



MISCELLANEOUS PROVISIONS



The section numbers pertains to CGST Act, unless otherwise specified. Further, the words 'the Act' refer to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- understand and explain the miscellaneous provisions relating to documents namely, presumption as to documents in certain cases, admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence etc.
- understand and explain the miscellaneous provisions relating to furnishing, collection and publication of information namely, bar on disclosure of information, disclosure of information by a public servant, publication of information in respect of person in certain cases etc.
- understand and explain the miscellaneous provisions relating to removal of difficulties, delegation of powers, omission repeal and saving and other provisions
- understand and explain the provisions relating to anti-profiteering measure including the constitution of Anti-Profiteering Authority, its duties, orders, process followed by it etc.
- appreciate and explain the provisions relating to administration of CGST and IGST.



1. INTRODUCTION

Chapter XXI of the CGST Act and Chapter IX of the IGST Act contain the miscellaneous provisions as under:

Chapter XXI of CGST Act: Miscellaneous		
Category	Section	Particulars
Documents	144	Presumption as to documents in certain cases
	145	Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence
Furnishing, collection and publication of information	150	Obligation to furnish information return
	151	Power to collect statistics
	152	Bar on disclosure of information
	158	Disclosure of information by a public servant
	159	Publication of information in respect of persons in certain cases
Removal of difficulties	153	Taking assistance from an expert
	160	Assessment proceedings, etc., not to be invalid on certain grounds
	161	Rectification of errors apparent on the face of record
	170	Rounding off of tax, etc.
	172	Removal of difficulties
Delegation of powers	164	Power of Government to make rules
	165	Power to make regulations
	166	Laying of rules, regulations and notifications

	167	Delegation of powers
	168	Power to issue instructions or directions
Omission and repeal of earlier laws	173	Amendment of Act 32 of 1994
	174	Repeal and saving
Other provisions	143	Job work procedure
	146	Common Portal
	147	Deemed exports
	148	Special procedure for certain processes
	149	Goods and services tax compliance rating
	154	Power to take samples
	155	Burden of proof
	156	Persons deemed to be public servants
	157	Protection of action taken under this Act
	162	Bar on jurisdiction of civil courts
	163	Levy of fee
	169	Service of notice in certain circumstances
	171	Anti-profiteering measure
Chapter IX of IGST Act: Miscellaneous		
Removal of difficulties	20	Application of provisions of Central Goods and Services tax Act
	25	Removal of difficulties

Delegation of powers	22	Power to make rules
	23	Power to make regulations
	24	Laying of rules, regulations and notifications
Other provisions	21	Import of services made on or after the appointed day

State GST laws also prescribe identical miscellaneous provisions.



The provisions relating to job work, information return and import of services made on or after the appointed day have been discussed separately in Chapter 15: Job Work, Chapter 13: Returns and Chapter 25: Transitional Provisions.

The remaining provisions under Chapter XXI of the CGST Act and Chapter IX of the IGST Act and other residuary provisions like administration under the CGST Act and the IGST Act, apportionment of tax and settlement of funds under IGST Act have been discussed in this Chapter.

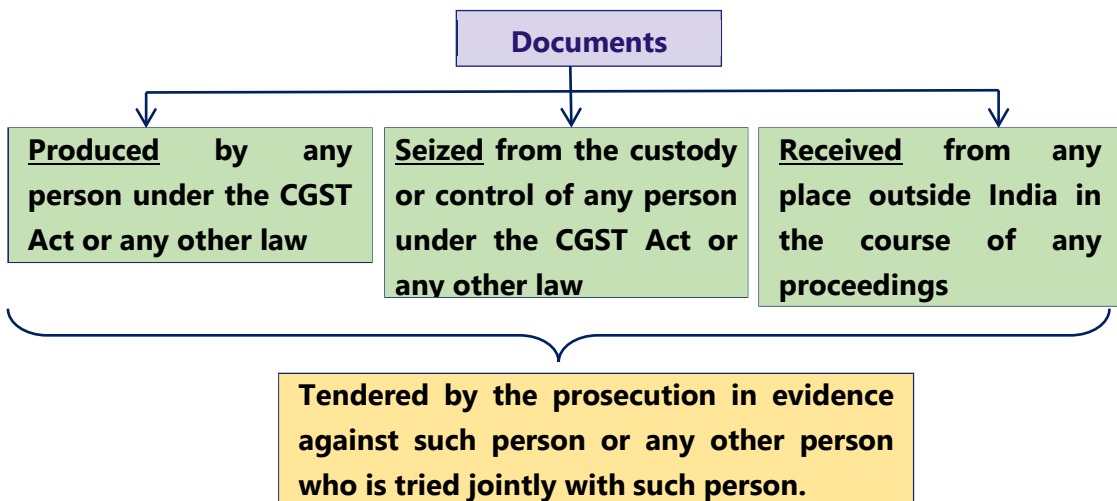
Miscellaneous provisions under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Documents



2. PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES [SECTION 144]

Presumption generally means 'an act of accepting that something is true until it is proved not true'. Section 144 lays down presumptions that are observed by the Court when certain documents (given below in the diagram) are submitted as evidence by the prosecution in a proceeding under the GST Act against any person.



As per the Evidence Act, 1872, the contents of a document must be proved by evidence and signature or handwriting of a person on the document must be proved to be of the person of whom it is alleged to be. Further, a document which is required by law to be attested shall not be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, except in certain cases.



Section 144 enables the court of law to make departure from the above general principles, in respect of the documents given in the diagram above, and presume:

- truth of the contents of the document
- that the signature which purports to be in the handwriting of any particular person is in that person's handwriting
- execution or attestation in the document has been executed or attested by the person by whom it purports to have been so executed or attested

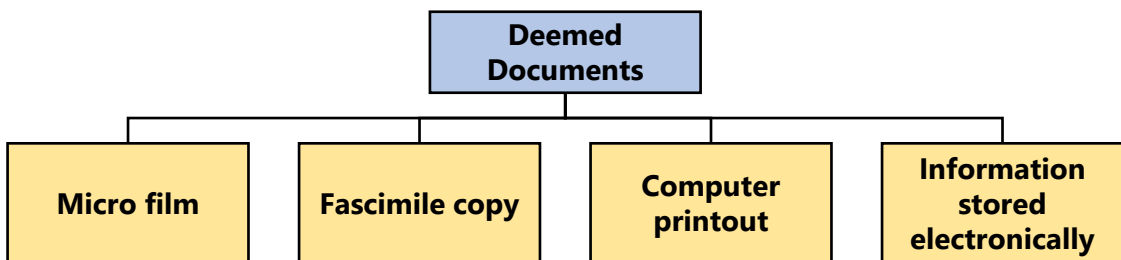
This implies that in case of such documents, if the said person claims that the document is not true or not signed or handwritten by him or not attested or executed by him, the burden of proof in respect of the same shall lie on him.

Further, the Stamp Act, 1899 provides that a document which is not duly stamped shall be inadmissible in evidence. However, section 144 allows the Court to depart from such general provision by providing that a document shall be admissible in evidence even if it is not duly stamped.

3. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS AND COMPUTER PRINTOUTS AS DOCUMENTS AND AS EVIDENCE [SECTION 145]

'Document' has been defined in section 2(41) of the CGST Act to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000.

Deemed documents



As per section 145(1), the following shall be deemed as 'documents':

- ❑ A micro film of a document or the reproduction of the image(s) embodied in such micro film, whether enlarged or not;

Microfilms are films containing microphotographs of a document. Such images are generally provided as negatives.

- ❑ A facsimile copy of a document;

A facsimile is a copy or reproduction of a document that is as true to the original source as possible. An exact copy of a documents is a facsimile.

- ❑ A **statement** contained in a document and included in a printed material produced by a computer;

- ❑ Information stored electronically in any device or media, including any hard copies made of such information.

It refers to the information stored in digital form, which requires the use of computer hardware and software. Also, such information is normally created and altered in the digital form. This category would include the information stored in ERP systems that are employed by most businesses presently. It also includes printouts of such digital information.

Such documents shall be admissible in any proceedings under the Act, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

Certification

As per section 145(2), a certificate,—

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,

shall constitute evidence of any matter stated in the certificate.

It may be noted that it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

Furnishing, Collection and Publication of Information

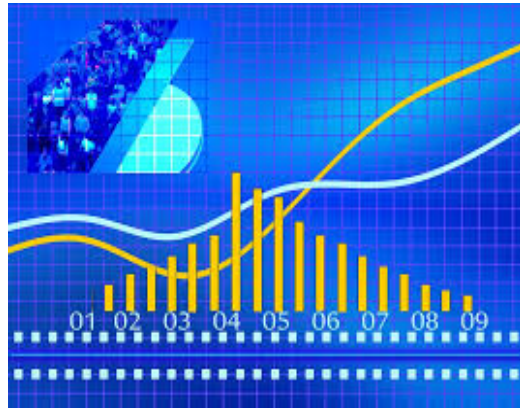


4. POWER TO COLLECT STATISTICS & BAR ON DISCLOSURE OF INFORMATION [SECTIONS 151 & 152]

Section 151 lays down as under:

- ❑ If the Commissioner considers necessary to do so, he may direct that statistics be collected relating to any matter dealt with, by or in connection with the Act.

- ❑ It may be noted that the statistics can be collected only for the purpose of better administration of the Act.
- ❑ Upon such notification being issued, the Commissioner, or any person authorized by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.



Bar on disclosure of information [Section 152]

- ❑ No information of any individual return with respect to any matter given for the purpose of sections 150 or 151 shall, without the previous consent in writing of the concerned person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular person.
- ❑ No such information shall be used for the purpose of any proceedings under the Act.

Confidentiality

Except for the purposes of prosecution under this Act, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.

Exception reporting

No restriction shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.



5. DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT [SECTION 158]

Section 158 lays down the provisions for disclosure of information as also maintaining the confidentiality of the same and related penal provisions in the event of contravention of the same.

(i) Information/ documents to be treated as confidential [Section 158(1)]

The following shall be treated as confidential:

- (i) all particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or
- (ii) all particulars contained in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or
- (iii) all particulars contained in any record of any proceedings under the Act.

(ii) Exceptions to section 158(1) - Particulars that can be disclosed [Section 158(3)]

Section 158(3) lays down that notwithstanding anything contained in section 158, the following information may be disclosed:

- **For prosecution:** Any particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or the Act, or any other law for the time being in force; or
- **For carrying out the objects of the Act:** Any particulars to the Central Government or the State Government or to any person acting in the implementation of the Act, for the purpose of carrying out the object of the Act; or
- **For service of notice or recovery of demand:** Any particulars when such disclosure is occasioned by the lawful exercise under the Act of any process for the service of any notice or the recovery of any demand; or
- **For furnishing to Court in a proceeding where Government is a party:** Any particulars to a Civil Court in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- **For audit of tax receipts or refunds:** Any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or
- **For inquiry into the conduct of GST officer:** Any particulars where such

particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or

- **For enabling levy/realisation of any tax or duty:** Any such particulars to an officer of the Central Government/ by a public servant/ statutory authority/ State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- **By lawful exercise of powers:** Any particulars, when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- **For inquiry into a charge of misconduct by any professional:** Any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or
- **For data entry on automated system:** Any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or
- **For any other law:** Any particulars to an officer of the Government as may be necessary for the purposes of any other law in force in India; and
- **In public interest:** Any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

(iii) Restriction on Courts [Section 158(2)]

Section 158(2) overrides the provisions contained in the Indian Evidence Act, 1872. It states that Court shall not require any GST officer to produce before it or to give evidence before it in respect of the particulars referred to in section 158(1). However, this restriction will not apply in respect of disclosures mentioned under sub-section (3).



6. PUBLICATION OF INFORMATION IN RESPECT OF PERSONS IN CERTAIN CASES [SECTION 159]

Section 159 confers powers on the Commissioner for publishing names and other particulars of persons in certain cases.

What type of information can be published?	The name of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person.
Who can publish such information?	Commissioner, or any other officer authorised by him in this behalf
What is the manner of publication of information?	The information shall be published in such manner as the Commissioner/authorised officer thinks fit.
When can the information be published?	Such information shall be published if the Commissioner, or any other officer authorised by him in this behalf is of the opinion that it is necessary or expedient in the public interest to do so.
Is there any additional information which can be published?	In cases of firm, company or association of persons, names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be may also be published, if in the opinion of the Commissioner/authorised officer, circumstances of the case justify it.
What is the limitation on publication of information relating to penalty?	No publication under this section shall be made in relation to any penalty imposed under the Act: <ul style="list-style-type: none"> • until the time for presenting an appeal to the

	<p>Appellate Authority under section 107 has expired (three months extendable to further one month) without an appeal having been presented; or</p> <ul style="list-style-type: none"> the appeal, if presented, has been disposed of.
--	---

Removal of Difficulties

7. TAKING ASSISTANCE FROM AN EXPERT [SECTION 153]

Section 153 enables an officer, not below the rank of Assistant commissioner, to take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

It may be noted that such decision shall be taken having regard to the nature and complexity of the case and the interest of revenue.



An IT professional's assistance may be sought where the officer is of the view that information pertaining to a taxable person stored on a computer system does not reveal correct details.

8. ASSESSMENT PROCEEDINGS, ETC. NOT TO BE INVALID ON CERTAIN GROUNDS [SECTION 160]

Sometimes, proceedings are challenged for their validity merely for reasons of mistakes etc. This provision aims at saving the proceedings from such challenges.

Which proceedings are covered under this provision?	The following proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any provisions of the Act are covered:
---	---

	<ul style="list-style-type: none"> • Assessment • Re-assessment • Adjudication • Review • Revision • Appeal • Rectification • Notice • Summons • Other proceedings
<p>On which grounds, will such proceedings be not held as invalid?</p>	<p>Such proceedings shall not be held invalid for mere reason of:</p> <ul style="list-style-type: none"> • Mistake • Defect • Omission <p>if such proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier law.</p>
<p>When will the service of any notice, order, or communication be not called in question?</p>	<p>The service of any</p> <ul style="list-style-type: none"> • Notice • Order • Communication <p>shall not be called in question if:</p> <ul style="list-style-type: none"> • the notice, order or communication has already been acted upon by the person to whom it is issued or • where such service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, communication or order.



9. RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD [SECTION 161]

Section 161 provides for rectification of mistakes/errors apparent on the face of record by any authority. It may be noted that this section overrides the entire Act, except for the provisions of section 160 (discussed above).

<p>Which documents are covered under section 161?</p>	<ul style="list-style-type: none"> • Decision • Order • Any notice • Certificate • Any other document
<p>Who can rectify the errors apparent on the face of record?</p>	<ul style="list-style-type: none"> • Any authority who has passed or issued any decision or order or notice or certificate or any other document may rectify any error which is apparent on the face of record in such documents.
<p>What type of mistakes or errors can be rectified?</p>	<p>Errors or mistakes which are apparent on the face of record may be rectified. Rectification can only be of error apparent from record. It is a settled law that a decision on a debatable point of law is not a mistake apparent from the record.</p>
<p>When does the Authority rectify the mistakes/errors?</p>	<p>The authority may rectify the mistake/error:</p> <ul style="list-style-type: none"> • <i>suo moto</i> • when such error or mistake is brought to its notice by a GST officer • when such error or mistake is brought to notice by the affected person within a period of 3 months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be

What is the time limit for rectification?	No rectification can be done after a period of six months from the date of issue of such decision /order/notice/certificate/any other document. However, such time limit does not apply in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission.
What type of precautions should be taken at the time of rectification?	Principles of natural justice should be followed by the authority carrying out such rectification, if such rectification adversely affects any person.



10. ROUNDING OFF OF TAX ETC. [SECTION 170]

Amounts covered

The principle of rounding off laid out in section 170 applies to:

- tax
- interest
- penalty
- fine
- any other sum payable under the provisions of the Act
- refund
- any other sum due under the provisions of the Act.

Rounding off principle

Amount contains part of a rupee consisting of paise, and such part is fifty paise or more	Increase to one rupee
Amount contains part of a rupee consisting of paise, and such part is less than fifty paise	Ignore such part



11. REMOVAL OF DIFFICULTIES [SECTION 172]

Section 172 lays down the procedure that may be followed by the Government in case of any difficulty in giving effect to any provision of the Act. In such cases, the Central Government may, on the recommendations of the GST Council, by general or special order published in the Gazette, make such provisions not inconsistent with the provisions of the Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty.

The time limit for making such order shall be 3 years from the date of commencement of the Act.

Every order so made shall be laid, as soon as may be, after it is made, before the Parliament.

Similar provisions relating to removal of difficulty have also been prescribed under section 25 of the IGST Act.

Delegation of Powers



12. POWER OF GOVERNMENT TO MAKE RULES & REGULATIONS [SECTIONS 164 & 165]

Section 164 empowers the Government to make rules on the recommendations of the GST Council for carrying out the provisions of the Act.

The following are noteworthy in this regard:

- The Government may make rules for all or any of the matters which by the Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- The rules may also be issued with retrospective effect but not from a date earlier than the date on which the provisions of the Act have come into force.
- The rules may provide for a penalty not exceeding Rs. 10,000/- for committing breach of any rule.

Section 165 empowers the Board to make regulations consistent with the Act and the rules made thereunder to carry out the provisions of the Act.

Thus, while the rule making power lies with the Government, the regulation making power has been delegated to the CBEC (Board).

The Central Government and the Board have been vested with the similar powers of making rules and regulations respectively under sections 22 & 23 of the IGST Act also.

13. LAYING OF RULES, REGULATIONS AND NOTIFICATIONS [SECTION 166]

Section 166 provides that the following delegated legislation under the Act shall be laid before each house of the Parliament, while it is in session, for a total period of 30 days which may be comprised in one session, or in two or more successive sessions:

- every rule made by the Government
- every regulation made by the Board
- every notification issued by the Government

If both the Houses agree that

- any modification be made in the rule / regulation / notification; or
- rule or regulation or notification should not be made,

the rule or regulation or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification.

Similar provisions relating to laying of rules, regulations and notification etc. have also been prescribed under section 24 of the IGST Act.



14. DELEGATION OF POWERS [SECTION 167]

Section 167 prescribes that the powers conferred on any authority/officer can also be exercised by another authority/officer, if the Commissioner so directs by way of notification, subject to such conditions as may be specified in the notification.

15. POWER TO ISSUE INSTRUCTIONS OR DIRECTIONS [SECTION 168]

Section 167 empowers the Board (CBEC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the Act.

All officers and all other persons employed in the implementation of the Act shall observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

The meaning of Commissioner for the purposes of following provisions is Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in these said sections with the approval of the Board:

Section	Particulars
Section 2(91)	Meaning of 'proper officer'
Section 5(3)	Delegation of powers by Commissioner
Section 25(9)(b)	Notification of person or class of persons for grant of Unique Identity Number
Section 35(3)	Notification of class of taxable persons required to maintain additional accounts or documents

Section 35(4)	Notification of class of taxable persons permitted to maintain accounts in a prescribed manner where the Commissioner considers that such persons are not in a position to keep and maintain accounts in accordance with the general provisions
Section 37(1)	Details of outward supplies (extension of time limit)
Section 38(2)	Details of inward supplies (extension of time limit)
Section 39(6)	Return (extension of time limit)
Section 66(5)	Determination of expenses of the examination and audit of records, including remuneration of the Chartered Accountant or Cost Accountant
Section 143(1)	Job-work procedure
Section 151(1)	Collection of statistics
Section 158(3)(l)	Exceptions to bar on disclosure of information by public servant
Section 167	Delegation of powers

Omission, Repeal and Saving



16. OMISSION AND REPEAL OF EARLIER LAWS [SECTIONS 173 AND 174]

Amendment of Act 32 of 1994 [Section 173]

Chapter V of the Finance Act, 1994 laid down the provisions for service tax. Since service tax has been subsumed in GST, such provisions are no more required and hence have been omitted, and are not in force.

Repeal and saving [Section 174]

The following legislations shall stand repealed from July 1, 2017 i.e., the date of commencement of the CGST Act:

- The Central Excise Act, 1944 laid (except in respect of goods included in Entry 84 of Union List – petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel, tobacco and tobacco products)
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955
- The Additional Duties of Excise (Goods of Special Importance) Act, 1957
- The Additional Duties of Excise (Textiles and Textile Articles) Act, 1978
- The Central Excise Tariff Act, 1985

The repeal under section 174 or amendment under section 173 shall not:

- revive anything not in force or existing at the time of such amendment or repeal - **No new effect**
- affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder - **No effect on previous position**
- affect any right, privilege, obligation, or liability acquired, accrued or incurred under the previous law - **No effect on rights or liabilities under previous law**

Any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day.

- affect any duty, tax surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the previous law - **No effect on tax etc. due under previous law**
- affect any investigation inquiry, verification, adjudication and assessment proceedings, recovery proceedings, other legal proceedings or tax, penalty etc. and any such proceedings may be instituted, continued or enforced and tax, penalty etc. may be levied or imposed as if these Acts had not been so amended or repealed - **No effect on legal proceedings and tax, penalty etc. under previous law**
- affect any proceedings including that relating to an appeal, review or reference, instituted before, on or after the appointed day under the previous law - **No effect on any appellate proceeding under previous law.**
- The provisions of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal will apply for repeal provided under section 174.

Section 6 of the General Clauses Act, 1897 is given hereunder:

Effect of repeal. *Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not*

- (a) *revive anything not in force or existing at the time at which the repeal takes effect; or*
- (b) *affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
- (c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
- (d) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
- (e) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.*

Other Provisions



17. COMMON PORTAL [SECTION 146]

Section 146 enables the Government to notify the GST Common Portal on recommendation of the GST Council for facilitating the following:

- Registration
- Payment of Tax
- Furnishing of returns
- Computation and settlement of integrated tax
- Electronic way bill
- Other functions and prescribed purposes

CBEC has notified www.gst.gov.in as the GST common portal. All the above stated functions shall be carried out on such common portal.



18. DEEMED EXPORTS [SECTION 147]

The general provisions for export have been discussed separately in other chapters of the Study Material.

Section 147 lays down the provisions for deeming certain supplies as exports, so as to extend the benefit of export to such supplies. Supplies may be notified as deemed exports if they meet the following conditions:

- Goods supplied do not leave India
- Payment for such supplies is received either in Indian rupees or in convertible foreign exchange
- Such goods are manufactured in India

It may be noted that this provision is applicable only in case of supply of goods, and not supply of services.



19. SPECIAL PROCEDURE FOR CERTAIN PROCESSES [SECTION 148]

Section 148 is an enabling provision for prescribing special procedures for certain processes. The following are noteworthy in this regard:

- Such procedures shall be prescribed by way of a notification issued by the Government, on recommendations of the GST Council.
- The conditions and safeguards and the classes of registered persons to whom such procedures will be applicable shall be stated in the notification itself.
- The special procedures may be prescribed with regard to the following matters:
 - Registration
 - Filing of returns
 - Payment of tax
 - Administration

20. GOODS AND SERVICES TAX COMPLIANCE RATING [SECTION 149]

As per section 149, every registered person shall be assigned a compliance rating based on the record of compliance in respect of specified parameters. Such ratings shall not be permanent and will be revised from time to time. The ratings shall be intimated to the taxable person and will also be placed in the public domain. A prospective client will be able to see the compliance ratings of suppliers and take a decision as to whether to deal with a particular supplier or not. This will create healthy competition amongst taxable persons.

21. POWER TO TAKE SAMPLES [SECTION 154]

Section 154 authorizes the Commissioner or an officer authorized by him to take samples of goods from the possession of any taxable person, where he considers it necessary. Such officer shall provide a receipt for any samples so taken.

22. BURDEN OF PROOF [SECTION 155]

'Burden of proof' normally refers to the obligation to prove one's assertion. Section 155 lays down that where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Thus, this provision empowers the officer to presume that a person is not eligible for input tax credit and it shall be the onus of the such person to rebut the Department's contention.

23. PERSONS DEEMED TO BE PUBLIC SERVANTS [SECTION 156]

Section 156 deems all persons discharging functions under the Act as public servants within the meaning of section 21 of the Indian Penal Code. This implies that all officers shall be governed by the provisions of Indian Penal Code, wherever so applicable.



24. PROTECTION OF ACTION TAKEN UNDER THIS ACT [SECTION 157]

Section 157 grants immunity to the following persons against legal proceedings for anything done or intended to be done in good faith:

- President of the Appellate Tribunal
- State President of the Appellate Tribunal
- Members of the Appellate Tribunal
- Officers or other employees of the Appellate Tribunal
- Any other person authorised by the Appellate Tribunal
- Any officer appointed or authorised under the Act

It makes them immune from personal liability for decisions, acts, or omissions that are made within the scope of their official duties, and not made in a wanton or reckless manner.



25. BAR ON JURISDICTION OF CIVIL COURTS [SECTION 162]

Taxes are a civil liability. The basic rule is that every dispute which is civil in nature can be tried by the Civil Court. However, since tax laws generally provide a specific machinery for appeals in terms of Tribunals, the jurisdiction of civil courts is barred in tax laws.

Therefore, as per section 162, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under the Act. However, this bar does not apply in case of appeals to High Court and Supreme Court as provided under sections 117 and 118 respectively.



26. LEVY OF FEE [SECTION 163]

Section 163 provides that a copy of any order or document can be provided to any person on an application made by him for that purpose after paying a prescribed fee.



27. SERVICE OF NOTICE IN CERTAIN CIRCUMSTANCES [SECTION 169]

Any notice, decision, order, summons, or any other communication under the Act and the related rules are served on the assessee in consonance with the provisions of section 169.

Modes of service [Section 169(1)]

Sub-section (1) of section 169 provides that a notice, decision, order, summons, or any other communication can be served by any one of the following methods:

- (a) Giving/tendering directly:** By giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- (b) Registered post/speed post/courier:** By registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- (c) Email:** By sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- (d) At common portal:** By making it available on the common portal; or
- (e) Publication in newspaper:** By publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
- (f) Affixing at place of business etc:** If none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

Deemed date of serving [Section 169(2)]

Every decision/order/summons/notice/communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

Deemed date of receipt [Section 169(3)]

When a decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.



28. ANTI-PROFITEERING MEASURE [SECTION 171]

The burden of indirect taxation ultimately falls on the consumers. It is expected that the GST regime will result in an increased flow of input tax credit. In such a scenario, the concern that benefit of such increased input tax credit may not be passed on by certain entities to the consumers is not unreasonable.

Section 171 makes it mandatory that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed to the recipient by way of commensurate reduction in prices.

National Anti-profiteering Authority

Constitution

National Anti-profiteering Authority is therefore being constituted by the Central Government to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him.

Chapter XV: Anti-profiteering of CGST Rules, 2017 prescribe the provisions relating to constitution of such authority, duties of the authority, orders of the authority etc. The same are discussed hereunder.



The National Anti-Profiteering Authority shall be a five member committee consisting of a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under earlier laws.

The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise.

Duties of the Authority

It shall be the duty of the authority-

- (i) to determine whether the reduction in tax rate or the benefit of input tax credit has been passed on by the seller to the buyer (hereinafter collectively referred to as 'benefit') by reducing the prices
- (ii) to identify the taxpayer who has not passed on the benefit
- (iii) to order
 - (a) reduction in prices
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18% from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be. If the eligible person does not claim return of the amount or is not identifiable, the amount must be deposited in the Consumer Welfare Fund;
 - (c) imposition of penalty
 - (d) cancellation of registration
- (iv) to furnish a performance report to the GST Council by the 10th of the month succeeding each quarter

Process followed by the Authority

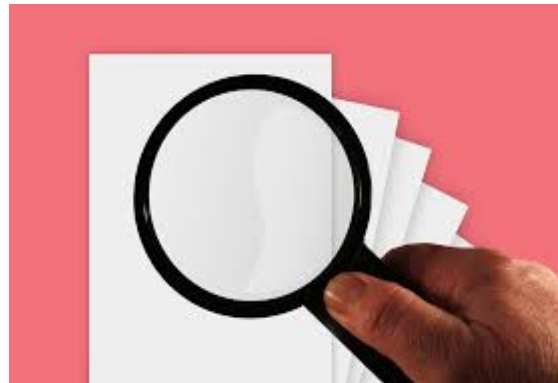
Application to the Authority: All applications from interested parties on issues of local nature shall first be examined by the State Level Screening Committee. On being satisfied that the supplier has not passed on the benefit, the Screening

Committee will forward the application with its recommendations to the Standing Committee on Anti-profiteering.

If the Standing Committee is satisfied that there is a *prima facie* evidence to show that the supplier has not passed on the benefit, it shall refer the matter to the Director General of Safeguards for a detailed investigation.

Investigation: The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter).

The evidence or information presented to the Director General of Safeguards by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005, shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.



The Director General of Safeguards can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Safeguards, or an officer authorised by him will have the power to summon any person either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

The Director General of Safeguards will complete the investigation within a period of 3 months or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing as allowed by the Standing Committee. Upon completion of the investigation, the Director General of Safeguards will furnish to the Authority, a report of its findings along with the relevant records.

Order of the Authority

Where the Authority determines that a registered person has not passed on the

benefit, the Authority may order-

- (a) reduction in prices;
- (b) return to the recipient, the benefit amount not passed on along with interest;
- (c) imposition of penalty as specified under the Act; and
- (d) cancellation of registration under the Act.

The following are noteworthy in this regard:

- Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount.
- The Authority will pass order within 3 months from the date of the receipt of the report from the Director General of Safeguards.
- An opportunity of being heard will be given, if the interested parties request for it in writing.
- Period of interest will be calculated from the date of collection of higher amount till the date of return of such amount.
- If the eligible person (i.e., the buyer) does not claim the return or the person is unidentifiable then the amount must be deposited to the Consumer Welfare Fund along with applicable interest.



29. APPLICATION OF PROVISIONS OF CENTRAL GOODS AND SERVICES TAX ACT [SECTION 20 OF THE IGST ACT]

The following provisions of CGST Act apply to IGST Act also-

- (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 [TDS rate under IGST – 2%];
- (xi) collection of tax at source [TCS rate under IGST – not exceeding 2%];
- (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

Where the penalty is leviable under the CGST Act and the SGST/UTGST Act, the penalty leviable under the IGST Act shall be the sum total of the said penalties.



30. APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS [CHAPTER VIII OF THE IGST ACT]



Since central tax (CGST) and state tax (SGST) are separate taxes levied concurrently on a transaction, the same are identifiable and can be transferred to the CGST account and SGST account of the concerned State Governments respectively. However, this is not possible in case of integrated tax (IGST). Therefore, it becomes necessary to

apportion IGST into components that can be transferred to CGST account and SGST account of the State Governments concerned.

Section 17 of the IGST Act prescribes the provisions for such apportionment of IGST and settlement of funds between the Central Government and the State Governments.

Supplies in respect of which the IGST shall be apportioned

Sub-section (1) of section 17 lays down that in respect of the IGST paid on the following supplies of goods and/or services, the IGST shall be apportioned:

- (a) inter-State supply to an unregistered person or to a registered person paying tax under composition scheme;
- (b) inter-State supply where the registered person is not eligible for input tax credit;
- (c) inter-State supply made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus the tax remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;
- (d) import by an unregistered person or by a registered person paying tax under composition scheme;
- (e) import where the registered person is not eligible for input tax credit;

- (f) import made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus the tax 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.

Thus, fundamentally IGST shall be apportioned only in respect of those supplies where the input tax credit cannot be availed and thus, the tax revenue finally accrues to the exchequer.

Methodology of apportionment

The IGST paid on the supplies mentioned above shall be apportioned as under:

- I. The amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.
- II. The balance amount of IGST remaining in the integrated tax account shall be apportioned to the State where such supply takes place and to the Central Government if such supply takes place in a Union territory.

If the place of such supply made by any taxable person cannot be determined separately, the balance amount shall be apportioned to each of the States/Central Government (in relation to Union territories) in proportion to the total supplies made by such taxable person to each of such States/Union territories in a financial year.

If the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as SGST/UTGST by the respective State/ the Central Government during the immediately preceding financial year.

The interest, penalty and compounding amount realised in connection with the IGST shall also be apportioned in the similar manner.

The Central Government shall transfer the amount apportioned to it to the CGST account or UTGST account, as the case may be and the amount apportioned to the State Government(s) to the SGST account of the respective States.

Transfer of input tax credit [Section 18 of the IGST Act]

Section 18 of the IGST Act provides as under:

- When IGST credit is utilised for payment of CGST, the amount collected as

IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the CGST account.

- ❑ When IGST credit is utilised for payment of UTGST, the amount collected as IGST shall stand reduced by the amount equal to such credit. The Central Government shall transfer an amount equal to the amount so reduced from the IGST account to the UTGST account.
- ❑ When IGST credit is utilised for payment of SGST, the amount collected as IGST shall stand reduced by the amount equal to such credit and shall be apportioned to the appropriate State Government. The Central Government shall transfer the amount so apportioned to the account of the appropriate State Government.
- ❑ Appropriate State means the State or Union territory where a taxable person is registered or is liable to be registered under CGST Act.

Tax wrongfully collected and paid to Central Government or State Government [Section 19 of the IGST Act]

Section 19 provides that a registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of IGST so paid.

A registered person who has paid CGST and SGST/UTGST on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of IGST payable.



31. ADMINISTRATION UNDER GST

The provisions regarding administrative set up under CGST and IGST laws, are contained in Chapter II – Administration [Sections 3 to 6] of the CGST Act, 2017 and Chapter II - Administration [Sections 3 and 4] of the IGST Act, 2017 respectively. State GST laws also prescribe identical provisions in relation to administration. These provisions have been discussed below:

A. Officers under CGST Act [Section 3 of the CGST Act]

The Government shall, by notification, appoint the following classes of officers for the purposes of CGST 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

Any other class of officers as it may deem fit

However, the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of CGST Act.

B. Appointment of officers under CGST Act [Section 4 of the CGST Act]

The Board may, in addition to the officers as may be notified by the Government under section 3 above, appoint such persons as it may think fit to be the officers under CGST Act [Section 4(1)].

Without prejudice to the provisions of section 4(1), 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 CGST Act [Section 4(2)].

C. Powers of officers under CGST Act [Section 5 of the CGST Act]

Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under CGST Act [Section 5(1)].

An officer of central tax may exercise the powers and discharge the duties conferred or imposed under CGST Act on any other officer of central tax who is subordinate to him [Section 5(2)].

The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him [Section 5(3)].

Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax [Section 5(4)].

D. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 6 of the CGST Act]

Without prejudice to the provisions of CGST Act, the officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of CGST Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify [Section 6(1)].

Subject to the conditions specified in the notification issued under section 6(1):

- (a) where any proper officer issues an order under CGST 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 SGST or UTGST;
- (b) where a proper officer under the SGST Act or the UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under CGST Act on the same subject matter [Section 6(2)].

Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act shall not lie before an officer appointed under the SGST Act or the UTGST Act [Section 6(3)].

E. Appointment of officers under IGST Act [Section 3 of the IGST Act]

The Board may appoint such central tax officers as it thinks fit for exercising the powers under IGST Act.

F. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances [Section 4 of the IGST Act]

Without prejudice to the provisions of IGST Act, the officers appointed under the SGST Act or the UTGST Act are authorised to be the proper officers for the purposes of IGST Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.



32. MANNER OF DETERMINATION OF COMMENCEMENT AND TERMINATION OF TIME [SECTION 9 OF THE GENERAL CLAUSES ACT, 1897]

Section 9 of the General Clauses Act, 1897 lays down the provision relating to commencement and termination of time. It stipulates that in any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word from, and, for the purpose of including the last in a series of days or any other period of time, to use the word to.

In simple words, while computing time, the rule is to exclude the first day and to include the last day. Courts have held that the word "from" is akin to "after" and that the word "from" if used for the purpose of and in reference to the computation of time, as for example, from a stated date, that stated date is *prima facie* excluded from computation. Although on some occasions, Courts have taken a view that the question as to whether the stated date should or should not be so excluded, should be decided according to the context in which the word "from" occurs.

It is worthwhile to mention here that the Supreme Court, in case of *M/s. Econ Antri Ltd v. M/s. Rom Industries Ltd. & Anr*, had also taken a similar view on this point and decided that while computing the period of limitation, the day on which the offence is committed/ date of cause of action has to be excluded.

Another point which needs a mention here is that section 3(35) of the General Clauses Act, 1897 defines the expression "month" to mean a month reckoned according to the British calendar. Further, *Allahabad High Court in case of CCus & CEx. v. Ashok Kumar Tiwari 2015 (37) STR 727 (All.)* has held that where the legislature has stipulated the period of limitation in terms of months, such a stipulation can only mean a calendar month and not 30 days.

TEST YOUR KNOWLEDGE

1. *How shall the GST compliance rating score be determined?*
2. *When shall the power to collect statistics be exercised under GST laws?*
3. *When shall the particulars relating to any proceedings or prosecution be published under GST laws?*
4. *Explain the provisions relating to rectification of errors apparent on the face of record under section 161 of the CGST Act, 2017?*
5. *What is Anti-profiteering measure?*

ANSWERS/HINTS

1. As per section 149(2), the GST compliance rating score shall be determined on a scale of ten on the basis of prescribed parameters.
2. As per section 151, if the Commissioner considers that collection of statistics is necessary for the purpose of better administration of the Act, he may direct that statistics be collected.
3. When the Commissioner/authorised officer is of opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under the CGST Act in respect of such person, it may cause to be published such name and particulars [Section 159(1)]

No publication under this section shall be made in relation to any penalty imposed under the CGST Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of [Section 159(2)].

4. Section 161 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

5. As per section 171 of the CGST Act, any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. National Anti-profiteering Authority may examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

