



# TRANSITIONAL PROVISIONS



*The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified. The expression 'the Act' refers to CGST Act, unless otherwise specified. For the sake of brevity, the term input tax credit has been referred to as ITC in this Chapter.*

## LEARNING OUTCOMES

**After studying this Chapter, you will be able to –**

- explain the provisions relating to repeal and saving with regard to earlier laws, on introduction of GST
- explain the various aspects relating to transitional provisions as applicable to different scenarios and the applicability of tax thereon

## 1. INTRODUCTION

GST is a significant reform in the field of indirect taxes in our country. Multiple taxes levied and collected by the Centre and States, have been replaced by GST. GST is a multi-stage value added tax on consumption of goods or services or both. As GST seeks to consolidate multiple taxes into one, it is very essential to have transitional provisions to



ensure that the transition to the GST regime is very smooth and hassle-free and no ITC (Input Tax Credit)/benefits earned in the earlier regime are lost. The transition provisions can be categorised under three heads:

- A. Relating to ITC
- B. Continuance of earlier procedures such as job work for a reasonable period without any adverse consequence under GST law
- C. All claims (pending as well as future) pertaining to earlier laws filed before, on or after the appointed day.

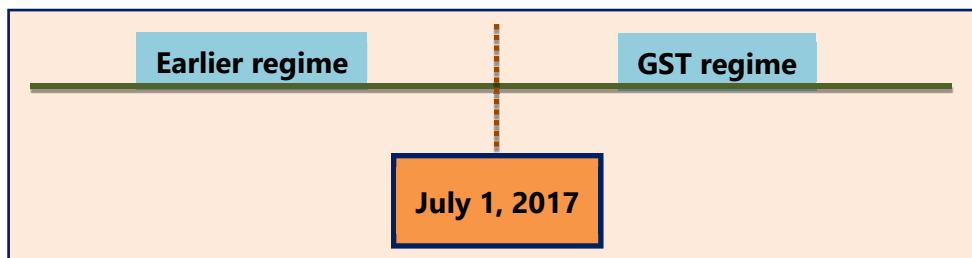
### Appointed day

Appointed day has been defined in section 2(10) to mean the date on which the provisions of this Act shall come into force.

The various sections of the CGST Act have come into force as under:

Section Nos. of CGST Act	Date of coming into effect
1, 2, 3, 4, 5, 10, 22, 23, 24, 25, 26, 27, 28, 29, 30, 139, 146 and 164	22.06.2017
Sections 6 to 9, 11 to 21, 31 to 41, 42 except the proviso to section 42(9), 43 except the proviso to section 43(9), 44 to 50, 53 to 138, 140 to 145, 147 to 163, 165 to 174	01.07.2017
Section 51(1) with respect to persons specified under clauses (a) and (b) and the persons notified under clause (d) of sub-section (1) of section 51	18.09.2017

<p>The said persons shall be liable to deduct tax from the payment made or credited to the supplier of taxable goods and/ or services with effect from a date to be notified subsequently.</p>	
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Chapter XX of the CGST Act [Sections 139-142] supplemented with Chapter XIV of the CGST Rules [Rules 117 to 121] prescribe the transitional provisions. State GST laws also prescribe almost identical transitional provisions.

Chapter XX of CGST Act : Transitional Provisions		
Section heading	Section No.	Particulars
Migration of existing taxpayers	139	Migration of existing taxpayers to GST
Transitional arrangements for input tax credit	140(1)	Closing balance of the credit in the last returns
	140(2)	Unavailed credit on capital goods
	140(3)	(i) Credit on duty paid stock (ii) Deemed credit on duty paid stock for traders who do not possess the duty/tax paying document
	140(4)	Credit relating to goods/services exempted under the earlier law but taxable under GST
	140(5)	Inputs/input services in transit

	140(6)	Tax paid under the earlier law under composition scheme
	140(7)	Distribution of credit by Input Service Distributor
	140(8)	CENVAT credit in case of centralised registration under service tax
	140(9)	Reclaiming the reversed input service credit
<b>Transitional provisions relating to job work</b>	141	Transitional provisions relating to job work
<b>Miscellaneous transitional provisions</b>	142(1)	Goods removed within 6 months prior to the appointed day but returned within 6 months from the appointed day
	142(2)	Price revision in existing contracts after appointed day
	142(3), 142(4) & 142(5)	Refund of duty/tax/interest/credit pertaining to earlier law
	142(6) & 142(7)	Appeal, review, reference proceedings relating to CENVAT credit and output duty/tax under earlier law
	142(8)	Assessment or adjudication proceedings under earlier law
	142(9)	Revision of returns furnished under earlier law after the appointed day
	142(10)	Supplies made in pursuance of existing contracts after the appointed day
	142(11)	Supplies on which tax was leviable under earlier law

	142(12)	Goods sent on approval basis within six months prior to the appointed day but returned within 6 months from the appointed day
	142(13)	TDS under VAT laws
<b>Chapter XXI of CGST Act : Miscellaneous</b>		
<b>Omission and repeal of earlier law</b>	173	Amendment of Act 32 of 1994
	174	Repeal and saving
<b>Chapter IX of IGST Act : Miscellaneous</b>		
	21	Import of services made on or after the appointed day

For the purposes of Chapter XX: Transitional Provisions of the CGST Act, the expressions "capital goods", "Central Value Added Tax (CENVAT) credit" "first stage dealer", "second stage dealer", or "manufacture" shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 or the rules made thereunder.



The transitional provisions relating to job work have been discussed in Chapter 15: Job Work. The remaining provisions have been discussed in the subsequent pages of this chapter.



## **2. OMISSION AND REPEAL OF EARLIER LAWS [SECTIONS 173 & 174]**

Whenever an existing law is repealed or substituted by a new law, the new Act prescribes provisions for repeal and saving of provisions under the old law. This ensures that the rights, powers, liabilities, duties, privileges, obligations etc. created under the old laws are intact and are not affected by the enactment of new law by repealing the old laws.

### Repeal and amendment by sections 173 and 174

As per section 174, the following legislations have been repealed with the introduction of GST from July 1, 2017:

- ❑ Central Excise Act, 1944 – Central Excise Act will continue to have limited application in respect of tobacco and tobacco products, crude petroleum, light diesel oil, motor spirit, aviation turbine fuel and natural gas (*discussed in detail under sub-heading 'Repeal by Other Legislations'*).
- ❑ Medicinal and Toilet Preparations (Excise Duties) Act, 1955,
- ❑ Additional Duties of Excise (Goods of Special Importance) Act, 1957,
- ❑ Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and
- ❑ Central Excise Tariff Act, 1985

Chapter V of the Finance Act, 1994 providing for service tax has been omitted vide section 173. Section 173 has amended Act 32 of 1994 (Finance Act, 1994) to omit Chapter V therefrom.

However, such repeal/amendment of old laws (earlier laws) will not-:

- ❖ revive anything not in force or existing at the time of such amendment or repeal.
- ❖ affect the previous operation of such earlier laws or anything duly done or suffered there under.
- ❖ affect any right, privilege, obligation, or liability acquired, accrued or incurred under such earlier laws.
- ❖ 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 under the provisions of such earlier laws.
- ❖ affect any investigation, inquiry, verification (including scrutiny and audit) assessment proceedings, adjudication any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if such earlier laws had not been so amended or repealed.

- ❖ affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the earlier laws and such proceeding shall be continued under the earlier laws as if the GST laws had not come into force and the said earlier laws had not been amended or repealed.

### **Repeal by other legislations**

Though petroleum and petroleum products (five products as given below) are within the GST ambit, GST will be levied on the same from a date to be notified by the GST Council. Therefore, till that time such products will continue to be exigible to central excise duty, VAT and CST, as the case may be. Alcoholic liquor for human consumption being outside the GST net, will continue to be exigible to State excise duty, VAT and CST, as the case may be.

Central excise duty will continue to be levied on

- (i) petroleum crude
- (ii) high speed diesel
- (iii) motor spirit (commonly known as petrol)
- (iv) natural gas
- (v) aviation turbine fuel
- (vi) tobacco and tobacco products

VAT and CST will continue to be levied on intra-State sale and inter-State sale respectively of the following products:

- (i) petroleum crude
- (ii) high speed diesel
- (iii) motor spirit (commonly known as petrol)
- (iv) natural gas
- (v) aviation turbine fuel
- (vi) alcoholic liquor for human consumption

VAT legislations and legislations of other State taxes which have been subsumed in GST have been repealed/ amended by respective State

legislations. Central Sales Tax Act, 1956 has been suitably amended by the Taxation Laws (Amendment) Act, 2017 to restrict its applicability to the products mentioned above. Legislations levying swachh bharat cess, krishi kalyan cess, infrastructure cess and few other cesses have also been repealed by the Taxation Laws (Amendment) Act, 2017.

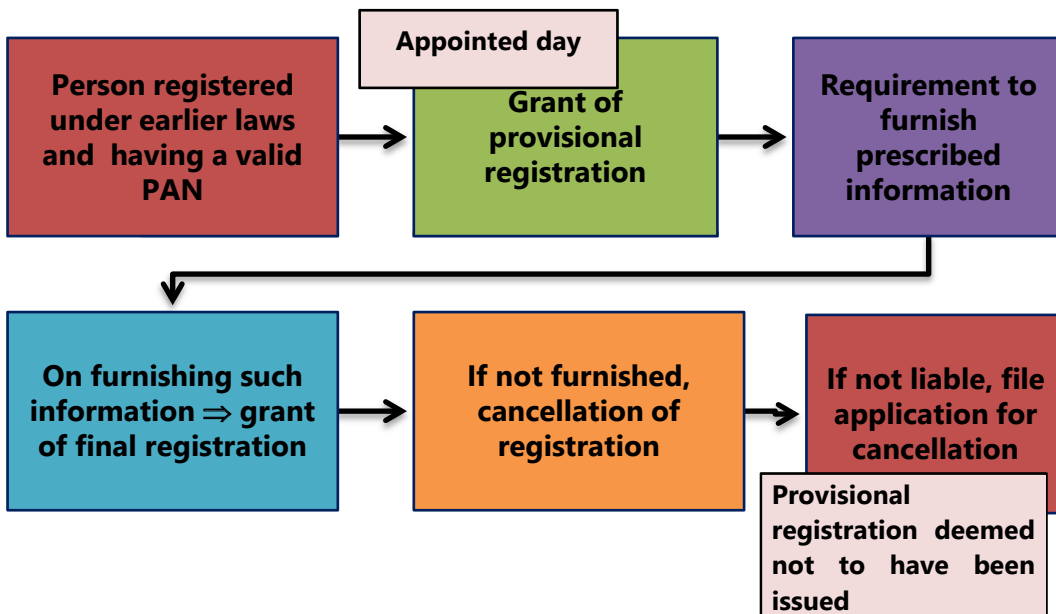
*Section 174 has also been discussed in Chapter 24: Miscellaneous Provisions.*



### 3. MIGRATION OF EXISTING TAXPAYERS [SECTION 139]

Section 139 of the Act prescribes the procedure for migration of existing taxpayers to GST. It provides that on and from the appointed day, every person registered under any of the earlier laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis on fulfillment of certain prescribed conditions. The final certificate of registration shall be granted on fulfillment of certain additional conditions. The provisional registration shall be cancelled if such conditions are not complied with.

The provisional registration certificate issued to a person shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.







## 4. TRANSITIONAL ARRANGEMENTS FOR INPUT TAX CREDIT [SECTION 140]

### (i) Closing balance of the credit in the last returns [140(1)]

A person may have unutilized CENVAT/VAT credit when migrating to GST. Sub-section (1) provides the mechanism for allowance of such CENVAT credit in the GST regime.

A registered person, other than a person opting to pay tax under the composition scheme, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the earlier law. In other words, CENVAT credit balance shall be carried forward as CGST credit under CGST law.

However, the registered person shall not be allowed to take credit in the following circumstances, namely:

- where the said amount of credit is not admissible as ITC under the CGST Act; or
- where he has not furnished all the returns required under the earlier law (service tax and/or central excise law) for the period of six months immediately preceding the appointed date; or
- where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

Similarly, VAT credit shall be carried forward as SGST credit under respective SGST laws.



Mr. B was a registered service provider providing taxable services under the service tax. He had unutilized CENVAT credit amounting to ₹ 10 lakh as on the 30.06.2017, which has been adequately shown by him in his service tax return for the relevant period. Such CENVAT credit shall be carried forward as CGST credit if such credit is admissible under CGST Act.

**ILLUSTRATION 1**

Mr. D is a manufacturer of excisable goods. As on 30.06.2017, Mr. D has the following unutilized credits available in his returns filed for the period ending on 30.06.2017:

<b>Particulars</b>	<b>Amount (₹)</b>
CENVAT credit of excise duty paid on raw material	5,00,000
Input tax credit under VAT	1,50,000
CENVAT credit of additional duty u/s 3(1) of Customs Tariff Act paid on imported raw material	70,000
CENVAT credit of additional duty u/s 3(5) of Customs Tariff Act paid on imported raw material	<u>60,000</u>
<b>Total</b>	<b>7,80,000</b>

Compute the amount of credit to which Mr. D will be entitled to under GST laws.

**ANSWER****Amount of credit available under CGST**

<b>Particulars</b>	<b>Amount (₹)</b>
CENVAT credit of excise duty	5,00,000
CENVAT credit of additional duty u/s 3(1) of Customs Tariff Act	70,000
CENVAT credit of additional duty u/s 3(5) of Customs Tariff Act	60,000
<b>Total CGST credit</b>	<b>6,30,000</b>

**Amount of credit available under SGST**

<b>Particulars</b>	<b>Amount (₹)</b>
Input tax credit under VAT	1,50,000
<b>Total SGST credit</b>	<b>1,50,000</b>

### Procedure for claiming carry forward of credit

Every registered person entitled to take credit of input tax shall, within ninety days of the appointed day, submit a declaration electronically in GST TRAN 1. The last date for submission of GST TRAN 1 has been extended till October 31, 2017.

### **(ii) Unavailed credit on capital goods [140(2)]**

Under the earlier law i.e., CENVAT Credit Rules, 2004, CENVAT credit on capital goods was allowed only to the extent of 50% in the financial year in which they were received. The balance CENVAT credit could be availed in any financial year subsequent to the financial year in which the capital goods were received. Under VAT Laws, the credit was generally allowed over a period of 2-3 years.

Such balance installment of unavailed credit on capital goods can also be taken by filing the requisite declaration in the TRAN 1. Both the amount of credit availed and the amount of credit yet to be availed, under the earlier laws till the appointed day, need to be specified in GST TRAN 1.

Sub-section (2) of section 140 provides that a registered person, other than a person opting to pay tax under the composition scheme, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the earlier law by him, for the period ending with the day immediately preceding the appointed day.

The credit shall be allowed only if it was admissible as CENVAT credit under the earlier law and is also admissible as ITC under the CGST Act.

Aggregate amount of CENVAT credit to which the said person was entitled to in respect of the capital goods under the earlier law	XXX
Less : Amount of CENVAT credit already availed in respect of said capital goods under the earlier law	XXX
<b>Unavailed CENVAT credit</b>	<b>XXX</b>



Mr. E is a manufacturer of excisable goods. He purchased a machinery on 01.05.2017 and paid ₹ 1,20,000/- as excise duty on the same. He availed CENVAT credit of ₹ 60,000/- (50%) in his return for the period ending 30.05.2017. He would have been entitled to the remaining credit in the financial year 2018-2019. He shall be allowed the remaining credit of ₹ 60,000/- as CGST credit on submission of GST TRAN 1.

**(iii) Credit on duty paid stock [Section 140(3)]**

A registered person, who was not liable to be registered under the earlier law, may have duty paid goods in his stock on the appointed day. GST would be payable on all supplies of goods or services made after the appointed day. It is not the intention of the Government to collect tax twice on the same goods. Hence, in such cases, it has been provided vide section 140(3) that the credit of the duty/tax paid earlier would be admissible as credit.

Sub-section (3) of section 140 prescribes the provisions in this regard as under:

Who is entitled to credit on duty paid stock under section 140(3)?	<p>The credit shall be allowed to the following:</p> <ul style="list-style-type: none"> <li>• a registered person who was not liable to be registered under the earlier law</li> <li>• a registered person who was engaged in the manufacture of exempted goods or provision of exempted services</li> <li>• a registered person who was providing works contract service and was availing of the benefit of <i>Notification No. 26/2012 ST dated 20.06.2012</i></li> <li>• first stage dealer</li> <li>• second stage dealer</li> <li>• registered importer</li> <li>• depot of manufacturer</li> </ul>
In respect of which inputs shall the credit be allowed under section 140(3)?	Credit shall be allowed in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.
Which duties are eligible for credit under section 140(3)?	<p>Eligible duties are:</p> <ul style="list-style-type: none"> <li>• Duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985</li> </ul>

	<ul style="list-style-type: none"> <li>• Duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985</li> <li>• Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978</li> <li>• Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957</li> <li>• National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001</li> <li>• Additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975</li> <li>• Additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975</li> </ul>
<p>What are the conditions for availing credit under section 140(3)?</p>	<p>The conditions for availing credit are:</p> <ul style="list-style-type: none"> <li>• inputs or goods are used or intended to be used for making taxable supplies under CGST Act</li> <li>• the said registered person is eligible for ITC on such inputs under the CGST Act</li> <li>• the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs</li> <li>• such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day</li> <li>• the supplier of services is not eligible for any abatement under the CGST Act</li> <li>• the stock of such inputs as on the appointed day is declared in GST TRAN 1 on the common portal by October 31, 2017</li> </ul>

**Deemed credit on duty paid stock for traders who do not possess the duty/tax paying document**

For traders who do not have excise or VAT invoice, there is a scheme to allow credit to them on the duty paid stock. The features of this scheme are as under:

- (i) The scheme is operative only for six months from the appointed day. It is not available to manufacturer or supplier of service. It is available to traders only.
- (ii)

Tax paid on inputs	Credit allowed on duty paid stock* not supported by document evidencing payment of duty	
	Goods chargeable to CGST @ 9% or more	Other goods
<b>CGST</b>	60% of CGST paid on stock cleared after the appointed day	40% of CGST paid on stock cleared after the appointed day
<b>IGST</b>	30% of IGST paid on stock cleared after the appointed day	20% of IGST paid on stock cleared after the appointed day

*\*Note: Such goods should not have been unconditionally exempted or taxed at nil rate under the excise law.*

- (iii) Credit would be allowed after the GST is paid on such goods subject to the condition that the benefit of such credit is passed on to the customer by way of reduced prices.
- (iv) A statement [GST TRAN 2] of supply of such goods has to be submitted for each of the six tax periods at the end of each tax period.
- (v) Stocks stored should be easily identifiable.
- (vi) the document for procurement of such goods is available with the registered person i.e., a purchase invoice;

**(iv) Credit relating to goods/services exempted under the earlier law but taxable under GST [Section 140(4)]**

There might be situations where a manufacturer was engaged in the manufacture of both taxable as well as exempted goods or a service provider was rendering both taxable and exempted services. In such cases, credit to the extent of such exempt output was liable to be reversed under the earlier laws. It could be so that such output exempted under earlier law becomes taxable under GST. In such cases, credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day relating to such exempted goods or services would be allowed. The details of the stock held on the appointed day shall be specified in GST TRAN 1.

Section 140(4) provides that a registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of the Finance Act, 1994, but which are liable to tax under the CGST Act, shall be entitled to take, in his electronic credit ledger,—

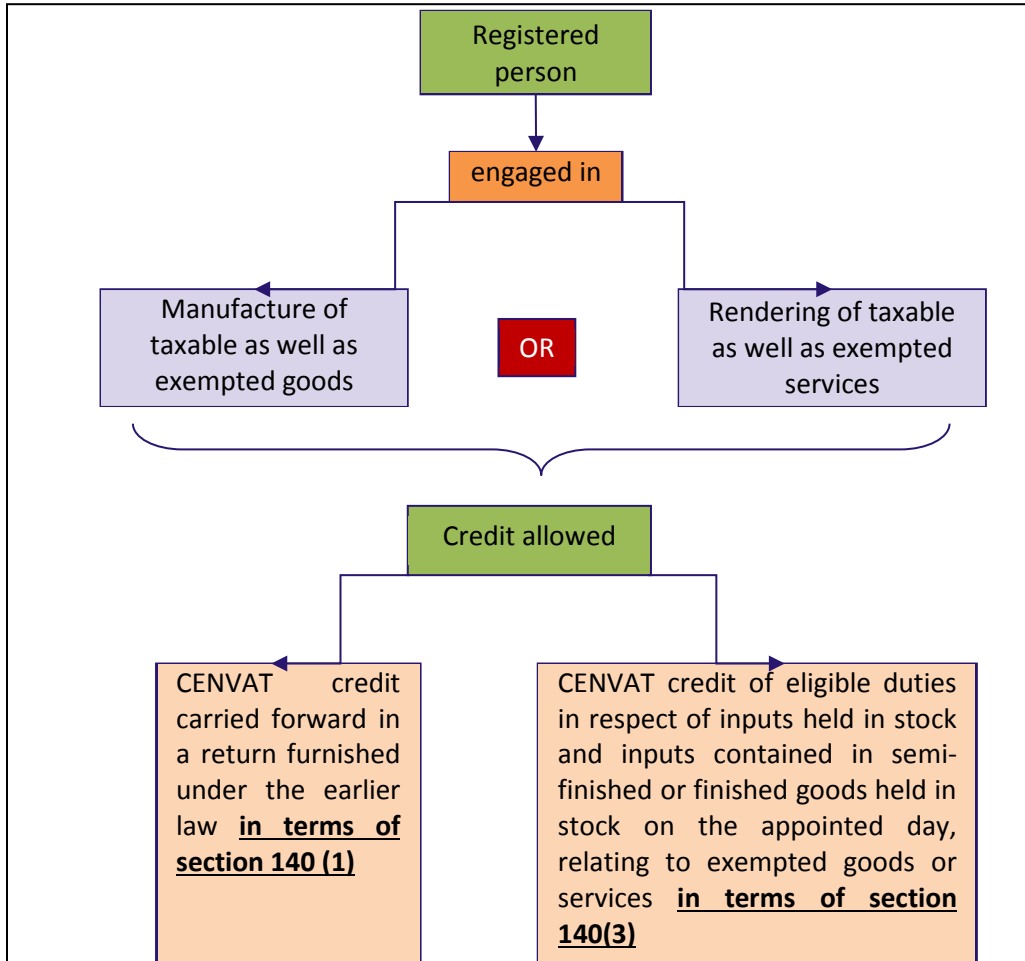
- (a) the amount of CENVAT credit carried forward in a return furnished under the earlier law by him in accordance with the provisions of sub-section (1); and
- (b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

Eligible duties are:

- Duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985
- Duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985
- Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978
- Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957
- National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001

- Additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975
- Additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975

The following chart depicts the provision laid down by section 140(4):



#### (v) Inputs/input services in transit [Section 140(5)]

There might be a scenario where input or input services are received on or after the appointed day but the duty or tax on the same was paid by the supplier under the earlier law. A registered person may take credit of eligible duties and taxes, provided the invoice has been recorded in the books of account within 30 days from the appointed day. This period can be extended by the Commissioner by another 30 days.



A statement of such invoices showing the following details shall be furnished by the registered person:

- (i) the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the earlier law;
- (ii) the description and value of the goods or services;
- (iii) the quantity in case of goods and the unit or unit quantity code thereof;
- (iv) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and
- (v) the date on which the receipt of goods or services is entered in the books of account of the recipient.

Eligible duties and taxes means:

- Duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985
- Duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985
- Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978
- Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957
- National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001
- Additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975
- Additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975
- Service tax leviable under section 66B of the Finance Act, 1994

**(vi) Tax paid under the earlier law under composition scheme  
[Section 140(6)]**

Those taxpayers who paid tax at fixed rate or fixed amount in lieu of the tax payable under the earlier law but are registered under normal scheme in GST can claim credit in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date, subject to the following conditions:

- (i) such inputs or goods are used or intended to be used for making taxable supplies under the CGST Act
- (ii) the said registered person is not covered under section 10 (composition scheme)
- (iii) the said registered person is eligible for ITC on such inputs under the CGST Act
- (iv) the said registered person is in possession of the invoice or other duty payment documents under the earlier law in respect of the inputs
- (v) such invoices or other duty paying documents are not more than twelve months old on the appointed day.

Eligible duties are:

- Duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985
- Duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985
- Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978
- Additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957
- National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001
- Additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975
- Additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975

**(vii) Distribution of credit by ISD [Section 140(7)]**

Section 140(7) enables an Input Service Distributor (ISD) to distribute credit on account of any services received prior to the appointed day, under the CGST Act even if the invoices relating to such services are received on or after the appointed day. It is important to note that an Input Service Distributor can distribute credit of only input services and not inputs.

**(viii) CENVAT credit in case of centralised registration under service tax [Section 140(8)]**

A registered person who had a centralized registration under the earlier service tax regime can take credit of the amount of CENVAT credit carried forward in the return furnished under the earlier law. The credit shall also be allowed if the return is filed within 3 months of the appointed day subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier.

The details of the stock held on the appointed day shall be specified in GST TRAN 1.

The registered person shall not be allowed to take credit unless the said amount is admissible as ITC under the CGST Act. Such credit may be transferred to any of the registered persons having the same PAN for which the centralised registration was obtained under the earlier law.

**(ix) Reclaiming the reversed input service credit [Section 140(9)]**

CENVAT credit on input services which has been reversed on account of non-payment of consideration within 3 months can be reclaimed if the payment is made to the supplier of service within 3 months from the appointed day.

Section 140(9) lays down that where any CENVAT credit availed for the input services provided under the earlier law has been reversed due to non-payment of the consideration within a period of 3 months (as provided under rule 4(7) of the CENVAT Credit Rules, 2004), such credit can be reclaimed under the GST regime if the registered person pays the consideration for that supply of services within a period of 3 months from the appointed day.



Mr J availed consultancy services in the month of January, 2017 for which, invoice dated 01.02.2017 was received by him. He availed the credit thereon on 01.03.2017, but could not pay the consideration to the vendor within three months of the date of invoice and therefore, he reversed the credit availed by him. He makes the payment of the value of invoice and tax on 07.07.2017. Mr. J can avail credit of service tax under GST regime.

**(x) Where any goods or capital goods belonging to the principal are lying at the premises of the agent on the appointed day**

This provision is specific to SGST law. In such cases, agent shall be entitled to take credit, subject to the following conditions:

- (i) The agent is a registered taxable person
- (ii) Both the principal and the agent declare the details of stock



## **5. TRANSITIONAL PROVISIONS RELATING TO JOB WORK [SECTION 141]**

Inputs or semi-finished goods or finished goods could be sent to the job worker or any other premises without payment of duty/VAT under the earlier law. No GST is payable by the job worker when such goods are returned by him within 6 months after the appointed day. The period of 6 months can be extended by the Commissioner by another 2 months. Both the manufacturer and the job worker will have to declare the details of such goods held in stock by the job worker on the appointed day in GST TRAN 1.

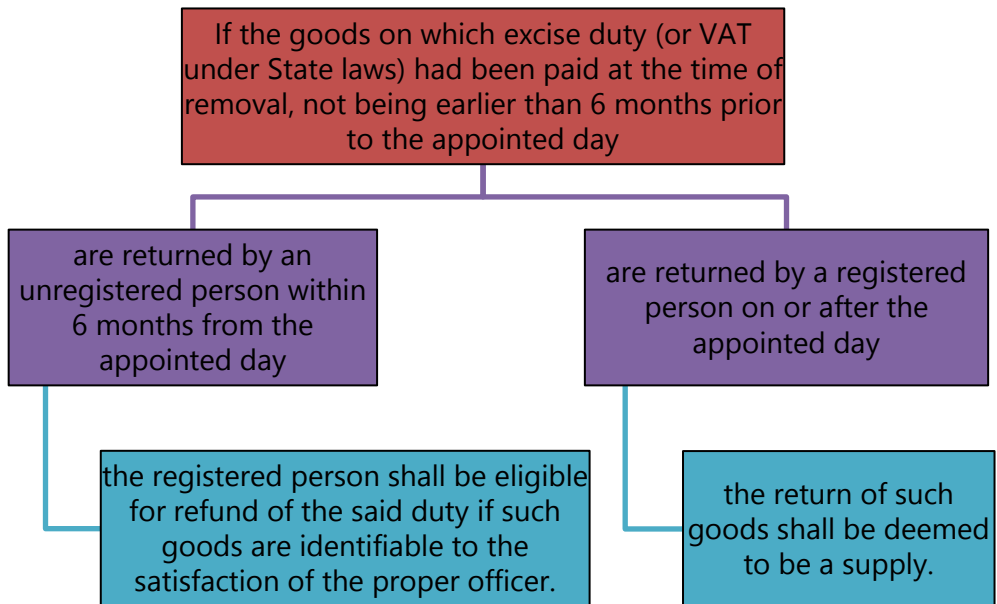
However, if such inputs, semi-finished goods or finished goods are not returned within the prescribed period, ITC shall be liable to be recovered from the principal as per section 142(8)(a). In addition, the job worker shall pay GST on such supplies.

*The provisions relating to transitional credit in case of job work have been discussed in detail in Chapter 15: Job Work.*



## 6. MISCELLANEOUS TRANSITIONAL PROVISIONS [SECTION 142]

### (i) Goods removed within 6 months prior to the appointed day but returned after the appointed day [Section 142(1)]



### (ii) Price revision in existing contracts after appointed day [Section 142(2)]

#### Upward revision

Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods and/or services is revised upwards on or after the appointed day, the registered person (who had removed or provided such goods and/or services) shall issue to the recipient a supplementary invoice or debit note, within 30 days of such price revision. Such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under the CGST Act.

#### Downward revision

Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods and/or services is revised downwards on or after the appointed day, the registered person (who had removed or provided such

goods and/or services) may issue to the recipient a credit note, within 30 days of such price revision. Such credit note shall be deemed to have been issued in respect of an outward supply made under this Act. The registered person shall reduce his tax liability on account of issue of such credit note, subject to reversal of corresponding credit by the recipient.

### **(iii) Refund of duty/tax/interest/CENVAT credit pertaining to earlier period [Sections 142(3), 142(4) & 142 (5)]**

#### **Refund in case of exports [Section 142(4)]**

Every claim for refund filed after the appointed day for refund of any duty or tax paid under earlier law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law.

If any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. Also, CENVAT credit shall not be refunded if the same has been carried forward under the CGST Act.

#### **Refund of service tax on services not provided [Section 142(5)]**

Every claim filed by a person after the appointed day for refund of tax paid under the earlier law in respect of services not provided shall be disposed of in accordance with the provisions of earlier law.

The refund, if any, shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of earlier law. However, such refund shall be subject to the principle of unjust enrichment.

#### **Other refunds [Section 142(3)]**

Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of

- CENVAT credit
- duty
- tax
- interest
- any other amount paid under the earlier law

shall be disposed of in accordance with the provisions of earlier law. The refund, if any, will be paid in cash notwithstanding anything to the contrary

contained under the provisions of earlier law. However, such refund shall be subject to the principle of unjust enrichment.

If any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. Also, CENVAT credit shall not be refunded if the same has been carried forward under the CGST Act.

**(iv) Appeal, review, reference proceedings relating to CENVAT credit and output duty/tax under earlier law [Sections 142(6) & 142(7)]**

Appeal, review or reference proceedings relating to CENVAT credit and any output duty or tax liability initiated before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law.

CENVAT credit or any amount, if found to be admissible, shall be refunded in cash, notwithstanding anything to the contrary contained under the provisions of earlier law. However, such refund shall be subject to the principle of unjust enrichment. CENVAT credit shall not be refunded if the same has been carried forward under the CGST Act. The amount rejected, if any, shall not be admissible as ITC under the CGST Act.

If credit or any amount becomes recoverable as a result of such appeal, review or reference proceedings, the same shall, unless recovered under the earlier law, be recovered as an arrear of tax under the CGST Act. The amount so recovered shall not be admissible as ITC under the CGST Act.

**(v) Assessment or adjudication proceedings under earlier law [Section 142(8)]**

If any amount of tax, interest, fine or penalty becomes recoverable from a person on account of any assessment or adjudication proceedings (instituted, before, on or after the appointed day) under the earlier law, the same shall be recovered as an arrear of tax under the CGST Act, if not recovered under the earlier law. The amount so recovered shall not be admissible as ITC under the CGST Act.

Refund, if any, arising out of such proceedings shall be paid in cash notwithstanding anything to the contrary contained in the earlier law. The refund shall, however, be subject to the principle of unjust enrichment. The amount rejected, if any, shall not be admissible as ITC under the CGST Act.

**(vi) Revision of returns furnished under earlier law after the appointed day [Section 142(9)]**

If any amount is found to be recoverable or CENVAT credit is found to be inadmissible on account of revision of a return (furnished under the earlier law) after the appointed day, the same shall, unless recovered under the earlier law, be recovered as an arrear of tax under the CGST Act. The amount so recovered shall not be admissible as ITC under the CGST Act.

If any amount is found to be refundable or CENVAT credit is found to be admissible on account of such revision of return, the same shall be refunded in cash notwithstanding anything to the contrary contained in the earlier law. The refund shall, however, be subject to the principle of unjust enrichment. The amount rejected, if any, shall not be admissible as ITC under the CGST Act.

**A point to note in case of refund is that the return should have been revised within the time limit specified for such revision under the earlier law.**

**(vii) Supplies made in pursuance of existing contracts after the appointed day [Section 142(10)]**

The goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of the CGST Act i.e., the same would be liable to GST.



Mr K has given his commercial property on rent to Mr. L. The rent agreement has been executed for 11 months from January, 2017 to November, 2017. While prior to July 1, 2017 service tax was payable on rent, from July 1, 2017 GST would be payable on rent.

**(viii) Supplies on which tax was leviable under earlier law [Section 142(11)]**

Section 142(10) provides that goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to GST. However, section 142(11) excludes the supplies of goods and services from the levy of GST to the extent the tax was leviable on the said goods and services under State VAT laws and Chapter V of the Finance Act, 1994 respectively.

Section 142(11)(a) provides that notwithstanding the provisions of section 12, GST shall not be payable on goods to the extent VAT was leviable on the said goods under the Value Added Tax Act of the State. Section 142(11)(b) lays



down that notwithstanding the provisions of section 13, GST shall not be payable on services to the extent service tax was leviable on the said services under Chapter V of the Finance Act, 1994. Sections 12 & 13 prescribe the provisions relating to time of supply of goods and services respectively.

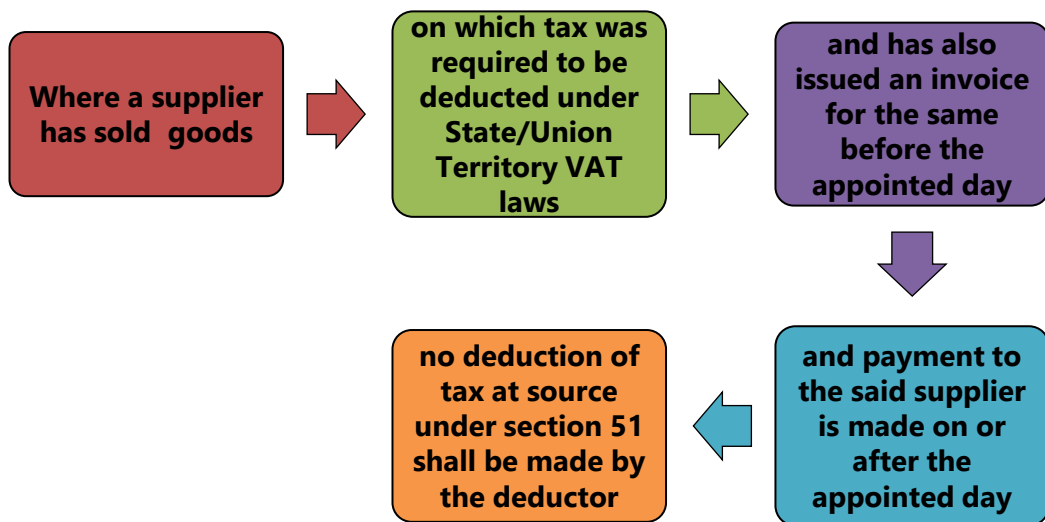
It is important to note that only pure sale or supply is covered under these provisions. When both VAT and service tax were paid on a supply, GST shall be leviable on the same. The taxable person shall be entitled to take credit of VAT or service tax paid to the extent of supplies made after the appointed day.

**(ix) Goods sent on approval basis within six months prior to the appointed day but returned within 6 months from the appointed day [Section 142(12)]**

Where any goods sent on approval basis are rejected and returned to the seller within 6 months from the appointed day, no tax shall be payable thereon. The goods should not have been sent for approval earlier than 6 months before the appointed day. The person who has sent the goods shall submit the details of such goods in GST TRAN 1.

The said period of six months can be extended by the Commissioner for a further period of 2 months. If the goods are returned after 6 months and if the supply is taxable under GST, the person returning the goods shall pay GST on the same. Further, if the goods are not returned within 6 months and if the supply is taxable under GST, the person who has sent the goods on approval basis shall pay the tax.

**(x) TDS under VAT laws [Section 142(13)]**



It is pertinent to mention that this provision applies only to supply of goods and not services as under earlier regime, TDS provisions were applicable only in respect of goods (under VAT laws) and not in respect of services (under service tax law).



## **7. IMPORT OF SERVICES MADE ON OR AFTER THE APPOINTED DAY [SECTION 21 OF THE IGST ACT]**

As per section 21 of the IGST Act, import of services made on or after the appointed day shall be liable to IGST, irrespective of whether the transactions for such import of services had been initiated before the appointed day.

A transaction shall be deemed to have been initiated before the appointed day, if

- either the invoice relating to such supply has been received before the appointed day, or
- the payment, either in full or in part, has been made before the appointed day.

However, two exceptions to the above provision are:

- (i) If the tax on such import had been paid in full under the earlier law, no tax shall be payable on such import under the IGST Act.
- (ii) If the tax on such import of services had been paid in part under the earlier law, balance amount of tax shall be payable on such import under the IGST Act.

## TEST YOUR KNOWLEDGE

1. Whether CENVAT credit carried forward in the last return prior to GST under earlier law be available as ITC under the CGST Act? Explain.
2. A registered person purchased capital goods under the central excise law in the June quarter of 2017-18. Though the invoice had been received by 30<sup>th</sup> June, the capital goods were received on 5<sup>th</sup> July, 2017 (i.e., under GST regime).  
Whether such a person will get full credit of CENVAT in GST regime? Elaborate.
3. Sales return under Central Sales Tax Act, 1956 is allowable as deduction from the turnover within 6 months. If goods sold under earlier regime are returned in GST regime by a buyer within 6 months from appointed day, will the same become taxable in GST? Discuss.
4. What will be fate of any appeal or revision relating to a claim of CENVAT or output liability which is pending under the earlier law? Describe.
5. If any goods or services are supplied in GST regime in pursuance of a contract entered into under earlier law, which tax will be payable?

## ANSWERS/HINTS

1. As per section 140(1), a registered person, other than a person opting to pay tax under composition scheme, shall be entitled to take credit in his electronic credit ledger the amount of CENVAT credit carried forward in the return of the last period before the appointed day, subject to the following conditions:
  - (i) the said amount of credit is admissible as ITC under the CGST Act;
  - (ii) the registered person has furnished all the returns required under the earlier law for the period of 6 months immediately preceding the appointed date;
  - (iii) the said amount of credit does not relate to goods manufactured and cleared under such exemption notifications as are notified by the Government.
2. Yes, the registered person will be entitled to ITC in 2017-18 (GST regime) provided such a credit was admissible as CENVAT credit under the central excise law and is also admissible as credit under the CGST Act [Section 140(2)].
3. Where tax has been paid under the earlier law [CST in this case] on any goods

at the time of sale, not being earlier than 6 months prior to the appointed day, and such goods are returned by the buyer after the appointed day, the sales return will be considered as a supply of the said buyer in GST and tax has to be paid on such supply, if, –

- (i) the goods are taxable under the GST law; and
- (ii) the buyer is registered under the GST law.

However, the seller is entitled to refund of such tax [CST, in this case] paid under the earlier law if the aforesaid buyer is an unregistered person under GST and the goods are returned within 6 months (or within the extended period of maximum two months) from the appointed day and the goods are identifiable [Section 142(1)].

4. Every proceeding of appeal, review or reference relating to a claim for CENVAT or any output tax liability initiated before, on or after the appointed day, will be disposed of in accordance with the earlier law and any amount of credit of CENVAT or output tax found admissible for refund will have to be refunded in accordance with the earlier law and will be paid in cash notwithstanding anything to the contrary contained in the earlier law. The refund will, however, be subject to the principle of unjust enrichment. In case any recovery is to be made then, unless recovered under earlier law, it will be recovered as an arrear of tax under GST [Sections 142(6) & 142(7)].
5. GST will be payable on such supplies in terms of section 142(10) of the CGST Act.

***The discussion on the GST law in Modules 1-3 of this Study Material incorporates the content and images made available by the CBEC on its website [www.cbec.gov.in](http://www.cbec.gov.in) namely, FAQs on GST, e-fliers issued on various aspects of GST, sectoral FAQs as also the user manuals and FAQs available on the GST common portal [www.gst.gov.in](http://www.gst.gov.in), to the extent relevant to such discussion.***