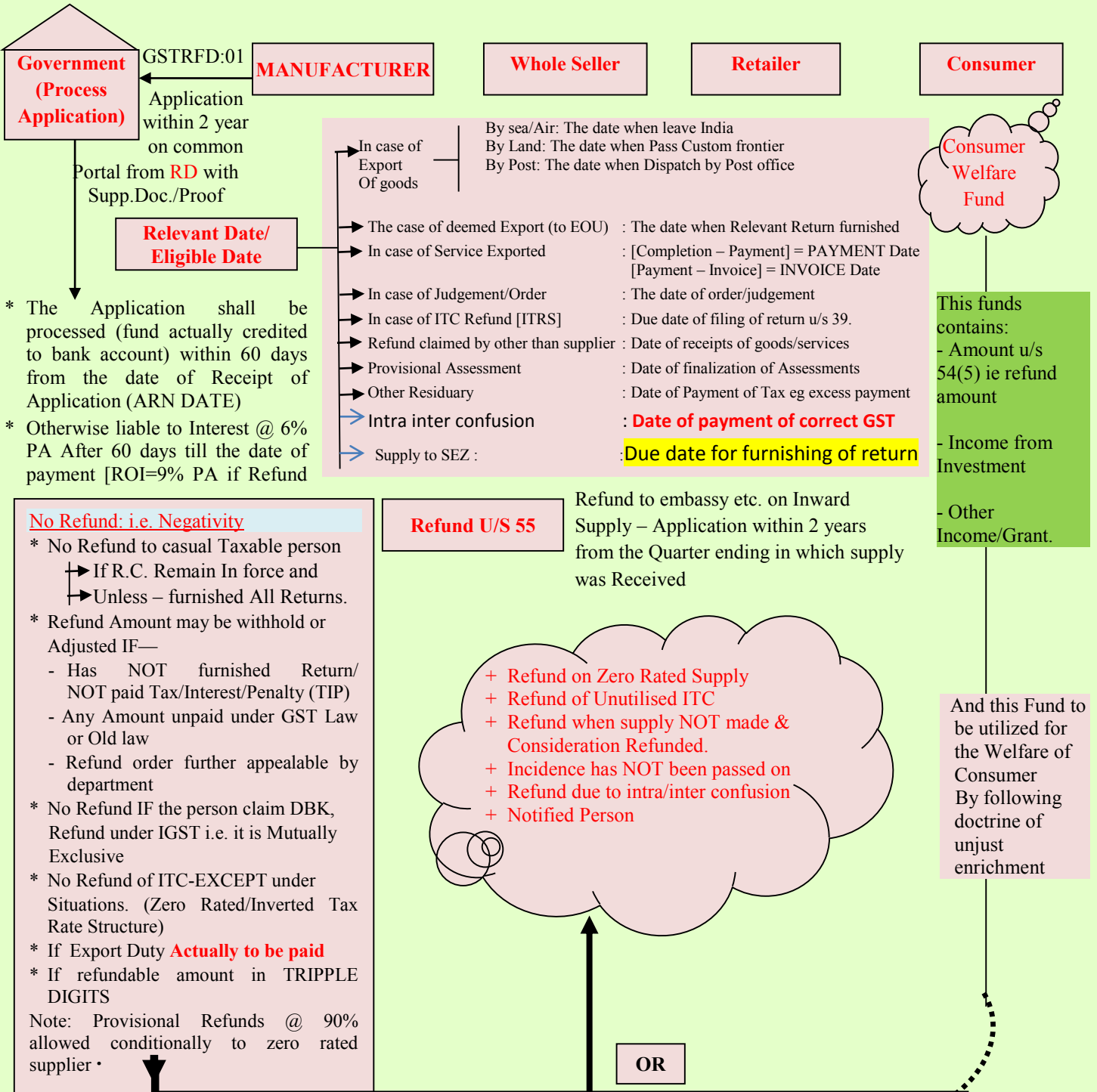
## REFUND

### **WHY REFUND**

- (1) Zero Rated Supply [Export to Abroad/SEZ (Unit/Developer)]
  - (a) Pay GST & After EXPORT claim Refund.
  - (b) On Export (Abroad/SEZ): Do Not Pay Tax: (Instead: Execute BOND/L.U.T.)
- (1A) Deemed Supply
- (2) Inverted Tax Rate Structure.
- (3) Refund of Excess Amount Deposited in E-Cash Ledger.
- (4) Refund to C.T.P./N.R.
- (5) First of all Provisional Assessment ₹ = 70,000/- & later on finalization @ ₹ 50,000/- Refund of ₹ 20,000/-
- (6) Refund due to Intra/Inter confusion.
- (7) Refund of Excess Payment of Tax.
- (8) Refund to UN/Embassy.
- (9) Refund due to any Judgment/Order etc.
- (10) Refund due to any Retrospective Amendment.
- (11) Refund to Tourist on Leaving India.
- (12) Advance Payment Received & No Supply made.
- (13) Etc.

**Rule: 89** Refund to Whom: Any person **who borne the incidence of TAX.**

**Refund Procedure**



**Transfer to Consumer Welfare Fund [on the basis of presumption u/s 49(9) @ tax load passed on to end user]**

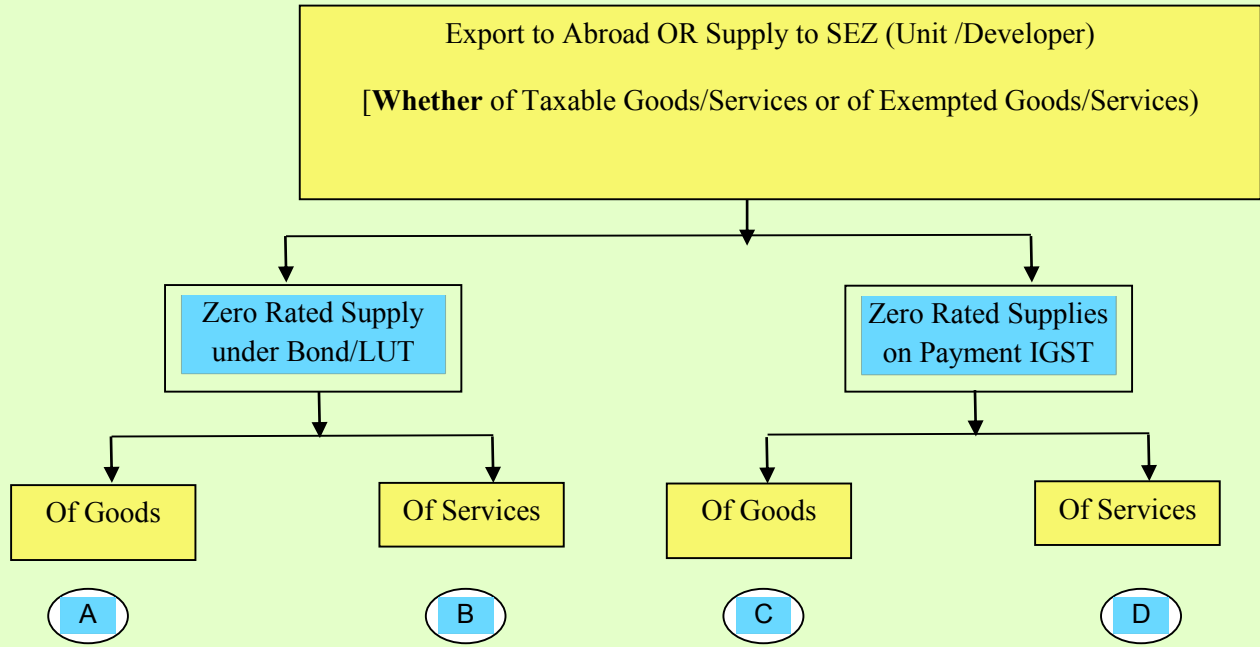
**Note: (1) Application: No need to file RFD 01, In case of Refund to casual taxable person /Non Resident [claim through return].**

**Note: (2) Supportive Documents: for Incidence of tax – required only when claim amount is of 2 lakh or more otherwise declaration is sufficient.**

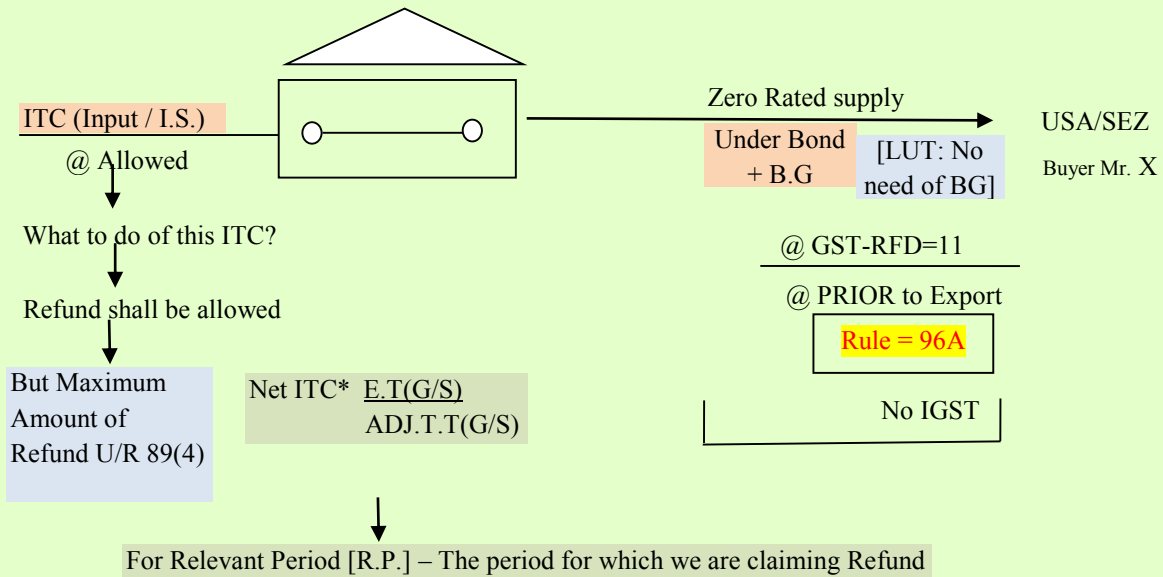
Note: (3) Where claiming refund of ITC then equal amount of ITC need to be deducted/ Reversed from E- Credit Ledger.

Note: (4) Refund is subjected to any other liability.

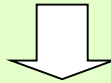
**Section: 16(3) of IGST Act + Section 54(3) of CGST Act + Rule: 89(4) + Rule: 96A**



**[A] Zero Rated Supply of Goods under Bond / LUT : Rule:89(4)**







Note:1- It is Data of R.P. [Which may be 1/2/3 etc. Months] ie if any opening Balance of ITC is given then that shall be ignored

* NET ITC: ITC of Input /Input Services
* E.T. (of Goods and Services)
▪ Export T/O of Goods under Bond/LUT
OR
▪ 1.5. Times of like domestic supplies [Whichever is Lower]
▪ Export T/O of Service [Payment Received]
[+] Past Advances <span style="float: right;">***</span>
[-] Future Advances <span style="float: right;">***</span>
*Adjusted T.T: = ET (G&S) + Other Turnover
Note: Value of Export goods in denominator will be same as in numerator.

Note: 2: Excluding Exempted supply But if Exempted supply is Exported then it will be called as zero Rated supply & to be Included in calculation

Note 3: Where Any Refund or Benefit is Claimed By supplier U/R- 89(4A/4B) then such supply to the extent shall be Excluded with Respect to Turnover & Corresponding ITC.

**Journal Entry**

Purchase A/C	Dr 10000
ITC A/C	Dr 1800
To Bank	11800
Bank A/C	Dr. 1800
To ITC	1800

Mr. X	Dr 15000
To Sales	15000
Bank A/C	Dr.15000
To Mr. X	15000

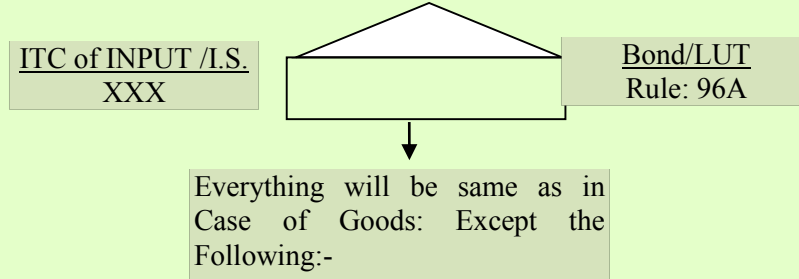
**Procedure**

- @ Application in RFD=01
  - @ Within 2 year from the Date of [Export Goods]
- Goods Leave India
  - Goods Pass Custom Frontier
  - Dispatch by Foreign Post Office

With Supportive Documents:

- \*In Case of Real Export: Shipping Bill / Bill of Export and Invoice
- \*In case of SEZ: Invoice, SEZ officer Certificate, Declaration that No GST charged From SEZ (Unit /Developer)]

**[B] Zero Rated Supply (Export/SEZ) of Service under Bond/LUT**

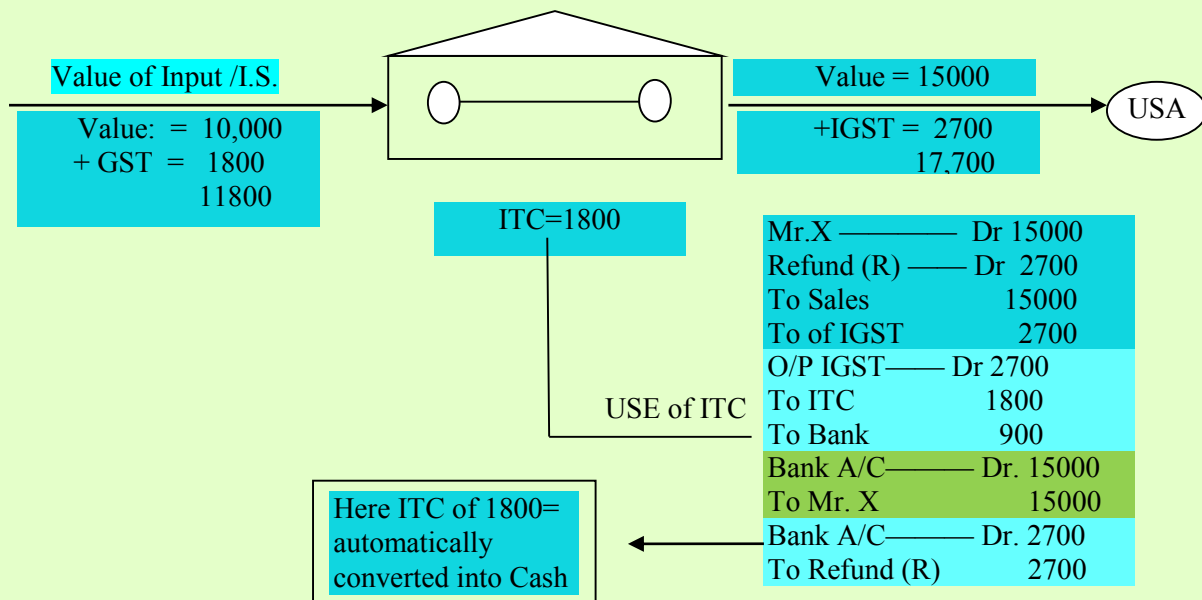


- @ Application within in 2 year  
From the Date of "Export of Service"
- (i) Completion 1/1/20
  - (ii) Payment: 1/2/20 —> LATER: 1/2/20
  - (i) Payment : 1/1/20
  - (ii) Invoice :1/2/20 —> LATER1/2/20

**@ With Supportive Documents:**  
**\*In case of Export:** Invoice, Bank Realisation Certificate [Proof of Foreign Currency Payment]  
**\*In case of SEZ:** Invoice, Payment Proof, Declaration as No GST has been charged, certificate of SEZ officer

**[C] Export of Goods on payment of GST [But Not to Charge from Customer]**

Special Provision @ Refund by  
Customs Department [Auto Refund]

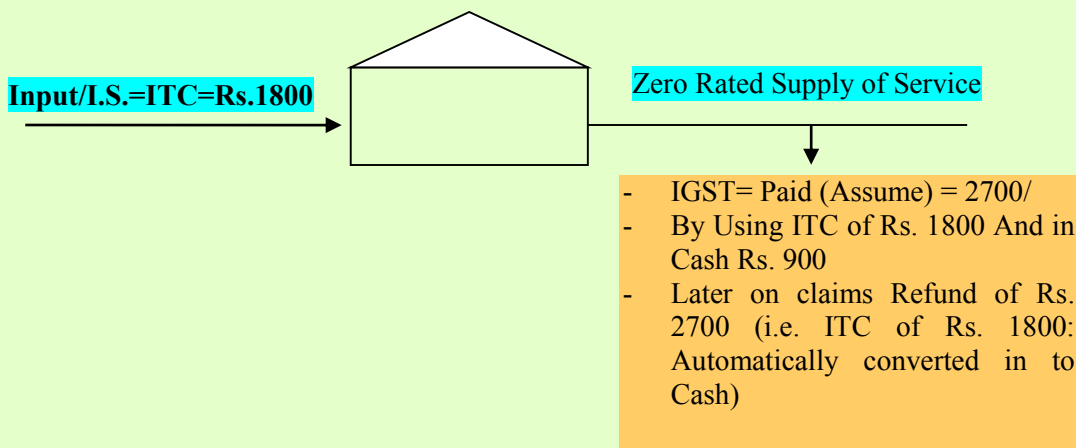


**Process of Refund (Auto Process)**

- \* Need to File GST-RFD=01= No
- \* Refund of IGST shall be given by customs Department
- ⇒ Shipping Bill/Bill of Export shall be treated as Refund Applications (Provided: Export manifest filed By Person in charge of conveyance.
- ⇒ GSTR-1 @ Auto transmit to Customs for Verification and Exporter Need to submit Valid Return (GSTR=1 and 3B and it is also transmit to customs department.
- ⇒ Now Custom officer – **Process the Refund and Amount Shall be transferred to Exporter.**

**[D] Zero Rated Supply of Service [Export/SEZ]**

On Payment of IGST



**Process:**

- \* File Application RFD=01 for Rs. 2700
- \* within 2 year of “Export of Service” ie Completion
- OR (Whichever is LATER)
- Payment
- Payment
- OR (Whichever is LATER)
- Invoice
- \* With Supportive Documents: “Same an earlier”
- **In case of Export:** Invoice, Payment Proof (For Export)
- **In case of SEZ:** Invoice, Payment Proof, Certificate of SEZ officer Declaration as No GST has been Charged from SEZ”

**Provisional Refund [RFD: 04]**

This Facility is Available to “All kind of Zero Rated Supplier of Goods/ Service (Export/SEZ): Except..

- Export of Goods to Abroad (Where Refund is Automatic given by custom department)
- The Person who was prosecuted in Last 5 years for an amount of Rs. 2.5. Crore Plus (under GST law/old law)

**\* Refund Amount will be: 90% of Amount claimed: ITC OR output IGST**

**[1A] Deemed Export**

**Note: It is not ZERO Rated supply**

**“Deemed Export”**

**of “Goods”**

Value = 1,00,000  
 GST = 18,000  
 1,18,000  
 GST Always be charged

Mr. X

Payment of GST to Government = 18000

- \*100% EOU
- \*EPCG- Holder
- \*A.A.S. Holder etc.
- \*Etc

NOW

Note: Deemed export data (ITC and outward turnover) will be Excluded in calculation of rule 89(4) only when option (2) is exercised i.e. Supplier claims benefit, Otherwise remain included.

**Option 2**

(S)

OR

By (R)

**Option: 1**

- (R) Authorise Suppliers to claim Refund
- (R) Not to Book ITC or claim Refund

Claim ITC  
 OR  
 Claim Refund

**Mandatory steps to be taken for claiming refund by RECEIPT (in case of deemed export..)**

- (a) First of all - Book ITC
- (b) At the time of refund application Reduce Equal Amount from E-credit ledger
- (c) Now submit your Refund Application [RFD 01]

**Process**

- @ Application: RFD=01 from the date of furnishing of Valid Return (GST= Rs.18,000 paid)
- @ With supportive Documents: (Invoice, Declaration etc. if any.)

**Q.** Whether the ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is to be included in the “Net ITC” for computation of refund of unutilised ITC under rule 89(4) & rule 89 (5) of the CGST Rules, 2017.

**Ans.** The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, such ITC availed by the recipient of deemed export supply for claiming refund of tax paid on supplies regarded as deemed exports is **not** to be included in the “Net ITC” for computation of refund of unutilised ITC on account of zero-rated supplies under rule 89(4) or on account of inverted rated structure under rule 89(5) of the CGST Rules, 2017.

**Question:**

- (i) ITC in Relevant period = Rs. 14, 00,000 [Input and I.S.]  
[Which Includes ITC Related to Rule: 89 (4A/4B) of Rs. 120,000]
- (ii) Zero Rated Supply to USA = Rs. 40,00,00 (under Bond) Supply to SEZ = 5,00,000 (under Bond)  
(and value of like domestic goods Rs. 32,00.000)
- (iii) Supply to SEZ = 5,00,000 (under Bond)
- (iii) Supply to 100% EOU = 15,00,000
- (iv) Total Payment Received for Service in Relevant period Rs. 50, 00,000 which Includes Rs. 8,00,000 for Future  
[Moreover Rs. 7,00,000 was Received Before Relevant period But Services is Completed in Relevant period]
- (v) Exempted supplies = 20,00,000
- (vi) Other Taxable Supplies Rs. 30,00,000 Find out maximum Amount of Refund U/R= 89(4)

**Answer**

$$\text{ITC Max Refund} = \text{NET ITC} * \frac{\text{E.T. (Goods and Services)}}{\text{Adjusted T/T}}$$

$$\begin{aligned} * \text{NET ITC: [Input/I.S]} &= 14,00,000 \\ \text{[ITC- Rule: 89(4A/4B)]} &= \underline{1,20,000} \\ &= \underline{12,80,000} \end{aligned}$$

**\* Export Turnover [ET]**

Goods: Under @ Bond: Zero Rated

-USA= 40 Lakh

-SEZ= 5 Lakh

45 Lakh @ Declared value

OR

1.5 Times Domestic value ( 32 Lakh × 1.5) = 48 Lakh

[whichever is lower ie Rs. 45 lakh]

For Services – in Relevant Period = Payment Received: 50Lakh

-Advance for future = 8 Lakh

+ Past Advances for services = 7 Lakh

Total= 49 Lakh

**Total ET: 45+49= 94 Lakh**

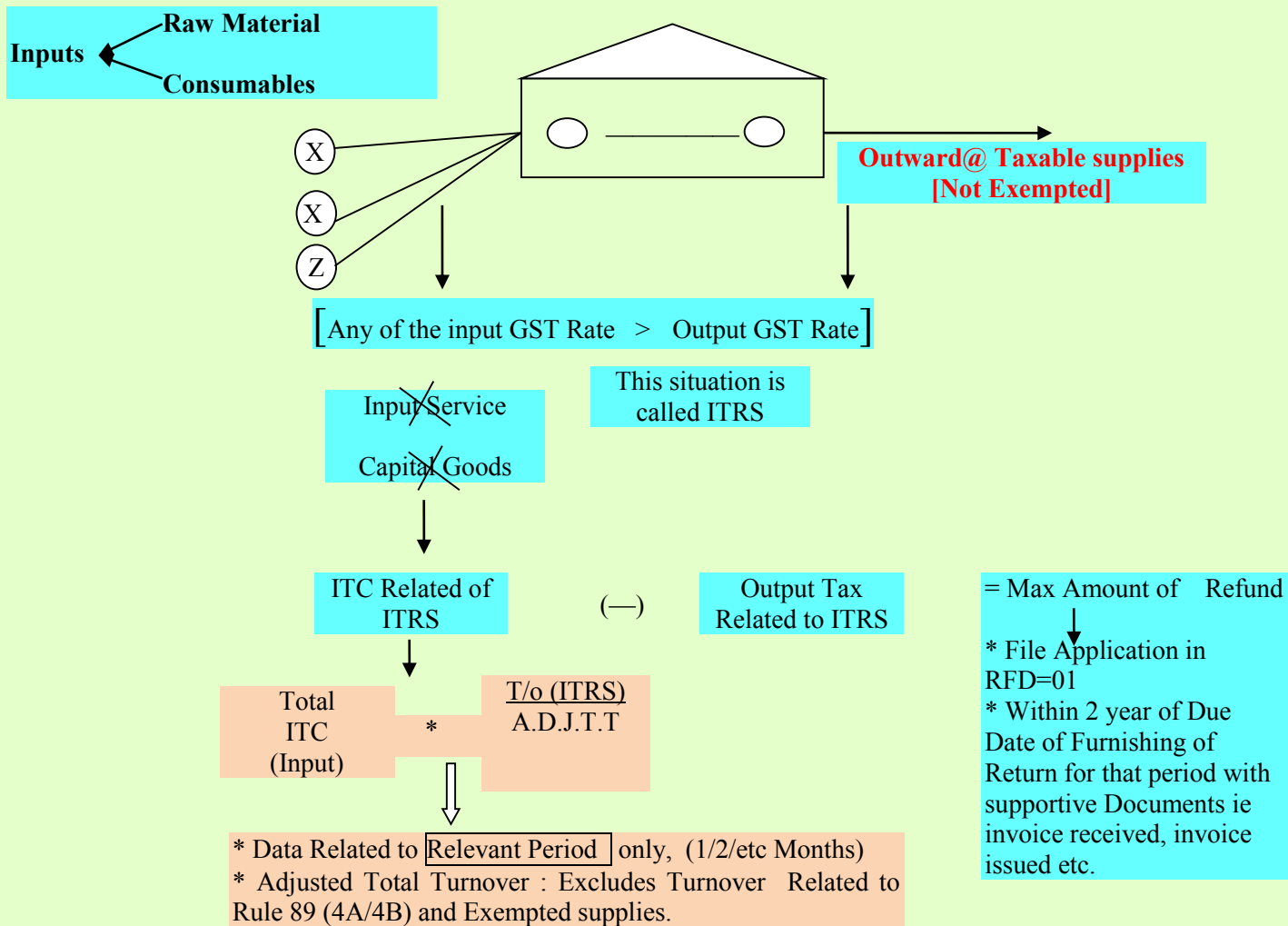
**Adjusted Total T/O** : Zero Rated Value under bond = 94 Lakh

$$\begin{aligned} + \text{Other turnover} &= 30\text{Lakh} \\ \text{Total Turnover} &= \mathbf{124 \text{ Lakh}} \end{aligned}$$

$$\begin{aligned} \text{MAX Amount of Refund} &= \text{NET ITC} \times \text{ET} / \text{Adjusted Total Turnover} \\ &= 12,80,000 \times \frac{94 \text{ Lakh}}{124 \text{ Lakh}} \\ &= \mathbf{Rs. 9,70,323} \end{aligned}$$

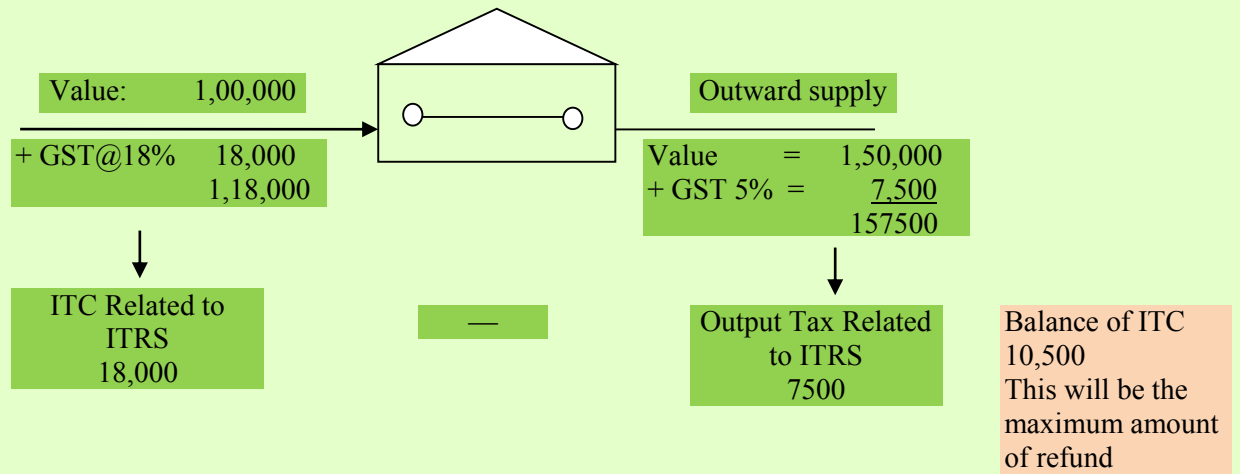
**Inverted Tax Rate Structure  
Section: 54(3) + Rule: 89(5)**

**What is inverted tax rate structure [I.T.R.S.]:**

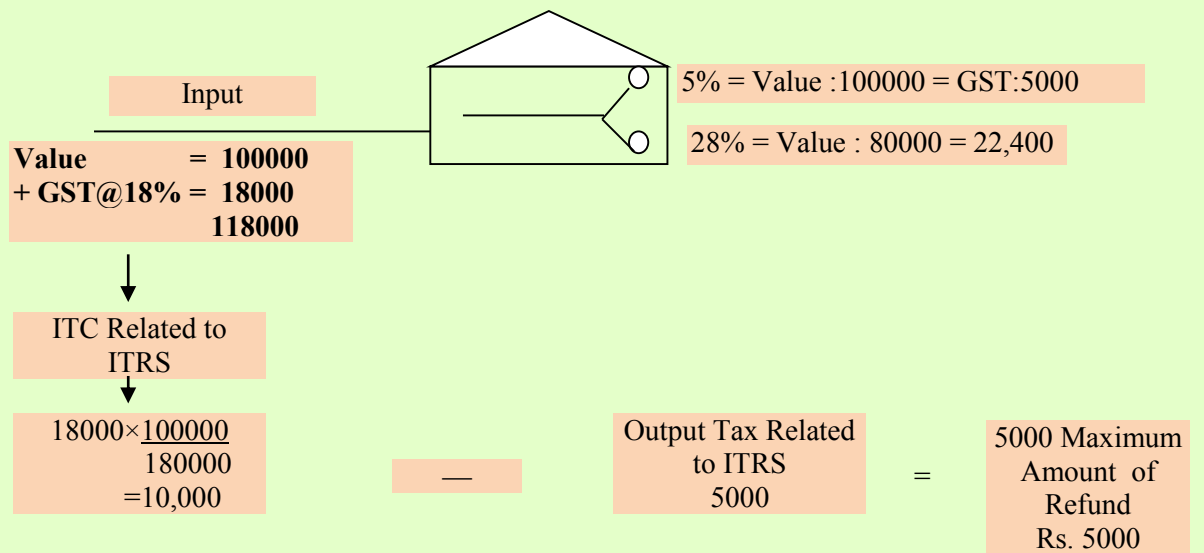


**Maximum Refund Amount** = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services).]

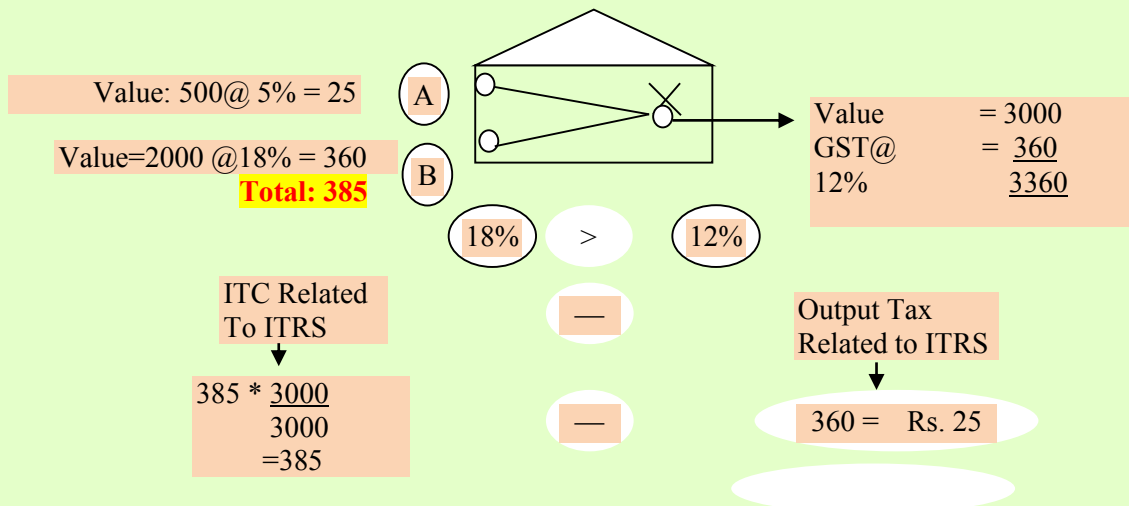
Q.1



Q.2



Q=3



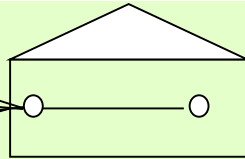
Q=4

(A) 10000 @ 5% = 500

(B) 20000 \* 12% = 2400R/M

(C) 10000 \* 18% = 1800R/M

(D) 10000 \* 28% = 2800

**7500**

Value : = 1,00,000

GST@18% = 18,000  
118000

28%

&gt;

18%

$$7500 \times \frac{1,00,000}{1,00,000}$$

—

18000

7500 (—) 18000 = No Refund

However if Credit was 27,500

Instead of Rs. 7500 then Refund amount will be Rs. 9500

### Refund of accumulated ITC on account of reduction in GST rate on goods, not available

The issue which arose for consideration is whether an applicant can seek refund of unutilized ITC on account of inverted duty structure, under section 54(3)(ii) of the CGST Act, 2017, in a case where the inversion is due to change in the GST rate on the same goods. For example, an applicant trading in goods has purchased, say goods “X” attracting 18% GST. However, subsequently, the rate of GST on “X” has been reduced to, say 12%.

It is clarified that, in such cases, the input and output being the same, though attracting different tax rates at different points in time, do not get covered under section 54(3)(ii) of the CGST Act, 2017. Thus, refund of accumulated ITC under said clause would not be applicable in cases where the input and the output supplies are the same.

**F.No. CBIC-20001/2/2022: Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification**

**1. It is hereby clarified that refund of accumulated ITC under inverted tax rate structure would not be applicable in cases where the input and the output supplies are the same.**

2. However, there may be cases

- Where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs.
- the credit accumulated on account of the same is admissible for refund under inverted tax rate structure.
- other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under invited tax rate structure.



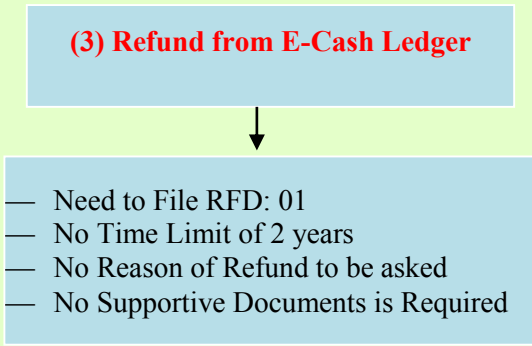
**Circular no. 125/44/2019**

In case of refunds of unutilised ITC on account of zero rated supplies and inverted tax rate structure, the common portal calculates the refundable amount as the least of the following amounts:

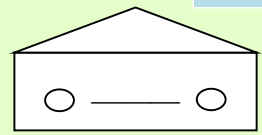
- (a) The maximum refund amount as per the formula in [Rule 89\(4\)](#) or [Rule 89\(5\)](#) of the [CGST Rules](#) [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax];
- (b) The balance in the electronic credit ledger of the applicant at the end of the tax period for which the refund claim is being filed after the return in [FORM GSTR-3B](#) for the said period has been filed; and
- (c) The balance in the electronic credit ledger of the applicant at the time of filing the refund application.

**Comparison**

* Rule: 89(4) Zero Rated Supply	*Rule: 89(5) Inverted Tax Rate Structure [ITRS]
* Where outward Exempted supply is Exported then it will be called as ZERO Rated -So Benefit is Allowed Under Rule 89(4)	*Where outward Exempted Supply is fall under ITRS- then Benefit-Rule: 89(5) shall Not be given
*No Such Restriction *Benefit U/R 89(4) is Allowed on ITC of Input and Input Services	* Benefit U/R: 89(5) Not Allowed on Notified Products. * Benefit U/R: 89(5) allowed on ITC of Input only.
*Maximum Amount of Refund = * Total ITC of Input and I.S. * $\frac{\text{Export Turnover}}{\text{Adj. T.T.}}$	<b>Maximum Refund Amount</b> = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services).]
<b>Adjusted Total Turnover--</b> Excludes : Supplies U/R=89(4A/4B) Excludes : Exempted supply (other than zero Rated)	
Relevant Period = 1Months /2Months /3Months etc.	1/2/3 Months ..... 1 Financial year
Relevant Date → When goods Leave India → Cross Barrier → Dispatch By Foreign Post Office → Export of Service	Relevant Date: Return Due Date
Refund may be Allowed Provisionally	No Provisional Refund



(4) Refund of Excess Payment



Value = 1,00,000

Legal Rate of : GST=12%, but Actually Paid @ 18% (with Interest due to late Payment)

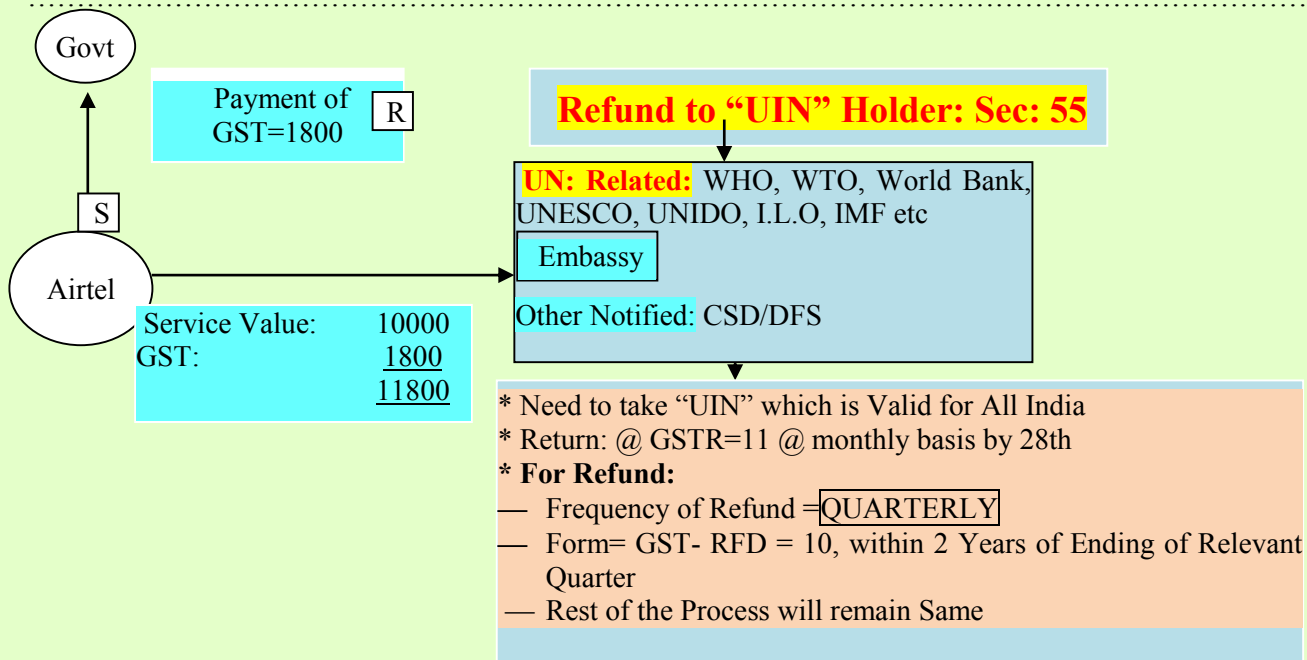
Tax and Interest	CGST	SGST	Interest on CGST	Int. on SGST	Total
Actually Paid @ 18%	9000	9000	900	900	=19800
Amount to be paid@12%	6000	6000	600	600	=13200
<b>Refund:</b>	<b>3000</b>	<b>3000</b>	<b>300</b>	<b>300</b>	<b>6600</b>

**Tax = 6000+Interest = 600 = Rs. 6600**

If Rs. 6,600 Not Paid within 60 Days then Interest @ 6% PA is to be Paid along with 6600

**Supportive Document in Other Cases**

Situation	Documents
*Refund due to Provisional to Final Assessment * Refund due to: Intra/Inter Confusion * Excess Payment	Copy of Final assessment All Invoices Related to Situation Invoice



## Section 54: Refund of tax

<p>How to claim Refund:</p>	<p><b><u>Application with in 2 year from Relevant Date:</u></b>(1) Any person claiming <b>refund of any tax and interest, if any</b>, paid on such tax or any other amount paid by him, may make an application before the <b>expiry of 2 years</b> from the <b>relevant date</b> in such form and manner as may be prescribed:</p> <p><b><u>Claim refund through Return:</u></b> <i>A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of section 49(6), may claim such refund in <del>the return furnished under section 39</del> such Form and manner as may be prescribed.</i></p>
<p>Refund to UN/Embassy etc. on INWARD supplies.</p>	<p>(2) A <b>specialised agency</b> of the United Nations Organisation or <b>any Multilateral Financial Institution and Organisation</b> notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, <b>entitled to a refund of tax paid by it on INWARD supplies of goods or services or both</b>, may make an application for such refund, in such form and manner as may be prescribed, before the <b>expiry of 2 YEARS 18 months</b> from the last day of the quarter in which such supply was received.</p>
<p>Refund of unutilized ITC in case of Zero Rated Supplies and in case of inverted tax rate structure</p>	<p><b><u>Refund of ITC at the end of TAX PERIOD:</u></b> (3) Subject to the provisions of sub-section (10), a <b>registered person</b> may claim refund of any unutilised input tax credit <b>at the end of any tax period:</b></p> <p>Provided that no refund of unutilised input tax credit shall be allowed in cases other than—</p> <ul style="list-style-type: none"> <li>(i) Zero rated supplies made <b>without payment of tax;</b></li> <li>(ii) Where the credit has accumulated on account of rate of tax on inputs being <b>higher than the rate of tax on output supplies</b> (<i>other than nil rated or fully exempt supplies</i>), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:</li> </ul> <p><b><u>No such Refund if goods attract Export duty (eg. leather Articles etc.):</u></b> Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:</p> <p><b><u>No such refund of ITC if claims DBK or Refund of IGST (ie mutual Exclusive):</u></b> Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both <b>avails of DRAWBACK in respect of central tax OR claims REFUND of the integrated tax paid on such supplies.</b></p> <p><b><u>Withhold or Adjust refund amount</u></b> (10) Where any refund is due <b>under sub-section (3)</b> to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-</p> <ul style="list-style-type: none"> <li>(a) Withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;</li> </ul>

	<p>(b) Deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.</p> <p><b><u>Explanation:</u></b> For the purposes of this sub-section, the expression “<b>specified date</b>” shall mean the last date for filing an appeal under this Act.</p>
<p>Supportive document to claim Refund: so as to prove of not passing of incidence and other documents: for claiming amount of refund of ₹ 2,00,000 or more</p>	<p>(4) The application shall be accompanied by—</p> <p>(a) Such <b>documentary evidence</b> as may be prescribed to establish that <b>a refund is due to the applicant; and</b></p> <p>(b) Such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the <b>incidence of such tax and interest had not been passed on to any other person:</b></p> <p>Provided that where the <b>amount claimed as refund is less than ₹ 2,00,000</b> it shall not be necessary for the applicant to furnish any documentary and other evidences <b>but he may file a declaration</b>, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.</p>
<p>Amount of REFUND transferred to consumer welfare fund, (if Nothing prove contrary) OR to applicant</p>	<p>(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be <b>credited to the Fund referred to in section 57.</b></p> <p><b><u>Refund on Provisional basis:</u></b> (6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, <i>other than such category of registered persons as may be notified by the Government on the recommendations of the Council</i>, refund on a <b>provisional basis, 90%</b> of the total amount so claimed, <b>excluding the amount of input tax credit provisionally accepted,</b> in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p><i>(14) Notwithstanding anything contained in this section, No refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if <b>the amount is less than ₹1000</b></i></p> </div> <p><b><u>Refund to Applicant:</u></b> (8) <b>Notwithstanding anything contained in sub-section (5),</b> the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—</p>

	<p>(a) Refund of tax paid on Export of goods or services or both or on inputs or input services used in making such Exports</p> <p>(b) Refund of unutilised input tax credit under sub-section (3);</p> <p>(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;</p> <p>(d) Refund of tax in pursuance of <b>section 77</b>;</p> <p>(e) The tax and interest, if any, or any other amount paid by the <b>applicant, if he had not passed on the incidence of such tax and interest to any other person</b>; or</p> <p>(f) The <b>tax or interest borne by such other</b> class of applicants as the Government may, on the recommendations of the Council, by notification, specify.</p> <p>(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, <b>no refund shall be made except in accordance with the provisions of sub-section (8).</b></p>
Refund order within 60 days	(7) The proper officer shall issue the order under sub-section (5) <b>within 60 days</b> from the date of receipt of application complete in all respects.
Refund withhold	<p>(11) Where <b>an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue</b> in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, <b>withhold the refund</b> till such time as he may determine.</p> <p>(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest <b>at such rate not exceeding 6% as may be notified on the recommendations</b> of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund</p>
Refund to Casual Taxable Person and Non Resident	(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual <b>taxable person or a non-resident</b> taxable person under sub-section (2) of section 27, shall not be refunded unless <b>such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.</b>
Explanation	“ <b>Refund</b> ” <b>includes</b> refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services <b>used in making such zero-rated supplies</b> , or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

**“Relevant date” means—**

- (a) In the case of **goods exported** out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—
- (i) *if the goods are exported by **sea or air**, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or*
- (ii) *if the goods are exported **by land**, the date on which such goods pass the frontier; or*
- (iii) *if the goods are exported **by post**, the date of dispatch of goods by the Post Office concerned to a place outside India;*
- (b) In the case of supply of goods regarded as **deemed exports** where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- (ba) In case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies.
- (c) **In the case of services exported out of India** where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—
- (i) **Receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India**, where the supply of services had been completed prior to the receipt of such payment; or
- (ii) **Issue of invoice**, where payment for the services had been received in advance prior to the date of issue of the invoice;
- (d) In case where the tax becomes refundable as a **consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court**, the date of communication of such judgment, decree, order or direction;
- (e) In the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;
- (f) In the case **where tax is paid provisionally** under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;
- (g) In the case of a person, other than the supplier, **the date of receipt of goods or services** or both by such person; and
- (h) In any other case, the date of payment of tax.

## Section 55: Refund in certain cases

The Government may, on the recommendations of the Council, by notification, specify:

- Any **Specialised agency** of the **United Nations Organisation** or
- Any **Multilateral Financial Institution** and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947,
- Consulate or **Embassy** of foreign countries and any other person or class of persons as may be specified in this behalf,

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

## Section: 56 Interest on delayed Refunds

If 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 subsection (1) of that section, **interest at such rate not exceeding 6%** as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund **from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax; for the period of delay beyond 60 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.**

Provided that 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 at such rate **not exceeding 9%** as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund **from the date immediately after the expiry of 60 days from the date of receipt of application** till the date of refund.

**Explanation:** For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under section 54(5), the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said subsection (5).

## Section 57: Consumer Welfare Fund

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,-

- (a) The amount referred to **in section 54(5)**;
- (b) Any **income from investment** of the amount credited to the Fund; and
- (c) Such **other monies** received by it,

in such manner as may be prescribed.



## Section 58: Utilisation of Fund

- (1) All sums credited to the Fund **shall be utilised by the Government for the welfare** of the consumers in such manner as may be prescribed.
- (2) The Government or the authority specified by **it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed** in consultation with the Comptroller and Auditor-General of India.

## CGST Rules, 2017 (Rule 89 to 97)

### **RULE 89: Application for refund of tax, interest, penalty, fees or any other amount**

(1) Any person, except the persons covered under notification issued under section 55, claiming refund of **[any balance in the electronic cash ledger in accordance with the provisions of section 49(6) or]** any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file subject to the provisions of rule 10B, an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

- (a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided Further that in respect of supplies regarded as deemed exports, the application may be filed by,—

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed ~~in the last return required to be furnished by him~~ **only after the last return required to be furnished by him has been so furnished**

*Explanation.* - For the purposes of this sub-rule, “specified officer” means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006.

(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period **of 2 years from the date of payment of the tax on the inter-State supply**, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of **2 years from the date on which this sub-rule comes into force.**

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in **Form GST RFD-01**, as applicable, to establish that a refund is due to the applicant, namely:-

- (a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in subsection (6) of section 107 and sub-section (8) of section 112 claimed as refund;
- (b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods [other than electricity]
- [(ba) a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit, in case where refund is on account of export of electricity.
- (c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;
- (d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;
- (e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;
- (f) a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer;
- (g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;
- (h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output

supplies, other than nil-rated or fully exempt supplies;

- (i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;
- (j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;
- (k) a statement showing the details of the amount of claim on account of excess payment of tax **and interest, if any, or any other amount paid**;

“(ka) a statement containing the details of invoices viz. number, date, value, tax paid and details of payment, in respect of which refund is being claimed along with copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated;

(kb) a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated.

- (l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

- (m) a Certificate in Annexure 2 of **FORM GST RFD-01** issued by a chartered accountant or a 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, in a case where the amount of refund claimed exceeds ₹ 2,00,000

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54;

**Explanation:** For the purposes of this rule-

- (i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression “invoice” means invoice conforming to the provisions contained in section 31;
- (ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

“Provided further that a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.”

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of subsection (3) of section 16 of the Integrated Goods and Services Tax Act, 2017, refund of input tax credit shall be granted as per the following formula –

**Refund Amount** = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

**Where, -**

(A) "**Refund amount**" means the maximum refund that is admissible;

(B) "**Net ITC**" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "**Turnover of zero-rated supply of goods**" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

(D) "**Turnover of zero-rated supply of services**" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:—

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "**Adjusted Total Turnover**" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(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. – For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –**

(i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, or

(ii) the value declared in tax invoice or bill of supply, whichever is less.]

(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) Received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), or notification No. 41/2017-Integrated Tax (Rate), or

(b) availed the benefit of notification No. 78/2017-Customs, or notification No. 79/2017-Customs, the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:—

**Maximum Refund Amount =** {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and input services).]

**Explanation:-** For the purposes of this sub-rule, the expressions –

- (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

	<p>(b) "Adjusted Total turnover" and "relevant period" shall have the same meaning as assigned to them in sub-rule (4)</p> <p><b>Note:</b></p> <p>Formula prescribed under <a href="#">Rule 89(5)</a> of the <a href="#">CGST Rules, 2017</a> for calculation of refund of unutilised input tax credit on account of inverted duty structure, will apply only to the refund applications filed on or after 05.07.2022</p>
<p><b>Rule 93: Credit of the amount of rejected refund claim</b></p>	<p>(1) Where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.</p> <p>(2) Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in <b>FORM GST PMT-03</b>.</p> <p><b>Explanation:</b> For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.</p>
<p><b>Rule 94: Order sanctioning interest on delayed refunds</b></p>	<p>(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 <b>FORM GST RFD-05</b>, specifying 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 amount of 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.</p> <p><b>(2) The following periods shall not be included in the period of delay under sub-rule (1), namely:-</b></p> <p><b>(a) Any period of time beyond 15 days of receipt of notice in FORM GST RFD-08 under Rule 92(3), that the applicant takes to-</b></p> <p><b>(i) Furnish a reply in FORM GST RFD-09, or</b></p> <p><b>(ii) Submit additional documents or reply;</b></p> <p><b>and</b></p> <p><b>(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.</b></p>

**Rule 96C: Bank Account for credit of refund**

For the purposes of Rule 91(3), Rule 92(4) and Rule 94, “bank account” shall mean such bank account of the applicant which is in the name of applicant and obtained on his Permanent Account Number:

Provided that in case of a proprietorship concern, the Permanent Account Number of the proprietor shall also be linked with the Aadhaar number of the proprietor.

**Circular No.135/05/2020 – GST**

It has been clarified that while filing the refund claim, an applicant may, at his option, file a refund claim for tax period or by clubbing successive tax periods.

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

**Circular No. 137/07/2020: Clarification in respect of certain challenges faced by the registered persons in implementation of provisions of GST Laws**

In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a “credit note” in terms of [section 34](#) of the [CGST Act](#).

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through [FORM GST RFD-01](#).

In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of [section 31 \(2\)](#) of the [CGST Act](#), he is required to issue a “refund voucher

The taxpayer can apply for refund of GST paid on such advances by filing [FORM GST RFD-01](#) under the category “Refund of excess payment of tax”.

In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a “credit note” in terms of [section 34](#) of the [CGST Act](#)

However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through [FORM GST RFD-01](#).



**Cir. No. 147/03//2021: Clarification in respect of refund claim by recipient of Deemed Export Supply****1. Mandatory steps to be taken for claiming refund by RECEPIENT (in case of deemed export..)**

- (a) First of all - Book ITC
- (b) At the time of refund application Reduce Equal Amount from E-credit ledger
- (c) Now submit your Refund Application [RFD 01]

**2. Under Rule 89(4): Maximum Amount Of Refund=**

EXPORT Turnover of GOODS and Services

$$\frac{(\text{ET of goods :- Export value OR 1.5 times of Domestic Value,- whichever is lower}) \times \text{NET ITC}}{\text{Adjusted Total Turnover [ET + OTHER TURNOVER]}}$$

Adjusted Total Turnover [ET + OTHER TURNOVER]

**(ET of goods:- Export value OR 1.5 times of Domestic Value- whichever is lower)**

## Circular No. 162/18/2021: Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

**Interpretation of the term “subsequently held”**

- ⇒ Where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or
- ⇒ Where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding.
- ⇒ Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

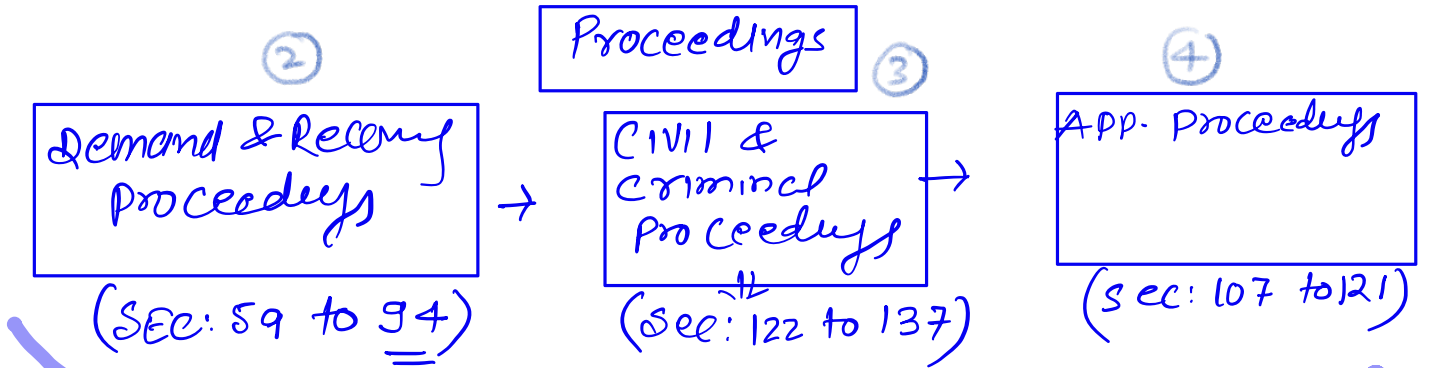
**Clarification on certain refund related issues-**

- The provisions of [section 54\(1\)](#) regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger
- No certification/ declaration under [Rule 89\(2\)\(l\)](#) or [89\(2\)\(m\)](#) [*for not passing the incidence of tax to any other person*] of [CGST Rules, 2017](#) is required to be furnished along with the application for refund of excess balance in electronic cash ledger.
- TDS/TCS deposited in electronic cash ledger under the provisions of [section 51 /52](#) of the [CGST Act](#) can be refunded as excess balance in cash ledger.
- The relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per [section 54 i.e.](#) *the date on which the return relating to such deemed exports is furnished by supplier.*

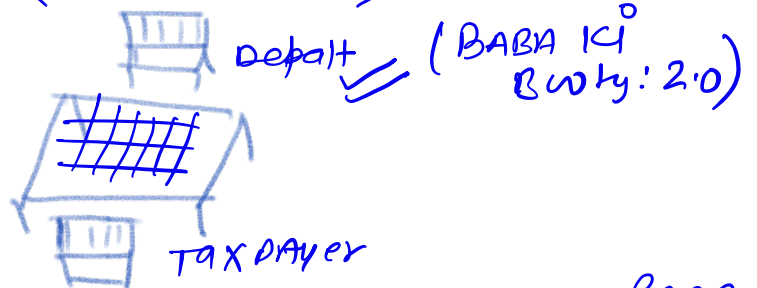
# 16

## Assessment

BABA KI<sup>o</sup> Booty : 2.0 (GIST OF GIST 2.0)



(1) TO AVOID all this  
EK CHANCE : ANY DOUBT  
"ADVANCE Ruling  
Proceedings"  
(Sec: 95 to 106)



ie KAHANI TABLE KE USS PAAR  
KI - MERI JOBANI  
CA RAJKUMAR.COM  
9810012161

# NOTES Demand and Recovery: Proceedings

PERSON liable for REGISTRATION



ASSESSMENT रेटिंग

SELF ASSESSMENT  
u/s: 59

PROVINCIAL ASSESSMENT  
u/s: 60

\* where we are unable to do self assessment  
 \* officer @ Allow provincial assessment  
 \* Initially pay provincial TAX and later on @ final return : Demand / Refund with INT.

Return ie 3B filed

Return @ 3B NOT filed

SCUTINY u/s: 61

NABT PAKANA

- \* PRIMA FACIE CHECK
- \* Any deficiency
- \* NOTICE to the person
- \* Reply : 30 + EXT
- \* officer's satisfy : OK
- \* otherwise ie officer NOT satisfied

BEST JUDGEMENT ie EX PARTE ASSESSMENT

BJ. OF NON FILED  
u/s: 62

BJ. OF NON REGIS-TRANT u/s: 63

SUMMARY ASSESSMENT u/s: 64

(upto 5 year) (upto 5 year)

further Action of officer



AUDIT BY OFFICER u/s: 65

Special Audit through CA u/s: 66

INSPECTION & SEARCH & SEIZURE u/s: 67

@ PRIMISES

IF GALAT order PASS HO GYAHAL (SOU moto or WITH 30 DAY)

②

X-RAY

③

MARI

④

(I-S-S)

OK

OK

OK

- \* Routine Audit By Deptt
- \* Conduct at Deptt office or at person's office
- \* Audit By officer
- \* within 3M + 6M

NOTES

- \* Due to complexity of case related to AV or ITC
- \* Deptt: Appoint CA/CMA to conduct audit of the person
- \* Submit Report to Deptt within 90 days + ext.
- \* And on the basis above report officer conclude the case.

Operation

- \* OF main Party,
- \* OF III PARTY,
- \* Inspection, search, seizure,
- \* After CONFISCATION i.e. T/F OF MONEY SLIP OF Goods.
- \* After that Auction.
- \* Money = Govt A/c

By the person

AB KAREGE  
DESI ILLA2

SCN - Demand order  
 U/S: 73 (Bonafide)  
 U/S: 74 (MALA fide)  
 @ REASON:  
 \* opp GST: NOT paid / SHORT paid  
 \* ITC wrongly Availd, wrongly Availd  
 \* Erronious Refund  
 (Supportive section: 75)  
 i.e. BACK Support to sec. 73/74

Demand

- + PAY OFF
- + RECOVERY

Rate = 5%  
 Actual collect = 12%  
 PAY = 5% T.1/6 EXTRA.

SECTION: 76: Where an Amount collected in EXCESS OF TAX  
 Section: 77: INTRA | INTER @ confusion

NOTES

# RECOVERY

सुरे हाथ खोद दिने

## General SECTIONS

## Special SECTIONS

"Paise kaha dega Bey"

### SEC: 78 : Time of Recovery

- \* After 3 months of Demand order.
- \* Exceptional Circumstances even within 3 MONTH of Summary Assessment.

### RECOVERY FROM WHOM???

see: 84 to 94

- MINOR CASE??
- HUF KHANDIT?? (KARTA - member)
- PARTNERSHIP firm @ DISSOLVE (FIRM - PARTNER)
- CO. & Director etc.

### SEC: 79 :

"अधे हो गये."

ANY GOODS

### RECOVERY mode :

- Adjust from Refund due ✓
- Sale of Goods ✓
- Sale of immovable property ✓
- Recovery from TH PARTY  
e.g. Debtor, BANK FD, POSTOFFICE FD, etc.
- Sale of Liquid ??? = YES ✓

### SEC: 80 : @ Recovery time :

Dues - in - Installment = YES (MAX 24 EMI)

### SEC: 81 :

- \* T/F of property with BAD INTENT
- \* to AVOID Recovery
- \* SUCH T/F @ VOID ab initio

### SEC: 82 :

- \* Govt Dues: UNSECURED
- \* Prefer Dues.

TOD

### SEC: 83 : PRE-caution @ Provisionally A Hatchment.

NOTES + NO Sale/T/F  
ete

COMMON  
PROVISION  
IN  
ATA PROCEEDINGS

Sec: 68, 69 = Read with CIVIL & CRIMINAL PROCEEDINGS

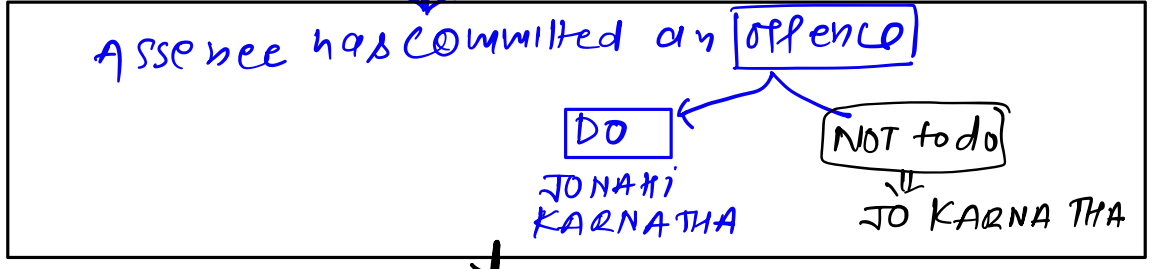
Sec: 70 = CO-operate : TH PARTY

71 = CO-operate : MAIN PARTY

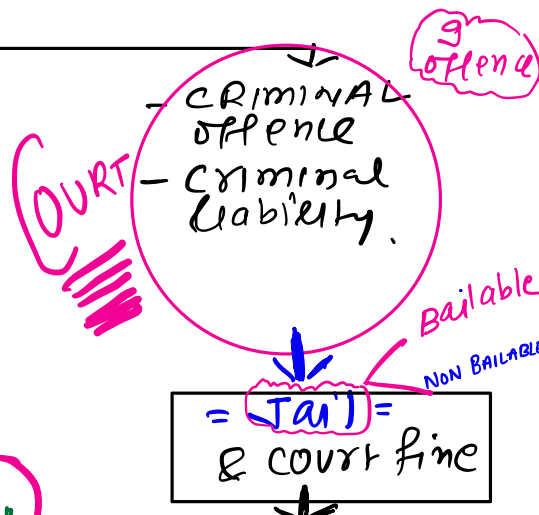
72 = CO-operate : Others, Police, Railway offrs,  
PRADHAN etc

31/11  
पेट  
उस + इर  
अव शो

# CIVIL & CRIMINAL proceeding



- CIVIL offence (∞)  
- SAJA: CIVIL liability



**PENALTIES**

Goods - KA seizure & Confiscation @ ON THE WAY

SEC: 122 : 21 offences ke naam & penalty (10000 or TAX EVASION) ↑

SEC: 125 : Residing penalty (UP TO 25000)

sec: 123 & sec: 124 → NOT for TAX payers BUT penalty for other default. eg BANK, REGISTRATION office etc.

SECTION 68 : Power to stop the trucks etc

SEC: 129 : SEIZURE of goods in TRANSIT.

SECTION: 130 Confiscation of goods.

SECTION: 131 CIVIL & CRIMINAL proceedings @ INDEPENDENT.

SECTION: 132 LIST OF 9 CRIMINAL offence & PUNISHMENT (Jail / BAP) → up to 5 years सजा

SECTION: 69 POWER TO ARREST (Cognizable / NON COG)

Relaxation :

SEC: 126 : PENALTY @ Reduce in MINOR Breach @ unIntentional.

SEC: 128 : Govt - may waive off penalty

SEC: 127 : Clarification : TO SATH NA De mra - ...  
Penalty @ Impose @ Independently.  
or we need to impose only with

SECTION: 133 (X)

SEC: 134 : PRIOR Approval of Commission to initiate criminal proceeding's

Section: 135  
Presumption of  
culpability  
state: (Doli  
Mala)  
& Burden of Proof  
on TAXPAYER

Section: 136 X

Section: 138  
Compounding of  
offence

Section: 137  
offence by CO.  
- IN CHARGE ✓  
- Director ✓

---



# Appellate Proceeding

Read: Bottom - to - TOP.

& ee: 120 = Deptt Appeal (X)  
& ee: 121 = NOBODY  
file an Appeal

Before filing Appeal @ DUES PAY ST.

119

log to 116

SC

Sec: 118

HC

Sec: 117

GST-AT  
- PRINCPAL BENCH  
- STATE BENCH

Direct Appeal to S.C.  
@ POS MATTER

A.A. Like CIT(A)

107

108

Rev. Authority

DONT PAY

3 MONTH

(RECOVERY)

Demand order

pay = OK

THIS WAY ONLY FOR DEPARTMENTAL APPEAL.

## ASSESSMENT

1. **Assessment KYA HOTA HAI ?:** Determination of tax liability as per law



**It Includes:**

Self- assessment (Section 59)

Provisional Assessment (Section 60)

Re- assessment (Section 61)

Best – Judgement assessment { Non filer (Section: 62)  
Non registrant (63)

Summary/Quick assessment (Section 64)

2. **Assessment KAB HOTA HAI ?:** At the “TIME OF SUPPLY” (Section 12,13,14)

3. **Assessment KAISE HOTA HAI?:**  $GST = AV \times ROT * (ROE \text{ if any})$  (Under Section 15 plus Valuation Rules)

4. **Assessment KYON HOTA HAI?:** To Know the amount of GST/CESS

5. **Assessment KAUN KARTA HAI?:** - Assessee Himself  
- Department Officer

### Section 59: SELF ASSESSMENT

Every Registered person (Section 22/24 – After threshold limit /Mandatory)

+

Shall Self assess the tax liability

+

And accordingly file valid return (Under Section 39): GSTR – 3/4/5/6/7 etc.



### SECTION 61 RE-ASSESSMENT OR SCRUTINY

Tax paid & return filed (Under Section 39) eg GSTR 3B /GST CMP 08



GST Officer may – Scrutinized the same



Intimate discrepancies by notice



Assessee reply (30 days) + Extension



Officer { Satisfied - OK  
OR

Not Satisfied – Then GST Officer will take further action

- Audit
- Special Audit
- Investigation
- SCN/DO etc.



**BEST JUDGEMENT Can be done without SCN Under Section 73/74**



**Section 62**

**In Case of Non Filer**

Alert message before 3 days of due date  
 ↓  
 Non filling of return  
 Under Section 39/45 (Periodic / Final Return)  
 ↓  
 Reminder message of non-filing after due date  
 ↓  
 Notice related to return  
 (Under Section 46- after 5 days of due date  
 To furnish return within 15 days)  
 ↓  
 Still return not filed  
 ↓  
 Best Judgement (On the basis of GSTR 01,2A,E way Bill etc)  
 (Time Limit – 5 Years from D/D of annual return)  
 ↓

Now further action of the Taxpayer

↓ Return file & All in <b>30 days-60 Days</b>	↓ Still not filed (Then recovery shall be initiated u/s 78) 6 Months- No return Then CANCELLATION of RC
-----------------------------------------------------	---------------------------------------------------------------------------------------------------------------

Now best Judgement shall be withdrawn)  
 (Interest and late fee Still payable)

**Note:** Summary thereof shall be uploaded electronically.

**Note:** Where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, 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 under section 50(1) or to pay late fee under section 47 shall continue.

**Section 63**

**Non Registrant**

RC – Not Obtained  
 or  
 RC – Taken but surrendered/cancelled  
 ↓  
 As of now status is Non -Registered  
 ↓  
 Best Judgement Within 5 year  
 from D/D of annual Return  
 ↓  
 Opportunity of being heard.

**SECTION 64 Summary Assessment**



Assessee “JALDBAZI” MAI HAI

Like going to abroad permanently



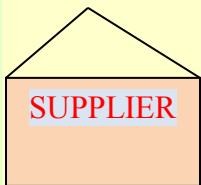
And Proper Officer has evidence of GST liability in respect of such person.



So to protect the “interest of revenue” (Department): process of summary assessment shall be initiated.

**Note:** if the order is erroneous [Found by Officer @ Suo Moto or by application of Taxpayer with in 30 days] - then such order shall be withdrawn and the procedure under section 73, 74 to be followed.

**“PROVISIONAL ASSESSEMENT”**



“Offer” of “ Year End Discount”

If any Buyer – Buy 1,00,000 Unit or more in the Current FY- then Rate per unit will be ₹ 9 per unit instead of Normal Rate of ₹ 10 per unit

First Transaction: 10,000 unit at 1-4-18 (18-19)

**Reasons:**

- \*Escalation Clause
- \*End Year Discount
- \*Rate Dispute
- +5% / 12%

Buyer = Mr. ABHISHEK

“OR”

H  
I  
S  
G  
I  
H  
D  
E  
E  
R

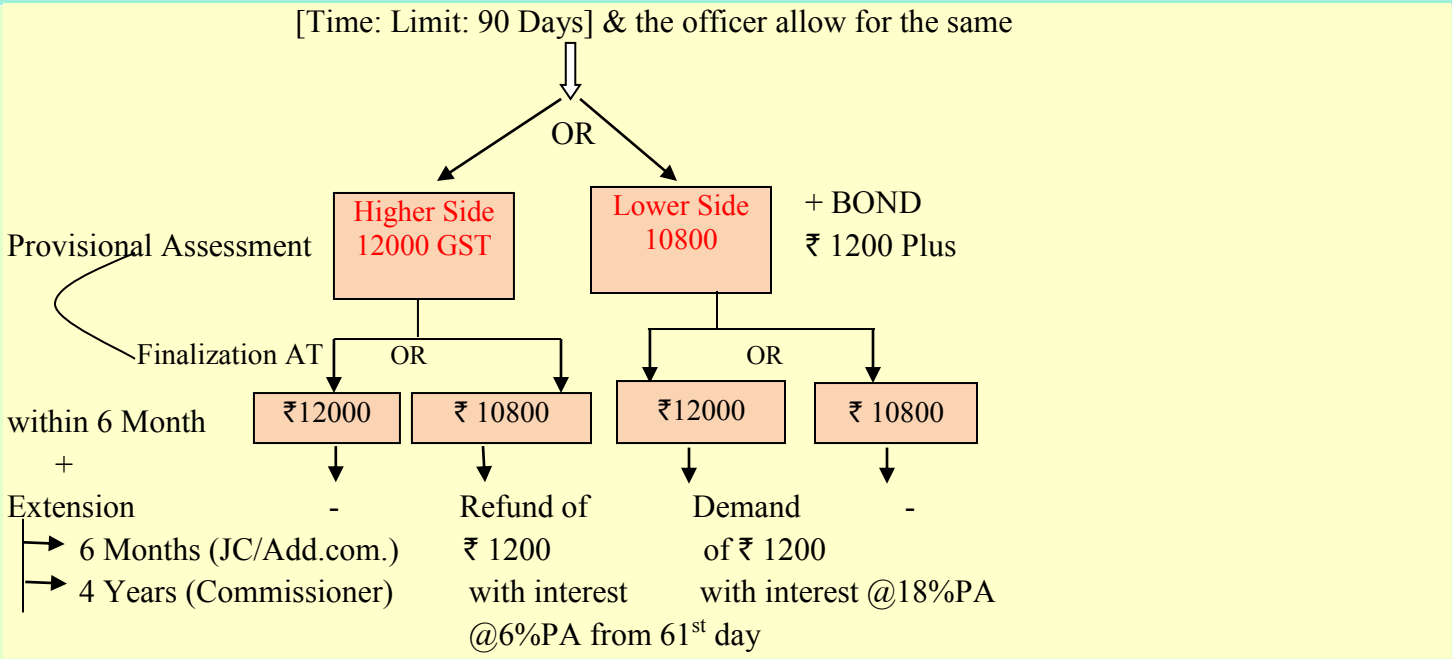
Value (10000 × 10)	= 100000
GST	= 12000
12%	<u>112000</u>

Value (10000 × 9)	= 90000
GST	= 10800
12%	<u>100800</u>

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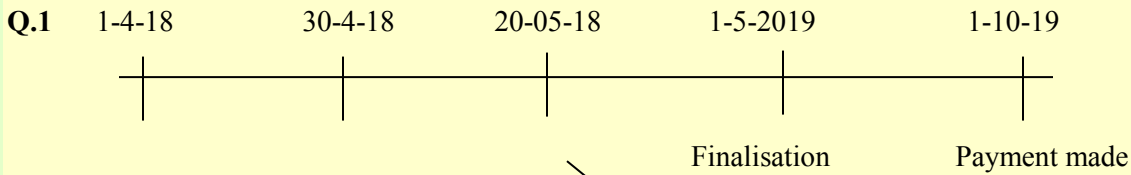


Supplier Approach the officer for Provisional Assessment, (with Reason Eg. Year end Discount)



## CALCULATION OF INTEREST

### In Case of Demand:



INTEREST:

$$1200 \times \frac{18}{100} \times \frac{21-5-18 \text{ to } 1-10-19}{365} = \times \times \times$$

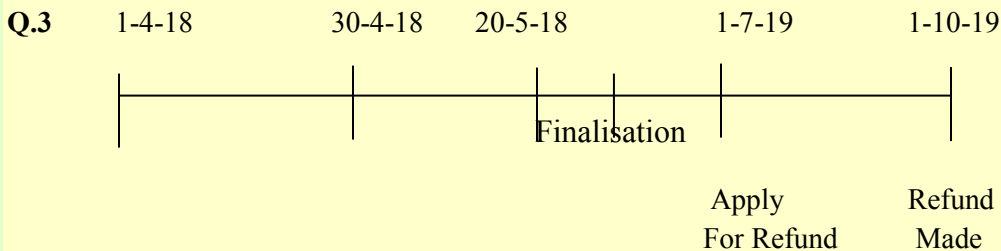
**Q.2** What if an amount of ₹ 400

Paid by the person on : 10-4-2019 ie. Before finalization.

INTEREST:

- $1200 \times \frac{18}{100} \times \frac{21-5-18 \text{ to } 10-4-2019}{365} = ₹ 192$
- $800 \times \frac{18}{100} \times \frac{11-4-2019 \text{ to } 1-10-19}{365} = Rs. 69$

### In case of Refund (u/s: 54)



INTEREST:

$$1200 \times \frac{6}{100} * \frac{(31/8/19 \text{ to } 1/10/19)}{365} = ₹ 6.31$$

**Circular No. 129/48/2019: Standard operating procedure to be followed in case of non-filers of returns**

Section 46 of the CGST Act read with rule 68 of the CGST Rules requires issuance of a notice to a registered person who fails to furnish return under section 39 or section 44 or section 45 of the CGST Act requiring him to furnish such return within 15 days. Further, section 62 of the CGST Act provides for assessment of non-filers who fail to file return under section 39 or section 45 even after service of notice under section 46. No separate notice is required to be issued for best judgment assessment under section 62 if the return is not filed within 15 days of issuance of notice under section 46.

CBIC has issued the following guidelines to ensure uniformity in the implementation of the provisions of law in relation to non-filers of returns:

- (i) System generated message would be sent to all the registered persons 3 days before the due date to nudge them about the filing of return by the due date.
- (ii) Once the due date for furnishing return under section 39 is over, a system generated mail/ message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/ message is to be sent to the authorized signatory as well as the proprietor/ partner/ director/ karta, etc.
- (iii) After 5 days of due date of furnishing the return, notice under section 46 shall be issued electronically to the defaulters requiring them to furnish return within 15 days.
- (iv) If the return is not filed within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said defaulter under section 62, to the best of his judgment taking into account all the relevant material which is available or which he has gathered and would issue assessment order. The proper officer would upload the summary of such order in the prescribed form.
- (v) For the purpose of assessment of tax liability under section 62, the proper officer may take into account the following:
  - Details of outward supplies available in GSTR-1
  - Details of inward supplies auto-populated in GSTR-2A
  - Information available from e-way bills
  - Any other information available from any other source including inspection under section 71 of the CGST Act
- (vi) If the defaulter furnishes a valid return within 30 days of the service of assessment order under section 62, the said assessment will be deemed to have been withdrawn.
- (vii) If the said return remains unfurnished within the statutory period of 30 days from the service of assessment order under section 62, the proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act.

Based on facts available, in some cases, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of assessment order under section 62. Further, proper officer would initiate action under section 29(2) of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

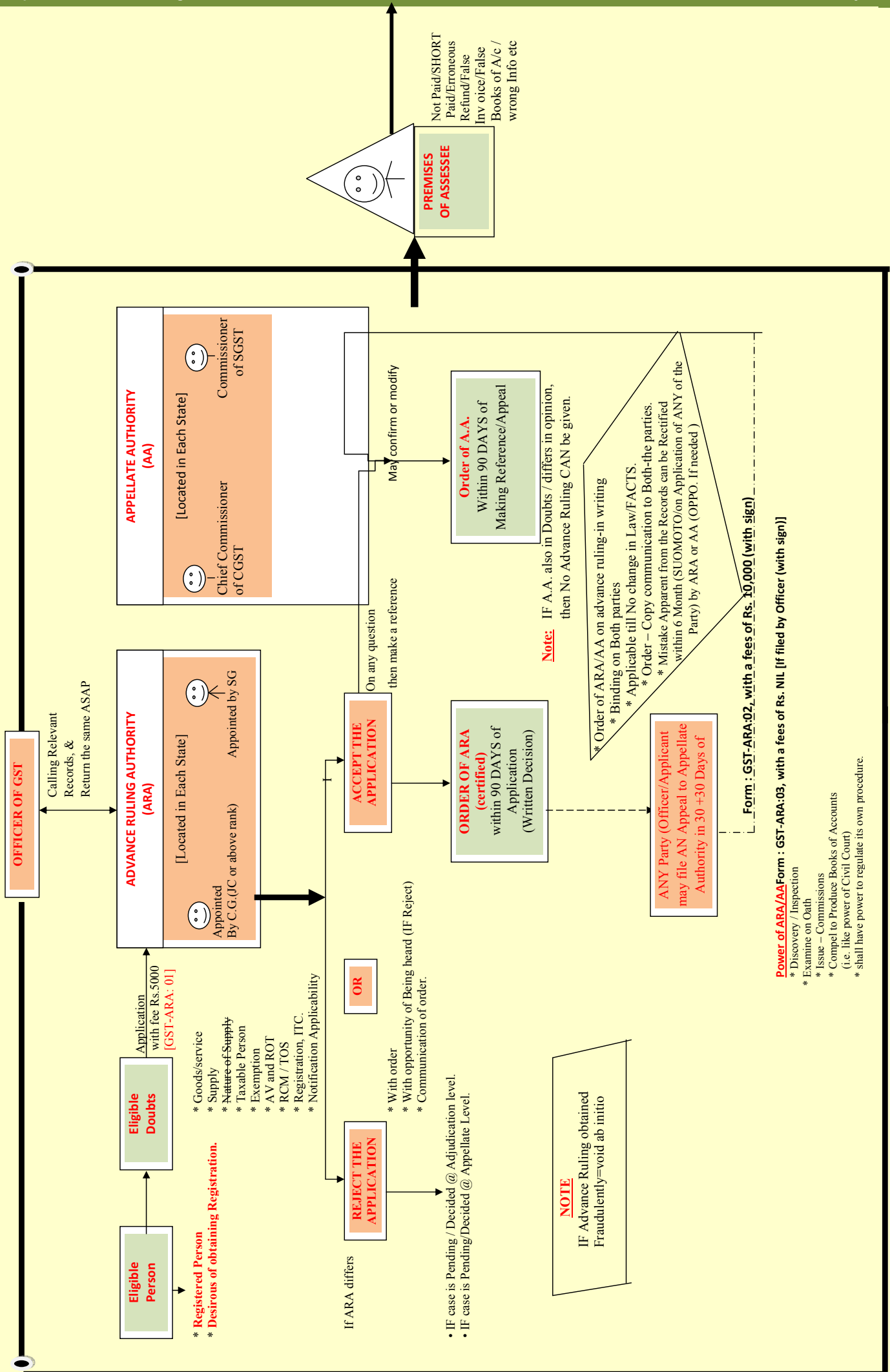
# ADVANCE RULING

# 17

## Background







## Sections 95: Definitions

<b>Advance Ruling</b>	(a) Advance Ruling means: <ul style="list-style-type: none"> <li>▪ a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified <b>in section 97(2) or section 100 (1),</b></li> <li>▪ in relation to the supply of goods or services or both</li> <li>▪ being undertaken or proposed to be undertaken by the applicant.</li> </ul>
<b>Appellate Authority</b>	(b) Appellate Authority means the <b>Appellate Authority for Advance Ruling</b> referred to in section 99.
<b>Applicant</b>	(c) Applicant means <b>any person registered [Existing Business] or desirous of obtaining registration [new business]</b> under this Act.
<b>Application</b>	(d) “Application” means an application made to the Authority <b>under section 97(1).</b>
<b>Authority</b>	(e) “Authority” means the Authority for Advance Ruling <b>referred to in section 96.</b>

## Section 96: Authority for Advance Ruling

Subject to the provisions of this Chapter, for the purposes of this Act,

- The Authority for advance ruling constituted **under the provisions of a State GST Act or Union Territory GST Act**
- **shall be deemed** to be the Authority for advance ruling in respect of that State or Union territory.

## Section 97: Application for Advance Ruling

(1) An applicant **desirous of obtaining an advance ruling** under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act, shall be in respect of,—

- (a) *Classification of any goods or services or both;*
- (b) *Applicability of a notification issued under the provisions of this Act;*

- (c) Determination of *time and value of supply of goods or services* or both;
- (d) Admissibility of *input tax credit of tax paid* or deemed to have been paid;
- (e) Determination of *the liability to pay tax* on any goods or services or both;
- (f) Whether *applicant is required* to be registered;
- (g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

## Section 98: Procedure on Receipt of Application

<p><b>On application: calling of Records</b></p>	<p>(1) <b>On receipt of an application</b>, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:</p> <p><i>Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.</i></p>
<p><b>Accept or Reject the Application by order</b></p>	<p>(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:</p> <p><b>Reasons of Rejection:</b> <i>Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.</i></p> <p><b>Rejection of Application:</b> <i>Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:</i></p> <p><b>Opportunity of being heard:</b> <i>Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:</i></p>
<p><b>Communication of above order</b></p> <p>[Accept/Reject]</p>	<p>(3) A copy of every order made under sub-section (2) <b>shall be sent to the applicant</b> and to the concerned officer.</p>
<p><b>Pronouncement of Advance Ruling</b></p>	<p>(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as <b>well as to the concerned officer or his authorised representative</b>,</p>

	<p>pronounce its advance ruling on the question specified in the application.</p> <p>(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.</p>
<p>Within 90 days and communication</p>	<p>(6) The Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.</p> <p>(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.</p>

## Section 99: Appellate Authority for Advance Ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State GST Act or a Union Territory GST Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

## Section 100: Appeal to Appellate Authority

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under section 98(4), may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

**Extension:** *Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of 30 days, allow it to be presented within a further period not exceeding 30 days.*

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

## Section 101: Orders of Appellate Authority

Power of Appellate Authority	(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.
Order Time	(2) The order referred to in sub-section (1) shall be passed within a period of 90 days from the date of filing of the appeal under section 100 or a reference under section 98(5).
If AA differs in opinion then no advance ruling	(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.
Communication of order	(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

## Section 102: Rectification of Advance Ruling (Mistake apparent from the Record)

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify **any error apparent on the face of the record**, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

*Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.*

## Section 103: Applicability of Advance Ruling

<b>Binding on</b>	<p>(1) The advance ruling pronounced by the Authority or the Appellate Authority under this Chapter shall be binding only—</p> <p>(a) <i>On the applicant who had sought it in respect of any matter referred to in <b>section 97(2) for advance ruling</b>;</i></p> <p>(b) <i>On the concerned officer or the jurisdictional <b>officer in respect of the applicant</b>.</i></p>
<b>Binding till</b>	<p>(2) The advance ruling referred to in sub-section (1) shall be binding <b>unless the law, facts or circumstances supporting the original advance ruling have changed</b>.</p>

## Section 104: Advance Ruling to be void in Certain Circumstances

(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it **under section 98(4) section 101(1)** has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab-initio* and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

*Provided that **no order shall be passed** under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.*

**Explanation:** The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in section 73(2)(10) or section 74(2),(10).

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned officer and the jurisdictional officer.

## Section 105: Powers of Authority and Appellate Authority

The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—

- (a) *Discovery and inspection;*
- (b) *Enforcing the attendance of any person and examining him on oath;*
- (c) *Issuing commissions and compelling production of books of account and other records,*

have all the powers of a civil court under the Code of Civil Procedure, 1908.

## Section 106: Procedure of Authority and Appellate Authority

The Authority or the Appellate Authority shall, subject to the provisions of this Chapter, **have power to regulate its own procedure**.

# 18

# AUDIT, INSPECTION

**Regular Audit: Section 65**

COMMISSIONER OFFICE



- Audit of books of account at any office (assessee/officer)  
(Period: **One FY or Part of a FY or multiple FY** & Frequency to be decided)
- INFORMATION /Notice 15 DAYS in advance **[GST ADT- 01]**
- Assessee Facilitate Officer - &provide timely & correct INFO.
- Time Limit of Audit: 3Months + EXT of 6 Months from:-
  - \* Books of A/c made Available at depatt. office
  - OR**
  - \* Actual Institution of Audit @ Assessee's Office
- On conclusion **[GST ADT- 02]** officer Inform Findings with in 30 days. &tell the Rights & Obligation & If Necessary-SCN shall be issued.

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OFFICE OF ASSESSEE

**SPECIAL AUDIT: Section 66**

Need to conduct During ANY – Scrutiny/Enquiry/ Investigation/Other Proceedings & complexity of case Value in issue, ITC npt with in normal Limit.

AC/DC or Above Officer

With Approval of Commissioner



- Notice to person for Special/Audit to be conducted by CA/Cost Accountant as Nominated by Commissioner. **[GST ADT- 03]**
- Report Time: 90 Days + 90 Days
- Opportunity of Being heard IF Adverse Report.
- SCN – May be – Issued- if needed
- Fees of Auditor: to be paid by Commissioner.
- **Note:** It is Irrelevant that Tax Audit/Cost Audit etc. already conducted. Special Audit Report:**[GST ADT- 04]**

## Legal Text

### Section 65: Audit by Tax Authorities

<b>Audit by Commissioner</b>	(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
<b>Place of Audit</b>	(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.
<b>Advance Notice</b>	(3) The registered person shall be informed by way of a notice <b>not less than 15 working days</b> prior to the conduct of audit in such manner as may be prescribed.
<b>Time limit of Audit</b>	<p>(4) The audit under sub-section (1) shall be completed within a <b>period of 3 months</b> from the date of commencement of the audit:</p> <p><i>Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within 3 months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding 6 months.</i></p> <p><b><u>Commencement of Audit the date</u></b></p> <p><i>On which records made available to tax authorities by registered person or actual conduct of audit at place of business whichever is later</i></p> <p>(5) During the course of audit, the authorised officer may require the registered person,-</p> <p style="padding-left: 40px;"><i>(i) to afford him the necessary facility to verify the books of account or other documents as he may require;</i></p> <p style="padding-left: 40px;"><i>(ii) to furnish such information as he may require and render assistance for timely completion of the audit.</i></p>
<b>Information of rights and obligations</b>	(6) On conclusion of audit, <b>the proper officer shall, within 30 days</b> , inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

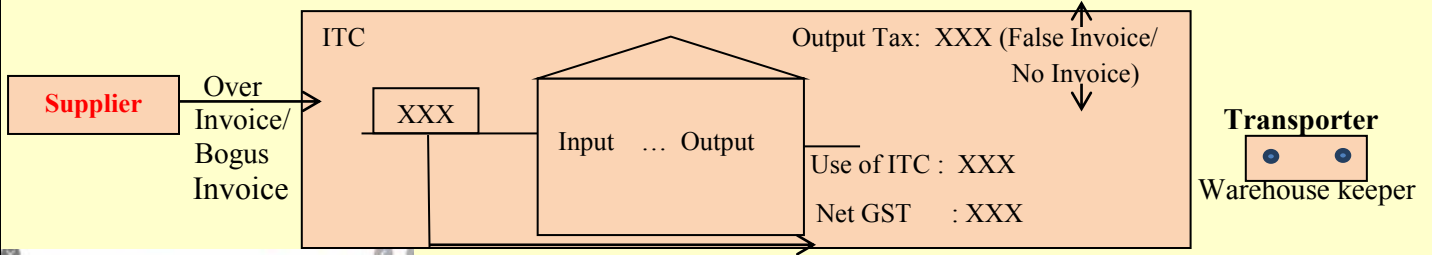


<b>Show cause Notice</b>	(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.
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## Section 66: Special Audit

<b>Initiation of Audit</b>	<p>(1) If at <b>any stage of scrutiny, inquiry, investigation or any other proceedings</b> before him, any officer not below the rank of Assistant Commissioner, <b>having regard to the nature and complexity of the case and the interest of revenue</b>, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.</p> <p>(3) The provisions of sub-section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force.</p>
<b>Time limit of Audit</b> <b>90 + 90 days</b>	<p>(2) The chartered accountant or cost accountant so nominated shall, <b>within the period of 90 days, submit a report of such audit duly signed and certified by him</b> to the said Assistant Commissioner mentioning therein such other particulars as may be specified:</p> <p><i>Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of 90 days.</i></p>
<b>Opportunity of being heard</b>	(4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-section (1) which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.
<b>Fees and expenses paid by depatt.</b>	(5) The expenses of the examination and audit of records under sub-section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and <b>paid by the Commissioner and such determination shall be final.</b>
<b>Show cause Notice</b>	(6) Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

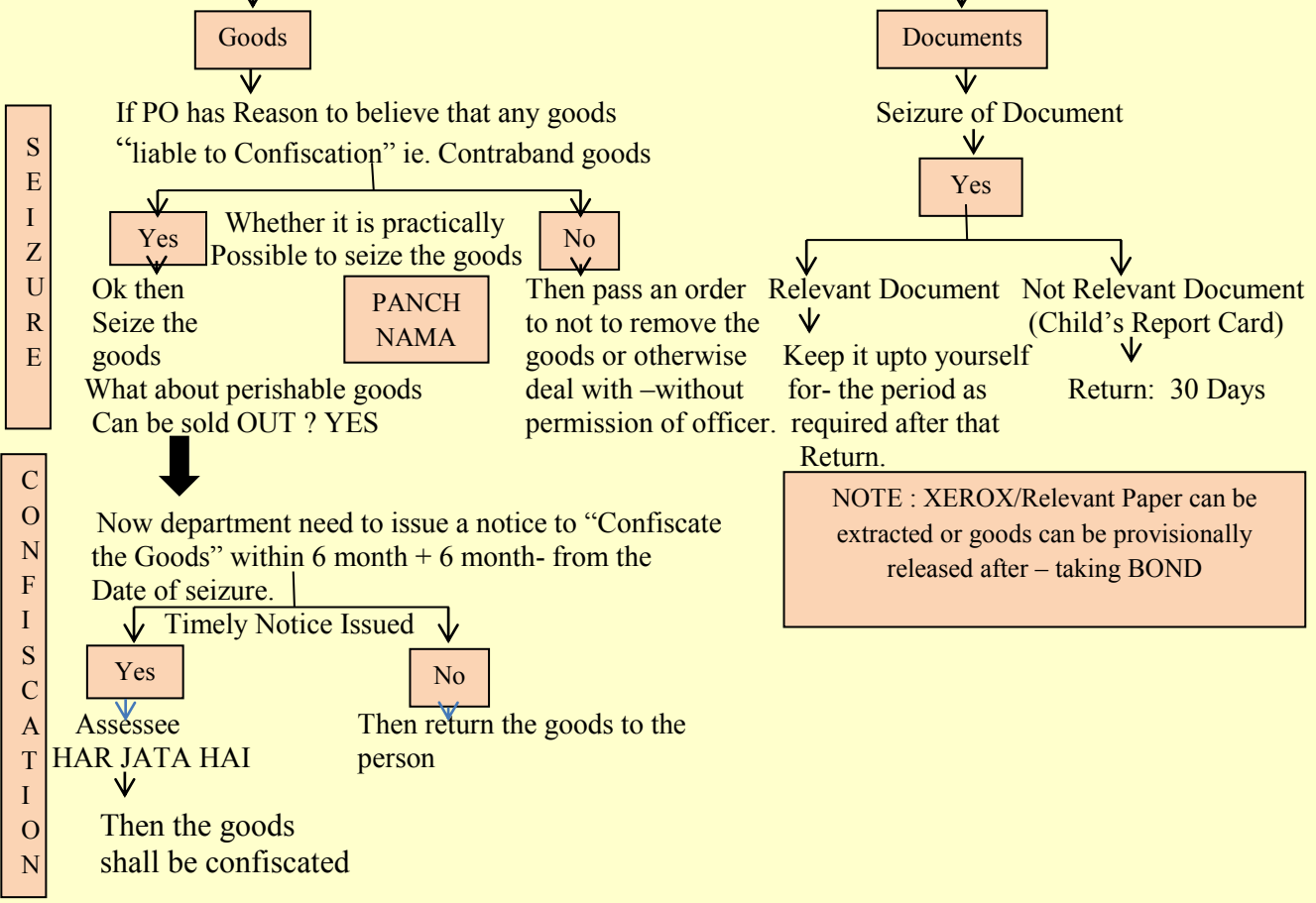
**INSPECTION: SECTION: 67(1)**



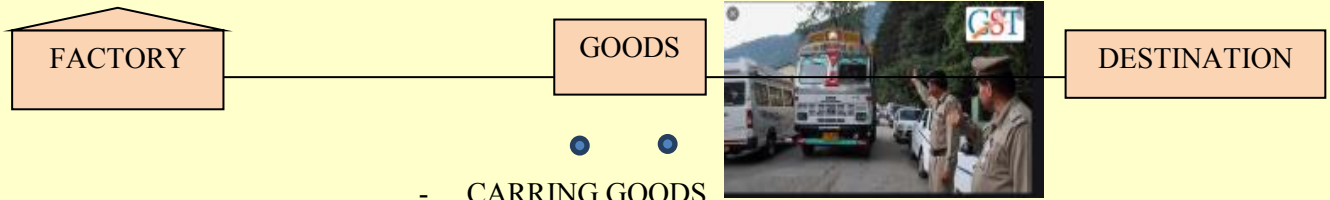
**Main Party**

Inspection of Main Party/II Party@ Business Place

**SECTION 67(2) : SEARCH & SEIZURE/RAID @ Business Premises/ Residence**

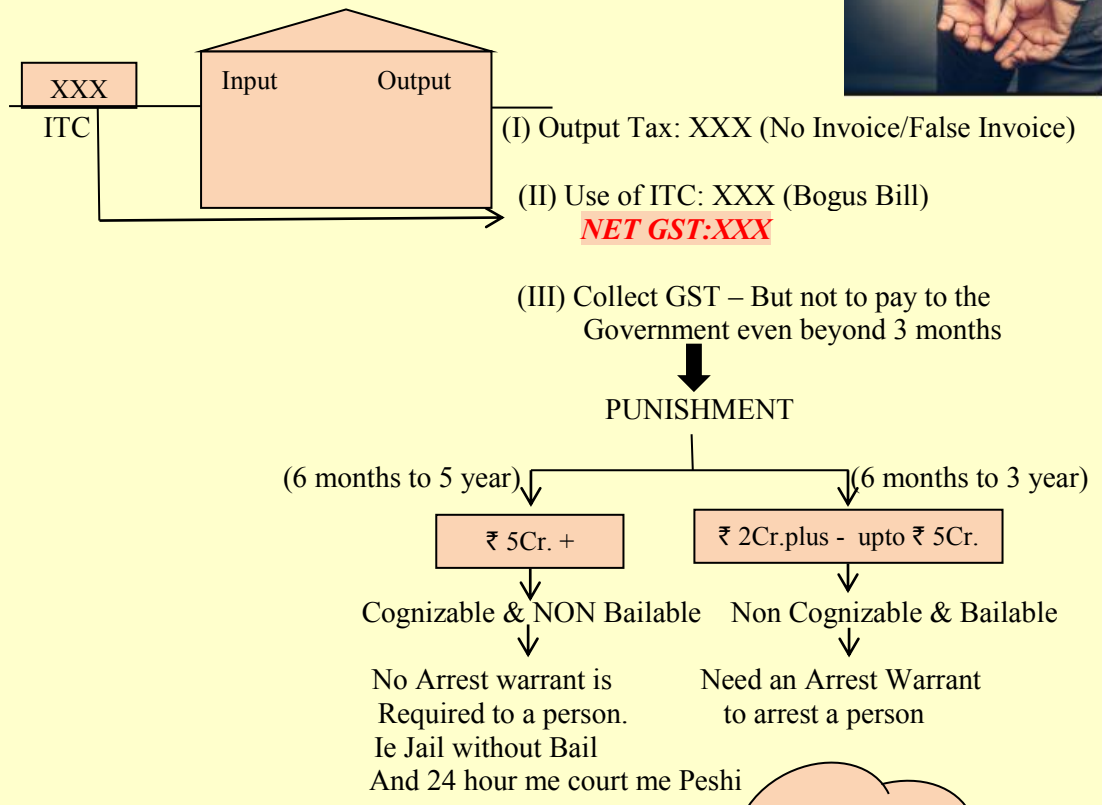


**SECTION: 68: INSPECTION OF GOODS IN MOVEMENT**



- CARRING GOODS Value: ₹50000 Plus (with Specified Document i.e. E-way Bill, Invoice, Bill of Entry etc.)
- & and produce all the documents etc. before Officer on demand for Verification purpose.

**ARREST: SECTION: 69 (Read with section 132)**



What if Subsequent time:  
 6 Month to 5 Years @ any value

**SECTION: 70 +71+72: CO-OPERATE**



<b>SECTION 70 [Secondary Party]</b>	<b>SECTION 71 [Main Party]</b>	<b>SECTION 72 [Others]</b>
<p>Require that "PERSON" Related with the Case eg. Transporter, warehouse keeper, Agent, Job worker etc.</p> <p>to Co-Operate</p> <ul style="list-style-type: none"> <li>+ Attendance</li> <li>+ Document/Record</li> </ul>	<p>Require that Taxable person to Co-Operate: (audit/special audit/Investigation)</p> <ul style="list-style-type: none"> <li>+ Give Required Document</li> <li>+ Give required Report</li> <li>+ Give key</li> <li>+ Time Limit :15 Days.</li> </ul>	<p>Require that SGST/UTGST/IGST Officer, Police Officer, Distic Level Officer, Block Level Officer etc.</p> <p>to Co – Operate:</p>

## Legal Text

### INSPECTION, SEARCH, SEIZURE AND ARREST

#### Section 67: Power of Inspection, Search and Seizure

<b>Inspections</b>	<p>(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—</p> <p><i>(a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or</i></p> <p><i>(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,</i></p> <p>he may authorise in writing any other officer of central tax to <b>inspect any places of business</b> of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.</p>
<b>Search and seizure</b>	<p>(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe <b>that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place</b>, he may authorise in writing any other officer of central tax to search and seize or may himself <b>search and seize</b> such goods, documents or books or things:</p> <p><i>Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:</i></p> <p><i>Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.</i></p>

	(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.
Power of officer during search and seizure	(4) The officer authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any <i>almirah</i> , electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, <i>almirah</i> , electronic devices, box or receptacle is denied.
Xerox copy or extracts from seized documents	(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.
Provisional release of goods on execution of bond	(6) The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.
Goods shall be return if the notice not given within time	(7) Where any goods are seized under sub-section (2) and no notice in respect thereof is given within 6 months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:  <i>Provided that the period of 6 months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.</i>
Disposal of Goods	(8) The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods (Salt, Newspapers and periodicals, Menthol, Camphor, Saffron, Fireworks etc.) which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorised by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

**Instructions No. 01/2020-21 [GST- Investigation]- Instructions / Guidelines regarding procedures to be followed during Search Operation**

1. Proper Authentication- with name - in advance
2. Going to search home- a lady officer must be there
3. At entry- call witness
4. Officer and witness- shall offer for personal search
5. Take care of kids/ladies/old age/Religion
6. If necessary make video of search
7. Prepare panchnama, sign properly and deliver copy to the person or affix at premises.
8. Follow COVID precautions
9. Leave the premises just after search
10. Report to senior about the search.

## Section 68: Inspection of Goods in Movement

- (1) The Government may require **the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified** to carry with him such documents and such devices as may be prescribed.
- (2) The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.
- (3) Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance **to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices** and also allow the inspection of goods.

## Section 69: Power to Arrest

<b>Reason of Arrest</b>	(1) Where the Commissioner has reasons to believe that a person has committed any offence specified in section 132(1)(a),(b),(c),(d) which is punishable <b>under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section</b> , he may, by order, authorise any officer of central tax to arrest such person.
<b>Inform grounds of Arrest</b>	(2) Where a person is arrested under sub-section (1) for an offence specified und section 132(5), the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.
<b>Bail</b>	(3) Subject to the provisions of the Code of Criminal Procedure, 1973,—  <i>(a) Where a person is arrested under sub-section (1) for any offence specified under section 132(4), he shall be admitted to bail or in default of bail, <b>forwarded to the custody of the Magistrate;</b></i>  <i>(b) In the case of a <b>non-cognizable and bailable offence</b>, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.</i>

## Section 70: Power to Summon Persons to give Evidence and Produce Documents

(1) The **proper officer under this Act shall have power to summon any person whose attendance he considers necessary** either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “**judicial proceedings**” within the meaning of section 193 and section 228 of the Indian Penal Code.

## Section 71: Access to Business Premises

(1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, **shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place**, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.



(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

- (i) *Such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;*
- (ii) *Trial balance or its equivalent;*
- (iii) *Statements of annual financial accounts, duly audited, wherever required;*
- (iv) *Cost audit report, if any, under section 148 of the Companies Act, 2013;*
- (v) *The income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and*
- (vi) *Any other relevant record,*

for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period **not exceeding 15 working days** from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

## Section 72: Officers to Assist Proper Officers

(1) All officers of **Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax** shall assist the proper officers in the implementation of this Act.

(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.

# 19

GST Liability u/s 73/74: Rs. 10 Lakh  
 Interest (Automatic): u/s 50 xxx  
 Penalty u/s : 73/74: xxx

# DEMAND AND RECOVERY

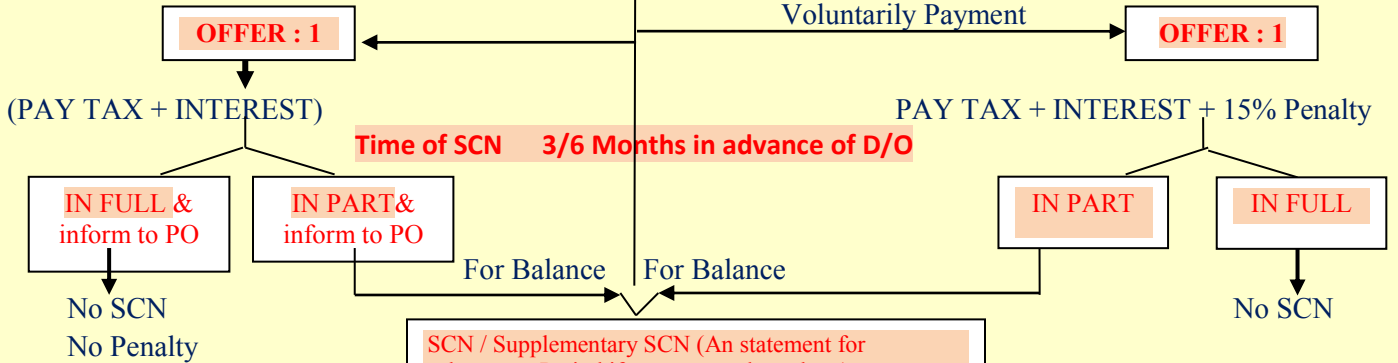
## BONAFIDE CASES

Voluntarily Pay with- in 30 days of due date on the basis of self -calculation or intimation by department which is discretionary by Depatt.

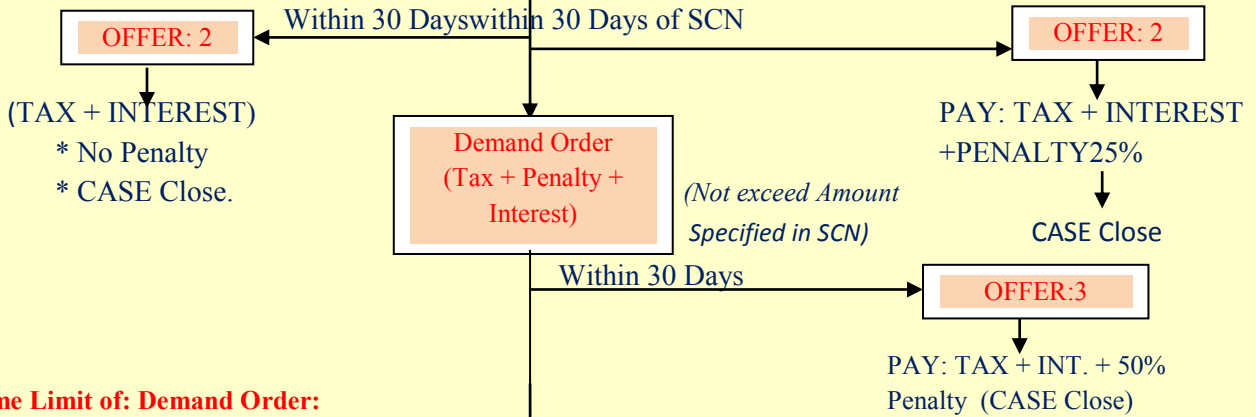
### Reasons of SCN-

TAX not paid/Short-Paid/Erroneous Refund  
 ITC Wrongly Availed/Utilised  
 (Audit/Special Audit May or May Not be)

## MALAFIDE CASES



SCN / Supplementary SCN (An statement for subsequent Period if same ground are there)  
 [TAX+INT+ PENALTY (10% or ₹ 10,000 For Bona fide] (For Fraud 100%)



**Demand Order**  
 (Tax + Penalty + Interest)

(Not exceed Amount Specified in SCN)

**Time Limit of: Demand Order:**  
 within 3/5 year of DD of filing of Annual Return  
 within 3/5 year of: Date of Erroneous Refund  
*Otherwise proceedings shall be deemed to be concluded.*  
*Within 2 years in referred back cases*

Pay off the demand and Relaxed	File an Appeal to First Appellate Authority, GST AT- HIGH COURT SUPREME COURT	Neither to pay nor File an appeal – now recovery Proceedings shall be initiated with in 3 months
--------------------------------	-------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------

**General Points:**

- \* Stay period to be excluded in computing the period (Either on SCN or Demand order)
- \* Opportunities of being heard.
- \* Adjournment 3 times (Max.) to a Party.
- \* Demand order – with Reasoning and NO Double penalty for the same act.
- \* Appellate Order Modify – INTEREST/Penalty shall also be modified.
- \* **INTEREST PAYABLE** even IF NOT specified in Demand order.
- \* Above Provisions also applicable when only **INTEREST** in Dispute.
- \* **Self assessed liability as shown in return u/s 39 – direct recovery- without issuing SCN and Demand Order.**
- \* Fraud Charge Impose – D/o – App. Order – Assessee found honest/Bonafide then SCN – shall be treated to issue as in Bonafide case.



**STEP: 1** : CASE LAGA By treating the person as fraud :

	18-19	19-20	20-21	21-22	22-23	23-24	24-25
Liability:	1L	2L	3L				

\* SCN ISSUED on on: 10/6/24 @ MALAFIDE for  
 FY 18-19, 19-20, 20-21 = TAX = 6 LAKH  
 PAY = on 6 LAKH  
 Penalty = 6 LAKH (100%)  
 ie 12L + Interest

LAST DATE OF SCN:	30/6/24	30/6/25	30/6/26
Actual Issue	10/6/24	10/6/24	10/6/24
	OK	OK	OK

\* Demand order: 12 LAKH + Interest

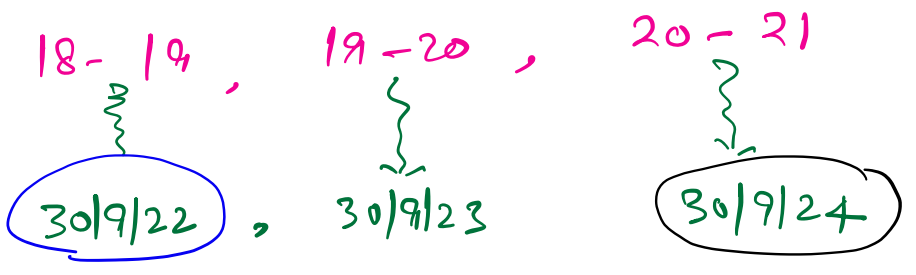
**STEP: 2** : App filed by the person – Delist the found @ Bonafide

**STEP: 3** : NOW WHAT TO DO

- ✗ (X) SCN @ MALAFIDE = CANCEL & fresh SCN as Bonafide = ISSUE KARO
- ✓ (checkmark) Malafide SCN Hai USSE HI Bonafide KARANA

Step: 4 If SCN issued on 10/6/24 : @ treat as issued in Banafide CASE

FY  
 Last Date  
 of SCN @  
 Banafide  
 (2 year = 9m)



SCN @  
 Actd Date?  
 SCN Valid??

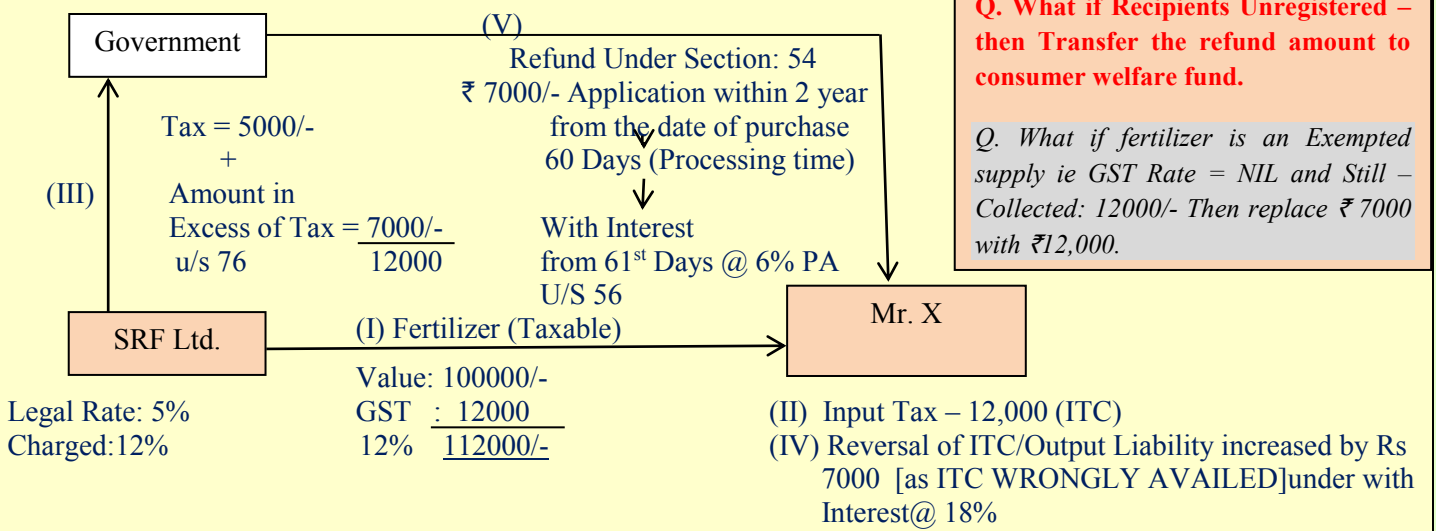
	10/6/24	10/6/24	10/6/24
Time Barred		Time Barred	OK

TAX Amount = 3 LAKH  
 Int. on 3 LAKH = X r r

Penalty:  
 (10K or 10% of 3L) = 30K

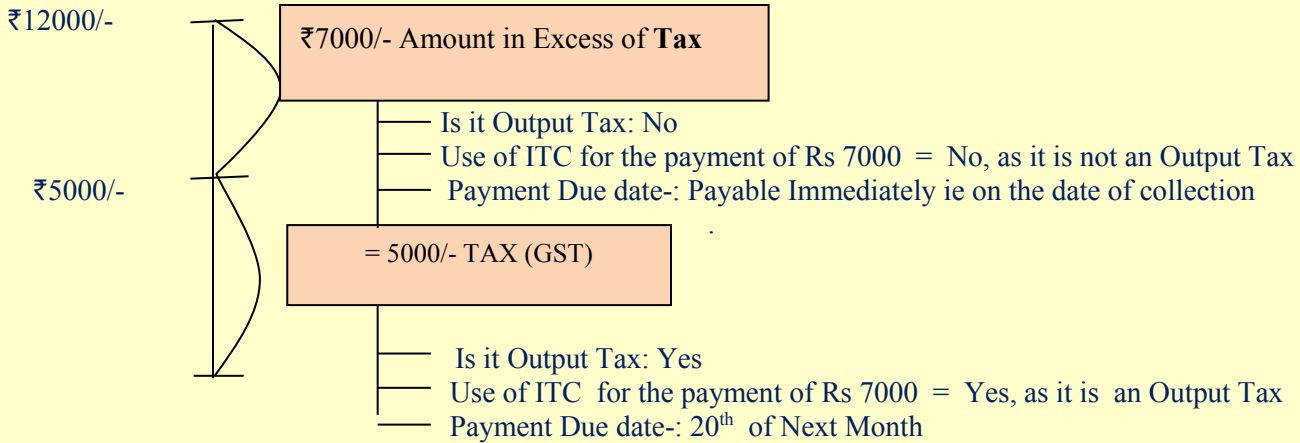
ie 3.30 LAKH + Interest

**SECTION: 76 TAX COLLECTED BUT NOT PAID**



**Q. What if Recipients Unregistered – then Transfer the refund amount to consumer welfare fund.**

*Q. What if fertilizer is an Exempted supply ie GST Rate = NIL and Still – Collected: 12000/- Then replace ₹ 7000 with ₹12,000.*



- FOR Rs. 7000
- SCN u/s 76 (Rs 7000 + interest from collection date + Penalty) [No time limit]
- With- in one year- Demand order

**AMOUNT PAID MAY BE ADJUSTED AS GST, IF REQUIRED**

**EXAMPLE: GOODS CARRY NIL RATE OF GST BUT SUPPLIER CHARGE GST @18% AND PAID THIS EXCESS AMOUNT OF RS 18,000 U/S 76 [SUPPOSE VALUE OF GOODS IS RS 1,00,000]. LATER ON, IT IS DECIDED THAT GOODS CARRY RATE OF 12% RATHER THAN NIL RATE, ACCORDINGLY, GST PAYABLE RS 12,000.**

**NOW THE QUESTION IS – WHETHER FOR THE PAYMENT OF GST OF RS. 12,000, AMOUNT ALREADY PAID CAN BE ADJUSTED :: YES**

**SECTION: 77 INTER INTRA (Read with section 19 of IGST ACT)**

- Transaction initially treated as INTRA State But later held as INTER State.


 GST WRONGLY PAID ie CGST + SGST/UTGST, shall be claimed as Refund  
 (However IGST is to be Paid.)

&

Vice versa

Note: Above to be done without Interest.

**SECTION 78: Initiation of Recovery Proceedings**

- Demand of Tax Dues to be Paid in 3 Months from the date of Service of order.
- If it is not paid then Recovery proceeding shall be initiated.  
(However in Exceptional Circumstances Recovery Proceeding can be Initiated even within the period of 3 months)

**SECTION 79: RECOVERY MECHANISM**

**[Any one or multiple methods may be adopted in any sequence for recovery]**

- (i) Adjust from Refund Due.
- (ii) From sale proceeds of ANY Goods (After Seizure & Confiscation.)
- (iii) # Recovery from III Party Directly (FD in Bank/Post office, Insurance, Debtors etc.) on or after the due date of that amount and never before due date of such amount.  
# Department will recover full amount or sufficient amount from the III party.  
# Any Guidelines or Regulations contrary in recovery will have no relevance.  
# Where III Party does not follow the instructions then III party shall be treated as taxable person/Defaulter for that amount.
- (iv) Distrain and sold the movable/immovable property of Assessee [if dues are not paid with in 30 days]
- (v) Authorised- District Collector (IAS) (having Power of KURKI) to collect tax dues. “
- (vi) Recovery Though Court, Realisation of BOND
- (vii) Recoery can also be made from Deemed Distinct Person.

Cross Empowerment: CGST Officer can recover = CGST/SGST/UTGST/IGST

SGST Officer can recover = CGST/SGST/UTGST/IGST

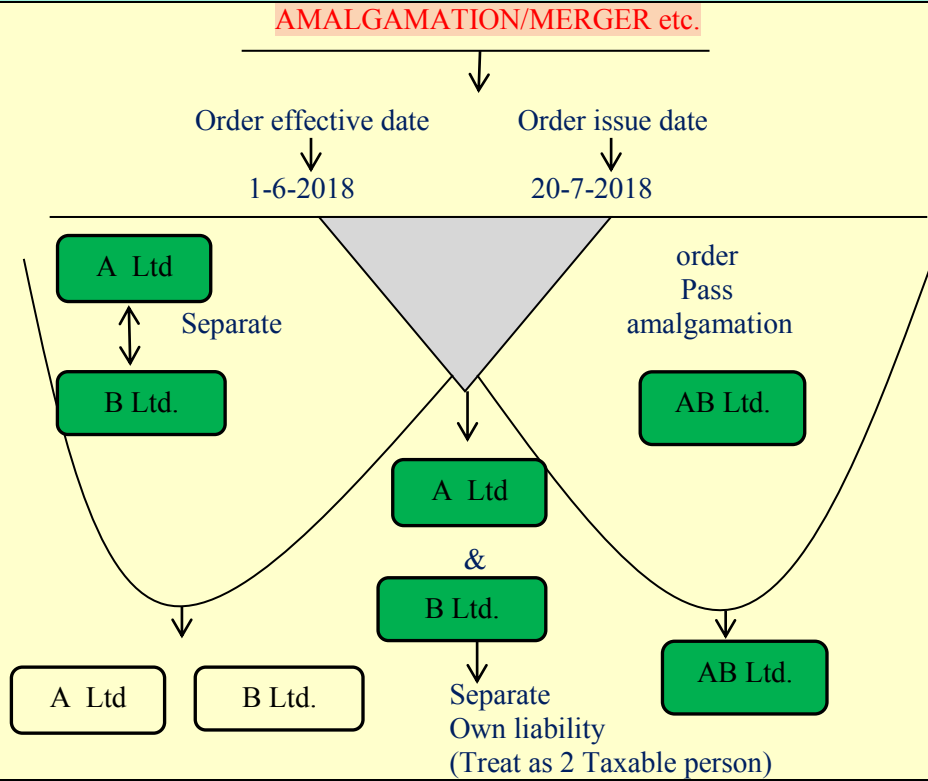
IGST Officer can recover = CGST/SGST/UTGST/IGST

Section	Provision
<p><b>Section: 80</b> <b>Recovery in Installment:</b> <b>Maximum 24 installment.</b></p>	<ul style="list-style-type: none"> <li>- During recovery pay in installment</li> <li>- Max 24 If financial position of Taxable Person is not sound.</li> <li>- If Default in Payment of Installment then given facility Shall be withdrawn and</li> <li>- Whole dues to be paid immediately.</li> </ul> <p>NOTE: Installment facility is Not applicable for self- assessed Liabilities.</p>
<p><b>Section: 81</b></p> <p>Transfer of property will be void if done so to avoid recovery</p>	<p>If any taxable person transfer his property or create a charge on the property with the intention to defraud with the department then such transfer be deemed to be VOID.</p> <p>Transfer of property under good faith for a Consideration (genuine transaction) then Such transfer remain : Valid.</p>
<p><b>Section: 82</b></p> <p>Government dues are preferential dues.</p>	<p><u>AS Per: IBC, 2016:</u></p> <ol style="list-style-type: none"> <li>1. Insolvency resolution process Cost &amp; liquidation Cost XXX</li> <li>2. Workmen Dues, Secured Creditor</li> <li>3. Financial debts (Bill of Exchange)</li> <li>4. Unsecured Creditor             <ul style="list-style-type: none"> <li>Government/ Preferential dues</li> <li>Rest of unsecured Creditor</li> </ul> </li> <li>5. Debenture Holder</li> <li>6. Preferential shareholder.</li> <li>7. Equity shareholder</li> </ol>
<p><b>Section: 83</b> <b>Provisional attachment</b></p>	<p>During Proceedings: officer may hold the properties including bank accounts. [Maximum for 1 year]</p>
<p><b>Section: 85 to 94:</b></p>	<p>Special cases of recovery.</p> <p>[Talks about Recovery from whom????]</p>

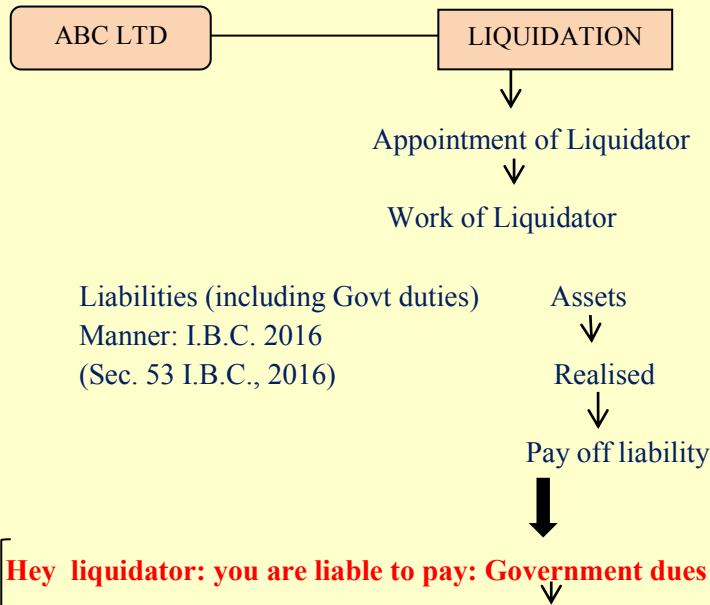
<p><b>SECTION:85</b> <b>Transfer of Going Concern</b></p>	<p><b>Special cases</b></p> <p style="text-align: center;"><b>BUSINESS TRANSFER For: ₹10 Cr.</b></p> <p style="text-align: center;">             Within this period: owner Mr. X              PERIOD: 1         </p> <p style="text-align: center;">             Within this period owner Mr. Y              PERIOD: 2         </p> <p style="text-align: center;">             SERVICE              +              SUPPLY as per Sec 7/8              +              INTRA/INTER Sec: 12/13/7/8 of IGST              +              EXEMPT:S. No 2              +              Computation X              +              TIME OF SUPPLY X         </p> <p style="text-align: right;">             { Business <math>\neq</math> Deemed              Stock <math>\neq</math> Supply }         </p> <p>             Mr. X shall file: Final return U/S 45 - GSTR = 10              ITC shall be Transferred to new ownership: Section: 18 (3)              Registration of Mr. X - Cancel U/S:29, Mr. Y require fresh Register: U/S 22              Both Mr X and Y liable to pay jointly and severally.         </p>
<p><b>SECTION:86</b> <b>Principal and Agents</b></p>	<p style="text-align: center;">             Goods              +              Supply (Even: FOC)              +              Intra/Inter (Sec. 10/11/7/8 of IGST)              +              T/P = ..... T1 –Agent              +              T2 – Principal              No Exemption              +              Valuation under Rule: 29 +30 + 31         </p> <p>RECOVERY from: Principal/Agent/: Both (Jointly &amp; Severally)</p>



**SECTION 87  
Amalgamation,  
Merger**



**SECTION 88  
LIQUIDATION  
OF A  
COMPANY**



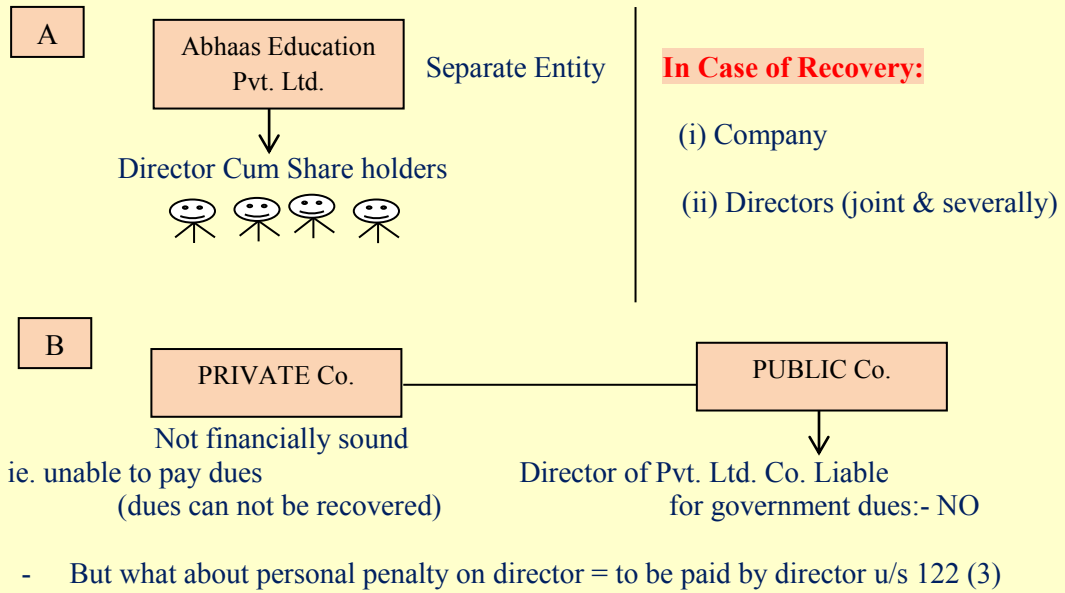
**Hey liquidator: you are liable to pay: Government dues which are preferential dues: sec. 82)**

Accordingly – Hey liquidator – inform to commissioner about his appointment – within 30 days & commissioner will intimate you (liquidator) amount of government dues – within 3 months and make payment to Government

**Q.** What if government dues are not paid – than What to do?  
**Ans:** In case of Pvt. Co. - Director of A Pvt. Co. (jointly/severally)

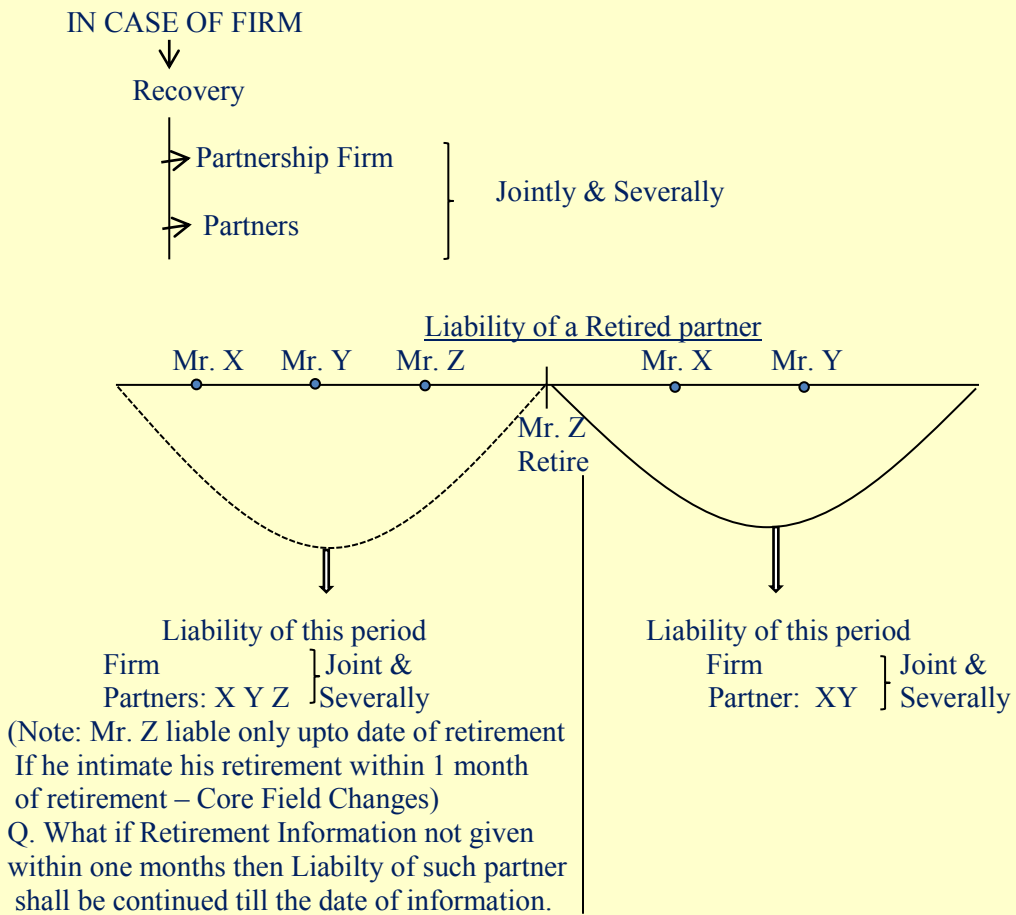
**SECTION 89**

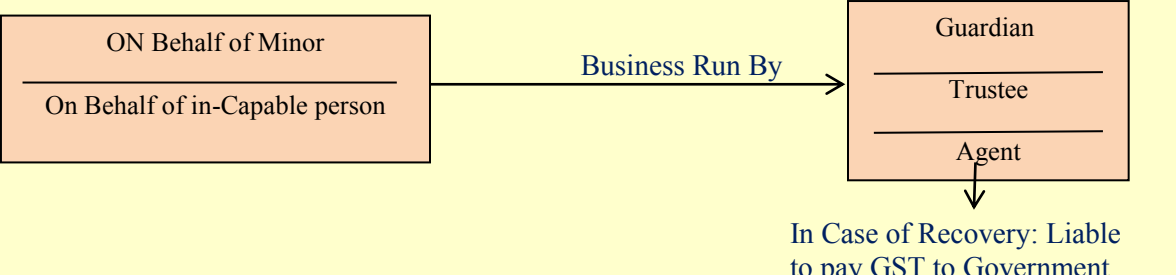
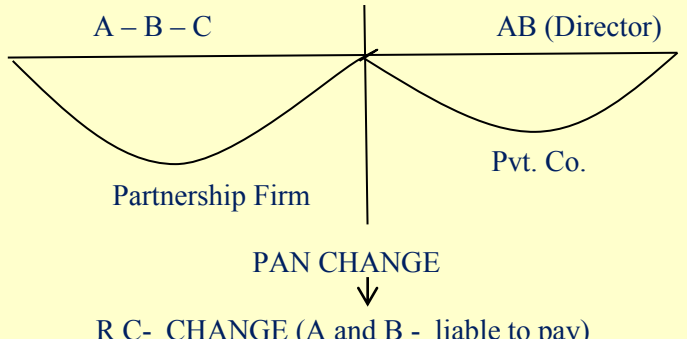
**Liability of Director of a Private Company**



**SECTION 90**

**Firm AND Partner**



<p><b>SECTION 91</b></p>	 <pre> graph TD     A["ON Behalf of Minor On Behalf of in-Capable person"] -- "Business Run By" --&gt; B["Guardian Trustee Agent"]     B --&gt; C["In Case of Recovery: Liable to pay GST to Government"]             </pre>
<p><b>SECTION 92</b></p>	<p>Where any state (HAVELI etc.)- Under Dispute – Matter hand over to “Court of WARD”                  ↓                  Court Appoint: MANAGER                  ↓                  Related to Govt. dues                  Who is liable to pay Govt Dues: Property Manager</p>
<p><b>SECTION 93</b></p>	<p>- In Case of Death of Taxable Person (Mr.X)</p> <ul style="list-style-type: none"> <li>Business Continued: Liable to pay GST “SUCCESSER”</li> <li>Business Closed: Legal Heirs                     <ul style="list-style-type: none"> <li>↓</li> <li>Sale of Estate of Mr. X</li> <li>And pay off Government Dues</li> <li>If Estate of Mr. X Fall short:</li> <li>Personal Assets of Legal heir</li> <li>Can not be used.</li> </ul> </li> </ul> <p>-HUF/AOP/BOI: Karta                  Each Member                  Group of Member (jointly &amp; Severally) liable to pay</p> <p>-Firm Dissolved : Every partner – liable to pay (jointly &amp; Severally) liable to pay.</p> <p>-Guardianship/Trust : Beneficiary – liable to pay</p>
<p><b>SECTION 94</b></p>	<p>(I) AOP/BOI/HUF: Member Individual } Jointly/Severally Liable to Pay</p>
	<p>(II) CHANGE IN constitution of business..</p>  <pre> graph TD     A["A – B – C Partnership Firm"] --&gt; B["AB (Director) Pvt. Co."]     B --&gt; C["PAN CHANGE"]     C --&gt; D["R C- CHANGE (A and B - liable to pay)"]             </pre>

## Legal Text

### Section 73: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts

<b>SCN in Bonafide cases: Along with interest and Penalty</b>	(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than Malafide cases he shall serve notice, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules.
<b>Time of SCN: At least 3 months prior to demand order</b>	(2) The proper officer shall issue the notice <b>at least 3 months prior</b> to the time limit specified in sub-section (10) for issuance of demand order.
<b>Time limit of order: 3 year from furnishing of annual return</b>	(10) The proper officer shall issue the demand order <b>within 3 years from the due date for furnishing of annual return</b> for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 3 years from the date of erroneous refund.
<b>Supplementary SCN: Bonafide cases</b>	(3) Where a notice has been issued for any period, <b>the proper officer may serve a statement</b> , containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1).  (4) The service of such statement shall be deemed to be part of original SCN
<b>OFFER: 1</b> <b>Voluntarily payment with interest: then NO SCN by depatt.</b> <b>(If falls short then issue SCN for balance amount)</b>	(5) The person chargeable with tax may, <b>before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3)</b> , pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.  (6) The proper officer, on receipt of such information, <b>shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3)</b> , in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.  (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, <b>he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short</b> of the amount actually payable.

<p><b>OFFER: 2 if made payment within 30 days of SCN--</b></p> <p><i>Waiver of penalty and all proceedings deemed to be concluded</i></p>	<p>(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within 30 days of issue of show cause notice, <b>no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.</b></p>
<p><b>Demand order: with interest and penalty</b></p>	<p>(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a <b>penalty equivalent to 10% of tax or ₹10,000, whichever is higher</b>, due from such person and issue an order.</p>

(11) **Payment of Penalty:** Notwithstanding anything contained in sub-section (6) or sub-section (8), **penalty under sub-section (9)** shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

### CBIC-20/16/04/2018:

## Leviability of penalty under section 73(11) of the CGST Act.

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

**Clarification:** The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. **It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.**

**Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts**

<p><b>SCN in Malafide cases: Along with interest and Penalty</b></p>	<p>(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised <b>by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax (Malafide cases)</b>, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, <b>requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a</b></p>
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	penalty equivalent to the tax (ie 100%) specified in the notice.
<b>Time of SCN: At least 6 months prior to demand order</b>	(2) The proper officer shall issue the notice under sub-section (1) at least <b>6 months prior</b> to the time limit specified in sub-section (10) for issuance of order.
<b>Supplementary SCN:</b>	(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.  (4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.
<b>OFFER: 1</b> <b>Voluntarily payment with interest: then NO SCN by depatt.</b> <b>(If falls short then issue SCN for balance amount)</b>	(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a <b>penalty equivalent to 15% of such tax</b> on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.  (6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.  (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount <b>which falls short of the amount actually payable.</b>
<b>OFFER: 2 if made payment within 30 days of SCN--</b> <i>Partial waiver of penalty and all proceedings deemed to be concluded</i>	(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a <b>penalty equivalent to 25% of such tax within 30 days of issue of the notice</b> , all proceedings in respect of the said notice shall be deemed to be concluded.
<b>Demand order</b>	(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, <b>determine the amount of tax, interest and penalty due from such person</b>

	and issue an order.
<b>Time limit of order: 5 year from furnishing of annual return</b>	(10) The proper officer shall issue the order under sub-section (9) within a period of <b>5 years from the due date for furnishing of annual return</b> for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.
<b>OFFER: 3 if made payment within 30 days of OIO--</b> <i>Partial waiver of penalty and all proceedings deemed to be concluded</i>	(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to <b>50% of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.</b>

**Explanation:** For the purposes of section 73 and this section,—

- (i) The expression “all proceedings in respect of the said notice” shall NOT include proceedings under section 132;
- (ii) Where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections **122 and 125, ~~129 and 130~~** are deemed to be concluded.

Example: Proceedings Initiated against a company u/s 73/74 and also against directors u/s 122- then suppose offer (2) is availed by company and proceedings against company concluded then proceedings against directors are deemed to be concluded.

## Section 75: General Provisions Relating to Determination of Tax

<b>Stay period: Excluded in computing time limit</b>	(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such <b>stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73</b> or sub-sections (2) and (10) of section 74, as the case may be.
<b>Initially Malafide later on Bonafide: then initially issued notice shall be deemed to be issued to Bonafide person</b>	(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, <b>deeming as if the notice were issued under sub-section (1) of section 73.</b>
<b>Time limit of order: 2 years if issued as per the directions of app. Authority, court etc.</b>	(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, <b>such order shall be issued within two years from the date of communication of the said direction.</b>
<b>Opportunity of being heard</b>	(4) An <b>opportunity of hearing shall be granted</b> where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
<b>Adjournment of proceedings: maximum 3 times to a party.</b>	(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than <b>3 times to a person</b> during the proceedings.
<b>Demand order with reasoning</b>	(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
<b>Demand order can not exceeds the amount specified in the SCN</b>	(7) The amount of tax, <b>interest and penalty demanded in the order shall not be in excess of the amount specified in the notice</b> and no demand shall be confirmed on the grounds other than the grounds specified in the notice.



<b>Modifications in tax amount: affects amount of interest and penalty</b>	(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.
<b>Interest always payable even if not specified in the OIO</b>	(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.
<b>Adjudicating proceedings deemed to be concluded ; if not finalised within 3 year or 5 year</b>	(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within 3 years as provided for in sub-section (10) of section 73 or within 5 years as provided for in sub-section (10) of section 74.
	(11) Not Relevant
<b>Recovery of unpaid amount</b>	<p>(12) Where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.</p> <p><b>Explanation.</b>—For the purposes of this sub-section, the expression “self-assessed tax” shall include</p> <ul style="list-style-type: none"> <li>- The tax payable in respect of details of outward supplies furnished under section 37,</li> <li>- but not included in the return furnished under section 39.</li> </ul> <p><b>Instruction No. 01/2022-GST - CBIC-20/16/05/2021-GST/23:</b> Guidelines for recovery proceedings under the provisions of section 79 of the CGST Act, 2017 in cases covered under explanation to section 75(12) of the CGST Act, 2017</p> <p>There may, however, be some cases where there may be a genuine reason for difference between the details of outward supplies declared in <a href="#">GSTR-1</a> and those declared in <a href="#">GSTR-3B</a>.</p> <p><i>For example:</i> The person may have made a typographical error or may have wrongly reported any detail in <a href="#">GSTR-1</a> or <a href="#">GSTR-3B</a>. Such errors or omissions can be rectified by the said person in a subsequent <a href="#">GSTR-1</a>/<a href="#">GSTR-3B</a>.</p> <p><i>For Example:</i> Where a supply could not be declared by the registered person in <a href="#">GSTR-1</a> of an earlier tax period, though the tax on the same was paid by correctly reporting the said supply in <a href="#">GSTR-3B</a>.</p> <p>The details of such supply may now be reported by the registered person in the <a href="#">GSTR-1</a> of the current tax period. In such cases, there could be a mis-match between <a href="#">GSTR-1</a> and <a href="#">GSTR-3B</a> (liability reported in <a href="#">GSTR-1</a>&gt; tax paid in <a href="#">GSTR-3B</a>) in the current tax period.</p>

Therefore, **in all such cases an opportunity needs to be provided** to the concerned registered person to explain the differences between [GSTR-1](#) and [GSTR-3B](#), if any, and for short payment or non-payment of the amount of self-assessed tax liability, and interest thereon, before any action under [section 79](#) of the Act is taken for recovery of the said amount.

Accordingly, in such cases, the proper officer may **send a communication** (with DIN), to the registered person to pay the amount short paid or not paid, or to explain the reasons for such short payment or non-payment of self-assessed tax, within a reasonable time, as prescribed in the communication.

If, the concerned person is

<p><b>*Able to justify</b> the differences between <a href="#">GSTR-1</a> and <a href="#">GSTR-3B</a>, or is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer, or</p> <p><b>*Pays the amount</b> such short paid or not paid,</p> <p>Then there may not be any requirement to initiate proceedings for recovery under <a href="#">section 79</a>.</p>	<p>However, if the said registered person</p> <p><b>*Fails to reply</b> to the proper officer, or</p> <p><b>*Fails to explain</b> the reasons for such difference/ short payment of tax to the satisfaction of the proper officer or</p> <p><b>*fails to make the payment</b> of such amount short paid or not paid, within the time prescribed in the communication or such further period as may be permitted by the proper officer,</p> <p>then the proceedings for recovery of the said amount as per provisions of <a href="#">section 79</a> may be initiated by the proper officer.</p>
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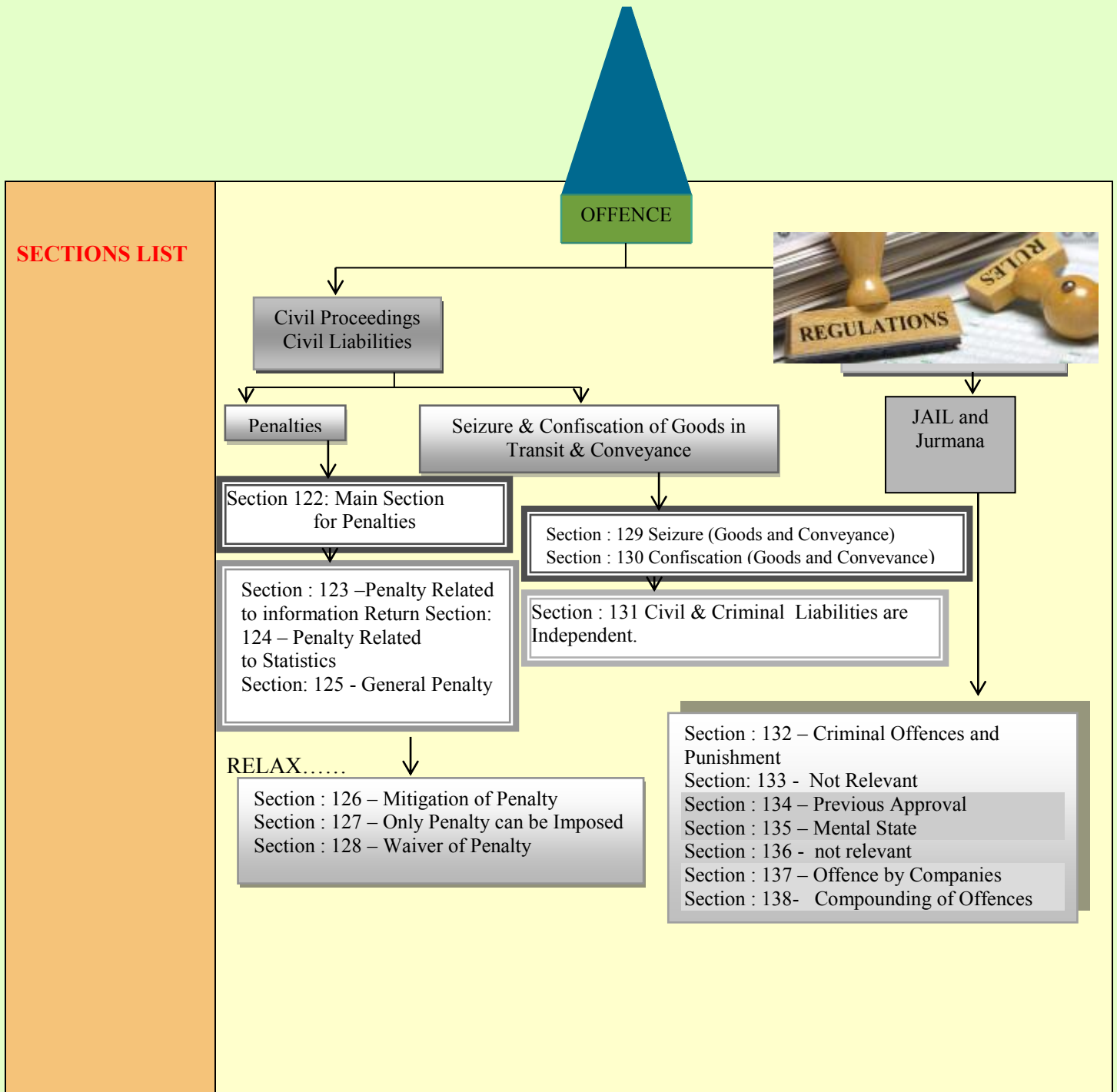
**No double penalty** (13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

**Rule 142: Notice and order for demand of amounts payable under the Act.** Where the person chargeable with tax makes payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in **FORM GST DRC-03** and the **proper officer shall issue an intimation in FORM GST DRC-05** concluding the proceedings in respect of the said notice.

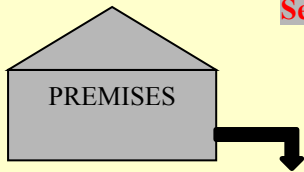
<p><b>Rule 142B:</b> <b>Intimation of certain amounts liable to be recovered under section 79 of the Act.-</b></p>	<p>(1) Where, in accordance with <b>section 75 read with rule 88C, or otherwise</b>, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D, directing the person in default to pay the said amount, along with applicable interest, or, as the case may be the amount of interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in <b>FORM GST PMT-01</b>.</p> <p>(2) The intimation referred to in sub-rule (1) <b>shall be treated as the notice for recovery</b>.</p> <p>(3) Where any amount of tax or interest specified in the intimation referred to in sub-rule (1) <b>remains unpaid</b> on the expiry of the period specified in the said intimation, the proper officer shall proceed to recover the amount that remains unpaid in accordance with the provisions of rule 143 or rule 144 or rule 145 or rule 146 or rule 147 or rule 155 or rule 156 or rule 157 or rule 160.</p>
<p><b>Rule 159:</b> <b>Provisional attachment of property.</b></p>	<p>The Commissioner shall send a copy of the order of attachment in <b>FORM GST DRC-22</b> to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect <b>or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier</b>, and a copy of such order shall also be sent to the person whose property is being attached under section 83</p>

# 20

# PENALTIES



**Section 122:** Main Section for penalties



SECTION : 122(1)

**OFFENCES (By Registered or liable to be Registered person)**

- I** No Invoice/FALSE Invoice/Bogus Invoice :Issued  
Invoice issued with Registration number of another Person,  
Bogus Invoice/false Invoice Received – for Claiming ITC,  
Suppress Turnover,  
E- Way Bill/Bilty etc. Not Issued
- M** Collect Tax/Amount – but not paid even beyond 3 months.  
TDS : Not deducted/Short Deduction/Deducted but not paid.  
TCS: Not Collected/Short collection/Collected but not paid.
- R** Registration: No Registration/Wrong Detail for Registration.
- R** Records: No Records as per Section: 35/False Records/Substitute or Destroy Records.
- R** Refund :Fraudulently claim Refund.
- R** **Return : No provision here- Because of Section : 47**
- ITC** ITC : Avail or Utilise Wrongly  
ITC Taken OR Distribution Wrongly by ISD

**Dispose off :** Dispose off/tamper with any Seized u/s 67 (2)/ Attached goods u/s 83

**Secondary Party:** Any person – supply/transport/store etc. (Knowing that the goods is a “Contraband Goods”)

**Officer :** Obstruct in officer work.

↓

Disputed Amount Involve ie 100 % or ₹ 10,000/-	Whichever is higher
------------------------------------------------------	---------------------

**(1A) Any person**

- **Who retains the benefit of a transaction covered under clauses [Subsection (1)]**
- **(i) [Supply without Invoice]**
- **(ii) [Invoice without Supply]**
- **(vii) [ITC without taking Supply]**
- **(ix) [Wrong distribution of ITC by ISD]**
- at whose instance such transaction is conducted,
- shall be liable to a penalty
- of an amount Equivalent to the tax evaded or nput tax credit availed of or passed on.

(1B) Any electronic commerce operator who—

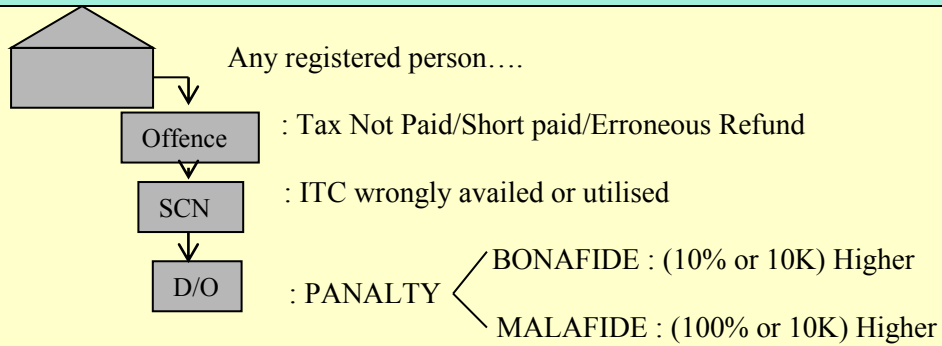
(i) Allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;

(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

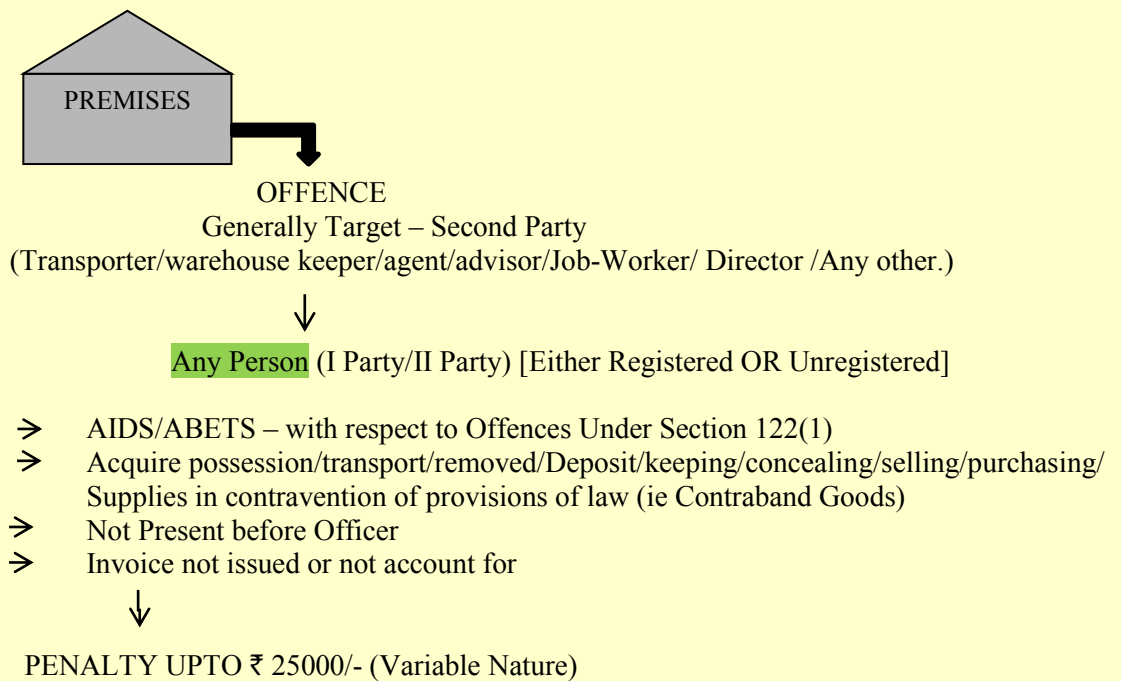
(iii) fails to furnish the correct details in the statement to be furnished under section 52(4) of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

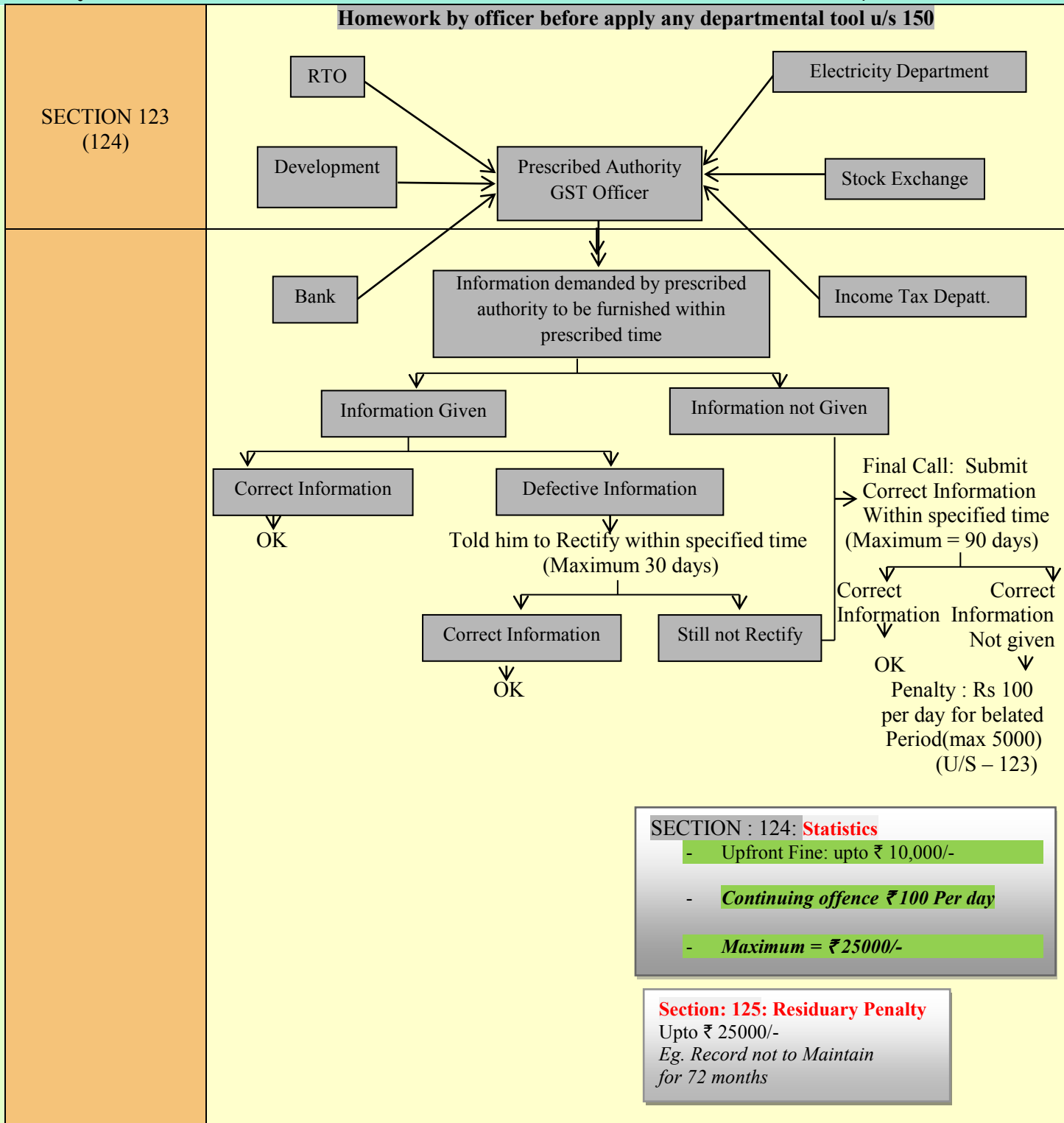
shall be liable to pay a penalty of Rs 10,000, OR an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

SECTION 122(2)



SECTION 122(3)







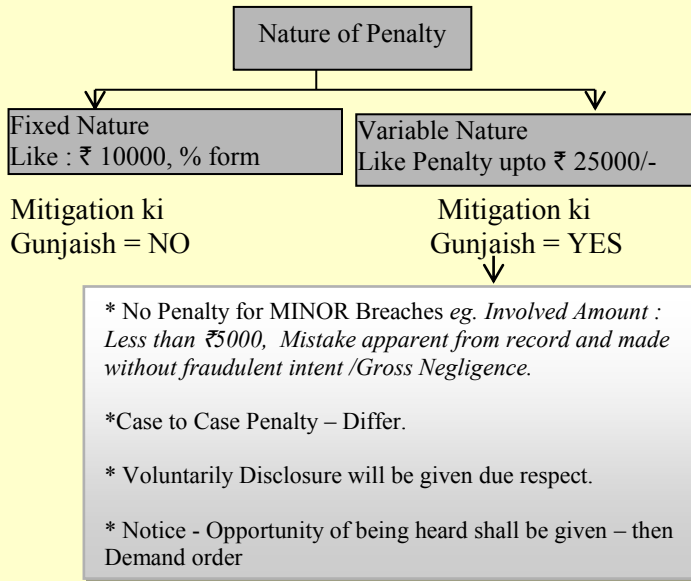
# RELAX



## SECTION : 126 : PENALTY MITIGATE

## SECTION:127 Only Penalty Order can be Made

## SECTION: 128 : Penalty Waive Off

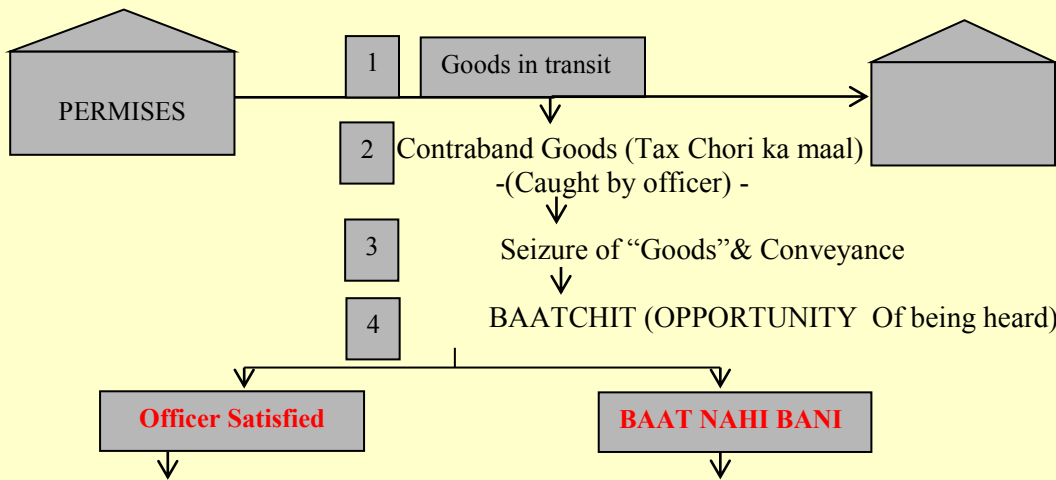


Just a CLARIFICATION-  
**Penalty Order can be Made even no proceedings going on u/s**

- 62/63/64/
- 73/74/
- 129/130

Govt. Power  
↓  
Special Circumstances  
↓  
Penalty Under Section 122/123/125/47  
(waiver fully/partly)

## SEIZURE : GOODS IN TRANSIT CONVEYANCE – SECTION : 129



OK – Release the Goods

Taxable goods

Exempted Goods

Owner come forward to make payment	GST + Penalty: 200% of Tax	Penalty: 2% of Value of Goods OR Rs 25,000 (Whichever is lower)
Owner Not to come forward to make payment	GST + <b>Penalty:</b> 50% of Value of goods OR 200% of Tax Payable [whichever is higher]	Penalty: 5% of Value of goods OR Rs 25,000 (Whichever is lower)

Example: Value Rs. 1,00,000, Rate of GST 18% - Goods Transported without E WAY BILL

Situation	Tax Amount	Penalty
Voluntarily pay	CGST = 9,000	200% of TAX= 18,000
	SGST= 9,000	200% of TAX= 18,000
Order Passed	CGST = 9,000	50% of value of goods = Rs.50,000 200 % of Tax payable = Rs 18,000 [higher = Rs.50,000]
	SGST= 9,000	50% of value of goods = Rs.50,000 200 % of Tax payable = Rs 18,000 [higher = Rs.50,000]

### In Case of EXEMPTED GOODS

Situation	Tax Amount	Penalty
Voluntarily pay	CGST = NIL	2% of Value of Goods OR Rs 25,000 (Whichever is lower) = 1,00,000 * 2% = Rs. 2,000
	SGST= NIL	2% of Value of Goods OR Rs 25,000 (Whichever is lower) = 1,00,000 * 2% = Rs. 2,000
Order Passed	CGST = NIL	5% of Value of Goods OR Rs 25,000 (Whichever is lower) = 1,00,000 * 5% = Rs. 5,000
	SGST= NIL	5% of Value of Goods OR Rs 25,000 (Whichever is lower) = 1,00,000 * 5% = Rs. 5,000

### Notes:

<b>Payment of Dues</b>	Paid all dues and relaxed otherwise confiscation of Goods shall be made.
<b>Release</b>	Goods may be released provisionally on taking a bond.
<b>Who is deemed to be owner of Goods</b>	<ul style="list-style-type: none"> <li>- Where the invoice or any other specified document is accompanying the consignment of goods, <b>then either the consignor or the consignee should be deemed to be the owner.</b></li> <li>- Where the invoice or any other specified document is not accompanying the consignment of goods, then in such cases, the proper officer should determine who should be declared as the owner of the goods.</li> </ul>

### Section 129: Detention, seizure and release of goods and conveyances in transit

Seizure and release on payment of tax and penalty	<p><b>(1) Notwithstanding anything contained in this Act,....</b></p> <p>Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—</p> <p><b>(a) Where the owner of the goods comes forward for payment of such penalty:</b> on payment of penalty equal to 200% of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to 2% of the value of goods or Rs. 25,000, whichever is less,</p> <p><b>(b) Where the owner of the goods does not come forward for payment of such penalty:</b> on payment of penalty equal to 50% of the value of the goods or 200% of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to 5% of the value of goods or Rs.25,000, whichever is less.</p> <p>(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:</p> <p>Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.</p>
Seizure	<p><del>(2) The provisions of section 67(6) shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.</del></p>
Notice and order	<p>(3) The proper officer detaining or seizing goods or conveyance shall issue a notice <b>within 7 days of such detention or seizure</b>, specifying the penalty payable, and thereafter, pass an order within a period of 7 days from the date of service of such notice, for payment of penalty under clause (a) or (b) of subsection (1).</p>
Opportunity of being heard	<p>(4) No <del>tax, interest or</del> penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.</p>

<p>Pay Penalty karo Relax</p>	<p>(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) <b>shall be deemed to be concluded.</b></p>
<p>Confiscation</p>	<p>(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) <b>within 15 days</b> from the date of receipt of the copy of the order passed under sub-section (3), <b>the goods or conveyance so detained or seized</b> shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3).</p> <p>Provided that the conveyance shall be released on payment by the transporter of penalty under <b>sub-section (3) or Rs.1 lakh, whichever is less.</b></p> <p>Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of 15 days may be reduced by the proper officer.</p>

**SECTION 130: CONFISCATION OF SEIZED GOODS**

Reason of contravention:

- \* SUPPLIES OR RECEIVE GOODS IN CONTRAVENTION WITH INTENT TO EVADE TAX
- \* DOES NOT ACCOUNT FOR TAXABLE GOODS
- \* SUPPLY GOODS WITHOUT HAVING REGISTRATION
- \* CONTRAVENTING ANY OTHER PROVISION WITH INTENT TO EVADE TAX
- \* KNOWINGLY USE ANY CONVEYANCE FOR CONTRABANDED GOODS



“WHERE CONFISCATION is Adjudged”

OPTION to pay Redemption Fine

**“IN LIEU OF CONFISCATION”**

OPTION EXERCISE  
with- in 3 months

OPTION NOT EXERCISE

Goods & Conveyance: Release on Payment of **Redemption fine.**

- Confiscation of Goods
- After that Govt may put the goods in auction / museum

**Maximum Redemption fine For Goods:**

= Market Price of Goods – GST

*(As Market Price = Value of Goods + GST)*

**Maximum Redemption fine For Conveyance:**

= Equal to Tax Evasion.

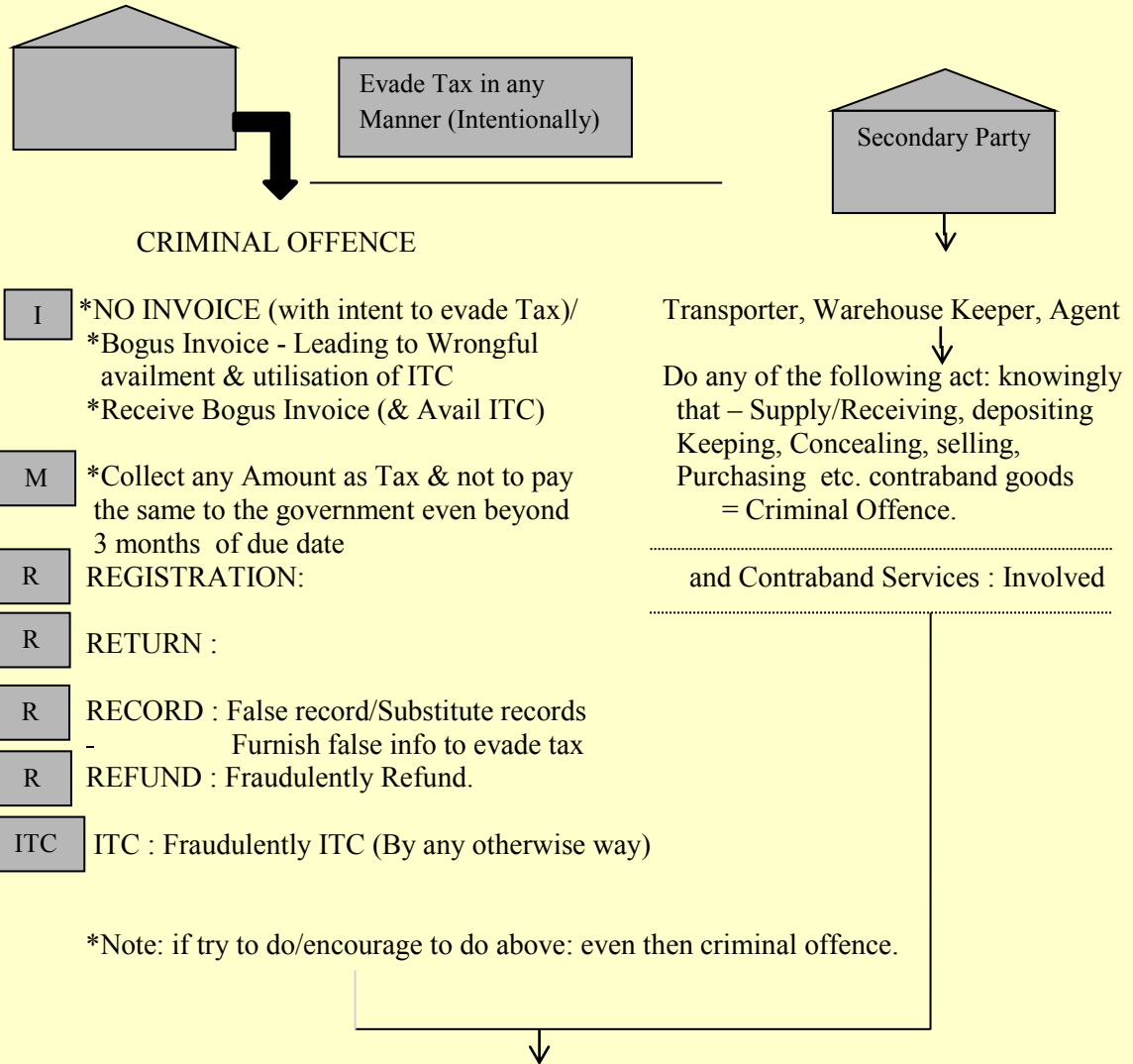
## Section 130: Confiscation of goods or conveyances and levy of penalty

<p>Circumstances for confiscation of GOODS</p>	<p>(1) <b>WHERE</b> any person-</p> <ul style="list-style-type: none"> <li>(i) <b>supplies or receives any GOODS</b> in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or</li> <li>(ii) <b>does not account for any GOODS</b> on which he is liable to pay tax under this Act; or</li> <li>(iii) supplies any <b>GOODS</b> liable to tax under this Act <b>without having applied for registration;</b> or</li> <li>(iv) <b>contravenes any of the provisions</b> of this Act or the rules made thereunder <b>with intent to evade payment of tax;</b> or</li> <li>(v) <b>uses any conveyance</b> as a means of transport for carriage of <b>GOODS</b> in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,</li> </ul> <p><b>then, all such <u>goods or conveyances</u> shall be liable to confiscation and the person shall be liable to penalty under section 122.</b></p>
<p><b>Redemption Fine</b></p>	<p>(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:</p> <p><u>Provided that</u> such fine leviable <b>shall not exceed the market value of the goods confiscated, less the tax chargeable</b> thereon:</p> <p><u>Provided further that</u> the <b>aggregate of such fine and penalty</b> leviable shall not be less than the <b>penalty equal to 100% of the tax payable on such goods.</b></p> <p><u>Provided also that</u> where any such conveyance is used for the carriage of the goods or passengers for hire, <b>the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods</b> being transported thereon.</p>
<p>Tax, Penalty and other charges payable along with Redemption Fine</p>	<p>Omitted</p>

Opportunity of being heard	(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an <b>opportunity of being heard</b> .
Ownership of goods transfer to government	(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance <b>shall thereupon vest in the Government</b> .
Take possession over the goods by PO (assisted by police officer)	(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.
Dispose off the goods	(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and <b>after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation</b> , dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.
<b>Section 131: Civil and criminal proceedings/liabilities both are independent.</b>	



**SECTION 132 and 133: Punishment for certain offences**



**SECTION : 132 OFFENCES and Punishment**

FREQUENCY	DISPUTED AMOUNT INVOLVED		PUNISHMENT
	First Time	1Cr. To 2 Cr. [only one case where NO Suply but Issue Invoice] 2Cr. To 5 Cr. 5 Cr. To ∞	
Subsequent time	Any Amont	6 Month to 5 Year (with fine)	

**NOTE (1): If Offence is to furnish false information to evade tax - Jail Upto 6 Month**

**NOTE (2): 6 Month SAJA (imprisonment) can be reduced in special cases which will be decided by the Court.**

**NOTE (3) IN CASE OF FIRST 4 OFFENCES -**

- Arrest Window opened After 2 Crore
- Non Bailable and cognizable window opened After 5 CRORE



**SECTION :122 Vs SECTION 132**

BASIS	CIVIL OFFENCES	CRIMINAL OFFENCES
1. List of Offence	Section : 122	Section : 132 [9 Offences]
2. SAJA	Penalty, Confiscation, ie. Civil Liability	Jail + Court Fine (criminal Liability)
3. Imposed BY :	GST Officer	Court (Magistrate)
4. Prior Approval of Senior Officer is Required to Initiate. -	NO	Prior Approval of Senior GST Officer (Commissioner) required [Section : 134]
5. Mental State	Any mental state (Guilty mind/Otherwise mind)	Guilty mind must – & Court presumed the status of guilty mind Burden of Proof of NON Existence of Guilty mind is on the Accused [Section: 135]

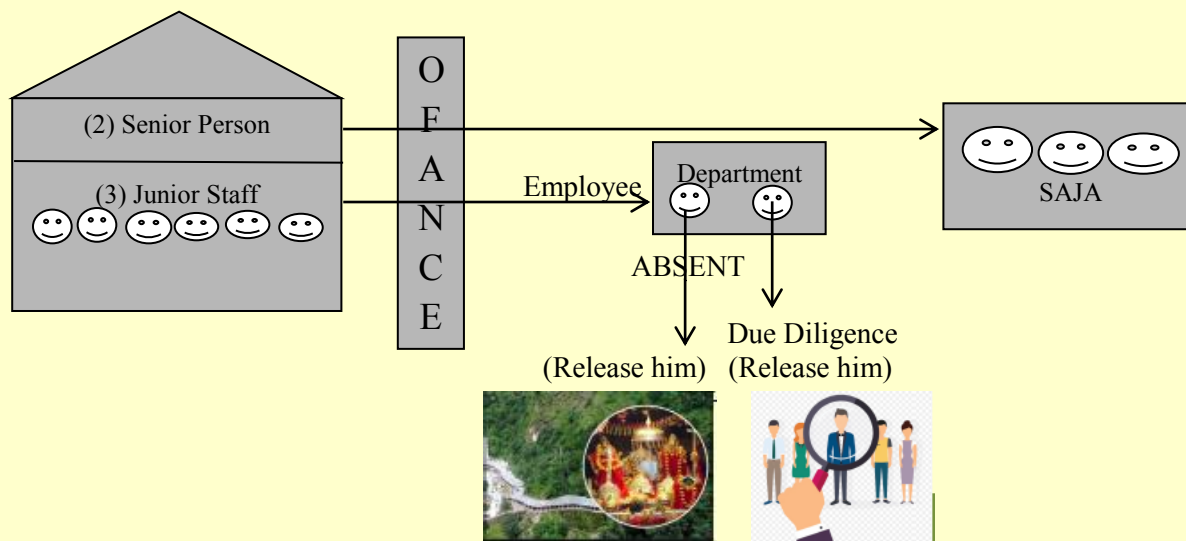
**Section 134: Previous sanction of commissioner:** No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

**Section: 135 Presumption of culpable Mental State:** In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

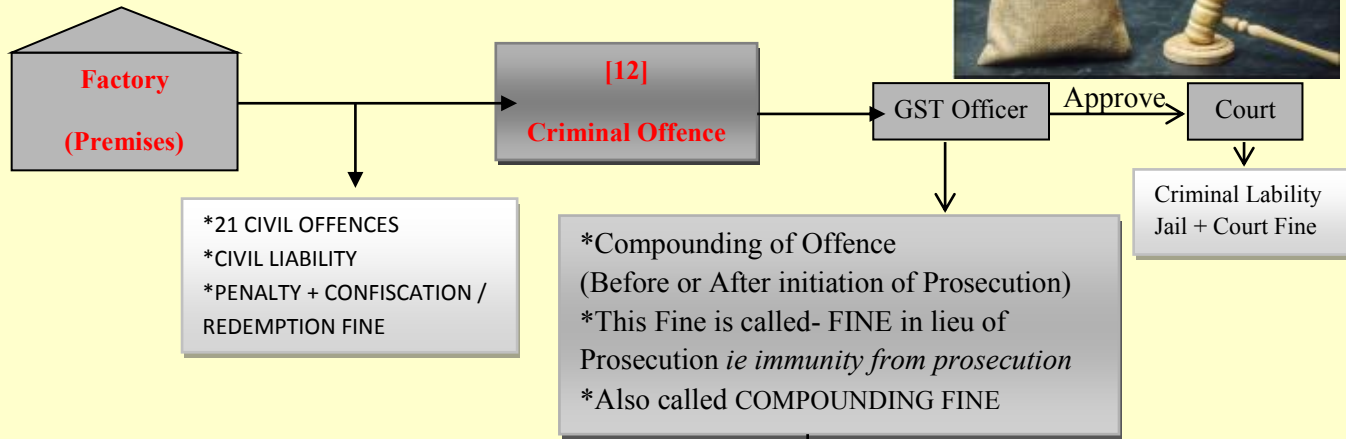
**Section 136: NOT RELEVANT**

**SECTION: 137 OFFENCES by COMPANIES/FIRMS/HUF/AOP**

(1) Company etc. par Case CHALEGA AND



**SECTION 138: Compounding of Offences**



NO - COMPOUNDING	COMPOUNDING - ONCE IN LIFE TIME	ALLOWED
IN CASE WHERE NO SUPPLY IS MADE BUT INVOICE ISSUED.	IN CASE WHERE COMPOUNDING IS ALREADY ONCE IN ANY CASE THEN AGAIN IT WILL NOT BE ALLOWED.	IN SPECIFIED CASES CASES

**Compounding Amount:**

Minimum: 25% of tax  
Maximum: 100% of Tax

S. No.	Offence	Compounding amount if offence is of Rs. 5 crore plus	Compounding amount if offence is of Rs 2 crore plus to 5 crore
1	No Bill but supply made	50% to 75%	40% to 60%
2	Book ITC where NO Bill or NO supply		
3	Collect an amount as tax but Not to paid even beyond 3 months of due date.		
4	Otherwise way evade tax or claim erroneous refund.	25%	25%
5	False or substitute records or furnish false information.		
6	Anyway deals with contraband Goods		
7	Anyway deals with contraband services		
8	Attempt to commit the offences or abets above offences.		

1. Compounding is allowed only after payment of tax, interest, Penalty.
2. Pay above dues and compounding fee and have relax
3. Such compounding does not affect proceedings under any other law

DO NOT forget :

NOTES

PARTICULARS	For Goods		For TRUCK
PENALTY u/s 129	<u>Before D/O :</u>	<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <span style="border: 1px solid red; border-radius: 50%; padding: 2px;">T</span>            200% of TAX         </div> <div style="text-align: center;"> <span style="border: 1px solid red; border-radius: 50%; padding: 2px;">E</span>            2% of value of Goods or 25000 (Lower)         </div> </div>	PENALTY AMT or for owner of goods XXX (or) Rs 100000 XXX (Lower) i.e. max. penalty = 100000/-
Redemption Fine u/s 130	<u>After D/O :</u>	200% of TAX or 50% of value of Goods (HIGHER)	<u>Red. Fine for TRUCK</u> = TAX EVASION Amt. =
USELESS note	make a total of Above (penalty + Red. fine) XXX or <span style="border: 1px solid red; border-radius: 50%; padding: 5px; display: inline-block;">100%</span> of TAX EVASION (whichever is HIGHER total will be payable FINALLY		—



SECTION 132 : USE of **g** criminal offences  
 ; NATURE thereof.  
 ; PUNISHMENT thereof.  
 (Civil offence ≠ Criminal offence)  
 (Criminal offence = Civil offence)

SEC: 132(1) ANY PERSON who commit  
 clause to commit  
 Beneficial.

- ③ Angle [ (a) NO Bill (BUT supply made. ④ अपेक्षित)  
 (b) NO supply (BUT Bill issued)  
 ② Angle. [ (c) BOOK ITC  $\begin{cases} \text{NO Bill Recd (a)} \\ \text{NO supply Recd (b)} \end{cases}$   
 ③ [ (d) collect an amount as TAX & NOT to pay even beyond 3 MONTHS of TD

NATURE/INTENSITY		
5cr <sup>+</sup>	<b>HOT</b> Cognizable* NON Bailable.	*A person can be arrested WITHOUT ARREST WARRANT vs: 69 & Produce before magistrate within 24 HOUR
2cr-5cr	<b>Cool</b> (also) NON Cognizable Bailable	ARREST vs: 69 WITH ARREST WARRANT
1cr <sup>+</sup>	<b>Cool</b>	NO ARREST

- Evade  
 (e) otherwise way evade TAX or claim REFUND fraudulently  
FALSE  
 (f) keep = FALSE / substitute records.  
produce = FALSE INFO. / DOC. to EVADE TAX  
 (Hi) ~~(g)~~ (b) (b) (b) (b)  
 (h) Goods : ANY way Deals with contrabanned goods  
 (i) Services : ANY way Deals with contrabanned services  
~~(j)~~  
~~(k)~~  
 (l) Attempt to commit above offences.

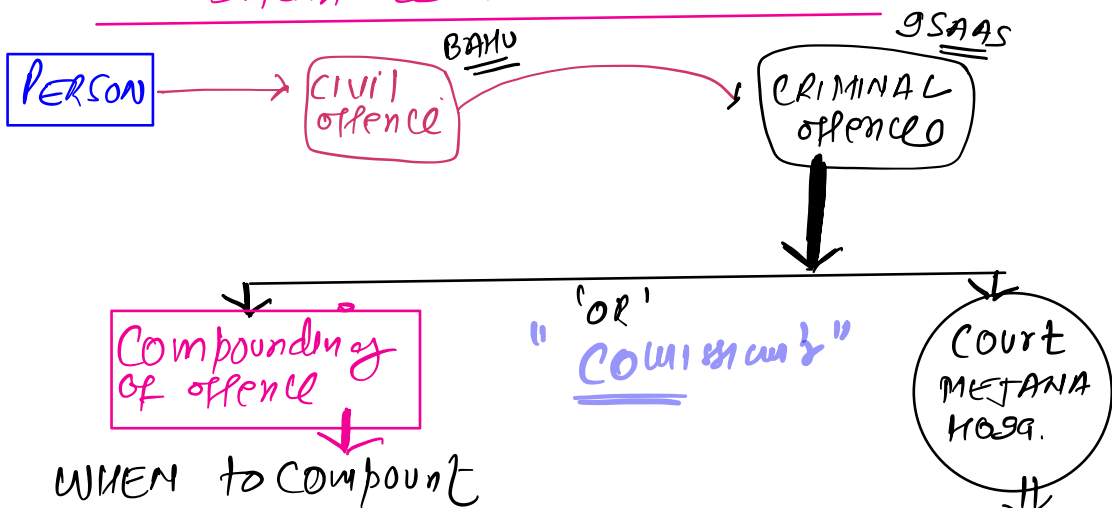
ALWAYS COOL  
 i.e. NON COGNIZABLE & BAILABLE.  
NO ARREST

NOTES  
PUNISHMENT

Particulars	Value	Punishment
Section: 132(1)(i) ✓	5 cr <sup>+</sup>	6M to 5 years (with fine)
Section: 132(1)(ii) ✓	2 cr <sup>+</sup> to 5 cr	6M to 3 years (with fine)
(b) Section: 132(1)(iii) With respect to only one offence. Under clause 'b' i.e. NO SUPPLY, BUT Bill ISSUED (Bill PARCHE KA KAM)	1 cr <sup>+</sup> to 2 cr <sup>+</sup>	6M to 1 year with fine
Section: 132(1)(iv) With respect to power NO 'f' only i.e. "FASLE Records etc"	- NA -	Upto 6 months with or without fine
Section: 132(2)	Repeat offence (ANY value)	(5) - TOP CLASS 5 6M to 5 years with fine

Notes IMPRISONMENT of 6 months  
 Special cases me reduce.  
 KIYA JA SAKTA HAI.

SECTION: 138 : Compounding of offences is fine in lieu of prosecution is PAISE LEKAR APRADHO PAR PARDA DAALNA is PAISE LEKAR COURT SE BACHA LENA



- WHEN to compound
- + Before prosecution : **YES**
  - + DURING the prosecution : **YES**
  - + AFTER prosecution is AFTER COURT DECISION : **NO**

HOW MANY TIME:

- + Sec. 132(1)(b) : GHINAUNA Kadm is "NDSupply" NO Compounding
- + Any other offence : ONCE in life time
- + Non-fide CASE NOT ALLOWED

Notes  
 compounding benefit can be taken only after : payment of TAX INT penalty compounding fee

Compound Fee  
 (minimum = 25% OF TAX)  
 (maximum = 100% OF TAX)

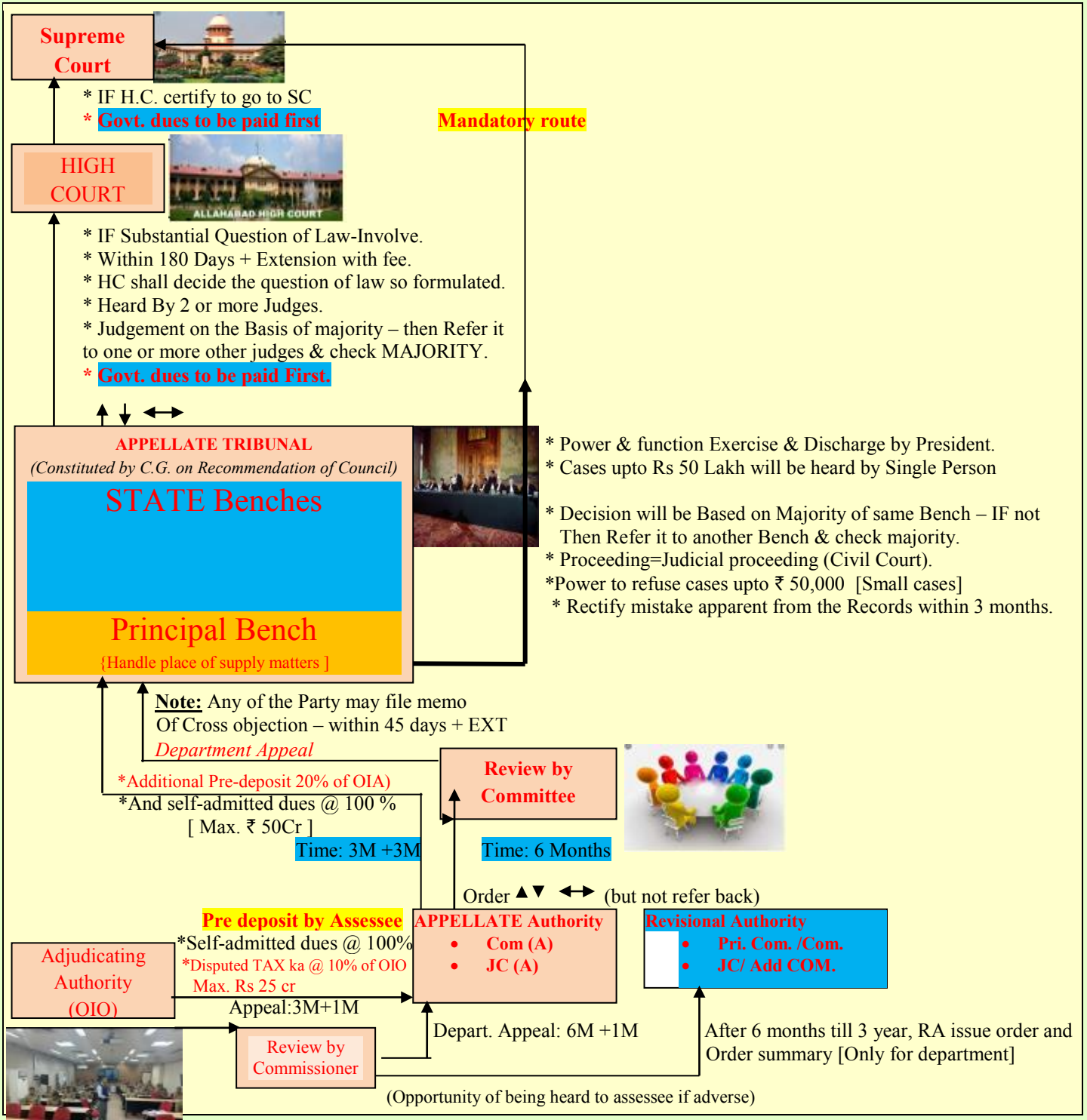
Rule 3 162

SN	offence	Value	Fee
(i)	axcd	500+	50-75%
(ii)	axcde	200-500	40/100%
(iii)	IN ALL OTHER CASES		25%

NOTE: IF FALL IN MORE THEN ONE CATEGORY THEN = HIGHER FEES

# 21

# APPEALS



## SOME GENERAL NOTES RELATED TO APPEAL

### PLACE OF SUPPLY MATTERS:

- Power to decide place of supply only with Central Government as per article no 269 A of constitution of India so place of supply provisions given under IGST act from section 7 to section 14.
- Advance ruling authority which is an state level authority cannot take question related to place of supply however for this National advance ruling authority has been constituted but not effective yet.
- Under appeal State Bench/Area bench cannot entertain the matters related to place of supply so appeal related to POS will go with National appellate tribunal or regional appellate tribunal and further moved to supreme court not to High court because High court has limited jurisdiction whereas national appellate tribunal has jurisdiction @ all over India,
- So further appeal will be filed with supreme court only

### Concept of Pre Deposit:

#### Example

Situation	Value	Rate	GST
Liability on the basis of self- assessment	10,00,000	12%	1,20,000 (Paid)
Liability Re-assessed by officer	20,00,000	18%	3,60,000
Differential amount demanded	-	-	2,40,000

### Reaction of Taxpayer over demand may be.....

Sn	Particulars	Total additional demand	Additional demand Admitted	Disputed in additional demand
(1)	Accept the rate but not the value $[10,00,000 * 18\% = 1,80,000]$ Already paid = 1,20,000 Balance admitted = 60,000	2,40,000	60,000	1,80,000
(2)	Accept the value but not the rate $[20,00,000 * 12\% = 2,40,000]$ Already paid = 1,20,000 Balance admitted = 1,20,000	2,40,000	1,20,000	1,20,000
(3)	Neither to accept the value nor the rate	2,40,000	Nil	2,40,000



For filing the appeal	-	Pay Tax Interest Penalty (Full amount as admitted)	10% of TAX amount Or Rs. 50 cr (25 for CGST and 25 for SGST)  (Whichever is lower)
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### Now at outcome of the appeal –

- if taxpayer won the case
- the amount of pre-deposit shall be refunded u/s 54 and application will be made in RFD 01
- But interest calculation will be made under section 115 from the date of pre-deposit and not under section 56 from 61<sup>st</sup> day.

### Special provision in case of appeal to high court or supreme court

In case of filing of appeal to high court or supreme court instead of pre-deposit the taxpayer liable to PAY full amount (admitted and disputed) and if he won the case refund application shall be filed u/s 54 and interest calculation shall be made from 61<sup>st</sup> day u/s 56

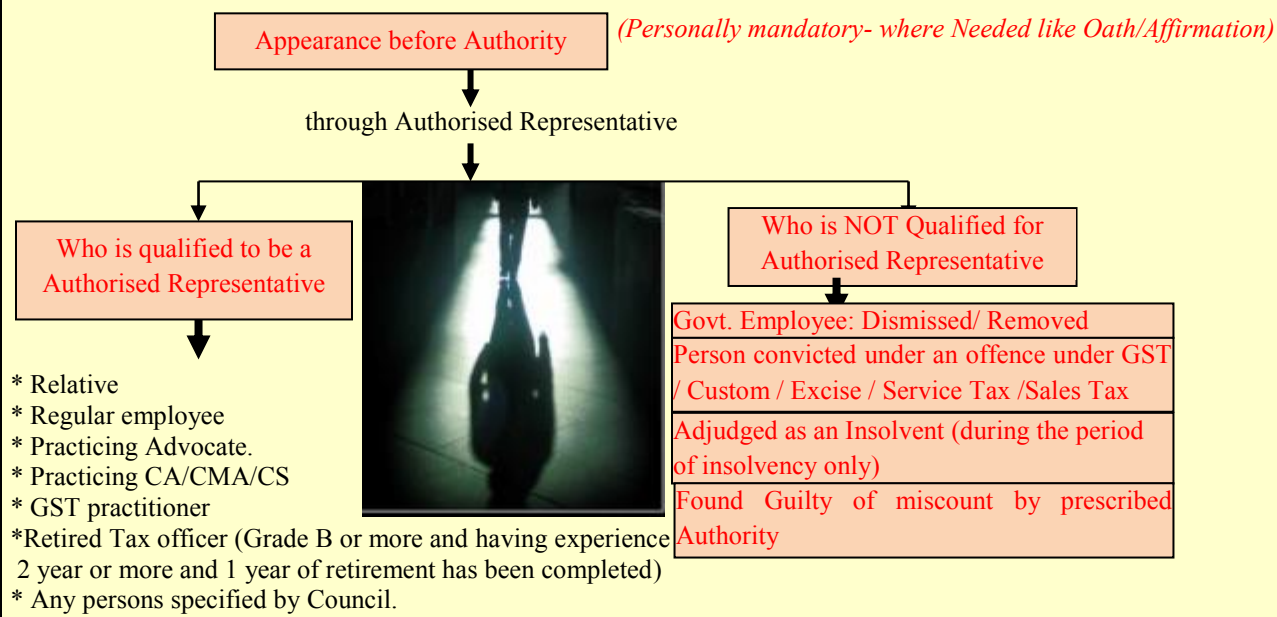
<b>OPPORTUNITY</b>	OPPORTUNITY OF BEING HEARD SHALL BE GIVEN
<b>ORDER TYPE</b>	EVERY ORDER WILL BE WRITTEN AND DESCRIPTIVE & TO BE COMMUNICATED TO CONCERNED PERSONS.
<b>ADJOURNMENT</b>	MAXIMUM 3 TIMES TO A PARTY.
<b>GROUND IN APPEAL</b>	IN APPEAL @ FIRST APPELLATE AUTHORITY CAN BE TAKEN UP EVEN IF ALREADY NOT MENTIONED IN GROUNDS OF APPEAL
<b>NO FEES</b>	FOR MEMORANDUM OF CROSS OBJECTION & DEPARTMENTAL APPEAL.
<b>STAY PERIOD</b>	TO BE EXCLUDED IN COMPUTING THE PERIOD (STAY ON RECOVERY GRANTED ON FILING OF APPEAL/PRE-DEPOSIT OF DEMAND)
<b>INTEREST</b>	ON PRE-DEPOSIT: FROM PAYMENT DATE TO REFUND DATE @6% PA.
<b>COMMUNICATION</b>	ORDER OF AUTHORITY/TRIBUNAL/COURT SHALL BE COMMUNICATED TO CONCERNED PERSON.

<b>NON-FILING</b>	<b>OF DEPARTMENTAL APPEAL – IN SMALL CASES TO PROTECT THE INTEREST OF REVENUE.</b>
<b>NON-FILING OF APPEAL AGAINST FOLLOWING.....</b>	<p>(A) <b>CHARGE T/F:</b> AN ORDER OF THE COMMISSIONER OR OTHER AUTHORITY EMPOWERED TO DIRECT TRANSFER OF PROCEEDINGS FROM ONE OFFICER TO ANOTHER OFFICER; OR</p> <p>(B) <b>SEIZURE OF BOOKS:</b> AN ORDER PERTAINING TO THE SEIZURE OR RETENTION OF BOOKS OF ACCOUNT, REGISTER AND OTHER DOCUMENTS; OR</p> <p>(C) <b>PROSECUTION ORDER:</b> AN ORDER SANCTIONING PROSECUTION UNDER THIS ACT; OR</p> <p>(D) <b>PAYMENT IN INSTALLMENT:</b> AN ORDER PASSED UNDER SECTION 80 [PAYMENT OF TAX AND OTHER AMOUNT IN INSTALMENTS.</p>
<b>BOUNDING</b>	<b>EVERY ORDER PASSED UNDER THIS CHAPTER WILL BOUND BOTH THE PARTIES</b>
<b>FEEES</b>	<b>FEEES FOR RECTIFICATION OF MISTAKE/RESTORATION OF APPEAL @ APPELLATE TRIBUNAL :: FEEES ₹ 1000 TO ₹ 25,000</b>

**Memorandum of Cross Objection: (it is a cross appeal having attacking nature)**

1. On receipt of notice that an appeal has been preferred under this section,
2. the party against whom the appeal has been preferred may,
3. file, within 45 days of the receipt of notice, a memorandum of cross-objections,
4. against any part of the order appealed against and
5. such memorandum shall be disposed of by the Appellate Tribunal,
6. as if it were an appeal presented within the time specified in sub-section (1).

**Authorised Representative**



**SECTION 120: NON Filing of Departmental Appeal**

By taking power from Section:120 board has issued a circular to fix Monetary limit for non-filing of Departmental Appeal.

In other words: **monetary limit for filing Departmental appeal to .....**

SC : ₹ 200 Lakh or More.

HC : ₹ 100 Lakh or More.

AT : ₹ 50 Lakh or More

[ ie. in Small Value CASE –  
Department cannot go for Appeal ]

**CRUX of Section : 120**

1. Board (CBIC) has power to issue circulars to fix monetary limit for NON filing of Department Appeal.
2. NON filing of Appeal by Department (Due to Small Cases)can not mean that – Department can not go for appeal in case of other Assessee.
3. TAKE CARE : Appellate Tribunal/HC/SC/  
Please take care

**CASE 1:** (i) An issue arises in case of Mr. A & Mr. A file an Appeal to AA (Amount Involve = ₹ 52 Lakh)

SC

↑  
HC

↑  
AT

↑  
AA

(iii) Department: **DOES NOT** – Go for Appeal.  
(iv) It means Department is agree on decision: Yes

(ii) & Decision of AA not in favour of department

(v) Later on in respect of other assessee department Want to go for appeal (Case Value : 52 lakh.)

Can Department Go?

NO : 2010 – SC : Bal pharma industries.  
2012 – SC : Tikitar Industries.

**CASE 2:** (i) An issue arises in case of Mr. X & Mr. X file on Appeal to AA (Amount Involve = ₹ 4 Lakh)

SC

↑  
HC

↑  
AT

↑  
AA

(iii) Department: **CAN NOT** – Go for Appeal.  
(iv) It means department accept the decision: NO

(ii) & Decision of AA not in favour of department

(v) Later on in respect of other assessee department want to go for appeal (Case Value : 53 lakh.)

Can the Department can go for appeal? YES

**Differences between both types of Appeal**

Basis	Appeal by taxpayer	Appeal by department
Weather to file an appeal or not	To be decided as per his own sense	To be decided by commissioner
Form of appeal	APL 01	APL 03
Pre-deposit or PAY off	YES	No
Appeal Fees	YES	No
Time limit of appeal	First stage appeal: 3 + 1 month Second stage appeal: 3+3 months	First stage appeal: 6 + 1 month Second stage appeal: 6 months
Revision possible	No	Yes
Non filing Restriction	No	Yes

## Section 107: Appeals to Appellate Authority

<b>Appeal by Assessee</b> <i>(against order of Adjudicating Authority)</i>	<p>(1) Any person aggrieved by any decision or order passed under this Act or the SGST Act or the UTGST Act <b>by an adjudicating authority</b> may appeal to such Appellate Authority <b>within 3 months</b> from the date on which the said decision or order is communicated to such person.</p>
<b>Departmental Appeal</b> <i>(against order of Adjudicating Authority)</i>	<p>(2) The <b>Commissioner may, on his own motion, or upon request from the Commissioner</b>, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the SGST or the UTGST Act, <b>for the purpose of as to <u>the legality or propriety</u></b>, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision or order.</p> <p>(3) Where, <b>the authorised officer makes an application to the Appellate Authority</b>, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority.</p>
<b>Extension in Time Limit for filing Appeal by 1 Month</b>	<p>(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal <b>within the aforesaid period of 3 months or 6 months</b>, as the case may be, allow it to be presented <b>within a further period of 1 month</b>.</p>
<b>Appeal in prescribed manner</b>	<p>(5) Every appeal under this section shall be in such form and <b>shall be verified in such manner as may be prescribed</b>.</p>
<b>Precondition to file Appeal: Payment of dues</b>	<p>(6) <b>No appeal shall be filed</b> under sub-section (1), unless the appellant has paid-</p> <p>(a) <b>in full</b>, such amount, as is admitted by him; and</p> <p>(b) a sum <b>equal to 10% of the remaining amount of tax</b> in dispute arising from the said order <b>subject to a maximum of ₹25 crore</b>.</p> <p>Provided that no appeal shall be filed against an order [Penalty Order] under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.</p>
<b>Stay on Recovery</b>	<p>(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the <b>balance amount shall be deemed to be stayed</b>.</p>
<b>Opportunity of being heard</b>	<p>(8) The Appellate Authority shall give an opportunity to the appellant of being heard.</p>

<p>Adjournment maximum 3 times to a party</p>	<p>(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:</p> <p><i>however no such adjournment shall be granted more than 3 times to a party during hearing of the appeal.</i></p>
<p>AA allow on the grounds which are not already in “Grounds of appeal”</p>	<p>(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that it was not wilful or unreasonable.</p>
<p>Order of Appellate Authority</p>	<p>(11) The Appellate Authority shall, pass such order, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:</p> <p><u>however</u> an order enhancing demand shall be passed only after the appellant has been given a reasonable opportunity of showing cause against the proposed order:</p>
<p>Order in writing and descriptive</p>	<p>(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.</p>
<p>Time limit of appellate order (Not Mandatory)</p>	<p>(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:</p> <p><u>Stay period excluded:</u> Where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of 1 year.</p>
<p>Communication of Order to appellant, Respondent, adjudicating Authority and to senior authority</p>	<p>(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.</p> <p>(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.</p>
<p>Finality of order</p>	<p>(16) Every order passed under this section shall be final and binding on the parties.</p> <p>[But subject to the provisions of: section 108 or section 113 or section 117 or section 118]</p>

## Section 108: Powers of Revisional Authority

Power of Revisional Authority	<p>(1) Subject to the provisions of section 121 and any rules made thereunder,</p> <ul style="list-style-type: none"> <li>▪ the Revisional Authority may, <b>on his own motion, or upon information received by him or on request from the Commissioner</b> of State tax, or the Commissioner of Union territory tax,</li> <li>▪ <b>call for and examine the record of any proceedings</b>, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India,</li> <li>▪ he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, <b>pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.</b></li> </ul>
No power of Revisional Authority to entertain	<p>(2) The Revisional Authority shall not exercise any power under sub-section (1), if-</p> <p>(a) the <b>order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or</b></p> <p>(b) the period specified under section 107(2) has not yet expired <b>or more than 3 years have expired</b> after the passing of the decision or order sought to be revised; or</p>
Binding nature of order	<p>(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.</p>
	<p>(4) Not relevant</p>
Stay Period Excluded	<p>(5) Where the issuance of an order under sub-section (1) <b>is stayed by the order of a court or Appellate Tribunal</b>, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).</p>

## Section 109: Constitution of Appellate Tribunal and Benches thereof

<b>GST Appellate Tribunal by CG</b>	(1) The Government shall, 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.
<b>Power Exercised by Principal and State Bench</b>	(2) The jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under sub-section (3) and sub-section (4).
<b>Principal Bench [New Delhi]</b>	(3) The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of the President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State).
<b>State Benches</b>	(4) On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).
<b>Appeal against Order Of AA /RA</b>	(5) The Principal Bench and the State Bench shall hear appeals against the orders passed by the Appellate Authority or the Revisional Authority: Provided that the cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.
<b>Case Transfer</b>	(6) The President shall, from time to time, by a general or special order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another.
<b>Vice-President of State Benches</b>	(7) The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.
<b>Cases upto 50 lakh Heard by Single Member</b>	(8) Appeals, where the tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed Rs. 50 lakh and which does not involve any question of law may, with the approval of the President, be heard by a single Member, and in all other cases, shall be heard together by one Judicial Member and one Technical Member.

<p><b>In case of difference in opinion</b></p>	<p>(9) If, after hearing the case, <b>the Members differ in their opinion</b> on any point or points, such Member shall state the point or points on which they differ, and <b>the President shall</b> refer such case for hearing,—</p> <p>(a) Where the appeal was originally heard by Members of a State Bench, to <b>another Member of a State Bench within the State</b> or, where no such other State Bench is available within the State, <b>to a Member of a State Bench in another State;</b></p> <p>(b) Where the appeal was originally heard by Members of the Principal Bench, <b>to another Member from the Principal Bench</b> or, where no such other Member is available, <b>to a Member of any State Bench,</b></p> <p>and such point or points shall be decided according to the <b>majority opinion</b> including the opinion of the Members who first heard the case.</p>
<p><b>Transfer of members</b></p>	<p>(10) The <b>Government may,</b> in consultation with the President, for the administrative efficiency, transfer Members <b>from one Bench to another Bench:</b></p> <p>Provided that a <b>Technical Member (State) of a State Bench may be transferred to a State Bench only of the same State</b> in which he was originally appointed, in consultation with the State Government.</p>
<p><b>No act or proceedings shall be invalid</b></p>	<p>(11) 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.</p>

**Section 110: President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc. [NOT RELEVANT]**

**Section 111: Procedure before Appellate Tribunal [NOT RELEVANT]**

## Section 112: Appeals to Appellate Tribunal

<p>Appeal by assessee against order passed under section 107/108 within 3 months</p>	<p>(1) <b>Any person aggrieved by an order passed against him under section 107 or 108</b> of this Act or the SGST Act or the UTGST Act may appeal to the Appellate Tribunal against such order <b>within 3 months</b> from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.</p> <p>In case of newly constituted <b>Appellate Tribunal:</b> Appeal time of 3 months will be counted from communication of order against which appeal is sought to be filed <b>or constitution of Appellate Tribunal whichever is later.</b></p>
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<p>Discretion to refuse in small cases</p>	<p>(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where:</p> <ul style="list-style-type: none"> <li>▪ The tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order,</li> <li>▪ does not exceed ₹ 50,000.</li> </ul>
<p>Departmental appeal</p>	<p>(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax,</p> <ul style="list-style-type: none"> <li>▪ call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act</li> <li>▪ for the purpose of satisfying himself as to the legality or propriety of the said order and</li> <li>▪ may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within 6 months from the date on which the said order has been passed</li> <li>▪ for determination of such points arising out of the said order as may be specified by the Commissioner in his order.</li> </ul> <p>In case of newly constituted <b>Appellate Tribunal</b>: Appeal time of 6 months will be counted from communication of order against which appeal is sought to be filed <b>or constitution of Appellate Tribunal whichever is later.</b></p> <p>(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, <b>such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under section 107(11) or section 108(1).</b></p>
<p>Memorandum of cross objection</p>	<p>(5) <b>On receipt of notice</b> that an appeal has been preferred under this section,</p> <ul style="list-style-type: none"> <li>▪ the party against whom the appeal has been preferred may,</li> <li>▪ notwithstanding that he may not have appealed against such order or any part thereof,</li> <li>▪ file, within 45 days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner,</li> <li>▪ against any part of the order appealed against and</li> <li>▪ such memorandum shall be disposed of by the Appellate Tribunal, <b>as if it were an appeal presented</b> within the time specified in sub-section (1).</li> </ul>
<p>Appeal admit after extension</p>	<p>(6) The Appellate Tribunal may <b>admit an appeal within 3 months</b> after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within 45 days after the expiry of the period referred to in sub-section (5).</p>

<p>Pre-condition to Appeal</p>	<p>(8) No appeal shall be filed under sub-section (1), unless the appellant has paid—</p> <p>(a) In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and</p> <p>(b) A sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order <b>subject to a maximum of ₹50 crore</b>, in relation to which the appeal has been filed.</p>
<p>Stay on Recovery Proceedings</p>	<p>(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.</p>
<p>Fees for rectification/ restoration (₹1000 to 25,000)</p>	<p>(10) Every application made before the Appellate Tribunal,-</p> <p>(a) In an appeal for rectification of error or for any other purpose; or</p> <p>(b) For restoration of an appeal or an application,</p> <p>shall be accompanied by such fees as may be prescribed.</p>

## Section 113: Orders of Appellate Tribunal

<p>Order of Appellate Tribunal</p>	<p>(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit,</p> <ul style="list-style-type: none"> <li>▪ <b>confirming, modifying or annulling</b> the decision or order appealed against or</li> <li>▪ may <b>refer the case back</b> to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.</li> </ul>
<p>Adjournment of case 3 times to a party</p>	<p>(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, <b>grant time to the parties or any of them</b> and adjourn the hearing of the appeal for reasons to be recorded in writing:</p> <p><i>However no such adjournment shall be granted more than 3 times to a party during hearing of the appeal.</i></p>

<p>Rectification of Mistake Apparent from the Records within 3 months</p>	<p>(3) The Appellate Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record, <b>if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner</b> or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:</p> <p><b><u>However</u></b> no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.</p> <p><b><u>Mistake apparent from the records</u></b></p> <ul style="list-style-type: none"> <li>-Prima facie Mistake/</li> <li>-Non debatable</li> <li>-Where two Opinions are not possible</li> <li>-Where No Need of any External evidence to prove the Same.</li> <li>Eg. -Calculation Mistake</li> <li>-Typing Error</li> <li>- Decision given by ignoring judgements of High Court, Supreme Court.</li> <li>-Pass Order Without giving Opportunity of being heard.</li> </ul> <p>Q. Correction – By Appellate Tribunal - Within 3 month. (time limit of 3 months is Suggestive)</p> <p>Q. Appellate Tribunal Can Re-appreciate (Change in Opinion) its order : No</p>
<p>Time limit of ORDER: 1 year (suggestive)</p>	<p>(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of 1 year from the date on which it is filed.</p>
<p>Communication of order: to Appellate authority, Revisional Authority, original adjudicating</p>	<p>(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.</p>

authority, appellant, commissioner	
Finality of order	(6) Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

## Section 114: Financial and administrative powers of President

The President shall exercise such financial and administrative powers over the Appellate Tribunal as may be prescribed.

The President shall exercise such ~~financial and administrative powers~~ over the National Bench and Regional Benches of the Appellate Tribunal.

However the President shall have the authority to ~~delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.~~

## Section 115: Interest on refund of amount paid for admission of appeal

Where an amount paid by the appellant under section 107(6) or section 112(8) 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.

## Section 116: Appearance by Authorised Representative

Appearance through Authorised Representative	(1) Any person <del>appear by an authorised representative</del> before an officer or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act.  Otherwise than when required under this Act to appear personally for examination on oath or affirmation.
Who can be an Authorised	(2) “ <del>Authorised representative</del> ” shall mean, being—

<p><b>Representative</b></p>	<p>(a) his <b>relative or regular employee</b>; or</p> <p>(b) an <b>advocate</b> who is entitled to practice in any court in India,</p> <p>(c) any <b>chartered accountant, a cost accountant or a company secretary</b>, who holds a COP or</p> <p>(d) a <b>retired officer of the Commercial Tax Department</b>, who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of <b>not less than 2 years</b>:</p> <p>however such officer shall not be entitled to appear before any proceedings under this Act for a period of 1 year from the date of his retirement or resignation; or</p> <p>(e) any person who has been authorised to act as a <b>goods and services tax practitioner</b> on behalf of the concerned registered person.</p>
<p><b>Who can NOT be an Authorised Representative</b></p>	<p>(3) No person,—</p> <p>(a) who has been <b>dismissed or removed</b> from Government service; or</p> <p>(b) who is <b>convicted of an offence connected</b> with any proceedings or</p> <p>(c) who is <b>found guilty of misconduct</b> by the prescribed authority;</p> <p>(d) who has been adjudged <b>as an insolvent</b>,</p> <p>shall be qualified to represent any person under sub-section (1)—</p> <p>(i) <b>for all times in case</b> of persons referred to in clauses (a), (b) and (c); and</p> <p>(ii) <b>for the period during which the insolvency continues</b> in the case of a person referred to in clause (d).</p>
<p><b>Common provision</b></p>	<p>(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act <b>shall be deemed to be disqualified under this Act.</b></p>

## Section 117: Appeal to High Court

Appeal to High Court against order of Appellate Tribunal (State bench/Area Bench)	(1) Any person aggrieved by any order passed by the <b>State Bench</b> <del>or Area Benches</del> of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.
Appeal within 180 days	(2) An appeal under sub-section (1) shall be filed <b>within a period of 180 days from the date on which the order appealed against is received by the aggrieved person</b> and it shall be in such form, verified in such manner as may be prescribed:  <b>however</b> the High Court may entertain an appeal <b>after the expiry of the said period</b> if it is satisfied that there was sufficient cause for not filing it within such period.
Hearing on substantial question of law	(3) <b>Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated,</b> and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:  (4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
May determine the issue as not determined/wrongly determined by Appellate Tribunal	(5) <b>The High Court may determine any issue which—</b> (a) has not been determined by the <b>State Bench</b> <del>or Area Benches</del> ; or (b) has been <b>wrongly determined</b> by the <b>State Bench</b> <del>or Area Benches</del> , by reason of a decision on such question of law as herein referred to in sub-section (3).
Heard by judges: at least 2 (Majority prevail)	(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not <b>less than two Judges of the High Court</b> , and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.
If no such majority then involve other judges and check majority	(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, <b>then, be heard upon that point only, by one or more of the other Judges of the High Court</b> and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Effect on the basis of certified copy	(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.
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## Section 118: Appeal to Supreme Court

Appeal to supreme	<p>An appeal shall lie to the Supreme Court-</p> <p>(a) From any order passed by the <del>National Bench or Regional Benches</del> <u>Principal Bench of the Appellate Tribunal</u>; or</p> <p>(b) From any <u>judgment or order passed by the High Court</u> in an appeal made under section 117.</p>
Effect of judgement	Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

## Section 119: Sums due to be paid notwithstanding appeal, etc.

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court,

- sums due to the Government as a result of an order passed by the ~~National Bench or Regional Benches~~ Principal Bench of the Appellate Tribunal under section 113(1) or
- an order passed by the ~~State Bench or Area Benches~~ of the Appellate Tribunal under section 113(1) or
- an order passed by the ~~High Court~~ under section 117, as the case may be,

shall be payable in accordance with the order so passed.

## Section 120: Appeal not to be filed in certain cases/Non filing of Departmental Appeal

Power of Board to issue circulars	(1) The Board may, from time to time, <b>issue circulars fixing such monetary limits, as it may deem fit</b> , for the purposes of regulating the filing of appeal or application by the officer of the central tax.
Non filing of departmental Appeal	(2) Where, in pursuance of the circulars the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it does not mean that department can not file an appeal or application in similar case.
Appeal can be filed by department in similar cases if the cases are eligible @monetary limit wise	(3) If No appeal or application has been filed by the officer of the central tax pursuant to the circular, assessee shall not contend that the officer of the central tax has acquiesced in the decision.
Take care	(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the circular.

## Section 121: Non-appealable decisions and orders

**Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:-**

- (a) An order of the Commissioner or other authority empowered to **direct transfer** of proceedings from one officer to another officer; or
- (b) An **order pertaining to the seizure or retention of books** of account, register and other documents; or
- (c) An **order sanctioning prosecution** under this Act; or
- (d) An **order passed under section 80 [payment of tax and other amount in instalments]**



## CGST Rules, 2017

<p><b>Rule 108 Appeal to the Appellate Authority</b></p>	<p>(1) An appeal to the Appellate Authority under section 107(1) shall be filed in <b>FORM GST APL-01</b>, along with the relevant documents, <b>electronically</b>, and a provisional acknowledgement shall be issued to the appellant immediately.</p> <p><u>Provided that an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if-</u></p> <p style="padding-left: 40px;">(i) <u>the Commissioner has so notified, or</u></p> <p style="padding-left: 40px;">(ii) <u>the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,</u></p> <p><u>and in such case, a provisional acknowledgement shall be issued to the appellant immediately.</u></p> <p>(2) The grounds of appeal and the form of verification as contained in <b>FORM GST APL- 01</b> shall be signed in the manner specified in rule 26.</p> <p>(3) Where the decision or order appealed against is uploaded on the common portal, a <b>final acknowledgment, indicating appeal number</b>, 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:</p> <p>Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant <b>shall submit a self-certified copy of the said decision or order within a period of 7 days</b> 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:</p> <p>Provided further that 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, <b>the date of submission of such copy shall be considered as the date of filing of appeal.</b></p>
<p><b>Rule 109 Application to the Appellate Authority</b></p>	<p>1) An application to the Appellate Authority under <b>section 107(2) shall be filed in FORM GST APL-03</b>, along with the relevant documents, <del>either electronically or otherwise as may be notified by the Commissioner</del> <b>electronically</b> and a provisional acknowledgement shall be issued to the appellant immediately.</p> <p>Provided that an appeal to the Appellate Authority may be filed manually in FORM GST APL-03, along with the relevant documents, only if-</p> <p style="padding-left: 40px;">(i) the Commissioner has so notified, or</p> <p style="padding-left: 40px;">(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,</p>

	<p>and in such case, a provisional acknowledgement shall be issued to the appellant immediately.</p> <p>(2) 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 under sub-rule (1):</p> <p>Provided that 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 seven 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:</p> <p>Provided further that 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.</p>
<p><b>Rule 109C Withdrawal of Appeal</b> [Newly Inserted]</p>	<p>The appellant may, at any time before issuance of show cause notice under section 107(11) or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W:</p> <p>Provided that where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application:</p> <p>Provided further that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in section 107(1),(2), as the case may be.</p>

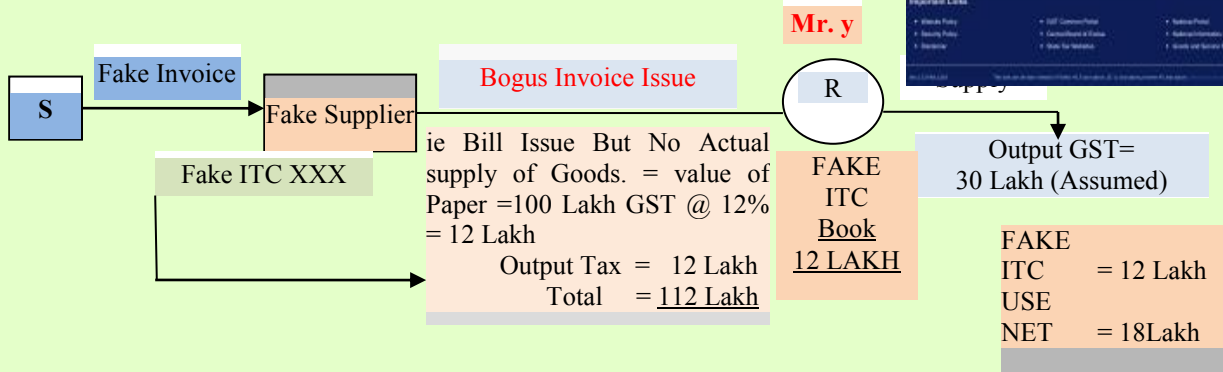
# 22

# E-WAY BILL

- (1) Why EBW
- (2) Where EBW [Circumstances where EWB required]  
[Value based / Mandatory]
- (3) Who, When and how to prepare EBW
- (4) Life of EWB & Extension
- (5) Check Mechanism
- (6) Misc



## Why EBW?



Total Evasion	=37 Lakh
Given to Fake (S)	=7 Lakh
Net Gain	=30 Lakh

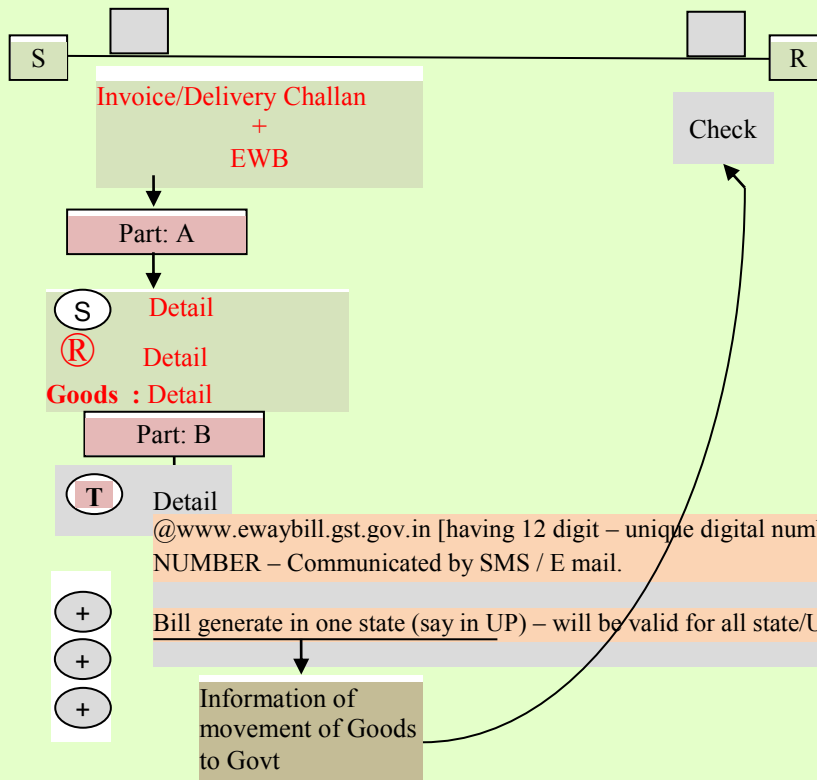
GST Evasion= 12 Lakh

Moreover Evasion of Income Tax By claiming Fake Expenditure = 100 Lakh  
Suppose: Income Tax Rate =25%

Income Tax Evade = 25Lakh

Govt want to check Actual movement of goods that's why the Govt. introduced the concept of EWB; to control/stop practice of bogus invoice related to GOODS.

# Concept of E Way Bill



S= Supplier  
R= Receptient  
T= Transporter

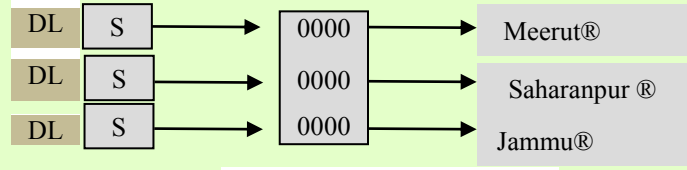
@www.ewaybill.gst.gov.in [having 12 digit – unique digital number with QR Code: EWB – NUMBER – Communicated by SMS / E mail.

Bill generate in one state (say in UP) – will be valid for all state/UT ie. valid for all over India

**EWB**

- Normal EWB:
- Bulk EWB:** Where Multiple E-way Bill are required to be prepared then this option is selected. With JSON file 1000's of EWB can be prepared in single shot.

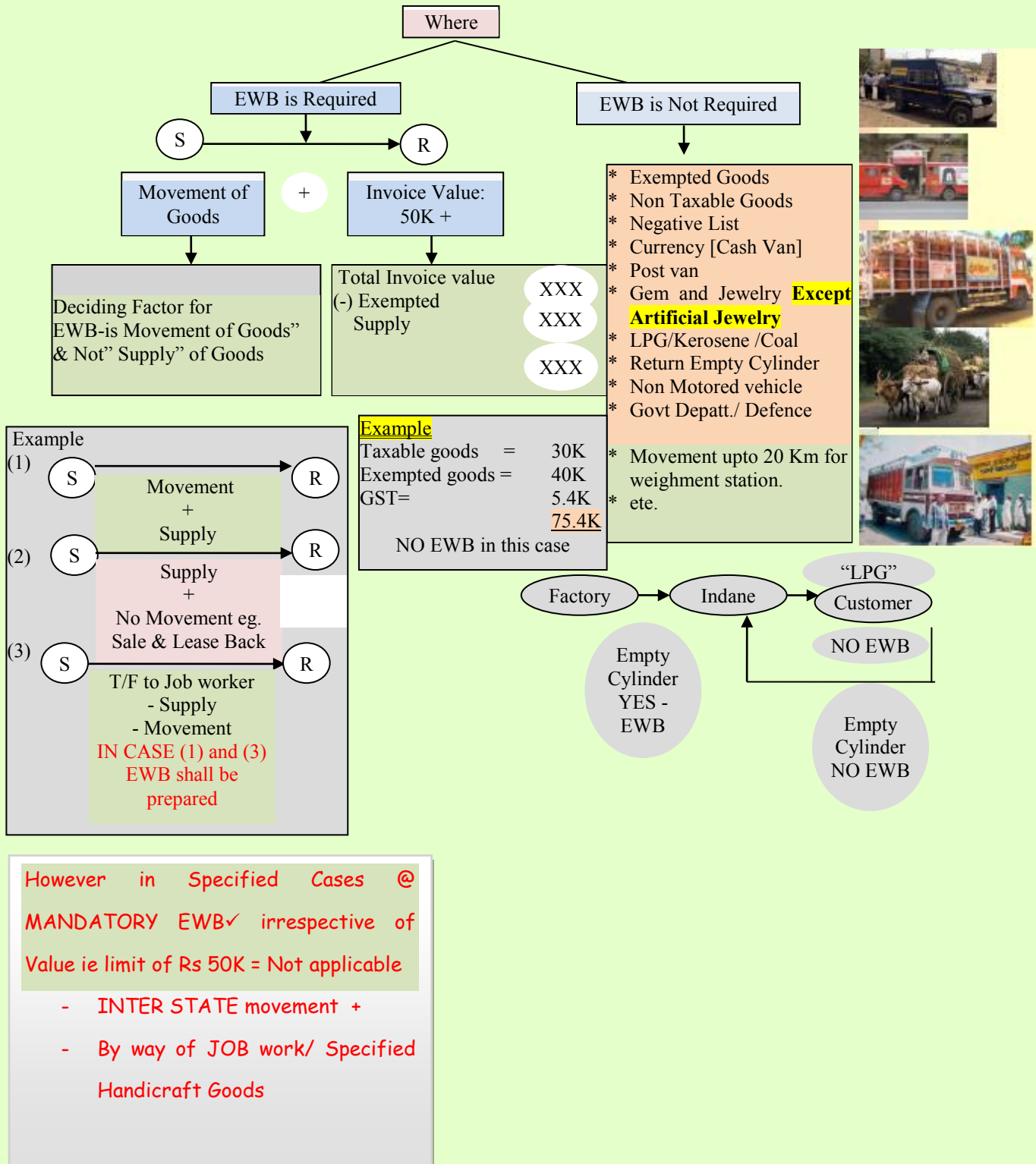
Consolidate E-way Bill [Optional to Prepare, it is for ease in transport]  
Where multiple EWB needs to be carry with single vehicle then all such EWB can be consolidated in single EWB

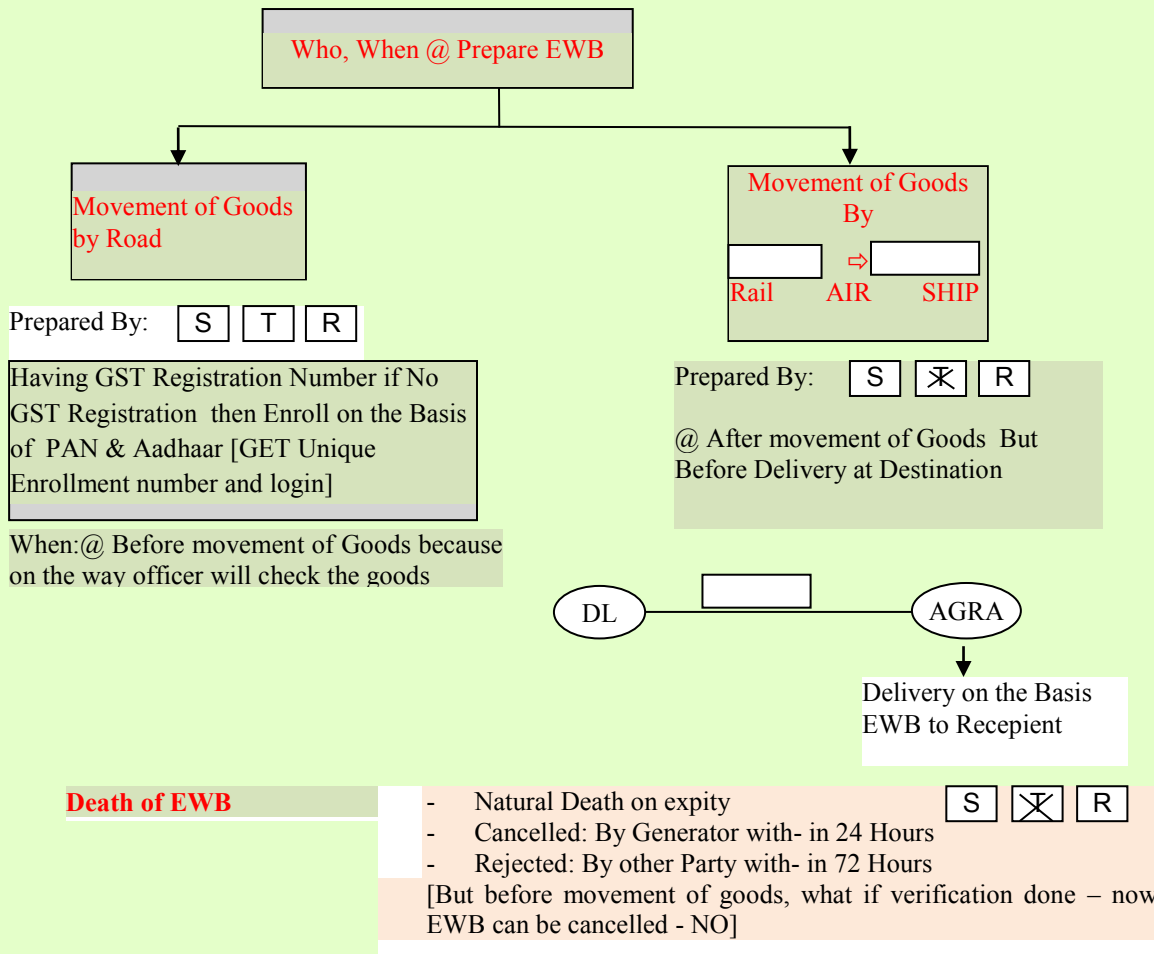


3 EWB shall be prepared

Facility: [Optional to Consolidate All 3 EWB]

**Circumstances where EWB is required**





Validity/Life of E- Way Bill

Sn.	Distance	Validity period
1.	Upto <b>200 km.</b>	One day in cases other than Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
2.	For every <b>200 km.</b> or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
3.	Upto 20 km	One day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]
4.	For every 20 km. or part thereof thereafter	One additional day in case of Over Dimensional Cargo [or multimodal shipment in which at least one leg involves transport by ship]

Extension :   
 By commissioner : in Certain Cases eg LOCKDOWN   
 By EWB Generator: Extend it eg Accident Situation [The validity of the e-way bill may be extended within 8 hours from the time of its expiry or Before Expiry.]

**Analysis**

**NORMAL CARGO**



[1 day for 200 KM or Part Thereof]

**OVER DIMENSIONAL CARGO**



[1 day for 20 KM or Part Thereof]



**Multimodal + Including vessel in any Leg + Any CARGO (Normal or Over dimensional)**

[1 day for 20 KM or Part Thereof]

How to calculate days -

**Q. 1** Normal Cargo

Distance : 421 km

Movement date 01/01/22

Upto which date EWB will remain Valid?

Ans: for 400 km = 2 days

For 21 km = 1 day

Total = 3 days

Ie remain valid till 04/01/22

**Q. 2** Over dimensional Cargo

Distance : 421 km

Movement date 01/01/22

Upto which date EWB will remain Valid?

Ans: for 420 km = 21 days

For 1 km = 1 day

Total = 22 days

Ie remain valid till 23/01/22

**Q. 3** Multimodal including vessel

Normal Cargo / Over dimensional Cargo

Distance : 421 km

Movement date 01/01/22

Upto which date EWB will remain Valid?

Ans: for 420 km = 21 days

For 1 km = 1 day

Total = 22 days

Ie remain valid till 23/01/22



In case of use of Multivehicle

**In case of MULTIVEHICLE –**

ONE EWB shall be prepared with Updation of ALL vehicles/Transporters

However, NO need to update the detail of such vehicle which is used in-

- Multivehicle cycle +
- Intra State movement +
- Distance is only upto 50 KM

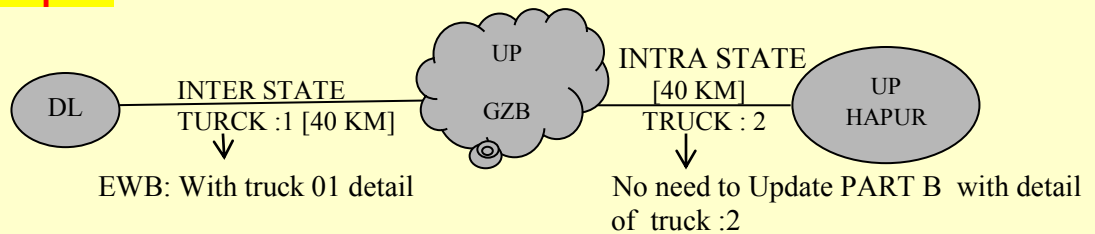
**Example 01:**

Journey start from UP and will be completed in BIHAR

UP (Truck 01)	DL (Truck 02)	MH (Truck 03)	BIHAR (Truck 04)
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Here ONE EWB shall be prepared with Updation of all vehicles in PART B.

**Example 02:**



**Example 03**



E- Way Bill : Generate with Detail of truck -1 [PART A]  
EWB : 4512 0019 3412

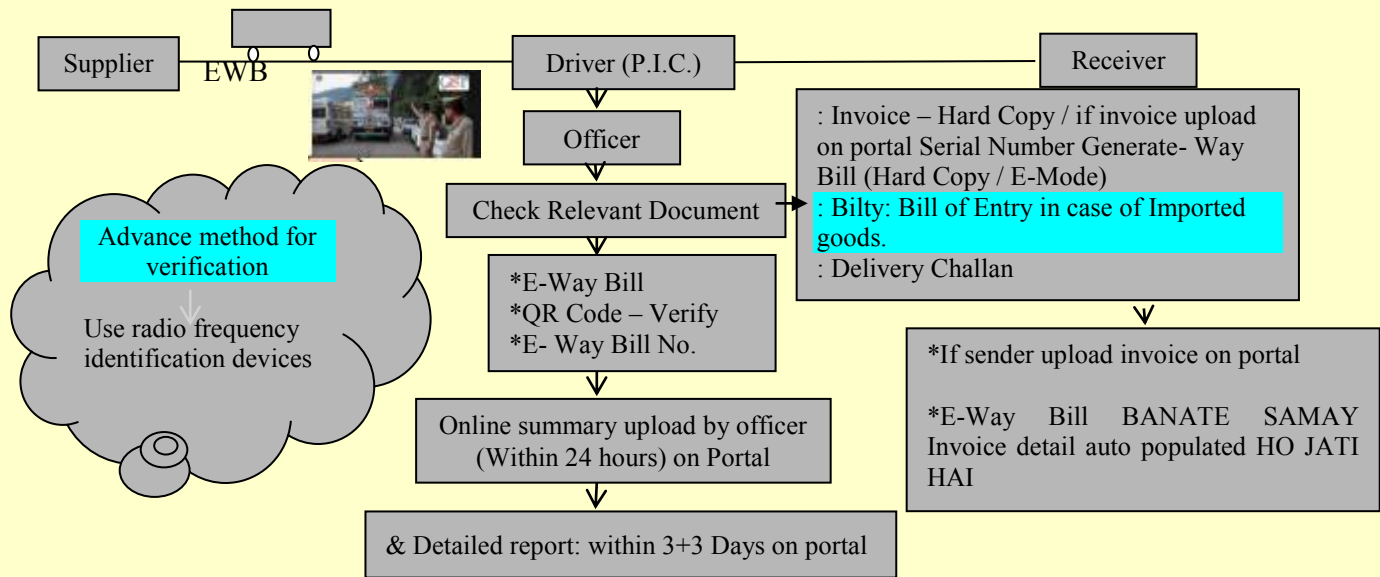
E- Way Bill (PART :B) Update with detail of truck -2 = YES

No need to give detail of ie Truck : 1

Own Master

Like adding beneficiary for NET Banking purpose.  
(List of customer, List of supplier, Item, HSN)

**Note:** E-Way Bill details – Can be used for the purpose of filling – GSTR:01  
 Verification (in transit): Section: 68 (if value of goods ₹ 50,000 plus)



Note: Driver – hold more than 30 minutes – Complained facility

Note : Physical verification done once – Not again physical verification unless specific information of contravention.

**Blocking of E way Bill:-**

**No person (Including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of any outward movement of goods of a registered person, who-**

<b>PERSON AVAILING REGULAR SCHEME</b>	<ul style="list-style-type: none"> <li>- HAS NOT FURNISHED THE RETURNS [GSTR 3B] FOR A CONSECUTIVE PERIOD OF TWO TAX PERIODS</li> <li>- HAS NOT FURNISHED THE STATEMENT OF OUTWARD SUPPLIES (GSTR:1) FOR ANY TWO MONTHS OR QUARTERS [QRMP/OTHER SCHEME]</li> </ul>
<b>PERSON AVAILING COMPOSITION SCHEME</b>	HAS NOT FURNISHED THE [STATEMENT IN FORM [GST CMP-08] FOR TWO CONSECUTIVE QUARTERS; OR
<b>EITHER REGULAR OR COMPOSITION SCHEME</b>	BEING A PERSON, WHOSE REGISTRATION HAS BEEN SUSPENDED UNDER RULE 21(1)(2)(2A). [WHEN TO SUSPEND RC- WHEN APPLICATION FOR CANCELLATION OF RC MADE BY THE PERSON, WHEN OFFICER FINDS SOME IRREGULARITY, WHEN THERE IS AN ANAMOLY IN GSTR 1 AND GSTR 2A]

SUBJECT TO SATISFACTION OF COMMISSIONER.

**Circular No. 47/21/2018-Clarifications of certain issues under GST**

1	In case of transportation of goods by railways, whether goods can be delivered even if the e-way bill is not produced at the time of delivery?	The railways shall not deliver the goods <b>unless the e-way bill is produced at the time of delivery.</b>
2	<p>Whether e-way bill is required - Where goods transit through another State while moving from one area in a State to another area in the same State.</p> <p>Whether e-way bill is required - Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.</p>	<p>It may be noted that e-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the <b>movement</b> of goods is inter-State or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated.</p> <p>Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State, there is <b>no requirement to generate</b> an e-way bill, if the same has been exempted under <a href="#">Rule 138(14)(d)</a> of the <a href="#">CGST Rules</a>.</p>

## Rule 138F: Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof

(1) Where-

(a) a Commissioner of State tax or Union territory tax mandates furnishing of information regarding intra-State movement of goods specified [**gold, precious stones, etc**], in accordance with Rule 138F(1) of the State or Union territory Goods and Services Tax Rules, and

(b) the consignment value of such goods exceeds such amount, not below Rs 2 Lakhs, 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**:

**Provided** that 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 as specified in sub-rule (1), **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 twenty-four hours of generation of the e-way bill:

**Provided** that 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 Rule 138 (10)(11)(12), Rule 138A, Rule 138B, Rule 138C, Rule 138D and Rule 138E shall, mutatis mutandis, apply to an e-way bill generated under this rule.

**Explanation.** - 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 CGST, SGST or UTGST 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**.

## Misc. Circulars

### Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion (Here and after to be called as Specified goods)

Various representations have been received from the trade and industry regarding procedure to be followed in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion. Such goods sent/taken out of India crystallize into exports, wholly or partly, only after a gap of certain period from the date they were physically sent/taken out of India.

**Clarification:** Since the activity of sending/taking specified goods out of India is not a supply, doubts have been raised by the trade and industry on issues relating to maintenance of records, issuance of delivery challan/tax invoice etc. These issues have been examined and the clarification on each of these points is as under:—

SN	Issue	Clarification
1.	Whether any records are required to be maintained by registered person for sending/taking specified goods out of India?	The registered person dealing in specified goods shall maintain a record of such goods.
2.	What is the documentation required for sending/taking the specified goods out of India?	<p>(a) As clarified above, the activity of sending/taking specified goods out of India is not a supply.</p> <p>(b) <b>The said activity is in the nature of “sale on approval basis”</b> wherein the goods are sent/taken outside India for the approval of the person located abroad and it is only when the said goods are approved that the actual supply from the exporter located in India to the importer located abroad takes place. The activity of sending/taking specified goods is covered under the provisions of <u>section 31(7)</u> of the <u>CGST Act</u>.</p> <p>(c) The specified goods shall be accompanied with a delivery challan issued in accordance with the provisions contained in <u>Rule 55</u> of the <u>CGST Rules</u>.</p> <p>(d) The activity of sending/taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under <u>section 16</u> of the <u>IGST Act</u>, is not required.</p>

3.	When is the supply of specified goods sent/taken out of India said to take place?	<p>(a) The specified goods sent/taken out of India are required to be either sold or brought back within the stipulated period of six months from the date of removal as per the provisions contained in <u>section 31(7)</u> of the <u>CGST Act</u>.</p> <p>(b) The supply would be deemed to have taken place, on the expiry of 6 months from the date of removal, if the specified goods are neither sold abroad nor brought back within the said period.</p> <p>(c) If the specified goods are sold abroad, fully or partially, within the specified period of 6 months, the supply is effected, in respect of quantity so sold, on the date of such sale.</p>
4.	Whether invoice is required to be issued when the specified goods sent/taken out of India are not brought back, either fully or partially, within the stipulated period?	<p>(a) When the specified goods sent/taken out of India have been sold fully or partially, within the stipulated period of six months, as laid down in <u>section 31(7)</u> of the <u>CGST Act</u>, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad, in accordance with the provisions contained in <u>section 12</u> and <u>section 31</u> of the <u>CGST Act</u>.</p> <p>(b) When the specified goods sent/taken out of India have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, as laid down in <u>section 31(7)</u> of the <u>CGST Act</u>, the sender shall issue a tax invoice on the date of expiry of 6 months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back, in accordance with the provisions contained in <u>section 12</u> and <u>section 31</u> of the <u>CGST Act</u>.</p>
5.	Whether the refund claims can be preferred in respect of specified goods sent/taken out of India but not brought back?	<p>(a) The activity of sending/taking specified goods out of India is not a zero-rated supply. That being the case, the sender of goods cannot prefer any refund claim when the specified goods are sent/taken out of India.</p> <p>(b) It has further been clarified in answer to question no. 3 above that the supply would be deemed to have taken place:</p> <p>(i) on the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or</p> <p>(ii) on the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months.</p> <p>(c) It is clarified accordingly that the sender can prefer refund claim even when the specified goods were sent/taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in <u>section 54(3)</u> the <u>CGST Act</u> read with <u>Rule 89(4)</u> of the <u>CGST Rules</u>, in respect of zero rated supply of goods after he has issued the tax invoice on the dates as has been</p>

		<p>clarified in answer to the question no. 4 above.</p> <p>It is further clarified that refund claim cannot be preferred under <u>rule 96 of CGST Rules</u> as supply is taking place at a time after the goods have already been sent/taken out of India earlier.</p>
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## GST on Residential Programmes or camps meant for advancement of religion, spirituality or yoga by religious and charitable trusts: Circular No. 66/40/2018

Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga. **However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable”.**

**3. It is accordingly clarified that taxability of the services of religious and charitable trusts by way of residential programmes or camps meant for advancement of religion, spirituality or yoga may be decided accordingly.**

## Circular No. 190/02/2023: Applicability of GST on accommodation services supplied by Air Force Mess to its personnel

All services **supplied by Central Government, State Government, Union Territory or local authority** to any person other than business entities (*Except few specified services such as services of postal department, transportation of goods and passengers etc.*) are exempt from GST.

It is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, **such as, Army mess, Navy mess, Paramilitary and Police forces mess** to their personnel or any person other than a business entity are covered under above exemption.

**Provided** the services supplied by such messes **qualify to be considered** as services supplied by Central Government, State Government, Union Territory or local authority.



## Circular No. 185/17/2022-GST: Clarification with regard to applicability of provisions of section 75(2) of Central Goods and Services Tax Act, 2017 and its effect on limitation

**Q.1 In some of the cases where the show cause notice has been issued by the proper officer to a noticee under section 74(1) of CGST Act for demand of tax not paid/ short paid or erroneous refund or input tax credit wrongly availed or utilized, the appellate authority or appellate tribunal or the court concludes that the said notice is not sustainable under sub-section (1) of section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73 of CGST Act, in accordance with the provisions of sub-section (2) of section 75 of CGST Act.**

**What would be the time period for re-determination of the tax, interest and penalty payable by the noticee in such cases?**

Ans. [Section 75\(3\)](#) of [CGST Act](#) provides that an order, required to be issued in pursuance of the directions of the appellate authority or appellate tribunal or the court, has to be issued within 2 years from the date of communication of the said direction.

Accordingly, in above case time limit will be **2 years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.**

**Q.2 How the amount payable by the noticee, deeming the notice to have been issued under sub-section (1) of section 73, shall be re-computed/ re-determined by the proper officer as per provisions of sub-section (2) of section 75?**

Ans. The demand would have to be re-determined keeping in consideration the provisions of [Section 73\(2\)](#), read with [Section 73\(10\)](#) of [CGST Act](#).

[Section 73\(1\)](#) of [CGST Act](#) provides for issuance of a show cause notice by the proper officer for tax not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, in cases which do not involve fraud or wilful misstatement or suppression of facts to evade tax.

[Section 73\(2\)](#) of [CGST Act](#) provides that such show cause notice shall **be issued at least 3 months prior** to the time limit specified in [Section 73\(10\)](#) for issuance of order.

As per [Section 73\(9\) of CGST Act](#) the proper officer is required to determine the tax, interest and penalty due from the noticee and issue an order.

As per [section 73\(10\)](#) an order under [section 73\(9\)](#) has to be issued by the proper officer **within 3 years** from the due date for furnishing of annual return for the financial year in respect of which tax has not been paid or short paid or input tax credit has been wrongly availed or utilized or from the date of erroneous refund.

It transpires from a combined reading of these provisions that in Bonafide cases, the show cause notice in terms of [Section 73\(1\) of CGST Act](#) has to be issued within **2 years and 9 months** from the **due date of furnishing of annual return** for the financial year to which such tax not paid or short paid or input tax credit wrongly availed or utilized relates, or within **2 years and 9 months from the date of erroneous refund**.

Therefore, in cases where the proper officer has to re-determine the amount of tax, interest and penalty payable deeming the notice to have been issued under [section 73\(1\) of CGST Act](#) in terms of [section 75\(2\)](#) of the said Act, the same can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which **show cause notice was issued within the time limit as specified under [section 73\(2\)](#) read with [section 73\(10\) of CGST Act](#)**. Thus, only the amount of tax short paid or not paid, or input tax credit wrongly availed or utilized, along with interest and penalty payable, in terms of [section 73 of CGST Act](#) relating to such financial years can be re-determined, **where show cause notice was issued within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year**. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be re-determined only **where show cause notice was issued within 2 years and 9 months from the date of erroneous refund**.

In case, where the show cause notice under [section 74\(1\)](#) was issued for tax short paid or tax not paid or wrongly availed or utilized input tax credit beyond a period of 2 years and 9 months from the due date of furnishing of the annual return for the financial year to which such demand relates to, and the appellate authority concludes that the notice is not sustainable under [section 74\(1\) of CGST Act](#) thereby deeming the notice to have been issued under [section 73\(1\)](#), **the entire proceeding shall have to be dropped, being hit by the limitation of time as specified in section 73**. Similarly, where show cause notice under [section 74\(1\) of CGST Act](#) was issued for erroneous refund beyond a period of 2 years and 9 months from the date of erroneous refund, the entire proceeding shall have to be dropped.

In cases, where the show cause in terms of [section 74\(1\) of CGST Act](#) was issued for tax short paid or not paid tax or wrongly availed or utilized input tax credit or on account of erroneous refund within 2 years and 9

months from the due date of furnishing of the annual return for the said financial year, to which such demand relates to, or from the date of erroneous refund, as the case may be, **the entire amount of the said demand in the show cause notice would be covered under re-determined amount.**

Where the show cause notice under Section 74(1) was issued for multiple financial years, and where notice had been issued before the expiry of the time period as per section 73(2) for one financial year but after the expiry of the said due date for the other financial years, then the amount payable in terms of section 73 shall be re-determined only in respect of that financial year for which show cause notice was issued before the expiry of the time period as specified in Section 73(2)

## Corporate Debtors: NOTIFICATION No. 11/2020

1. In exercise of the powers conferred by section 148 of the CGST Act, 2017,

- the Government, on the recommendations of the Council, hereby notifies those registered persons (hereinafter referred to as the erstwhile registered person),
- who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016, undergoing the corporate insolvency resolution process and
- the management of whose affairs are being undertaken by interim resolution professionals (IRP) or **resolution professionals (RP)**, as the class of persons who shall follow the following special procedure,
- from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned below.

**Provided that the said class of persons shall not include those corporate debtors who have furnished the statements under section 37 and the returns under section 39 of the said Act for all the tax periods prior to the appointment of IRP/RP.**

2. **Registration:** The said class of persons shall,

- with effect from the date of appointment of IRP / RP,
- be treated as a distinct person of the corporate debtor, and
- shall be liable to take a new registration
- in each of the States or Union territories where the corporate debtor was registered earlier,
- within thirty days of the appointment of the IRP/RP.

3. **Return:** The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

4. **Input tax credit.**-The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions.

## Circular No. 22/22/2017-GST: Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries

1. It is seen that [Rule 55\(1\)\(c\)](#) of the [Central Goods and Services Tax Rules, 2017](#) provides that the supplier shall issue a delivery challan for the initial transportation of goods where such transportation is for reasons other than by way of supply. Further, sub-rule (3) of the said rule provides that the said delivery challan shall be declared as specified in [rule 138](#) of the said [Rules](#). It is also seen that [of Rule 55\(4\)](#) of the said [Rules](#) provides that where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.
2. A combined reading of the above provisions **indicates that the art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work.**
3. It is also clarified that the supplies of the art work from one State to another State will be inter-State supplies and attract integrated tax in terms of [section 5](#) of the [Integrated Goods and Services Tax Act, 2017](#).
4. It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

## F.No. CBIC-20001/2/2022-GST

### **Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices**

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 (ie “fake invoices”), in order to enable the recipients of such invoices to avail and utilize input tax credit fraudulently.

Representations are being received from the trade as well as the field formations seeking clarification on the issues relating to applicability of demand and penalty provisions under the [CGST Act, 2017](#), in respect of such transactions involving fake invoices.

Sl. No.	Issues	Clarification
1.	<p>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 <a href="#">section 7 of CGST Act</a> and whether any demand and recovery can be made from ‘A’ in respect of the said transaction under the provisions of <a href="#">section 73</a> or <a href="#">section 74</a> of <a href="#">CGST Act</a>.</p> <p>Also, whether any penal action can be taken against registered person ‘A’ in such cases.</p>	<p>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 <a href="#">section 7</a> of the <a href="#">CGST Act</a>. As there is no supply by ‘A’ to ‘B’ in respect of such tax invoice in terms of the provisions of <a href="#">section 7</a> of <a href="#">CGST Act</a>, 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 <a href="#">section 73</a> or <a href="#">section 74</a> of <a href="#">CGST Act</a> in respect of the same. Besides, no penal action under the provisions of <a href="#">section 73</a> or <a href="#">section 74</a> is required to be taken against ‘A’ in respect of the said transaction.</p> <p>The registered person ‘A’ shall, however, be liable for penal action under <a href="#">section 122 (1)(ii)</a> of the <a href="#">CGST Act</a> for issuing tax invoices without actual supply of goods or services or both.</p>
2.	<p>A registered person “A” has issued tax invoice to another registered person “B” without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice. B further issues invoice along with underlying supply of goods or services or both to his buyers and utilizes ITC availed on the basis of the above mentioned invoices issued by ‘A’, for payment of his tax liability in respect of his said outward supplies. Whether ‘B’ will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of <a href="#">section 73</a> or <a href="#">section 74</a> or any other provisions of the <a href="#">CGST Act</a>.</p>	<p>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 <a href="#">section 16(2)(b)</a> of <a href="#">CGST Act</a>, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of <a href="#">section 74</a> of the <a href="#">CGST Act</a>, along with applicable interest under provisions of <a href="#">section 50</a> of the said Act.</p> <p>Further, as per provisions of <a href="#">section 75(13)</a> of <a href="#">CGST Act</a>, if penal action for fraudulent availment or utilization of ITC is taken against ‘B’ under <a href="#">section 74</a> of <a href="#">CGST Act</a>, no penalty for the same act, i.e. for the said fraudulent availment or utilization of ITC, can be imposed on ‘B’ under any other provisions of <a href="#">CGST Act</a>, including under <a href="#">section 122</a>.</p>
3.	<p>A registered person ‘A’ has issued tax invoice to another registered person ‘B’ without any underlying supply of goods or services or both. ‘B’ avails input tax credit on the basis of the said tax invoice and further passes on the said input tax credit to another registered person ‘C’ by issuing invoices without underlying supply of goods or services or both. Whether ‘B’ will be liable for the demand and recovery and penal action, under the provisions of <a href="#">section</a></p>	<p>In this case, the input tax credit availed by ‘B’ in his electronic credit ledger on the basis of tax invoice issued by ‘A’, without actual receipt of goods or services or both, has been utilized by ‘B’ for passing on of input tax credit by issuing tax invoice to ‘C’ without any underlying supply of goods or services or both. As there was no supply of goods or services or both by ‘B’ to ‘C’ in respect of the said transaction, no tax was required to be paid by ‘B’ in respect of the same. The input tax credit availed by ‘B’ in his electronic credit ledger on the basis of tax invoice issued by ‘A’, without actual receipt of goods or services or both, is ineligible in terms of <a href="#">section 16 (2)(b)</a> of the <a href="#">CGST Act</a>.</p>

<p><u>73 or section 74</u> or any other provisions of the <u>CGST Act</u>.</p>	<p>In this case, there was no supply of goods or services or both by 'B' to 'C' 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' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of <u>section 73 or section 74 of CGST Act</u>.</p> <p>However, in such cases, 'B' shall be liable for penal action both under <u>section 122(1)(ii) and section 122(1)(vii) of the CGST Act</u>, 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.</p>
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The fundamental principles that have been delineated in the above scenarios may be adopted to decide the nature of demand and penal action to be taken against a person for such unscrupulous activity.

Actual action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios.

Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section.

It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case.

## Circular: Supply

<p>Whether various prerequisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?</p>	<ol style="list-style-type: none"> <li>1. <a href="#">Schedule III</a> to the <a href="#">CGST Act</a> provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.</li> <li>2. Any prerequisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.</li> </ol> <p>It follows therefrom that prerequisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, <b>will not be subjected to GST</b> when the same are provided in terms of the contract between the employer and employee.</p>
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## Circular No. 178/10/2022: GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law?

1. In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.

Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at [para 5 \(e\) of Schedule II of Central Goods and Services Tax Act, 2017](#), in this context has been examined in the following paragraphs.

2. “*Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act*” has been specifically declared to be a supply of service in [para 5 \(e\) of Schedule II of CGST Act](#) if the same constitutes a “supply” within the meaning of the Act. The said expression has following three limbs: -

**(a) Agreeing to the obligation to refrain from an act-**

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

(b) **Agreeing to the obligation to tolerate an act or a situation-**

This would include activities such as a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

(c) **Agreeing to the obligation to do an act-**

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

3. The description “*agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act*” was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

**Followings are not to be treated as Negative Acts:-**

- (i) Liquidated damages paid for **breach of contract**;
- (ii) **Compensation given to previous allottees** of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
- (iii) Cheque dishonour fine/penalty charged by a power distribution company from the customers;
- (iv) Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
- (v) **Bond amount recovered** from an employee leaving the employment before the agreed period;
- (vi) Late payment charges collected by any **service provider for late payment of bills**;
- (vii) Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/ DISCOMs from individual customer for supply of electricity;
- (viii) **Cancellation charges recovered by railways for cancellation of tickets, etc.**



## F. No. CBIC-190354/195/2023-TO (TRU-II)-CBEC

**Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants.**

Doubts were raised on the applicability of GST on supply of electricity by the real estate companies, malls, airport operators etc., to their lessees or occupants.

It is clarified that whenever electricity is being supplied **bundled with renting of immovable property and/or maintenance of premises**, as the case may be, 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, as the case may be, and the supply of electricity **is an ancillary supply** as the case may be. 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, as the case may be, 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.**

**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.**

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.**

The ultimate users of the various schemes under DMF are individuals, families, women and children, farmers/producer groups, SHGs 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.

**Whether supply of pure services and composite supplies by way of horticulture/horticulture works (where the value of goods constitutes not more than 25 per cent of the total value of supply) made to CPWD are eligible for exemption from GST**

Public parks in government residential colonies, government offices and other public areas are developed and maintained by CPWD.

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.

Notification No. 12/2017- exempt pure services and composite supply of goods and services in which value of goods **does not constitute more than 25%**, that are provided to the Central Government, State Government or Union territory or local authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

**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 per cent of the total value of supply) made to CPWD are eligible for exemption from GST**

# ETHICS UNDER GST

# 23

## (i) Meaning of Ethics

<p><b>Moral Principle</b></p>	<p>The Oxford Dictionary defines the term “Ethics” as <b>the moral principle that governs a person's behavior or how an activity is conducted</b>. Ethics provides a framework for</p> <ul style="list-style-type: none"> <li>■ distinguishing between right and wrong,</li> <li>■ guiding <b>decision-making</b>, and</li> <li>■ determining what is considered <b>morally acceptable</b> in a given context.</li> </ul>
<p><b>Reduced tax evasion</b></p>	<p><b>Ethics are fundamental to the effective functioning of any taxation system;</b></p> <ul style="list-style-type: none"> <li>■ This also <b>holds true for the GST regime</b> in India.</li> <li>■ Ethical conduct contributes to <b>increased regulatory compliance</b> and</li> <li>■ <b>reduced tax evasion</b> which in turn leads to increased Government revenue collection. This tax revenue can be used for public welfare and development projects.</li> </ul>
<p><b>Trustworthy tax environment and Less Litigations</b></p>	<ul style="list-style-type: none"> <li>■ It also helps in creating a fair, transparent, and <b>trustworthy tax environment</b> and reduces uncertainty that supports economic growth and development.</li> <li>■ 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.</li> </ul> <p>Ethical behavior <b>may also reduce tax-related disputes and litigations</b></p>

## (ii) Role of Chartered Accountant in ensuring ethics under GST

General	<p>The professional behaviour of a Chartered Accountant is <b>governed by a set of ethical guidelines and principles - known as Code of Ethics</b> - laid down by the ICAI.</p> <ul style="list-style-type: none"> <li>■ Every Chartered Accountant has to <b>abide by this code of ethics</b>.</li> <li>■ It encourages the Chartered Accountants to be <b>honest, fair, and professional</b> 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.</li> </ul> <p>The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.</p> <p><b>The Chartered Accountants Act, 1949</b> prescribes the <b>disciplinary action</b> if a Chartered Accountant is found guilty of any Professional or Other Misconduct.</p> <p>A Chartered Accountant</p> <ul style="list-style-type: none"> <li>■ <b>needs to follow ethical conduct</b> while discharging his professional duties</li> <li>■ under the <b>GST law</b>,</li> <li>■ namely, <b>compliance functions</b>, furnishing certifications/reports and advisory roles, by adhering to a set of principles and practices that promote integrity, transparency, and compliance.</li> </ul>
Second Schedule - Part I - clause (7)	<p>A Chartered Accountant in practice <b>would be deemed to be guilty</b> of professional misconduct under <b>Second Schedule - Part I - clause (7)</b> of the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.</p>
Second Schedule - Part I - clause (8)	<p>Further, as per <b>Second Schedule - Part I - clause (8)</b> to the Chartered Accountants Act, 1949,</p> <ul style="list-style-type: none"> <li>■ a <b>chartered accountant in practice</b> shall be deemed to be guilty of professional misconduct,</li> <li>■ if he <b>fails to obtain sufficient information</b> which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.</li> </ul>
Maintain professional knowledge and skill	<p><b>He should maintain professional knowledge and skill at the level required</b></p> <ul style="list-style-type: none"> <li>■ to ensure that a client or employer receives competent professional service based on latest applicable provisions of GST law.</li> <li>■ In case of any violation of law in performing the compliance, certifications/ reporting and advisory functions,</li> <li>■ he shall also be liable to applicable penalty and prosecution (in some cases) under GST law.</li> </ul>

<p><b>Crucial role</b></p>	<p><b>Chartered Accountants play a crucial role</b></p> <ul style="list-style-type: none"> <li>■ in ensuring GST <b>compliance within their clients' organizations</b>.</li> <li>■ This involves assisting in the process of obtaining <b>registration, structuring the transactions</b> 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.</li> </ul>
<p><b>Responsibilities</b></p>	<p><b>Generally, Chartered Accountants are responsible</b></p> <ul style="list-style-type: none"> <li>■ for ensuring the maintenance of accurate and <b>detailed records</b> of all GST-related transactions.</li> <li>■ This includes <b>invoices, receipts</b>, and other relevant documents.</li> <li>■ Such meticulous record-keeping is a legal requirement as well as an ethical duty of the Chartered Accountant.</li> </ul> <p><b>Another major responsibility of a Chartered Accountant in the realm of GST</b></p> <ul style="list-style-type: none"> <li>■ is to act as a <b>tax advisor</b> to their clients.</li> <li>■ This entails a comprehensive <b>understanding of the client's business</b> operations and goals.</li> </ul> <p><b>Chartered Accountants must assess the impact of GST</b></p> <ul style="list-style-type: none"> <li>■ on <b>various aspects</b> of the business,</li> <li>■ including <b>supply chain</b>, pricing strategies and financial reporting.</li> </ul>
<p><b>Practicing CA</b></p>	<p><b>A Chartered Accountant, who holds a certificate</b> of practice and who has not been debarred from practice,</p> <ul style="list-style-type: none"> <li>■ can also <b>appear on behalf of his client</b> before a GST officer, GST Appellate Authority or GST Appellate Tribunal</li> <li>■ in connection with any proceedings under GST law,</li> <li>■ as an authorised representative of the client.</li> </ul>
<p><b>Closing</b></p>	<p><b>Furthermore, Chartered Accountants play a vital role in the GST ecosystem</b></p> <ul style="list-style-type: none"> <li>■ by <b>providing certifications</b> that affirm compliance with GST laws and regulations.</li> <li>■ These certifications are mandatory in specific situations and are required to ensure compliance with GST regulations.</li> </ul> <p><b>They primarily aim at curbing</b> the unethical practices and</p> <ul style="list-style-type: none"> <li>■ preventing the leakage of revenue.</li> <li>■ Thus, it is the duty of every Chartered Accountant to exercise utmost care and due diligence while granting these certifications.</li> </ul>

	<p>While providing said certification,</p> <ul style="list-style-type: none"> <li>■ the Chartered Accountant has to comply with the <b>ethical requirements</b> of the Code of Ethics issued by the ICAI,</li> <li>■ 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.</li> </ul>
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**The certifications/reports required to be furnished by a Chartered Accountant under GST law have been explained in detail hereunder:**

**Certifications/reports to be furnished by a Chartered Accountant required under the GST law**

**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
Section 18(1)(a)	Person who has applied for <b>registration within 30 days from the date on which he becomes liable to registration</b> and has been granted such registration	<b>Inputs</b> 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 <b>voluntary registration</b>	<b>Inputs</b> 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 <b>who ceases to pay composition tax and switches to regular scheme</b>	<b>Inputs</b> held in stock and inputs contained in semi-finished or finished goods held in stock <b>and capital goods</b>	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	<b>Inputs</b> held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply <b>and capital goods exclusively used for such exempt supply</b>	The day immediately preceding the date from 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.
- 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 ₹ 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.

**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.

**Certification that in case of refund claim exceeding ₹ 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 ₹ 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.

**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)]**

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**.

**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**.

**Attestation**

**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.

## 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<sup>1</sup>. 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<sup>2</sup> is the tax consultant of the firm - M/s L and Co.

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 ₹ 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 ₹ 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 ₹ 280 lakh. Further, Mr. X, in his individual capacity, shall issue labour work related bills for ₹ 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 ₹ 280 lakh and ₹ 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.

1 Based on view taken in Circular No. 171/03/2022 GST dated 06.07.2022

2 Mr. A is not a Chartered Accountant.

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<sup>3</sup> 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 a partner in XYZ & Associates LLP. Post appointment of Mr. X, following chain of events unfolded:

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3 Mr. X is not a Chartered Accountant.

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 utilised 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 alongwith 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 alongwith 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 ₹ 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 ₹ 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<sup>4</sup> is tax consultant of A Ltd. Mr. X advises A Ltd. on GST compliances.

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.

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4 Mr. X is not a Chartered Accountant.

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.