

The Simplified Indian GST Law

E-Book

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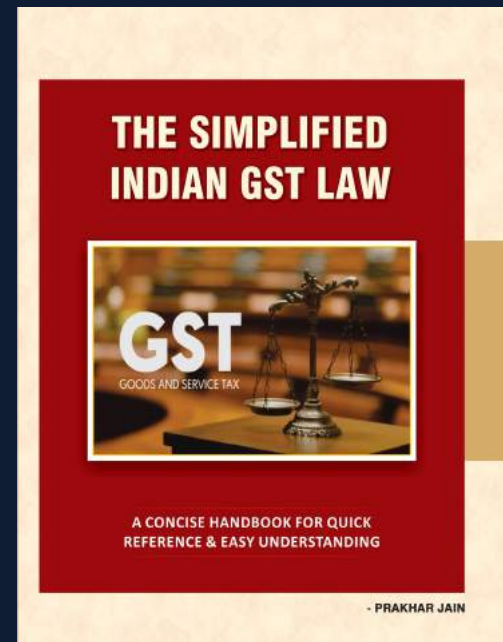
The Simplified Indian GST Law

A concise GST Handbook for quick reference and easy understanding

The GST Law is a total of 256 pages in Bare Act and Rules. In this book covering all of them, it has been summarised in just 150 pages, while simplifying it.

- **Shortest length** - only 150 pages! This makes it very handy and easy to navigate.
- **100% coverage** of CGST Act and Rules, IGST Act, UTGST Act, and Compensation to States Act. (Including e-waybill)
- **Sequential arrangement of topics** as per Bare Act, for ease of cross referencing.
- **Easy language** and Use of tables, so that any topic is easily understood, and can be quickly learnt.

Download a sample here - [CLICK HERE](#)



0. Introduction to GST and Constitutional Provisions	3
1.2. Preliminary & Administration	18
3. Levy & Collection	26
4A. Time of Supply	37
4B. Value of Supply	48
5. Input Tax Credit	78
6. Registration	113
7. Tax Invoice, Debit & Credit Notes	141
8. Accounts and Records	156
9. Returns	168
10. Payment of Tax	194
11. Refunds	211
12.13. Assessment & Audit	236
14. Inspection, Search, Seizure & Arrest	254
15. Demands and Recovery	271
16. Liability to pay in certain cases	289
17. Advance Ruling	303
18. Appeals & Revision	312
19. Offences & Penalties	329
20. Transitional Provisions	342

21. Miscellaneous	354
22. Schedule I, II & III	374
23. Place of Supply & Nature of Supply	381
24. IGST Act Remaining	405
25. Compensation Act	425

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INTRODUCTION TO GST & CONSTITUTIONAL PROVISIONS

Discussing the concept of GST and the basis of its levy

- By Prakhar Jain

HISTORY OF GST IN INDIA



- Idea of a national GST was first brought about by “Kelkar Task Force” in 2004.
- The major deficiencies in the old indirect tax regime were – multiplicity of taxes, cascading effect, difficult compliance.
- There was a plan and announcement too, of implementing GST from 1st April 2010, but no concrete steps were taken and it kept on being postponed and ignored.
- The new NDA govt. showed a strong resolve and, after widespread consultation and consensus building, brought the Constitutional Amendment Bill, which was to scrap the old indirect tax system and to bring about the powers to levy GST.
- The minimum criteria of passing of the bill in Lok Sabha, Rajya Sabha, and at least 50% of state legislatures was fulfilled in step by step manner, and by September 2016, it became the Constitution (101st Amendment) Act, 2016.
- After that, in March 2017, the central government passed the GST bills in the Parliament, which became Acts in April.
 - The Central Goods and Services Tax Act, 2017
 - The Integrated Goods and Services Tax Act, 2017
 - The Union Territory Goods and Services Tax Act, 2017
 - Goods and Services Tax (Compensation to States) Act, 2017
- Then many states passed their respective “State Goods and Services Tax Act”.

CONCEPT OF GST



- It is a Destination Based Consumption Tax, levied on value additions, and burden borne by Final Consumer.
- Destination Based = GST Tax Revenue to that state, where goods/ services 'destined' to. (means where consumed)
- It is achieved by maintaining the flow of Input Tax Credit, while preventing the cascading effect.
- Dual GST model has made the implementation of GST possible and practical in India, as per our federal structure.
- Federal structure means that there is one central government, then there different state governments. (There are also Union Territories, which are like a state, but controlled by the central government).
- CGST act gives power to CG levy CGST, UTGST act gives power to CG to levy UTGST, respective SGST acts give the states the power to levy SGST, and IGST act gives power to CG to levy IGST. There is also a Compensation Cess that is levied by the government, on certain 'luxury' or 'demerit' goods, to get money for compensating state losses.
- So, in case of supplies within state, both Center and State/ UT charge CGST & SGST/ UTGST respectively, at half rates each, and in case of outside state supplies, the center charges IGST at full rate, and distributed half of it to the consumption state (in case of union territory, the whole is of central govt only).
- Main Act is the CGST Act, IGST Act is an important and small supplement to it; while the SGST Acts are just a copy paste of the CGST Act, and the UTGST act also does not have anything original.
- Consumption alcoholic liquor, oil and fuel, tobacco, and the real estate sector have been currently kept out of GST ambit.

BILL: A sells to B within same state (Madhya Pradesh)

Example

Of Intra State Sales and Intra State Purchase

PAY: A will pay whole GST amount collected by him to the govts

PAY: But B also has input tax credit, so he will pay as follows-

Govt A/c

Central	MP
$60 + 6 = \underline{66}$	$60 + 6 = \underline{66}$

Particulars	Amount
Value	1000
Add: CGST @ 6%	60
Add: MPGST @ 6%	60
Total	1120

Particulars	Amount
Output CGST	66
Less: Input CGST	(60)
Net to be paid	6
Output MPGST	66
Less: Input MPGST	(60)
Net to be paid	6

BILL: B adds 10% profit and sells to C (MP only)

Particulars	Amount
Value	1100
Add: CGST @ 6%	66
Add: MPGST @ 6%	66
Total	1232

BILL: C adds Rs. 100 profit and sells to D in Andhra Pradesh

Example

Of Inter State Sales and Intra State Purchase

Particulars	Amount
Value	1200
Add: IGST @ 12%	144
Total	1344

PAY: C will pay as follows -

Particulars	Amount
Output IGST	144
Less: Input CGST	(66)
Less: Input MPGST	(66)
Net to be paid	12

	Govt A/c	
	Central	MP
<u>Old</u>	66	66
<u>Transaction</u>	Got IGST 12, & received 66 from MP Govt	Transfer 66 to CG because MPGST used to pay IGST
<u>Now</u>	$66+12+66 = \underline{144}$	$66-66 = 0$

BILL: D adds Rs. 200 profit and sells to E (consumer) within same state (Andhra Pradesh)

Example Of Intra State Sales and Inter State Purchase

Particulars	Amount
Value	1400
Add: CGST @ 6%	84
Add: APGST @ 6%	84
Total	1568

PAY: D will pay as follows -

Particulars	Amount
Output CGST	84
Less: Input IGST	(84)
Net to be paid	0
Output APGST	84
Less: Input IGST	(60)
Net to be paid	24

Govt A/c			
	Central	MP	AP
<u>Old</u>	144	-	-
<u>Transaction</u>	IGST used to pay CGST & APGST, so pay to AP govt to extent used for APGST = 60	-	Received 24 cash, and 60 from central govt
<u>Now</u>	144-60 = 84	-	24+60 = 84

Thus, we see the working of the input tax credit chain, and how the consumption state gets all the revenue!

BASIC FEATURES

- Goods are classified on the basis of HSN, while a new classification scheme for services has been brought.
- Registration threshold is Rs. 20 lakhs for most states, and Rs. 10 lakhs for special category states. There are many goods and services which have been exempted from levy of GST.
- Normal system is to levy GST over and above sales price, and charge it from customer, while one can take the input tax credit of the GST paid on purchases, thus nullifying the tax effect, and passing on the burden to the consumer.
- Note that MRP includes all taxes, and GST can't be levied over and above it.
- There is an option to opt for composition scheme, where you can just pay a specified % of your sales as tax, without charging it from customer, and also not taking the input tax credit. It is available for small businessmen, with a turnover of upto Rs. 1 crore (normal states), and Rs. 75 lakhs (special category states), subject to other conditions.
- Everything is online. From registration, to return filing, tax payment to refund claim, all are done through a "GST Common Portal" – "www.gst.gov.in".
- There are also companies designated as "GST Suvidha Providers (GSPs)", who develop user-friendly applications that can be used to do all activities on the common portal. There are "Application Service Providers (ASPs)" who may serve as a link between the GSPs and the taxpayers.

CONSTITUTIONAL PROVISIONS & AMENDMENT



BACKGROUND

- The constitution of India is the supreme law that gives the power to make any other law. Taxation powers are also vested by it only. **Article 265** says that “no tax shall be levied or collected except by authority of law”. Thus, it is necessary to formulate and pass a law before even government can collect any form of tax.
- Additionally, as part of the federal power structure, powers of taxation had been distributed between the center and the state. **Article 245** says that center can make a law applicable to whole or part of India, while state legislature make laws for whole or part of any state.
- Article 246 specifies the Union List, State List, and the Concurrent List. These lists specify that which government can make laws on which matter. (Union = Center, State = State, Concurrent = Both)
- So before the amendment, the powers of taxation on different things were distributed unevenly in the Union and State List. For example, excise duty on manufacture, tax on services, basic and additional customs duties could be collected only by the central government, while tax on sale of goods, entertainment tax, luxury tax, and various other local taxes could be collected only by the state government.
- The concept of GST, a unified national tax, with seamless credit flow, could not fit in with these restrictions in the constitution. So there was a need for an amendment.

THE AMENDMENT IN BRIEF

- In order to meet out this need, the Constitution (101st Amendment) Act, 2016 was passed. It has 20 sections.
- If we wish to take a bird's eye view of the enabling provisions in the constitutional amendment act, it would be-
 - Power to center and state both, to levy tax on goods and services concurrently.
 - Power for the forming of a GST council.
 - Provision for providing compensation to the states for loss of revenue to them, if any, for 5 years, on account of introduction of GST
 - Power to levy a GST on all goods and services, except alcoholic liquor for human consumption.
 - Also, separate notification date for applicability of GST on oil and fuel.
 - Power to levy IGST on inter-state supplies, and that the revenue shall be apportioned between the center & state.
 - The GST Council will have most powers, like deciding rates, exemptions, threshold limits, etc.

THE AMENDMENT IN DETAIL



NEWLY INSERTED ARTICLE 246A

- NWA in Articles 246 & 254, the Parliament and State both can make laws with respect to goods and services tax in general.
- But only Center can make law for goods and services tax on inter-state supplies.
- With respect to following, the above provisions (power to levy tax) shall apply from a date recommended by GST Council-
 - Petroleum Crude, High speed Diesel, Motor Spirit (petrol), natural gas, aviation turbine fuel.

ARTICLE 248 AMENDED

- It says that center can collect tax on anything not covered in any of the 3 lists. It's a residuary power. After amendment, it has just been made 'subject to' Article 246A.

ARTICLE 249 AND 250 AMENDED

- They say that center can make law for any matter in State List, when-
- The State Council agrees by at least a two-thirds majority, or
- If 'emergency' has been proclaimed.
- They have been amended now, to extend this provision to Article 246A also.

THE AMENDMENT IN DETAIL (CONTD...)



ARTICLE 268 AMENDED (EXCISE)

- It has been so amended as to remove the power to levy excise duty on medicinal and toilet preparations. It was earlier levied by the central government, but collected and appropriated by the state governments.

ARTICLE 268A OMITTED (SERVICE TAX)

- It was inserted in 2003 to give center power to levy service tax, by introducing a separate entry 92C in Union List (But it was not notified, and service tax was collected as per Residual Entry 97). It has been completely removed now.

NEW ARTICLE 269A (INTER-STATE)

- Power to levy IGST on inter-state supplies. Import into India to be deemed inter-state supply.
- IGST shall be levied and collected by center, and thus shall initially be a part of the 'consolidated fund of India'.
- Then the amount shall be divided between the center and state. (State's portion will go to that state, where the place of supply of goods is there)
- The Parliament has powers to formulate principles for Determining - Place of Supply & when any supply is inter-state
- The State's portion of IGST shall not be a part of the 'consolidated fund of India'.
- When IGST input credit is used to pay SGST, the whole IGST amount will be given to state, and shall not be a part of the 'consolidated fund of India'.
- When SGST input credit is used to pay IGST, the SGST amount will be given to center, and shall not be a part of the 'consolidated fund of STATE'.

THE AMENDMENT IN DETAIL (CONTD...)



ARTICLE 270 AMENDED (DISTRIBUTION)

- It has been amended to provide that GST shall be distributed between center and the states, as per orders of President, on recommendation of Finance Commission.

ARTICLE 271 AMENDED (POWER TO INCREASE)

- It provided that center has power to increase any taxes referred to in Article 269 or 270, and that surcharge belongs to center only. It has been amended to remove GST from its ambit.

ARTICLE 366 AMENDED (DEFINITIONS)

- It provides for definition of various words. Definitions of "Goods and Services Tax" – 366(12A), "Services" – 366(26A), and "State" – 366(26B) have been inserted. [Definition of goods was already there in 366(12)]

ARTICLE 286 AMENDED (INTER-STATE)

- It prevented the state from imposing any tax on inter-state sale of goods. It has been amended to prevent state from imposing any tax on inter-state **supply** of goods **or services or both**.
- The power of center to declare "Goods of Special Importance" (and thus control the system of levy, rates and other incidents of **state** taxes on them) has been removed.

- The council shall meet, quorum = one half of the members, and it will have the power to decide –
 - The taxes to be subsumed in GST, the goods/ services to be exempted from GST
 - Model Laws, rules for determining place of supply, and for determining inter-state supplies.
 - Threshold exemption limit, rate of GST, special provisions with respect to the states – Arunachal Pradesh, Assam, Jammu & Kashmir, Meghalaya, Mizoram, Manipur, Nagaland, Sikkim, Tripura, Himachal Pradesh & Uttarakhand (Special Category States)
 - Any other matter
- It shall keep in mind the need for a harmonized system of GST and the development of a harmonized national market for goods and services.
- Decision shall be taken by at least three-fourth majority.
 - Vote of Center = Weight of One-Third
 - Vote of all States combined = Weight of remaining Two-Thirds
- It shall establish a mechanism to adjudicate any dispute between the center and the states, or between the states.
- Article 368 has been amended to include this Article 279A within its purview, so now, to amend this, ratification by two-thirds majority in both houses of parliament and half of state legislatures would be required.

NEW ARTICLE 279A (THE GST COUNCIL)

Empowers the President to constitute a joint forum of the Center, and all the States, known as the “Goods and Services Tax Council”, which shall have as its members –

- The Union finance Minister as Chairperson.
- The State Finance Ministers/ any other Minister nominated by the state as members.
- The Union Minister of State in charge of revenue or finance as a member.
- The representatives of the states, shall choose one amongst themselves to be the “Vice president”.



- History of GST in India
- Concept of GST
- Basic Features
- Constitutional Provisions & Amendment
- Background
- The Amendment in Brief
- The Amendment in Detail
- Newly Inserted Article 246A
- Article 248 amended
- Article 249 and 250 Amended
- Article 268 Amended (Excise)
- Article 268A Omitted (Service Tax)
- New Article 269A (Inter-state)
- Article 270 amended (Distribution)
- Article 271 amended (power to increase)
- Article 366 Amended (Definitions)
- Article 286 Amended (Inter-state)
- New Article 279A (The GST Council)

END OF PRESENTATION!

← What we learned



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PRELIMINARY & ADMINISTRATION

Chapter I & II of the CGST Act

Sections 1-6

- By Prakhar Jain



Section 1 - Short Title Extent & Commencement

- **Short Title** - This Act may be called as Central Goods and Services Tax Act,2017
- **Extent** - The **Whole of India** “except the state of Jammu & Kashmir”
 - Jammu & Kashmir has power to make its own laws
 - The Jammu Kashmir Govt applied the GST provisions from 8th July 2017
 - So an ordinance was passed by central govt 8th July and the words “except the state of Jammu & Kashmir were omitted”
- **Commencement** – The act shall come into force from such date as may be notified. Different dates may be notified for implementing different provisions.
 - Some provisions relating to registration/ migration to GST, composition levy etc. were notified w.e.f. **22nd June 2017**.
 - All other Provisions were notified to be effective w.e.f. **01st July 2017**

Section 2 - Definitions

- There are definitions of 119 words in the act
- Those have been discussed in the other topics, as and when their relevance comes
- Also, we have separate videos on each definition, so you can refer them as and when the need arises.

- Important point to remember is that if any word is not defined in CGST Act, but defined in IGST/ UTGST/ Compensation Act, then their meaning shall apply here also

Sec 3 - Classes of Officers

- Principal Chief Commissioner
- Chief Commissioner
- Principal Commissioner
- Commissioner
- Additional Commissioner
- Joint Commissioner
- Deputy Commissioner
- Assistant Commissioner
- Principal Director General
- Director General
- Principal Additional Director General
- Additional Director General
- Additional Director
- Joint Director
- Deputy Director
- Assistant Director

Any other class of officers as it may deem fit

- Officers under Central Excise Act deemed to be officers appointed under this Act.

Appointment and Powers of Officers

Sec 4 – Appointment

- Board (currently CBEC, in future CBIC - Central Board of Indirect Taxes & Customs) shall appoint
- Board may appoint officers additional to those given in section 3 previously
- Board may authorize any commissioner mentioned in section 3 - to appoint officers below the rank of Assistant Commissioner

Sec 5 - Powers

- Officers can exercise all powers and discharge duties UNDER THIS ACT, subject to limitations by Board
- An officer may exercise powers of his subordinate
- A Commissioner may delegate his power to subordinate
- Appellate Authority shall not discharge duties of any other officer

Sec 6 – Authorisation of SGST/ UTGST Officers

- SGST/ UTGST officers are authorized to be proper officers under this act (subject to conditions imposed by CG by notification)
- Subject to notification above, where PO issues an order under this act (CGST), then also issue an order under SGST/ UTGST Act, under intimation to jurisdictional officer
- Where PO under SGST/ UTGST initiated any proceedings – PO under this act shall not begin any proceedings on the same matter
- Any rectification/ appeal & revision – of order passed by PO under this act – shall not lie before officer under SGST/ UTGST Act



End of Presentation!

What we learned-

- Section 1 - Short Title, Extent & Commencement
- Section 2 - Definitions
- Section 3 - Classes of Officers
- Section 4 – Appointment
- Section 5 - Powers
- Section 6 – Authorisation of SGST/ UTGST Officers

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Levy and Collection of Tax

Chapter III of the CGST Act

- By Prakhar Jain

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Section 7: Scope of Supply

1) Supply Includes -

- All forms of supply... for consideration, for business
- Import of Services – for consideration, for any purpose
- Activities in **Schedule I** – Without Consideration
- Activity to be treated as supply of goods or services? – See **Schedule II**

2) NWA, following treated as neither supply of goods, nor services (thus outside GST) –

- Activities/Transactions specified in **Schedule III**
- Activities/Transactions by CG/ SG/ LA, where engaged as public authorities, and notified by government

3) Subject to SS (1) & (2), Govt may notify, transactions to be treated as goods or services

For detailed discussion of Schedules I, II, and III, search for separate videos on these topics

SECTION 8: TAX LIABILITY ON COMPOSITE & MIXED SUPPLIES

Applicability of the concept

It is vital to understand that this concept shall only be applicable when 2 or more supplies of goods/ services/ both are combined, and the consideration is not distinguishable. In such cases-

- If such supplies are **usually** bundled together as a package, and one of the supply is the major or 'principal' supply , Then it is called Composite Supply → Whole supply = Supply of PRINCIPAL Supply (Ex- Airplane + Snacks in plane = Airplane Service)
- If such supplies are **not generally given together** in business , Then it is called Mixed Supply → Whole supply = Supply of 'highest tax rate supply'



SEC 9: LEVY AND COLLECTION

1) (Subject to SS 2) There shall be levied	Tax called 'Central Goods and Services Tax'	On all Intra-State Supplies	Of goods/ services or both	Except on the supply of alcoholic liquor for human consumption
On value determined u/s 15 (Valuation)	At such rates notified (not exceeding 20%)	Collected in such manner as may be prescribed		& shall be paid by the taxable person
2) Tax on Petrol, Diesel, Natural Gas, Aviation Turbine Fuel, Crude oil			Shall be Levied from notified date	
3) Govt. may notify categories of goods/ services – Tax applicable on REVERSE CHARGE All provisions of this act apply on recipient of such goods/ services/ both, as if he is liable to pay				
4) Supply by unregistered Dealer to registered dealer – Reverse Charge on recipient (similar to Purchase Tax)				
5) Govt. may notify services, which if supplied through E-Commerce Operator, tax to be paid by it (Provided if no physical presence in taxable territory (TT) then person representing in TT is liable) (Provided if no physical presence & no representative , then appoint a person in TT for paying tax)				



SEC 10: COMPOSITION LEVY

NWA in Act, but subject to Sec 9(3) & 9(4), if a supplier fulfils conditions in RHS →

Then has a SPECIAL OPTION for payment of tax.

CONDITIONS

- Aggregate t/o in preceding FY → Upto **75 lakhs** (Normal States); Upto **50 lakhs** (Special Category States - Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh)
- Does not supply → any **service (except restaurant/ catering)**, any **exempt** supply, any supply outside state (**inter-state** supply), any supply through **e-commerce** operator
- Not a manufacturer of → **Ice cream/** other edible ice, **Pan masala, Tobacco/** manufactured tobacco substitutes either now or during the preceding FY
- Not a Casual taxable person/ Non-resident Taxable Person
- For Migrators – Stock as on 1st July 2017 should not contain any inter-state purchase/ import

SPECIAL OPTION

Pay Lump Sum tax as a percent of turnover (Below is aggregate of half CGST & half SGST) -

<u>Trader</u>	1%
<u>Manufacturer</u>	2%
<u>Restaurant/ Catering</u>	5%

Note: If opt for one branch, applies to all registered businesses under same PAN

HOW TO OPT

- If Migrating taxpayer – File Form GST CMP-01 within time limit (was extended till 30th September)
- If New GST Registration – Indicate in Part B of registration application (Form GST REG-01) that want to opt for composition
- If Existing GST Registration – File GST CMP-02 before start of FY for which want to opt composition; also furnish Form GST ITC-03, as per Rule 44(4) [If any ITC had been taken on stock], option continues automatically for further FYs
- For all 3, if stock on transition day contains purchases from unregistered person, then pay tax on it under RCM in Form GST CMP-03.

COMPLIANCES

- Not eligible to take any type of input tax credit
- Cannot charge tax on bill to customers
- Must pay tax under RCM as applicable to normal taxpayers u/s 9(3) & 9(4)
- Issue 'Bill of supply' & Mention the words "composition taxable person, not eligible to collect tax on supplies" at the top
- Mention the words "composition taxable person" on every signboard displayed at a prominent place at his principal place of business and at every additional place(s) of business
- Need to file quarterly return in Form GSTR-4 & Annual Return in Form GSTR-9A. (Pay tax before filing GSTR-4)

Miscellaneous

VALIDITY & MOVING OUT

- So long as taxpayer satisfies all the conditions, valid
- As soon as cease to satisfy any condition (like crossing of turnover limit), then goes to normal scheme from the very next day. (start issuing tax invoice, collecting and paying GST at normal rate, start getting ITC)
- Can withdraw from composition scheme and go to normal scheme voluntarily anytime during FY
- When go out of composition scheme, file Form GST CMP-04 within 7 days of ineligibility/ withdrawal

PENALTY

- If ineligible person opted for composition scheme, liable to pay tax & penalty, Sec 73/ 74 apply
- Proper officer may issue a show cause notice to such person in **FORM GST CMP-05** as to why the option to pay tax under section 10 shall not be denied, and assessee must reply in Form GST CMP-06 within 15 days, officer will issue order in Form GST CMP-07 within 30 days.

SEC 11: POWER TO GRANT EXEMPTION

1) The Govt. may by notification	exempt GENERALLY	Goods/ services/ both of any specified description	From whole or any part of tax leviable	w.e.f. date specified
Either Absolutely, or subject to some conditions specified		Where it is satisfied that it is necessary in the public interest so to do		
2) The Govt. may by special order in each case	Exempt from payment of tax on goods/ services/ both		Where it is satisfied that it is necessary in the public interest so to do	
But only under exceptional circumstances, to be states on such order				
3) The govt. may insert an notification/ order, by notification	EXPLANATION in such		At any time within 1 year of their issue	For the purpose of clarifying the scope or applicability
And every such explanation shall have effect as if it had always been its part (retrospective effect)				



END OF PRESENTATION

We learned Chapter III of the CGST ACT, covering sections 7 - 11

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Time of Supply in GST

Part of Chapter IV of the CGST Act

- By Prakhar Jain

What questions are dealt here?

- WHEN GST WOULD BE CHARGED? THE POINT OF TAXATION. AND THUS, WHEN THE LIABILITY TO PAY GST WILL ARISE.

Time of Supply = Time when Liability to pay GST arised

- WHETHER ADVANCES RECEIVED WOULD BE LIABLE FOR GST?
- WHAT WILL BE THE SITUATION IN CASE OF CHANGE IN RATE OF TAX?

Section 12: Time of Supply of Goods



Normal Outward Supplies = Earlier of the Following dates



Date of issue of **invoice**/ last date when ought to issue u/s 31(1)

Date of receipt of **payment** (which is earlier of following)

Credited into bank account of supplier

Entry into books of account of supplier

'Supply' deemed to be made to extent of invoice/ payment, as is case

- Provided, where advance upto Rs. 1000 received, time of supply may be deferred till invoice date

Section 13: Time of Supply of Services



Normal Outward Supplies = Earlier of the Following dates



Invoice issued within prescribed time u/s 31(2)? [its 30 days]
YES - Date of issue of **invoice**;
NO - Date of **provision** of service

Date of receipt of **payment** (which is earlier of following)

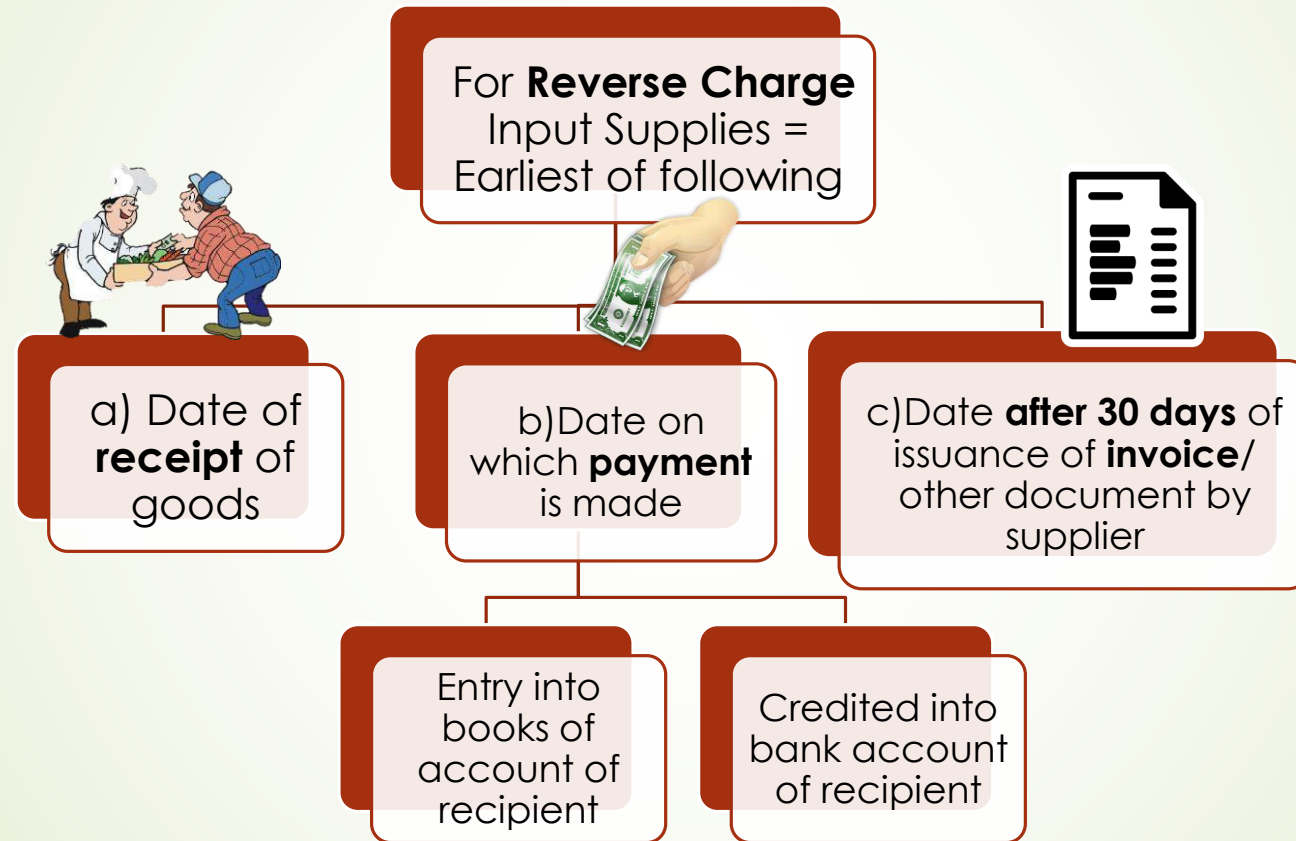
Credited into bank account of supplier

Entry into books of account of supplier

- Provided, where advance upto Rs. 1000 received, time of supply may be deferred till invoice date

'Supply' deemed to be made to extent of invoice/ payment, as is case

Section 12: Time of Supply of Goods



- Provided if not able to determine as above, then = Date of Entry in books of Recipient

Section 13: Time of Supply of Services

For **Reverse Charge**
Input Supplies =
Earlier of following



b) Date on which
payment is made

c) Date **after 60 days** of
issuance of **invoice**/ other
document by supplier

Entry into books
of account of
recipient

Credited into
bank account of
recipient

Provided Further, In case of
ASSOCIATED ENTERPRISES, where
supplier located outside India,
Time of Supply = Earlier of-

- Date of entry in books of recipient
- Date of payment

- Provided if not able to determine as above, then = Date of Entry in books of Recipient

Common Provisions for Supply of Goods & Services

Supply of Vouchers

- (a)** Date of Issue of Voucher, if supply identifiable at that point, or
- (b)** In all other cases, Date of Redemption of voucher

Time of Supply Not possible to determine

- (a)** Where return has to be filed, date of filing of return
- (b)** All other cases, Date on which Tax is paid

Time of Supply of- Intt/ late fee/ penalty for delayed payment

- Date of receipt of such amount

Sec 2(118)

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

Change in rate of tax in respect of supply of goods or services

► THE IMPORTANT THINGS TO CONSIDER:-

1. DATE OF **SUPPLY** OF GOODS AND SERVICES.
2. DATE OF ISSUE OF **INVOICES**.
3. DATE OF **PAYMENT**.

Normally

“Date of receipt of payment” =
date of entry or credit in bank a/c, w.e.e.

But

When credit in bank a/c is after 4 working days from change of rate of tax, then -
‘Date of receipt of payment’ =the date of credit in the Bank a/c

{[Super Tip 1: DECIDE MAJORITY
Majority side wins – Check the three dates-
Date of Supply, Invoice issue, Payment receipt]}

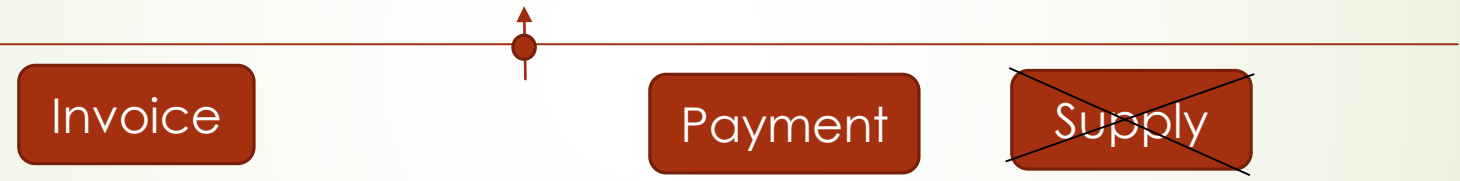
{[Super Tip 2: After deciding
the winning side- ignore 'Date
of Supply'- take earlier one]}

Case 1



ToS = Before Change
in Rate of Tax
ToS = Invoice

Case 2



ToS = After Change
in Rate of Tax
ToS = Payment date

End of Presentation!

We covered Sections 12, 13 & 14

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Value of Supply in GST

INCLUDING VALUATION RULES

- By Prakhar Jain

Background

Section 9, the charging section of the GST specifies that GST is chargeable on 'supply', at prescribed 'rates', on VALUE determined as per Section 15.

Thus, for calculating GST payable in any supply, Value of that supply has to be in accordance with Section 15, which is the matter of discussion in this presentation.

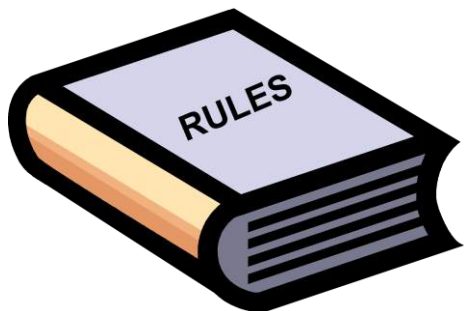
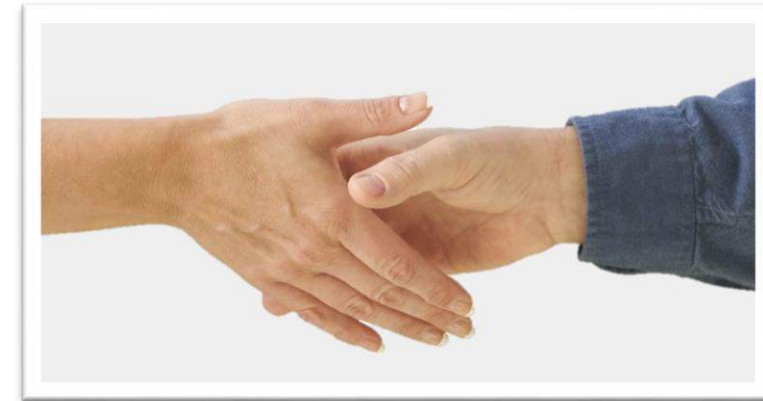
Sec 15: Value of Taxable Supply

Where Supplier & Recipient are not related & Price is sole consideration

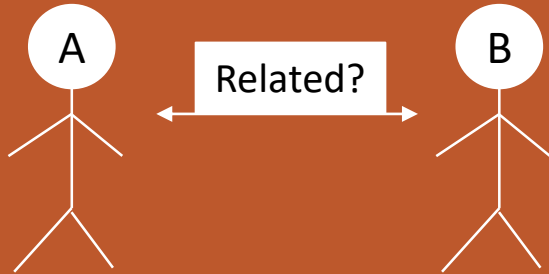
Value = 'Transaction Value' = Price actually paid/ payable

In all other cases

Value shall be as determined in prescribed manner (in rules)



How to decide if persons are Related or not?



Explanation to section 15 →

Note: Persons associated in business, where one is the sole agent/ distributor/ concessionaire/ however described, of the other, shall be deemed to be related

Definition of “RELATED PERSONS”:

- i. Such persons are officers/ directors of one another’s business
 - ii. Such persons are legally recognized partners in business
 - iii. Such persons are employer-employee
 - iv. Any third person owns/ controls/ holds, directly or indirectly, \geq 25% of voting stock/ shares of both
 - v. One of them directly/ indirectly controls the other
 - vi. Both are directly/ indirectly controlled by third person
 - vii. Together, they directly/ indirectly control third person
 - viii. They are members of same family
- The term “Person” also includes a Legal Person

Inclusions in Value

- a) Any Taxes, Duties, Cesses, Fees & Charges, except under this act/ SGST/ UTGST/ Comp. Act
- b) Any Amt. liable to be paid by supplier but incurred by recipient & not included in price
- c) Incidental Exp., commission & packing, any amt. for anything done before/ at time of supply
- d) Intt/ Late fee/ Penalty for delayed payment
- e) Subsidies linked to price except by CG/ SG (Explanation: Amt of Subsidy incl. in Value of Supply of that supplier who receives subsidy)

Include these!

Discount to be excluded if-

Given Before/ At time of supply, and it is duly recorded in invoice

or

Given After the supply, and –

- Established in agreement entered before/ at time of supply
- specifically linked to relevant invoices
- ITC attributable is reversed by recipient



Determination of Value of Supply RULES

AN EXTENSION TO SECTION 15, AND PRESCRIBE SPECIFIC METHODS
OF VALUATION IN CASE OF DIFFERENT SUPPLIES

When Consideration is not wholly in money (Rule 27)



The value of the supply shall be -

- a) The open market value of such supply;
- b) If the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- c) If the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;
- d) If the value is not determinable under clause (a) or clause (b) or clause (c), amount of non-money consideration shall be determined by the application of rule 30 or rule 31 in that order

Examples

- 1. Where a new phone is supplied for Rs. 20,000 along with the exchange of an old phone and if the price of the new phone without exchange is Rs. 24,000, the open market value of the new phone is Rs. 24,000. (Case I)*
- 2. Where a laptop is supplied for Rs. 40,000 along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is Rs. 4,000 but the open market value of the laptop is not known, the value of the supply of the laptop is Rs. 44,000. (Case II)*

Supply between distinct/ related persons, other than through agent

The value of the supply of goods or services or both between -

- Distinct persons as specified in sub-section (4) and (5) of section 25 (Branches) or
- Related persons,

other than where the supply is made through an agent, shall-

- a) be the open market value of such supply;
- b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Supply between distinct/ related persons, other than through agent

Where goods are **intended for further supply** as such by the recipient, the value shall, at the option of the supplier, be → 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.

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

Supplies made or received through an AGENT

The value of supply of goods between the principal and his agent shall be-

- a) The open market value of the goods being supplied, **or** at the option of the supplier, be 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient
- b) Where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

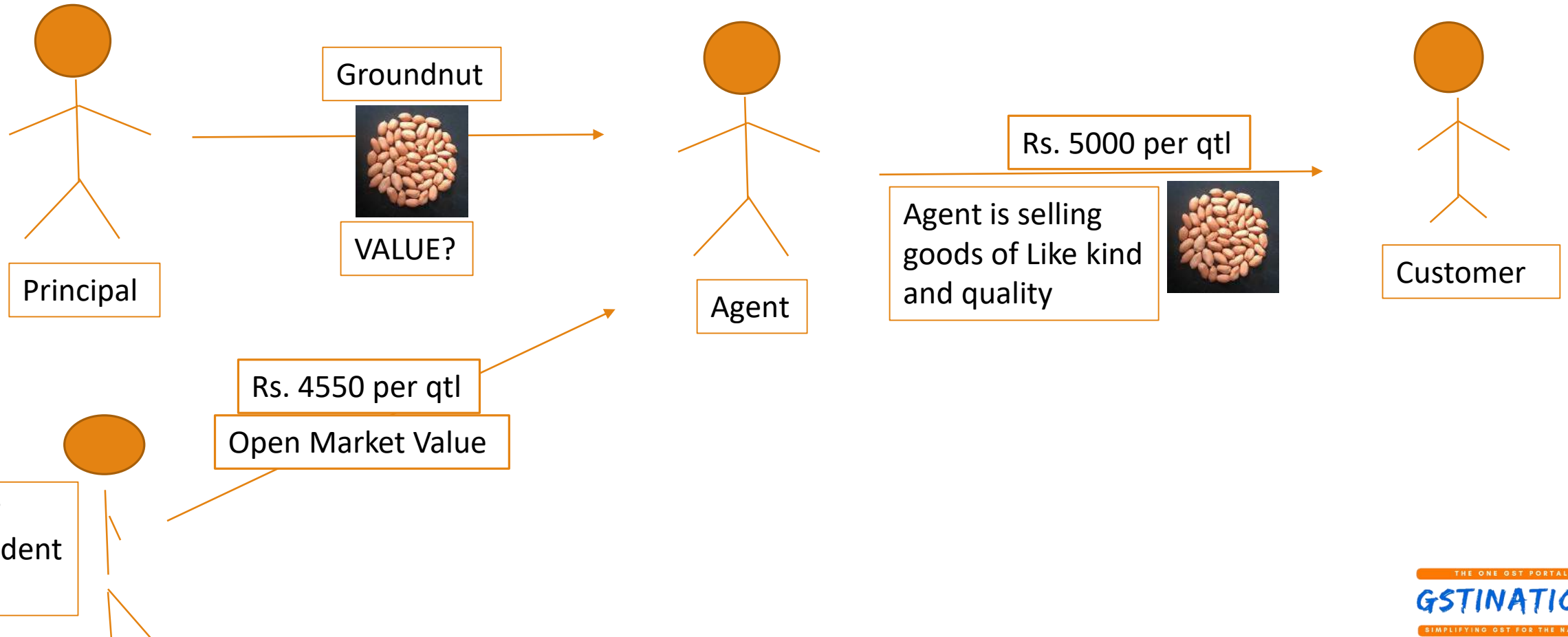
Some definitions

- “Open market value” of a supply of goods or services or both means the full value in money, excluding the GST/ cess payable by a person in a transaction, where supplier and recipient are not related and the price is the sole consideration;
- “Supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, is the same as, or closely or substantially resembles, the supply of goods or services or both in question, w.r.t. the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both

An Example

Two Options-

1. *Rs. 4550 per quintal (open market value)*
2. *90% of 5000 rupees = Rs. 4500*



RESIDUAL PROVISIONS

Rule 30 - Where the value is not determinable by any of the preceding rules -

Value = 110% of the cost of production/ the cost of acquisition (goods) or the cost of provision

Rule 31 - Where the value cannot be determined under rules 27 to 30

Determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of the Rules

(Supplier of services may opt for this rule, ignoring rule 30)

SPECIAL SUPPLIES (RULE 32)

Supplier of supplies specified below shall have the option to determine value as per the specific unique method specified.

1. Foreign currency, including money changing -
 - a) Purchase or sale of foreign currency,
 - b) Supply of foreign currency,
2. Air Travel Agent
3. Life Insurance business
4. Second hand goods dealer
5. Token/ voucher/ coupon/ stamp (other than postage stamp)
6. Inter-branch supplies

Purchase or sale of foreign currency, including money changing (1st Option)

- a) For a currency, when exchanged from, or to, Indian Rupees, Value –
 - i. For purchase → [RBI reference rate (-) Buying rate] * total units of currency
 - ii. For sale → [Selling rate (-) RBI reference rate] * total units of currency

(If RBI reference rate is not available, Value = 1% of the gross amount of Indian Rupees involved)

- b) If Indian Rupees not involved in conversion,

Value = 1% of the lower amount of Indian Rupees we get from converting both the currencies using the RBI reference rate on that day

Lets take an Example



Amount to be converted in Dollar	Rate as per USD	RBI Reference Rate	Value of Supply *
Rs. 65000	Rs. 65 per USD	Rs. 63 per USD	$1000 * (65 - 63) = 2000$
Rs.65000	Rs. 65 per USD	Not available	1% of of INR amount =Rs 650
EURO 6500	Not available	Not available	1% of USD or EURO whichever is Lower

Supply of foreign currency, including money changing (2nd option)

This option must be opted for a financial year, and cannot be withdrawn till its end

1. Amount up to Rs. 1 lakh - 1% of the gross amount (minimum amount of 250 rupees);
2. Amount > Rs. 1 lakh and up to Rs. 10 lakh - 1000 rupees (+) 0.5% of the gross amount of currency exchanged for an amount exceeding 1 lakh rupees and up to 10 lakh rupees; and
3. Amount exceeding Rs. 10 lakh - 5500 rupees (+) 0.10% of the gross amount of currency exchanged (maximum amount of Rs. 60000)

Lets take another Example



Gross amount of currency exchanged	GST	Calculation
Rs. 6,500	Rs 250	1% of 65000 or Rs 250 whichever is higher
Rs. 65,000	Rs 650	1% of 65000 or Rs 250 whichever is higher
Rs. 6,50,000	Rs. 3750	1000 plus .50 % of 5,50,000
Rs. 65,00,000	Rs 10,500	5000 plus .10% of Rs.55,00,000
Rs 6,50,00,000	Rs 60,000	5000 plus .10% of Rs.6,40,00,000 subject to maximum of Rs 60,000

Life insurance business



- a) Value = The gross premium charged (-) the amount allocated for investment/ savings (if such an allocation is intimated to the policy holder at the time of supply of service)
- b) For single premium annuity policies other than above = 10% of the single premium
- c) All other cases = 25% of the premium in 1st year (+) 12.5% of the premium in subsequent years:

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

Air Travel Agent

- 5% of the basic fare in the case of domestic bookings, and
- 10% of the basic fare in the case of international bookings.

“Basic fare” = that part of the air fare on which commission is normally paid to the air travel agent



Second hand goods dealer

Means a person who buys and sells used goods as such or after such minor processing which does not change the nature of the goods.

Value of supply =

Selling price (-) purchase price (If negative, it shall be ignored)

No Input Tax Credit shall be available

IN CASE OF REPOSSESSION

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

Inter-Branch Supplies

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

Token/ voucher/ coupon/ stamp
(other than postage stamp)

Value of a supply =
money value of the goods or
services or both redeemable
thereon

CONCEPT OF PURE AGENT

The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- i. The supplier **acts as a pure agent** of the recipient of the supply, **when he makes the payment** to the third party on authorisation by such recipient;
- ii. The **payment made** by the pure agent on behalf of the recipient of supply has been **separately indicated in the invoice** issued by the pure agent to the recipient of service; and
- iii. The **supplies procured** by the pure agent from the third party as a pure agent of the recipient of supply **are in addition to the services he supplies** on his own account.

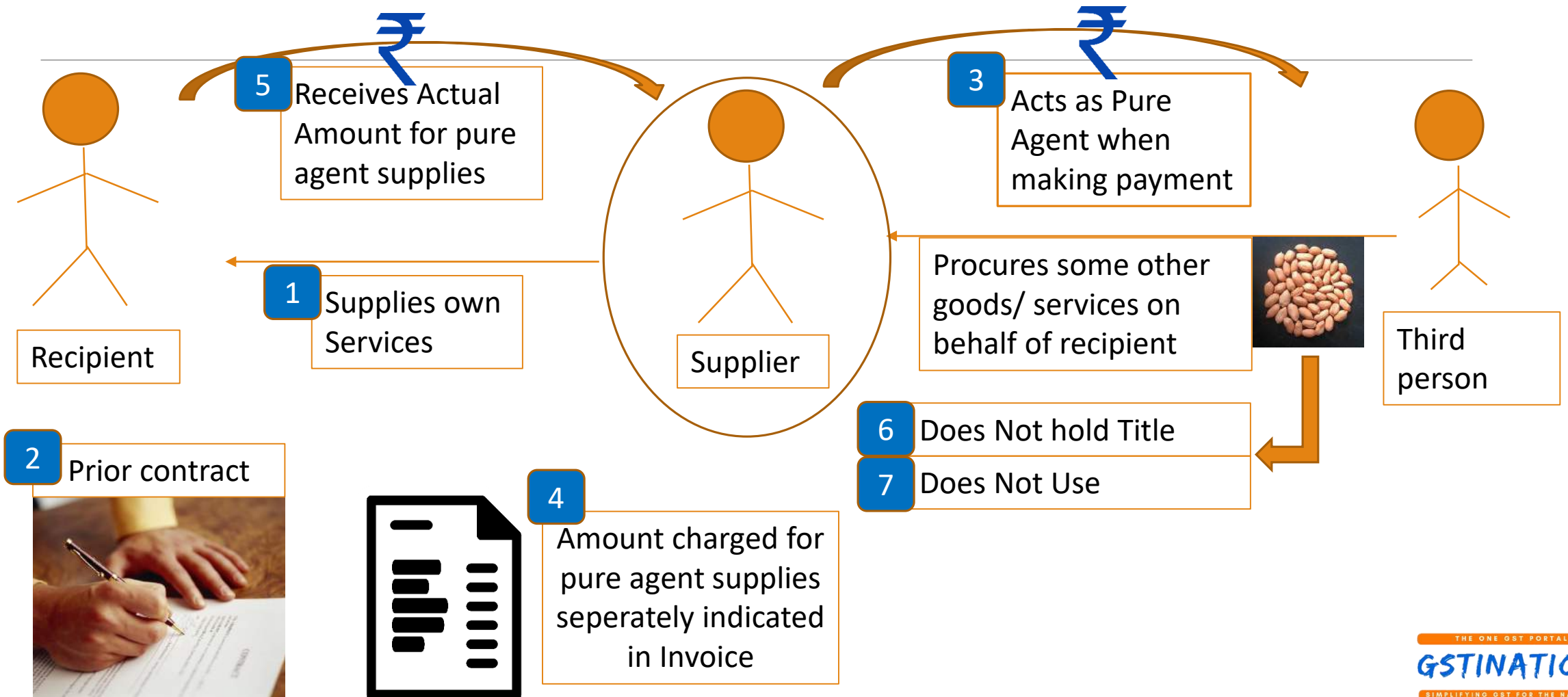
WHO IS A PURE AGENT?



Pure Agent” means a person who-

- a) Enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- b) Neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- c) Does not use for his own interest such goods or services so procured; and
- d) Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Lets Picturize the situation



RATE OF EXCHANGE OF CURRENCY, OTHER THAN INDIAN RUPEES

The rate of exchange for the determination of the value of taxable goods or services or both shall be the **applicable reference rate** for that currency as determined by the Reserve Bank of India **on the date of time of supply** in respect of such supply in terms of section 12/ section 13 of the Act.

INCLUSIVE OF TAX VALUE

Where the value of supply is inclusive of CGST & SGST/ UTGST or IGST, then –

$$\text{Tax Amount} = (\text{Value inclusive of taxes} \times \frac{\text{tax rate in \%}}{100 + \text{tax rate in \%}})$$

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End of Presentation!

AREAS COVERED

SECTION 15 OF THE CGST ACT, AND VALUATION RULES

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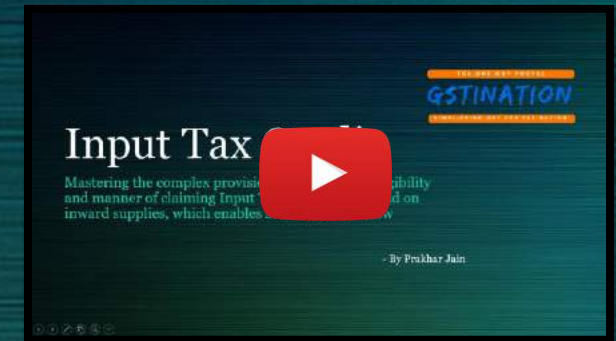
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Input Tax Credit

Mastering the complex provisions regarding the eligibility and manner of claiming Input Tax credit of GST paid on inward supplies, which enables seamless credit flow



- By Prakhar Jain

Enabling Section for taking Input Tax credit

Section 16(1) - Every registered person shall, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used for business.

Basic Conditions:

- A. Documentary Evidence should be as per law – Detail in next slide***
- B. Actual Receipt of Supply***
- C. Tax Paid & Return Filed***

(A) Documentary Evidence should be as per law



1. An invoice (u/s 31) [Normal]; or an invoice u/s 31(3)(f) [RCM] (subject to the payment of tax);
2. A debit note (u/s 34);
3. A bill of entry or any similar document for the assessment of IGST on imports;
4. An ISD invoice/ credit note rule 54(1).

All particulars as specified in the provisions of Chapter VI should be there in the above documents.

(B) Actual Receipt of Supply

- Normally = Physically received the goods/ services/ both.
- Deemed received where delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise



(C) Tax Paid & Return Filed

- Tax charged in respect of such supply has been actually paid to the Government by the supplier, and
- The recipient has shown the details in GSTR-2 and GSTR-3.

Special Case: Goods against one invoice received in multiple lots/ instalments

- In such a case, the registered person can take credit upon receipt of the last lot or instalment:

Payment of Invoice within specified time

- For all supplies other than reverse charge supplies, the invoice amount (including GST) must be paid by the recipient to the supplier within 180 days from the date of issue of invoice.

If it is not so paid, then input credit will be reversed.

- The recipient must furnish -

the details of such supply the amount not paid the proportionate tax amount

in FORM GSTR-2 for the month immediately following the period of 180 days from the date of the issue of the invoice.

Procedure after Non payment within Specified time

- The input credit that was availed shall be added to his (recipient's) output tax liability, along with interest (from the date of availing credit on such supplies till the date when the amount added to the output tax liability) (basically).
- After reversal, once payment is made by him of the invoice amount to the supplier, then can claim input credit again in the return of month when paid.
- Exception - Value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purpose of this provision.

Cannot claim depreciation on Input Credit Component

- Logically, If you are taking input credit of 'tax component' on purchase of capital goods, then it is not your cost.
- So you cannot claim depreciation on it under Income Tax.
- Now in GST, If depreciation is claimed, then the input tax credit on the said tax component shall not be allowed.

Time Limit for taking input tax credit

Must take input credit on or before, the earlier of following two dates –

- Due date of furnishing GSTR-3 for September of next FY, as compared with the FY to which the invoice pertains or
- Actual date of furnishing of the relevant annual return,

Exception – This time limit shall not apply to a claim for re- availing of any credit, earlier reversed due to non-payment of consideration.

No Input Credit of Tax in demand relating to Fraud

- If any tax has been paid against an order of confirmed demand on account of any fraud/ willful misstatement/ suppression of facts, then input credit cannot be taken of such amount.

Blocked Credits

Notwithstanding anything contained in section 16(1) and section 18(1), input tax credit shall not be available in respect of some goods/ services.



Blocked Credits

(A) Motor vehicles & Other conveyances, except when :

(A) Used for further supply of that vehicle/ conveyance

(B) Used for supplying Transportation of Passengers Services

(C) Used for giving training of driving such vehicle/ conveyance

(D) For transportation of goods

(B) Some Specific supplies

i. Food & Beverages/ Outdoor Catering/ Beauty treatment/ Health Services/ Cosmetic & plastic Surgery

(Except when same type of input is used for same type of taxable outward supply, or even as a part of a taxable mixed/ composite supply)

ii. Club Membership/ Health & Fitness Center Membership

iii. Rent-a-cab, Life/ Health Insurance except where –

a) Govt. notifies that obligatory for employer to provide to employee

b) Such input service is used for same type of taxable outward service, or even as a part of a taxable mixed/ composite supply

iv. Travel benefits to employees on vacation, like leave/ home travel concession



Blocked Credits

(E) Composition Supplies received

(F) Supplies recd by Non-Resident, except goods imported by him

Construction Related:

(C) Works Contract Service for construction of Immovable property (except where used for further supply of works contract service only)

(D) Goods/ Services/ Both for construction of immovable property (Except P&M) on own account, incl. when for business purpose

- Construction' includes re-construction/ renovation/ additions/ alterations/ repairs – which are capitalised to the said immovable property
- “Plant & Machinery” (P&M) means apparatus, equipment, and machinery fixed to earth by foundation or structural support → used for making an outward supply of goods/ services/ both, & includes such foundation/ structural support, but excludes-
 - i. Land/ Build./ civil structure
 - ii. Telecommunication Towers
 - iii. Pipelines outside Factory

(G) Supplies used for personal consumption

(H) Goods lost/ stolen/ destroyed/ written off/ gifted/ given as free samples

(I) Any Tax paid in accordance with the provisions of sections 74, 129 & 130

Input Service Distributor (ISD)



As per Sec 2(61), “Input Service Distributor” means an office of the supplier which receives tax invoices towards the receipt of input services and issues a prescribed document to a supplier of taxable supplies having the same PAN, for distributing the credit of CGST, SGST/ UTGST & IGST paid on the said services.

(In Short – It’s a centralised office which takes input services for the organisation as a whole, and then distributes the ITC among its relevant branches)

How Input is distributed?

- Through “ISD Invoice”
- The ISD shall issue an “Input Service Distributor invoice”, as per rule 54(1), indicating in such invoice-
 - That it is issued only for distribution of ITC
 - Mentioning the amount of ITC being distributed



Classification of GST

ISD may get input in the form of CGST, SGST/ UTGST & IGST.

1. As per rules **IGST** shall be distributed as IGST only (but as per act, it may be distributed as CGST also; practically difference doesn't matter);
2. Now, for **CGST and SGST/ UGST**, compare location of ISD and location of Recipient branch –
 - If recipient located in same State/ UT: Distribute credit **as it is** (CGST = CGST, SGST/ UTGST = SGST/ UTGST);
 - If recipient located in different State/ UT: Distribute **as credit of IGST** (IGST = CGST + SGST/ UTGST)

Conditions for distribution of ITC by ISD

- If ITC attributable to a single recipient, then distribute only to that recipient
- If ITC attributable to more than one (but not all) recipient, distribute *pro rata* on the basis of the turnover.
- If ITC attributable to all recipients, credit shall be distributed *pro rata* amongst all on the basis of –
 - the turnover in a State/ UT of a recipient during the relevant period,
 - the aggregate turnover of all recipients which are operational in the current year, during the relevant period
- ITC available in a month shall be distributed in the same month.
- Cannot distribute more than available.
- Furnish the details of such distribution in Form GSTR-6 monthly.

Separation: Distribute eligible and ineligible ITC, and CGST, SGST/ UTGST & IGST, separately

Methodology of Pro Rata Distribution

Let one of the recipients be 'R1', whether registered or not.

Compare with all the recipients to whom ITC attributable (including exempt suppliers and unregistered persons)

$$\bullet C_1 = \left(\frac{t_1}{T} \right) \times C$$

- “C” = total amount of credit to be distributed.
- “C₁” = ITC to be distributed to ‘R1’.
- “t₁” = turnover in a State/ UT of R1 during the relevant period
- “T” = aggregate of the turnover, during the relevant period, of all recipients to whom the ITC attributable/ which are operational

Some Definitions

Manner of recovery of Credit distributed in excess. (Sec 21)

“Relevant Period”

- If all recipients to whom ITC attributable have some turnover in preceding FY – Preceding FY
- If some/ all recipients do not have any turnover in their States/ UTs in the preceding FY – the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

“Turnover”

- in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

- Where the ISD distributes ITC in contravention of section 20, resulting in excess distribution of ITC to one or more recipients,
- The excess credit shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

Additional ITC due to debit note

- If any supplier issues a debit note to the ISD, then there will be additional amount of ITC, which shall be distributed similarly as the original credit, in the month in which the debit note is included in the return in **FORM GSTR-6**.

When earlier ITC distributed to wrong recipient, now correction

- ISD would have issued an ISD credit note to the recipient to whom it was wrongly distributed. Now, on the basis of that ISD credit note, ISD shall issue a new ISD invoice to the correct recipient and include the ISD credit note and the ISD invoice in the return in **FORM GSTR-6** for the month in which such credit note and invoice was issued.

ISD Credit Note

Where ITC already distributed gets reduced for any reason (may be supplier issued credit note to ISD, or ITC given to wrong recipient by mistake, or any other reason), the ISD shall issue an ISD credit note as per Rule 54(1) for reduction of credit. The reduction shall be apportioned to each recipient in the same ratio in which the ITC contained in the original invoice was distributed, and the amount so apportioned shall be either –

- i. Reduced from the amount of ITC to be distributed in the month, or
- ii. Added to the output tax liability of the recipient, where above may go negative

I. New Registration

When? - Person applied for registration < 30 days of becoming liable to register, and has got registration.

Entitlement? - ITC of inputs, semi-finished, finished goods

Of Stock as on Date? - Immediately preceding day of becoming liable to take registration;

II. Voluntary Registration

When? - Person who takes voluntary registration u/s 25(3), and has got registration.

Entitlement? - ITC of inputs, semi-finished, finished goods

Of Stock as on Date? - Immediately preceding day of date of grant of registration;

III. Composition to Regular

When? - Registered person ceases to pay tax under section 10 (i.e. moves from composition to normal)

Entitlement? - ITC of inputs, semi-finished, finished goods and on capital goods

Of Stock as on Date? - Immediately preceding day of date from which comes under normal scheme;

IV. Exempt to Taxable

When? – An exempt supply becomes a taxable supply

Entitlement? - ITC of inputs, semi-finished, finished goods relatable to such exempt supply and on capital goods exclusively used for such exempt supply

Of Stock as on Date? - Immediately preceding day of date from which such supply becomes taxable;

Input Tax Credit Eligibility on Specific Events [Sec 18(1) & Rule 40]

Conditions-

1. Make a declaration in FORM GST ITC- 01 to the effect that he is eligible to avail the ITC, and clearly specify the details of the stock as on the relevant date, as applicable (details furnished must be certified by Chartered Accountant/ Cost Accountant, if total amount of ITC claimed exceeds Rs. 2 lakhs)
2. Credit on capital goods shall be reduced by 5% per quarter or part thereof from date of invoice.
3. In case of cases 3 & 4, the details furnished shall be verified with GSTR-1/ GSTR-4 of your supplier.

Amount = Sum of following two -

I. ITC attributable to - **inputs, semi-finished or finished goods** held in stock on the day immediately preceding the date of exercising of such option/ the date of such exemption,
Calculation: Proportionately on the basis of corresponding invoices on which ITC had been availed

II. ITC involved in the remaining useful life of – **capital goods**,
Calculation: Pro-rata basis (in months), taking the useful life as 5 years.
[Note: In case of cancellation of registration, Amount = higher of - above/ tax on transaction value]

After payment of such amount, the balance of ITC (if any) in his ITC ledger shall lapse.

Calculation as above shall be determined separately for input tax credit of IGST & CGST.

Example for pro rata calculation in capital goods

*Capital goods have been in use for 4 years, 6 month and 15 days.
The useful remaining life in months= 5 months ignoring part of the month.
Assume, Input tax credit taken on such capital goods= C*

→ Input tax credit attributable to remaining useful life= C multiplied by $\frac{5}{60}$

ITC Payment/ Reversal on Specific Events [Sec 18(4), Sec 29(5) & Rule 44]

Where any registered person who has availed of input tax credit -

1. Goes from Normal to Composition Scheme, (Normal → Compo)
2. Where his supply becomes wholly exempt, (Taxable → Exempt)
3. His registration gets cancelled due to any reason (Cancellation)

The amount determined as per the calculation on LHS shall form part of the output tax liability of the registered person, and shall be paid by debiting the ITC ledger/ Cash ledger.

Furnishing of the details

The details of the amount to be paid shall be furnished -

- For Events (1) & (2), in **FORM GST ITC- 03**,
- For Event (3), in **FORM GSTR-10**.

The details furnished shall be duly certified by a practicing chartered accountant/ cost accountant.

If Tax Invoice not available

Then the registered person shall estimate the amount based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified.

Supply of Capital Goods on which input tax credit had been taken

Two methods have been prescribed for the same event in the rules:-

Rule 40(2) - In such a case, the registered person shall pay an amount equal to the higher of following -

- i. ITC taken (-) 5% per quarter or part thereof from the date of the issue of the invoice.
- ii. Tax applicable on the transaction value determined under section 15 (Sale Value)

Proviso: Where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value (ignoring (i) above).

Rule 44(6) Determine as per Rule 44, in the same manner as specified in case of occurrence of the 3 specific events, separately for ITC of IGST and CGST.

If it is more than the tax on transaction value of capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in **FORM GSTR-1**.

Change in Constitution

- Furnish the details in **FORM GST ITC-02** with a request for transfer of unutilized input tax credit.
- Transferee shall accept the details so furnished in common portal, and, upon such acceptance, the unutilized credit shall be credited to transferee's ITC ledger.

- Where sale, merger, demerger, amalgamation, lease or transfer of the business or change in the ownership of business for any reason.
- With the specific provisions for transfer of liabilities. (Need to submit a copy of a certificate issued by a practicing chartered accountant/ cost accountant certifying this fact)
- Registered person shall be allowed to transfer the ITC which remains unutilised to new entity.

Procedure

- The inputs/ capital goods so transferred shall be duly accounted for by the transferee in his books.
- In the case of demerger, ITC shall be apportioned in the ratio of the value of assets of the new units.

Condition

Special Method for Banking Co./ Financial Institutions/ NBFCs

Where such people are engaged in supplying services by way of - “accepting deposits, extending loans or advances”

- They shall have a special option for input tax credit.

[Point to remember – such services are exempt vide Notfn 12/2017 –CT(R)]

Normally - They will have to apportion the credit between exempt and taxable supplies as per Sec 17(2).

Special option - Avail, every month, an amount equal to 50% of the eligible ITC and the rest shall lapse

Provided that the option once exercised shall not be withdrawn during the remaining part of the FY

Procedure for such option (Rule 38)

(A) Don't take any ITC of →	(i) GST on inputs and input services that are used for <u>non-business</u> purposes	(ii) <u>Blocked</u> credits as per Sec 17(5)
(B) Take Full ITC of →	Tax paid on supplies between 2 RTPs having same PAN (inter-branch)	
(C) Take 50% ITC of →	remaining amount of input tax	

Furnish as above in GSTR-2, for taking ITC of the amounts (B) + (C).

Condition:

The **inputs** sent within 1 year, and **capital goods**, within 3 years of being sent out, either be –

- Received back by the principal [as per Sec 143(1)(a)], or
- Supplied from the place of business of the job worker [as per Sec 143(1)(b)]

Note: Where inputs/ cap goods sent directly to job worker, 1 year counted from date of receipt of them by job worker.

In case of violation of above:

- It shall be deemed that such inputs/ cap goods had been supplied by the principal to the job worker on the day when the said inputs/ cap goods were sent out. (Back Date)
- The supply shall be declared in **FORM GSTR-1** & principal shall be liable to pay tax along with applicable interest.

Exception: This shall **not apply to** moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work

Job Worker [Section 19 & Rule 45]

- The principal is allowed ITC on inputs/ capital goods sent to a job worker for job work.
- Notwithstanding Sec 16(2)(b), the principal is entitled to take credit of ITC even if the inputs/ capital goods are directly sent to a job worker without being first brought to his place of business.

[Sec 16(2)(b) mandates 'receipt' of goods/ services for being eligible to take ITC, so here, it has been overridden]

Compliances for availing such facility-

1. The inputs, semi-finished goods or capital goods shall be **sent** to the job worker under the cover of a challan issued by the principal, which shall contain the details specified in rule 55 (Even when such goods are sent directly to a job-worker).
2. The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in **FORM GST ITC-04** furnished for that period on or before the 25th day of the month succeeding the said quarter.

Explanations:

For the purposes of this Chapter of Input Tax Credit,-

1. The expressions “capital goods” shall include “plant and machinery” as defined in the Explanation to section 17;
2. For determining the value of an exempt supply -
 - the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
 - the value of security shall be taken as one per cent. of the sale value of such security.

Apportionment of Credit [Sec 17(1) & (2)]

Where inputs are used partly for -	(i)	Business purposes	and	Non-Business purposes
	ITC shall be restricted to extent <u>used for business purpose</u>			
	(ii)	Effecting taxable supplies (including zero-rated supplies)	and	Effecting exempt supplies
	ITC shall be restricted to extent used <u>for effecting taxable</u> supplies (including zero-rated supplies)			

Note: “Exempt supply” here shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

How to attribute ITC between business/ non-business, or taxable/ exempt usage, is what we have to discuss.

**Method of Attribution -
Different for [Input goods + input services] & [capital goods]**

Method of Attribution for inputs & input services (Rule 42)

Step 1 – Initial Cleaning

‘T’ = Total ITC

From this

Remove these

Explicitly Dirty ITCs-

- ‘T₁’ = ITC attributable to ‘used for other than business’
- ‘T₂’ = ITC attributable to ‘exclusively used for effecting exempt supplies’
- ‘T₃’ = Blocked ITC as per Sec 17(5)

‘C₁’ = Cleaned ITC*

We get this

(C₁ shall be credited to ITC ledger)

$$*C_1 = T - (T_1 + T_2 + T_3)$$

Step 2 – Separation

Separate the Common Credit

Common Credit

$$\bullet \text{ ‘C}_2\text{’} = C_1 - T_4$$

(Observe that C₂ does not contain both type of explicit elements)

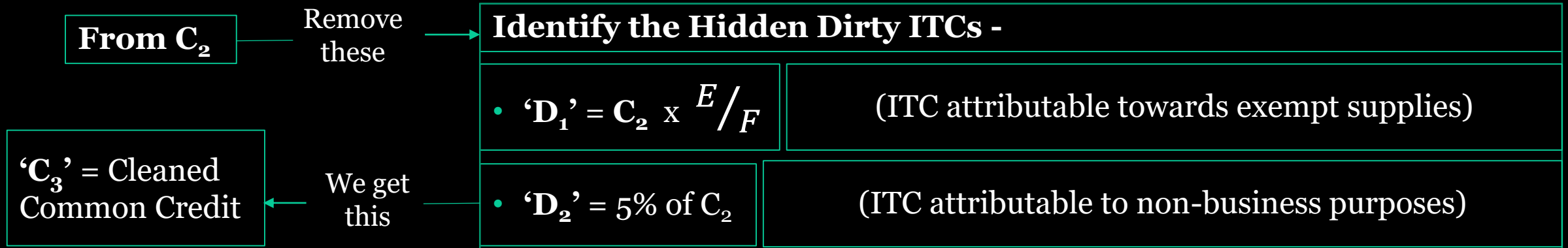
Remove Explicitly Clean ITC (to separate mixed portion)

- ‘T₄’ = ITC attributable to ‘exclusively used for effecting taxable supplies (including zero-rated)’

‘T₁’, ‘T₂’, ‘T₃’ and ‘T₄’ shall be determined & declared by registered person at the Invoice level in Form GSTR-2.

Method of Attribution for inputs & input services (Rule 42)

Step 3 – Identification



where, 'E' = the aggregate value of exempt supplies during the tax period, and

'F' = the total turnover in the State of the registered person during the tax period:

Special Case: If do not have any turnover during the said tax period/ information is not available,

→ the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available.

Note: 'E' = aggregate value of exempt supplies and 'F' = the total turnover, shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

Step 4 – Addition

*The amount equal to [$'D_1' + 'D_2'$] shall be added to the output tax liability of the registered person.
(Because earlier, whole C_1 was credited to ITC ledger, which included mixed dirty portions)*

Where the [D_1 (+) D_2] for whole FY calculated finally, exceeds the aggregate of the [D_1 (+) D_2] calculated and reversed in each month, this means you need to reverse more ITC -

- So such excess shall be added to the output tax liability of the registered person in any month, not later than the month of September following the end of the FY to which such credit relates.
- Also will liable to pay interest on the said excess amount at the specified rate for the period starting from the 1st April of the next FY till the date of payment

Where the aggregate of the [D_1 (+) D_2] calculated and reversed in each month exceeds the [D_1 (+) D_2] for whole FY calculated finally, this means you have reversed excess ITC -

- Such excess amount shall be claimed as ITC by the registered person in his return for a month not later than the month of September following the end of the FY to which such credit relates.

All the 4 steps discussed will be done for each Month (Tax Period)

Annual Exercise yet again

The ITC as per above procedure shall be calculated finally for the whole financial year, before the due date for furnishing of GSTR-3 of September following the end of the FY to which such credit relates.

Method of Attribution for capital goods (Rule 43)

Step 1 – Separate Explicits, Get Common

- ITC on capital goods used/ intended to be used exclusively for non-business purposes/ for effecting exempt supplies shall be indicated in **FORM GSTR-2** and shall not be credited to the electronic credit ledger.
- ITC on capital goods used/ intended to be used exclusively for effecting taxable supplies (including zero- rated supplies) shall be indicated in **FORM GSTR-2** and shall be credited to the electronic credit ledger.

ITC on capital goods not covered in above 2 = Mixed ITC = 'A'
'A' shall be credited to the ITC ledger and the useful life of such goods shall be taken as 5 years from the date of the invoice.

[Note: If any capital goods earlier covered under dirty credit, is subsequently covered here (mixed ITC). Then 'A' shall be arrived at by reducing the ITC at the rate of 5% per quarter or part thereof]

Common Credit

→ 'T_c' = Aggregate of the amounts of 'A' credited to the ITC ledger in a tax period (month) = Common Credit

Step 2 – Get Monthly

$$T_m = T_c \div 60$$

[Note: If any capital goods earlier covered under clean credit, is subsequently covered here (common credit). Then 'A' shall be arrived at by reducing the ITC at the rate of 5% per quarter or part thereof, and added to T_c]

Proportionate Common Credit = T_m

Now →

- 'T_r' = ITC at the beginning of a month, on all common capital goods whose useful life remains during the tax period = aggregate of 'T_m' for all such capital goods

Method of Attribution for capital goods (Rule 43)

Step 3 – Dirty Portion

ITC attributable to exempt supplies = T_e

$$\bullet \text{ 'T}_e\text{' = T}_r \times \frac{E}{F}$$

where, 'E' = Aggregate value of exempt supplies made during the month, and
'F' = Total turnover of the registered person during the month.

Special Case: If do not have any turnover during the said tax period/ information is not available,
→ the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available.

Note: 'E' = aggregate value of exempt supplies and 'F' = the total turnover, shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

T_e (+) applicable interest = added to the output tax liability of the person making such claim of credit, during every tax period of the useful life of the concerned capital goods

What We learned in a glimpse -



End of Presentation!

- Enabling Section for taking Input Tax credit
- Payment of Invoice within specified time
- Cannot claim depreciation on Input Credit Component
- Time Limit for taking input tax credit
- Blocked Credits
- Input Service Distributor (ISD)
- Input Tax Credit Eligibility on Specific Events [Sec 18(1) & Rule 40]
- ITC Payment/ Reversal on Specific Events [Sec 18(4), Sec 29(5) & Rule 44]
- Supply of Capital Goods on which input tax credit had been taken
- Change in Constitution
- Apportionment of Credit [Sec 17(1) & (2)]
- Method of Attribution for inputs & input services (Rule 42)
- Method of Attribution for capital goods (Rule 43)
- Special Method for Banking Co./ Financial Institutions/ NBFCs
- Job Worker [Section 19 & Rule 45]

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REGISTRATION UNDER GST

Chapters VI of the CGST Act

-By Prakhar Jain

SECTION 22, 23 & 24— PERSONS LIABLE TO GET REGISTERED OR EXEMPT

1. Turnover Criteria – If supplier makes taxable supplies, and his aggregate turnover (all India, incl. exempt) exceeds –

- a) Special Category States – Rs. 10 lakhs [Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand]
- b) All other states/ UTs – Rs. 20 lakhs

Then liable to get registered in every state/ UT from where makes taxable supply.

2. Migration - Every person who is registered or holds a license under an existing tax law as on 30.06.2017, shall be liable to be registered under this Act with effect from 01.07.2017.

3. Compulsory Registration - Following categories of persons shall be required to be compulsorily registered —

a. Inter State Supplier	b. Casual Taxable Person	c. NR Taxable Person	d. Persons liable to pay u/s 9(5)
e. Persons liable to deduct TDS u/s 51	f. Agents	g. Persons liable to pay tax under RCM	h. ISD
i. Persons who supply through e-comm operator u/s 52 (other than those u/s 9(5))	j. All E-Commerce Operators	k. Such other persons, class of persons as may be notified	

- Supplier makes taxable supply →
- Aggregate t/o exceed the limit
- Reg in state/ UT from where taxable supply is made

LETS TAKE SOME EXAMPLES

Dealer 1

Chhattisgarh = 19 lakhs	Karnataka = 1 lakhs
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Dealer 2

Mizoram = 19 lakhs



Dealer 3

Himachal Pradesh = 9 lakhs	Karnataka = 2 lakhs
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We had assumed only about taxable supplies

Dealer 4

MP = 9 lakhs (Exempt)

Karnataka = 12 lakhs (Taxable)



Dealer 5

CG = 20 lakhs (Exempt)

CG = Rs. 1 (Taxable)



Dealer 6

CG = Rs. 1 (Inter state)



Dealer 7

CG = Rs. 1 crore (Exempt)



EXEMPT FROM REGISTRATION (SECTION 23)

The following persons shall not be liable to registration, namely:—

- a. If person engaged exclusively in supplying goods/ services/ both that are - not liable to tax or wholly exempt from tax under CGST/ IGST Act;
- b. An agriculturist, to the extent of supply of produce out of cultivation of land.
- c. Other persons as may be notified by the government (Vide Notfn 32/2017 - Casual taxable persons making taxable supplies of handicraft goods, whose aggregate turnover does not exceed Rs. 20 lakhs/ Rs. 10 lakhs)

SPECIAL CASES

Transfer of Business - Where business of RTP is transferred to another person as a going concern, due to succession or otherwise, transferee/ successor shall be liable to be registered with effect from the date of such transfer/ succession.

Amalgamation/ Demerger - Transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation.

PROCEDURE FOR REGISTRATION (SECTION 25)

- Every person who is liable to be registered under section 22/ 24 shall apply for registration in every such State/ UT in which he is so liable within 30 days from the date on which he becomes liable to registration.
- Every person shall have a PAN/ TAN issued under the Income tax Act. (For NR taxable person, other may be prescribed)
- Casual taxable person or a Non-resident taxable person shall apply for registration at least 5 days before starting business.
- Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State/ UT where the nearest point of the appropriate baseline is located.
- A person may get himself registered voluntarily, even though not liable to be registered under section 22 or section 24, anytime, and all provisions as applicable to a registered person, shall apply.

APPLICATION FOR REGISTRATION (RULE 8)

1.

- Every person, [other than - NR taxable person, TDS deductor u/s 51, TCS collector u/s 52, and person supplying OIDAR services from a place outside India to a NTOR referred to in Sec 14 of the IGST Act] who is liable to be registered or seeking voluntary registration (“the applicant”) shall, before applying for registration, declare his PAN, mobile number, e-mail address, State/ UT in Part A of FORM GST REG-01 on the common portal.

2.

- PAN shall be validated online by the common portal from the database maintained by the CBDT. The mobile number & email id shall be verified through an OTP sent to each of them.

3.

- On successful verification of the PAN, mobile number and email address, a temporary reference number (TRN) shall be generated and communicated to the applicant on the said mobile number and e-mail address.

4.

- Using the TRN, the applicant shall electronically submit an application in Part B of FORM GST REG-01 along with the documents specified in the said Form, duly signed or verified through electronic verification code (EVC), at the common portal.

5.

- On receipt of such application, an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

VERIFICATION & APPROVAL (RULE 9)

1. PO shall examine the application and the accompanying documents and if the found to be in order, approve the grant of registration to the applicant within 3 working days from the date of submission of the application.
2. Where application submitted found to be deficient in terms of any information or any document required to be furnished, or where the proper officer requires any clarification with regard to any information provided, he may issue a notice electronically in FORM GST REG-03 within 3 working days from the date of submission of the application and the applicant shall furnish such clarification, information or documents electronically, in FORM GST REG-04, within 7 working days from the date of the receipt of such notice.
3. Where PO is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within a period of 7 working days from the date of the receipt of such clarification.
4. Where no reply is furnished or where the PO is not satisfied with the clarification, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05.
5. If the proper officer fails to take any action, -
 - within 3 working days from the submission of application; or
 - within 7 working days from receipt of the clarification,the application for grant of registration shall be deemed to have been approved.

Explanation. - For the purposes of this sub-rule, the expression “clarification” includes modification or correction of particulars declared in the application for registration, other than PAN, State, mobile number and e-mail address.

ISSUE OF REGISTRATION CERTIFICATE (RC) (RULE 10)

If registration application approved → a certificate of registration, duly signed or verified through electronic verification code by the proper officer, in FORM GST REG-06 showing - the principal place of business and additional place or places of business, shall be made available to the applicant on the common portal and a Goods and Services Tax Identification Number (GSTIN) shall be assigned. GSTIN shall be in following format –

2 characters	10 characters	2 characters	1 character
State code	PAN/ TAN	Entity code	Checksum

Example of a GSTIN – 22ADFRT8745Q1ZT

- If any registration/ UIN has been granted/ rejected under the SGST/ UTGST Act, then deemed so under this act too.
- If automatic approval → RC made available within a period of three days after the expiry of the time limit of 3/ 7 days.

FORCED (SUO MOTO) REGISTRATION (RULE 16)

Where a person who is liable to be registered fails to obtain registration, PO may proceed to register such person.

- It may have been found out pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act.
- PO shall register the person on a temporary basis and issue an order in Form GST REG-12, effective from date of order.
- Person shall within 90 days apply properly for registration under GST as per normal procedure. (If went to appeal against this suo-moto registration, and lost appeal, then apply for registration within 30 days of order of appeal)
- The registration certificate now issued shall be effective from back date, from date of suo-moto registration order.

EFFECTIVE DATE OF REGISTRATION

If applied within time limit (30 days) → The date on which the person becomes liable to registration

If applied after time limit → The date of the grant of registration.

SINGLE/ MULTIPLE REGISTRATIONS (RULE 11)

- Normally, a person will take 1 registration in one state/ UT.
- Person having multiple business verticals in a State/ UT may take a separate registration for each business vertical.
- Different registrations of same person, within same state/ UT, or in different states/ UTs, shall be treated as distinct persons.
- Person having SEZ Unit/ is a SEZ developer, shall make a separate application for registration as a business vertical distinct from his other units located outside the SEZ.
- ISD shall make a separate application for registration as such ISD.

CONDITIONS FOR MULTIPLE REGISTRATIONS FOR SEPARATE BUSINESS VERTICALS-

1. Have more than one business verticals as per Sec 2(18).

2. All business verticals must be either registered in normal scheme, or in composition scheme, no mix.

3. Supplies between business verticals would also become taxable, and proper tax invoice would be issued.

4. Just Submit separate registration application for vertical, and the normal procedure will be followed.

SPECIAL AGENCIES – UIN

NWA in 25(1), following persons shall be granted a Unique Identity Number (UIN) for purpose of refund of taxes on the notified supplies of goods or services or both received by them etc. -

- a) any specialised agency of the United Nations Organisation (UNO) or any Multilateral Financial Institution (MFI) and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and
- b) any other person or class of persons, as may be notified by the Commissioner,

STEPS -

1. Submit application electronically in FORM GST REG-13
2. The registration or the UIN shall be granted/ rejected after due verification and a certificate of registration in Form GST REG-06 shall be issued; if no deficiency communicated within 3 working days, deemed to have been granted registration.
3. PO may even on his own, or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign UIN and issue certificate of registration.

SPECIAL PROVISIONS FOR CASUAL, NR TAXABLE PERSONS (SECTION 27)

- 1. For Casual Taxable Person** – The process of registration is same as normal, just mention in Part B of Form GST REG-01 that seeking registration as a casual taxable person. Can make supplies only after issuance of Registration Certificate.
- 2. For NR Taxable person** – Apply in Form GST REG-09, along with self-attested copy of passport, at least 5 days prior to commencement of business. If business entity established/ incorporated outside India, then also submit either PAN (if available), or Tax identification Number by which identified by Govt. of its home country. The registration application must be signed/ verified by an authorised signatory, who is resident of India and having PAN. Normal procedure for approval.
- 3. For Both** - They shall be given a TRN by the common portal for making advance deposit of tax in accordance Sec 27. They shall make an advance deposit of tax in an amount equivalent to the estimated tax liability for the period for which the registration is sought, at the time of submission of application for registration. The acknowledgement shall be issued electronically only after the said deposit.
- 4. Validity of registration** - The certificate of registration issued to a casual taxable person or a non-resident taxable person → valid for the **period specified** in the application for registration or 90 days from the effective date of registration, whichever is earlier. PO may extend the said period of 90 days by a further period not exceeding 90 days. They would have to file Form GST REG-11, before the end of validity, and deposit an additional amount of tax equivalent to the estimated tax liability for the extension period.

SPECIAL PROVISIONS FOR PERSONS REQUIRED TO DEDUCT TDS OR COLLECT TCS

- Any persons required to deduct TDS u/s 51, or collect TCS u/s 52, shall apply for registration in Form GST REG-07.
- PO shall within 3 working days verify and approve the application, and issue a certificate in Form GST REG-06.
- Where PO satisfied that the person registered is no longer liable to deduct/ collect tax, PO may cancel the registration and issue a communication in Form GST REG-08. Proper procedure for cancellation shall be followed. (described below)

DISPLAY OF REGISTRATION CERTIFICATE AND GSTIN ON THE NAME BOARD (RULE 18)

1. Display Registration Certificate at a prominent place at the Principal Place of Business and at every additional place.

2. GSTIN should be written in the name board that is exhibited at entry of principal place & every additional place.

PERSON SUPPLYING OIDAR SERVICES FROM A PLACE OUTSIDE INDIA TO A NTOR

Such person shall submit an application in Form GST REG-10, and such person shall be granted registration certificate in Form GST REG-06, subject to such conditions and restrictions as may be prescribed.

AMENDMENT (SECTION 28 & RULE 19)

1. Every RTP/ UIN holder, shall inform the PO of any changes in the information furnished at the time of registration or subsequent thereto, by filing an application for amendment in FORM GST REG-14, along with relevant documents, at the common portal.
2. Two types of amendment –
 - Core fields (Legal Name, Address of Principal Place of business, or additional place of business, addition, deletion or retirement of individuals) &
 - Non-Core fields (All others).

FOR AMENDMENT OF NON-CORE FIELDS

Approval of PO shall not be required.
The registration certificate shall stand amended upon submission of application.

FOR AMENDMENT OF CORE FIELDS

Approval of the proper officer shall be required.

PROCESS FOR AMENDMENT OF CORE FIELDS

1. The PO may approve core field amendments after due verification, within 15 working days of receipt of application, and issue an order in Form GST REG-15, such amendment shall take effect from the date of the occurrence of the event warranting such amendment.

2. Where PO is not satisfied, or thinks that documents are incomplete, he shall, within 15 working days from receipt of application, issue a Show Cause Notice in FORM GST REG-03, asking as to why the application should not be rejected.

3. Assessee may furnish a reply in Form GST REG-04, within 7 working days from service of notice.

4. Where PO not satisfied by reply, or where no reply furnished within the time limit, he shall reject the application, by an order in Form GST REG-05.

5. If PO fails to take any action within 15/ 7 working days from application/ reply respectively, then deemed approved.

Note: Any rejection or approval under SGST/ UTGST Ac shall be deemed to be a rejection or approval under this Act.

CHANGE IN CONSTITUTION

- No amendment can be done. Have to apply for fresh registration in Form GST REG-01.

CHANGE OF EMAIL ID & PHONE NUMBER

- It shall be only made after proper verification using OTP.

CANCELLATION OF REGISTRATION (SECTION 29 & RULE 20, 21, 22)

It can be in 2 ways -	1. On an application filed by assessee (or legal heirs in case of death)	<ul style="list-style-type: none">(i) Business discontinued/ death/ amalgamation/ demerger(ii) Change in constitution of business(iii) Voluntarily registered person, not liable u/s 22 or 24, seeks cancellation (cancellation cannot be made before expiry of 1 year from registration)
	2. PO may cancel in his own motion	<ul style="list-style-type: none">(i) RTP does not conduct any business from the declared place of business(ii) Issues invoices/ bill of supply in contravention of Act or rules(iii) Violates Sec 171 or rules made thereunder (Anti-Profiteering)(iv) Regular/ Composition RTP not furnish return for 6 months/ 3 quarters(v) Voluntarily registered person didn't start business within 6 months(vi) Registration was obtained by any kind of fraud

CANCELLATION OF REGISTRATION (SECTION 29 & RULE 20, 21, 22)

1. **Liability to pay dues** – Cancellation shall not affect liability to pay dues under GST of period prior to cancellation, whether determined before or after such cancellation.
2. **Deeming** – Cancellation under SGST/ UTGST act deemed to be a cancellation under this act.
3. **Payment of ITC** – Every RTP whose registration is cancelled, shall pay an amount = [ITC on stock held as on cancellation date & capital goods (reduced by some %)] or [Output tax on transaction value u/s 15], whichever is higher.

(Refer Chapter of ITC & Video on it for detailed calculation method)

PROCEDURE

FROM SIDE OF DEPARTMENT

1. Where PO thinks registration liable to be cancelled due to any of the reasons mentioned in above table, then shall issue Show Cause Notice (SCN) in Form GST REG-17, requiring assessee to reply within 7 days.

2. After seeing the application from the side of assessee for cancellation (in case of voluntary), or on being unsatisfied from SCN reply, If officer decides eligible/ liable to be cancelled → Order in Form GST REG-19 within 30 days from application/ SCN reply, and cancel registration with an effective date decided by him, and direct the person to pay any liabilities due.

3. In case of SCN, if officer is satisfied from SCN reply → Drop proceedings and issue order in Form GST REG-20.

FROM SIDE OF ASSESSEE

For voluntary cancellation, assessee/ legal heirs shall file application in Form GST REG-16, including in it details of stock & capital goods held as on date from which cancellation is sought, details of any payment made against it, any relevant documents, within 30 days of event.

If assessee has received any SCN for cancellation, then reply in Form GST REG-18 within 7 working days of SCN.

REVOCAATION OF CANCELLATION

1. Any RTP whose registration is cancelled by the PO on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-21 within 30 days from the date of service of the cancellation order.
2. If registration was cancelled due to non-filing of returns, revocation application will not be considered unless such returns filed and tax/ interest/ late fees/ penalty thereon paid.
3. Where PO is satisfied, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration for reasons to be recorded in writing, by an order in FORM GST REG-22 within 30 days from the date of the receipt of the application, and communicate the revocation to the applicant.
4. Where PO is not satisfied, shall issue a Show Cause Notice in FORM GST REG-23 asking the applicant as to why the application submitted for revocation should not be rejected.

REVOCAATION OF CANCELLATION

5. Applicant shall furnish reply within 7 working days from the date of the service of the notice in FORM GST REG-24.
6. Upon receipt of reply, may accept or reject the application for revocation of cancellation of registration, within 30 days of receipt of reply.
7. PO may finally reject the application, for reasons to be recorded in writing, by an order in FORM GST REG- 05 and communicate the rejection to the applicant.
8. **Deeming** - Revocation of cancellation under SGST/ UTGST act deemed to be a revocation of cancellation under this Act.

MIGRATION (RULE 24)

1. Every person (other than ISD), having a PAN and registered under existing tax laws, shall enrol on the portal, by validating email ID and mobile number.
2. Upon enrolment, granted a provisional registration certificate in Form GST REG-25, with GSTIN. (Persons having multiple registration in same PAN under existing law will get single provisional registration only)
3. All provisional ID holders shall fill Form GST REG-26 along with required documents, within 3 months (or extended period)
4. If PO finds particulars furnished as correct & complete, shall issue a final registration certificate in Form GST REG-06.
5. If info incorrect/ not furnished, PO shall issue a SCN in Form GST REG-27, assessee may reply, and after considering reply-
 - May withdraw the SCN by an order in Form GST REG-20.
 - May issue an order for cancellation of the provisional ID in Form GST REG-28.
6. Any person who is not required to be registered under GST, can apply for cancellation of provisional ID on or before 30/09/2017, in Form GST REG-29, and PO shall cancel after conducting any enquiry.

PHYSICAL VERIFICATION OF BUSINESS PREMISES (RULE 25)

- Where PO is satisfied that the physical verification of the place of business of a RTP is required after the grant of registration, he may get such verification done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of 15 working days following the date of such verification.

METHOD OF AUTHENTICATION (RULE 26)

- All applications, replies, returns, appeals, etc shall be verified using DSC or E-Signature (Aadhar based OTP) or any other method notified by board. (For Companies, only DSC is allowed). All notices, certificates and orders by PO or any other officer authorised, also shall be issued in same manner of authentication.

WHAT WE LEARNED -

- Section 22, 23 & 24– Persons Liable to get Registered or Exempt
- Procedure for Registration (Section 25)
 - Who/ Time Limit & Location of Application
 - Application for Registration (Rule 8)
 - Verification & Approval (Rule 9)
 - Issue of Registration Certificate (RC) (Rule 10)
 - Effective date of registrationa
 - Forced (Suo Moto) Registration (Rule 16)
 - Single/ Multiple Registrations (Rule 11)
 - Conditions for Multiple registrations for separate Business Verticals-
 - Special Agencies – UIN
 - Special provisions for Casual, NR Taxable Persons (Section 27)
 - Special provisions for persons required to deduct TDS or collect TCS
 - Person supplying OIDAR Services from a place outside India to a NTOR
 - Display of Registration Certificate and GSTIN on the name board (Rule 18)
- Amendment (Section 28 & Rule 19)
 - For Amendment of Core fields
 - For Amendment of Non-Core fields
 - Change in Constitution
 - Change of Email ID & Phone Number
- Cancellation of Registration (Section 29 & Rule 20, 21, 22)
 - Procedure
 - From side of assessee
 - From side of Department
- Revocation of cancellation (Section 30 & Rule 23)
- Migration (Rule 24)
- Physical Verification of Business Premises (Rule 25)
- Method of Authentication (Rule 26)

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Tax Invoice, Credit & Debit Notes

CHAPTER VII OF THE CGST ACT

-By Prakhar Jain



SECTION 31 – TAX INVOICE

- Normal Invoice: RTP supplying taxable goods shall issue a Tax Invoice —

If Supply Involves Movement of Goods	Before or at the time of <u>removal</u> of goods for supply to the recipient
In Any Other Case	Before or at the time of <u>delivery</u> of goods or <u>making available</u> thereof to the recipient
Govt may notify categories of supplies in respect of which a tax invoice shall be issued within different time limit	

- The Tax Invoice shall show - the description, quantity and value of goods, the tax charged thereon and others (see Rule 46). Also see Notification no. 12/2017 – CT.
- RTP supplying **taxable services** shall issue a tax invoice –

Where supplier is Banking/ Insurance/ FI/ NBFC	<u>Before or after</u> the provision of service but <u>within</u> a period of <u>45 days</u> from the date of the supply of service
In All Other Case	<u>Before or after</u> the provision of service but <u>within</u> a period of <u>30 days</u> from the date of the supply of service
Notified class of suppliers making Inter-branch supplies	<u>Before or at the time</u> such supplier <u>records</u> the same in his <u>books</u> of account or <u>before</u> the <u>expiry</u> of the <u>quarter</u> during which the supply was made
Govt may notify categories of services for which any other document issued deemed tax invoice, or a tax invoice may not be issued	

- The Invoice shall show - the description, value, tax charged thereon and others (see Rule 46).
- Invoices shall be issued in [**3 copies (goods)** – Recipient, Transporter, Supplier] & [**2 copies (services)** – Recipient, Supplier]

REVISED INVOICE



- RTP may issue a revised invoice against the invoice already issued, during the period -

The effective date of registration ←-----→ the date of issuance of certificate,
within 1 month from the date of issuance of certificate of registration.
See Rule 53 for particulars required.

- May issue a **consolidated** revised tax invoice against all intra-state taxable supplies made to unregistered recipients during such period. If inter-state supplies (where value \leq 2.5 lakhs), then consolidated revised invoices to be issued state-wise.

- RTP supplying **exempted** goods/ services/ both or **Composition** taxable person shall issue a **bill of supply** instead of a tax invoice, for particulars, see Rule 49.
- Any document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

BILL OF SUPPLY

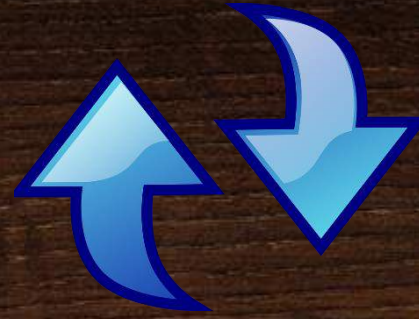


OPTION FOR CONSOLIDATION OF CERTAIN TAX INVOICES/ BILL OF SUPPLY

- RTP may not issue individual tax invoice/ bill of supply - if the value of the supply is less than Rs. 200, and -
 - The Recipient is unregistered person, and
 - The Recipient does not demand/ require such invoice/ bill of supply
- Then issue a **consolidated** tax invoice for such supplies at the close of each day for all such supplies.



RCM INVOICE



- If RTP receives a supply from an unregistered person, on which he is liable to pay tax Sec 9(3) or 9(4) → shall issue an invoice in respect of such supply received by him on the date of receipt of goods or services or both.
- As we know that if the aggregate value of supplies from unregistered persons does not exceeds Rs. 5000 in a day from any or all the suppliers, then it is exempt from RCM liability u/s 9(4). For those which are not exempt (greater than Rs. 5000) → RTP may issue a consolidated invoice at the end of a month.

RECEIPT VOUCHER

- RTP shall issue a receipt voucher or any other document, evidencing receipt of such payment, containing particulars as given in Rule 50, on receipt of advance payment with respect to any supply.
- If at time of receipt of advance – Rate of tax indeterminable → 18%;
Nature of supply indeterminable → **Inter-State supply**

- Where, on receipt of advance payment the RTP issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued, the RTP may issue a refund voucher against such payment, containing particulars as given in Rule 51.

REFUND VOUCHER

- If RTP receives a supply on which he is liable to pay tax Sec 9(3) or 9(4) → shall issue a payment voucher at the time of making payment to the supplier, containing particulars as given in Rule 52.

PAYMENT VOUCHER



CONTINUOUS SUPPLY

For definition –

- ‘Continuous supply of goods’ - see Section 2(32)
- ‘Continuous supply of services’ – see Section 2(33)

- **Of Goods** - Where successive statements of accounts or successive payments are involved
 - the invoice shall be issued **before or at the time** each such **statement** is issued or **payment** is received.

- **Of Services** - Subject to the provisions of issuing receipt voucher, in case of continuous supply of services –
 - Where due date of payment is ascertainable from contract,
 - invoice shall be issued **on or before the due date of payment.**
 - Where due date of payment is not ascertainable from the contract,
 - invoice shall be issued **before or at the time** when the supplier **receives payment.**
 - Where payment is linked to completion of an event,
 - invoice shall be issued **on or before the date of completion of that event.**

CESSATION OF SUPPLY OF SERVICES

- In a case where the supply of services ceases under a contract before the completion of the supply, the **invoice** shall be **issued** at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

- Where the goods being - sent or taken - on 'approval for sale' or return - are removed before the supply takes place, the invoice shall be issued → before or at the time of supply or six months from the date of removal, whichever is earlier.

SALE ON APPROVAL BASIS

SPECIAL PROVISIONS

1. **For Insurer/ Banking company/ financial institution (including a NBFC)** – Invoice, Bill of supply, Receipt voucher, Refund Voucher, Payment Voucher, Revised Tax Invoice, Debit or Credit Notes, → may be ‘issued’ or ‘made available’, physically or electronically → **may not be serially numbered** and may not contain the address of the recipient.
2. **ISD** invoice or credit note shall contain particulars as in Rule 54(1). For Banking company/ financial institution (including a NBFC), serial number is not necessary.
3. **For GTA** supplying services in relation to transportation of goods by road in a goods carriage, the tax invoice shall **also** contain → the gross weight of the consignment, name of the consigner and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax (whether as consigner, consignee or goods transport agency).
4. **For Passenger transport service**, Tax invoice, Bill of supply, Receipt voucher, Refund Voucher, Payment Voucher, Revised Tax Invoice, Debit or Credit Notes → may be in form of ticket, & **may not contain serial number or address of recipient**.
5. **For Exports**, invoice shall carry an endorsement as specified in 3rd Proviso to Rule 46, and contain → Name and address of the recipient, address of delivery; and name of the country of destination (instead of name of state/ state code)

PROHIBITION OF UNAUTHORISED COLLECTION (SECTION 32)

- An unregistered person shall not collect any amount by way of tax under this Act in respect of any supply.
- No RTP shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

- NWA contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

AMOUNT OF TAX TO BE INDICATED (SECTION 33)

CREDIT & DEBIT NOTES (SECTION 34)



1. Where a tax invoice has been issued for a supply and –
 - The taxable value/ tax charged in that tax invoice is found to exceed the correct amount, or
 - Where the goods supplied are returned by the recipient, or
 - Where supply is found to be deficient

The registered supplier may issue to the recipient a **credit note** containing particulars as per Rule 53.

2. Any RTP who issues a credit note shall declare the details of such credit note in the return for the month during which such credit note has been issued.
 - Last Date: Credit note can be issued not later than September following the end of the FY in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier
 - The tax liability shall be adjusted (reduced) accordingly.
 - No reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

3. Where a tax invoice has been issued for a supply and –
 - The taxable value/ tax charged in that tax invoice is found to be less than the correct amount,

The registered supplier shall issue to the recipient a **debit note** containing particulars as per Rule 53.

4. Any RTP who issues a debit note shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted (increased).

Explanation.—For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.

TRANSPORTATION OF GOODS WITHOUT ISSUE OF INVOICE

1. For the purposes of --

- a) Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,
- b) Transportation of goods for job work,
- c) Transportation of goods for reasons other than by way of supply, or
- d) Such other supplies as may be notified by the Board,



2. The consigner may issue a delivery challan in lieu of invoice at the time of removal of goods for transportation. It shall be serially numbered not exceeding 16 characters, in one or multiple series, containing the following details, namely:-

• date and number of the delivery challan;
• name, address and GSTIN of the consigner, if registered;
• name, address and GSTIN or Unique Identity Number of the consignee, if registered;
• Harmonised System of Nomenclature code and description of goods;
• quantity (provisional, where the exact quantity being supplied is not known);
• taxable value;
• tax rate and tax amount – CGST/ SGST/ UTGST/ IGST or cess, where for supply to the consignee;
• place of supply, in case of inter-State movement; and
• signature.

TRANSPORTATION OF GOODS WITHOUT ISSUE OF INVOICE

3. The delivery challan shall be prepared in 3 copies - original copy marked as ORIGINAL FOR CONSIGNEE; duplicate copy marked as DUPLICATE FOR TRANSPORTER; and triplicate copy marked as TRIPLICATE FOR CONSIGNER.
4. Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared as specified in rule 138.
5. Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.
6. Where the goods are being transported in a semi knocked down or completely knocked down condition -
 - a) Supplier shall issue the **complete invoice** before dispatch of the first consignment;
 - b) Supplier shall issue a **delivery challan** for each of the subsequent consignments, giving reference of the invoice;
 - c) Each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
 - d) The **original copy** of the invoice shall be sent along with the last consignment.



End of Presentation!

What we learned →

- Section 31 – Tax Invoice
 - Normal Invoice
 - Revised Invoice
 - Bill of Supply
 - Option for Consolidation of certain Tax Invoices/ Bill of Supply
 - Receipt Voucher
 - Refund Voucher
 - RCM Invoice
 - Payment Voucher
 - Continuous Supply
 - Cessation of Supply of services
 - Sale on Approval Basis
 - Special Provisions
- Prohibition of Unauthorised Collection (Section 32)
- Amount of tax to be indicated (Section 33)
- Credit & Debit Note (section 34)
- Transportation of goods without issue of invoice

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Accounts and Records

Chapter VIII of the CGST Act, along with Rules

- By Prakhar Jain



Background

- Assessment in GST is mainly focused on self-assessment by the taxpayers themselves
- The compliance verification is done by the department is to be done through documentary checks rather than physical controls
- This requires certain obligations to be cast on the taxpayer for keeping and maintaining accounts and records.



General Records (I)



Every registered person shall keep and maintain, at his principal place of business, true and correct account of-

- **Inward supply**, names and complete addresses of suppliers, **input tax credit** availed, and inward supplies attracting payment of tax on **reverse charge**
- **Production** or manufacture of goods;
- **Outward supply**, names and complete addresses of customers, **output tax** payable and paid;
- **Stock** of goods, the complete address of the **premises** where **goods are stored** by him, including goods stored during transit along with the particulars of the stock stored therein
- Separate account of **advances** received, paid and adjustments thereto
- Goods or services **imported or exported**

along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.

General Records (II)



Every registered person (other than composition dealer), shall maintain-

Accounts of stock in respect of goods received and supplied by him, containing particulars of -

- the opening balance
- receipt
- supply
- goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample
- the balance of stock including raw materials, finished goods, scrap and wastage thereof

Account containing details of -

- tax payable (including tax payable under RCM))
- tax collected and paid
- input tax
- input tax credit claimed

Along with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period



Special Records

IV. Supplier of services

Maintain the accounts showing –

- Quantitative details of **goods used** in the provision of services and **Details of input services utilised**
- The **services supplied**.

V. Works contractor

Separate accounts for works contract showing -

- The **names and addresses of the Customers** (persons on whose behalf the works contract is executed);
- Description, value and quantity (wherever applicable) of **goods or services received**;
- Description, value and quantity (wherever applicable) of **goods or services utilized**;
- The **details of payment received**
- The **names and addresses of suppliers** (from whom he received goods or services).

I. Agent

Maintain accounts depicting the,-

- particulars of **authorisation** received to receive or supply goods or services
- particulars including **description, value and quantity** (wherever applicable) of **goods/ services received or supplied** on behalf of principal;
- details of **accounts furnished** to every principal; and
- **tax paid** on receipts or on supply of goods/ services.

II. Manufacturer

Maintain **monthly** production accounts showing **quantitative details** of -

- **Raw materials or services used** in the manufacture
- **Goods manufactured** including the waste and by products thereof.

III. Carrier/ C&F Agent

Any person having custody over goods as a carrier/ C&F agent - for delivery or dispatch thereof to a recipient on behalf of any registered person → shall maintain true and correct records in respect of such goods handled by him on behalf of such registered person and produce the details thereof as and when required by the proper officer.

Special Records

Owner/ operator of godown/ warehouse



Transporters



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- If not already registered under the Act, such people shall submit the details regarding his business in **FORM GST ENR-01**, and get a unique enrolment number which shall be generated and communicated. Where required, amend the details furnished in **FORM GST ENR-01** from time to time.

▪ OWNER/ OPERATOR OF A GODOWN (WAREHOUSE) –

- Maintain books of accounts with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods.
- Store the goods in such manner that they can be identified item-wise and owner-wise, facilitate any physical verification or inspection by the proper officer on demand

▪ TRANSPORTER - Maintain records of

- The consigner, consignee along with their GSTIN, if any,
- Goods transported, delivered and goods stored in transit by him.

Other Documents



- The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

Exemption/ Relaxation



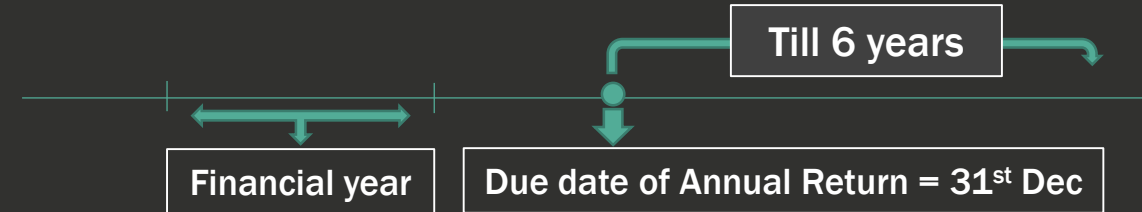
- Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

Audit

Every registered person whose turnover during a financial year exceeds Rs. 2 Crore (as per Rule 80) shall -

- Get his accounts audited by a chartered accountant/ cost accountant
- Submit a copy of the audited annual accounts, the reconciliation statement, duly certified, in FORM GSTR-9C

Preservation Period (Section 36)



Accounts maintained together with all the invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply -

- Shall be preserved until the expiry of 72 months (6 years) from the due date of furnishing of annual return for that year.
- In case of appeal/ revision/ any other proceedings/ investigation → retain records pertaining to the subject matter for a period of 1 year after final disposal, or for the period specified above, whichever is later.
- Where maintained manually → kept at every related place of business
- Where maintained digitally → shall be accessible at every related place of business

General Points



- Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force.
- Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.
- Each volume of books of account maintained manually by the registered person shall be serially numbered.
- Any entry in registers, accounts and documents shall not be erased, effaced or overwritten,
 - All incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter, the correct entry shall be recorded and
 - Where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

General Points



- If any taxable goods are **found to be stored at any place(s) other than those declared under sub-rule (5) without the cover of any valid documents** → the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person
- Every registered person shall **keep the books of account at the principal place of business** and books of account relating to **additional place** of business mentioned in his certificate of registration and such books of account shall include any electronic form of data stored on any electronic device.
- Where **fails to account** for the goods/ services
 - Proper officer shall determine the tax payable as if such goods/ services had been supplied.
 - Provisions of section 73 or section 74, shall, *mutatis mutandis*, apply.

End of Presentation!

Sections and Rules covered

Section 35 - Accounts and other records

Section 36 - Period of retention of accounts.

Rule 27 - Maintenance of accounts by registered persons

Rule 28 - Generation and maintenance of electronic records

Rule 29 - Records to be maintained by owner or operator of godown or warehouse and transporters

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Returns

CHAPTER IX OF THE CGST ACT

- By Prakhar Jain



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SIMPLIFYING GST FOR THE NATION

DETAILS OF OUTWARD & INWARD SUPPLIES & MATCHING

1. **Every Registered Supplier** (other than ISD, NRTP, Composition dealer, TDS deductor or TCS collector) shall furnish the details of outward supplies of goods/ services/ both effected during a tax period in **FORM GSTR-1** on or before the 10th day of the month succeeding the said tax period. (Commissioner may extend; extension under SGST/ UTGST deemed here)

(A) <u>Invoice wise</u> details of all -	(i) Inter-State/ intra-State supplies made to the RTPs.	(ii) Inter-State supplies with invoice value more than Rs. 2.5 lakhs made to the unregistered persons.
(B) <u>Consolidated</u> details of all -	(i) Rate-wise, Intra-State supplies made to unregistered persons.	(ii) State-wise, Rate-wise inter-State supplies with invoice value upto Rs. 2.5 lakhs made to unregistered persons.
(C) <u>Debit and credit notes</u> , if any, issued during the month for invoices issued previously.		

2. RTP not allowed to furnish the details of outward supplies from the 11th day to the 15th day of the month.
3. Such details shall be communicated to the recipient of the said supplies in Part A of FORM GSTR- 2A (Normal & NR)/ FORM GSTR-4A (Composition)/ FORM GSTR-6A (ISD) after the due date of filing of FORM GSTR-1. (After 10th)
 - o Details of supplies from ISD will be communicated in Part B of FORM GSTR- 2A.
 - o Details of TDS deducted & TCS collected will be communicated in Part C of FORM GSTR- 2A.

DETAILS OF OUTWARD & INWARD SUPPLIES & MATCHING

4. **Every Registered Recipient** (other than ISD, NRTP, Composition dealer, TDS deductor or TCS collector) shall verify, validate, modify, delete or add in on the details communicated, to prepare his details of inward supplies.
5. The recipient shall then **furnish** the details of Inward Supplies as is prepared above, include the RCM supplies, and other details as required in **Form GSTR-2**, after the 10th day but on or before the 15th day. (Commissioner may extend; extension under SGST/ UTGST deemed here)

(i) Invoice wise details of all Inter-State and intra-State supplies received from registered/ unregistered persons.

(ii) Import of goods and services made.

(iii) Debit and credit notes

- Specify Inward on which is ineligible ITC, where such eligibility can be determined at the invoice level.
 - Declare the quantum of ineligible ITC relatable to non-taxable/ non-business supplies (which cannot be determined at the invoice level)
6. The details of inward supplies added, corrected or deleted by the recipient in his FORM GSTR-2 (Normal)/ FORM GSTR-4 (Composition)/ FORM GSTR-6 (ISD), shall be **made available** to the supplier electronically in FORM GSTR-1A, such supplier may either accept or reject the modifications made by the recipient on or before the 17th day, but not before the 15th day and FORM GSTR-1 shall stand amended to the extent of modifications accepted by him.

RECTIFICATION

- ▶ If any details of supply/ receipt have remained unmatched, and the supplier/ recipient discovers any error or omission therein, then they shall rectify such error or omission in that month's GSTR-1 or GSTR-2 when it is so discovered, and shall pay the tax and interest as applicable.
- ▶ Last Date for rectification –
 - Date of furnishing of GSTR-3 for September of next FY, or
 - Date of furnishing of the relevant annual return,
whichever is earlier.



MONTHLY RETURN

1. **Every RTP** (other than ISD, NRTP, Composition dealer, TDS deductor or TCS collector) shall discharge the liability using cash/ ITC and furnish return in **Form GSTR-3** for every month, on/ before 20th day of next month, showing –

(i) Inward and outward supplies (Auto populated based on GSTR-1 & GSTR-2)	(ii) ITC availed (Auto populated based on GSTR-2)	(iii) Tax payable & Tax paid
---	---	------------------------------

- ▶ Exporters claiming refund as per Sec 49(6) may indicate in the return and it shall be deemed to be a refund application.
2. **Composition Taxable person** shall on the basis of details contained in FORM GSTR-4A, and after adding, correcting or deleting the details, discharge the liability and furnish the quarterly return in **Form GSTR-4** for each quarter, on or before 18th day of the month succeeding the quarter, and give details of –

(i) Consolidated details of outward supplies made	(ii) Invoice wise inter-State and intra-State inward supplies received from registered and un-RTPs (Partly Auto populated)	(iii) Tax payable & Tax paid
---	--	------------------------------

- ▶ If Composition scheme opted for a FY, then returns for previous period to be filed as per normal procedure by - due date of GSTR-3 for September of the next FY or furnishing of annual return of the preceding FY, whichever is earlier.
- ▶ If going out of Composition scheme, then returns for period under composition to be filed by - due date of GSTR-4 for quarter ending September of the next FY or furnishing of annual return of preceding FY, whichever is earlier.

MONTHLY RETURN

3. **TDS deductor** shall furnish return showing details of deductions in FORM GSTR-7, within 10 days after the end of the month in which deductions have been made. On the basis of these details, TDS deduction certificate will be made available to the deductees.
4. **TCS collector** (E-commerce operator) shall furnish return showing details of supplies effected through it and the amount of tax collected, for every month in **FORM GSTR-8**.
5. **ISD** shall on the basis of details contained in FORM GSTR-6A, and after adding, correcting or deleting the details, furnish return containing details of tax invoices on which credit has been received and ISD invoices issued u/s 20, in **FORM GSTR-6** within 13th of the next month.
6. **NR Taxable person** shall furnish for every month, return in **Form GSTR-5**, showing the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable, within 20 days after the end of a calendar month or within 7 days after the last day of the period of registration, whichever is earlier.
7. Every person providing **OIDAR services** from a place outside India to an unregistered recipient in India, shall file return for every month in **FORM GSTR-5A** on or before the 20th day of the next month.
 - ▶ Commissioner may extend the time limit for furnishing the above returns. Extension under SGST/ UTGST deemed here.
 - ▶ GSTR-3 & GSTR-4 must be filed, even if nil return.
 - ▶ RTP shall not be allowed to furnish return of current period unless previous returns furnished.

RECTIFICATION

- ▶ If RTP discovers any omission or incorrect particulars after furnishing a return as above (other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities), he shall rectify it in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest.
- ▶ Last Date for rectification –
 - Due date for furnishing of GSTR-3 for the month of September or second quarter following the end of the FY, or
 - The actual date of furnishing of relevant annual return, whichever is earlier.



PROVISIONAL ITC

- ▶ Every RTP shall be entitled to take the ITC of eligible input tax as self-assessed in his return and such amount shall be credited on a provisional basis to his electronic credit ledger. It shall be utilised only for payment of self-assessed output tax as per the return.



As per GSTR-2
and GSTR-3

Imagine....



MATCHING OF ITC



1. WHAT & HOW

The details of every inward supply - GSTIN of supplier & recipient, Invoice or debit note number & date and tax amount - furnished by a Recipient shall be matched after the due date for furnishing the return in FORM GSTR-3 (20th) –

1. With the corresponding details of outward supply furnished by the corresponding Supplier in his valid return for the same/ preceding tax period.
2. With the IGST paid u/s 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and
3. For duplication of claims of ITC.

(Commissioner may extend of matching; if Time limit for GSTR-1 & 2 extended, then date of matching shall be extended accordingly)

2. Deemed Match

The claim of ITC shall be treated as already matched if-

- o If they are in respect of Invoices/ debit notes in FORM GSTR- 2 that were accepted by the recipient on the basis of FORM GSTR- 2A without amendment, and supplier had furnished valid return for the same.
- o Amount of ITC claimed is equal to/ less than the output tax paid on such tax invoice/ debit note by the supplier.

3. Matched

The claim of ITC in respect of invoices/ debit notes relating to inward supply - that match with the details of corresponding outward supply/ with the IGST paid u/s 3 of the Customs Tariff Act, 1975 in respect of goods imported by him - shall be finally accepted and such acceptance shall be communicated in **FORM GST MIS-1** to the recipient.

(Basically for invoices which were not accepted by recipient as such, were modified, and modification was accepted by supplier!)



4. Mismatch

Where-

- ITC claimed by recipient in respect of an inward supply is in excess of tax declared by the supplier for the same supply, or
- The outward supply is not declared by the supplier in his valid returns,

Then such discrepancy and corresponding ITC that is liable to be reversed shall be made available to recipient in FORM GST MIS-1 and to supplier in **FORM GST MIS-2** on or before the last date of month in which matching has been carried out.

5. Corrections

Supplier/ Recipient may make corrections in Form GSTR-1/ GSTR-2 respectively of month when discrepancy communicated.

(Supplier may add or correct the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient; Recipient may delete or correct the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier)

6. Now Match

The claim of ITC in respect of any tax period which had been communicated as mismatched, but is found to be matched after rectification by the supplier/ recipient shall be finally accepted and made available electronically in FORM GST MIS-1.

7. Unmatched

The amount in respect of which any discrepancy is communicated which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated - shall be added to the output tax liability of the recipient in his return in Form GSTR-3 for the month succeeding the month in which the discrepancy is communicated. Also shall be liable to pay interest u/s 50(1) on the amount so added from the date of availing of credit till the corresponding additions are made.

MATCHING OF ITC

MATCHING OF ITC

8. Future Correction

If Supplier declares the details of the invoice or debit note in his valid return in future, within the time specified in Sec 39(9), then the recipient shall be eligible to reduce, from his output tax liability, the amount earlier added due to mismatch. Also, the interest that would have been earlier paid during mismatch shall be refunded, recipient shall claim it in Form GSTR-3.

9. Contravention

The amount reduced from the output tax liability in contravention of the above method shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in Sec 50(3).

10. Duplicate claim

The duplication of claims of ITC shall be communicated to the recipient in FORM GST MIS-1.

11. Reversal

The amount claimed as ITC that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated. Also liable to pay interest u/s 50(1) from the date of availing of credit till the corresponding additions are made.

MATCHING OF REDUCTION

1. WHAT & HOW

The details of every credit note relating to outward supply – GSTIN of supplier & recipient, credit note number & date, and tax amount – furnished by supplier for a tax period shall, after the due date for furnishing FORM GSTR-3, be matched—

- a) With the corresponding reduction in the claim for ITC by the corresponding Recipient, in his valid return for the same tax period or any subsequent tax period; and
- b) For duplication of claims for reduction in output tax liability.

(Commissioner may extend of matching; if Time limit for GSTR-1 & 2 extended, then date of matching shall be extended accordingly)

2. Deemed Match

The claim of Reduction shall be treated as already matched if-

- a) If they are in respect of Credit notes in FORM GSTR- 1 that were accepted by the recipient in FORM GSTR-2 without amendment, and recipient had furnished valid return for the same.
- b) The amount of output tax liability after taking into account the reduction claimed is equal to or more than the claim of ITC (after taking into account the reduction admitted & discharged on such credit note by the recipient in his valid return).

3. Matched

The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for ITC by the recipient shall be finally accepted and communicated in FORM GST MIS-1 to the supplier.

(Basically for credit noted which were not accepted by recipient as such, were modified, and modification was accepted by supplier!)

4. Mismatch

Where-

- o The reduction of output tax liability in respect of outward supplies exceeds the reduction in the claim for ITC or
- o The corresponding credit note is not declared by the recipient in his valid returns,

Then such discrepancy, and the details of output tax liability liable to be added, shall be communicated to supplier in FORM GST MIS-1 and to recipient in FORM GST MIS-2, on or before last date of the month in which matching has been carried out.

5. Corrections

Supplier/ Recipient may make suitable rectifications (supplier may delete or correct the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient, or the recipient may add or correct the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier) in Form GSTR-1/ GSTR-2 respectively of month when discrepancy communicated

6. Now Match

The claim of reduction in output tax liability in respect of any tax period which had been earlier mismatched but is found to be matched after rectification by the supplier/ recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS-1.

7. Unmatched

The amount in respect of which any discrepancy is communicated and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, and shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is communicated. Also shall be liable to pay interest u/s 50(1) on the amount so added from the date of claiming reduction till the corresponding additions are made.

MATCHING OF REDUCTION

MATCHING OF REDUCTION

8. Future Correction

If the recipient declares the details of the credit note in future in his valid return within the time specified in Sec 39(9), then supplier shall be eligible to reduce, from his output tax liability, the amount earlier added due to mismatch. Also, the interest that would have been earlier paid during mismatch shall be refunded, supplier shall claim it in Form GSTR-3.

9. Contravention

The amount reduced from output tax liability in contravention of the above method, shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in Sec 50(3).

10. Duplicate claim

The duplication of claims for reduction in output tax liability shall be communicated to the supplier in in FORM GST MIS-1.

11. Reversal

The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated. Also liable to pay interest u/s 50(1) from the date of claiming such reduction till the corresponding additions are made.

SPECIAL RETURN GSTR-3B

- ▶ Where the time limit for furnishing of details in FORM GSTR-1 u/s 37 and in FORM GSTR-2 u/s 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in **FORM GSTR-3B**.
- ▶ Part A of the return in FORM GSTR-3 shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods and PART B of the said return shall be electronically generated on the basis of the return in FORM GSTR-3B furnished in respect of the tax period.
- ▶ RTP shall modify Part B of the return in FORM GSTR-3 based on the differences, if any, as compared to FORM GSTR-3B, and discharge any additional tax and other liabilities, if any, or where the amount of ITC in FORM GSTR-3 exceeds the amount of ITC as per FORM GSTR-3B, the additional amount shall be credited to the electronic credit ledger of the RTP.



E-COMMERCE OPERATOR



The details of –

- State of place of supply and
- the net taxable value

relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1. (Where the time limit for furnishing FORM GSTR-1 u/s 37 has been extended, the date of matching shall be extended accordingly)

- ▶ Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in **FORM GST MIS-3** and to the e-commerce operator electronically in **FORM GST MIS-4** on or before the last date of the month in which the matching has been carried out.
- ▶ The supplier or the operator may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.
- ▶ Where the discrepancy is not rectified, an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available, and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the common portal in FORM GST MIS-3.

ANNUAL RETURN

- ▶ Every RTP (other than ISD, TDS deductor, TCS collector, a casual taxable person and a NR taxable person), shall furnish an annual return for every FY in **FORM GSTR-9** on or before the 31st day of December following the end of such FY.
- ▶ Composition taxable person shall furnish in **FORM GSTR-9A**.
- ▶ TCS collector shall furnish in **FORM GSTR-9B**.
- ▶ Every RTP whose aggregate turnover during a FY exceeds Rs. 2 crore, is required to get his accounts audited in accordance with Sec 35(5), and shall furnish the annual return along with a copy of the audited annual accounts and a reconciliation statement in **FORM GSTR-9C**, reconciling the value of supplies declared in return furnished with the audited annual financial statement.

FIRST & FINAL RETURN

FIRST RETURN

- ▶ Every RTP who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted, shall declare them in the first return furnished by him after grant of registration.

FINAL RETURN

- ▶ Every RTP who is required to furnish a return under Sec 39(1) and whose registration has been cancelled shall furnish a final return in **FORM GSTR-10** within 3 months of date of cancellation or date of order of cancellation, whichever is later.

Notice & Late Fees

NOTICE

- ▶ Where RTP who fails to furnish a return u/s 39 or section 44 or section 45, a notice shall be issued in FORM GSTR-3A requiring him to furnish such return within 15 days.

LATE FEES

- ▶ Any RTP who fails to furnish the details of outward or inward supplies required u/s 37 or section 38 or returns required u/s 39 or section 45 by the due date, shall pay a late fee of Rs. 100 for every day subject to a maximum amount of Rs. 5000.
- ▶ Any RTP who fails to furnish the return required u/s 44 (Annual return) by the due date shall be liable to pay a late fee of Rs. 100 for every day subject to a maximum of an amount = 0.25% of turnover in the State/ UT.

UIN HOLDERS

(REFER REGISTRATION CHAPTER TO KNOW WHO ARE UIN HOLDERS)

- ▶ Every person who has been issued a Unique Identity Number (UIN) and claims refund of the taxes paid on his inward supplies, shall furnish the details of such supplies in **FORM GSTR-11**, along with application for such refund claim. If purpose is other than refund, furnish the details of inward supplies as may be required by the proper officer in FORM GSTR-11.

GSTP (GOODS AND SERVICES TAX PRACTITIONER)

Who can become?

- ▶ Satisfies any of the following conditions, namely:-
 - ▶ He is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower than the rank of a Group-B gazetted officer for a period of not less than two years; or
 - ▶ That he has enrolled as a sales tax practitioner or tax return preparer under the existing law for a period of not less than 5 years;
 - ▶ Has passed -
 - ▶ A graduate/ postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or
 - ▶ A degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or
 - ▶ Any other examination notified by the Government, on the recommendation of the Council, for this purpose; or
 - ▶ Has passed the Final examination of the Institute of Chartered Accountants of India; or the Institute of Cost Accountants of India; or the Institute of Company Secretaries of India.
- ▶ Is a citizen of India;
- ▶ Is a person of sound mind;
- ▶ Is not adjudicated as insolvent;
- ▶ Has not been convicted by a competent court;

GSTP Application Procedure

1.

- An application in **FORM GST PCT-01** may be made for enrolment as GSTP by any person

2.

- On receipt of the above application, the officer authorised in this behalf shall either enrol the applicant as a GSTP and issue a certificate to that effect in **FORM GST PCT-02**.
- May reject his application where it is found that the applicant is not qualified to be enrolled as a GSTP.
- The enrolment made shall be valid until it is cancelled.
- No person enrolled as a GSTP shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Commissioner on the recommendations of the Council.

OTHER POINTS

1.

- RTP may authorise an approved GSTP to-
 - Furnish details of outward supplies u/s 37, details of inward supplies u/s 38 and return u/s 39 or section 44 or section 45.
 - Make deposit for credit into the electronic cash ledger.
 - File refund claim.
 - File an application for amendment or cancellation of registration.

2.

- The responsibility for correctness of any particulars furnished in the return or other details filed by the GSTPs shall continue to rest with the RTP on whose behalf such return and details are furnished.

3.

- The GSTP shall prepare the statements with due diligence and affix his digital signature on the statements prepared by him or electronically verify using his credentials.

4.

- If any GSTP is found guilty of misconduct in connection with any proceedings, the authorised officer may, after giving him a notice to show cause in FORM GST PCT-03 for such misconduct and after giving him a reasonable opportunity of being heard, by order in FORM GST PCT -04 direct that he shall henceforth be disqualified u/s 48 to function as a GSTP. The person may within 30 days from the date of issue of such order, appeal to the Commissioner against such order, if he so wishes.

OTHER POINTS

5.

- Where a statement required to be furnished by a RTP has been furnished by the GSTP authorised by him, the statement furnished shall be made available to the RTP on the common portal and a confirmation shall be sought from the RTP over email or SMS. RTP shall before confirming submission, ensure that the facts mentioned in the return are true and correct. Where RTP fails to respond to confirmation request till last date of furnishing of such statement, deemed that he has confirmed. But where it is application for refund/ amendment or cancellation of registration, then such application shall not be proceeded with further until the RTP gives his consent to the same.

6.

- RTP may, at his option, authorise a GSTP or withdraw such authorisation in **FORM GST PCT-05**, and the GSTP so authorised shall be allowed to undertake such tasks as indicated in the said authorisation during the period of authorisation.

7.

- GSTP enrolled in any State/ UT shall be treated as enrolled in every State/ UT for the purposes of undertaking activities as above.

CONDITIONS FOR PURPOSES OF APPEARANCE

- ▶ Only persons enrolled as GSTP shall be eligible to attend before any authority in connection with any proceedings under the Act on behalf of any registered or unregistered person.
- ▶ GSTP attending on behalf of a RTP or an unregistered person in any proceedings under the Act before any authority shall produce before such authority, if required, a copy of the authorisation given by such person in FORM GST PCT-05.

End of Presentation!

WHAT WE LEARNED -

- ▶ Details of Outward & Inward Supplies & Matching
- ▶ Rectification
- ▶ Monthly Return
- ▶ Rectification
- ▶ Provisional ITC
- ▶ Matching of ITC
- ▶ Matching of reduction
- ▶ Special Return GSTR-3B
- ▶ First Return
- ▶ E-Commerce Operator
- ▶ Annual Return
- ▶ Final Return
- ▶ Notice
- ▶ Late Fees
- ▶ UIN HOLDERS
- ▶ GSTP (goods and services tax practitioner)
- ▶ Conditions for purposes of appearance

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Payment of Tax

CHAPTER X OF THE CGST ACT

-By Prakhar Jain



DEPOSIT OF TAX & ELECTRONIC CASH LEDGER



- Any person wanting to deposit, shall **generate a challan** in FORM GST PMT-06 on the common portal (which shall be valid for 15 days) and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.
- If payment is by unregistered person, then it shall be made on the basis of a **temporary identification number** generated through the common portal, by the tax officer.
- **Modes:** Deposit can be made by -
 - Internet banking through authorised banks (Directly through portal)
 - Credit or debit cards through the authorised bank (Directly through portal)
 - NEFT/ RTGS from any bank (The mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank, it shall also be valid for 15 days only)
 - Over the Counter payment through authorised banks for deposits up to Rs. 10,000 per challan per tax period, by cash, cheque or demand draft. Restriction of Rs. 10,000 shall not apply to deposit to be made by –
 - Government Departments or any other deposit to be made by persons as may be notified by the Commissioner;
 - Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;
 - Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any *ad hoc* deposit.

DEPOSIT OF TAX & ELECTRONIC CASH LEDGER

- The **commission**, if any, payable in respect of such payment shall be borne by the person making such payment.
- On successful credit of the amount to the concerned government account maintained in the authorised bank, a **Challan Identification Number (CIN)** shall be generated by the collecting bank and the same shall be indicated in the challan.
- On receipt of the CIN, the amount shall be **credited** to the electronic cash ledger of such person maintained in FORM GST PMT-05, and a receipt shall be generated.

NON RECEIPT OF CIN

- Where the bank account is **debited but no CIN is generated**/ communicated to the common portal, the person may represent (complaint) to the bank/ electronic gateway through which the deposit was initiated, electronically in FORM GST PMT-07 through the common portal.



SPECIAL FOR OIDAR SERVICES PROVIDER

{OIDAR = Online Information & Database Access or Retrieval}



- A person supplying OIDAR services from a place outside India to a NTOL referred to in Sec 14 of the IGST Act may also do so through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax (EASIEST) and may also pay through **international money transfer** through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.

OTHER TRANSACTIONS

- Any **TDS** deducted/ **TCS** collected, and claimed by assessee in Form GSTR-2, shall be credited to the Electronic Cash Ledger.
- Where any **refund** is claimed, the amount shall be debited from the ledger.
- Where **refund is rejected** (wholly or partially), amount to extent of rejection shall be credited to the ledger by the PO by an order made in FORM GST PMT-03. (Refund deemed to be rejected if the relevant appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal)
- If RTP notices any **discrepancy** in his electronic cash ledger, he shall communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.
- The **balance** in the Cash ledger may be refunded in accordance with the provisions of Sec 54



ELECTRONIC CREDIT LEDGER

- The **input tax credit as self-assessed** in the return of a RTP shall be credited to his electronic credit ledger in accordance with Sec 41, maintained in FORM GST PMT-02.
- The amount available may be used for making any payment towards → tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder.
- The ledger shall be debited to the extent of discharge of any liability as per Sec 49.
- The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the IGST Act in such manner and subject to such conditions and within such time as may be prescribed.
- The amount of input tax credit available in the electronic credit ledger of the RTP on account of—
 - IGST shall first be utilised towards IGST, then CGST, then SGST/ UTGST, in that order.
 - CGST shall first be utilised towards CGST, then IGST.
 - SGST shall first be utilised towards SGST, then IGST.
 - UTGST shall first be utilised towards UTGST then IGST.
 - {CGST shall not be utilised towards SGST/ UTGST; and the SGST/ UTGST shall not be utilised towards CGST}

ELECTRONIC CREDIT LEDGER

- The unutilized balance in the Credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded as per Sec 54, the amount of refund claim shall be debited in the ledger.
- If the refund so filed is rejected (fully or partly) the amount debited earlier shall be re-credited by the PO by an order made in FORM GST PMT-03 to the extent of rejection. (A refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the PO that he shall not file an appeal)
- No entry shall be made directly in the electronic credit ledger under any circumstance.
- If RTP notices any discrepancy in his electronic credit ledger, he shall communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.



ELECTRONIC LIABILITY REGISTER



- All **liabilities** of a taxable person under this Act shall be **recorded and maintained** in an electronic liability register in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal.
- The electronic liability register of the person shall be **debited** by-
 - a) The amount payable towards tax, interest, late fee or any other amount payable as per the return furnished;
 - b) The amount of tax, interest, penalty or any other amount payable as determined by a PO in pursuance of any proceedings under the Act or as ascertained by the said person;
 - c) The amount of tax and interest payable as a result of mismatch under Sec 42// 50;
 - d) Any amount of interest that may accrue from time to time.
- RTP shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:--
 - a) Self-assessed tax, and other dues related to returns of previous tax periods;
 - b) Self-assessed tax, and other dues related to the return of the current tax period;
 - c) Any other amount payable under this Act/ rules including the demand determined under Sec 73/ 74.

“Tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.
- Payment of every liability by a RTP as per his return shall be made → by debiting the electronic credit ledger or the electronic cash ledger, and the electronic liability register shall be credited accordingly.

ELECTRONIC LIABILITY REGISTER

- The TDS/ TCS/ amount payable on RCM/ composition tax payable/ any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid → by debiting the electronic cash ledger only, and the electronic liability register shall be credited accordingly.
- Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.
- The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.
- If RTP notices any discrepancy in his electronic liability ledger, he shall communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.

UNIQUE IDENTIFICATION NUMBER

A Unique identification number shall be generated at the common portal for –

- Each debit or credit to the electronic cash or credit ledger, as the case may be.
- Each discharge of any liability in the electronic liability register. Also for any credit due to reasons other than discharge.

INTEREST ON DELAY/ UNDUE OR EXCESS CLAIM OF ITC OR REDUCTION

- Every person who fails to pay the tax or any part thereof within the prescribed time limit, shall on his own, pay interest at such rate, not exceeding 18%, as may be notified; for the period for which the amount remains unpaid. (Currently 18% notified)
- The interest shall be calculated from the day succeeding the day on which such tax was due to be paid.
- A taxable person who makes an undue or excess claim of input tax credit under sub-Sec (10) of Sec 42 or undue or excess reduction in output tax liability under sub-Sec (10) of Sec 43, shall pay interest on such amount, at such rate not exceeding 24%, as may be notified.

DEEMED PASSING OF INCIDENCE

Every person who has paid the tax on goods or services or both under this Act shall be deemed to have passed on the full incidence of such tax to the recipient, unless the contrary is proved by him.



TAX DEDUCTION AT SOURCE (SEC 51)



- NWA in this Act, the Government may mandate,--
 - a) a department or establishment of the CG/ SG; or
 - b) local authority; or
 - c) Governmental agencies; or
 - d) such persons or category of persons as may be notified by the Government on the recommendations of the Council, (hereafter in this Sec referred to as “the deductor”),
- To **deduct tax** at the rate of **1%** from the payment made or credited to the supplier (“the deductee”) of taxable goods or services or both, **where** the total **value** of such supply, under a contract, **exceeds Rs. 2.5 lakhs**. {We shall call such amount as TDS}
- **No deduction** shall be made **if** the **location** of the supplier and the place of supply is in a State/ UT which is different from the State/ UT of registration of the recipient.
- The **value** of supply shall be taken as the amount excluding the CGST, SGST, UTGST, IGST and cess indicated in the invoice.
- The TDS deducted shall be **paid** to the Government by the deductor within 10 days after the end of the month in which such deduction is made. If any deductor fails to pay, liable to pay **interest** in addition, at rate notified u/s 50(1). [18%]

TAX DEDUCTION AT SOURCE (SEC 51)

- The deductor shall furnish to the deductee a **certificate** mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed. If **fails** to furnish the certificate within 5 days of crediting the TDS so deducted to the Government, he shall pay a late fee of **Rs. 100 per day** from the day after expiry of 5 days period until the failure is rectified, upto **maximum Rs. 5000**.
- The **deductee** shall claim **credit** of the TDS deducted and reflected in the return of the deductor furnished under sub-Sec (3) of Sec 39, in his electronic cash ledger.
- The determination of the amount in **default** under this Sec shall be made in the manner specified in Sec 73/ 74.
- The **refund** to the deductor/ deductee arising on account of excess/ erroneous deduction shall be dealt with in accordance with the provisions of Sec 54. **No refund** to the deductor shall be granted, if the TDS deducted has been credited to the electronic cash ledger of the deductee.

TAX COLLECTION AT SOURCE (SEC 52)



- NWA anything in this Act, **every E-Commerce Operator** (“operator”) (not being an agent), **shall collect** an amount calculated at such rate as may be notified not exceeding 1% of the net value (the aggregate value of taxable supplies made during any month, except services u/s 9(5), and net of any sales returns) of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator. {We will call such amount as TCS}
- The **power to collect** TCS shall be without prejudice to any other mode of recovery from the operator.
- The TCS collected shall be **paid** to the Government by the operator within 10 days after the end of the month in which such collection is made.
- Every operator shall furnish a **statement**, electronically, containing the details of outward supplies effected through it, including returns through it, and the TCS collected during a month within 10 days after the end of such month. (See returns chapter)
- Every operator who collects TCS shall furnish an **annual statement**, electronically, containing the details of outward supplies effected through it, including returns through it, and the TCS collected during the FY, before 31st December of next FY.
- If any operator after furnishing a statement, discovers any omission or incorrect particulars therein (other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities), he shall **rectify** in the statement to be furnished for the month during which they are noticed, and pay applicable **interest**, as specified in Sec 50(1). No such rectification shall be allowed after the due date for furnishing of statement for the month of September of next FY, or the actual date of furnishing of the relevant annual statement, whichever is earlier.

TAX COLLECTION AT SOURCE (SEC 52)

- The **supplier** who has supplied through the operator shall **claim credit** of the TCS collected and reflected in the statement of the operator, in his electronic cash ledger.
- The details of supplies furnished by every operator shall be **matched** with the corresponding details of outward supplies furnished by the concerned supplier. Where the details do not match, the discrepancy shall be communicated to both persons.
- If after communication of discrepancy, it is not rectified by the supplier in his valid return or by the operator in his statement, for the month in which discrepancy is communicated, and, where the value furnished by the operator is more than the value furnished by the supplier, then the difference shall be **added to the output tax liability** of the said supplier in his return for the month succeeding the month in which the discrepancy is communicated.
- The concerned supplier shall **pay** the tax payable, along with **interest** at the rate specified under Sec 50(1) on the amount so added from the date such tax was due till the date of its payment.
- Any authority not below the rank of Deputy Commissioner may serve a **notice**, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—
- **Supplies** effected through such operator during any period; or
- **Stock** of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers.
- Every operator on whom such notice has been served, shall furnish the required information within 15 working days. If fails to furnish the information required, shall be liable to a penalty which may extend to Rs. 25,000, without prejudice to any action that may be taken under Sec 122.

TRANSFER OF CREDIT (SECTION 53)

- On utilisation of ITC of CGST for payment of tax dues under the IGST Act, the amount collected as CGST shall stand reduced by such amount, and the Central Government shall transfer such amount from the CGST account to the IGST account.

End of Presentation!

What we learned →

THE ONE GST PORTAL

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SIMPLIFYING GST FOR THE NATION

- Electronic Cash Ledger
 - Deposit
 - Non Receipt of CIN
 - Special for OIDAR service provider
 - Other transactions
- Electronic Credit Ledger
- Electronic Liability Register
- Unique identification number
- Deemed passing of incidence
- Interest on Delay/ Undue or excess Claim of ITC or Reduction
- TDS (Sec 51)
- Tax Collection at Source (Sec 52)
- Transfer of Credit (Section 53)

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Refunds

CHAPTER XI OF THE CGST ACT

-By Prakhar Jain



REFUND (SECTION 54)

Any person claiming refund of any tax/ interest, or any other amount paid by him → make an application before the expiry of 2 years from the relevant date.

“Relevant date” means—

- ▶ Where **goods exported** out of India and a refund of tax paid is available in respect of exported goods themselves or, the inputs or input services used in such goods,—
 - i. If exported **by sea or air**, the date on which the ship or the aircraft in which such goods are loaded, leaves India;
 - ii. If the goods are exported by **land**, the date on which such goods pass the frontier;
 - iii. If the goods are exported by **post**, the date of despatch of goods by the Post Office concerned to a place outside India;
- ▶ In the case of supply of **goods** regarded as **deemed exports** where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- ▶ Where **services exported** out of India and a refund of tax paid is available in respect of exported services themselves or, the inputs or input services used in such services –
 - a) Where **supply completed** prior to receipt of payment → Date of Receipt of payment in convertible Forex;
 - b) Where **payment had been received** in advance prior to date of issue of the invoice → Date of issue of invoice;
- ▶ Where the tax becomes refundable as a consequence of **judgment, decree, order or direction** of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;
- ▶ Where refund of **unutilised input tax credit** under sub-section (3) {Discussed afterwards}, the end of the FY in which such claim for refund arises;
- ▶ Where **tax is paid provisionally**, the date of adjustment of tax after the final assessment thereof;
- ▶ In the case of a person, **other than the supplier**, the date of receipt of supply by such person; and
- ▶ In any **other case**, the date of payment of tax.

Other Points

- ▶ If RTP claiming **refund of balance in the electronic cash ledger** as per Sec 49(6), may claim such refund in the return furnished under section 39 (GSTR-3/ 4/ 7). Not required to make separate application.
- ▶ RTP may claim refund of any **unutilised input tax credit** at the end of any tax period, in following cases only –
 - i. Zero rated supplies made without payment of tax;
 - ii. Where the credit has accumulated due to → rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) {Supplies may be notified by the Government on which this shall not be available, example, construction services has been notified}
- ▶ In respect of **supplies to a SEZ Unit/ developer**, the application for refund shall be filed by the supplier –
 - a) **If goods** → after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone.
 - b) **If services** → along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.
- ▶ In respect of **supplies regarded as deemed exports**, the application shall be filed by the recipient of deemed export supplies.
- ▶ The amount of **advance tax** deposited by a casual taxable person or a non-resident taxable person, shall not be refunded unless they have furnished all the returns required under section 39, in respect of the entire period for which the certificate of registration granted to him had remained in force. The refund shall be claimed in the last return.

NON-ALLOWANCE

- ▶ Not allowed in cases where the goods exported out of India are subjected to export duty.
- ▶ Not allowed if the supplier avails of CGST drawback or claims refund of the IGST paid on such supplies.
- ▶ **No refund** if amount is less than Rs. 1000.

PROCEDURE FOR GRANT OF REFUND



STEP 1: FILING OF APPLICATION FOR REFUND

ALL PERSONS (EXCEPT IN CASE OF REFUND OF IGST ON EXPORTS), SHALL FILE AN APPLICATION FOR REFUND IN FORM GST RFD-01.

STEP 2: DOCUMENTARY EVIDENCES

REQUIRED



The application shall be accompanied by—

1. Any of the following **documentary evidences** in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

▶ Refund due to order

The **reference number** of the order and a **copy** of the order passed by the PO/ appellate authority/ Appellate Tribunal/ court resulting in such refund or reference number of the payment of the amount specified in Sec 107(6) and Sec 112(8) claimed as refund. (Appeal Deposits)

▶ Refund on account of export of goods

A **statement** containing the number and date of **shipping bills/ bills of export** and the number and the date of the relevant **export invoices**.

▶ Refund on account of export of services

A **statement** containing the number and date of invoices and the relevant **Bank Realisation Certificates/ Foreign Inward Remittance Certificates**.

▶ Refund on account of supply of goods to SEZ Unit/ Developer

A **statement** containing the number and date of invoices as provided in rule 46 along with the **evidence** regarding the **endorsement** by the officer as is required. Also a **declaration** to the effect that the SEZ Unit/ developer has not availed the input tax credit of the tax paid by the supplier

STEP 2: DOCUMENTARY EVIDENCES

REQUIRED (CONTD...)

▶ Refund on account of supply of services to SEZ Unit/ Developer

A **statement** containing the number and date of **invoices**, the evidence regarding the **endorsement** by the officer required in case of supplies to SEZ Unit/ Developer, and the details and proof of **payment** by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005. Also a **declaration** to the effect that the SEZ Unit/ developer has not availed the input tax credit of the tax paid by the supplier

▶ Refund on account of deemed exports

A statement containing the number and date of invoices along with other notified evidence.

▶ Refund of unutilized ITC due to inverted tax structure

A statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under Sec 54(3).

▶ Refund on account of finalisation of provisional assessment

The reference number of the final assessment order and a copy of the said order.

▶ Refund due to Inter-Intra Confusion u/s 77

A statement showing the details of transactions considered as intra-State supply which is subsequently held to be inter-State supply.

▶ Refund on account of excess payment of tax

A statement showing the details of the amount of claim on account of excess payment of tax.

STEP 2: DOCUMENTARY EVIDENCES REQUIRED (CONTD...)



2. Following documentary or other evidence (including the documents referred to in section 33{Tax to be indicated in invoice}) to establish that the amount of tax/ interest/ any other amount paid in relation to which such refund is claimed, was collected from/ paid by him and the **incidence** of such tax and interest had **not been passed** on to any other person:-
 - ▶ **Where refund claimed does not exceeds Rs. 2 lakhs**

A **declaration** on the basis of the evidence available, to that effect.
 - ▶ **Where refund claimed exceeds Rs. 2 lakhs**

A **Certificate** in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant/ cost accountant to that effect.
- Where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer
- A declaration/ certificate as above is not required for the cases covered under clause (a)/ (b)/ (c)/ (d)/ (f) of Sec 54(8).

STEP 3: GENERATION OF ACKNOWLEDGEMENT/ COMMUNICATION OF DEFICIENCY.



Where -

- ▶ Refund application is **for refund from the electronic cash ledger**, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in Sec 54(7) {60 days} shall be counted from such date of filing.
- ▶ The application for refund, **in other cases**, shall be **forwarded to the PO**. He shall scrutinize the application for its completeness, **within** a period of **15 days** of filing of the said application.
- ▶ After that, **where** the application is **found to be complete**, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in Sec 54(7) {60 days} shall be counted from such date of filing.
- ▶ **Where any deficiencies** are noticed, the PO shall **communicate** the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to **file a fresh refund application** after rectification. If such communication has been made under the SGST Act, the same shall also deemed to have been communicated here.

STEP 4: GRANT OF PROVISIONAL REFUND FOR ZERO RATED SUPPLIES

- ▶ In case of claim for refund on account of **zero-rated supply** by RTP (other than such category of RTPs as may be notified), he shall be eligible to get a fast track **provisional refund**.
- ▶ **PO** shall after scrutiny of the claim & evidence submitted, and on being **prima facie satisfied** that refund is due, shall make an **order** in FORM GST RFD-04, sanctioning **90% of the amount** of refund due (excluding the amount of provisional ITC) to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement (subject to the condition that the person claiming refund has, during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds Rs. 250 lakhs).
- ▶ The PO shall issue a **payment advice** in FORM GST RFD-05 for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

STEP 5: NOTICE, REPLY & REJECTION

- ▶ Where the PO is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as **refund is not admissible** or is not payable to the applicant, he shall issue a **notice** in FORM GST RFD-08 to the applicant.
- ▶ Applicant shall be required to furnish a **reply** in FORM GST RFD-09 **within** a period of 15 days of the receipt of such notice.
- ▶ PO shall **after considering the reply**, make an **order** in FORM GST RFD-06, either sanctioning the amount of refund in whole or part, or rejecting the said refund claim. The said order shall be made available to the applicant electronically.
- ▶ If amount is rejected, and earlier Electronic Credit Ledger was debited at time of claiming refund, now it will be re-credited.



STEP 6: FINAL REFUND

ORDER

Where, upon examination of the application, or upon satisfactory reply of the notice, the PO is completely satisfied that a refund is due and payable to the applicant, he shall make a final order (**within 60 days** from the date of receipt of application complete in all respects) in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis earlier as discussed above, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable.

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07.

The amount of refund so determined shall be **paid** to the applicant in the following cases only —

- a) Refund of tax paid on zero-rated supplies or on inputs or input services used in making such zero-rated supplies;
- b) Refund of **unutilised ITC** to eligible people;
- c) Refund of tax paid on **supply** which is **not provided** (wholly or partially) and invoice (as per Sec 31) has not been issued/ refund voucher has been issued;
- d) Refund of tax in pursuance of **section 77** (Inter-Intra confusion, wrongly paid, then refund & correct pay);
- e) Tax/ interest/ any other amount paid by applicant, of which he had **not passed on the incidence** to any other person;
- f) Tax/ interest borne by such other class of applicants as the Government may **notify**.

In such cases, PO shall issue a **payment advice** in FORM GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

In all **other cases**, the refundable amount shall be credited to the Fund referred to in section 57 (Consumer Welfare Fund). PO shall issue an **advice** in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.



STEP 7: WITHHOLDING OF REFUND



- ▶ Where such refund due to RTP - who has defaulted in furnishing any return/ who is required to pay any tax, interest or penalty, (which has not been stayed by any court, Tribunal or Appellate Authority by the last date for filing an appeal) the PO may—
 - i. Withhold payment of refund due until person has furnished the return/ paid the tax, interest or penalty.
 - ii. Deduct from the refund due, the amount which is unpaid.
- ▶ In following cases, the commissioner may withhold the refund till such time as he may determine, after giving reasonable opportunity of being heard –
 - a) Refund order is the subject matter of an appeal/ further proceedings or
 - b) Where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud.
- ▶ Where a refund is so withheld, the commissioner shall pass an order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund
- ▶ If in future, as a result of an appeal or further proceedings RTP becomes entitled to refund, he shall be entitled to interest at notified rate not exceeding **6%**.

CALCULATION IN CASE OF REFUND OF UNUTILIZED ITC WHERE ZERO RATED SUPPLY WITHOUT PAYMENT OF TAX UNDER BOND/ LUT

CALCULATION FOR INVERTED DUTY STRUCTURE REFUND

- ▶ Refund of input tax credit shall be granted as per the following formula –

$$\text{Refund Amount} = \left(\left[\frac{\{(Turnover of zero rated supply of goods + Turnover of zero rated supply of services)\}}{\text{Adjusted total turnover}} \right] \times \text{Net ITC} \right)$$

- ▶ Refund of input tax credit shall be granted as per the following formula –

$$\text{Refund Amount} = \left(\left[\frac{\{(Turnover of inverted rated supply of goods)\}}{\text{Adjusted total turnover}} \right] \times \text{Net ITC} \right) - \text{Output Tax payable}$$

- "Refund amount" means the maximum refund that is admissible;
- "Net ITC" means input tax credit availed on inputs and input services during the relevant period;
- "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking;
- "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:- Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;
- "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;
- "Relevant period" means the period for which the claim has been filed.

REFUND OF IGST PAID ON EXPORTS OF GOODS (RULE 96)



- ▶ The **shipping bill filed** by an exporter shall be **deemed to be an application for refund** of IGST paid on the goods exported out of India and such application shall be **deemed to have been filed only when:-**
 - i. the person in charge of the conveyance carrying the export goods duly files an **export manifest** or an **export report** covering the number and the date of shipping bills or bills of export; and
 - ii. the applicant has **furnished a valid return** in FORM GSTR-3 or FORM GSTR- 3B.
- ▶ The details of the relevant export invoices contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the **said system** shall electronically transmit to the common portal, a **confirmation** that the goods covered by the said invoices have been exported out of India.

REFUND OF IGST PAID ON EXPORTS OF GOODS (RULE 96) (CONTD...)

- ▶ Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3/ FORM GSTR-3B, from the common portal, the system designated by the Customs shall process the claim for refund and the IGST paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.
- ▶ The claim for refund shall be withheld where,-
 - a) A **request** has been **received from** the jurisdictional **Commissioner** of CGST/ SGST/ UTGST to withhold the payment of refund as per Sec 54(10)/ (11). The **PO of IGST** at the Customs station shall **intimate** the applicant and the jurisdictional Commissioner, and a copy of such intimation shall be transmitted at the common portal. Upon such intimation, the **PO of CGST/ SGST/ UTGST** shall pass an **order** in Part B of FORM GST RFD-07. Where in future becomes entitled to refund, the jurisdictional **officer of CGST/ SGST/ UTGST** shall pass an order in FORM GST RFD-06 and refund the amount.
 - b) The **PO of Customs determines** that the goods were **exported** in violation of the provisions of the Customs Act, 1962.
- ▶ The Central Government may pay refund of the IGST to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the IGST (means IGST shall be recovered by the supplier from government of Bhutan).

CONDITIONS FOR ZERO RATED SUPPLIES WITHOUT PAYMENT OF IGST (RULE 96A)



- ▶ **RTP** who is **availing** the **option** to export without payment of IGST shall **furnish**, prior to export, a **bond or a Letter of Undertaking (LUT)** in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under Sec 50(1) {18%}, where —
 1. **If Goods are not exported out of India**

Pay Tax & Interest within 15 days after the expiry of **3 months** from the date of issue of the invoice for export.
 2. **If the payment of such services is not received by the exporter in convertible foreign exchange**

Pay Tax & Interest within 15 days after the expiry of **1 year** (or such further period as may be allowed by the Commissioner) from the date of issue of the invoice for export.
- ▶ The **details of the export invoices** contained in **FORM GSTR-1** furnished on the common portal shall be electronically transmitted to the system designated by Customs and **a confirmation** that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from that system.
- ▶ The **Board may notify** the conditions/ safeguards under which an LUT may be furnished in place of a bond. (Bond is accompanied by a Bank Guarantee, while LUT is not – Refer "Circular 8/8/2017 – GST")

WITHDRAWAL OF FACILITY



- ▶ Where the goods are not exported within the time specified above, and the RTP fails to pay the amount, the export as allowed under bond/ LUT (means without payment of tax) shall be withdrawn forthwith, and the amount shall be recovered from the RTP as per Sec 79.
- ▶ The export allowed under bond/ LUT earlier withdrawn, shall be restored immediately when the RTP pays the amount due.
- ▶ The same provisions shall *mutatis mutandis* apply for zero-rated supplies to a SEZ Unit/ developer without payment of IGST.

SECTION 55 – FOR UIN HOLDERS

The Government may notify (UIN Holders) → any specialised agency of the UNO or any MFI and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf.

They shall be entitled to claim a refund of taxes paid on the notified supplies received by them

PROCEDURE →

- ▶ They shall make an **application** in FORM GST RFD-10 **once in every quarter**, along with a **statement of the inward supplies** in FORM GSTR-11, prepared on the basis of the statement of the outward supplies furnished by the corresponding suppliers in FORM GSTR-1, for such refund before the expiry of 6 months from the last day of the quarter in which such supply was received.
- ▶ An **acknowledgement** for the receipt of the application for refund shall be issued in FORM GST RFD-02.
- ▶ The **refund** of tax paid by the applicant shall be **available if** -
 - a) The inward supplies were received from RTP against a tax invoice and the price of the supply covered under a single tax invoice exceeds Rs. 5000, excluding tax paid, if any.
 - b) Name and GSTIN or UIN of the applicant is mentioned in the tax invoice; and
 - c) Such other restrictions or conditions as may be specified in the notification are satisfied.
- ▶ The provisions of rule 92 for procedure for grant of refund shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.
- ▶ Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

SECTION 56 – INTEREST ON DELAYED REFUNDS

- ▶ If any tax ordered to be refunded to any applicant is **not refunded within 60 days** from the date of receipt of application, interest at notified rate not exceeding **6%** shall be payable in respect of such refund, **from** the date immediately after the expiry of 60 days from the date of receipt of application **till** the date of refund of such tax.
- ▶ Where there was proceedings/ appeal, and any claim of **refund arises from** an **order** passed by an adjudicating authority/ Appellate Authority/ Appellate Tribunal/ court which has attained finality and the **same is not refunded within 60 days** from the date of receipt of application filed consequent to such order, interest at notified rate not exceeding **9%** shall be payable in respect of such refund, **from** the date immediately after the expiry of 60 days from the date of receipt of application **till** the date of refund of such tax.
- ▶ **Where** any **order** of refund is made by - an Appellate Authority, Appellate Tribunal or any court, **against an order of the PO**, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed by the PO (and interest shall be calculated after expiry of 60 days from this date).
- ▶ Where any interest is due and payable as above, the PO shall make an **order** along with a **payment advice** in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

SECTION 57 – CONSUMER WELFARE FUND

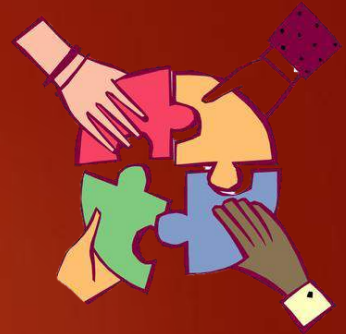
The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—

- a) The amount referred to in Sec 54(5) {Refund other than 6 cases}
- b) Any income from investment of the amount credited to the Fund; and
- c) Such other monies received by it, in such manner as may be prescribed.

Any amount, having been credited to the Fund, ordered or directed as payable to any claimant by orders of the PO, appellate authority or Appellate Tribunal or court, shall be paid from the Fund.

SECTION 58 – UTILISATION OF FUND

- ▶ All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers.
- ▶ The Government/ the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in consultation with the CAG of India.
- ▶ Any utilisation of amount from the Consumer Welfare Fund shall be made by debiting the Consumer Welfare Fund account and crediting the account to which the amount is transferred for utilisation.



STANDING COMMITTEE FOR CONSUMER WELFARE FUND

CONSTITUTION

- ▶ The Government shall, by an order, constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other Members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers.

MEETINGS

- ▶ The Committee shall meet as and when necessary, but not less than once in 3 months.

GRANTS & EXPENSES

- ▶ The **Central Government or the State Government** may make an application for a **grant** from the Consumer Welfare Fund to-
 - ▶ Any agency or organisation engaged in consumer welfare activities for a period of 3 years, registered under the provisions of the Companies Act or under any other law for the time being in force, including village or mandal or samiti level cooperatives of consumers especially Women, Scheduled Castes and Scheduled Tribes, or
 - ▶ Any industry as defined in the Industrial Disputes Act, recommended by the Bureau of Indian Standards to be engaged for a period of 5 years in viable and useful research activity which has made, or is likely to make, significant contribution in formulation of standard mark of the products of mass consumption.
- ▶ The Committee shall consider an application for grant from the Consumer Welfare Fund, only if it has been **inquired** into in **material details** and **recommended** for consideration accordingly by the Member Secretary, and all applications shall be made by the **Member Secretary**.
- ▶ A **consumer** may make application for **reimbursement of legal expenses** incurred by him as a complainant in a **consumer dispute**, after its final adjudication.
- ▶ The Central Consumer Protection Council and the Bureau of Indian Standards shall recommend to the GST Council, the broad guidelines for considering the **projects/ proposals** for **incurring expenditure** from the Consumer Welfare Fund.

POWERS

The Committee shall have powers to -

- ▶ **Require** any **applicant** to produce before it, or before a duly authorised Officer of the Government, → such **books**, accounts, **documents**, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;
- ▶ **Require** any **applicant** to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or, as the case may be, State Government
- ▶ Get the **accounts** of the applicants **audited**, for ensuring proper utilisation of the grant;
- ▶ **Require** any **applicant, to refund in lump-sum**, the sanctioned grant to the Committee, in case of any default, or suppression of material information on his part, and to be subject to prosecution under the Act;
- ▶ **Recover** any **sum due from any applicant** in accordance with the provisions of the Act;
- ▶ **Require** any **applicant**, or class of applicants **to submit a periodical report**, indicating proper utilisation of the grant;
- ▶ **Reject an application** placed before it on account of factual inconsistency, or inaccuracy in material particulars;
- ▶ **Recommend minimum financial assistance**, by way of grant to an applicant, having regard to his financial status, and importance and utility of nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;
- ▶ **Identify** beneficial and safe **sectors**, where **investments** out of Consumer Welfare Fund may be made and make recommendations, accordingly;
- ▶ **Relax the conditions** required for the period of engagement in consumer welfare activities of an applicant;
- ▶ **Make guidelines** for the management, administration and audit of the Consumer Welfare Fund.

END OF PRESENTATION!

WHAT WE LEARNED -

Refund (Section 54)

Non-Allowance

Procedure For Grant of Refund

1. Filing of Application for Refund
2. Documentary Evidences Required
3. Generation of Acknowledgement/
Communication of Deficiency.
4. Grant of provisional refund for Zero Rated
Supplies
5. Notice, Reply & Rejection
6. Final Refund Order
7. Withholding of Refund

CALCULATION IN CASE OF REFUND OF UNUTILIZED ITC
WHERE ZERO RATED SUPPLY WITHOUT PAYMENT OF TAX
UNDER BOND/ LUT

CALCULATION FOR INVERTED DUTY STRUCTURE REFUND

REFUND OF IGST PAID ON EXPORTS OF GOODS (RULE 96)

CONDITIONS FOR ZERO RATED SUPPLIES WITHOUT PAYMENT OF IGST
(RULE 96A)

WITHDRAWAL OF FACILITY

SECTION 55 – FOR UIN HOLDERS

PROCEDURE

SECTION 56 – INTEREST ON DELAYED REFUNDS

SECTION 57 – CONSUMER WELFARE FUND

SECTION 58 – UTILISATION OF FUND

STANDING COMMITTEE FOR CONSUMER WELFARE FUND

CONSTITUTION

MEETINGS

GRANTS & EXPENSES

POWERS

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Chapters XII & XIII of the CGST Act

ASSESSMENT & AUDIT

- By Prakhar Jain

Sections 59-64, Rules 98-100

ASSESSMENT



SELF-ASSESSMENT (SECTION 59)



- ⦿ Every RP → Self-assess the taxes payable + furnish a return for each tax period as per Sec 39 (GSTR 3)
- ⦿ Generally, this is the only type of assessment for most small assesseees, as the department does not have time to check compliance of each and every assessee

PROVISIONAL ASSESSMENT (SECTION 60 & RULE 98)

- CASE: Where the RTP unable to determine the –
 - Value of goods/ services/ both, or
 - Rate of tax applicable thereto



- → May be allowed to pay tax on provisional basis for the time being, and final settlement afterwards



Procedure for Provisional Assessment

1. Furnish FORM GST ASMT-01 along with supporting documents, giving reasons for provisional assessment.
2. PO may issue a notice in FORM GST ASMT-02 requiring the RTP to furnish additional information/ documents
3. Applicant shall file a reply in FORM GST ASMT – 03, may appear in person before the said officer if he so desires.
4. The PO shall issue an order in FORM GST ASMT-04 within 90 days, allowing payment on provisional basis, indicating-
 - a. The value/ the rate/ both on the basis of which the assessment is to be allowed on a provisional basis
 - b. The amount for which the bond is to be executed and security to be furnished (Max = 25% of Bond Amt)
5. The RTP shall execute a bond in FORM GST ASMT-05, and present a security in the form of a bank guarantee for an amount as determined by PO. (Bond binds RTP to pay difference between tax as may be finally assessed and tax provisionally assessed). (Bond furnished under SGST/ UTGST, deemed to be bond under this act)
6. PO shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment.
7. PO shall issue a final assessment order in FORM GST ASMT-07, within 6 months from provisional assessment order, specifying the amount payable by/ refundable to the RTP.

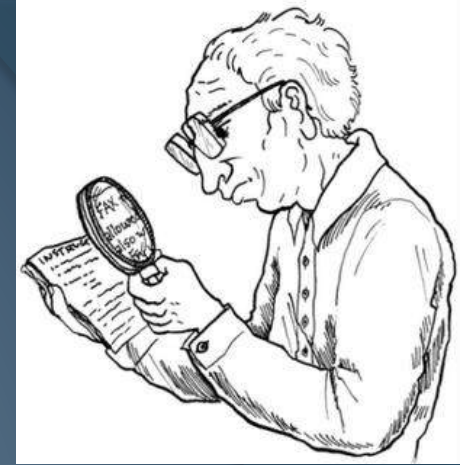
[Period of 6 months may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by
-→ the JC/ AC for a further period upto 6 months. → the Commissioner for such further period upto 4 years.]

PROVISIONAL ASSESSMENT

- If Provisional amount is not paid, liable to pay interest from the first day after the due date till the date of actual payment.
- If refund due as per final assessment, interest will be paid on refund as per Sec 56.
- The applicant may apply in FORM GST ASMT- 08 for the release of the security furnished, after issue of final order.
- PO shall release the security after ensuring that the applicant has paid the amount due, and issue an order in FORM GST ASMT-09 within 7 working days from the date of the receipt of the application

SCRUTINY OF RETURNS (SECTION 61 & RULE 99)

- ⦿ The PO may scrutinize the return furnished by RTP to verify the correctness
- ⦿ He shall issue a notice to the said person in FORM GST ASMT-10, informing him of any discrepancy found and seeking his explanation thereto within such time, not exceeding 30 days from the date of service of the notice (or such further period as may be permitted by him) and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy



SCRUTINY OF RETURNS (SECTION 61 & RULE 99)

- ⦿ RTP may accept the discrepancy mentioned in the notice and pay the tax, interest and any other amount arising from such discrepancy and inform the same; or furnish an explanation for the discrepancy in FORM GST ASMT- 11 to the PO.
 - If explanation is found acceptable, RTP shall be informed in FORM GST ASMT-12 and no further action shall be taken.
 - If no explanation is furnished within prescribed time, or its not satisfactory, or where RTP, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, PO may initiate appropriate action including those under section 65 / 66 / 67, or proceed to determine the tax and other dues under section 73 / 74.

NON FURNISHING OF RETURN (SECTION 62 & RULE 100)



- NWA Sec 73/ 74, where a RTP fails to furnish the return under section 39 (GSTR-3) or section 45 (Final return) , even after the service of a notice under section 46, → PO may proceed to do best judgement assessment of the tax liability, taking into account all the relevant material which is available or which he has gathered.
- PO shall issue an assessment order in FORM GST ASMT-14 within 5 years from due date of annual return for the FY to which the tax not paid relates.
- If RTP furnishes a valid return within 30 days of the service of the assessment order above, the order deemed to be withdrawn. Interest & late fees shall still be payable.

ASSESSMENT OF UNREGISTERED PERSONS (SECTION 63 & RULE 100)

- NWA Sec 73/ 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled u/s 29(2), but who was liable to pay tax,
- → PO may proceed to do best judgement assessment of tax liability for the relevant tax periods.
- PO shall issue notice to taxable person in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and
- After allowing 15 days to furnish his reply, pass an order in FORM GST ASMT- 15 within 5 years from due date of annual return for the FY to which the tax not paid relates.
- No such assessment order shall be passed without giving the person an opportunity of being heard.



SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES (SECTION 64 & RULE 100)



- If PO has any evidence showing a tax liability of a person, he may obtain permission of AC/ JC and proceed to assess the tax liability of such person to protect interest of revenue, issue an assessment order in FORM GST ASMT-16 (immediately without proceedings)
 - Only if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue.
- If RTP to whom the liability pertains is not ascertainable, and such liability pertains to supply of goods, → person in charge of such goods deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due.
- RTP may file an application for withdrawal of the summary assessment order in FORM GST ASMT-17 within 30 days from date of receipt of order.
- The AC/ JC may, considering the application, or on his own motion, if considers that such order is erroneous, withdraw such order and follow the procedure laid down in section 73/ 74. The order of withdrawal or rejection of the application shall be issued in FORM GST ASMT-18.

Sections 65-66, Rules 101-102

AUDIT



AUDIT BY TAX AUTHORITIES (SECTION 65 & RULE 101)

- The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for a financial year or multiples thereof, at such frequency and in such manner as may be prescribed.
- Officers may conduct audit at the place of business of the registered person or in their office.
- RTP shall be informed by a notice in FORM GST ADT-01 not less than 15 working days prior to the conduct of audit.
- The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes

AUDIT BY TAX AUTHORITIES (SECTION 65 & RULE 101)

- The audit shall be completed within 3 months from the date of commencement of the audit. (Where Commissioner is satisfied that audit cannot be completed within 3 months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding 6 months)
 - *Explanation.*— “commencement of audit” shall mean the date on which the records/ other documents, called for by the tax authorities, are made available by the RTP, or the actual institution of audit at the place of business, whichever is later.
- During the course of audit, the authorised officer may require the registered person,—
 - to afford him the necessary facility to verify the books of account or other documents as he may require;
 - to furnish such information as he may require and render assistance for timely completion of the audit.
- The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.
- On conclusion of audit, the proper officer shall, within 30 days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings in FORM GST ADT-02.
- Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

SPECIAL AUDIT (SECTION 66 & RULE 102)

- If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in FORM GST ADT-03 to get his records including books of account examined and audited by a chartered accountant or a cost accountant (CA) as may be nominated by the Commissioner.
- The CA so nominated shall, within 90 days, submit a duly signed and certified audit report to the Assistant Commissioner mentioning therein such other particulars as may be specified. (Assistant Commissioner may, on an application made by the RTP or the CA, or for any material and sufficient reason, extend the said period by a further period of 90 days.)

SPECIAL AUDIT (SECTION 66 & RULE 102)

- It doesn't matter that the accounts of RTP have been audited under any other provisions of this Act or any other law.
- On conclusion of the special audit, RTP shall be informed of the findings of the special audit in FORM GST ADT-04.
- RTP shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit, which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.
- The expenses of the examination and audit of records, including the remuneration of such CA, shall be determined and paid by the Commissioner and such determination shall be final.
- Where the special audit conducted results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 / 74.

End of Presentation!

What We Learned -

◎ ASSESSMENT

- Self-Assessment (Section 59)
- Provisional Assessment (Section 60 & Rule 98)
 - Case
 - Procedure
- Scrutiny of returns (Section 61 & Rule 99)
- Non Furnishing of return (Section 62 & Rule 1000)
- Assessment of Unregistered Persons (Section 63 & Rule 100)
- Summary Assessment in certain Special Cases (Section 64 & Rule 100)

◎ AUDIT

- Audit by Tax Authorities (Section 65 & Rule 101)
- Special Audit (Section 66 & Rule 102)

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INSPECTION-SEARCH-SEIZURE & ARREST!!

(CHAPTER XIV OF THE “CENTRAL GOODS AND SERVICES TAX ACT, 2017”)

The Definitive Provisions In the GST Act to prevent and punish
the evasion of tax



-By Prakhar Jain

ARUN JAITLEY, OUR FINANCE MINISTER SAID-



“The government is losing a lot by way of tax evasion. I will not quantify it, but in FY16, we *detected* around Rs. 71,000 crore of direct + indirect tax evasion.

In GST, evasion will be difficult”

SECTION 67

Inspection/ Search & Seizure

THEN he may AUTHORIZE any other officer of central tax in WRITING To INSPECT –

- Any place of Business of RTP/ Transporter/ Warehouser
- Any other place

If after inspection, or otherwise, he has REASONS TO BELIEVE that-

- Goods liable for confiscation, or
- Documents/ books/ things relevant for proceedings

are SECRETED (Hidden) in any place, then may authorize for SEARCH & SEIZURE of such goods/ books/ documents

(If Seizure of goods not practicable, then order not to remove goods without permission)

JOINT COMMISSIONER OF TAX OR ABOVE

Where he has REASONS TO BELIEVE that-

- RTP has evaded tax in anyway
- Transporter/ Warehouse operator is keeping goods on which tax have been evaded
- Transporter/ Warehouse operator has kept his accounts in such manner as is LIKELY TO CAUSE EVASION of tax

RETAIN AS LONG AS NECESSARY, THEN RETURN

- The Documents/ Books or Goods seized shall be retained only for so long as is necessary for their examination/ enquiry
- The **Seized** things, and any other things **produced** by the taxable person or any other person,
 - if not relied upon in the notice issued
 - Then return within 30 days of issue of notice



POWER TO SEAL/ BREAK OPEN

- Where access is DENIED to
- The Door of any premises/ Almirah/ Boxes/ Electronic Devices etc.
- IN WHICH, any goods/ accounts/ documents are suspected to be concealed,

Officer authorized for Inspection/ Search/ Seizure shall have the power to

- Seal, or Break it Open



OTHER PROVISIONS

- Officer can **seize the document/** accounts produced before him, if he thinks TAX evasion involved
 - Where Documents/ books seized, officer may allow taking its photocopies, except where detrimental to intt of revenue
 - The Govt. shall specify in notification, list of such goods, which shall be sold immediately after seizure, **due to perishability/ hazardous nature/ fast depreciation/ lack of storage space.** PO shall make inventory of such goods.
- Notice has to be given within 6 months of seizure of goods, otherwise goods to be returned (6 month may be extended)
 - The Goods that have been seized, may be released, if-
 1. **Executes Bond & Furnishes Security** of specified Amt, or
 2. **Pays applicable tax, Intt & Penalty**



TEST PURCHASE [SEC 67(12)]

Commissioner/ Officer
Authorised may

- Cause Purchase, by ANY THIRD PERSON authorized by them
- Of goods/ services from a taxable person
- Purpose would be to check issue of tax invoice/ bills of supply and compliance with provisions

After checking, officer shall
return goods purchased

- The taxable person shall refund the amount paid
- And cancel the tax invoice/ bill of supply

SPECIAL CASE - INSPECTION OF GOODS IN TRANSIT (Section 68)

Where goods transported value greater than
Specified Amount,

Then Govt may require the person in charge of
conveyance carrying goods

TO CARRY WITH HIM

- Such Documents (Like WayBill), &
- Such Devices (Like GPS)

As may be prescribed

Where conveyance INTERCEPTED by proper
officer, he may require to

- Show documents/ devices for verification
- Person shall be bound



SECTION 69

Arrest



Section 132(1)

- (a) Invoice not issued with intention to evade
- (b) Invoice of higher amount to get excessive ITC
- (c) Availed excessive ITC by fake/ inflated Tax Invoice
- (d) Tax collected but not paid within 3 months

Punishment under-

Clause (i) – Amt involved > 5 crore – Jail upto 5 yrs & fine

Clause (ii) – Amt involved > 3 crore – Jail upto 3 yrs & fine

Section 132(2) – Convicted person again convicted

Section 132(5)

If committed offences under Clause (a), (b), (c), (d) of Section 132(1), AND punishable under clause (i)

THEN

Arrest is COGNIZABLE (arrest without warrant) and NON_BAILABLE

Where arrested for such offense , then officer shall – Inform person of GROUNDS OF ARREST & produce before magistrate within 24 hours

Section 132(4)

All other offenses are NON COGNIZABLE & BAILABLE

If fails to furnish bail bond – forwarded to custody of magistrate

WHERE THE COMMISSIONER HAS REASONS TO BELIEVE

Person committed offence under-

- **Section 132(1)** - Clause (a), (b), (c), (d) AND punishable under clause (i)/ (ii)

or

- **Section 132(2)**

Then he may authorize PO to ARREST such person

SECTION 70

Power to Summon

PROPER OFFICER SHALL HAVE THE POWER -

To summon “ANY PERSON”* in any enquiry, in the same manner as in the case of a CIVIL COURT

*Any Person - whose attendance he considers necessary-

- To give evidence
- To produce document/ any other thing

Every such enquiry shall be deemed to be “judicial proceedings” u/s 193, 228 of IPC.



- Books of Accounts
- Documents
- Computers
- Computer Programs
- Computer Software (whether installed in computer or otherwise)
- Such other things as he may require

For the purposes of carrying out-
Audit/ scrutiny/ verification/ checks
As may be necessary to safeguard the intt of
the revenue

- Such records maintained & declared to
PO in prescribed manner
 - Trial Balance, Annual Financial
Statements
 - Cost Audit Report
 - Income Tax Audit report
 - Any other relevant record
- For Scrutiny by officer/ audit party/ CA/ CA

Shall make available < 15 days (or < time
allowed by them)

Any PO, who is at
least **Joint
Commissioner** (or
above ranking), -
shall have access to
any place of business
of registered person

← **TO INSPECT**

Every PERSON-IN-
CHARGE of place

- SHALL make available
ON DEMAND
- To the Officer/ Audit
Party/ Cost
accountant/
Chartered Accountant
-nominated u/s 66

← **This**

SECTION 71 - ACCESS TO BUSINESS PREMISES



SECTION 72 – OFFICERS TO ASSIST PROPER OFFICERS



All officers of-

- Police
- Railways
- Customs
- Land Revenue
- Village Officers
- Officers of SGST/ UTGST

SHALL assist PO under this Act

→ Govt. may by NOTIFICATION, empower & require ***any other officer*** - to assist the PO under this act – When called upon to do so – By the Commissioner

THE END

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DEMANDS AND RECOVERY

CHAPTER XV OF THE CGST ACT

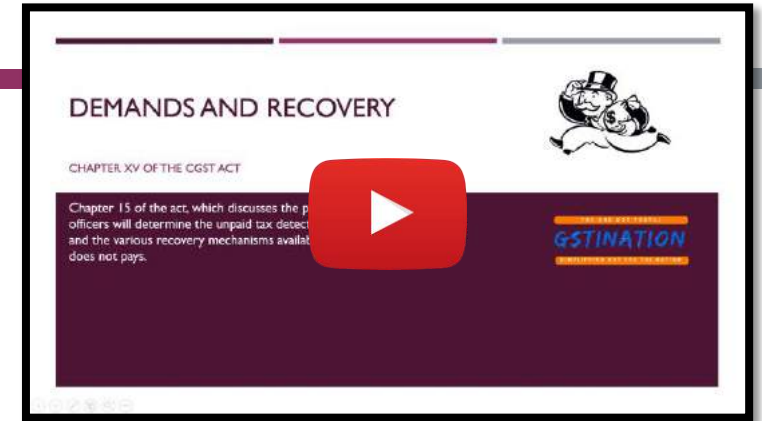
Chapter 15 of the act, which discusses the procedures for how the officers will determine the unpaid tax detected, issue notices and orders, and the various recovery mechanisms available with them if the assessee does not pay.

Short Forms used:-

“Tax not paid” = Tax has not been paid or short paid or erroneously refunded or where ITC has been wrongly availed or utilised

“FRAUD” = ‘fraud’ or any wilful-misstatement or suppression of facts to evade tax

AA = Appellate Authority; AT = Appellate Tribunal; HC = High Court; SC = Supreme Court



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Where it appears to the PO that → any 'Tax not paid' ---

Event	OTHER THAN BY 'FRAUD' (Sec 73)	BY REASON OF 'FRAUD' (Sec 74)
SCN	Then he shall serve a show cause notice & a summary thereof in FORM GST DRC-01, on the person chargeable with 'Tax not paid', as to why he should not pay the amount specified along with interest payable thereon u/s 50 And a penalty (amount not specified in SCN)	And a penalty of 100% of tax specified in the notice
Time limit	Notice must be served at least 3 months prior to order	Notice must be served at least 6 months prior to order
Time limit of order	Order must be issued within 3 years from the due date of annual return for the FY to which the 'Tax not paid' relates, or within 3 years from date of erroneous refund	Order must be issued within 5 years from the due date of annual return for the FY to which the 'Tax not paid' relates, or within 5 years from date of erroneous refund
Statement deemed to be SCN	Where a SCN has been issued for any period, and 'Tax not paid' is detected for any other period under same grounds as that of SCN, then PO may serve a 'statement' & a summary thereof electronically in FORM GST DRC-02, containing the details of 'Tax not paid' for those other periods (not covered in SCN); and the service of such statement shall be deemed to be service of notice for those other periods. (Grounds of "FRAUD" need not be same)	
Payment before SCN	The person may, before service of SCN/ statement, pay tax + interest + penalty (on the basis of own ascertainment or as ascertained by the PO) and inform the PO in FORM GST DRC-03. Penalty = Nil	
		Pay Penalty @ 15% of tax
	On receipt of such information, The PO shall issue an acknowledgement accepting the payment made in FORM GST DRC-04 & not serve any SCN/ statement in respect of the tax so paid or any penalty payable.	
Short Paid	Where the PO is of the opinion that the amount paid as above falls short of amount payable, then shall proceed issue SCN in respect of remaining amount	
Payment < 30 days of SCN	Where paying the tax + interest + penalty within 30 days of issue of SCN, then proceedings will be concluded No penalty	
		Penalty @ 25% of tax
	Intimate the PO of such payment in FORM GST DRC-03 and the PO shall issue an order in FORM GST DRC-05	
Order by PO	The person may make a representation against the SCN in FORM GST DRC-06. After considering the representation made by person (if any), the PO shall determine the amount due from such person and issue an order, along with a summary in FORM GST DRC-07, specifying the amount of tax, interest and penalty payable Penalty = 10% of tax or Rs. 10,000, whichever is higher	
		Penalty automatically = 100%, as specified in SCN
Special	Where any amount of self-assessed tax or any amount collected as tax has not been paid < 30 days of due date, Penalty @ 10% will be payable, notwithstanding that amount paid before SCN, or within 30 days of SCN.	Where person served with an order pays the tax + interest + penalty @ 50% of tax < 30 days of communication of the order, all proceedings in respect of the said notice deemed to be concluded.

SECTION 73 & 74: 'TAX NOT PAID' - OTHER THAN 'FRAUD' AND BY 'FRAUD'

“All proceedings in respect of the said notice” shall not include proceedings u/s 132;

Where notice under same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded u/s 73/ 74, proceedings against all the persons liable to pay penalty u/s 122, 125, 129 and 130 are deemed to be concluded.

“Suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished, or failure to furnish any information on being asked for, in writing, by the PO.

SECTION 75 – DETERMINATION OF TAX – GENERAL PROVISIONS

- Where the service of notice/ issuance of order is **stayed** by an order of a court/ AT, the period of such stay shall be excluded in computing the time limits of 3 months/ 6 months for SCN and 3 years/ 5 years for order, u/s 73 & 74.
- Where proceedings are initiated by way of issue of a SCN u/s 73/ 74, and an issue on which –
 1. AA/ AT/ HC has given its decision which is **prejudicial** to the interest of revenue in some other proceedings, and
 2. an **appeal** to the AT/ HC/ SC against such decision of the AA/AT/ HC is pending;
the period spent between the date of the decision of the – AA and AT, or, AT and HC, or, HC and SC; → shall be excluded in computing the time limit of issuing order u/s 73(10)/ 74(10) [3 years & 5 years]
- Where any order is required to be issued in pursuance of the **direction** of the AA/ AT/ court, such order shall be issued within 2 years from the date of communication of the said direction.
- Where any AA/ AT/ court concludes that the notice issued under Section 74(1) [‘Tax not paid’ by reason of ‘FRAUD’] is **not sustainable** for the reason that the charges of ‘Fraud’ has not been established against the person, the PO shall determine the tax payable, deeming as if the notice were issued under Section 73(1) [Other than ‘FRAUD’].
- Notwithstanding anything contained in section 73 or section 74, where any amount of **self-assessed tax** in accordance with a return furnished u/s 39 remains **unpaid**, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.
- Where any penalty is imposed u/s 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.
- An **opportunity of hearing** shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
- If sufficient cause is shown, the PO shall grant time and **adjourn** the hearing for reasons to be recorded in writing. No such adjournment shall be granted for more than 3 times to a person during the proceedings.
- The PO shall set out the relevant **facts** and the **basis** of his decision, in his order.
- The amount of tax, interest and penalty demanded in the order shall **not be in excess** of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.
- Where the AA/ AT/ court **modifies** the amount of tax determined by the PO, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.
- The **interest** on the tax short paid or not paid shall be **payable whether or not specified** in the order determining the tax liability.
- The adjudication proceedings deemed to be **concluded**, if order not issued within 3 years/ 5 years as per 73(10)/ 74(10).
- Any **rectification** of the order, as per section 161, shall be made by the PO in FORM GST DRC-08.

SECTION 76: TAX COLLECTED BUT NOT PAID

- **NWA**, every person who has **collected** from any other person any amount as representing the tax under this Act, and has **not paid** the said amount to the Government, shall forthwith pay the said amount to the Government.
(Irrespective of whether the supplies in respect of which such amount was collected are taxable or not)
- If not been so paid, the PO may serve a **notice**, along with a summary in FORM GST DRC-01, requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty = 100% of the amount should not be imposed on him.
- An **opportunity of hearing** shall be granted where request is received, & he may make representation in FORM GST DRC-06.
- After considering the representation made, if any, the PO shall determine the amount due, shall issue an **order**, setting out the relevant facts and the basis of his decision, along with a summary in FORM GST DRC-07, within 1 year from the date of issue of SCN. [Where the issuance of order is stayed by an order of the court/ AT, the period of such stay shall be excluded in computing the period of 1 year]
- The person shall in addition to paying the amounts of tax & penalty, also be liable to pay **interest** from the date such amount was collected by him to the date such amount is paid by him to the Government.
- If goods was **taxable**, and tax was payable, then amount paid by assessee shall be adjusted against his liability. Where any **surplus** is left after the adjustment (the supply might not be taxable, rate difference etc.), the amount of such surplus shall either be credited to the Fund (Consumer Welfare Fund) or refunded to the person who has borne the incidence of such amount, who may apply for the refund of the same in accordance with the provisions of section 54.



SECTION 77: TAX WRONGFULLY COLLECTED AND PAID (INTER-INTRA CONFUSION)

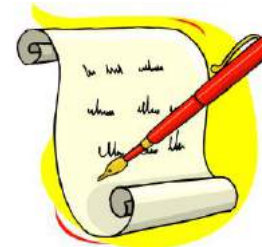
- RTP who has paid the CGST + SGST/ CGST + UTGST on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an **inter-State supply** → shall be refunded the amount of taxes so paid.
- RTP who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an **intra-State supply**, shall not be required to pay any interest on the amount of CGST + SGST/ CGST + UTGST payable.



SECTION 78 & 79: RECOVERY

- The order issued by a PO u/s 73/74/76 shall be treated as the **notice for recovery**.
- Any **amount payable** by a taxable person in pursuance of an order passed under this Act shall be **paid** by such person **within** a period of **3 months** from the date of service of such order failing which recovery proceedings shall be initiated. (PO may require assessee to pay within period specified, less than 3 months, for reasons to be recorded in writing, if he considers it expedient in the interest of revenue)
- Where any amount payable is not paid, the PO shall proceed to recover the amount by one or more of the following modes :—

- I. By Deduction
- II. By Detention and Sale of Goods
- III. From Third Person
- IV. By Attachment and Sale of Property
- V. Through Collector
- VI. Through Magistrate



I. BY DEDUCTION

The PO may **deduct** (or may require any other specified officer to deduct, in FORM GST DRC-09) the amount so payable from any money owing to such person which may be under the control of the PO or such other specified officer. [“Specified officer” shall mean any officer of the CG/ SG or the Government of a UT/ LA, or officer of a Board or Corporation or a company owned or controlled, wholly or partly, by the CG/ SG or the Government of a UT/ LA]

II. BY DETENTION AND SALE OF GOODS

The PO may recover (or may require any other specified officer to recover) the amount so payable by **detaining and selling any goods** belonging to such person which are under the control of the PO or such other specified officer;

III. FROM THIRD PERSON

The PO may issue a **notice** in FORM GST DRC-13 to any **third person**,-

- from whom money is due (or may become due) to assessee, or
- who holds (or may subsequently hold) money for or on account of assessee,

to **pay** to the Government such money, upto the amount due from the assessee, either forthwith [upon the money becoming due or being held], or within the time specified in the notice [not being before the money becomes due or is held].

IV. By Attachment and Sale of Property

The PO may, in accordance with the rules to be made in this behalf, **distrain** any movable or immovable **property** belonging to or under the control of assessee, and detain the same until the amount payable is paid. In case, any part (of the said amount payable) or (of the cost of the distress or keeping of the property), **remains unpaid** for a period of 30 days next after any such distress, may cause the said property to be **sold** and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to assessee.

V. THROUGH COLLECTOR

The PO shall send a **certificate** to the Collector/ Deputy Commissioner of the district in which assessee owns any property or resides or carries on his business, or any other officer authorised in this behalf in FORM GST DRC-18 specifying the amount due from assessee, and the said Collector (or the said officer), on receipt of such certificate, shall proceed to recover from assessee, the amount specified thereunder as if it were an **arrear of land revenue**.

VI. THROUGH MAGISTRATE

The PO may file an **application** to the appropriate **Magistrate** in FORM GST DRC- 19 and such Magistrate shall proceed to recover from assessee, the amount specified thereunder as if it were a **fine imposed** by him. (Notwithstanding anything contained in the Code of Criminal Procedure, 1973)

RECOVERY FROM THIRD PERSON – DETAILED PROCEDURE

1. Every person to whom such a notice is issued shall be **bound to comply** with it, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.
2. In case the person to whom a notice has been issued, **fails** to make the payment, he shall be deemed to be a defaulter in respect of the amount and all the consequences of this Act or the rules made thereunder shall follow.
3. The officer issuing a notice may, at any time, **amend or revoke** such notice **or extend** the time for making any payment in pursuance of the notice.
4. Any person making any payment in compliance with a notice shall be deemed to have made the payment, under the **authority of the assessee**, and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the assessee, to the extent of the amount specified in the receipt. The PO shall issue a **certificate** in FORM GST DRC-14 to the third person clearly indicating the details of the liability so discharged.
5. Any person discharging any liability to the assessee, after service on him of the notice, shall be **personally liable** to the Government (to the extent of the liability discharged) or (to the extent of the liability of the assessee for tax + interest + penalty), whichever is less.
6. Where a person on whom a notice is served, **proves** to the satisfaction of the officer issuing the notice that, as at the time of service of the notice, the **money** demanded or any part thereof was **not due**, & not likely to become due to the assessee; or that he **did not hold** any money for or on account of the assessee; & not likely to be held so, he shall not be required to pay to the Government any such money.

STEP	SALE OF GOODS UNDER THE CONTROL OF PO	SALE OF MOVABLE OR IMMOVABLE PROPERTY
I	The PO shall <u>prepare an</u> inventory of the goods and estimate the <u>market value</u> of such goods and <u>proceed</u> to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.	The PO shall <u>prepare</u> a list of properties belonging to the defaulter, estimate their value as per the prevalent <u>market price</u> and issue an <u>order of attachment/</u> distraint and a notice for sale in <u>FORM GST DRC- 16</u> , prohibiting any transaction - with regard to such movable and immovable property as may be required for the recovery of the amount due. (Separate rule for attachment of debt, shares, and movable property not in possession of defaulter)
II	The said goods/ property attached or distrained shall be sold through a process of auction, including e-auction, for which a notice shall be issued in <u>FORM GST DRC-10</u> (Goods)/ <u>FORM GST DRC- 17</u> (Property) clearly indicating the goods/ property to be sold and the purpose of sale.	
III	The last day for <u>submission of bid</u> or the date of auction shall <u>not be earlier than 15 days from</u> the date of issue of the <u>notice</u> . (Where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the PO may sell them forthwith)	
IV	The PO may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be <u>returned</u> to the <u>unsuccessful bidders</u> , and <u>forfeited</u> in case the <u>successful bidder fails</u> to make the <u>payment</u> of the full amount, as the case may be.	
V	The PO shall issue a notice to the successful bidder in <u>FORM GST DRC-11</u> requiring him to make the <u>payment within</u> a period of <u>15 days</u> from the date of auction. <u>On payment</u> of the full bid amount, the PO shall transfer the possession of goods/ rights, title and interest in the property to the successful bidder and issue a certificate in <u>FORM GST DRC-12</u> .	

DETAILED PROCEDURE FOR SALE OF GOODS AND PROPERTY

DISPOSAL OF PROCEEDS OF SALE OF GOODS AND MOVABLE OR IMMOVABLE PROPERTY

The amounts realised from the sale of goods, movable or immovable property, for the recovery of dues from a defaulter shall,-

- a) first, be appropriated against the administrative cost of the recovery process;
- b) next, be appropriated against the amount to be recovered;
- c) next, be appropriated against any other amount due from the defaulter under the CGST Act, the IGST Act, the UTGST Act, any SGST Act, and the rules made thereunder; and
- d) any balance, be paid to the defaulter.

Where the defaulter (assessee who owned goods/ property) pays the amount under recovery, including expenses incurred on the process of recovery, before the issue of the notice of auction, the PO shall cancel the process of auction and release the goods.

Where no bid is received or the auction is considered to be non-competitive [due to lack of adequate participation (less bidders) or due to low bids (amounts of bid low)], the PO shall cancel the process and proceed for re-auction.

OBJECTION IN CASE OF PROPERTY

- ❖ Where any **claim** is preferred or any **objection** is raised with regard to the attachment or distraint of any property on the ground that such property is not liable to such attachment or distraint, the **PO** shall **investigate** the claim or objection and may postpone the sale for such time as he may deem fit.
- ❖ The person making the claim or objection **must adduce evidence** to show that on the date of the order issued, he had some interest in, or was in possession of, the property in question under attachment or distraint.
- ❖ Where, upon investigation, the **PO** is **satisfied** that, on the said date, for the reason stated in the claim or objection -
 - Such property was not in the possession of the defaulter or of any other person on his behalf or
 - It was in the possession of the defaulter on the said date, but not on his own account or as his own property, rather on account of or in trust for any other person (or partly on his own account and partly on account of some other person)
- ❖ Then the PO shall make an order **releasing** the property, wholly or to such extent as he thinks fit, from attachment/ distraint.
- ❖ Where the PO is **satisfied** that the property was, on the said date, in the **possession** of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the PO shall **reject** the claim and **proceed** with the process of sale through **auction**.

ADDITIONAL PROCEDURES IN CASE OF PROPERTY

1. The PO shall **send a copy** of the order of attachment/ distraint of property to the concerned Revenue Authority (In case of immovable property) or Transport Authority (In case of motor vehicles) or any other Authority (In case of others), to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the PO to that effect.
2. Where the property subject to the attachment or distraint is-
 - a) an **immovable** property → the **order** of attachment or distraint shall be affixed on the said property and shall remain affixed till the confirmation of sale;
 - b) a **movable** property → the PO shall **seize** the said property in accordance with the provisions of chapter XIV of the Act and the custody of the said property shall either be taken by the PO himself or an officer authorised by him.
3. Where the highest bid is made by **more than one person**, and one of them is a **co-owner** of the property, he shall be deemed to be the successful bidder.

PROHIBITION AGAINST BIDDING OR PURCHASE BY OFFICER

No officer or other person having any duty to perform in connection with any sale under the provisions of this Chapter shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

PROHIBITION AGAINST SALE ON HOLIDAYS

No sale under the rules under the provision of this chapter shall take place on a Sunday or other general holidays recognized by the Government or on any day which has been notified by the Government to be a holiday for the area in which the sale is to take place.

RECOVERY THROUGH EXECUTION OF A DECREE, ETC.

Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the PO shall send a request in FORM GST DRC- 15 to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.

IN CASE OF NEGOTIABLE INSTRUMENTS OR SHARES

NWA, where the property to be sold is a negotiable instrument or a share in a corporation, the PO may, **instead of** selling it by public **auction, sell** such instrument or a share **through a broker** and the said broker shall deposit to the Government so much of the proceeds of such sale, reduced by his commission, as may be required for the discharge of the amount under recovery and pay the amount remaining, if any, to the owner of such instrument or a share.

RECOVERY – OTHER POINTS

- Where the terms of any **bond** or **other instrument** executed provide that any amount due may be recovered in the manner laid down above (all 6 methods), the amount may, without prejudice to any other mode of recovery, be so recovered.
- Where **PO of SGST/ UTGST** is doing recovery, and any amount of tax, interest or penalty is unpaid under this Act or the rules (means CGST is unpaid), then he may recover the CGST amount also from the assessee, as if it were an arrear of SGST/ UTGST and credit the amount so recovered to the account of the (Central) Government. Where the amount so recovered is **less** than the total amount due to the Central Government and State Government, the amount shall be proportionately distributed in ratio of amount due to each Government.
- Where the recovery is from a company under **liquidation**, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in FORM GST DRC -24.
- Where any person has become **surety** for the amount due by the defaulter, he may be proceeded against under this Chapter as if he were the defaulter.

SECTION 80: PAYMENT IN INSTALMENTS

- On an application filed by a taxable person in FORM GST DRC- 20, the Commissioner shall call for a report from the jurisdictional officer about the financial ability of the taxable person to pay the said amount.
- After considering the request and the report, he may issue an **order** in FORM GST DRC- 21, -
 - I. Extending the time** for payment or
 - II. Allow payment** of any amount due (other than the amount due as per the liability self-assessed in any return), by such person in monthly instalments not exceeding 24, subject to payment of interest u/s 50.
- Where there is **default** in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.
- The facility referred shall **not be allowed** where-
 - a) The taxable person has already defaulted on the payment of any amount under this act/ IGST act/ UTGST act/ any SGST act, for which the recovery process is on.
 - b) The taxable person has not been allowed to make payment in instalments in the preceding FY under this act/ IGST act/ UTGST act/ any SGST act.
 - c) The amount for which instalment facility is sought is less than Rs. 25,000.

SECTION 81, 82, 83: PROPERTY

SECTION 83: PROVISIONAL ATTACHMENT

- Where during the pendency of any proceedings u/s 62/ 63/ 64/ 67/ 73/ 74, the Commissioner is of the opinion that it is necessary for the purpose of protecting the interest of the Government revenue, he may **attach provisionally** any property, including bank account, belonging to the taxable person, by order in FORM GST DRC-22.
- He shall send a copy of order to Revenue Authority/ Transport Authority/ any other, to place encumbrance on property, which shall be removed only with written permission of the Commissioner.
- Any person whose property is attached may file an objection to the effect that the property attached was or is not liable to attachment, within 7 days of the attachment. The Commissioner shall afford an opportunity of being heard.
- The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, **release** such property by issuing an order in FORM GST DRC-23.
- Where the property attached is of perishable or hazardous nature, -
 - I. If the taxable person pays an amount = the lower of (the market price of such property) or (the amount that is or may become payable by the taxable person), then → such property shall be **released** forthwith, by an order in FORM GST DRC-23, on proof of payment.
 - II. If fails to pay the amount, then the commissioner may **dispose** of the property and amount realized adjusted against dues.
- Every such provisional attachment shall **cease** to have effect after the expiry of a period of 1 year from the date of the order.

SEC 81: TRANSFER VOID

- Where a person (creates a **charge** on) or (**parts** with) the **property** belonging to him/ in his possession, after any amount has become due from him, by way of sale, mortgage, exchange, or any other mode of transfer whatsoever, in favour of any other person, with the intention of defrauding the Government revenue, such charge or transfer shall be **void** as against any claim in respect of any tax or any other sum payable by the said person.
- Such charge or transfer **shall not be void**, if it is made –
 - I. For adequate consideration, and
 - II. In good faith and
 - III. [Without notice of (the pendency of such proceedings) or (such tax/ other sum payable by the assessee)], or [with the previous permission of the PO].

SECTION 82: FIRST CHARGE

NWA, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by any person on account of tax, interest or penalty, shall be a **first charge** on his property.

ATTACHMENT OF INTEREST IN PARTNERSHIP

Where property to be attached belongs to a partnership firm, and the defaulting assessee is one of the partners, the PO may –

- Make an order – ‘**charging**’ only the share of such partner in the property and ‘profits’ – with payment of the amount due under the certificate.
- **Appoint a receiver** of the share of such partner in the - profits (whether already declared or accruing) & any other money which may become due to him in respect of the partnership (by the same or subsequent order).
- Direct **accounts** and **enquiries** and
- Make an order for the **sale** of such interest or
- Make **such other order** as the circumstances of the case may require.
 - The other partners may **redeem** the interest (in partnership) charged or to **purchase** the property being sold.

ATTACHMENT OF PROPERTY IN CUSTODY OF COURTS OR PUBLIC OFFICER

Where the property to be attached is in the custody of any court or Public Officer, the PO shall send the order of attachment to such court/ officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held till the recovery of the amount payable.

ATTACHMENT OF DEBTS AND SHARES, ETC

- A **debt** (not secured by a negotiable instrument), a **share** in a corporation, or other **movable property** not in the possession of the defaulter [except for property deposited in, or in the custody of any court] shall be attached by a written order in FORM GST DRC-16 prohibiting -
 - a) In the case of a **debt**, the creditor from recovering the debt and the debtor from making payment thereof until the receipt of a further order from the PO.
 - b) In the case of a **share**, the (person in whose name the share is standing) from transferring the same or receiving any dividend thereon.
 - c) In the case of any other **movable property**, the person in possession from giving it to the defaulter.
- A **copy** of such order shall be **affixed** on some conspicuous part of the office of the PO, and another copy shall be **sent**, in the case of debt, to the debtor, and in the case of shares, to the registered address of the corporation and in the case of other movable property, to the person in possession of the same.
- A **debtor**, so prohibited, may pay the amount of his debt to the PO, and such payment shall be deemed as paid to the defaulter.

SECTION 84: CONTINUATION & VALIDATION OF RECOVERY

- Where any notice of demand in respect of – any tax, penalty, interest or any other amount (“Government dues”), is **served** upon any taxable person or any other person **and any appeal or revision** application is **filed** or any other proceedings is initiated in respect of such Government dues, then—
 - a) where such Government dues are **enhanced**, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings under previous notice of demand may be continued from the stage at which such proceedings stood immediately before such appeal/ revision/ proceedings, without the service of any fresh notice of demand.
 - b) where such Government dues are **reduced** in such appeal, revision or in other proceedings—
 - i. it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;
 - ii. the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;
 - iii. any recovery proceedings initiated on the basis of the earlier demand may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

The order for the reduction or enhancement of the demand, as the case may be, shall be issued in FORM GST DRC- 25.

ASSISTANCE BY POLICE (RULE 150)

The PO may seek such assistance from the officer-in-charge of the jurisdictional police station as may be necessary in the discharge of his duties and the said officer-in-charge shall depute sufficient number of police officers for providing such assistance.

End of Presentation

WHAT WE LEARNED -

Section 73 & 74: 'Tax not paid' - other than 'fraud' and by 'fraud'

Section 75 – Determination of Tax – General Provisions

Proceedings

Section 76: Tax Collected but not paid

Section 77: Tax Wrongfully Collected and Paid (Inter-Intra Confusion)

Section 78 & 79: Recovery

- I. By Deduction
- II. By Detention and Sale of Goods
- III. From Third Person
- IV. By Attachment and Sale of Property
- V. Through Collector
- VI. Through Magistrate

Detailed Recovery Procedures

Some Additional Procedures in case of Property

In Case of Negotiable Instruments or Shares

Objection in case of property

Recovery through execution of a decree, etc.

Disposal of proceeds of sale of goods and movable or immovable property

Prohibition against bidding or purchase by officer

Prohibition against sale on holidays

Section 80: Payment in Instalments

Section 81, 82, 83: Property

Sec 81: Transfer Void

Section 82: First Charge

Section 83: Provisional Attachment

Attachment of interest in partnership

Attachment of debts and shares, etc

Attachment of property in custody of courts or Public Officer

Section 84: Continuation & Validation of recovery

Assistance by police (Rule 150)

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LIABILITY TO PAY IN CERTAIN CASES

These provisions of Chapter XVI - from Section 85 to 94 - specify the persons, who shall be liable for the payment of GST, in several different situations.

Short Form used-

TIP = Tax, Interest, or Penalty



- By Prakhar Jain



SECTION 85 – TRANSFER OF BUSINESS



- Where transfer of business, in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever,
 - → Transferor & Transferee, jointly and severally, liable - wholly or to the extent of such transfer,
 - to pay the TIP due from the taxable person upto the time of such transfer,
 - whether determined before or after such transfer.
- Where transferee continues to carry on such business,
 - → Liable to pay tax on the supply of goods/ services/ both effected by him w.e.f. the date of transfer
 - If already registered, apply for amendment of his registration certificate within time limit.



SECTION 86 – AGENT

- Where an agent supplies/ receives any taxable goods on behalf of his principal, such agent and his principal shall be jointly and severally liable to pay the tax payable on such goods under this Act.

SECTION 87 – AMALGAMATION/ MERGER



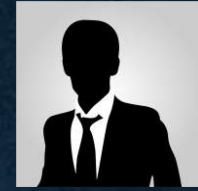
Case: When 2 or more companies amalgamated/ merged due to order of tribunal. The order is to take effect retrospectively. Such companies have supplied/ received any goods/ services/ both to or from each other during the intermittent period (From Effective date till date of the order).

- Then such transactions shall be included in the t/o of the respective companies and liable to pay tax accordingly.
- Such companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled with effect from the date of the said order. (and not retrospectively)

SECTION 88 – WINDING UP

- When any company is being wound up, “**liquidator**” shall within 30 days after his appointment, give intimation of his appointment to the Commissioner.
- The **Commissioner** shall notify the liquidator within 3 months from the date of receipt of intimation, the amount which would be sufficient to provide for any TIP which is/ may be payable by the company.
- When any **PVT company** is wound up AND any TIP determined under this Act on the company **cannot be recovered**, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such TIP, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

SECTION 89 – PVT COMPANY & DIRECTOR



- Where any TIP due from a PVT company cannot be recovered, then, every person who was a director of the PVT company during such period shall, jointly and severally, be liable for the payment of such TIP unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- Where a PVT company - converted into a public company and the TIP for any period during being PVT company cannot be recovered before such conversion,
 - Then, sub-section (1) shall not apply → director of such PVT company not liable in relation to any TIP of such PVT company.
 - Proviso: Director still liable for any personal penalty imposed on them.

SECTION 90 – FIRM

- Where any firm is liable to pay any TIP under this Act → the firm & all partners jointly and severally liable for such payment.
- Where any partner retires: He or the firm, shall intimate the date of retirement of the said partner in writing to the Commissioner. Such partner shall be liable to pay TIP due up to the date of his retirement (whether determined or not, on that date).
- If no such intimation given < 1 month of retirement, liability of such partner shall continue until the date of receipt of intimation.



SECTION 91 – GUARDIAN/ TRUSTEE/ AGENT OF A MINOR/ OTHER INCAPACITATED PERSON

- Case: Where the business is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person;
- The TIP shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

SECTION 92 – COURT OF WARDS, THE ADMINISTRATOR GENERAL, THE OFFICIAL TRUSTEE OR ANY RECEIVER OR MANAGER

- Case: Where the estate/ any portion of the estate of a taxable person who owns a business in respect of which any TIP is payable, is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager or any person, whatever be his designation, who in fact manages the business, appointed by or under any order of a court,
 - The TIP shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

SECTION 93 – DEATH/ PARTITION/ DISSOLUTION

INDIVIDUAL

- Where a person, liable to pay TIP under this Act, dies, then—
- (a) if a business continued after his death - Legal representative/ other person liable to pay TIP due from such person
- (b) if the business discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent of estate, the TIP due, whether determined before or after his death.

HUF/ AOP

- Where the property of the HUF/ AOP is partitioned amongst the members, then, each member shall be jointly and severally liable to pay the TIP due up to time of partition, whether such TIPs has been determined before or after partition.

SECTION 93 – DEATH/ PARTITION/ DISSOLUTION

FIRM

- Where a firm is dissolved, then, every person who was a partner shall be jointly and severally liable to pay the TIP due from the firm under this Act up to time of dissolution whether such TIP has been determined before or after the dissolution.

GUARDIAN/ TRUSTEE

- Where guardian/ trustee was liable to pay tax, and the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the TIP due upto the time of termination, whether such TIP has been determined before or after the termination.

SECTION 94 – DISCONTINUATION/ CHANGE IN CONSTITUTION IN FIRM/ AOP/ HUF

DISCONTINUATION

Where a taxable person is a firm/ AOP/ HUF, and it has discontinued business—

- The TIP payable up to the date of discontinuance may be determined as if no discontinuance taken place.
- Every person who was a partner/ member at the time of such discontinuance, shall jointly and severally be liable for the payment of TIP payable whether determined/ imposed prior to or after such discontinuance, and the provisions of this Act shall apply as if every such person were himself a taxable person.

[These provisions shall apply where dissolution/ partition with respect to the business carried on by it and accordingly references to discontinuance shall be construed as reference to dissolution/ partition.]

CHANGE IN CONSTITUTION

- Where change in the constitution has occurred, the partners/ members, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay TIP due before its reconstitution.

EXPLANATION FOR WHOLE CHAPTER

For the purposes of this Chapter,—

- (i) a “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a firm;
- (ii) “court” means the District Court, High Court or Supreme Court.

WHAT WE LEARNT IN THIS CHAPTER

[Section 85 – Transfer of Business](#)

[Section 86 – Agent](#)

[Section 87 – Amalgamation/ Merger](#)

[Section 88 – Winding Up](#)

[Section 89 – PVT. Company](#)

[Section 90 – Firm](#)

[Section 91 – guardian/ trustee/ agent of a minor/ other incapacitated person](#)

[Section 92 – Court of Wards, the Administrator General, the Official Trustee or any receiver or manager](#)

[Section 93 – Death/ Partition/ Dissolution – Individual, Huf/ Aop, Firm, Guardian/ Trustee](#)

[Section 94 – Discontinuation/ Change in Constitution in Firm/ Aop/ Huf,](#)

[Explanation for whole chapter](#)

END OF PRESENTATION!

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Advance Ruling

CHAPTER XVII OF THE CGST ACT

- By Prakhar Jain



DEFINITIONS SPECIFIC FOR THE CHAPTER – SECTION 95

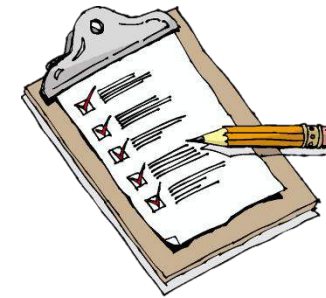
- “**Advance ruling**” means a decision provided by the Authority/ Appellate Authority to an applicant on matters or on questions specified in Sec 97(2) or Sec 100(1), in relation to the supply of goods/ services/ both being undertaken or proposed to be undertaken by the applicant;
- “**Appellate Authority**” means the Appellate Authority for Advance Ruling referred to in section 99;
- “**Applicant**” means any person registered or desirous of obtaining registration under this Act;
- “**Application**” means an application made to the Authority under sub-section (1) of section 97;
- “**Authority**” means the Authority for Advance Ruling referred to in section 96.

AUTHORITY FOR STATE/ UT – SECTION 96

- Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a SGST Act/ UTGST Act shall be deemed to be the Authority for advance ruling in respect of that State/ UT.

Application for Advance Ruling – Section 97

- An applicant who wants to obtain an advance ruling may make an application in FORM GST ARA-01 and shall be accompanied by a fee of Rs. 5000, to be deposited as per Sec 49, stating the question on which the advance ruling is sought.
- The question on which the advance ruling is sought can be in respect of –
 - a) classification of any goods/ services/ both;
 - b) applicability of a notification issued;
 - c) determination of time and value of supply;
 - d) admissibility of input tax credit of tax paid or deemed to have been paid;
 - e) determination of the liability to pay tax;
 - f) whether applicant is required to be registered;
 - g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.



PROCEDURE UPON APPLICATION – SECTION 98

1. On receipt of an application, the Authority shall **forward** a copy to the concerned officer and, if necessary, call upon him to furnish the relevant records. (Where any records have been called for, they shall be returned as soon as possible)
2. The Authority shall **examine** the application and the records called for, and after hearing the applicant (or his authorised representative) and the concerned officer (or his authorised representative), may either admit or reject the application by **order**. A copy of every order shall be sent to the applicant and to the concerned officer.
 - No application shall be rejected without giving an opportunity of hearing to the applicant. Where the application is rejected, the reasons for such rejection shall be specified in the order
 - Authority shall **not admit** the application if, the question raised in the application is already pending/ decided in any proceedings of any applicant.
3. Where an application is admitted, the Authority shall –
 - Examine such further material as may be placed before it by the applicant or obtained by the Authority and
 - Provide an opportunity of being heard to the applicant (or his authorised representative) and to the concerned officer (or his authorised representative)
4. A copy of the advance ruling pronounced by the Authority (duly signed by the members and certified to be a true copy of its original by any member) shall be sent to -
 - i. the applicant;
 - ii. the concerned officer of CGST/ SGST/ UTGST;
 - iii. the jurisdictional officer of CGST/ SGST/ UTGST; and
5. Where members differ on any question, they shall state the point/ points on which they differ and make reference to the Appellate Authority for hearing and deciding on such question(s).

And after that, may pronounce its advance ruling on the question specified in the application. Ruling must be pronounced within 90 days from the date of receipt of application.

APPELLATE AUTHORITY and Appeals to them – Sec 99 & 100

1. The **Appellate Authority** for Advance Ruling constituted under SGST/ UTGST Act shall be **deemed** to be the Appellate Authority in respect of that State or UT. (for this act also)
2. The aggrieved applicant (concerned officer, the jurisdictional officer or an applicant), may **appeal** to the Appellate Authority in **FORM GST ARA-02** and shall be accompanied by a fee of Rs. 10,000, to be deposited as per Sec 49. The aggrieved concerned officer or the jurisdictional officer may also file an appeal in **FORM GST ARA-03** and no fee shall be payable.
3. Appeal shall be filed within 30 days from the date on which the ruling is communicated. (Appellate Authority may allow a further period not exceeding 30 days, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within time)
4. The appeal, the verification contained therein and all the relevant documents accompanying such appeal shall be **signed** -
 - In the case of concerned officer/ jurisdictional officer, by an officer authorised in writing by such officer; and
 - In the case of applicant, in the manner specified in rule 26 (DSC, OTP, EVC etc).

ORDERS OF THE APPELLATE AUTHORITY – SECTION 101

1. The Appellate Authority shall give the parties to the appeal or reference, an **opportunity of being heard**, and then pass such **order** as it thinks fit, confirming or modifying the ruling appealed against or referred to. The order shall be passed within 90 days from the date of filing of the appeal/ date of reference.
2. Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that **no advance ruling can be issued** in respect of the question under the appeal or reference.
3. A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified to be a true copy of its original by any member, shall be sent to -
 - i. the applicant and the appellant;
 - ii. the concerned officer of CGST/ SGST/ UTGST;
 - iii. the jurisdictional officer of CGST/ SGST/ UTGST; and
 - iv. the Authority of advance ruling.

SOME POINTS ON THE ADVANCE RULING

RECTIFICATION – SECTION 102

- The Authority/ Appellate Authority may amend any order passed by it, so as to rectify any **error apparent on the face of the record**, if such error is noticed by the Authority/ Appellate Authority on its own, or is brought to its notice by the concerned officer/ the jurisdictional officer/ the applicant/ the appellant within 6 months from the date of the order.
- If rectification has the effect of enhancing the tax liability or reducing the amount of admissible ITC, then the applicant/ the appellant must be given an opportunity of being heard

APPLICABILITY – SECTION 103

- The advance ruling pronounced by the Authority/ Appellate Authority shall be binding only -
- On the applicant who had sought it;
- On the concerned officer/ the jurisdictional officer in respect of the applicant.
- The advance ruling shall be binding and continue to have effect, unless the law/ facts/ circumstances supporting the original advance ruling have changed.

VOID – SECTION 104

- Where the Authority/ Appellate Authority finds that advance ruling pronounced by it, has been obtained by the applicant/ appellant by fraud/ suppression of material facts/ misrepresentation of facts, it may declare by order, such ruling to be **void ab-initio**, and all the provisions of this Act and rules shall apply as if such advance ruling had never been made. Opportunity of being heard shall be granted. A copy of the order shall be sent to the applicant, concerned officer and jurisdictional officer.
- The period from the date of such advance ruling till the date of order declaring it void ab-initio, shall be excluded while computing the time limits for notice (3/ 6 months) and order (3/ 5 years) under sections 73 and 74.

POWERS OF AUTHORITIES – SECTION 105

- The Authority or the Appellate Authority shall, for the purpose of exercising its **powers** regarding -
 - a) **Discovery and inspection;**
 - b) **Enforcing the attendance** of any person and examining him on oath;
 - c) Issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908.
- The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

MISCELLANEOUS POINTS

Section 106 - The Authority or the Appellate Authority shall have power to regulate its own procedure. (Subject to Act)

Rule 103 - Qualification and appointment of members of the Authority for Advance Ruling

- The Government shall appoint officers not below rank of Joint Commissioner as member of the Authority for Advance Ruling.

Rule 107A - Manual filing and processing

- In respect of any process or procedure prescribed herein, any reference to electronic filing shall include manual filing.

End of Presentation!

What we learned -

- Definitions Specific for the Chapter – Section 95
- Authority for State/ UT – Section 96
- Application for Advance Ruling and Procedure – Section 97 and 98
 - Application
 - Procedure
- Appellate Authority
 - Authority and Appeals to them - Sections 99 and 100
 - Orders – Section 101
- Points on the Advance Ruling
 - Rectification – Section 102
 - Applicability – Section 103
 - Void – Section 104
- Powers of Authorities – Section 105
- Miscellaneous Points

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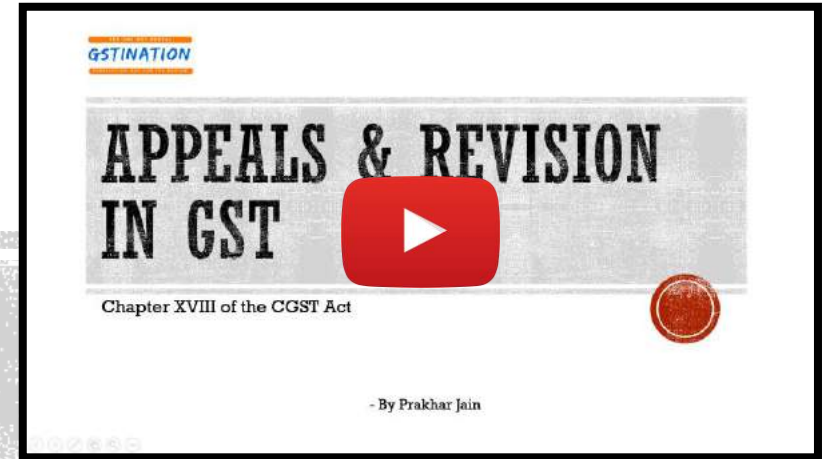
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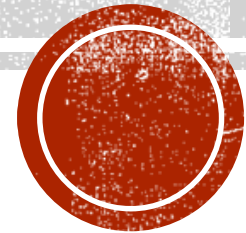
APPEALS & REVISION IN GST



Chapter XVIII of the CGST Act

AA = Appellate Authority; **RA** = Revisional Authority;
AT = Appellate Tribunal; **HC** = High Court; **SC** = Supreme Court

- By Prakhar Jain





APPEALS TO AA – SEC 107

Appeal By Person	<p><u>Person aggrieved</u> by any decision/ order passed by an adjudicating authority under this Act/ SGST/ UTGST Act, may <u>appeal</u> to prescribed AA in FORM GST APL-01, along with the <u>relevant documents</u>, and a <u>provisional acknowledgement</u> shall be issued to the appellant immediately. <u>Time Limit: 3 months</u> from date of communication of the said decision/ order to him.</p>	
Application By Officer on order of Commissioner	<ul style="list-style-type: none"> If commissioner wants to <u>satisfy</u> himself as to the <u>legality or propriety</u> of any decision/ order passed by an adjudicating authority under this Act/ SGST/ UTGST Act, then he may call for and <u>examine</u> the record of any <u>proceedings</u>, either on his own motion, or upon request from the Commissioner of SGST/ UTGST. If he finds any points where he has <u>doubts</u>, he may <u>order</u> any officer <u>subordinate</u> to him to <u>apply</u> to the prescribed AA in FORM GST APL-03, along with the <u>relevant documents</u>. <u>Time Limit: 6 months</u> from the date of communication of the decision/ order. 	
Application = Appeal	<p>Where authorised officer makes an application to the AA as above, it shall be dealt with as if it were an appeal made against the decision/ order of the adjudicating authority, and that the authorised officer were an appellant and all provisions relating to appeals shall apply.</p>	
Prescribed AA (Rule 109A)	<u>Decision/ Order Passed by -</u>	<u>Appellate Authority</u>
	Additional or Joint Commissioner	Commissioner (Appeals)
	Deputy or Assistant Commissioner or Superintendent	Additional Commissioner (Appeals)
Submission of copy of decision/ order appealed against	<p>A <u>certified copy of the decision/ order</u> appealed against shall be submitted within 7 days of filing the appeal. Then, a <u>final acknowledgement</u> in FORM GST APL-02, indicating appeal number shall be issued by the AA/ authorised officer. Appeal is treated 'filed' only when final acknowledgement is issued.</p>	
	<u>Whether Copy of Decision/ Order submitted within time limit?</u>	<u>Effective Date of filing of the appeal</u>
	Yes	Date of the issue of the provisional acknowledgement
	No	Date of the submission of such copy





APPEALS TO AA – SEC 107

Extension of time	The AA may allow appeal to be presented within a <u>further</u> period of <u>1 month</u> , if satisfied that appellant was prevented by from presenting the appeal within the time limit of 3/ 6 months.
Pre-Deposit	No appeal shall be filed, unless appellant has paid — (a) <u>100% of</u> the tax/ interest/ fine/ fee/ penalty arising from the impugned order which is <u>admitted</u> by him (b) <u>10% of</u> the <u>remaining</u> amount of tax in dispute.
Stay of Recovery	Where the appellant has paid above amount, recovery proceedings for balance amount shall be deemed to be stayed.
Hearing	The appellant shall be given an opportunity of being heard.
Adjournment	The AA <u>may grant time</u> to the parties, and <u>adjourn</u> the hearing of the appeal, if <u>sufficient cause</u> is shown at any stage of hearing of an appeal. Max adjournment = 3 times to each party.
Addition of Grounds	The AA <u>may allow</u> an appellant to add any ground of appeal, at the time of hearing, which was not specified in the grounds of appeal earlier, if it is satisfied that <u>omission was not wilful/ unreasonable</u> .
Order	<ul style="list-style-type: none"> • The AA shall pass a <u>just and proper order</u>, after making necessary inquiries. • Order may <u>confirm, modify or annul</u> the decision/ order appealed against, but shall <u>not refer back</u> the case to the adjudicating authority that passed the said decision or order. • The order shall be in writing and shall <u>state the points</u>, the <u>decision</u> and the <u>reasons</u> for such decision, and along with it will be issued a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed. • Any adverse order shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order. • Where AA finds - any amount (which was not subject matter of appeal) has not been paid/ short-paid/ erroneously refunded, or that ITC has been wrongly availed/ utilised; then appellant shall be given SCN, and required to show cause why an order should not be passed, requiring him to pay it, and the final order must be passed within the time limit specified u/s 73/ 74. [Means due procedure will be followed]
Time Limit for order	The AA shall hear and decide every appeal <u>within 1 year from date of its filing</u> (wherever it is possible to do so). Where issuance of order is stayed by any court/ Tribunal, period of such stay shall be excluded.
Communicate	On disposal of appeal, AA shall communicate order to <u>appellant, respondent and adjudicating authority</u> .
Copy Send	A copy of the order shall be sent to <u>jurisdictional Commissioners</u> of CGST, SGST & UTGST/ authority designated by them.



REVISIONS BY REVISIONAL AUTHORITY - SEC 108



- Subject to Sec 121 & its Rules, it is the power of the RA that it can call for and examine the record of any proceedings either –
 - on his own motion, or
 - upon information received by him or
 - on request from the Commissioner SGST/ UTGST
- And** if he considers that any decision/ order passed by a subordinate officer under this Act/ SGST/ UTGST Act, is –

Erroneous in so far as it is prejudicial to the interest of revenue	and	(i) Is <u>illegal</u>	(ii) Has <u>not taken into account</u> certain <u>material facts</u> (whether available at the time of issuance of the said order or not)
		(iii) Is <u>improper</u>	(iv) In consequence of an <u>observation by the CAG</u>

- Then he may stay operation of such decision/ order for such period as he deems fit. He will give the person concerned an opportunity of being heard, make necessary further inquiries, and pass a just and proper order, which may enhance/ modify/ annul the said decision/ order.
- Minimum Period, only after which revision can be done:- After expiry of period specified for appeal.
- Limitation Period (after which revision can't be done):- More than 3 years have expired after passing of decision/ order.

REVISIONARY POWER NOT TO BE EXERCISED

- The RA shall not exercise revisionary power if—
 - Order in question has been passed by a RA only.
 - Order in question has already been taken for revision at an earlier stage.
 - Order has been subject to an appeal u/s 107/ 112/ 117/ 118.
- But, RA may undertake revision and pass an order on points which has not been raised and decided in the appeal, before the earlier of –

Expiry of 1 year from date of decision of appeal

Expiry of 3 years from date of original decision/ order

(i) Revision proceedings have been initiated by way of issue of a notice under this section	Then →	For calculating above time limit of 3 years, the period spent between – Dates of Decisions of AT ↔ HC, or HC ↔ SC, shall be excluded
(ii) Decision/ Order in question involves such an issue, on which AT/ HC has given its decision in some other proceedings, and appeal against that decision is pending in HC/ SC		
(iii) Issuance of order is stayed by the order of a court/ AT	Then →	Such period of stay shall be excluded in calculating 3 years

GST – AT	The Govt. shall constitute an AT known as the “Goods and Services Tax Appellate Tribunal”, for hearing appeals against the orders passed by the AA/ RA.	
Benches of AT & their jurisdiction	The powers of AT shall be exercisable by - National Bench, its Regional Benches; State Bench, its Area Benches	
	The National Bench of the AT shall be situated at New Delhi, presided over by President, and consisting of <u>1 TMC and 1 TMS</u> .	The Govt. shall constitute such number of Regional Benches as may be required, and they shall consist of a <u>JM, 1 TMC and 1 TMS</u>
	<u>Jurisdiction:</u> The <u>National Bench/ Regional Benches</u> shall have <u>jurisdiction</u> to hear appeals against the orders passed by the AA/ RA, only in the cases where one of the issues involved <u>relates to</u> the place of supply.	
	The Govt. shall specify a State Bench of the AT, for each State/ UT, for exercising the powers of the AT within that State/ UT.	If any SG requests, then CG may constitute such number of Area Benches in that State, as may be recommended by the Council.
	Each State Bench & Area Benches shall consist of <u>1 JM, 1 TMC and 1 TMS</u> . SG may designate the <u>senior most JM</u> in a State as the <u>State President</u> .	
	<u>For a State</u> – On <u>request</u> from SG; <u>For UT</u> – On its <u>own motion</u> ; Govt. may notify the AT in a State to act as the AT for any other State/ UT, as may be recommended by the Council, subject to prescribed terms and conditions.	
	<u>Jurisdiction:</u> The <u>State Bench/ Area Benches</u> shall have <u>jurisdiction</u> to hear appeals against the orders passed by the AA/ RA in all the cases except those <u>where</u> one of the issues involved <u>relates to</u> the place of supply.	
Hearing by 2 members	In the absence of a Member in any Bench, due to <u>vacancy or otherwise</u> , any appeal <u>may be heard</u> by a Bench of <u>two Members</u> , with the <u>approval</u> of the <u>President/ State President</u> .	
Hearing by 1 member	Any <u>appeal where</u> the [tax/ ITC involved/ difference in tax or ITC involved/ the amount of fine, fee or penalty determined in the order appealed against], does not exceed Rs. 5 lakhs, and which does not involve any question of law <u>may be heard</u> by a bench consisting of a <u>single member</u> , with the approval of President and subject to prescribed conditions of the Council.	
Decision Making	<ul style="list-style-type: none"> If the <u>Members differ in opinion</u> on any point(s), it shall be decided according to majority opinion. If <u>no majority</u> is there, they shall <u>state the point(s) on which they differ</u>, and the <u>case</u> shall be referred to one or more of the <u>other Members</u> of the National Bench, Regional Benches, State Bench or Area Benches, by the President/ State President, for hearing on such point(s). Such point(s) shall then be decided according to the opinion of the aggregate majority (Majority of Members who have heard the case, <u>including those who first heard it.</u>) 	
Transfers	The CG in consultation with President may transfer, for the administrative convenience —	
	<p>(a) Any <u>JM</u> or a <u>TMS</u> from one National/ Regional Bench to another.</p> <p>(b) Any <u>TMC</u> from one National/ Regional/ State/ Area Bench to another.</p>	
	The SG in consultation with State President may transfer, for administrative convenience, a <u>JM</u> or a <u>TMS</u> from one Bench to another Bench within the State.	
No Invalidation	No act/ proceedings of AT shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the AT.	

COMPOSITION OF AT & ITS BENCHES – SEC 109

[Short Forms used →

Technical Member (Centre) = TMC;

Technical Member (State) = TMS;

Judicial Member = JM]

Distribution of cases

By general or special order, following shall distribute the business or transfer cases

President of AT	among <u>Regional Benches</u>
State President	among <u>Area Benches</u>



PRESIDENT AND MEMBERS OF AT – SEC 110

QUALIFICATION

President	He has been a Judge of the SC/ is or has been the Chief Justice of a HC/ is or has been a Judge of a HC for a min period of 5 years
JM	(i) He has been a <u>Judge of the HC</u> ; or (ii) He is/ has been a <u>District Judge qualified to be appointed as a Judge of a HC</u> ; or (iii) He is/ has been a <u>Member of Indian Legal Service</u> and has held a post of <u>Additional Secretary or higher post</u> for at least <u>3 years</u> .
TMC	He is/ has been a <u>member</u> of, and has completed at least <u>15 years of service, in Indian Revenue Service (Customs & Central Excise), Group A</u> .
TMS	He is/ has been an <u>officer of the SG</u> of rank <u>Additional Commissioner or higher</u> rank, of VAT/ SGST, or other notified rank by SG, on recommendations of Council; with <u>at least 3 years of experience in administration of old law/ SGST Act or in the field of finance and taxation</u> .

APPOINTMENT

For National & Regional Benches -

President & JM	Appointed by CG after <u>consultation</u> with the Chief Justice of India/ his nominee. <ul style="list-style-type: none"> If any vacancy in office of the President by reason of his death, resignation or otherwise → The senior most Member of the National Bench shall act as the President until the date on which a new President enters upon his office. Where the President is unable to discharge his functions owing to absence, illness or any other cause → The senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.
TMC and TMS	Appointed by the CG on the recommendations of a Selection Committee, consisting of prescribed persons and in prescribed manner.

For State & Area Benches -

JM	They shall be appointed by the SG after <u>consultation</u> with the Chief Justice of the HC of the State/ his nominee.
TMC and TMS	The <u>TMC</u> shall be appointed by the CG, and <u>TMS</u> shall be appointed by the SG.

OTHER POINTS

No Invalidation	<u>No appointment shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.</u>
Conflict of Interest checked	<u>Before appointing any person, the CG/ SG shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as President or Member of the AT.</u>

SALARY

- The salary, allowances and other terms and conditions of service of the President, State President and the Members of the AT shall be such as may be prescribed. They shall not be varied to their disadvantage after their appointment.

TENURE

Post	Term (years from the date on which enters upon his office)	Age Limit
President	3 years	70 years
JM & State President	3 years	65 years
TMC & TMS	5 years	65 years

All shall be eligible for reappointment

RESIGNATION

- The President/ State President/ Members of the AT may resign from their office, by **notice in writing** under their hand, **addressed to the CG/ SG**.

They shall **continue to hold office** until the earliest of –

(i) Expiry of 3 months from the date of receipt of such notice by the CG/ SG	(i) When a person duly appointed as his successor enters upon his office	(i) Expiry of his term of office
--	---	--

FUTURE RESTRICTION

- Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear/ act/ plead before the Benches where they were the President/ Member.

REMOVAL

The **CG** in consultation with the Chief Justice of India, and the **SG** in consultation with the Chief Justice of HC, **may remove those persons** from the office, **whom they have power to appoint** respectively, **where** any person —

- has been adjudged an **insolvent**
- has been **convicted** of an **offence** which, in the opinion of such Govt. involves moral turpitude
- has become physically or mentally incapable of acting as such President, State President or Member
- has acquired such **financial or other interest** as is likely to affect prejudicially his functions
- Has so **abused** his position as to render his continuance in office prejudicial to the public interest

Any person shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.



MISBEHAVIOUR/ INCAPACITY



- Without prejudice to the provisions for removal discussed above, where it is found that the President/ JM/ TMC/ TMS are involved in misbehaviour or incapacity, then they may be removed by the Govt. which appointed them.
- **CG** shall **make reference** to Chief Justice of India, who shall **nominate a judge of the SC** to **conduct inquiry** into the charges of misbehaviour or incapacity.
- **SG** shall **make reference** to Chief Justice of the concerned HC, who shall **nominate a judge of the HC** to **conduct inquiry** into the charges of misbehaviour or incapacity.
- The **CG/ SG may**, in concurrence with CJI/ CJ of HC, **suspend from office**, the person against whom inquiry is being conducted.
- The concerned person shall be given an opportunity of being heard.
- **If** the inquiries **confirm** the charges, then CG/ SG shall pass an **order for removal** of the persons from their office.

POWERS OF AT – SEC 111



THE AT –

- Shall not be bound by procedure laid down in Code of Civil Procedure, 1908, while disposing of proceedings/ appeal.
- Shall be guided by the principles of natural justice.
- Shall have power to regulate its own procedure (Subject to the other provisions of this Act and the rules).

The AT shall have the **same powers** as are vested in a **civil court** while trying a suit, for the purposes of discharging its functions under this Act, in respect of the **following matters** :—

• Summoning and enforcing the attendance of any person and examining him on oath	
• Requiring the discovery and production of documents	• Receiving evidence on affidavits
• Requisitioning any public record/ document or a copy of them from any office (Subject to Sec 123/ 124 of the Indian Evidence Act)	• Issuing commissions for the examination of witnesses or documents
• Dismissing a representation for default or deciding it ex parte	• Setting aside any order of dismissal of any representation for default or any order passed by it ex parte
• Any other prescribed matter	

- Any order made by the AT → enforced by it in the same manner as if it were a decree made by a court in a suit pending therein.
- It shall be lawful for the AT, to send its orders for execution, to the court within whose jurisdiction —
 - a) The **registered office** of the **company** is situated (In the case of an order against a company) or
 - b) The **person** concerned voluntarily **resides** or carries on **business** or personally **works** for gain (In the case of an order against any other person).
- All proceedings before AT - deemed to be judicial proceedings, and AT - deemed to be civil court.

Appeal time limit	Any person who is aggrieved by an order passed against him under section 107/ 108 (AA or RA) of this Act/ SGST/ UTGST Act, may appeal to the AT against such order, in FORM GST APL-05 along with the relevant documents, within 3 months from the <u>date of communication of the order appealed against</u>. A provisional acknowledgement shall be issued to the appellant immediately
Minimum Amt involved	The AT may refuse to admit any such appeal where [the tax/ ITC involved/ difference in tax or ITC involved or the amount of fine/ fee/ penalty] determined by such order, does not exceed Rs. 50,000.
Appeal by Commissioner	<ul style="list-style-type: none"> If commissioner wants to <u>satisfy</u> himself as to the <u>legality or propriety</u> of any order passed by AA/ RA under this Act/ SGST/ UTGST Act, then he may call for and <u>examine</u> the record of any <u>order passed</u>, either on his own motion, or upon request from the Commissioner of SGST/ UTGST. If he finds any points where he has <u>doubts</u>, he may <u>order</u> any officer <u>subordinate</u> to him to <u>apply</u> to the AT in FORM GST APL-07, along with the <u>relevant documents</u>. <u>Time Limit</u>: 6 months from the <u>date of passing</u> of the decision/ order.
Submission of copy of decision/ order appealed against	<p>A <u>certified copy of the decision/ order</u> appealed against shall be submitted to the Registrar within 7 days of filing the appeal. Then, a <u>final acknowledgement</u> in FORM GST APL-02, indicating appeal number shall be issued by the Registrar. Appeal is treated 'filed' only when final acknowledgement is issued.</p> <p>Whether Copy of Decision/ Order submitted within time limit?</p> <p>Yes → Effective Date of filing of the appeal = Date of the issue of the provisional acknowledgement</p> <p>No → Effective Date of filing of the appeal = Date of the submission of such copy</p>
Fees	The fees for filing of appeal or restoration of appeal shall be Rs. 1,000 for every Rs. 1 lakh of [tax/ ITC involved/ the difference in tax or ITC involved/ amount of fine/ fee/ penalty determined in the order appealed against], maximum Rs. 25,000. Where appeal for rectification of error, no fees shall be payable.
Application Appeal	= Where <u>authorised officer makes an application</u> to the AT as above, it shall be dealt with as if it were an appeal made against the order of the AA/ RA, and all provisions relating to appeals shall apply.
Memorandum of Cross-Objections	On receipt of notice that an appeal has been filed, the <u>party against whom the appeal has been filed</u> , may file a memorandum of cross-objections in FORM GST APL-06 - <u>against any part of the order appealed against</u> , <u>within 45 days</u> of the receipt of notice. Such memorandum shall be <u>disposed of</u> by the AT, <u>as if it were an appeal</u> . (The person can file the memorandum, notwithstanding that he may not have appealed against such order or any part thereof)
Extension of time	The AT may admit an <u>appeal</u> within 3 months after the expiry of its time limit, or permit the filing of a <u>memorandum of cross-objections</u> within 45 days after the expiry of its time limit, if it is satisfied that there was <u>sufficient cause</u> for not presenting it within time.
Pre-Deposit	<u>No appeal shall be filed, unless the appellant has paid</u> — <ul style="list-style-type: none"> (a) 100% of [tax/ interest/ fine/ fee/ penalty arising from the impugned order], which is admitted by him. (b) 20% of the remaining amount of tax <u>in dispute</u>, (in addition to amount paid during appeal to AA).
Stay on Recovery	Where appellant has paid the above amount → <u>Recovery proceedings</u> for the balance amount shall be deemed to be stayed <u>till the disposal of the appeal</u> .

APPEALS TO AT – SEC 112



ORDERS OF AT – SEC 113.



OOBH	The AT shall give the parties to the appeal an opportunity of being heard.
Passing of Order	After hearing, AT may pass an order as it thinks fit, <u>confirming, modifying or annulling</u> the decision/ order appealed against or may refer the case back to the AA/ RA/ original adjudicating authority, with directions as it may think fit, for a <u>fresh adjudication/ decision after taking additional evidence</u> , if necessary.
Adjournment	AT may at any stage of hearing of an appeal, grant time and adjourn the hearing of the appeal, if sufficient cause is shown, for reasons to be recorded in writing. Max adjournments = 3 times to each party.
Rectification	The AT may amend any order passed by it so as to rectify any error <u>apparent on the face of the record</u> , if such error is noticed by it on its <u>own accord</u> , or is <u>brought to its notice</u> by the <u>Commissioners</u> of CGST/ SGST/ UTGST or the <u>other party</u> to the appeal, within 3 months from the date of the order. <u>If</u> any amendment <u>adverse</u> to the other party is to be made, an <u>opportunity of being heard</u> shall be first given.
Time Limit for Decision	The AT shall hear and decide every appeal within 1 year from the date on which it is filed, as far as possible.
Copy Send	The AT shall send a copy of every order passed to the <u>AA/ RA/ the original adjudicating authority</u> , the <u>appellant</u> and the <u>jurisdictional Commissioner</u> of CGST/ SGST/ UTGST.
Final Demand	The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the <u>final amount of demand confirmed</u> by the AT.

FINANCIAL & ADMINISTRATIVE POWERS OF THE PRESIDENT – SEC 114

- The President shall exercise prescribed financial and administrative powers over the National Bench and Regional Benches of the AT. President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

INTEREST ON REFUND OF PRE-DEPOSIT – SEC 115

- **Where an amount paid** by the appellant before filing of appeals to the AA/ AT (Pre-Deposit) is **required to be refunded** consequent to an order, **interest** at the rate specified **u/s 56 (6%)** shall be **payable** in respect of such refund **from** the date of payment of such amount till the date of its refund.

QUALIFICATIONS

For whole CGST Act, “Authorised representative” shall mean a person authorised by any person to appear on his behalf, being—

- a) His relative or regular employee
- b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India
- c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice
- d) a retired officer of the Commercial Tax Department of any SG/ UT/ Board (CBEC) who, during his service under the Govt., had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than 2 years. But such officer shall not be entitled to appear for a period of 1 year from the date of his retirement/ resignation.
- e) Any person who has been authorised to act as a GST practitioner on behalf of concerned RTP.

DISQUALIFICATIONS

(a) A person who has been dismissed or removed from Govt. service

(c) A person who is found guilty of misconduct by the prescribed authority

(b) A person who is convicted of an offence connected with any proceedings under this Act/ SGST/ IGST/ UTGST Act, or under the old law or under any of the Sale tax Acts passed by a State Legislature.

- Above persons shall not be qualified to represent any person for all times (forever).

(d) Any person who has been adjudged as an insolvent, shall not be qualified to represent any person for the period during which the insolvency continues

(e) Any person disqualified under SGST/ UTGST Act shall be deemed to be disqualified under this Act also.

Rule 116 - Disqualification for misconduct of an authorised representative

Where an authorised representative (other than people referred in Sec 116(2)(b)/ (c) - advocates, chartered accountants, cost accountants, company secretaries) is found guilty of misconduct in connection with any proceedings under the Act, upon an enquiry into the matter → the Commissioner may disqualify him from appearing as an authorised representative, after providing him an opportunity of being heard.

APPEARANCE BY AUTHORISED REPRESENTATIVE – SEC 116



Any **person** entitled/ required to appear before an officer/ AA/ AT, in connection with any proceedings, **may appear by an authorised representative**, except when required to appear personally for examination on oath or affirmation.

APPEAL TO HIGH COURT – SEC 117



Appeal to HC – When admit	Person aggrieved by any <u>order passed by the State Bench/ Area Benches of the AT</u> may <u>file an appeal to the HC in FORM GST APL-08</u> , and it shall contain the <u>grounds of appeal</u> . The <u>HC may admit such appeal</u> , <u>if it is satisfied that the case involves a substantial question of law</u> .
Time Limit	Appeal shall be filed within 180 days from the <u>date of receipt of order</u> appealed against by the aggrieved person. HC <u>may entertain an appeal after time limit</u> , if it is satisfied that there was <u>sufficient cause</u> for not filing it within such period.
Question Formulation	<ul style="list-style-type: none"> HC shall formulate the question of law involved in the case, and the <u>appeal shall be heard only on the question so formulated</u>. The <u>respondents</u> shall, at the hearing of the appeal, be <u>allowed to argue</u> that the <u>case does not involve such question</u>. HC <u>may hear the appeal on any other substantial question of law not formulated</u> by it, if it is satisfied that the case involves such question, for reasons to be recorded.
Decision and order	The HC shall <u>take</u> decision on the question of law so formulated, and <u>deliver</u> such judgment thereon containing the <u>grounds on which such decision is founded</u> and may <u>award</u> such cost as it deems fit.
Affected Issue	The HC may determine any issue which has <u>not been determined/ wrongly determined</u> by the State Bench/ Area Benches <u>by reason of the decision on such question of law</u> .
Hearing	An appeal to the HC shall be heard by a <u>Bench of at least two Judges</u> of the HC, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.
Difference of opinion	<u>Where there is no majority</u> , the Judges shall <u>state the point of law upon which they differ</u> . Then, the case shall be <u>heard by one or more of the other Judges</u> of the HC, <u>on that point only</u> , and such point shall be decided according to the opinion of the <u>aggregate majority</u> (Majority of the Judges who have heard the case including those who first heard it)
Effect	<u>Effect shall be given</u> to the judgment of HC <u>by either side</u> on the basis of a certified copy of the judgment.
CCP Applies	Save as otherwise provided in this Act, the <u>provisions of the Code of Civil Procedure, 1908</u> , relating to appeals to the HC shall, as far as may be, <u>apply</u> in the case of appeals under this section.

APPEAL TO SUPREME COURT – SEC 118



1. An appeal can be made to the SC against —
 - Any **order passed by the National Bench or Regional Benches of the AT**; or
 - Any **judgment or order passed by the HC**. For this, HC certificate is required certifying the case to be 'fit for appeal to SC'. This certificate can be provided by the HC its own motion, or on an application made immediately after passing of the judgment or order, by or on behalf of the party aggrieved.
2. The provisions of the Code of Civil Procedure, 1908, relating to appeals to the SC shall, so far as may be, apply in the case of appeals to SC, as they apply in the case of appeals against decrees of a HC.
3. Where the judgment of the HC is varied or reversed in the appeal, effect shall be given to the order by either side on the basis of a certified copy of the judgment.

DEMAND CONFIRMED BY THE COURT

The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the HC/ SC.

SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL – SEC 119

- **Notwithstanding** that an **appeal** has been **filed** to HC/ SC, sums due to the Govt. as a result of an order passed by the National/ Regional/ State/ Area Benches of the AT shall be payable in accordance with the order so passed.

PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE AA/ AT – RULE 112

1. The appellant shall not be allowed to produce before the AA/ AT any evidence (whether oral or documentary) other than those produced by him during the course of the proceedings before the adjudicating authority/ AA except in the following circumstances -
 - a) Where the adjudicating authority/ AA had refused to admit evidence which ought to have been admitted
 - b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority/ AA, or which is relevant to any ground of appeal.
 - c) Where the adjudicating authority/ AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
2. Evidence shall be admitted as above only when AA/ AT records in writing the reasons for its admission.
3. The AA/ AT shall not take any evidence unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -
 - a) To examine the evidence or document or to cross-examine any witness produced by the appellant.
 - b) To produce any evidence or any witness in rebuttal of the evidence produced by the appellant.
4. Power of the AA/ AT to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal, shall not be affected by this section.

APPEAL NOT TO BE FILED BY OFFICER – SEC 120

1. The Board may issue orders or instructions or directions - fixing monetary limits for the purposes of regulating the filing of appeal/ application by the CGST officers. (As we saw in appeals to AA/ AT)
2. Where a CGST officer has not filed an appeal/ application against any decision or order, in pursuance of such above order, it shall not preclude such officer from filing appeal/ application in any other case involving the same/ similar issues or questions of law. Also, no person, being a party in appeal or application shall contend that the officer of the central tax has accepted the decision on the disputed issue by not filing an appeal or application.
3. The AT/ court hearing such appeal/ application shall have regard to the circumstances under which the appeal/ application was not filed by the officer in pursuance of the orders issued.

NON-APPEALABLE ORDERS – SEC 121

- NWA in this Act, **no appeal shall lie against any decision/ order of an officer of CGST, if such decision/ order relates to following matters —**
 - a) An order of the Commissioner/ other authority empowered to direct transfer of proceedings from one officer to another
 - b) An order pertaining to the seizure or retention of books of account, register and other documents
 - c) An order sanctioning prosecution under this Act
 - d) An order passed under section 80 (allowing payment in instalments)

END OF PRESENTATION!!

WHAT WE LEARNED -

- Appeals to AA – Sec 107
- Revisions by Revisional Authority - Sec 108
- Composition of AT & Its Benches – Sec 109
- President and Members of AT – Sec 110
- Qualification
- Appointment
- Other Points
- Salary
- Tenure
- Resignation
- Removal
- Misbehaviour/ Incapacity
- Future Restriction
- Powers of AT – Sec 111
- Appeals to AT – Sec 112
- Orders of AT – Sec 113.
- Financial & Administrative Powers of the President – Sec 114
- Interest on Refund of Pre-Deposit – Sec 115
- Appearance by Authorised Representative – Sec 116
- Qualifications
- Disqualifications
- Appeal to High Court – Sec 117
- Appeal to Supreme Court – Sec 118
- Demand confirmed by the Court -
- Sums Due to be paid notwithstanding Appeal – Sec 119
- Appeal Not to be Filed by Officer – Sec 120
- Non-Appealable Orders – Sec 121
- Production of additional evidence before the AA/ AT – Rule 112



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Offences & Penalties in GST

Chapter 19 of the CGST Act

- By Prakhar Jain



PENALTY FOR CERTAIN OFFENCES – SECTION 122



• Supplies without issue of invoice/ issues an incorrect or false invoice	• Issues invoice/ bill without supply in violation of Act/ Rules
• Collects tax but fails to pay beyond 3 months from due date	• Collects tax against provisions but fails to pay beyond 3 months from due date
• Fails to deduct/ deducts less/ fails to pay TDS	• Fails to collect/ collects less/ fails to pay TCS
• Takes/ utilises ITC without actual receipt of supply, against Act/ Rules	• Fraudulently obtains refund
• Takes/ distributes ITC in contravention of Sec 20 and the rules	
• Falsifies/ substitutes financial records <u>or</u> produces fake accounts/ documents <u>or</u> furnishes any false information/ return with an intention to evade payment of tax	
• Fails to obtain registration even though liable	
• Furnishes any false information wrt registration particulars at the time of applying for registration or subsequently	
• Obstructs/ prevents officer in discharge of his duties	
• Transports taxable goods without cover of specified documents (Invoice/ E-waybill/ Challan)	
• Suppresses his turnover leading to evasion of tax	
• Fails to keep/ maintain/ retain books of account and other documents as per Act/ Rules;	
• Fails to furnish information/ documents called for by an officer as per Act/ Rules <u>or</u> Furnishes false information/ documents during any proceedings	
• Supplies/ transports/ stores any goods which he has reasons to believe are liable to confiscation under this Act	
• Issues invoice/ document by using the registration number of another RTP	
• Tampers with/ destroys any material evidence/ document;	
• Disposes off/ tampers with goods that have been detained/ seized/ attached	

Person committing such offences shall be liable to pay **penalty** = higher of –

1. Rs. 10,000
2. 100% of Amount of **Tax** evaded, **ITC** availed/ passed/ distributed wrongly, refund claimed fraudulently, **TDS** not deducted/ short deducted/ deducted but not paid, **TCS** not collected/ short collected/ collected but not paid

PENALTY FOR CERTAIN OFFENCES – SECTION 122 (CONTD...)

RTP who **supplies** any goods/ services/ both on which any **tax has not been paid/** short-paid/ erroneously refunded, or where the **ITC** has been **wrongly** availed/ utilised,—



<u>Reason</u>	<u>Penalty</u>
Any reason, other than fraud/ wilful misstatement/ suppression of facts	Rs. 10,000 or 10% of tax due weh
Fraud/ wilful misstatement/ suppression of facts	Rs. 10,000 or 100% of tax due weh

Any person who commits the following offences Shall be liable to a **penalty** which may extend to **Rs. 25,000** -



- (a) **Aids/ abets** any offences specified here and before it
- (b) Acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any **goods** which he knows or has reasons to believe are liable to confiscation
- (c) Receives/ is in any way concerned with the supply of/ in any other manner deals with - any supply of **services** which he knows/ has reasons to believe are in contravention of Act/ Rules
- (d) Fails to appear before the officer of central tax, when issued with a **summon** in an inquiry;
- (e) Fails to issue invoice as per Act/ Rules or fails to account for an invoice in his books of account,

FAILURE TO FURNISH INFORMATION RETURN – SEC 123

If a person who is required to furnish an information return u/s 150 fails to do so within the period specified, PO may direct → liable to pay a penalty = Rs. 100 for each day failure continues (Max = Rs. 5,000).

GENERAL PENALTY – SEC 125

- Any person who contravenes Act/ Rules, and for which **no penalty** is separately **provided** → Liable to a penalty upto Rs. 25,000.

- If any person required to furnish any information/ return u/s 151 (for collection of statistics) —
 - without reasonable cause fails** to furnish such information/ return, or
 - wilfully furnishes/** causes to furnish any information/ return which he knows to be **false**,
→ Shall be punishable – fine upto Rs. 10,000; and if continuing offence, further fine upto Rs. 100 per day, after the first day during which the offence continues (Max = Rs. 25,000)

FAILURE TO FURNISH STATISTICS RETURN – SEC 124

DISCIPLINES RELATING TO PENALTY – SEC 126



[The following shall not apply in cases where penalty specified is either a fixed sum or expressed as a fixed percentage.]

- No officer shall impose penalty for –**
 - Minor breaches** (amount of tax involved < Rs. 5,000) or **procedural requirements**,
 - Omission/ mistake in documentation** (Error apparent on the face of record) without fraudulent intent/ gross negligence.
- The penalty shall depend on facts and circumstances, and as per the degree and severity of breach.
- No penalty shall be imposed without giving him an opportunity of being heard.
- The officer, while imposing penalty, shall **specify** → Nature of breach, and the applicable law where penalty has been specified for it.
- If person **voluntarily discloses** the circumstances of a breach to an officer, prior to the discovery by them, PO may consider this fact as a mitigating factor when quantifying a penalty.

ORDER FOR PENALTY – SEC 127

Where PO finds that a person is liable to a penalty, but the **penalty is not covered under any proceedings** u/s 62/ 63/ 64/ 73/ 74/ 129/130 → he may issue an order levying such penalty, after giving a reasonable opportunity of being heard.

WAIVER OF PENALTY/ FEE – SEC 128

The Government may waive any penalty u/s 122/ 123/ 125, or any late fee u/s 47, in part or full, by a notification, for such class of taxpayers and under such mitigating circumstances as may be specified.

DETENTION OF GOODS – SEC 129



NWA contained in this Act, where any person -

- (I) Transports any goods, or
- (II) Stores any goods while they are in transit

in contravention of Act/ Rules

Then –

1. All such goods
2. The Conveyance used as a means of transport for carrying them
3. Documents relating to such goods and conveyance

Shall be liable to detention/ seizure

- They shall be detained/ seized by serving an order of detention or seizure on the person transporting the goods.
- The PO shall issue a notice, specifying the tax and penalty leviable, the assessee will be given opportunity of being heard.
- The goods will be released under any of following condition —
 - (A) Where the owner of the goods comes forward for payment
 - On payment of Tax + Penalty = 100% of the tax payable on such goods
 - [In case of exempted goods, Penalty = Lower of – (2% of **value** of goods)/ (Rs. 25,000), and obviously no tax involved]
 - (B) Where the owner of the goods does not come forward for payment
 - On payment Tax + Penalty = [50% of Value of goods (-) Tax paid thereon]
 - [In case of exempted goods, Penalty = Lower of – (5% of **value** of goods)/ (Rs. 25,000)]
 - (C) Upon furnishing a security = Amount payable as above
- As per the circumstance, the PO shall then issue order for payment under any of above 3.
- On payment of the amount, all proceedings in respect of the notice issued shall be deemed to be concluded.
- Where person transporting goods/ owner of goods, fails to pay tax and penalty, within 7 days of such detention/ seizure → further proceedings as per Sec 130 shall be initiated. If the goods are of perishable/ hazardous nature, or are likely to depreciate in value with passage of time, then period of 7 days may be reduced by PO.
- The provisions of Sec 67(6) – provisional release on furnishing of bond + security of specified amount shall apply.

CONFISCATION OF GOODS – SEC 130



NWA contained in this Act, if any person—

- (i) **Supplies/ receives goods** against Act/ Rules with **intent to evade** payment of tax
- (ii) **Does not account** for any goods on which he is liable to pay tax under this Act
- (iii) Supplies taxable goods **without being registered** (when being liable to be registered)
- (iv) **Contravenes** any of the provisions of Act/ Rules with intent to evade payment of tax
- (v) **Uses conveyance** as means of transport for carriage of goods, against Act/ Rules [unless owner of conveyance proves that it was used without the knowledge/ connivance of him/ his agent and the person in charge of the conveyance]

Then all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty u/s 122.

- Person will be given an opportunity of being heard before confiscation and penalty.
- Every police officer shall, on the requisition of PO, assist him in taking and holding possession of the confiscated goods/ conveyance.
- After confiscation, the title of such goods or conveyance shall vest in the Government.
- OPTION TO PAY FINE
Officer giving confiscation order shall give an option to the owner of the goods, that to prevent confiscation, he may pay a **fine** of amount decided by officer, not exceeding - [Market value of the goods confiscated (-) the tax chargeable thereon]. If owner accepts, then he shall also be liable to any tax, penalty and charges payable in respect of such goods or conveyance.
- Aggregate of fine and penalty shall **not be less than** - Amount of penalty leviable under detention.
- Where conveyance is used for carriage of the goods/ passengers for hire, owner of conveyance can, to prevent confiscation, pay a **fine = tax payable** on the goods being transported.
- Where person was given reasonable time (not exceeding 3 months) to pay fine in lieu of confiscation, but he does not pay, and the PO is satisfied that confiscated goods/ conveyance not required in any other proceedings, then he may **dispose of** such goods or conveyance and deposit the sale proceeds thereof with the Government.

NO PREJUDICE TO OTHER PUNISHMENTS – SEC 131

Without prejudice to of CrPC, no confiscation/ penalty under Act/ Rules shall prevent the infliction of any other punishment to which the person is liable under this Act or any other law for the time being in force.

PUNISHMENT

– SEC 132



- Where any **convicted person** (under this section), is **again convicted here**, then he shall be punishable for the second and for every subsequent offence with imprisonment upto **5 years and fine**.
- Normally, the offences shall be **non-cognizable and bailable**. [Cognizable = Arrest without warrant, Non-Cognizable = Can't arrest without warrant]
- The offences specified in **clause (a)/ (b)/ (c)/ (d)** and punishable under **clause (i)** shall be **cognizable and non-bailable**.
- Prosecution for any offence under this section will be only with the **previous sanction of the Commissioner**.

“Tax” includes tax evaded/ ITC wrongly availed or utilised/ refund wrongly taken under - this/ SGST /IGST /UTGST/ Compensation Act (cess).

Where any person commits any of following offence -

- | | |
|--|--|
| (a) Supplies any goods/ services/ both <u>without</u> issue of any <u>invoice</u> in violation of Act/ Rules with <u>intention</u> to evade tax | |
| (b) Issues any invoice or bill without supply against Act/ Rules, leading to wrongful availment/ utilisation of ITC/ refund of tax | |
| (c) Avails ITC using above such invoice/ bill | (d) Collects tax but fails to pay beyond <u>3 months</u> from due date |
| (e) All cases where Evades tax/ fraudulently avails ITC / fraudulently obtains refund [but not covered under above 4] | |
| (f) Falsifies/ substitutes financial records or produces fake accounts/ documents or furnishes any false information - with an intention to evade tax | |
| (g) Obstructs/ prevents officer in discharge of his duties | |
| (h) Acquires <u>possession</u> of/ in any way <u>concerns</u> himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing/ in any other manner <u>deals</u> with - any goods which he knows or has reasons to believe are liable to confiscation under Act/ Rules | (i) <u>Receives/</u> is in any way <u>concerned</u> with the supply of/ or in any other manner <u>deals</u> with - any supply of services which he knows or has reasons to believe are in contravention of Act/ Rules |
| (j) Tampers with/ destroys any material <u>evidence</u> or <u>documents</u> | |
| (k) Fails to supply any information which he is required to supply under Act/ Rules, or supplies false information (Burden of proving truthfulness of information shall be upon him, has to establish a reasonable belief) | |
| (l) Attempts to commit/ abets the commission of any of the offences mentioned above | |

shall be punishable as under —

<u>Amount of tax evaded/ Amount of ITC wrongly availed or utilised/ Amount of refund wrongly taken</u>		<u>Punishment</u>
(i)	Amount > Rs. 5 crore	Imprisonment upto 5 years and fine
(ii)	Rs. 2 crore < Amount ≤ Rs. 5 crore	Imprisonment upto 3 years and fine
(iii)	Rs. 1 crore < Amount ≤ Rs. 2 crore	Imprisonment upto 1 year and fine
(iv)	In cases where he commits/ abets the commission of an offence specified in clause (f) [<u>falsification</u>] or clause (g) [<u>obstruction</u>] or clause (j) [<u>tampering</u>]	Imprisonment upto 6 months or fine or both .

LIABILITY OF OFFICERS – SEC 133



<ul style="list-style-type: none"> Person engaged in collection/ compilation/ computerisation of statistics u/s 151 	<ul style="list-style-type: none"> Officer having access to information specified u/s 150(1) 	<ul style="list-style-type: none"> Person engaged in providing service on common portal/ agent of common portal
<p>Where above people →</p>	<p>wilfully disclose any information/ contents of return furnished</p>	<p>otherwise than in execution of their duties/ for the purposes of prosecution for an offence under this Act/ any other Act</p>
<p>→ Punishable with imprisonment upto 6 months <u>or</u> fine upto Rs. 25,000 <u>or</u> both</p>		

- A Government servant shall not be prosecuted under this section except with previous sanction of the **Government**.
- Other persons, shall not be prosecuted under this section except with previous sanction of the **Commissioner**.

COGNIZANCE OF OFFENCES – SEC 134

No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act/ Rules, and it shall not take cognizance of any offence, except with previous sanction of Commissioner.



PRESUMPTION OF CULPABLE MENTAL STATE – SEC 135

- (Hint: Culprit ~ Culprit-able ~ Culpable)(“Culpable mental state” includes intention, motive, knowledge of a fact, and belief in a fact, or reason to believe a fact)
- If any prosecution for an offence under this Act requires a ‘culpable mental state’ of the accused, the **court shall presume** the existence of such mental state, but **it shall be a defence** for the accused to prove the fact that he had no such mental state. [“A fact (here, the fact of not having culpable mental state) is said to be proved only when court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability”]

RELEVANCY OF STATEMENTS – SEC 136

- A statement **made and signed** by a person **on appearance in** response to any **summons** issued u/s 70 during course of inquiry/ proceedings → shall be **relevant**, for proving the truth of the facts which it contains, in any prosecution for an offence under this Act, only **when** --
 - **Person** who made the statement is **dead** or **cannot be found**/ is **incapable** of giving evidence/ is **kept out of the way** by the adverse party/ his **presence cannot be obtained** without an amount of delay/ expense which the court considers unreasonable, under the circumstances of the case, or
 - **Person** who made the statement is **examined as a witness** in the case before the court and the court having regard to circumstances is of the opinion that, the statement should be admitted in evidence in the interest of justice.

OFFENCE BY COMPANY – SEC 137



Where an offence committed by a company ("company" means a body corporate and includes a firm or other association of individuals)	→	(I) Every person who was in charge of the company, and was responsible to the company for the conduct of its business, at the time the offence was committed	shall be deemed to be guilty of the offence and liable to prosecution and punishment accordingly
		(I) The Company	

Where an offence committed by a company/ partnership firm/ LLP/ HUF/ trust and it is proved that offence was committed with the consent/ connivance of, or due to negligence of following persons -

<u>ENTITY</u>	<u>PERSON</u>	Then he shall be deemed to be guilty of that offence and shall be liable to <u>prosecution</u> and <u>punishment</u> accordingly	If he proves - offence was committed <u>without</u> his <u>knowledge</u> / he had <u>exercised</u> all <u>due diligence</u> to <u>prevent</u> the commission of such offence → then not liable
Company	director, manager, secretary, other officer		
Partnership firm/ LLP	partner		
HUF	karta		
Trust	managing trustee		

COMPOUNDING OF OFFENCES – SEC 138

(Compounding = Fine instead of prosecution/ imprisonment)

COMPOUNDING NOT TO BE ALLOWED TO THE SOME PERSONS

- a) A person who had been allowed to compound once earlier, in respect of any offence specified in clauses (a) to (f) of Sec 132(1) and the offences specified in clause (l) which are relatable to (a) to (f).
- b) A person who had been allowed to compound once earlier, in respect of any offence, other than above, under this Act/ SGST/ UTGST/ IGST Act in respect of supplies of value exceeding Rs. 1 crore.
- c) A person who has been accused of committing an offence under this Act, which is also an offence under any other law.
- d) A person who has been convicted for an offence under this Act by a court
- e) A person who has been accused of committing an offence specified in clause (g)/ (j)/ (k) of Sec 132(1)
- f) Any other class of persons or offences as may be prescribed

- (1) Accused person may, before/ after the institution of prosecution, make an application in **FORM GST CPD-01** to the Commissioner for compounding of an offence.
 - (2) On receipt of application, Commissioner shall call for a report from concerned officer, and pass **order** for acceptance/ rejection within 90 days of the receipt of the application.
 - (3) If the Commissioner is satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case → he may pass acceptance order in **FORM GST CPD-02**, indicating the compounding amount and grant him immunity from prosecution. [which means if pays the amount, then **no further proceedings** shall be initiated under this Act against the accused person. Any criminal proceedings already initiated for it, shall stand abated]
 - (4) Compounding allowed only if the person has **paid tax, interest and penalty involved** in such offences.
 - (5) If commissioner is not satisfied, he will give opportunity of being heard, and may **reject** the application, recording the grounds of such rejection.
 - (6) The applicant shall **pay** the compounding amount **within 30 days** from the date of the receipt of the order and shall furnish the proof of such payment to the commissioner.
 - (7) Compounding amount → **Minimum** = Higher of Rs. 10,000/ 50% of the tax; **Maximum** = Higher of Rs. 30,000/ 150% of the tax.
 - (8) In case the applicant **fails to pay** the compounding amount within the time, the order will become void.
- The compounding allowed shall **not affect** the proceedings instituted under **any other law**.

Immunity granted may be withdrawn by the Commissioner at any time, if he is satisfied - such person had concealed material particulars/ had given false evidence, during compounding proceedings. Then, he will be tried for the (offence for which he was given immunity) + (offence that he has committed wrt compounding proceedings), and provisions of Act shall apply as if no immunity granted.

End of Presentation!

What we learned -

- Penalty for Certain offences – Section 122
- Failure to furnish Information Return – Sec 123
- Failure to furnish Statistics Return – Sec 124
- General Penalty – Sec 125
- Disciplines relating to penalty – Sec 126
- Order for Penalty – Sec 127
- Waiver of Penalty/ Fee – Sec 128
- Detention of Goods – Sec 129
- Confiscation of Goods – Sec 130
- Option to pay Fine
- No Prejudice to other punishments – Sec 131
- Punishment – Sec 132
- Liability of Officers – Sec 133
- Cognizance of Offences – Sec 134
- Presumption of Culpable Mental State – Sec 135
- Relevancy of Statements – Sec 136
- Offence by Company – Sec 137
- Compounding of Offences – Sec 138

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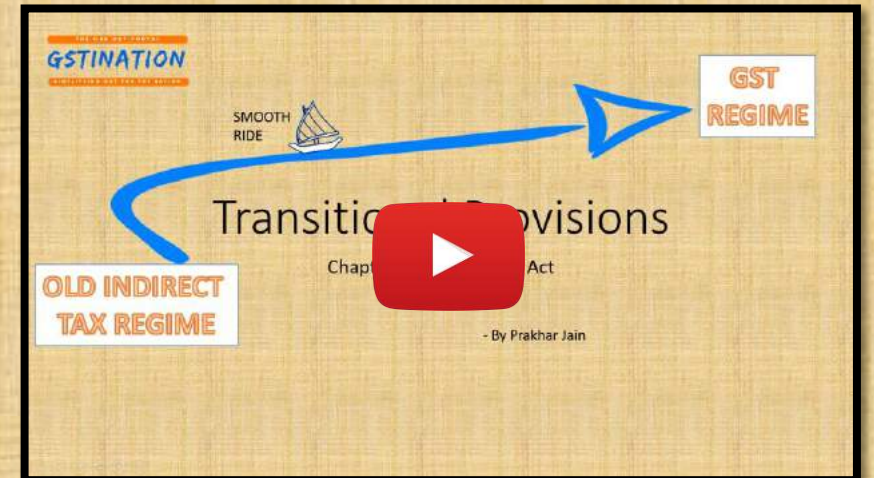
**GST
REGIME**

Transitional Provisions

Chapter XX of the CGST Act

- By Prakhar Jain

**OLD INDIRECT
TAX REGIME**



MIGRATION – SEC 139



- Every person - registered under any of old laws & having a valid PAN, shall be issued a provisional registration certificate, person will have to give additional information in FORM GST REG-26, after verification of which, the final certificate of registration shall be granted. Provisional registration shall be cancelled, unless replaced by a final certificate of registration within due date.
- Person can file an application for cancellation of provisional registration, if he is not liable to register as per Sec 22/ 24. And the provisional registration certificate shall be deemed to have not been issued.

TRANSITIONAL ITC – SEC 140



CENVAT CARRY FORWARD

- An RTP (other than composition dealer) shall be entitled to carry forward the amount of CENVAT credit shown as remaining in the return for last period before GST, furnished by him under old law.
- Credit shall not be allowed in the following circumstances —
 - Where the said amount is not admissible as ITC under this Act
 - Where all returns for past 6 months before GST has not been furnished
 - Where said amount relates to goods manufactured and cleared under exemption notifications

UNAVAILED CENVAT ON CAPITAL GOODS

An RTP (other than composition dealer) shall be entitled to take credit of the unavailed CENVAT credit on capital goods, provided the said credit was admissible as CENVAT under old law and is also admissible as ITC under this Act.

[“Unavailed CENVAT credit” = CENVAT credit entitled to take (-) CENVAT credit already availed]

ITC ON STOCK

An RTP, who was –

not liable to be registered under old law	engaged in the supply of exempted goods/ services
providing works contract service under notification 26/ 2012 (under Abatement)	first stage dealer/ second stage dealer/ registered importer/ depot of a manufacturer

shall be entitled to take credit of excise duty paid on → inputs/ semi-finished/ finished goods held in stock on transition day (1st July 2017) subject to the following conditions —

Goods are used/ intended to be used for making taxable supplies	ITC on such inputs is eligible under this Act	If supplier of services → not eligible for any abatement under this Act
The RTP is in possession of invoice/ other prescribed documents evidencing payment of duty, not issued earlier than 12 months before the transition day		

NON –AVAILABILITY OF DUTY PAYING DOCUMENTS

Where an RTP (other than a manufacturer/ supplier of services) is not in possession of an invoice/ other document evidencing payment of duty, then such RTP shall be allowed to take ITC on stock, provided he shall pass on the benefit of such ITC by way of reduced prices to the recipient. The scheme shall be available for 6 tax periods (months) from the transition date.

Type of Goods	Amount of Eligible ITC	When person will get ITC
Goods attracting GST @ 18% or more	60% of the CGST/ 30% of the IGST applicable on supply (sale) of such goods	ITC shall be credited after the CGST payable on such supply (sale) has been paid
Other Goods	40% of the CGST/ 20% of the IGST applicable on supply (sale) of such goods	

CONDITIONS -

- Such goods were not unconditionally exempt from the whole of the excise duty or were not nil rated
- The document for procurement of such goods (invoice) is available with the RTP
- RTP availing of this scheme and having furnished the details of stock held by him in FORM GST TRAN-1 (discussed afterwards), submits a statement in **FORM GST TRAN 2** at the end of each 6 months during which the scheme is in operation, and indicating in it, the details of supplies of such goods effected during the month.
- Each month, on the basis of FORM GST TRAN-2, the amount of credit allowed shall be credited to the electronic credit ledger.
- The stock of goods on which the credit is so availed is to be stored in such a manner that it can be easily identified by the RTP. (So need to separate such stock from other stock)



TAXABLE AS WELL AS EXEMPT EARLIER, ALL TAXABLE NOW

A RTP, who was engaged in supply of both taxable & exempted goods/ services earlier, but which are wholly taxable under this Act, shall be entitled to take credit of —

- a) CENVAT credit carried forward in last return before GST; and
- b) Excise duties paid on inputs/ semi-finished/ finished goods held in stock on transition day, relating to such exempted goods or services. (Earlier, the output was exempted so corresponding inputs were not allowed, but now taxable, so allowed)

- RTP shall be entitled to take credit of excise duty/ service tax paid under earlier law, on inputs/ input services received on or after the transition day, provided the invoice or any/ other duty or tax paying document of the same was recorded in his accounts within 30 days from the transition day (Period of 30 days may be extended by the Commissioner for a further period not exceeding 30 days).

CREDIT OF OLD TAX PAID ON GOODS/ SERVICES RECEIVED AFTER TRANSITION DAY

COMPOSITION TAXPAYER EARLIER, NOW NORMAL RTP

- A RTP who was earlier, either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable, shall be entitled to take credit of excise duty paid on inputs/ semi-finished/ finished goods held in stock on transition day subject to the following conditions —
 - Such goods are used/ intended to be used for making taxable supplies
 - RTP is not paying tax u/s 10 (composition)
 - RTP is eligible for ITC on such inputs under this Act
 - RTP is in possession of invoice/ other duty paying document, which were not issued earlier than 12 months before transition day

SERVICES RECEIVED BY ISD BEFORE TRANSITION

- ITC on services received prior to the transition day by an ISD, shall be eligible for distribution as GST credit, even if invoices relating to such services are received on or after the transition day.

CENTRALISED REGISTRATION

- Where RTP had centralised registration under old law, such person shall be allowed to take credit of the CENVAT credit carried forward in last return before GST. The credit may be transferred to any of the RTPs having same PAN, Conditions —
 - i. If last return was furnished within 3 months of transition day, then credit allowed only if return was either an original return, or a revised return where credit was reduced.
 - ii. The said amount is admissible as ITC under this Act.

RE-AVAILMENT OF REVERSED CENVAT

- Where any CENVAT credit of service tax paid on input services had been reversed due to non-payment of consideration within 3 months, such credit can be reclaimed, provided RTP has paid the consideration within 3 months from the transition day.

Explanation: “Excise duty” includes —

- Additional duty of excise leviable u/s 3 of the Additional Duties of Excise (Goods of Special Importance) Act and the Additional Duties of Excise (Textile and Textile Articles) Act
- Additional duty leviable Sec 3(1) & 3(5) of the Customs Tariff Act, 1975;
- Excise Duty specified in the First & Second Schedule to the Central Excise Tariff Act, 1985;
- National Calamity Contingent Duty (NCCD) leviable u/s 136 of the Finance Act, 2001.

TRANSITIONAL PROVISIONS RELATING TO JOB WORK – SEC 141



- Where –
 - **Inputs** had been sent (as such or after being partially processed) prior to the transition day to a job worker for further processing, testing, repair, reconditioning or any other purpose,
 - **Semi-finished goods** were removed prior to the transition day to any other premises for carrying out manufacturing processes as per old law
 - **Any Excisable Goods**, were sent for carrying out tests or any other process not amounting to manufacture
- and they are returned on or after the transition day → no tax shall be payable if returned within 6 months from the transition day. [Period of 6 months may be extended by the Commissioner for a further period not exceeding 2 months]
- If not returned within the period specified, the ITC shall be liable to be recovered as per Sec 142(8)(a).
- In case of points (b) & (c), the manufacturer may, instead of receiving back, transfer the said goods within the period specified on payment of tax in India or without payment of tax for exports.
- Need to submit FORM GST TRAN-1 , specifying therein, the stock of the inputs, semi-finished goods or finished goods, as applicable, held by him on the transition day

FORM GST TRAN-1

1. Every RTP entitled to take credit under the transitional provisions, shall **submit FORM GST TRAN-1** within 90 days of the transition day. [Commissioner may extend the period by a further period not exceeding 90 days]
2. Where the inputs have been received from an EOU/ unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in Rule 3(7) of the CENVAT Credit Rules, 2004.
3. The amount of credit specified in **FORM GST TRAN-1** shall be credited to the electronic credit ledger of the applicant. Any amount credited may be verified and proceedings u/s 73 or 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.
4. Every RTP who has submitted FORM GST TRAN-1 within the time limits as applicable, then he **may revise it once** and submit the revised declaration in FORM GST TRAN-1 within period as may be prescribed.

INFORMATION REQUIRED IN FORM GST TRAN-1 -

- a) Where claim of unavailed ITC on capital goods, specify separately the amount of ITC availed, and the amount of ITC yet to be availed till the transition day, in respect of every item of capital goods as on the transition day.
- b) Where claim of ITC in stock held, specify separately the details of stock held on the transition day.
- c) In the case where inputs/ input services were received on or after the appointed day but the excise duty/ service tax in respect of them has been paid by the supplier under the old law, then furnish the following details :—
 - i. Name of the supplier, serial number and date of issue of the invoice by the supplier/ any other document on the basis of which ITC was admissible under old law.
 - ii. Description and Value of the goods or services;
 - iii. Quantity in case of goods and the unit or unit quantity code thereof;
 - iv. The amount of eligible taxes/ duties, VAT/ entry tax charged by the supplier in respect of the goods or services; and
 - v. Date on which the receipt of goods or services is entered in the books of account of the recipient.

OTHER PROVISIONS – SEC 142

SALES RETURN

Where –

- Goods were removed within 6 months before transition day,
- Excise duty had been paid at the time of removal,
- They are returned on or after the transition day, within 6 months
- Such goods are identifiable to the satisfaction of the PO
- The person returning the goods is not registered in GST

→ RTP eligible for refund of excise duty paid

[If the goods are returned by a RTP, then it shall be deemed to be a supply. And thus, he will get input tax credit on it]

REFUND CLAIM

- If any **refund claim** has been filed before, on or after the transition day, in respect of –
 - CENVAT credit, duty, tax, interest or any other amount paid under old law, ,
 - Duty or tax paid under existing law in respect of the goods or services exported
 - Services not provided
- If any proceeding of appeal, review or reference relating to a **claim for CENVAT credit** was initiated before, on or after the transition day.

→ They shall be disposed as per old law only.

- Any amount accruing as refund shall be paid in cash, NWA to the contrary contained in old law [Except Sec 11B(2) of the Central Excise Act, 1944)]
- Where the claim fully or partially rejected, the amount so rejected shall lapse.
- No refund shall be allowed where the balance of the said amount has been carried forward under this Act.

PRICE REVISION

Where a contract was entered into prior to transition day, and in pursuance of it, the **price** of any goods/ services/ both is –

- Revised upwards** on or after the transition day → the registered supplier shall issue a supplementary invoice/ debit note, containing prescribed particulars, within 30 days of such price revision. It shall be deemed to be issued in respect of an outward supply made under this Act. (and thus there will be GST liability on it)
- Revised downwards** on or after the transition day → the registered supplier may issue a credit note, containing prescribed particulars, within 30 days of such price revision. It shall be deemed to have be issued in respect of an outward supply made under this Act. (and thus will be eligible to reduce the tax liability in GST, but only if the recipient of the credit note has reduced his ITC corresponding to such reduction of tax liability)

PROCEEDINGS AND REVISED RETURN

- If any proceeding of appeal, review or reference was initiated before, on or after the transition day, relating to –
 - Recovery of CENVAT credit
 - Any output duty or tax liability

→ Then they shall be disposed as per old law only.

- If any assessment or adjudication proceeding was instituted before, on or after the transition day

- Where any return furnished under old law is revised after the transition day, and if due to such revision –
 - (i) any amount is found to be recoverable or
 - (ii) any amount of CENVAT credit is found to be inadmissible

If any amount –

- Becomes recoverable → same shall be recovered as an arrear of GST (unless already recovered under old law) and the amount so recovered shall not be admissible as ITC under this Act.
- Found to be admissible/ refundable → it shall be refunded to him in cash, NWA to the contrary contained in old law [Except Sec 11B(2) of the Central Excise Act, 1944]], and if any amount rejected, it shall not be admissible as ITC under this Act.

DETERMINATION OF APPLICABLE LAW

<p>Supply after transition, under an earlier contract</p>	<p>(Save as otherwise provided in this Chapter) Where goods/ services/ both are supplied on or after the transition day, as per a contract entered into prior to transition day → they shall be liable to tax under the this Act (GST will be leviable)</p>
<p>Tax paid under earlier law on any supply</p>	<p>NWA in Sec 12/ 13 (Time of Supply), GST shall not be payable on –</p> <ul style="list-style-type: none"> (a) Goods, to the extent the tax was leviable under the VAT Act of the State. (b) Services, to the extent the tax was leviable under Service Tax Act (Chapter V of the Finance Act, 1994)
<p>Refund of (VAT + ST) paid, and GST leviable</p>	<p>Where tax was paid on any supply made after the transition day, under both VAT Act and Service Tax Act (means it was works contract/ food supply) → GST shall be leviable, and person can take credit of VAT/ service tax paid under old law.</p> <p>Required to submit FORM GST TRAN-1, furnishing the proportion of supply on which VAT/ ST has been paid before the transition day but the supply is made after the transition day, and the ITC admissible thereon.</p>
<p>Goods sent on Approval Basis</p>	<p>Where any goods sent on approval basis within 6 months before transition day, and they are rejected or not approved by the buyer and returned to the seller on or after the transition day → no tax shall be payable thereon if such goods are returned within 6 months from the transition day. (Period of six months may be extended by the Commissioner for a further period not exceeding 2 months). Person must submit details of such goods sent on approval in FORM GST TRAN-1.</p> <ul style="list-style-type: none"> ○ If returned after the specified period, then tax shall be payable by the person returning the goods ○ If not returned within specified period, then tax shall be payable by the person who had sent the goods on approval basis
<p>TDS deducted under earlier law</p>	<p>Where a supplier had made any sale of goods in respect of which any TDS was to be deducted under any VAT law of any State/ UT, and has also issued an invoice for the same before the transition day → no TDS u/s 51 shall be deducted by the deductor where payment to the said supplier is made on or after the transition day.</p>

End of Presentation!

What we learned -

- Migration – Sec 139
- Transitional ITC – Sec 140
 - CENVAT Carry Forward
 - Unavailed CENVAT on Capital Goods
 - ITC on Stock
 - Non –Availability of Duty Paying Documents
 - Conditions
 - Taxable As well as Exempt Earlier, all taxable now
 - Credit of Old Tax paid on goods/ services received after transition day
 - Composition taxpayer earlier, now Normal RTP
 - Services received by ISD before transition
 - Centralised Registration
 - Re-Availment of Reversed CENVAT
- Transitional Provisions relating to Job Work – Sec 141
- Form GST TRAN-1
 - Information required in FORM GST TRAN-1
- Miscellaneous Transitional Provisions – Sec 142
 - Sales Return
 - Price Revision
 - Refund Claim
 - Proceedings and Revised Return
 - Determination of Applicable Law

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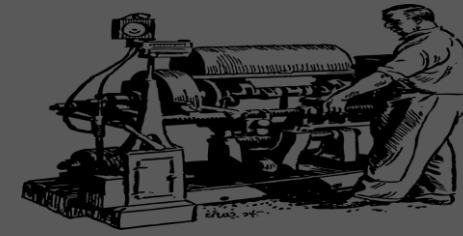
Miscellaneous

Chapter XXI of the CGST Act

- By Prakhar Jain



JOB WORK PROCEDURE – SEC 143



A registered principal may send any inputs or capital goods, without payment of tax, to a job worker for job work (and from there send to another job worker etc...), under intimation and shall either,--

1. Bring back to any of his place of business, without payment of tax, or
 2. Supply such inputs/ capital goods, from the place of business of a job worker, on payment of tax within India, or with/ without payment of tax for export,
- The inputs within 1 year and the capital goods within 3 years of their being sent out.

[Moulds and dies, jigs and fixtures, or tools need not be brought back/ supplied]

- If wish to supply the goods from the place of business of a job worker as per second option above, then the principle must declare place of business of the job worker as his additional place of business, except where –
 - i. Where the job worker is registered; or
 - ii. Where the principal is engaged in the supply of notified goods.
- Any waste and scrap generated during the job work may be supplied by - the job worker (if registered) directly from his place of business on payment of tax, otherwise by the principal.
- The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

FAILURE

Where the inputs/ capital goods sent are not received back/ not supplied within a period of 1 year and 3 years respectively, of their being sent out, it shall be deemed that they had been supplied by the principal to the job worker on the day when they were sent out. (On back date)(And thus tax liability shall arise immediately along with interest)

EXPLANATION

For the purposes of job work, input includes intermediate goods arising from any treatment/ process carried out on the inputs by principal/ job worker.

PRESUMPTION AS TO DOCUMENTS IN CERTAIN CASES – SEC 144

WHERE

- 1) Any document -
 - (i) is produced by any person
 - (ii) has been seized from the custody/ control of any person
 - (iii) has been received from any place outside India in the course of any proceedings under this Act/ any other law for the time being in force,



AND

- 2) Such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, then the court shall –
 - (a) Presume (unless the contrary is proved by such person) -
 - i. the truth of the contents of such document;
 - ii. that the signature and every other part which -
 - a) appears to be in the handwriting of any particular person or
 - b) which the court may reasonably assume to be in the handwriting of, any particular person,is actually in that person's handwriting, and that it was executed/ attested (signed) by the person.
 - (b) Admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

ADMISSIBILITY OF VIDEOS, FAX AND PRINT-OUTS AS EVIDENCE – SEC 145

NWA –

- a) A micro film/ the reproduction of the image(s) embodied in such micro film (whether enlarged or not)
- b) Any information stored electronically in any device/ media, including any hard copies of them.
- c) A facsimile (fax) copy of a document;
- d) Computer Print-outs, (subject to prescribed conditions)



All shall be deemed to be a document in any proceedings under this Act and the rules made thereunder, and shall be admissible as evidence [of any contents of the original or of any fact stated therein of which direct evidence would be admissible], without further proof or production of the original.

Where in any proceedings, it is desired to give a statement in evidence of such above 'documents', a certificate may be produced,—

- i. identifying the 'document' containing the statement and describing the manner in which it was produced;
- ii. giving such particulars of any device which shows that the document was produced by a computer,

Shall be considered evidence for that matter (It may be to the best of the knowledge and belief of the person stating it)

SECTIONS 146-149

COMMON PORTAL - SECTION 146



- The Government may, notify the Common GST Electronic Portal for facilitating registration, payment, returns, computation and settlement of IGST, E-way bill and for carrying out other prescribed functions. (www.gst.gov.in)

DEEMED EXPORTS - SECTION 147



- The Government may notify certain supplies of goods as **deemed exports**, even where such goods supplied do not leave India and where payment is received either in Indian rupees or in convertible foreign exchange, but such goods are **manufactured in India**.

SPECIAL PROCEDURES FOR CERTAIN PERSONS - SECTION 148



- The Government may notify certain classes of RTPs, and the **special procedures** to be followed by them, including those with regard to registration, furnishing of return, payment of tax and administration of such persons. (Subject to such conditions and safeguards as may be prescribed)

GST COMPLIANCE RATING - SECTION 149

- Every RTP may be assigned a GST compliance rating score by the Government based on his record of compliance with the provisions of this Act. It may be determined on the basis of prescribed parameters.
- It may be **updated** at periodic intervals and **intimated** to the RTP and also **placed** in the public domain in prescribed manner.



INFORMATION RETURN – SECTION 150



NON FURNISHING

Where a person has **not furnished** an information return, which he is required to furnish, within the time specified, the said authority may serve upon him a **notice requiring furnishing within 90 days** from the notice and such **person shall furnish** the information return.

Any person, being –

(a) a taxable person ; or		(b) a LA or other public body or association		(c) Tax collection authority of the CG/ SG	
(d) an income tax authority	(e) a banking company	(f) a State Electricity Board or an electricity distribution or transmission licensee or any other entity entrusted with such functions by the CG or the SG			
(g) the Registrar/ Registrar under Registration Act, 1908;	(h) a Registrar within the meaning of the Companies Act, 2013; (RoC)		(i) the registering authority (RTO) under the Motor Vehicles Act, 1988; or		
(j) the Collector referred in Sec 3(c) of the RFCTLARR Act, 2013;	(k) the recognised stock exchange referred in Sec 2(f) of the SCRA, 1956;		(l) an officer of the RBI as under section 3 of the RBI Act, 1934; or		
(m) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996		(n) the Goods and Services Tax Network		(o) a UIN Holder	
(p) any other specified person,					

Who are responsible for maintaining record of following under any law for the time being in force, -

(i) Registration	(ii) Statement of accounts	(iii) Periodic return	(iv) Bank account transactions	(v) Electricity Consumption
(vi) Document containing details of payment of tax and other details of transaction of goods or services or both		(vii) Transaction of purchase, sale or exchange of goods or property or right or interest in a property		

These all persons shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

DEFECT

Where the **Commissioner** (or an officer authorised) **considers** that the information furnished is **defective**, he may intimate the defect to the person and give him an opportunity of rectifying within 30 days from such intimation or within such further period which the said authority may allow (on an application made in this behalf).

If the defect is **not rectified** within the said period, then, NWA anything contained in Act, such information return shall be treated as **not furnished** and the provisions of this Act shall apply accordingly.

NON-DISCLOSURE OF INFORMATION – SEC 152

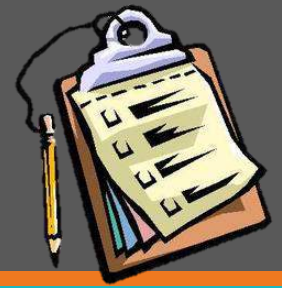


- No information in any individual return given under Sec 150/ 151 shall, be -
 - **Published** in such manner so as to enable such particulars to be identified as referring to a particular person, and
 - **Used** for the purpose of any proceedings under this Act.

(Without the previous written consent of the person/ his authorised representative)

- Any person who is not engaged in the collection of statistics/ compilation or computerisation thereof, shall **not be permitted to see/ have access** to any information or any individual return referred to in section 151 (Except for the purposes of prosecution under this Act or any other Act for the time being in force).
- This section shall not prevent the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information

POWER TO COLLECT STATISTICS – SEC 151



1. The Commissioner may direct that **statistics** may be **collected** relating to any matter dealt with by or in connection with this Act, by notification.
2. Upon such notification, the Commissioner (or any person authorised) may call upon the concerned persons to **furnish** such information or returns relating to any matter in respect of which statistics is to be collected, in prescribed form and manner.

SECTIONS 153-157



<u>Sec 153:</u> Expert Assistance	<u>Assistant Commissioner or above</u> ranking officer may take assistance of any expert <u>at any stage of proceedings before him, having regard to the nature and complexity of the case and the interest of revenue</u>
<u>Sec 154:</u> Power to take goods samples	The <u>Commissioner</u> (or an authorised officer) <u>may take</u> samples of goods from the possession of any taxable person and <u>provide a receipt</u> for any samples so taken.
<u>Sec 155:</u> Burden of Proof for ITC	Where any <u>person claims</u> that he is <u>eligible for input tax credit</u> , the <u>burden of proving</u> such claim shall lie on such person.
<u>Sec 156:</u> Deemed Public Servants	All <u>persons discharging functions under this Act</u> shall be <u>deemed</u> to be public servants within the meaning of section 21 of the Indian Penal Code.
<u>Sec 157:</u> Protection of action under Act	No suit/ prosecution/ other legal proceedings shall lie against - <ul style="list-style-type: none">• The President, State President, Members, officers or other employees of the Appellate Tribunal (or any other person authorised by the said Appellate Tribunal)• Any officer appointed or authorised under this Act <u>for anything which is done or intended to be done in good faith under this Act or the rules.</u>

DISCLOSURE OF INFORMATION BY A PUBLIC SERVANT – SEC 158



1. All particulars contained in the following shall not be disclosed –

- i. Any **statement made**, return furnished or accounts or documents produced in accordance with this Act,
- ii. Any **record of evidence given** in the course of proceedings under this Act (other than proceedings before a criminal court),
- iii. Any **record of any proceedings** under this Act.

2. No court shall require any officer to produce before it or to give evidence before it in respect of above particulars, NWA contained in the Indian Evidence Act, 1872.

Nothing contained in this section shall apply to the disclosure of –

(a) any particulars, in respect of any prosecution under the <u>Indian Penal Code</u> or the <u>Prevention of Corruption Act, 1988</u> , or any other law for the time being in force	(b) any particulars, <u>to the CG or the SG</u> or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act
(c) any particulars when such disclosure is due to <u>service of any notice or recovery</u> of any demand	(d) any <u>particulars, to a civil court in any suit or proceedings</u> , in relation to any matter arising out of this act/ any other law, and where Government/ any authority under this Act is a party, and a power thereunder is exercised
(e) any particulars, to any <u>officer appointed for audit</u> of tax receipts or refunds of the tax imposed by this Act	(f) any particulars, <u>where</u> such particulars relevant for any <u>inquiry into the conduct of any officer</u> appointed or authorised under this Act, <u>to any person or persons appointed as an inquiry officer</u>
(g) any such particulars <u>to an officer</u> of the CG or of any SG, as may be necessary <u>for the purpose of enabling that Government to levy or realise any tax or duty</u>	(h) any particulars, <u>by a public servant or any other statutory authority</u> , in exercise of its powers
(i) any particulars, <u>relevant to any inquiry into a charge of misconduct</u> against a tax <u>practitioner</u> , practising advocate/ cost accountant/ chartered accountant/ company secretary, <u>to the authority empowered to take disciplinary action</u> against the such people	(j) any particulars, <u>to any agency appointed for the purposes of data entry</u> on any automated system <u>or for the purpose of operating, upgrading or maintaining</u> any automated system where such <u>agency is contractually bound</u> not to use or disclose such particulars except for the aforesaid purposes
(k) any particulars, to an <u>officer of the Government</u> as may be necessary for the purposes of any other law	(l) any <u>information relating to any class of taxable persons or class of transactions</u> for publication, if in the opinion of the Commissioner, it is desirable



PUBLICATION OF INFORMATION IN CERTAIN CASES – SEC 159

1. The Commissioner (or any other officer authorised by him), **may publish** the **name** of any person **and any other particulars** relating to any proceedings or prosecution under this Act in respect of such person, in such manner as it thinks fit, if it thinks it is necessary in public interest.
2. **No publication** as above shall be made **in relation to any penalty imposed** under this Act **until the time for presenting an appeal** to the Appellate Authority u/s 107 has **expired** without appeal, or the appeal presented has been disposed of.
3. In the case of firm, company or other AoPs, the **names** of the partners, directors, managing agents, secretaries, treasurers, managers of the company, or the members of the association, as the case may be, **may also be published** if, in the opinion of the Commissioner (or any other officer authorised by him), circumstances of the case justify it.

ASSESSMENT PROCEEDINGS NOT INVALID – SEC 160



- No proceedings under this Act shall be invalid merely by reason of any **mistake**, defect or omission, if such proceedings are in substance and effect in conformity with/ according to the intents, purposes and requirements of this Act or any existing law.
- The **service** of any notice, order or communication shall **not** be called in question, if -
 - 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 earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

Rectification of Apparent Errors – Sec 161



- NWA anything in this Act, **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
 - upon such error being brought to its notice by any officer appointed under CGST/ SGST/ UTGST Act or by the affected person
- within a period of **3 months** from the date of issue of such decision/ order/ notice/ certificate/ any other document.
- No such rectification after a period of **6 months** from date of issue of decision/ order/ notice/ certificate/ any other document.
- But this time limit of 6 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.
- Where such rectification **adversely affects** any person, the principles of **natural justice** shall be followed by the authority carrying out such rectification. (Opportunity of being heard will be given)

BAR ON JURISDICTION OF CIVIL COURTS - SEC 162

Save as provided in Sec 117/ 118, 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 this Act.

LEVY OF FEES FOR COPIES - SEC 163

Wherever a **copy** of any order or document is to be **provided** to any person on an application made by him for that purpose, there shall be paid a prescribed **fee**.

POWER TO MAKE RULES - SEC 164

1. The Government may make **rules** for carrying out the provisions of this Act, by notification.
2. Without prejudice to generality of above, the Government may make rules for matters for which -
 - a) Rules are compulsorily required to be made, or
 - b) For which rules may be prescribed.
3. This power to make rules shall include the power to give **retrospective effect** to the rules or any of them from a date not earlier than the date of this Act coming into force.
4. Any rules made may provide that a **contravention** thereof shall be liable to a penalty not exceeding Rs. 10,000.

POWER TO MAKE REGULATIONS - SEC 165

The **Board may make regulations** consistent with this Act and rules to carry out the provisions of this Act, by notification.

LAYING OF RULES, REGULATIONS & NOTIFICATIONS - SEC 166

Every rule made by the Government, **every regulation made** by the Board and **every notification issued** by the Government under this Act, shall be laid as soon as may be after it is made or issued, before each House of 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)

If before the expiry of the **next session** (the session after the session(s) in which it was laid down), both Houses agree in making any modification in the rule or regulation or in the notification, or that it should not be made, the rule/ regulation/ notification shall henceforth be so modified/ annulled. But anything previously done under that rule/ regulation/ notification shall remain valid.

DELEGATION OF POWERS – SEC 167

The Commissioner may direct by a notification that, any power exercisable by any authority/ officer under this Act may be exercisable also by another authority/ officer, and it may be subject to any specified conditions.

POWER TO ISSUE INSTRUCTIONS & DIRECTIONS – SEC 168

1. The Board may issue such **orders, instructions or directions** to the central tax officers as it may deem fit. All such officers and all other persons employed in the implementation of this Act shall follow them.
2. The Commissioner specified in Sec 2(91), Sec 5(3), Sec 25(9)(b), Sec 35(3)/ (4), Sec 37(1), Sec 38(2), Sec 39(6), Sec 66(5), Sec 143(1), Sec 151(1), Sec 158(3)(1) and Sec 167, shall mean a **Commissioner or Joint Secretary** posted in the Board and they shall exercise the specified powers only with the approval of the Board.

SERVICE OF NOTICE/ ORDERS ETC- SEC 169

Any decision, order, summons, notice or other communication shall be **served** by any one of **following methods** –

- a) by giving **directly** (or by a messenger/ **courier**) to addressee/ taxable person/ his manager/ authorised representative/ authorised advocate or tax practitioner/ his employee/ adult family member residing with the taxable person
 - b) by registered **post**/ speed post/ courier **with acknowledgement due**, to the person for whom it is intended/ his authorised representative, at his last known place of business or residence
 - c) by sending an **email** to his e-mail address provided at the time of registration or as amended
 - d) by making it available on the **common portal**
 - e) by publication in a **newspaper** circulating in RTP's/ Recipient's locality of residence/ business place
 - f) if none of the modes above is practicable, by **affixing** it in some conspicuous place at his last known place of business/ residence. If this is also not practicable, then by affixing a copy on the notice board of the office of the concerned officer/ authority who or which passed such decision or order or issued such summons or notice.
- They shall be deemed to have been served on the date on which any of above is done.
 - When sent by registered post/ speed post, deemed to have been received at expiry of period normally taken for transit (unless contrary is proved).

ROUNDING OFF – SEC 170

The **amount** of tax, interest, penalty, fine or any other sum payable, amount of refund or any other sum due → **rounded off to the nearest rupee.**

REMOVAL OF DIFFICULTIES – SEC 172

- If any difficulty arises in giving effect to any provision of this Act, the Government may, **make such provisions (not inconsistent** with the provisions of this Act or the rules or regulations made thereunder) as may be necessary or expedient for the purpose of removing the said difficulty, **by** a general or a special **order** published in the Official Gazette.
- No such order shall be made after the expiry of a period of **3 years** from the date of commencement of this Act.
- Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

REPEALS AND SAVINGS – SECTIONS 173 & 174

- Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be **omitted**. (Service Tax Act deleted)
- Save as otherwise provided in this Act, on and from the date of commencement of this Act, **following are hereby repealed** –
 - a. the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List),
 - b. the Medicinal and Toilet Preparations (Excise Duties) Act, 1955,
 - c. the Additional Duties of Excise (Goods of Special Importance) Act, 1957,
 - d. the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and
 - e. the Central Excise Tariff Act, 1985[We shall to these as 'repealed acts']
- The **repeal** of the said Acts **shall not** –
 - a) **revive anything not in force** or existing at the time of such amendment or repeal.
 - b) **affect the previous operation** of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder.
 - c) **affect any right, privilege, obligation, or liability under the repealed Acts** or orders thereunder. Any tax exemption granted as an incentive against investment through a notification, shall not continue as privilege if notification is rescinded.
 - d) **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 repealed Acts.
 - e) **affect any proceedings or recovery of arrears or remedy**, and they may be instituted, continued or enforced, and any tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;
 - f) **affect** any proceedings relating to an **appeal, review or reference** under the repealed Acts and such proceedings shall be continued as if this Act had not come into force and the said Acts had not been repealed.

Above references shall not prejudice general application of Sec 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

ANTI-PROFITEERING (SECTION 171 & RULES)

- Any reduction in rate of tax on any supply, or the benefit of input tax credit - shall be passed on to the recipient by way of commensurate reduction in prices.
- The CG may constitute an Authority, by notification, or empower an existing Authority, to examine whether input tax credits availed or the reduction in the tax rate have actually resulted in a commensurate reduction in the price by any RTP.

CONSTITUTION OF THE AUTHORITY

The Authority shall consist of -

- a) A Chairman who holds (or has held) a post equivalent in rank to Secretary to the GOI; and
- b) 4 Technical Members to be nominated by the Council, who are (or have been) Commissioners of State tax/ central tax for at least 1 year or have held an equivalent post under the old indirect tax laws.
- c) The Additional DGoS under the Board (CBEC) shall be the Secretary to the Authority.

The Authority shall cease to exist after the expiry of 2 years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

TENURE

Chairman/ Technical Member - term of 2 years from the date of entry in office, or until age of 65 years, whichever is earlier.

- a) A retiring chairman/ technical member shall be eligible for reappointment.
- b) Any person who of age 62 years, shall not be selected.
- c) CG may terminate the appointment at any time (with approval of Chairperson of GST Council).

TERMS FOR MEMBERS

APPOINTMENT

Chairman and Members of the Authority shall be **appointed** by the CG on recommendations of a Selection Committee (to be constituted by GST Council)

SALARY & ALLOWANCES

- **Chairman** - monthly salary = Rs. 2,25,000 (fixed), other allowances = as are admissible to a CG officer getting the same pay. Where a retired officer is Chairman, monthly salary reduced by the amount of pension.
- **Technical Member** - monthly salary & other allowances = as are admissible when holding an equivalent Group 'A' post in GOI. Where a retired officer is Technical Member, monthly salary = last drawn salary reduced by the amount of pension (as per Seventh Pay Commission)

POWER TO DETERMINE THE METHODOLOGY AND PROCEDURE

- The Authority may determine the methodology + procedure - for determination as to whether or not, the reduction in the rate of tax or the benefit of ITC, has been passed on by the RTP to the recipient by way of commensurate reduction in prices.

DUTIES OF THE AUTHORITY

- a) To **determine** whether any reduction in the rate of tax or the benefit of ITC has **been passed on** to the recipient or not.
- b) To **identify** the RTP who has not passed on the benefit.
- c) To make **orders** against defaulting dealers, and in favour of aggrieved recipients.
- d) To **furnish** a performance report to the Council by the 10th of the close of each quarter.

SCREENING AND PRIMA FACIE DETERMINATION

1. An **interested party/ Commissioner/ any other person** may make an application for where they claim that benefit has not been passed on.
 - All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee. If it is satisfied, that supplier has indeed contravened Sec 171 by not passing on the benefit, it will forward application to the Standing Committee for further action.
2. The **Standing Committee** shall, within 2 months from date of the receipt of written application from, examine the accuracy and adequacy of the evidence provided in the application. It will determine whether there is *prima-facie* evidence to support the claim of the applicant that the benefit has not been passed on to the recipient.
3. If *prima-facie* evidence proves supplier has not passed on the benefit, Standing Committee shall refer the matter to the Director General of Safeguards (DGoS) for a detailed investigation.

STANDING COMMITTEE AND SCREENING COMMITTEES

1. The Council may constitute "Standing Committee on Anti-profiteering" consisting of nominated officers of the SG and CG.
2. A "State level Screening Committee" shall be constituted in each State by the SGs which shall consist of-
 - 1 officer of SG, nominated by Commissioner, and
 - 1 officer of CG, nominated by Chief Commissioner.

INITIATION AND CONDUCT OF PROCEEDINGS



CONFIDENTIALITY OF INFORMATION

1. The DGoS shall issue a **notice** to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter) before initiating the investigation, which will contain, among other things, information on following –
 - a) **Description** of goods/ services in respect of which proceedings initiated
 - b) **Summary** of statement of facts on which the allegations are based
 - c) Time limit allowed to interested parties/ other persons who may have information related to proceedings, for furnishing their **reply**.
2. It shall **conduct investigation** & collect **evidence** necessary. It shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.
3. The DGoS shall **complete** investigation within 3 months of the receipt of the reference (or within such extended period not exceeding further 3 months for reasons to be recorded in writing as allowed by the Standing Committee) and, upon completion of the investigation, **furnish a report** of its findings along with the relevant records to the Authority.
4. Where the DGoS deems fit, he may seek **opinion** of any other agency or statutory authorities in the discharge of his duties.
5. The DGoS, or an officer authorised by him, shall have **power to summon** any person and ask to **produce documents**, and shall have power in any **inquiry** in the same manner, as provided in the case of a civil court. Every Inquiry shall be deemed to be judicial proceedings.

1. If any party is providing information on confidential basis, then DGoS may require it to furnish a **non-confidential summary** of it, and if party says that said information cannot be summarised, then such party shall submit a 'statement of reasons' as to why summarisation is not possible.
2. NWA contained in Rule 129 and Rule 133(2), Sec 11 of the **RTI Act, 2005**, shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis. (It basically provides procedure when an RTI officer receives request to disclose a third party information)

ORDER OF THE AUTHORITY



1. Within 3 months from date of receipt of the report from DGoS, **Authority** shall **determine** whether RTP has passed on the benefit to the recipient or not.
2. An **opportunity of hearing** shall be granted, where any request is received in writing from the interested parties.
3. Where Authority determines that RTP has not passed on the benefit, the Authority may order -
 - a) **Reduction** in prices (Where it believes price should be reduced)
 - b) Where higher amount has been recovered from recipient by supplier – **Recover** difference amount from supplier along with interest @ 18% (from date of collection of higher amount till date of return of such amount) and -
 - i. **Return** it to the recipient
 - ii. In case eligible person does not claim return/ is not identifiable → **depositing** in the Consumer Welfare Fund.
 - c) Imposition of **penalty**; and
 - d) **Cancellation** of registration.
4. If Members of the Authority **differ in opinion** on any point, it shall be decided as per **majority**.
5. The Authority may require any authority of CGST/ SGST/ UTGST tax to **monitor implementation** of the order passed by it.

COMPLIANCE BY RTP

Any order passed by the Authority shall be immediately complied with by the RTP, failing which action shall be initiated to recover the amount in accordance with IGST/ CGST/ UTGST/ SGST Acts of the respective States, as the case may be.

End of Presentation!

What we learned -

- Job Work Procedure – Sec 143
- Presumption as to documents in certain cases – Sec 144
- Admissibility of Videos, Fax and Print-outs as Evidence – Sec 145
- Common Portal – Section 146
- Deemed Exports – Section 147
- Special Procedures for Certain persons – Section 148
- GST Compliance Rating – Section 149
- Information Return – Section 150
- Power to Collect Statistics – Sec 151
- Non-Disclosure of Information – Sec 152
- Sec 153: Expert Assistance
- Sec 154: Power to take goods samples
- Sec 155: Burden of Proof for ITC
- Sec 156: Deemed Public Servants
- Sec 157: Protection of action under Act
- Disclosure of Information by a public servant – Sec 158
- Publication of Information in certain cases – Sec 159
- Assessment Proceedings not invalid – Sec 160
- Rectification of Apparent Errors – Sec 161
- Bar on jurisdiction of civil courts – Sec 162
- Levy of Fees for Copies – Sec 163
- Power to Make Rules – Sec 164
- Power to Make Regulations – Sec 165
- Laying of Rules, Regulations & Notifications – Sec 166
- Delegation of Powers – Sec 167
- Power to Issue Instructions & Directions – Sec 168
- Service of Notice/ Orders etc- Sec 169
- Rounding OFF – Sec 170
- Removal of Difficulties – Sec 172
- Repeals and Savings – Sec 173 & 174
- Anti-Profiteering (Section 171 & Rules)

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Schedules I, II & III to the Central GST Act, 2017

These schedules are important part of the definition of the term 'Supply', which is the charging event in GST.

- By Prakhar Jain

What are the Schedules about?

- **Schedule I** – Activities treated as SUPPLY, even if without consideration.
- **Schedule II** – Specifically provides What is 'goods', What is 'services'.
- **Schedule III** – Activities treated as neither supply of goods, nor services (thus outside definition of 'supply' – outside levy of GST)



Schedule I - ACTIVITIES TREATED AS SUPPLY EVEN IF WITHOUT CONSIDERATION



- Permanent transfer/ disposal of business assets – on which ITC had been availed
- Supply between related parties – in furtherance of business
 - (Gifts upto Rs. 50,000 by employer to employee = excluded)
- Supply by-
 - Principal to Agent (When agent helps in selling)
 - Agent to Principal (When agent helps in receiving/ buying)
- Import of services from related person / own establishment outside India (for business)

Schedule II - ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES



<u>Supply of Goods</u>	<u>Supply of Services</u>
<ul style="list-style-type: none">▪ Transfer of the title in goods▪ Transfer of the title under an Agreement - stipulates property shall pass at a future date upon payment of full consideration (Hire Purchase)	<ul style="list-style-type: none">▪ Transfer of right/ undivided share in goods (without title)▪ Lease, tenancy, easement, licence to occupy land▪ Lease or letting out of the building either wholly or partly
<ul style="list-style-type: none">▪ Business assets disposed off▪ Where ceases to be taxable person, all assets deemed supplied by him (unless transferred as Going Concern, or representative carries on the business)	<ul style="list-style-type: none">▪ Renting of any Immovable Property▪ Construction (except where entire consideration received after issue of Completion Certificate)▪ Private/ Non business use of assets

Schedule II - ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

Contd...

Supply of Goods-

- Supply of goods by any **unincorporated association** or body of persons to a member thereof

Supply of Services

- Temporary transfer/ permitting the use of any **intellectual property right**
- Transfer of the **right to use** any goods for any purpose
- Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of **information technology software**
- Agreeing Refrain from/ tolerate/ or to do - **an act**
- Any **treatment or process** which is applied to another person's goods
- **Works Contract**
- **Restaurant/ catering**



Schedule III - ACTIVITIES TREATED AS NEITHER A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

- Services by an employee to the employer
- Services by any court or Tribunal ("court" includes District Court, High Court and Supreme Court.)
- Services of funeral, burial, crematorium or mortuary incl. transportation of the deceased.
- The functions/ duties performed by-
 - MPs/ MLAs/ Panchayat, Municipalities, other Local Authority Members
 - Constitutional Position Holders (Ex – President/ Governor etc.)
 - Chairperson or a Member or a Director in a body established by CG/ SG/ LA – who is not deemed employee
- Sale of land & Sale of Building (Other than under-construction one, where consideration Before CC)
- Actionable claims, other than lottery, betting and gambling

END OF PRESENTATION!

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DETERMINATION OF NATURE OF SUPPLY (INTER-STATE/ INTRA-STATE) & PLACE OF SUPPLY

Chapters IV & V, Sections 7-14 of the IGST Act

- By Prakhar Jain

WE ALL KNOW THAT -

- Intra-State Supplies

WITHIN STATE

CGST + SGST is applicable

- Inter-State Supplies

OUTSIDE STATE

IGST is applicable

BUT THE QUESTION HERE IS -

Are the terms

“Intra-State Supplies” and “Inter-State Supplies”

Specifically defined in the Act?

Or we have to take its general meaning?



SECTIONS 7 & 8 DEFINE WHAT SHALL BE CONSIDERED AS 'INTER-STATE SUPPLY' AND 'INTRA-STATE SUPPLY' RESPECTIVELY

If we are to understand it in a simple way, then we need to just check two things in every supply-

- Location of supplier
- Place of Supply

LoS

PoS

'LOCATION OF SUPPLIER' & 'PLACE OF SUPPLY'

If both are in-

- (a) two different States;
- (b) two different Union territories;
- (c) a State and a Union territory

INTER-STATE SUPPLY

- If both are in Same State/
Union Territory

INTRA-STATE SUPPLY

'FOLLOWING SHALL ALSO BE **DEEMED** 'INTER-STATE SUPPLY'' -

- **Import** of goods, till they cross customs frontier; and Import of services
- **Export** Supply (Supplier – India, PoS – Outside India)
- Supplies of goods or services to/ by an **SEZ** unit/ developer
- All other supplies **in taxable territory**, not being intra-state, and not covered above

FOLLOWING ARE **DEEMED NOT TO BE** 'INTRA-STATE SUPPLY' -

- **Import** of goods, till they cross customs frontier
- Supplies to a **tourist** u/s 15
- Supplies of goods or services to/ by an **SEZ** unit/ developer

EXPLANATION TO SECTION 8 -

Branches of same person,

- in different countries/ states/ UTs, or
- separate business verticals in same state/ UT; shall be treated as distinct persons



LOCATION OF SUPPLIER

It is directly defined in Section 2(15) of the IGST Act as under-

“Location of the supplier of services” means,—

- *supply from a **place of business - registration** has been **obtained, such place** of business;*
- *supply from a **place other than registered (a fixed establishment elsewhere)**, location of **such** fixed establishment;*
- *supply from **more than one establishment**, location of the **establishment most directly concerned** with the provision of the supply; and*
- ***in absence of such places**, the location of the **usual place of residence** of the supplier;*



BEFORE ASKING WHAT IS 'PLACE OF SUPPLY', WE NEED TO ASK WHY PLACE OF SUPPLY?



- Why are we not simply comparing 'location of recipient' with 'location of supplier'?
- Because GST = **destination** based consumption tax.
- Tax goes to that state where goods are destined/ consumed.
- That's why important what the "**place of supply**" is. It may be possible that 'location of recipient' is different than the actual place where goods or services are supplied/ destined/ consumed.

- The place of supply of **goods** and **services** are determined in separate fashion.
- The reason being, Goods = Have an **Independent identity**, while Services = Dependent, **connected** to recipient or something else that benefits the recipient.
- So our discussion now shall be divided into 4 parts –
 - Place of Supply of Goods – other than import/ export (Sec 10)
 - Place of Supply of Goods – import/ export (Sec 11)
 - Services – Location of supplier & recipient in India (Sec 12)
 - Services – Either Location of supplier or recipient is outside India (Sec 13)

PLACE OF SUPPLY

CHAPTER V OF THE IGST ACT

I. PLACE OF SUPPLY OF GOODS – OTHER THAN IMPORT/EXPORT (SEC 10)

(i) Where movement of goods involved

- Place of supply → the location of the goods at the time, when movement terminates for delivery

(ii) Where goods delivered by transfer of documents of title or otherwise

- By the supplier to a recipient or any other person
- on the direction of a third person, (whether acting as an agent) **before or during movement of goods,**
- Deemed third person has received the goods and
- Place of supply → the principal place of business of such third person



I. PLACE OF SUPPLY OF GOODS – OTHER THAN IMPORT/ EXPORT (SEC 10)

(iii) Where movement NOT involved

Place of supply → Location of such goods at the time of the delivery to the recipient

(iv) Where goods are assembled or installed at site

Place of supply → the place of such installation or assembly

(v) Where goods are SUPPLIED ON BOARD A CONVEYANCE

Place of supply → the location at which such goods are taken on board

(vi) WHERE THE PLACE OF SUPPLY OF GOODS CANNOT BE DETERMINED

Determined in such manner as may be prescribed (in rules)



II. PLACE OF SUPPLY OF GOODS – IMPORT/ EXPORT (SEC 11)



(i) PoS of goods **IMPORTED** →

- Location of the importer

(ii) PoS of goods **EXPORTED** →

- Location outside India
(Where being exported to)



III. SERVICES – LOCATION OF SUPPLIER & RECIPIENT IN INDIA (SEC 12)

HERE, THERE ARE 12 SERVICES WITH SPECIFIC POS PROVISIONS, AND A GENERAL PROVISION

(I) IMMOVABLE PROPERTY

- Directly in relation to IMMOVABLE PROPERTY (like architect, interior decorators, surveyors, engineers, real estate agents, grant of right to use, construction or its coordination etc.)
- All types of lodging accommodation
- Function related accommodation in, like marriage, reception, business function etc, related services
- Services ancillary to the above three

Place of Supply	Location of the Immovable Property (or the intended location)
-----------------	---

(II) PERFORMANCE BASED SERVICES

- Restaurant and catering
- Personal Grooming, Beauty Treatment, Cosmetic & plastic Surgery
- Health Services and fitness services

Place of Supply	Location where services actually performed
-----------------	--

(iii) TRAINING & PERFORMANCE APPRAISAL SERVICES

Place of Supply	To a registered person	→ Location of such person
	To unregistered person	→ Location where services actually performed

(v) ORGANISATION OF ANY EVENT

- Organisation of events and services or related services
- Assigning of sponsorship to such events

Place of Supply	To a registered person	→ Location of such person
	To unregistered person	→ Place where event actually held

Exception – If event held outside India ☐ POS = Location of recipient

(vi) Goods Transport (including mail/ courier)

Place of Supply	To a registered person	→ Location of such person
	To unregistered person	→ Location at which goods handed over for transport

(iv) ADMISSION TO EVENT/ AMUSEMENT PARK

- Cultural/ artistic/ sporting/ scientific/ educational/ entertainment events
- Amusement Park/ other place
- Services ancillary thereto

Place of Supply	Event	→ Where event actually held
	Amusement Park	→ Where amusement park is located

(VII) PASSENGER TRANSPORT

Place of Supply	To a registered person	→ Location of such person
	To unregistered person	→ Location at which passenger embarks (climbs)

Exception – If Right to passage is for future use, point of embarkation unknown – this specific rule not apply – GENERAL RULE apply

Note: Return Journey treated as separate journey

(viii) ON-BOARD A CONVEYANCE SERVICES

Whether it be a vessel, aircraft, train or motor vehicle

Place of Supply	Location of first scheduled point of departure
------------------------	---

(X) BANKING/ FINANCIAL/ STOCK BROKING SERVICES ETC.

Place of Supply	Address of recipient on record of supplier
------------------------	---

(If address of recipient not available, Place of Supply – Location of supplier)

(IX) TELECOMMUNICATION & TELEVISION SERVICES

Place of supply	Fixed lines/ cables & antenna	→ Location where it is installed	
	Post-paid mobile & internet		→ Billing address on record
	Prepaid mobile/ internet/ DTH	Through intermediary	→ Intermediary address on record
		All other cases	→ Location where payment received
	All other services		→ Address of recipient on record of supplier
(If address of recipient not available, place of supply – location of supplier)			

Note: If online payment used for prepaid recharge, **POS** = Location of recipient on record

(XI) INSURANCE SERVICES

Place of Supply	To a registered person	→ Location of such person
	To unregistered person	→ Location of recipient on record of supplier

GENERAL PROVISION

- It is the same as a common theme that we observed in the specific provisions too, i.e. -

Place of Supply	To a registered person	→ Location of such person
	To unregistered person	→ Location of recipient on record of supplier

(If address of recipient not available, Place of Supply – Location of supplier)

(XII) ADVERTISEMENT SERVICES TO CENTRAL GOVT/ STATE GOVT/ LOCAL AUTHORITY/ STATUTORY BODY

Where such advertisement services are to be provided in multiple States/ UTs, then-

Place of Supply	Each such State/ UT – to the extent of value attributable to them	As ascertained in the terms of agreement
	If not mentioned in contract, then on such basis as may be prescribed	

IV. SERVICES – LOCATION OF SUPPLIER OR RECIPIENT IS OUTSIDE INDIA (SEC 13)

HERE, THERE ARE 8 SERVICES WITH SPECIFIC POS PROVISIONS, AND A GENERAL PROVISION

(I) PERFORMANCE BASED SERVICES

Place of Supply	(a) Services in respect of goods required to be made physically available	→ Location where services actually performed
	(b) Services which require the person to be physically present	
	Provided if services on goods is provided from a remote location electronically, then	→ Location where goods are situated

Note: In case of services on goods temporarily imported into India for repairs & exported thereafter without being put to any other use, then this clause shall not apply.

(II) IMMOVABLE PROPERTY



“Copy Pasted”

- Directly in relation to IMMOVABLE PROPERTY (like architect, interior decorators, surveyors, engineers, real estate agents, grant of right to use, construction or its coordination etc.)
- All types of lodging accommodation
- Function related accommodation in, like marriage, reception, business function etc, related services
- Services ancillary to the above three

Place of Supply

Location of the Immovable Property (or the intended location)

(iii) ADMISSION TO/ ORGANISATION OF AN EVENT (SIMILAR)

- Cultural/ artistic/ sporting/ scientific/ educational/ entertainment events
- Services ancillary thereto

Place of Supply	Event	→ Where event actually held
-----------------	-------	-----------------------------

Note: If above three services provided at multiple locations, including a location at taxable territory then Place of Supply for all shall be the location in taxable territory

(vi) ON-BOARD A CONVEYANCE SERVICES



Whether it be a vessel, aircraft, train or motor vehicle

Place of Supply	Location of first scheduled point of departure
-----------------	--

(iv) Goods Transport (OTHER THAN mail/ courier)

Place of Supply	Place of Destination of such goods
-----------------	------------------------------------

(v) Passenger Transport

Place of Supply	Location at which passenger embarks (climbs) on the conveyance for journey
-----------------	--

Note: Return Journey treated as separate journey

(vii) SOME SPECIFIC SERVICES

- Services by Banking Co./ Financial Institution/ NBFC to its account holders
- Intermediary services
- Hiring means of transport (including yachts, excluding aircraft/ vessel) upto 1 month

Place of Supply	Location of supplier of services
------------------------	---

(viii) Online Information and Database access or retrieval services (OIDAR)

Place of Supply	Location of Recipient
------------------------	------------------------------



GENERAL PROVISION

Place of Supply	Location of RECIPIENT
------------------------	------------------------------

(If location of recipient not available, Place of Supply – Location of supplier)

SECTION 9

When either

- Location of Supplier, or
- Place of Supply is in “TERRITORIAL WATERS”



Then they shall be deemed to be in the COASTAL STATE/ UT having the nearest base



SECTION 14 –

Special provision for supplier of OIDAR (online information and database access or retrieval) services

Where **Supplier** is in **Non-Taxable Territory NTT**, and **Recipient** is a **Non-Taxable Online Recipient (NTOR)**

Supplier is liable to pay IGST

For paying this IGST, such supplier shall take a single registration in TT, under SIMPLIFIED REGISTRATION SCHEME

- If not present in TT, then any person representing such supplier located in TT
- If no such person, then appoint one

If there is an **intermediary** located in NTT who arranges/ facilitates such supply – deemed – he is recipient, and further supplying to NTOR, unless –

- Invoice issued by him clearly identifies service & supplier
- He is not involved in payment, delivery, or setting of terms & conditions)

END OF PRESENTATION!

WHAT WE COVERED-

Chapters IV & V,
Sections 7-14 of the IGST Act

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IGST Act (Remaining)

All the provisions of the IGST Act except chapters IV & V

By Prakhar Jain

IGST Act (Remaining)

All the provisions of the IGST Act except chapters IV & V

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PRELIMINARY (CHAPTER I)



SECTION 1 – SHORT TITLE, EXTENT & COMMENCEMENT

- ▶ **Short title** - This Act may be called the “Integrated Goods and Services Tax Act, 2017”.
- ▶ **Extent** - It shall extend to the **whole of India** (“except the State of Jammu and Kashmir” was later omitted)
- ▶ **Commencement** - It shall come into force on such date as may be notified. Different dates may be appointed for different provisions (Notified Date = **22nd June** for some provisions relating to registration etc., & **01st July** for all remaining provisions)

SECTION 2 – DEFINITIONS

- ▶ The definitions have been discussed as and when there relevance comes, and also we shall have separate videos for the definitions that are demanded.

ADMINISTRATION (CHAPTER II)



SECTION 3 - APPOINTMENT OF OFFICERS

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

SECTION 4 – AUTHORISATION OF OTHER OFFICERS

- ▶ The officers appointed under the SGST/ UTGST Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government may notify

LEVY AND COLLECTION OF TAX (CHAPTER III)



SECTION 5 – LEVY & COLLECTION

1) (Subject to SS 2) There shall be levied	Tax called ' integrated ' Goods and Services Tax'	On all Inter-State Supplies	Of goods/ services or both	Except on the supply of alcoholic liquor for human consumption
On value determined u/s 15 (Valuation) of the CGST Act	At such rates notified (not exceeding 40%)	Collected in such manner as may be prescribed	& shall be paid by the taxable person	
IGST on goods imported into India shall be levied and collected in accordance with the Sec 3 of the Customs Tariff Act, 1975; and on value determined as per that act at the point when custom duties are levied.				
2) Tax on Petrol, Diesel, Natural Gas, Aviation Turbine Fuel, Crude oil				Shall be Levied from notified date
3) Govt. may notify categories of goods/ services – Tax applicable on REVERSE CHARGE All provisions of this act apply on recipient of such goods/ services/ both, as if he is liable to pay				
4) Supply by unregistered Dealer to registered dealer – Reverse Charge on recipient (similar to Purchase Tax)				
5) Govt. may notify services, which if supplied through E-Commerce Operator, tax to be paid by it (Provided if no physical presence in taxable territory (TT) then person representing in TT is liable) (Provided if no physical presence & no representative, then appoint a person in TT for paying tax)				

SECTION 6 – POWER TO GRANT EXEMPTION



1) The Govt. may by notification	exempt GENERALLY	Goods/ services/ both of any specified description
Either Absolutely, or subject to some conditions specified		Where it is satisfied that it is necessary in the public interest so to do
2) The Govt. may by special order in each case	Exempt from payment of tax on goods/ services/ both	Where it is satisfied that it is necessary in the public interest so to do
But only under exceptional circumstances, to be stated on such order		
3) The govt. may insert an EXPLANATION in such notification/ order, by notification		At any time within 1 year of their issue
And every such explanation shall have effect as if it had always been its part (retrospective effect)		

REFUND OF IGST TO INTERNATIONAL TOURIST (CHAPTER VI)



SECTION 15

- ▶ The IGST paid by **tourist** leaving India on any **supply** of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.
- ▶ Here, “tourist” means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

ZERO RATED SUPPLY (CHAPTER VII)

SECTION 16

“Zero Rated Supply” means any of the following supplies of goods or services or both, namely:—

- Export of goods or services or both; or
- Supply of goods or services or both to a SEZ developer/ SEZ unit.

Subject to Sec 17(5) of CGST Act, ITC may be availed for zero-rated supplies, even if such supply is an exempt supply.

- ▶ A registered person making zero rated supply shall be eligible to claim **refund** under either of the following options, namely –
 - a) He may supply goods or services or both under bond or Letter of Undertaking, **without payment of IGST** and claim refund of unutilised ITC (Certain conditions & restrictions have been given in circulars); or
 - b) He may supply goods or services or both, **on payment of integrated tax** and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder.
- ▶ Observe that both methods are Tax Neutral, the first one just helps to avoid blockage of working capital.

APPORTIONMENT OF TAX AND SETTLEMENT OF FUNDS (CHAPTER VIII)



SECTION 17 – APPORTIONMENT OF IGST & SETTLEMENT

Out of the IGST paid to the Central Government,—

- a) in respect of inter-State supply to an **unregistered** person or to a **composition** taxable person;
- b) in respect of inter-State supply where the registered person is not eligible for input tax credit;
- c) in respect of inter-State supply made in a FY to a **RTP**, where he **does not avail** of the **ITC within** the specified **time limit** and thus remains in the IGST account after expiry of the due date for furnishing of annual return for such year in which the supply was **made**;
- d) in respect of import by an **unregistered** person or by a **composition** taxable person;
- e) in respect of import where the ITC is **not eligible**;
- f) in respect of import made in a FY by a **RTP**, where he **does not avail** of the **ITC within** the specified **time limit** and thus remains in the IGST account after expiry of the due date for furnishing of annual return for such year in which the supply was **received**,

The amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

SECTION 17 – APPORTIONMENT OF IGST & SETTLEMENT (CONTD...)

- ▶ The balance amount of IGST remaining in the IGST account in respect of the supply for which an apportionment to the Central Government has been done as above, shall be apportioned to the,—
 - a) **State** where such supply takes place; and
 - b) Central Government where such supply takes place in a Union territory:
- ▶ Where the **place** of such supply made by any taxable person **cannot be determined** separately, the said balance amount shall be apportioned to, **each of the States**; and Central Government (in relation to Union territories), **in proportion to the total supplies made** by such taxable person to each of such States or Union territories, as the case may be, **in a FY**:
- ▶ Where the **taxable supplier** is **not identifiable**, the said balance amount shall be apportioned to all States and the Central Government **in proportion to the amount collected** as State tax or, as the case may be, UTGST, by the respective State or, as the case may be, by the Central Government **during the immediately preceding FY**.

SECTION 17 – APPORTIONMENT OF IGST & SETTLEMENT (CONTD...)

- ▶ Same apportionment shall be done for **interest, penalty and composition tax amount** realised in connection with the IGST.
- ▶ Amount apportioned to the Central Government = Reduced from IGST account & transferred to CGST/ UTGST account, and Amount apportioned to the State Government = Reduced from the IGST account & transferred to the SGST account (of the respective States) in such manner and within such time as may be prescribed.
- ▶ If any IGST earlier apportioned to a State or Central Government (on account of a Union territory), and now subsequently found to be refundable to any person and refunded to such person → Such amount shall be reduced from the current amount to be apportioned to such State or Central Government (on account of such Union territory), in prescribed manner and time.

SECTION 18 – IMPACT OF CROSS-UTILISATION OF ITC



On utilisation of credit of IGST availed under this Act **for payment of,—**

- a) **CGST** in accordance with Sec 49(5) of the CGST Act, the amount collected as IGST shall stand reduced and the Central Government shall transfer the amount from the IGST account to the CGST account in prescribed manner and time
- b) **UTGST** in accordance with Sec 9 of the UTGST Act, the amount collected as IGST shall stand reduced and the Central Government shall transfer the amount from the IGST account to the UTGST account in prescribed manner and time.
- c) **SGST** in accordance with the respective SGST Act, the amount collected as IGST shall stand reduced by and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount to the appropriate SGST account in prescribed manner and time.

{“Appropriate State”, means the State/ Union territory where he is registered or is liable to be registered as per the CGST Act}

SECTION 19 – MISTAKES & THEIR CORRECTION

- ▶ If RTP had paid IGST on a supply which he considered as inter-State supply, but subsequently held to be intra-State supply, then he shall be granted refund of the IGST that he had paid in prescribed manner and conditions. *(He will have to pay CGST & SGST)*
- ▶ If RTP had paid CGST and SGST/ UTGST on a transaction which he considered as intra-State supply, but subsequently held to be inter-State supply, then he shall *(get refund of the CGST & SGST/ UTGST that he had paid, and be liable to pay the correct IGST amount, but)* not be required to pay any interest on the amount of IGST payable.

MISCELLANEOUS (CHAPTER IX)

SECTION 20 – CGST PROVISIONS IMPORTED & APPLIED

Subject to the provisions of this Act and the rules made thereunder, the provisions of CGST Act relating to the following shall, *mutatis mutandis*, apply in relation to IGST, as they apply in relation to CGST, as if they are enacted under this Act,—

(i) scope of supply;	(ii) composite supply and mixed supply;	(iii) time and value of supply;	(iv) input tax credit;
(v) registration;	(vi) tax invoice, credit and debit notes;	(vii) accounts and records;	(viii) returns, other than late fee;
(ix) payment of tax;	(x) tax deduction at source;	(xi) collection of tax at source;	(xii) assessment;
(xiii) refunds;	(xiv) audit;	(xv) inspection, search, seizure and arrest;	(xvi) demands and recovery;
(xvii) liability to pay in certain cases;	(xviii) advance ruling;	(xix) appeals and revision;	(xx) presumption as to documents;
(xxi) offences and penalties;	(xxii) job work;	(xxiii) electronic commerce;	(xxiv) transitional provisions; and
(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,;			

SECTION 20 – CGST PROVISIONS IMPORTED & APPLIED

- ▶ In the case of TDS, the deductor shall deduct tax at the rate of 2% from the payment made or credited to the supplier:
- ▶ In the case of TCS, the operator shall collect tax at such rate not exceeding 2%, as may be notified on the recommendations of the Council, of the net value of taxable supplies:
- ▶ For this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force **other than** this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.
- ▶ In cases where the penalty is leviable under the CGST Act and the SGST/ UTGST Act, the penalty leviable under this Act shall be the sum total of the said penalties.

SECTION 21 – APPLICABLE TAX FOR IMPORT OF SERVICES AROUND TRANSITION DAY

- ▶ **Import of services** made **on or after 01st July** = taxable under this Act **even if** the transactions for such import of services had been initiated before the appointed day. But -
 - ▶ If tax on such import had been **paid in full** under the existing law, no tax shall be payable under this Act.
 - ▶ If tax on such import had been **paid in part** under the existing law, the balance amount shall be payable under this Act.
- ▶ A transaction shall be deemed to have been initiated before the appointed day, **if either** the invoice relating to such supply or payment (either in full or in part) has been received or made **before** the appointed day.

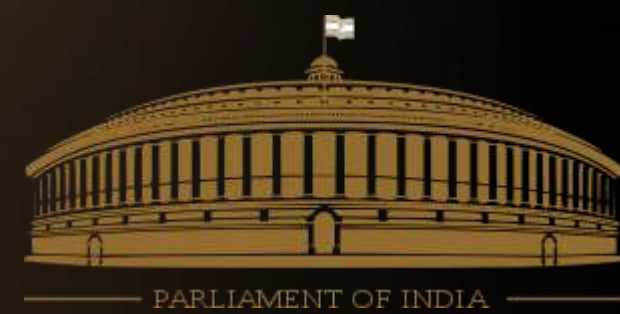
SECTION 22 – POWER TO MAKE RULES

- ▶ Government **may notify rules** for carrying out the provisions of this Act.
- ▶ Without prejudice to the generality of the above, the Government may make rules for **matters** – for which rules are required to be made/ for which rules may be made as per this Act.
- ▶ The power to make rules conferred by this section shall include the power to give **retrospective effect** to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force. (not earlier than 01st of July 2017)
- ▶ Any rules notified may provide that a contravention thereof shall be liable to a **penalty** not exceeding **Rs. 10,000**.

Section 23 – Power to make regulations

- ▶ The Board may notify regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

SECTION 24 – LAYING BEFORE PARLIAMENT



- ▶ **Every rule made** by the Government, **every regulation made** by the Board and **every notification issued** by the Government under this Act, shall be laid as soon as may be after it is made or issued, before each House of 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)
- ▶ **If before the expiry** of the **next session** (the session after the session(s) in which it was laid down), both Houses agree in making any modification in the rule or regulation or in the notification, or that it should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

SECTION 25 – REMOVAL OF DIFFICULTIES

- ▶ If any difficulty arises in giving effect to any provision of this Act, the Government may, **make such provisions (not inconsistent** with the provisions of this Act or the rules or regulations made thereunder) as may be necessary or expedient for the purpose of removing the said difficulty, **by** a general or a special **order** published in the Official Gazette.
- ▶ No such order shall be made after the expiry of a period of **3 years** from the date of commencement of this Act.
- ▶ Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament

End of Presentation!

What we learned -

- ▶ Section 1 – Short Title, Extent & Commencement
- ▶ Section 2 – Definitions
- ▶ Section 3 - Appointment of officers
- ▶ Section 4 – Authorisation of other officers
- ▶ Section 5 – Levy & Collection
- ▶ Section 6 – Power to grant exemption
- ▶ Section 7-14 – Covered Elsewhere
- ▶ Section 15 - Refund of IGST to international tourist
- ▶ Section 16 - ZERO RATED SUPPLY
- ▶ Section 17 – Apportionment of IGST & Settlement
- ▶ Section 18 – Impact of Cross-Utilisation of ITC
- ▶ Section 19 – Mistakes & their correction
- ▶ Section 20 – CGST provisions imported & applied
- ▶ Section 21 – Applicable Tax for Import of Services around Transition day
- ▶ Section 22 – Power to Make Rules
- ▶ Section 23 – Power to make regulations
- ▶ Section 24 – Laying before Parliament
- ▶ Section 25 – Removal of Difficulties

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THE GST (COMPENSATION TO STATES) ACT, 2017

The Act for the levy of compensation cess on certain supplies, to provide for the compensation to be given to the States by Center for loss of revenue

- By Prakhar Jain

BACKGROUND

- During the introduction of the GST, the states had to relinquish their powers to levy tax on goods, and they feared loss of revenue to them. They wanted an assurance that they will not have to bear any losses due to the introduction of GST. So, the Central Government proposed that it will compensate any losses to any state that accrues after the introduction of GST. To give effect to that proposal, this Act has been enacted, and here we will understand how the loss is calculated and compensated.



SECTION 8: LEVY & COLLECTION OF CESS

There shall be levied a cess on →	Such Intra-State supplies (as per Sec 9 of the CGST Act), and Inter- State supplies (as per Sec 5 of the IGST Act), as specified in the Schedule, at notified rates not exceeding that mentioned in the Schedule.
Levied wef date on which CGST Act comes into force, and <u>for 5 years</u> from that date (or such other period as prescribed), and collected in prescribed manner.	Purpose: For providing compensation to the States for loss of revenue
No Cess leviable on supplies by <u>Composition Taxable Person</u> .	

- **Value** of supply shall be determined as per Sec 15 of the CGST Act.
- **Cess on goods imported** into India shall be levied and collected as per Sec 3 of the Customs Tariff Act, 1975, at the point when duties of customs are levied under Sec 12 of the Customs Act, 1962, on a value determined under the Customs Tariff Act, 1975.

THE SCHEDULE (AS AFTER AMENDMENT VIDE ORDINANCE DT. 02/09/17)

S. No.	Description	HSN	Maximum Rate of Compensation Cess
1	Pan Masala	2106 90 20	135% ad valorem
2	Tobacco and manufactured tobacco substitutes including tobacco products	24	Rs. 4170 per 1000 sticks, or 290% ad valorem, or a combination thereof, but not exceeding [Rs. 4170 per thousand sticks + 290% ad valorem]
3	Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite, whether or not agglomerated, excluding jet, peat (including peat litter), whether or not agglomerated	2701, 2702 or 2703	Rs. 400 per tonne
4	Aerated waters	2202 10 10	15% ad valorem
4A	Motor vehicles for the transport of not more than 13 persons, including the driver	8702 10, 20, 30	25% ad valorem
5	Motor cars and other motor vehicles principally designed for the transport of persons (other than motor vehicles for the transport of 10 or more persons, including the driver), including station wagons and racing cars	8703	25% ad valorem
6	Any other supplies	-	15% ad valorem

SECTION 1: SHORT TITLE, EXTENT AND COMMENCEMENT

Short Title	This Act may be called the <u>Goods and Services Tax (Compensation to States) Act, 2017</u> .
Extent	It extends to the whole of India.
Commencement	It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. (Notified wef 01/07/2017 vide - <u>Notification No. 1/2017</u> – Goods and Services Tax Compensation, dated 28 th June 2017)

SECTION 2: SOME IMPORTANT DEFINITIONS

(HERE, ONLY SELECTED DEFINITIONS HAVE BEEN DISCUSSED. FOR ALL AND EXACT DEFINITIONS, ONE CAN REFER THE ACT.)

(g) “input tax” in relation to a taxable person, means →	(i) cess charged on any <u>supply</u> of goods/ services/ both <u>made to him</u>
	(ii) cess charged on <u>import</u> of goods and includes the cess payable on <u>reverse charge</u> basis
(k) “<u>projected growth rate</u>” means the <u>rate of growth projected for the transition period</u> as per section 3	
(m) “<u>State</u>” means –	(i) for the purposes of Sec 3, 4, 5, 6 and 7 → the States as defined under the CGST Act; and (ii) for the purposes of Sec 8, 9, 10, 11, 12, 13 and 14 → the States as defined under CGST Act (+) the Union territories as defined under UTGST Act
(p) “<u>taxable supply</u>” means a <u>supply</u> of goods/ services/ both, which is <u>chargeable to the cess</u> under this Act;	
(q) “<u>transition date</u>” shall mean, in respect of any State, the date on which the SGST Act of that State comes into force	
(r) “<u>transition period</u>” means a <u>period of 5 years from the transition date</u>; and	
The words/ expressions used and <u>not defined</u> in this Act, but <u>defined in the CGST/ IGST Act</u> shall <u>have</u> the <u>meanings</u> respectively <u>assigned</u> to them <u>in those Acts</u>.	

SECTION 3 – GROWTH RATE

The projected nominal growth rate of revenue subsumed for a State during the transition period shall be **14% p.a.**

SECTION 4 – BASE YEAR

For calculating compensation amount payable in any FY, the **FY 2015-16** shall be taken as the **base year**.

SECTION 5 – BASE YEAR REVENUE

INCLUSIONS

The base year revenue for a State = Sum of revenue collected by the State and the local bodies during the base year, through the following taxes levied (net of refunds) -

1. VAT, sales tax, purchase tax, Works Contract Tax, or any other tax levied under Entry 54
2. CST levied under the Central Sales Tax Act, 1956;
3. Entry tax, Octroi, Local Body Tax, any other tax levied under Entry 52
4. Luxury Tax, Entertainment tax, tax on amusements, betting and gambling or any other tax levied under Entry 62
5. Advertisement tax, or any other tax levied under Entry 55
6. Excise duty on medicinal and toilet preparations under Article 268
7. Cess/ Surcharge/ Fee leviable under Entry 66 read with Entries 52, 54, 55 and 62 through any Act, enacted prior to constitution amendment

EXCLUSIONS

Following taxes shall **not be included** -

1. Any taxes levied under Entry 54 (VAT), CST, Cess - on the sale/ purchase of → petroleum crude, high speed diesel, petrol, natural gas, aviation turbine fuel and alcoholic liquor for human consumption.
2. Entertainment tax levied by the State but collected by local bodies under Entry 62.

SPECIAL PROVISIONS FOR CERTAIN STATES

- For **Jammu and Kashmir**, Base year revenue shall include - Service tax collected by it during the base year.
- For the “**Special Category States**” [mentioned in Article 279A(4)(g)], Base year revenue shall include → Amount of revenue foregone by such states, due to ‘exemptions or remission’ given by them to promote industrial investment in their States, with respect to the taxes which are included in Base Year Revenue. [Means, the taxes they lost due to giving exemptions during the base year, shall also be considered as included in “Base Year Revenue”]

ROLE OF CAG

Base year revenue shall be calculated as above, on the basis of the figures of revenue (net of refunds given in that year), collected and audited by the CAG of India.

OTHER POINTS

- In respect of any State, if any part of revenues mentioned above are not credited in the Consolidated Fund of the respective State → it shall be included in the total base year revenue of the State, subject to prescribed conditions.
- The Acts under which the specific taxes are being subsumed under GST shall be as such as may be notified.

SECTION 6 – CALCULATION OF PROJECTED REVENUE

The projected revenue for any year in a State = Projected growth rate (x) Base year revenue.

Illustration.—If the base year revenue for 2015-16 = Rs. 100,

$$\rightarrow \text{Projected revenue for FY 2018-19} = \left[100 \times \left(\frac{(1+14)}{100} \right)^3 \right]$$

SECTION 7 – COMPENSATION

CONCEPT

- The **compensation** shall be **payable during the transition period** (for 5 years).
- **Every 2 months**, the compensation shall be **provisionally** calculated and **released**.
- **Every FY**, after the receipt of final revenue figures as audited by the CAG, the **compensation** shall be **finally** **calculated**.

CALCULATION AT END OF EVERY 2 MONTHS	CALCULATION FOR WHOLE FY
The loss of revenue at the end of every 2 months period shall be calculated in the following manner –	The total compensation payable for any FY shall be calculated in the following manner –
(a) Projected revenue <u>till end of period</u> , calculated on a <u>pro-rata basis as a % of Total Projected revenue</u> for FY as per Sec 6. <i>Illustration.</i> —If total projected revenue = Rs. 100 → Projected revenue till end of 10 months = $100 \times \frac{10}{12} = \text{Rs. } 83.33$	(a) Projected revenue <u>for FY</u> , calculated <u>as per Sec 6</u> .
(b) Actual revenue collected will be sum of — (i) Actual revenue from <u>SGST</u> (net of refunds) till end of period (ii) <u>IGST</u> apportioned to that State till end of period, as certified by the Principal Chief Controller of Accounts of the CBEC (iii) Any collection of <u>other taxes</u> levied by State under Acts specified in Sec 5(4) (net of refund) till end of period, as certified by CAG.	(b) Actual revenue collected, will be the sum of - (i) Actual revenue from <u>SGST</u> (net of refunds) (ii) <u>IGST</u> apportioned to that State (iii) Any collection of <u>other taxes</u> levied by State under Acts specified in Sec 5(4) (net of refund), as certified by CAG.
Provisional compensation payable = [<u>Projected revenue</u> till end of period (-) <u>Actual revenue</u> till end of period] (-) <u>Provisional compensation paid</u> till end of previous 2 months period.	(c) Final Compensation = <u>Projected revenue</u> (-) <u>Actual revenue</u> .
If any difference between Final compensation payable and total provisional compensation released at the end of the 2 month periods, then it shall be <u>adjusted against</u> release of compensation in the <u>subsequent FY</u> .	
For the last year of the transition period (5 th year), since it there will be no compensation payable in the next year to it, so it can't be adjusted as above. Thus, any <u>excess</u> amount paid to the state shall be <u>refunded</u> by the state, to the center.	

SECTION 9: RETURNS, PAYMENT AND REFUNDS

1. **Every taxable person** making a taxable supply shall -
 - a) Pay the amount of cess as payable under this Act in prescribed manner.
 - b) Furnish Returns, along with the returns to be filed under the CGST Act.
 - c) Apply for Refunds of such cess in prescribed form.
2. **For** furnishing of **returns** and claiming **refunds** (except for the form to be filed), the provisions of the CGST Act and the rules made thereunder, shall apply, as they apply in relation to the levy and collection of CGST.

SECTION 10: CREDITING PROCEEDS OF CESS TO FUND

1. The **proceeds** of the Cess collected, shall be credited to a non-lapsable Fund known as the 'GST Compensation Fund', which shall form part of the public account of India.
2. All amounts payable to the States under section 7 (**compensation**) shall be paid out of this Fund.
3. **50% of the amount remaining unutilised** in the Fund at the end of the transition period, shall be transferred to the Consolidated Fund of India as the share of Centre, and the balance 50% shall be distributed amongst the States in the ratio of their total revenues from the SGST/UTGST in the last year of the transition period.
4. The **accounts** relating to Fund shall be **audited by the CAG** (or any person appointed by him) at such intervals as may be specified by him and any expenditure in connection with such audit shall be payable by the Central Government.
5. The accounts of the Fund, as certified by the CAG (or any other person appointed by him in this behalf), together with the audit report thereon shall be **laid before each House of Parliament**.

SECTION 11: OTHER PROVISIONS APPLICATION

The provisions of the CGST Act/ IGST Act, and the rules made thereunder, including those relating to -

• assessment	• input tax credit	• non-levy/ short-levy	shall mutatis mutandis apply for Intra-State/ Inter-State supplies leviable to Cess respectively.
• interest	• appeals	• offences and penalties	

Input tax credit in respect of cess shall be utilised only towards payment of said cess.

SECTION 12: POWER TO MAKE RULES

1. **CG shall**, on the recommendations of the Council, **by notification** in the Official Gazette, **make rules** for carrying out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - a) The **conditions**, under which the exemption amounts were **included in the total base year revenue** of the Special Category States, under Sec 5(3).
 - b) The **conditions** subject to which any part of **revenues not credited in the Consolidated Fund** of the respective State **shall be included in the total base year revenue** of the State, Sec 5(6).
 - c) The **manner of refund of compensation by the States** to the CG Sec 7(6).
 - d) The **manner of levy and collection of cess** and the period of its imposition under Sec 8(1).
 - e) The **manner and forms for payment** of cess, furnishing of **returns** and **refund** of cess under Sec 9(1).
 - f) **Any other matter** which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

SECTION 13: LAYING OF RULES

- **Every rule made** under this Act by the CG shall be **laid** as soon as may be after it is made or issued, **before each House of 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).
- **If before the expiry** of the **next session** (the session after the session(s) in which it was laid down), both Houses agree in making any modification in the rule, or that it should not be made, the rule shall henceforth be so modified/ annulled. But anything previously done under that rule shall remain valid.

SECTION 14: POWER TO REMOVE DIFFICULTIES

- If any difficulty arises in giving effect to any provision of this Act, the Government may, **make such provisions (not inconsistent** with the provisions of this Act or the rules or regulations made thereunder) as may be necessary or expedient for the purpose of removing the said difficulty, by order published in the Official Gazette.
- **No** such **order** shall be made **after the expiry of 3 years** from the commencement of this Act.
- **Every** such **order** made, as soon as may be after it is made, be laid before each House of Parliament.

WHAT WE LEARNED -

- Background
- Section 1: Short Title, Extent and Commencement
- Section 2: Some Important Definitions
- Section 3 – Growth Rate
- Section 4 – Base Year
- Section 5 – Base Year Revenue
 - Inclusions
 - Exclusions
 - Special Provisions for Certain States
 - Role of CAG
 - Other Points
- Calculation of Projected Revenue, Compensation, and its release
- Section 6 – Calculation of Projected Revenue
- Section 7 – Compensation
 - Concept
 - Calculation At End of Every 2 months
 - Calculation for Whole FY
- Section 8: Levy & Collection of Cess
- Section 9: Returns, Payment and Refunds
- Section 10: Crediting Proceeds of Cess to Fund
- Section 11: Other Provisions Application
- Section 12: Power to make Rules
- Section 13: laying of Rules
- Section 14: Power to Remove Difficulties
- THE SCHEDULE [See section 8 (2)]

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